STATE OF TAMIL NADU

v.

J. JAYALALITHA

MAY 9, 2000

[K.T. THOMAS AND R.C. LAHOTI, JJ.]

Criminal Procedure Code, 1973—Sections 227,239 and 245—Discharge—Accused allegedly entered into criminal conspiracy to import coal causing huge losses to the State—Import was made inspite of strong objections by the bureaucracy, Central Government and other high officials—Special Judge discharged accused as material on record was found insufficient to frame a charge—High Court upheld order of discharge—On appeal, Held, it cannot be decided at this premature stage that accused was unaware of the serious implications, which were brought to her notice—Exercise at this stage should be confined to considering the police report and documents in order to ascertain whether the allegations are groundless or whether a rebuttable presumption of guilt can be raised—Order of discharge set aside and trial to continue—Penal Code, 1860—Section 120-B and section 409—Prevention of Corruption Act, 1988—Section 13(2).

Evidence Act, 1872—Section 10—Relevancy of fact—Court should have material to believe participation of accused in conspiracy and only then whatever was said, done or written by the accused would be relevant—Relevant material to be considered to decide whether there is a reasonable ground to believe participation of accused in the conspiracy even at the stage of framing charges.

Respondent, a former Chief Minister, along with 10 others, was accused of entering into a criminal conspiracy to import coal in order to obtain personal pecuniary advantages, causing huge losses to the State. The Government Secretary (PWD) had raised strong objections against the acceptance of tender regarding the said import but they could not reach the respondent as the relevant pages were removed from the file. The Union Minister for Coal and many other high officials also discouraged this import as it was neither urgent nor qualitative but inspite of all these, the deal was made.

A Special Judge discharged the respondent, as the materials shown on record were insufficient to frame a charge. High Court in revision did not interfere with the order. Hence this appeal.

Appellant contended that the materials and circumstances were sufficient to bring home the guilt of the respondent, that such a conspiracy B could not have been hatched without the direct, active and positive involvement of the respondent; that the Government Secretary, Union Coal Minister and many other high officials had expressed their displeasure inspite of which the deal was made; and that it was an impossibility that such material could have escaped her attention.

C Respondent contended that there was nothing on record to connect her with the conspiracy; that the sheets containing adverse remarks were absent from the file and she was herself in dark; and that action was taken on the proposals and recommendations submitted by departmental heads and high officials in the bureaucracy.

D Allowing the appeal, the Court

HELD: 1. The question of using anything said, done on written by any one of such conspirators arise only if the facts would help to sustain the first limb of Section 10 of the Evidence Act, 1872 i.e. there is reasonable ground E to believe that two or more persons have conspired together to commit an offence. Unless the court has some materials to believe that the respondent is one of those persons referred to in the first limb of the section, any consideration for what was said, done or written would not be relevant fact as against each of the conspirators. It is open to the court, even at this stage, to consider the materials relating to what was said, done or written with F reference to the common intention between the accused for the purpose of deciding whether there is reasonable ground to believe that the said accused would have been one of the conspirators. [30-D-E]

State v. *Nalini*, [1999] 5 SCC 253, relied on

G 2. It is pertinent to point out that all the materials were included in the file which was submitted to the respondent. There is no case for the respondent that they were not in that file when she scrutinised it nor is it anybody's case that those warnings were included only in the missing sheets. If she came to know of these prompt warnings and despite them accorded her green signal H to import the coal, then it cannot be concluded at this premature stage that

she was not aware of the serious implications of the clandestine deal on the State exchequer. [34-D]

3. This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are "groundless" or whether "there is ground for presuming that the accused has committed the offences." Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial. [35-H; 36-A-B]

4. The Court should not have discharged the respondent at this premature stage. The Special Judge shall proceed against her as one of the accused in the case, however, she may seek permission to dispense with her presence in the trial court provided she agrees to abide by the conditions (i) a counsel shall represent her whenever the case is taken up; (ii) she would not dispute her identity as the particular accused in the case and (iii) she would be present on any day when her presence is required by the court. On her failure to abide by these conditions it is open to the Special Judge to revoke the above said benefits. [36-G-H; 37-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 452 of 2000.

From the Judgment and Order dated 13.1.2000 of the Madras High Court in Crl. R.C. No. 575 of 1999.

