**SUPREME COURT OF INDIA**

Jasbir Singh

Vs.

Vipin Kumar Jaggi

Crl.A.Nos. 826-827 of 2001

(G. B. Pattanaik and Ruma Pal, JJ.)

16.08.2001

**JUDGEMENT**

**RUMA PAL, J.:-**

**1.** Leave granted.

2. The appellant is under trial for offences alleged to have been committed under Ss. 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (referred to herafter as the 'Act'). The respondent No. 1 was a co-accused. The appellant has challenged an order date 31-1-2000 by which the High Court upheld an order of the Central Government granting the respondent No. 1 immunity from prosecution under Section 64 of the Act. In this appeal, we are concerned with the scope of the power under Section 64 of the Act and whether it can be exercised by the Central Government in favour of a person after the Sessions Judge has ejected an application by such person for pardon under Section 307 of the Code of Criminal Procedure, 1973.

3. Proceedings under the Act were initiated agaist inter alia the appellant and the respondent No. 1 on two separate complaints of the Narcotics Control Bureau (briefly referred to as 'NCB') being SC No.136/89 and SC No.233/88. The appellant is the principal accused in both cases. The allegation is that he was the kingpin of an international net-work of drug smugglers. According to the prosecution, the evidence against the appellant included 'chits' recording some details regarding the smuggling of drugs and contacts in the United States of America and a tape recording of a conversation between the appellant and the respondent No. 1 relating to the smuggling of drugs to the USA.

4. On 23rd November, 1989 the respondent No. 1 applied to the NCB to be made an approver as he was willing to co-operate with the NCB in securing a conviction of the appellant. While this application was pending, the respondent No. 1 filed two identical applications on 19-4-1990 in the two cases before the Additional Sessions Judge, New Delhi, for grant of pardon under Section 307, Cr. P.C. in return for making ful disclosure of the trnsactions relating to the drug smuggling in both cases. The applications were supported by the Special Public Prosecutor and arguments were advanced by the Special Public Prosecutor in support of the applications urging that in keeping with the provisions of Section 307, Cr. P.C. the grant of pardon to the respondent No. 1 would enable the prosecution to obtain the evidence of the respondent No. 1 which would strengthen the case of the prosecution against the appellant. The appellant opposed the applications before the Sessions Judge.

5. The Sessions Judge by his order dated 4th October, 1990 rejected the applications of the respondent No. 1 after assessing the evidence sought to be adduced against the appellant in some detail. It was held that the evidence of the respondent No. 1 was not necessary to bring home the guilt of the appellant. It was also held that any evidence given by the respondent No. 1 would be weak evidence not only because the respondent No. 1 would be an approver but also because the respondet No. 1 was a convicted offender and had been released on parole because of mental sickness. The Sessions Judge concluded that no purpose would be served at all in granting pardon to the respondent No. 1.

6. After this, the application made by the respondent No. 1 praying for immunity from prosecution from the offences with which he was charged was considered by NCB. The transcript supplied by the respondent No. 1 of the telephonic conversation with the appellant, the original tape-recorded version of which was with the prosecution, was also considered. The respondent No. 1 stated that he was willing to identify the appellant's voice in the tape-recorded conversation. The application was allowed by the NCB and immunity was granted to the respondent No. 1 under Section 64 of the Act after recording the reasons in writing on 18th August, 1992. It was noted that the appellant was "big time drug trafficker and main organiser of the syndicate. He operates very cleverly avoiding direct exposure. The available evidence against him is the 'Chits' recovered from his house. The other evidence is his intercepted telephonic conversation with Shri Vipin Jaggi" (namely the respondent No. 1 herein). The order took note of the rejection of the respondent No. 1's application for pardon by the Sessions Judge but went on to state that the powers under Section 64 of the Act were independent of and did not conflict with the powers conferred on the Court under Sections 306 and 307, Cr. P.C. The NCB was of the opinion that the evidence which would be rendered by the

respondent No. 1 was "mainly the identification of the voice and corroboration and explanation of recorded conversation" between the respondent No. 1 and the appellant which was "crucial" for the prosecution of the appellant. It was also recorded in the order that the respondent No. 1 had been medically examined on 24-4-1992 by the Associate Professor Department of Psychiatry, All India Institute of Medical Sciences and found to be normal. The immunity which was granted to the Respondent No. 1 from prosecution in the pending case was made subject to the withdrawal of such immunity under Section 64(3), if the respondent No. 1 did not render the evidence or wilfully concealed anything or gave false evidence.

