AJAY AGARWAL A

v.

UNION OF INDIA AND ORS

MAY 5, 1993

[K. RAMASWAMY & R.M. SAHAI, JJ.] B

Penal Code, 1860—Sections 120A, 120B—'Conspiracy'—'Criminal Conspiracy'—Definition—Ingredients—Whether conspiracy punishable as a substantive offence and whether continuing offence—Offences in pursuant to conspiracy whether separately punishable.

C

Code of Criminal Procedure 1973—Section 188—When applicable—Conspiracy hatched at Chandigarh—Part of conspiracy at Dubai—Overt acts in furtherance of such conspiracy—Sanction not necessary.

D

Code of Criminal Procedure 1973—Section 188, Proviso—Construction—Requirements under.

Code of Criminal Procedure 1973—Section 188, read with Section, 4 IPC—Offence by Indian Citizen outside India—Effect of.

E

Penal Code, 1860—Section 120A, 120B, 468, 471—Charged under—Conspiracy at Chandigarh—Certain overt acts in furtherance of conspiracy done at Dubai—Sanction under Section 188, Cr. P.C. not necessary—Jurisdiction of Chandigarh Court—Scope of.

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Penal Code, 1860—Section 120A, 120B, 468, 471—Charged under—Conspiracy at Chandigarh—Certain Overt acts in furtherance of conspiracy done at Dubai by a NRI—Effect of.

The prosecution case was that the appellant, a non-resident Indian at G
Dubai, hatched a conspiracy along with four others to cheat the Bank at Chandigarh. In furtherance of the conspiracy, the appellant got credit facility by way of Foreign Letters of Credit and issued proforma invoices of his concern and addressed to the Bank through the establishments of other accused. The Manager of the Bank, another accused, in confabulation with H

A the appellant and other accused, being in-charge of foreign exchange department, issued Foreign Letter of Credit in violation of import policy. The Bills of Lading were addressed to the Bank. The cable confirmation of the Bank was sent to appellant's concern at Dubai for confirmation of discrepancy. The appellant confirmed correctness thereof. Placing reliance thereon, authority letter was issued by the Bank and cables were sent subsequent thereto to remit B the amounts to the Dubai Bank through one Irving Trust Company, At the instance of accused Anand, The Dubai Bank informed the Bank at Chandigarh that the discrepancy in the document adaptable to accused Anand and claimed to have inspected the goods on board in the vessel. On receipt of the information from the appellant's concern at Dubai, full amount is US Dollars 4,39,200 was credited against all the three Letters of Credit on discount basis. C

The investigation established that the vessel was a non-existent one and three Foreign Letters of Credit were fabricated on the basis of false and forged shipping documents submitted by the appellant to the Dubai Bank. Thus the Bank at Chandigarh was cheated of an amount of Rs. 40,30,329. D

The accused were charge-sheeted under section read with sections 420, 468, and 471, IPC.

The Trial Court discharged all the accused of the offences on the ground E that conspiracy and the acts done in furtherance thereof had taken place outside India and as no sanction under section 188, Code of Criminal Procedure 1973 was produced, the prosecution was not maintainable.

The High Court in revision held that the conspiracy took place at F Chandigarh and the overt acts committed in pursuance of that conspiracy at Dubai constituted offences under sections 420, 467 and 471 IPC., and they were triable at Chandigarh without previous sanction of the Central Govt. The High Court setting aside the order of discharge of the trial Court, directed to continue further proceedings in accordance with law. That order of the High Court was challenged under this appeal under Article 136 of the G Constitution.

The appellant contended that he was not a privy to the conspiracy and the conspiracy did not take place at Chandigarh; and that even assuming that some of the offences were committed in India, by operation of Section 188 read H with the proviso thereto with a *non-obstanti* clause, absence of sanction by the

Central Govt. barred the jurisdiction of the Courts in India to take cognisance of or to enquire into or try the accused. A

The respondents submitted that the conspiracy to cheat the Bank was hatched at Chandigarh; that all the accused committed over acts in furtherance of the conspiracy at Chandigarh and therefore, the sanction of the Central Govt. was not necessary. B

Dismissing the appeal, this Court,

HELD : Per K. Ramaswamy, J. C

1.01. Judicial power of a State extends to the punishment of all offences against the municipal laws of the State by whomsoever committed within the territory. It also has the power to punish all such offences wherever committed by its citizen. The general principle of international law is that every person be it a citizen or foreigner who is found within a foreign State is subjected to, and is punishable by, its law. Otherwise the criminal law could not be administered according to any civilised system of jurisprudence. (553-F) D

1.02. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no contact in municipal laws and the doctrine of autrefois convict or acquit would extend to such offences. The comity of nations are duty bound to apprehend the conspirators as soon as they set their feet on the country territorial limits and nip the offence in the bud. (564-F-G) E F

2.01. Section 120-A of the I.P.C. defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy". No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. (557-C) G H

A **2.02. Section 120-B of the I.P.C. prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every state. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements : (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be** B **either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. (554-E)**

2.03. Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is C **separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. (556-D)**

2.04. The agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a D **continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Govt. All of them need not be present in India nor continue to remain in India. (556-E)**