Shanti Bhushan, V.R. Reddy, Anil B. Diwan, R. Mohan, R. Shunmughasundaram and V.G. Pragasam for the Appellant.

Sushil Kumar, K.V. Viswanathan, N. Jothi, Sanjay Jain, Kunwar Ajit Mohan Singh, R.P. Wadhwani and K.V. Venkataraman for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

The former Chief Minister of Tamil Nadu Ms. J. Jayalalitha was arraigned before the court of a Special Judge, Chennai, along with 10 others, depicting her as the hub of a cabal for knocking off a huge sum of public money to make vast pecuniary gains at the cost of the State exchequer. The Special

A Judge at the stage of framing charge felt that the materials shown to him were insufficient to frame a charge against her and also against one of her former cabinet colleagues (V.R. Nedunchezhian). So they were discharged by the Special Judge, but a charge has been framed against the other nine accused for criminal conspiracy to misappropriate Government funds and other related offences. The State of Tamil Nadu challenged the aforesaid order of discharge B before the High Court of Madras in revision, but a learned Single Judge did not interfere with the order. In the meanwhile V.R. Nedunchezhian has passed away. This appeal is by the Sate as against Ms. Jayalalitha (respondent herein) in challenge of the said order of the High Court.

C The substance of the police case is that during the period between February 1992 and October 1993, all the above 11 accused and certain foreign coal suppliers had entered into a criminal conspiracy to import coal for Tamil Nadu Electricity Board(hereinafter referred to as the 'Electricity Board') for such price as to obtain huge pecuniary advantage to themselves by causing heavy and wrongful loss to the State to the tune of about 6.5 crores of rupees.

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There are three Thermal Power Stations in Tamil Nadu (at Ennore, Mettur and Tuticorin) which generate electric power by using coal as fuel. The annual requirement of coal for those three stations was about 12 million metric tonnes of coal. As the stock position of coal in March 1992 appeared E insufficient to meet the requirement a decision was taken to import at least 2 million metric tonnes of coal from foreign countries. The allegation is that such a decision was taken pursuant to a criminal conspiracy hatched by the accused persons for obtaining huge pecuniary advantage. Pursuant to the decision, tenders were invited from foreign suppliers of coal. On 10.3.1993, tenders were opened, but only 11 of them were found to be in order. However, F those bidders were asked to revise the price bid after adding three more parameters, such as size, ash content and volatile matter. The idea was to facilitate import of inferior quality of coal at higher price by showing favouritism to certain coal suppliers of Indonesia, according to the allegation.

G The Government Secretary (PWD) raised strong objections against the said tenders being accepted. A company based at Singapore (M/s. Counter Corporation) made an offer to supply 6 lacs metric tonnes of coal at the rate of 35.24 US Dollars. But it was rejected without even starting negotiation with them. But the Electricity Board fixed the price of coal at 40.20 US Dollars per metric ton and three Indonesian bidders were permitted to supply coal at that H price. Subsequently M/s. Counter Corporation (Singapore) was also asked to

supply coal at the increased price of 40.20 US Dollars per metric ton. A

The offences alleged against all the accused are Section 120-B read with Section 409 of IPC as well as Section 13(2) of the Prevention of Corruption Act, 1988.

What persuaded the Special Judge to adopt the view that materials B produced before him were insufficient to frame a charge against the respondent, are briefly the following:

The strong objection raised by Government Secretary (Shri V. Sundaram) against the proposal to import coal at such a high price would not have C reached the notice of the respondent because it is an admitted position that some crucial sheets in the Current File were removed and such sheets were later added after obtaining approval from the Chief Minister. Special Judge has made the following observations:

> "It is not known as to how and where and at what point of time the D pages 223 to 226 and also the pages 21 to 32 were removed from the Secretariat file (no.55360/U2/93). This part of the file only contains the objections raised by Sundaram, objections in paras 21 to 32 are based on the objections already raised in pages 223 to 246. I have carefully gone through the materials placed before me to find out whether there is anything to show that the file was intact with the pages containing E the objections of Sundaram when the file reached the table of A11 and A1. The pages containing the objections of Sundaram pages 223 to 246 and pages 21 to 32 can be called as missing pages for shortness. The materials on record do not reveal how, when and where the missing pages were removed and secreted." F

The Special Judge has further observed thus:

> "If the file in the present condition without the missing pages had been submitted to A1 and A11, they would not have been in a position to know the removal of pages and suspect foul play. If these G missing pages have been removed either by 2nd or 3rd accused before sending the file to 11th accused and 1st accused, then there might not have been any occasion for 11th and 1st accused to note the objections of Sundaram."