7. On 24th February, 1993 the prosecution applied under Section 311, Cr. P.C. before the Sessions Judge for leave to examine the respondent No. 1 as witness in the pending cases. This was opposed by the accused. The Sessions Juge found that the application under Section 311 was a "misuse of process of Court and was without any substance" essentially on the ground that once prosecution had been launched against accused persons and they were undergoing trial, powers under Section 64 of the Act could not be exercised for changing the status of an accused into that of a witness. It was held that the grant of immunity under Section 64 to an accused who was facing trial before the Court would amount to vesting the power of judicial authority in the Government. According to the Sessions Judge, if the prosecution wished to seek pardon for any accused from the Court to strengthen its case against the other accused, the prosecution should have moved an appropriate application before the Court either under Section 307 or under Section 321, Cr. P.C. neither of which had been done. The prosecution's applications under Section 311, Cr. P.C. were accordingly rejected by a composite order on 24th November, 1995.

8. The decision of the Sessions Judge was challenged by the Respondent No. 1 under Article 226 of the Constitution before the High Court at Delhi. The appellant was not made a party. He filed an application for being added as a party. This was disallowed by the High Court on 21st September, 1999. The appellant has not challenged this order before us.

9. The writ application was finally allowed by the High Court by the order dated 31-1-2000. It was held by the High Court that the Sessions Judge was wrong in limiting the power under Section 64 to a stage before the prosecution was commenced. According to the High Court, neither the language of Section 64 of the Act nor of Sections 306 and 307, Cr. P.C. could be construed in a manner so as to hold that the power under Section 64 came to an end on the taking of cognizance of the offence by the trial Court. The High Court also relied upon the decisions i.e. Sardar Iqbal Singh v. State (Delhi Admn.), AIR 1977 SC 2437, Sanjay Gandhi v. Union of India, AIR 1978 SC 514 : (1978 Cri LJ 642), State (Delhi Admn.) v. Jagjit Singh, AIR 1989 SC 598 : (1989 Cri LJ 986), Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420 : (1994 AIR SCW 3420 : 1994 Cri LJ 3271) to hold that immediately upon the tendering of immunity to the respondent No. 1 under Section 64, the respondent No. 1 would stand discharged whereupon he ceased to be an accused and could be examined as a witness.

10. The appellant then filed an application under Article 215 of the Constitution read with S. 482, Cr.P.C. for recalling the order dated 31-1-2000. This was rejected by the High Court on 18-8-2000. In this appeal, the appellant has challenged both the orders dated 31-1-2000 as well as 18-8-2000.

11. At the outset a preliminary objection raised by the respondent No. 1 is dealt with. According to the respondent No. 1 this appeal has been preferred from an order passed in proceedings to which the appellant was not a party and the appellant has not challenged the order by which his application for intervention was rejected. It is contended that in the circumstances, the appeal preferred before us is not maintainable. The objection, assuming that it had some force, does not survive the order passed by this Court on 3rd November, 2000 granting permission to the appellant to file the special leave petition.

12. The appellant's arguments on the merits were to some extent a reiteration of the views expressed by the Sessions Judge, namely, that the power under Section 64 of the Act could only be exercised before the commencement of the trial. It has been contended that this was clear from the language of the section itself. The second submission is that once the Court had rejected the respondent No. 1's application for pardon under Section 307, it was not open to the Government to grant immunity to the respondent under Section 64 of the Act on the same facts. According to the appellant by so doing, the Government had encroached upon an area which was exclusively within the jurisdiction of the Court.

13. The submissions appear to us to proceed on a misunderstandng of the role of the Court, the prosecutor and of the NCB in the granting of pardon in trials for offences under the Act and a misreading of the provisions of Section 64.

14. The grant of pardon by Court is rooted in the premise that most criminals try to avoid detention. Crimes like smuggling, by definition are carried on secretively. The persons involved in such criminal activity would obviously try to conceal and hide any evidence of their activities in as many ways as human ingenuity can devise. That is why the prosecution is often compelled to rely on the evidence of an accomplice to bring the most serious offenders to book. Besides ". ..... . . . . to keep the sword hanging over the head of an accomplice and to examine him as a witness is to encourage perjury". Laxmipat Choraria v. State of Maharashtra, AIR 1968 SC 938: (1968 Cri LJ 1124).

15. It was in recognition of this need that the Code of Criminal Procedure, 1898 contained provisions like Sections 337 and 338 under which the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class at the stage of inquiry, and the trial Court, after commitment and before judgment, could grant pardon to a co-accused. The pardon was made conditional upon the person making "a full and the true disclosure of the whole of the circumstances within his knowledge relating to the offence, and to every other person concerned, whether as principal or abettor, in the commission thereof".