E **2.05. An agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and** F **unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. (563-F-G)**

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"Jones' Case, 1832 B & A-D 345; *Mulcahy* v. *Reg.*, (1868) L.R. 3 H.L. 306; *Quinn* v. *Leathem*, 1901 AC 495 at 528; *B.G. Barsay* v. *The State of Bombay*, (1962) 2 SCR 229; *Yashpal* v. *The State of Punjab*, [1977] SCR 2433; *Mohammed Usman, Mohammed Hussain Manivar & Anr.* v. *State of Maharashtra*, [1981] 3 SCR 68; *Noor*

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Mohammad Yasuf Monin v. *State of Maharashtra,* [1971] 1 SCR 119; *R.K. Dalmia & Anr.* v. *The Delhi Administration,* [1963] 1 SCR 253; *Shivanarayan Laxminarayan & Ors.* v. *State of Maharashtra & Ors.* [1980] 2 SCC 465 and *Lennart Schussler & Anr.* v. *Director of Enforcement & Anr.,* [1970] 2 SCR 760, referred to.

2.06. A conspiracy is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and *vice versa*. (564-H, 565-A)

Abdul Kader v. *State.* **AIR 1964 *Bombay* 133;** U.S. v. *Kissal,* 218 **US 601;** *Ford* v. *U.S.,* **273 US 593 at 620 to 622;** *Director of Public Prosecutions* v. *Doot and Ors.,* **(1973) Appeal Cases 807 (H.L);** *Treacy* v. *Director of Public Prosecutions,* **(1971) Appeal Cases 537 at 563 (H.L.)** *and Board of Trade* v. *Owen.* **(1957) Appeal Cases 602, referred to.**

Prof. Williams, Glanville: *"Vanue and the Ambit of Criminal Law",* **[1965] L.Q.R. 518 at 528;** Halsbury's *Law of England,* **third edition Vol. 10. page 327, Para 602; Archobold:** *Criminal pleadings. Evidence and Practice,* **42nd edition, [1985] Chapter 23, In para 28-32 at page 2281; Writ:** *Conspiracies and Agreements,* **at pages 73-74;** Smith: *Crimes,* **at page 239 and Russel:** *Crime,* **12th edition, page 613, referred to.**

2.07. Sanction under section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins. Conspiracy was initially hatched at Chandigarh and though itself is a completed offence, being continuing offence, even accepting appellant's case that he was at Dubai and part of conspiracy and overt acts in furtherance

A thereof had taken place at Dubai and partly at Chandigarh; and in consequence thereof other offences had been ensued. Since the offences have been committed during the continuing course of transaction culminates in cheating P.N.B. at Chandigarh, the need to obtain sanction for various officer under proviso to s. 188 is obviated. Therefore, there is no need to obtain sanction from Central Govt. The case may be different if the offences were committed B out side India and are completed in themselves without conspiracy. (566-D-E)

K. Satwant Singh v. *The State of Punjab*, [1960] 2 SCR 89; In *Re M.L Verghese*, AIR 1947 Mad. 352; T. *Fakhrulla Khan and Ors.* v. *Emperor*, AIR 1935 Mad. C 326; *Kailash Sharma* v. *State*, 1973 Crl. law Journal 1021, distinguished.

Purshottamdas Dalmia v. *State of Bengal*, [1962] 2 SCR 101; *L.N. Mukherjee* v. *The State of Madras*, [1962] 2 SCR 116; *R.K. Dalmia* v. *Delhi Administration*, [1963] 1 SCR 253 at 273; *Banwari Lal Jhunjhunwala and Ors.* v. *Union of India and Anr.*, [1963] Supp. 2 SCR 338, referred to.

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Per R.M. Sahai, J. *(Concurring)*

1.1. Language of the section 188, Code of Criminal Procedure is plain E and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one—commission of an offence; second—by an Indian citizen; and third—that it should have been committed outside the country. (567-D)

1.2. Substantive law of extra-territory in respect of criminal offences is F provided for by Section 4 of the IPC and the procedure to inquire and try it is contained in Section 188 Cr. P.C. Effect of these sections is that an offence committed by an Indian citizen outside the country is deemed to have been committed in India. (567-E)

G 1.3. Since the proviso to Section 188, Cr.P.C. begins with a *non obstinate* clause its observance is mandatory. But it would come into play only if the principal clause is applicable, namely, it is established that an offence as defined in clause 'n' of Section 2 of the Cr.P.C. has been committed and it has been committed outside the country. (567-G)

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1.4. What has to be examined at this stage is if the claim of the appellant that the offence under Section 120B read with Section 420 and Section 471 of the IPC were committed outside the country. An offence is defined in the Cr.P.C. to mean an Act or omission made punishable by any law for the time being in force. None of the offences for which the appellant has been charged has residence as one of its ingredients. (567-H, 568-A)

1.5. The jurisdiction to inquire or try vests under Section 177 in the Court in whose local jurisdiction the offence is committed. It is thus the commission of offence and not the residence of the accused which is decisive of jurisdiction. When two or more persons agree to do or cause to be done an illegal act or an act which is illegal by illegal means such agreement is designated a criminal conspiracy under Section 120A of the IPC. The ingredients of the offence is agreement and not the residence. Meeting of minds of more than two persons is the primary requirement. Even if it is assumed that the appellant was at Dubai and he entered into an agreement with his counterpart sitting in India to do an illegal act in India the offence of conspiracy came into being when agreement was reached between the two. The two minds met when talks oral or in writing took place in India. Therefore, the offence of conspiracy cannot be said to have been committed outside the country. (568-B-C)

1.6. If a foreign national is amenable to jurisdiction under Section 179 of the Cr.P.C. a NRI cannot claim that the offence shall be deemed to have been committed outside the country merely because he was not physically present. (568-F)

Mobarik Ali Ahmed v. *The State of Bombay*, AIR 1957 SC 857, referred to.