Learned Single Judge of the Madras High Court while affirming the said H

A order pointed out that the entire case against the respondent is based on the statement of Shri V. Sundaram and another statement made by Shri Venkataraman, the then Chief Secretary (who is arrayed as the third accused in the charge sheet, against whom the trial court has framed charge). The latter statement was recorded under Section 164 of the Code of Criminal Procedure (for short 'the Code'). Regarding the objections put forward by V. B Sundaram in the Current File, learned Single Judge noticed that Page Nos. 225 to 245 of that file remained missing at a particular point of time and the objections made by V. Sundaram were on those sheets. When there is nothing to show that those sheets were removed at the behest of respondent Jayalalitha it must be presumed that she had not come across those objections, according C to learned Single Judge of the High Court.

While considering the possibility of those pages being surreptitiously removed at the behest of respondent Jayalalitha learned Single Judge has stated thus:

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> "A mere imagination cannot be said to be a presumption. There is no evidence on record to show that the file had gone to the first accused and she ordered the removal of those pages at the time when she signed the said file. When the file was sent from witness Sundaram those pages were found in the file and thereafter, it has gone to E number of officials and the Minister for Public Works, who is the second accused in this case and from him, the said file has gone to A-11 and finally to A-1. The fact of the file containing those pages and thereafter missing of those pages when the file once gain reached him after the signature of the accused and the fact of inserting those missing pages together in the file by one Easakki Muthu are also F spoken to by witness Sundaram. However, there is absolutely no evidence as to what had happened in between."

Thereafter learned Single Judge proceeded to consider the statement attributed to 3rd accused Venkataraman as recorded under Section 164 of the G Code and found that the said material is not capable of being converted into legal evidence later on after framing the charges.

We may, at the outset, point out that there is no use with the said statement attributed to the third accused Venkataraman on account of two reasons. First is that the said author of the statement has already been H arraigned in the case and a charge has been framed against him. Second is

that on a reading of the statement we have noticed that it is exculpatory in nature. Hence the said statement can only lie in store and no court can possibly treat it as evidence.

Shri Sushil Kumar, learned senior counsel who argued for respondent Jayalalitha contended that if the said statement is to be kept at bay there is nothing else to connect the respondent with the criminal conspiracy alleged. He submitted that there is no material to indicate that respondent had ever come to know of the adverse remarks made by V. Sundaram in the file concerned as those notes happened to be on those sheets which were missing from the Current File. If that be so, according to the learned senior counsel, respondent could only have acted on the recommendations submitted by the departmental heads in the Note, and on the proposals prepared by the high officials in the bureaucracy. No head of the executive can in such circumstances be asked to answer any charge of criminal conspiracy, according to Shri Sushil Kumar.

On the other hand Shri Shanti Bhushan, learned senior counsel presented before us a number of materials and circumstances which, according to him, are sufficient to bring home the guilt of the respondent. He submitted that it is for the respondent to controvert those circumstances by participating in the trial and defend herself and if she fails in that endeavour she would end in conviction of the offences being the inevitable consequence thereof. Learned senior counsel on that premise attacked the order of discharge passed by the Special Judge and made a forceful onslaught on the order passed by the learned Single Judge of the High Court for not correcting the mistake committed by the Special Judge.

At this stage we have to proceed on a premise that a criminal conspiracy was hatched in respect of import of 2 million metric tonnes of coal during the relevant period. Such a premise can be adopted as the Special Judge, after hearing both sides, has decided to frame charge against the other nine accused persons presuming that there was such a conspiracy and those nine accused have involved themselves as the conspirators therein. Hence the only question now to be considered is whether at this stage such a presumption can be stretched towards respondent Jayalalitha as well.

Chapter II of the Evidence Act - deals with "of the Relevancy of Facts." One particular provision included in that Chapter to deal with evidence relating to criminal conspiracy is Section 10. It is useful to have a look at that

A Section at this stage. Therefore, we may now refer to Section 10 of the Evidence Act.