16. The issue has to be weighed in the balance so that at the cost of not bringing one of the offenders to book, the others or at least the principal offender can be convicted ". . . . . The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence." Suresh Chandra Bahri v. State of Bihar, 1995 (Supp) 1 SCC 80, 106 : (1994 AIR SCW 3420 (3444, 3445) : AIR 1994 SC 2420 : 1994 Cri LJ 3271).

17. The provisions of Sections 337 and 338 of the 1898 Cr.P.C. have been substantially re-enacted as Sections 306 and 307 of the present Cr.P.C. For the purposes of this case, however, we are concerned only with Section 307 which provides :

307. Power to direct tender of pardon- At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person."

18. Although the power to actually grant the pardon is vested in the Court, obviously the Court can have no interest whatsoever in the outcome nor can it decide for the prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job. This was the view expressed in Lt. Commander Pascal Fernandes v. State of Maharashtra, AIR 1968 SC 594 at p. 599 : (1968 Cri LJ 550), where it was said :

". . . . . Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge execises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will undubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case."

(Emphasis supplied)

19. Judged by this standard, the first order of the Sessions Judge refusing pardon to the respondent No. 1 even though it was actively canvassed for by the Special Public Prosecutor, was wrong. It was not for the Sessions Judge to have considered the possible weight of the approvers evidence, even before it was given. In any case, the evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. But the suspicion may be removed and if the evidence of an approver is found to be trustworthry and acceptable then that evidence might well be decisive in securing a conviction (see Suresh Chandra Bahri v. State of Bihar (1994 AIR SCW 3420 : AIR 1994 SC 2420 : 1994 Cri LJ 3271) (supra).The Sessions Judge could not and indeed should not have assessed the probable value of the possible evidence of the respondent No. 1 in anticipation and wholly in the abstract.

20. The role of the prosecutor under Section 307 is distinct and different from the part he is called on to play under the provisions of Section 321, Cr.P.C. Under Section 321, the Public Prosecutor or the Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. The most noticeable difference between this Section and Section 307 of the Act is that unlike the grant of pardon under Section 307, withdrawal from prosecution under Section 321, Cr.P.C. is unconditional although it does provide for the express permission of the Central Government in specified cases. Section 321 also does not spell out the circumstances under which the power may be exercised, either by the prosecution or by the Court in granting consent. However, it has been judicially recognised that "implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances" (Subhash Chander v. The State (Chandigarh Admn.), AIR 1980 SC 423 : (1980 Cri LJ 324) or it may be that "broader considerations of public peaces, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, or order in a disorderly situation of harmony in a faction milieu, or halting a false and vexatious prosecution in a Court, may persuade the Executive, pro bona publico, to sacrifice a pending case for a wider benefit". (M. N. Sankaranarayanan Nair v. P. V. Balakrishnan, AIR 1972 SC 496 : (1972 Cri LJ 301).

21. In contrast the power of tendering pardon under Section 307 is restricted to one consideration alone namely the obtaining of evidence from the person to whom pardon is granted relating to the offences being tried. But it needs to be noted at this stage that the power undre Section 321 not only emphasises the role of the Executive in the trial of offences but also that the Executive can exercise the power at any time during the trial but before the judgment is delivered. This will be relevant in construing the language of Section 64 of the Act.

22. The Act consolidated and amended earlier laws relating to narcotic drugs, namely, the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930. In the Act's Statement of Objects and Reasons, it was noted that the earlier Acts were not sufficiently deterrent to deal with the challenge of well organised gangs of smugglers. It was necessary to make special provisions for

exercising effective control not only of narcotic drugs but also of psychotropic substances particularly when "the country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighbouring countries and destined mainly to Western Countries."

23. The concern which motivated the enactment of the Act was echoed by this Court in Durand Didier v. Chief Secretary, Union Territory of Goa, AIR 1989 SC 1966 when it said (para 24) :

"With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances .....has assumed serious and alarming proportions in the recent years.

24. Under Section 4(1) of the Act, the Central Government is obliged to take all such measures as are deemed necessary for the purpose of preventing and combating the abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. By Notification S. O. No. 96(E) dated 17th March, 1985, the Central Government constituted the Narcotics Control Bureau (NCB) in exercise of its powers under Section 4(3) of the Act to discharge the powers and functions of the Central Government under the Act subject to the superintendence and control of the Central Government.