1.7. An offence is committed when all the ingredients are satisfied. The section having used the word 'offence' it cannot be understood as part of the offence. Section 179 Cr.P.C. empowers a court to try an offence either at a place where the offence is committed or the consequences ensue. On the allegations in the complaint the act or omissions were committed in India. In any case the consequence of conspiracy, cheating and forging having taken place at Chandigarh the offence was not committed outside the country therefore the provisions of Sec. 188 Cr. P.C. were not attracted. (569-B)

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 400 of 1993.

From the Judgment and order dated 3.6. 1992 of the Punjab and Haryana High Court in Criminal Revision No. 443 of 1990.

B P. Chadambaram, Mukul Rohtagi, Ms. Bina Gupta and Ms. Monika Mohil for the Appellants.

N.N. Goswamy, Y.D. Mahajan and N.D. Garg for the Respondent.

C The Judgments of the Court were delivered by

K. RAMASWAMY.J : Special leave granted.

The appellant, accused No. 2 in p.Ch. (CBI) No. 40/2, dated February 18, D 1985, F.I.R. No. RC No. 2 to 4/1983 dated March 4, 1983 and P.S. SPE/CBI/CTU (E) I/New Delhi, Dist. Delhi and four other namely, V.P. Anand, Baldev Raj Sharma, Bansi Lal and Ranjit Kumar Marwah are accused in the said case. It is the prosecution case that the accused hatched a conspiracy at Chandigarh to cheat Punjab National Bank for short 'PNB '. In furtherance thereof V.P. Anand floated three New Link Enterprises and M/s. Moonlight Industries in the name of Baldev E Raj Sharms, his employee and M/s. Guru Nanak Industries in the name of Bansi Lal, yet another employee. He opened current accounts in their respective names in the P.N.B. at Chandigarh. In furtherance of the conspiracy and in confabulation with V.P. Anand, the appellant, Ajay Aggarwal, a non-resident Indian at Dubai who is running M/s. Sales International, Dubai, agreed to and got credit facility by way of Foreign Letters of Credit Nos. 4069-p, 4070-p and 4084-p, issued proforma F invoices of the said concern and addresses to PNB through Guru Nanak Industries and New Link Enterprises. Ranjit Marwah, the 5th accused, Manager of P.N.B., In-charge of foreign exchange department confabulated with the accused, issued Foreign Letter of Credit in violation of import policy. The Bills of Lading were addressed to PNB at Chandigarh. The cable confirmation of P.N.B. was sent to M/ G s Sales International by P.N.B., Chandigarh for confirmation of discrepancy. The appellant had confirmed correctness thereof in the name of V.P. Anand. Placing reliance thereon authority letter was issued by P.N.B., Chandigarh and cables were sent subsequent thereto to remit the amounts to Emirates National Bank Ltd. through Irving Trust Company. V.P. Anand was present on September 16, 1981 at Dubai and at his instance the Emirates National Bank, Dubai informed the

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P.N.B., Chandigarh that the discrepancy in the document adeptable to V.P. Anand and claimed to have inspected the goods on board in vessel, M.V. Atefeh. On receipt of the information from the Sales International, Dubai, full amount in US Dollars 4, 39,200 was credited against all the three Letters of Credit on discount basis. During investigation it was found that Vessel M.V. Atefeh was a non-existent one and three Foreign Letters of Credit were fabricated on the basis of false and forged shipping documents submitted by the appellant, Ajay Aggarwal to the Emirates National Bank, Dubai. Thus the P.N.B. was cheated of an amount of Rs. 40,30,329. Accordingly charge sheet was laid against the appellant. and others for offences punishable under sections 120B read with Sections 420 (Cheating), 468 (Forgery) and 471 using as genuine (Forged documents), I.P.C. The Chief Judicial Magistrate, Chandigarh by his order dated January 11, 1990 discharged all the accused of the offences on the ground that conspiracy and the acts done in furtherance thereof had taken place outside India and, therefore the sanction under section 188 Criminal Procedure Code, 1973 for short the 'Code' is mandatory. Since no such sanction was produced the prosecution is not maintainable. On revision, the High Court of Punjab and Haryana in Criminal Revision No. 443 of 1990 by order dated June 3, 1992 held, that the conspiracy had taken place at Chandigarh. The overt acts committed in pursuance of that conspiracy at Dubai constituted offences under sections 420, 467 and 471, I.P.C., are all triable at Chandigarh without previous sanction of the Central Govt. The order of discharge, therefore, was set aside and the appellant and other accused were directed to be present through their counsel in person in the Trial Court on July 17, 1992 to enable the court to take further proceedings in accordance with law. This appeal has been filed by the appellant alone under Art. 136 of the constitution.