> "10. Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable B wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose C of showing that any such person was a party to it."

The question of using anything said, done or written by any one of such conspirators would arise only if the facts would help to sustain the first limb of the section i.e. there is reasonable ground to believe that two or more persons have conspired together to commit an offence. Unless the court has D some materials to believe that respondent is one of those persons referred to in the first limb of the section, so far as the conspiracy in this case is concerned, any consideration for what she had said, done or written would not be a relevant fact as against each of the conspirators. Nevertheless, it is open to the court, even at this stage to consider the materials relating to what E an accused would have said, done or written with reference to the common intention between the accused for the purpose of deciding whether there is reasonable ground to believe that the said accused would have been one of the conspirators. In *State* v. *Nalini,* [1999] 5 SCC 253 a three Judge Bench of this Court has stated the legal position thus regarding the first limb of Section 10 of the Evidence Act:

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> "The first condition which is almost the opening lock of that provision is the existence of 'reasonable ground to believe' that the conspirators have conspired together. This condition will be satisfied even when there is some *prima facie* evidence to show that there was such a G criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement 'in reference to their common intention'. Under the corresponding provision in the English law the expression used is 'in furtherance of the common object'. No doubt, the words 'in reference to their common H intention' are wider than the words used in English law vide *Sardar*

Sardul Singh Caveeshar v. *State of Maharashtra,* AIR (1965) SC 682)." A

So now what we have to consider is whether the materials are sufficient to show the prospect for holding that "there is reasonable ground to believe" that respondent Jayalalitha would also have been at least one of the conspirators, if not the kingpin of it. B

In the above context it is useful to notice the office held by the other persons against whom the Special Court framed the charge in the same case for the offence of criminal conspiracy. They can be shown by reference to the rank allotted to each of them in the challan submitted by the police. A-2 was the Minister in the cabinet of respondent Jayalalitha for the portfolio relating to PWD. A-3 was the Chief Secretary, A-4 was the Chairman of the Electricity Board, A-5 and A-6 were the Secretaries to Government of Tamil Nadu in the Finance and Industries departments respectively. A-7, A-8 and A-9 were members of the Electricity Board and A-10 was the Chief Engineer of the Electricity Board (Coal Wing). C D

Shri Shanti Bhushan submitted that the above officers would not have even dreamt of committing a criminal conspiracy for knocking off such a fabulous fund of the Tamil Nadu Government without the direct, active and positive involvement of the then Chief Minister, particularly due to the peculiar set up of the ministerial network arranged by the respondent herself. For that the first circumstance which learned senior counsel highlighted is a Government Order issued by the State Government on 6.11.1991. This was issued almost soon after respondent assumed the office of Chief Minister of the State. The said Government Order pointed out that there was no uniformity in the procedure followed by the public sector undertakings in the State regarding settlement and purchase of contracts and tenders, and hence it was considered essential that proper scrutiny is exercised before approval of such tenders and contracts. So the Government ordered that prior approval of the Government should be obtained in respect of all the tenders and all the purchases "where the value of the contract exceeds Rs.one crore". It was directed that the file shall, therefore, be circulated to the concerned Minister, Minister of Finance and the Chief Minister for such proper scrutiny and prior approval. E F G

The next circumstance pointed out is the D.O. letter which respondent herself addressed to the then Union Minister for Coal (Shri P.A. Sangma). The H

A letter was sent on 8.10.1991 seeking permission to import 7 lacs tonnes of coal from Australia. But the Union Minister discouraged her from buying coal from outside India, by pointing out the following:

> "As reported by Coal India Ltd., these power stations had a coal stock of 7.95 lakh tonnes at the end of October '91 as compared to 0.44 lakh tonnes at the end of March '91. I have also been told that because of large stocks, TNEB has not been lifting coal from Paradeep, Vishakapatnam and Haldia Ports as per programme. As such it would appear that TNEB prima-facie does not have any justification for importing any coal for the present. They would be well advised to accumulate as much indigenous coal as possible so that they have comfortable stocks during this busy season."