25. It is, in the circumstances, clear that when cases are started on the complaint of the NCB, it is not a mere complainant but is the Executive and it must act in discharge of a mandate statutorily cast upon it to effectively check among other activities, the illegal dissemination and smuggling of drugs.

26. As early as in 1968 this Court had expressed the hope that (para 14 of AIR 1968 SC 938) :

"Perhaps it will be possible to enlarge Section 337 to make in certain special laws dealing with customs, foreign exchange etc., where accomplice testimony will always be useful and witnesses will come forward because of the conditional pardon offered to them." Laxmipat Choraria v. State of Maharashtra (AIR 1968 SC 594) (supra) at p. 945.

27. The hope has been fulfilled by enacting provisions like Section 64 in the Act, Section 291 in the Income-tax Act, 1961 and Section 60 in the Foreign Exchange Regulation Act, 1973. Each of these sections are substantially identical.

28. Under Section 64(1) of the Act, the Central Government or the State Government tender immunity from prosecution for any offence under the Act or under the Penal Code or under any Central or State Act with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of the Act. The limitations on the exercise of the power are two fold : first the Central Government or the State Government, as the case may be, must form an opinion that it is necessary or expedient to grant immunity to such a person. The reasons for such opinion are required to be recorded in writing. The second limitation on the exercise of the power under Section 64(1) is that it can be granted only conditionally - the condition being that the person granted the immunity must make a full and true disclosure of the whole circumstances relating to the contravention. The immunity is limited only to the offence in respect of which a tender of evidence is made [Section 64(2)]. If the condition subject to the immunity is granted is not fulfilled by the person to whom the immunity has been tendered, after recording a finding to that effect by the Central Government or the State Government, the immunity 'shall be taken to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter.1The underlying rationale of Section 64 is that the Government/NCB which is vitally interested in getting hold of the culprits, must be allowed to assess the strength of the evidence available to it and if necessary, bolster its case with evidence of an accomplice. Therefore, the Section serves the same purpose as the grant of pardon to approvers under Section 307, Cr.P.C.

1. Section 64. Power to tender immunity form prosecution -(1) The Central Government or the State Government may, if it is of opinion (the reason for such opinion being recorded in writing) that with a view of obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of the Act or for any order made thereunder it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act or State Act, as the case may be, for the time being in force on condition of his making a full and true disclosure of the whole circumstance relating to such contravention. (2) A tender of immunity made to, and accepted by the person concerned, shall, to the extent to which immune from prosecution for any offence in respect of which the tender was made. (3) if it appears to the Central Government, or as the case may be, the State Government, that any person to whom immunity has been tendered under this section has not complied with the conditions on which the tender was made or is willfully concealing anything or is giving false evidence, the Central Government, or as the case may be, the State Government, may record a finding to that effect and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence of which he appears to have been guilty in connection with the same matter.

29. The object of Section 64 being the same as Section 307, it should logically follow that it may be exercised at any time during the course of the trial. It is true that the words 'immunity from prosecution' have been used, but the phrase does not mean anything more than the power to withdraw from prosecution. That, as has been noted earlier, can be exercised at any time in the course of the trial, but before judgment is delivered.

30. However, according to the appellant the word 'prosecution' is limited to the initiation of proceedings and, therefore, the grant of immunity cannot be made subsequently. We are of the opinion that no principle of interpretation requires a statutory provision to be broken down to the words which constitute it and then after defining each word inidividually weld them together to arrive at the meaning of a phrase. Words take their colour from the context in which they are used. Given the nature and object of the power, the word 'prosecution' must in the context of Section 64 mean the entire proceeding till the judgment of the Court is delivered. It may be pointed out that the words 'prosecution' and 'punishment' have been held to have no fixed connotation and they are susceptible of both a wider and a narrower meaning. See S. A. Venktaraman v. Union of India, AIR 1954 SC 375 : (1954 Cri LJ 993).

31. Nevertheless even adopting the method of interpretation suggested by the appellant, we arrive at the same result. The definition of the word 'immunity' in the context of Section 64 is - 'Freedom or exemption from penalty, burden, or duty.2 Prosecution has been defined as - "A criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime."3 (Emphasis supplied)

2. Black Law Dictionary- Sixth Edition.

3. Ibid.

32. Cobbling these two definitions together, the phrase 'immunity from prosecution' in Section 64 would mean 'Freedom from punishment during a proceeding instituted and carried on by law'.