Sri Chidambaram, learned Senior counsel contended that the appellant was not a privy to the conspiracy. He was an N.I.R. businessman at Dubai. He never visited Chandigarh. Even assuming for the sake of argument that conspiracy had taken place and all act committed in furtherance thereof were also at Dubai. The transaction through bank is only bank to bank transaction. Even assuming that some of the offences were committed in India since as per the prosecution case itself that part of the conspiracy and related offences were committed at Dubai, by operation of Section 188 read with the proviso thereto with a *non-obstanti* clause, absence of sanction by the Central Govt. knocks of the bottom of the jurisdiction of the courts in India to take cognisance of or to enquire into or try the accused. He placed strong reliance on I. *Fakhrulla khan and Ors.* v. *Emperor* AIR 1935 Mad. 326, In re M.L. Verghese AIR 1947 MAD. 352, kailash Sharma v. State [1973 Crl. Law Journal 1021 and *K. Satwant Singh* v. *State of Punjab* [1960] 2 SCR 89. Sri Goswami, the learned senior counsel for the respondents contended that the conspiracy to cheat. PNB was hatched at Chandigarh. All the accused committed

A overt acts in furtherance. All the accused committed overt acts in furtherance on the conspiracy at Chandigarh and, therefore, the sanction of the Central Govt. is not necessary. The High Court had rightly recorded those findings. There is no need to obtain sanction under s. 188 of the Code.

The diverse contentions give rise to the primary question whether the B sanction of the Central Govt. as required under proviso to s. 188 of the Code is necessary. Section 188 of the Code reads thus :

"Offence committed outside India-when an offence is committed outside India -

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(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may D be found :

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except. with the previous sanction of the Central E Government".

Section 3, IPC prescribes punishment of offences committed beyond, but which by law may be tried with, India, It provided that any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the F same manner as if such act had been committed within India. Section 4 extends its territorial operation postulating that IPC shall apply to any offence committed by-

(1) any citizen of India in any place without any beyond India;

G (2) any person on any ship or aircraft registered in India wherever it may be.

Explanation—In this section the word 'offence' includes every act committed outside India which, if committed in India, would be punishable under this Code.

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Illustration—A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

The Code of Criminal Procedure extends to whole of India except the State of Jammu & Kashmir and except chapters 8, 10 and 11, the other provisions of the Code shall not apply to the State of Nagaland and to the tribal area. However, the State Govt. has been empowered, by a notification, to apply all other provisions of the Code or any of them to the whole or part of the State of Nagaland and such other tribal areas, with supplemental, incidental or consequential modifications, as may be specified in the notification. Therefore, the Code also has territorial operation. The Code is to consolidate and amend the law relating to criminal procedure. Section 188 was suitably amended pursuant to the recommendation made by the Law Commission. Chapter VIII deals with jurisdiction of the courts in inquiries and trials. Section 177 postulates that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed but exceptions have been engrafted in subsequent sections in the Chapter. Section 179 provides venue for trial or enquiry at the place where the act is done or consequences ensued. So inquiry or trial may be had by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. Section 188 by fiction dealt offences committed by a citizen of India or a foreigner outside India or on high seas or elsewhere or on any ship or aircraft registered in India. Such person was directed to be dealt with, in respect of such offences, as if be had committed at any place within India at which he may be found. But the proviso thereto puts and embargo that notwithstanding anything in any of the preceding sections of this Chapter have been done such offences shall not be inquired into or tried in India except with the previous sanction of the Central Govt.

Judicial power of a State extends to the punishment of all offences against the municipal laws of the State by whomsoever committed within the territory. It also has the power to punish all such offences wherever committed by its citizen. The general principle of international law is that every person be it a citizen or foreigner who is found within a foreign State is subjected to, and is punishable by, its law. Otherwise the criminal law could not be administered according to any civilised system of jurisprudence. Sections 177 to 186 deal with the venue or the place of the enquiry or trial of crimes. Section 177 reiterates the well-established common law rule that the properand ordinary situs for the trial of a crime is the area of jurisdiction in which the acts occurred and are alleged to constitute the crime. But this rule is subject to several well-recognised exceptions and some of those exceptions have been engrafted in subsequent sections in the chapter of the Code.

A Therefore, the provisions in Chapter VIII are elastic and not peremptory. In consequence there- with Sections 218 to 223 of the code would also deal with exceptions engrafted in the Code. Therefore, they do permit enquiry or trial of a particular offence along with other offences at a common trial in one court so that the court having jurisdiction to try an offence gets jurisdiction to try other offence committed or consequences thereof has ensued. The procedure is hand maid to
B substantive justice, namely, to bring the offenders to justice to meet out punishment under IPC or special law as the case may be, in accordance with the procedure prescribed under the Code or special procedure under that Act constituting the offence.