The respondent did not stop there and she addressed a D.O. letter dated 30.7.1992 to the Prime Minister requesting him to accord special permission to the aforesaid Electricity Board for importing one million tonnes of coal "as a one time measure, on an emergency basis free of import duty." Referring to the said letter which respondent has addressed to the Prime Minister the Central Minister for Coal wrote a reply to her on 29.9.1992, informing her that the stock position of coal at the three Thermal Power Stations of TNEB was quite comfortable. A chart was given by him showing the stock at the three different power stations. The Central Minister therefore advised the respondent against import of coal.

It appears that the respondent was insistent on importing coal in spite of the strong advice against it. However, even those persons who opposed such import had subsequently yielded to her insistence. Nonetheless the Central Government put a rider that such import shall be routed through Central Government. It was in the wake of the above materials that the next circumstance was projected against the respondent as she did not agree to abide by the said rider as well and it was decided to import coal directly through the State and not via the Centre.

Shri Shanti Bhushan invited our attention to the strong language used by Shri V. Sundaram (PWD Secretary) for castigating the proposal for importing coal, as per his letter dated 26.5.1993, addressed to the Chairman of the Electricity Board, with copies to all members of the Board. Some of the excerpts of the said letter are the following:

"The question how these two Indonesian sources, whose original offers stipulated maximum C.V. of 6000 will meet the requirements of TNEB whose minimum stipulation of C.V. is 6000 baffles me. .... In fact the specifications of these 2 Indonesian supply sources is so divergent from TNEB tender specification in so many critical elements that they should not merit even a cursory look as can be seen from the table below."

After giving the table in his letter Shri V. Sundaram further noted that "in fact High Moisture and High Volatile matter alone should eliminate these two Indonesian sources. I have been advised that the combination of High Total Moisture and High Volatile Matter could prove to be deadly", and he concluded thus:

"These are only some of the points that come to my mind immediately. All in all, I am very uncomfortable about the way this tender has been issued and processed. I have a feeling of lurking uneasiness that we will one day discover yet another bloomer which might land us all in considerable embarrassment, besides involving TNEB and Government in protracted legal wrangles and heavy losses, apart from unseemly public controversy."

On 18.6.1993, the Secretary of the Ministry of Coal, New Delhi, sent an urgent communication to the Chairman of the Electricity Board as well as to Shri V. Sundaram. The relevant portion of the communication reads thus:

"In view of sufficient stock of coal available with the Tamil Nadu Power Stations there is no justification for import of coal. Moreover the time limit for import of coal expires in September 1993. One cannot visualise as to how import will materialise within these few months. I request any case be opposed to any extension of concessional duty facility beyond September 1993. I have been informed that tender specifications have been drawn in such a manner that it will exclude domestic producers from bidding. If that is true it will be unfortunate. Kindly appreciate that import of coal on concessional duty has been allowed to give fair and competitive chance to the domestic producers also."

Shri Ramachandran, a Joint Secretary to Government, strongly wrote against accepting the said tenders in his Note dated 22.6.93. It is not necessary to extract the whole Note as the same is replete with warnings against the proposal. Yet we may extract only the barest relevant portion:

A "It is apprehended that an excess of Rs. 8,64,93,100 has to be incurred by the Tamil Nadu Electricity Board on account of the present recommendation of the tender proposal by the Tamil Nadu Electricity Board vide Annexure 6 at page 39 of flag A. Further, the quality of Indonesian coal is poor and could cause fire explosion in the mill."

B The above note has been fully concurred by Shri Sundaram by further writing the following in his note dated 23.6.93:

"I have explained the difficulties to Minister (PWD). The tender proposal may be returned to the Board for various reasons like admitting C certain firms with post - tender clarification and proposing allotment of quantities to them besides other infirmities."

It is pertinent to point out that the above materials are included in the Current File which was submitted to the respondent. There is no case for the respondent that the above were not in that File when she scrutinised it nor D is it anybody's case that those warnings were included only in the missing sheets. If respondent came to know of those prompt warnings and despite them she accorded her green signal to import the coal, how could it be concluded at this premature stage that she was not aware of the serious implications of the clandestine deal on the State exchequer.

E We again repeat that at this stage we are proceeding on the assumption that there was a criminal conspiracy to commit the offence under Section 409 of IPC and Section 30(2) of the PC Act, because the trial court has chosen to frame charge against the co-accused including one Cabinet Minister who was working under the respondent. Shri Shushil Kumar contended that it is not necessary that she would have read those portions in the Notes. F Alternatively he contended that even if she had read those notes she would have been persuaded to grant permission on the strength of the later note submitted in same Current File.