33. There is thus nothing in Section 64 of the Act to circumscribe the power of the Central or State Government under Section 64 to a point of time prior to the commencement of the trial. Therefore, if in any trial of offences under the Act, it is felt by the Government, in this case the NCB, that it is necessary to have the evidence of the co-accused, it can, subject to the conditions specified in Section 64(1), withdraw the case against such co-accused by granting him immunity.

34. The decisions cited by the appellant viz. S.A. Venkataraman v. Union of India, (AIR 1954 SC 375 : 1954 Cri LJ 993) (supra) and Tomas Dana v. State of Punjab, AIR 1959 SC 375 : (1959 Cri LJ 392) are inapposite. In both cases, the question was whether the appellant could avail of the protection under Article 20(2) of the Constitution. In S. A. Venkataraman, the petitioner had challenged criminal proceedings initiated against him claiming that he had already been prosecuted and punished for the same offences by the proceedings under the Public Servants (Inquiries) Act which had been resulted in his dismissal from service. It was held by this Court that the inquiry

under the Public Servants (Inquiries) Act was not a prosecution for the purposes of Article 20 since the inquiry did not result in punishment under that Act.

35. Similarly, in Thomas Dana v. State of Punjab, (AIR 1959 SC 375 : 1959 Cri LJ 392) (supra), the only issue was whether a person proceeded against under Section 167 (8) of Sea Customs Act could be said to have been prosecuted and punished so that he could claim protection from trial under the Criminal Procedure Code by virtue of Article 20(2) of the Constitution. The issue was answered in the negative. Neither of the cases hold that prosection only means the initiation of proceedings.

36. The order under Section 64 was fully operative when the applications under Section 311 to examine the respondent No. 1 were filed by the prosecution before the Sessions Judge. The refusal of the applications under Section 311 by the Sessions Judge in fact would result in the withdrawal of the immunity granted to the respondent No. 1 under Section 64 since the immunity had been granted to the respondent No. 1 subject to the condition that evidence would be tendered by him in the pending cases. The Sessions Judge could not sit in appeal over the decision of the NCB more so when no one had challenged the order under Section 64 before him.

37. The power conferred on the NCB is not an arbitrary one. Reasons are required to be recorded in writing. Needless to say, the reasons would have to be appropriate and germane to the object sought to be achieved by the exercise of such power. We have scrutinised the order dated 18th August 2000 and are satisfied that the reasons recorded for granting the immunity to the respondent No. 1 are neither extraneous nor relevant.

38. There is no conflict between the powers exercised by the Court under Section 307 and by the Government under Section 64. All that Section 64 does is to bring expressly to the fore the role which the Executive already has to play under Section 307. The only difference is in the authority which orders the pardon or the grant of immunity. Even under the Cr.P.C., 1898 it was held that the provisions of Sections 337 and 338 of the Code contemplated concurrent jurisdiction in the Magistrate and the District Magistrate to tender a pardon. The powers were independent so that when the Magistrate rejected the grant of pardon under Section 337 it did not take away the power or jurisdiction of the District Magistrate to entertain a further application for grant of pardon. See Kanta Prashad v. Delhi Administration, 1958 SCR 1218 : (AIR 1958 SC 350 : 1958 Cri LJ 698) and State of U. P. v. Kailash Nath Agarwal, (1973) 3 SCR 728 : (AIR 1973 SC 2210 : 1973 Cri LJ 1196).

39. Assuming there is a conflict between the powers of the Court under Section 307 Cr.P.C. and the power of the Central Government under Section 64 of the Act, then it must be held that Section 64 would prevail both on the ground that the Act being a special Act overrides the Cr.P.C. which is a general Act and also because the later enactment must prevail over the earlier one. See (1) Sarwan Singh v. Kastguri Lal, 1977 (2) SCR 421 : (AIR 1977 SC 265); (2) Maharashtra Tubes Ltd. v. State

Industrial and Investment Corporation of Mharashtra Ltd., (1993) 2 SCC 144 : (1993 AIR SCW 991); (3) Allahabad Bank v. Canara Bank, (2000) 4 SCC 406 : (2000 AIR SCW 1347 : AIR 2000 SC 1535 : 2000 CLC 913) and (4) Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. (2001) 3 SCC 71 : (2001 AIR SCW 733 : AIR 2000 SC 958).

40. We are told that after the decision of the High Court, the respondent No. 1 has in fact tendered the evidence promised by him. To refuse him the immunity now would not only be illegal but particularly unjust.

41. For the reasons aforementioned, we uphold the decision of the High Court and dismiss this appeal.

Appeal dismissed.