C The question is whether prior sanction of the Central Govt. Is necessary for the offence of conspiracy under proviso to s. 188 of the Code to take cognizance of an offence punishable under s. 120-B etc. I.P.C. or to proceed with trial. In Chapter VA, conspiracy was brought on statute by the Amendment Act, 1913 (8 of 1913). Section 120-A of the I.P.C. defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is
D not illegal by illegal means such an agreement is designated as "criminal conspiracy". No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120-B of the I.P.C. prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details or the scheme nor be a participant at
E every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law
F definition of 'criminal conspiracy' was stated first by Lord Denman in *Jones'* case (1832 B & A D 345) that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of the Judges while referring the question to the House of Lords in *Mulcahy* v. *Reg* [1868] L.R. 3 H.L. 306 and the House of Lords in unanimous decision
G reiterated in *Quinn* v. *Leathem* (1901 AC 495 at 528) as under:

> "A conspiracy consists not merely in the intention of two or more, but in the agreement. of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agree to carry it into

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effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable of for a criminal object or for the use of criminal means". A

This Court in *B.G. Barsay* v. The *State of Bombay* [1962] 2 SCR at 229, held B

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under section 43 of the Indian Penal Code, an act would be illegal if fit is an offence or if it is prohibited by law". C

In *Yashpal* v. *State of Punjab* [1977] SCR 2433 the rule was laid as follows D

"The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators". E F G

In Mohammed Usman. Mohammad Hussain Manivar & Anr. v. *State of Maharashtra* [1981] 3 SCR 68, it was held that for an offence under section 120-B IPC, the prosecution need not necessarily prove that the conspirators expressly H

A agreed to do or cause to be done the illegal act. the agreement may be proved by necessary implication. In *Noor Mohammed Yusuf Momin* v. *State of Maharashtra* [1971] 1 SCR 119, it was held that s. 120-B IPC makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. If the offence itself is to commit an offence, no further steps are needed to be proved to carry the agreement B into effect. In *R.K. Dalmia & Anr.* v. *The Delhi Administration* [1963] 1 SCR 253, it was further held that it is not necessary that each member of a conspiracy must know all the details of the conspiracy. In *Shivanarayan Laxminarayan & Ors.* v. *State of Maharashtra & Ors.* [1980] 2 SCC 465, this court emphasized that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences C drawn from acts or illegal omission committed by the conspirators in pursuance of a common design.

The question then is whether conspiracy is a continuing offence. Conspiracy to commit a crime itself is punishable as a substantive offence and every individual D offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, in our considered view, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitutes an offence, are done in India or outside its territory the conspirators continuing to be E parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Govt. all of them need not be present in India nor continue to remain in India. *In lennart Schussler & Anr.* v. *Director of Enforcement & Anr.* [1970] 2 SCR 760, a Constitution Bench of this Court was to consider the question of conspiracy in the setting of the facts, stated thus :

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> "A. 2 was the Managing Director of the Rayala Corporation Ltd. Which manufactures Halda Typewriters. A.1 was an Export Manager of ASSAB. A.1 and A.2 conspired that A.2 would purchase material on behalf of his Company from ASSAB instead of M/s G Atvidabergs, which provides raw material. A.2 was to over-invoice the value of the goods by 40 per cent of true value and that he should be paid the difference of 40 per cent on account of the aforesaid over-invoicing by crediting it to A.2's personal account at Stockholm in a Swedish Bank and requested A.1 to help him in opening the account in Swenska Handles Banken, Sweden and to have further

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deposits to his personal account from ASSAB. A.1 agreed to act as requested by A.2 and A.2 made arrangements with ASSAB to intimate to A.1 the various amounts credited to A.2's account and asked A.1 to keep a watch over the correctness of the account and to further intimate to him the account position from time to time through unofficial channels and whenever A. 1 come to India. A.1 agreed to comply with this request. This agreement was entered into between the parties in the year 1963 at Stockholm and again in Madras in the year 1965. The question was whether Sec. 120-B of the Indian Penal Code was attracted to these facts".

Per majority, Jaganmohan Reddy, J. held that the gist of the offence defined in s. 120-A IPC, which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or legal act by illegal means, subject, however, to the proviso that where the agreement is not an agreement to commit an offence, the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If, in furtherance of the conspiracy, certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It was contended in that regard that several acts which constitute to make an offence under s. 120-B may be split up in parts and the criminal liability of A.1 must only be judged with regard to the part played by him. He merely agreed to help A.2 to open an account in the Swedish Bank, having the amounts lying to the credit of A.2 with Atvidaberg to that account and to help A.2 by keeping a watch over the account. Therefore, it does not amount to a criminal conspiracy. While negating the argument, this court held thus:

"It appears to us that this is not a justifiable contention, because what has to be seen is whether the agreement between A.1 and A.2 is a conspiracy to do or continue to do something which is illegal and, if it is, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. the entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve".

A Thus, this court, though not in the context of jurisdictional issue, held that the agreement not illegal at its inception would become illegal by subsequent conduct and an agreement to do an illegal act or to do a legal act by illegal means, must be viewed as a whole and not in isolation. It was also implied that the agreement shall continuing till the object is achieved. The agreement does not get terminated by merely entering into an agreement but it continues to subsist till the object is either B achieved or terminated or abandoned.