Shri Shanti Bhushan, learned senior counsel, on the other hand, G contended that it is next to impossibility that the Chief Minister would have missed the above materials, particularly when it was her Government which wanted through the G.O. dated 6.11.1991 that all the files shall be routed through the Chief Minister for her "proper scrutiny" regarding any venture of public sector undertakings involving more than a crore of rupees. The said G.O. was issued with the idea that without the specific scrutiny and supervision H of the Chief Minister no approval should be granted.

Learned senior counsel further contended that if the Chief Minister had read the whole Note of Shri V. Sundaram it is for her to put forth satisfactorily that she was convinced in spite of such warnings that the deal was genuine and in the best interest of the State or that she had discussed those points with the said Secretary and she had good reasons to overrule the objections. We find force in the said contention that until the respondent affords satisfactory explanation the court can presume that she was aware of the serious consequences of the deal on the State exchequer as pointed out by the said PWD Secretary. Court can also presume at this stage that there are reasonable grounds to believe that she was involved in the conspiracy as envisaged in Section 10 of the Evidence Act.

In the written submission presented by the learned counsel for the respondent it is contended, inter alia, that when the "Current File" reached respondent as Chief Minister the relevant sheets were missing therefrom and hence she acted on the latest Note put up by the officials of the department which was countersigned by the same V. Sundaram on 7.7.1993. On the said premise learned counsel argued -why should a conspiring Chief Minister be kept in the dark; why should the pages at all be removed and the File renumbered if respondent was a co-conspirator?

Sri Shanti Bhushan invited our attention to the statement recorded from Sri V.Sundaram under Section 161 of the Code on 13.12.1996 in which there is a narrative of the details of the circumstances in which he had to initial a Note prepared by the other departmental heads including the Chief Secretary (A3). The aggressive and truculent role attributed to a lady by name "Sasikala" looms large in the said statement of V. Sundaram and that he was veritably threatened that he would be dismembered if he would persist with his opposition to the clearance of the proposal to import the coal. Learned counsel submitted that prosecution would prove that the said Sasikala was the surrogate of the respondent and wielded considerable influence on her during the relevant time.

We would choose to refrain from dealing with the above contention, lest any comment made by us may turn out to be detrimental to one or the other side of the case. Nevertheless, it is for the prosecution to explain how certain relevant sheets were found missing and whether respondent had any knowledge of and also why the respondent should have caused them to be removed. This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the

A prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are "groundless" or whether "there is ground for presuming that the accused has committed the offences." Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial.

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For all the above reasons we have no doubt in our mind that the court would not, and should not, have discharged the respondent at this premature stage in respect of the offences charged against the other nine accused persons.

C

Therefore, we set aside the order passed by the Special Court discharging respondent J. Jayalalitha and that of the High Court which confirmed the said order. We direct the Special Judge to proceed against the respondent as one of the accused in the case. Regarding the witnesses already examined by the prosecution we permit the prosecution to treat the examination-in-chief already D done as part of the evidence recorded in this case with all the accused on the array. Prosecution can elicit from those witnesses any further materials and they can be recorded as the remaining portion of the examination-in-chief. Thereafter the respondent shall have full opportunity to cross-examine such witnesses as though the entire chief examination was conducted with her on E the array of the accused. This provision is made by us for avoiding unnecessary delay and repetition of re-recording the evidence already recorded. On completion of examination of such witnesses prosecution can examine any remaining witnesses. Thereafter, trial can proceed in accordance with law.

If respondent Jayalalitha seeks permission to dispense with her presence F in the trial court it is open to her to file an application for the same before the Special Judge. The Special Judge shall exempt her from personally appearing after recording her plea, if she agrees to abide by the following conditions:

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(1) A counsel on her behalf would be present in the court whenever the case is taken up.

(2) She would not dispute her identity as the particular accused in the case.

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(3) She would be present on any day when her presence is required by the court.

It is needless to say that if she fails to abide by any of the above conditions it is open to the Special Judge to revoke the aforesaid benefit granted to her. A

The appeal is disposed of accordingly.

A.Q. Appeal allowed. B