In Abdul Kader v. *State* AIR 1964 Bombay 133, a conspiracy was formed in South Africa by appellants to cheat persons by dishonestly inducing them to deliver money in the Indian currency by using forged documents and the acts of cheating were committed in India. When the accused were charged with the C offence of conspiracy, it was contended that the conspiracy was entered into and was completed in South Africa and, therefore, the Indian Courts had no jurisdiction to try the accused for the offence of conspiracy. The Division Bench held that though the conspiracy was entered in a foreign country and was completed as soon as the agreement was made, yet it was treated to be a continuous offence and the D persons continued to be parties to the conspiracy when they committed acts in India. Accordingly, it was held that the Indian Courts had jurisdiction to try the offence of conspiracy. In *U.S.* v. *Kissal* 218 US 601, Holmes, J. held that conspiracy is a continuous offence and stated "is a perversion of natural thought and of natural language to call such continuous co-operation of a cinematographic series of distinct conspiracies rather than to call it a single one... a conspiracy is E a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that overt act by one partner may be the act of all without any new agreement specifically directed to that act". In *Ford* v. *U.S.* 273 US 593 at 620 to 622, Tuft, C.J. held that conspiracy is a continuing offence.

F In *Director of Public Prosecutions* v. *Doot and Ors.* 1973 Appeal Cases 807 (H.L.), the five respondents hatched a plan abroad, i.e. Belgium and Morocco and worked out the details to import cannabis into the United States via England, In pursuance thereof two vans with cannabis concealed in them were shipped from Morocco to Southampton; the other van was traced at Liverspool, from where the vans were to have been shipped to America and the cannabis in it was found. They G were charged among other offences with conspiracy to import dangerous drugs. At the trial, the respondents contended that the Courts in England had no jurisdiction to try them on the count of conspiracy since the conspiracy had been entered into abroad. While rejecting the contention, Lord Wilberforce held (at page 817) :

H "The present case involves international elements the accused are

aliens and the conspiracy was initiated abroad but there can be no question here of any breach of any rules of international law if they are prosecuted in this country. Under the objective territorial principle (I use the terminology of the Harward Research in International Law) or the principle of University (For the prevention of the trade in narcotics falls within this description) or both, the courts of this country have a clear right, if not a duty, to prosecute in accordance with our municipal law. The position as it is under the international law it not, however, determinative of the question whether, under our municipal law, the acts committed amount to a crime. That has to be decided on different principles. If conspiracy to import drugs were a statutory offence, the question whether foreign conspiracies were included would be decided upon the terms of the statute. Since it is (if at all) a common law offence, this question must be decided upon principle and authority- In my opinion, the key to a decision for or against the offence charged can be found in an answer to the question why the common law treats certain actions as crimes. And one answer must certainly be because the actions in question are a threat to the Queen's peace or as we would now perhaps say, to society. Judged by this test, there is every reason for, and none that I can see against, the prosecution. Conspiracies are intended to be carried into effect, and one reason why, in addition to individual prosecution of each participant, conspiracy charges are brought is because criminal action organised and executed, in concert is more dangerous than an individual breach of law. Why, then, restrain from prosecution where the relevant concert was, initially, formed outside the United Kingoom?...*The* truth is that, in the normal case of a conspiracy carried out, or partly carried out, in this country, the location of the formation of the agreement is irrelevant; the attack upon the laws of this country is identical wherever the conspirators happened to commit; the "conspiracy" is a complex formed indeed, but not separately completed, at the first meeting of the plotters".

Viscount Dilhorne at page 823 laid the rule that :

"a conspiracy does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry out the design. It would be highly unreal to say that the conspiracy to carry out the Gunpower plot was completed when the conspirators met and agreed to the plot at Catesby".

A At page 825B it was concluded thus :

"The conclusion to which I have come after consideration of these authorities and of many others to which the House was referred but to which I do not think it is necessary to refer is that though the offence of conspiracy is complete when the agreement to do B unlawful act is made and it is not necessary for the prosecution to do more than prove the making of such an agreement a conspiracy does not end with the making of the agreement. It continues so long as the parties to the agreement intended to carry it out.....

C Lord Pearson at page 827 held that :

"a conspiracy involved an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding because it is unlawful. But as an agreement it has its three stages, namely, (1) making or formation; (2) performance or implementation ; (3) D discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirator can be prosecuted even though no performance had taken place. But the fact that of the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being E performed, it is very much alive. so long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its F performance or by abandonment or frustration or, however, it may be"

Lord Salmon at page 833 observed :

"If a conspiracy is entered into abroad to commit a crime in England, G exactly the same public mischief is produced by it as if it had been entered into here. It is unnecessary for me to consider what the position might be if the conspirators came to England for an entirely innocent purpose unconnected with the conspiracy. If however, the conpirators come here and do acts in furtherance of the conspiracy, for example, by preparing to commit the planned crime, it cannot, H

> in my view, be considered contrary to the rules of international comity for the forces of law and order in England to protect the Queen's peace by arresting them and putting them in trial for conspiracy whether they are British subjects or foreigners and whether or not conspiracy is a crime under the law of the country in which the conspiracy was born".

At page 835 it was held that the respondents conspired together in England notwithstanding the fact that they were abroad when they entered into the agreement which was the essence of the conspiracy. That agreement was and remained a continuing agreement and they continued to conspire until the offence they were conspiring to commit was in fact committed. Accordingly, it was held that the conspiracy, though entered into abroad, was committed in England and the courts in England and jurisdiction. The ratio emphasizes that acts done in furtherance of continuing conspiracy constitute part of the cause of action and performance of it gives jurisdiction for English Courts to try the accused.

In *Treacy* v. *Director of Public Prosecutions* 1971 Appeal Cases 537 at 563 (H. L.), the facts of the case were that the appellant therein posted in the Isle of Wright a letter written by him and addressed to Mrs. X in West Germany demanding money with menaces. The letter was received by Mrs. X in West Germany. The appellant was charged with black mail indictable s. 21 of the Theft Act, 1968. While denying the offence, it was contended that the courts in England were devoted of jurisdiction. Over-ruling the said objection, Lord Diplock at page 562 observed :

> "The State is under a correlative duty to those who owe obedience to its laws to protect their interests and one of the purposes of criminal law is to afford such protection by deterring by threat of punishment conducted by other persons which is calculated to hand to those interests. Comity gives no right to a State to insist that any person may with immunity do physical acts in its own territory which have harmful consequences to persons within the territory of another state. It may be under no obligation in comity to punish those acts itself, but it has no ground from complaint in international law if the State in which the harmful consequences had their effect punishes, when they do enter its territories, persons who did such acts".

Prof. Williams, Glanville in his article "*Venue and the Ambit of Criminal Law* [1965] L.Q.R. 518 at 528 stated thus :

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> "Sometimes the problem of determining the place of the crime is assisted by the doctrine of the continuing crime. Some crimes are regarded as being of a continuing nature, and they may accordingly be prosecuted in any jurisdiction in which they are partly committed the partial commission being, in the eye of the law, a total commission".

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In the context of conspiracy under the caption inchoate crimes" It was stated:

> "The general principle seems to be that jurisdiction over an inchoate crime appertains to the State that would have had jurisdiction had the crime been consummated".

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Commenting upon the ratio laid down in *Board of Trade* v. *Owen* [1957] Appeal Cases 602, he stated at page 534 thus :

> "The seems to follow owen as logical corollary that our courts will assume jurisdiction to punish a conspiracy entered into abroad to commit a crime here. Although the general principle is that crime committed abroad do not become punishable here merely because their evil effects occur here, there may be an exception for inchoate crimes aimed against persons in this country. Since conspiracy is the widest and vaguest of the inchoate crimes, it seems clearly that the rule for conspiracy must apply to more limited crimes of incitement and attempt also".

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At page 535 he further stated that "the rule of inchoate crimes is therefore an exception from the general principle of territorial jurisdiction. The crime is wholly committed in the State A, yet is justiciable also in State B". At page 535 he elucidated that "certain exceptions are recognised or suggested". Lord Tucker in own's case (supra) illustrated that a conspiracy D 2 England to violate the laws of a foreign country might be justiciable here if the preferments the conspiracy charged would produce a public mischief within the State or injure a person here by causing him damage abroad". At page 536 be stated that "as another exception from the rule in *Board of Trade* v. *Owen* (supra it seems from the earlier decision that a conspiracy entered into here will be punishable if the conspirators contemplates that the illegality may be performed either within British jurisdiction or abroad even though, in the event, the illegality is performed abroad". His statement of law now receives acceptance by House of Lords in *Doot's* case.

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In Halsbury's *Law of England,* third edition, vol. 10, page 327, para 602, while dealing with continuing offence it was stated as under: A

> "A criminal enterprise may consist of a continuing act which is done in more places than one or of a series of acts which are done in several places. In such cases, though there is one criminal enterprise, there may be several crimes, and a crime is committed in each B place where a complete criminal act is performed although the act may be only a part of the enterprise".

It was further elucidated in para 603 that :

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> "What constitutes a complete criminal act is determined by the nature of the crime. Thus, as regards continuing acts, in the case of sending by post or otherwise a libellous or threatening letter, or a letter to provoke a breach of the peace, a crime is committed, both where the letter is posted or otherwise sent, and also where it is received, and the venue may be laid in either place. D

Archbold in *Criminal Pleadings, Evidence and Practice,* 42nd edition (1985) Chapter 23, in para 28-32 at p. 2281, Wright on Conspiracies and Agreements at pages 73-74, Smith on Crimes at page 239 and Russel on *Crime,* 12th edition, page 613 stated that conspiracy is a continuing offence and liable to prosecution at the place of making the agreement and also in the country where the E acts are committed.

Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by F an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executG ing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or technics to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is H

A the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, B and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found C only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and D the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country 'A' to kill 'D' in country 'B' with explosive substance. As far as conspiracy is concerned, it is complete in country 'A' one of them pursuant thereto carried the explosive substance and hands it over to third one in the country 'B' who implants at a place where 'D' frequents and got exploded with remote control. 'D' may be killed or E escape or may be diffused. The conspiracy continues-till it is executed in country 'B' or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country 'B' though first two are liable to murder with aid of s. 120-B and the last one is liable under s. 302 or 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity F of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of autrefoes convict or acquit would extend to such offences. The comity of nations are duty bound to apprehend the conspirators as soon as they set their feet on the country territorial limits and nip the offence in the bud.

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A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long a its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement H is made, but it is not a thing of the moment. It does not end with the making of the

agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and *vice versa*.

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In K. *Satwant Singh* v. *The State of Punjab* [1960] 2 SCR 89, a Constitution Bench of this Court was to consider as to when s. 188 of the Code would be applicable to a case. The facts therein was that the appellant had cheated the Govt. of Burma whose office was at Shimla punishable under s. 420 IPC. The accused contended that the part of the act was done at Kohlapur where payment was to be made and on that basis the court at Shimla had no jurisdiction to try the offence without prior sanction of the political agent. Considering that question this court held that if the offence of cheating was committed outside British India, the sanction would be necessary but on facts it was held that :

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> "It seems to us, on the facts established in this case, that no part of the offence of cheating was committed by the appellant outside British India. His false representation to the Govt. of Burma that money was due to him was at a place in British India which induced that govt. to order payment of his claims. In fact, he was paid at Lahore at his own request by means of cheques on the Branch of the Imperial Bank of India at Lahore. The delivery of the property of the Govt. of Burma, namely, the money, was made at Lahore, a place in Brithsh India, and we cannot regard, in the circumstances of the present case, the posting of the cheques at Kohlapur either as delivery of property to the appellant at Kohlapur or payment of his claims at Kohlapur. The entire argument founded on the provisions of S. 188 of the Code, therefore, fails.

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Far from helping the appellant the ratio establishes that if an offence was committed in India the need to obtain sanction under section 188 is obviated. In *Purshottamdas Dalmia* v. *State of West Bengal* [1962] 2 SCR 101, this court, when the appellant was charged with offences punishable under ss. 120B, 466 and 477, the appellant contended that offence of conspiracy was entered into at Calcutta the offences of using the forged documents was committed at Madras. Therefore, the court at Calcutta had no jurisdiction to try the offence under s. 471 read with s. 466, IPC, even though committed in pursuance of the conspiracy and in course of the same transaction. This court held that the desirability of trying the offences of allt

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A he overt acts committed in pursuance of a conspiracy together is obvious and ss. 177 and 239 of the Code leave no manner of doubt that the court which has the jurisdiction to try the offence of criminal conspiracy has also the jurisdiction to try all the overt acts committed in pursuance of it even though outside its territorial jurisdiction. In *L.N. Mukherjee* v. *The State of Madras* [1962] 2 SCR 116, it was further held that the court having jurisdiction to try the offences committed in B pursuance of the conspiracy, has also the jurisdiction to try the offence of criminal conspiracy, even though it was committed outside its territorial jurisdiction. This view was further reiterated in *R.K. Dalmia* v. *Delhi Administration* [1963] 1 SCR 253 at 273 and *Banwari Lal Jhunjhunwala and Ors.* v. *Union of India and Anr.* [1963] supp. 2 SCR 338. Therein it was held that the court trying an accused for offence of conspiracy is competent to try him for offences committed in pursuance C of that conspiracy irrespective of the fact whether or not overt acts have been committed within its territorial jurisdiction. The charges framed therein under s. 409 read with ss. 120B, 420, IPC and s. 5(1) (D) read with s. 5(2) of the Prevention of Corruption Act were upheld.

D Thus we hold that sanction under section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins. Conspiracy was initially hatched at Chandigarh and though itself is a completed offence, being continuing offence, even accepting appellant's case that he was at Dubai and part of conspiracy and overt acts in furtherance thereof had taken place at Dubai and partly at Chandigarh; and in consequence thereof other offences had E been ensued. Since the offences have been committed during the continuing course of transaction culminated in cheating P.N.B. at Chandigarh, the need to obtain sanction for various offences under proviso to s. 188 is obviated. Therefore, there is no need to obtain sanction from Central Govt. The case may be different if the offences were committed out side India and are completed in themselves without conspiracy. Perhaps that question may be different for which we express F no opinion on the facts of this case. The ratio in Fakhrulla Khan has no application to the facts in this case. Therein the accused were charged for offences under s. 420, 419, 467 and 468 and the offences were committed in native State, Mysore. As a result the courts in British India i.e. Madras province had no jurisdiction to try the offence without prior sanction. Equally in *Verghese's* case the offences charged under s. 409, IPC had also been taken place outside British India. Therefore, it was G held that the sanction under s.188 was necessary. The ratio in *Kailash Sharma's* case is not good at law. The appeal is accordingly dismissed.

R.M. SAHAI J. While agreeing with Brother Ramaswamy, J., I propose to add a few words. Prosecution of the appellant under Section 120B read with H Section 420 and 471 of the Indian Penal Code (in brief 'IPC') was assailed for

absence of sanction under Section 188 of the Criminal Procedure Code (in brief 'Cr. P. C.'). Two submissions were advanced, one that even though criminal conspiracy was itself an offence but if another offence was committed in pursuance of it outside India then sanction was necessary; second—an offence is constituted of a number of ingredients and even if one of them was committed outside the country Section 188 of the Cr. P.C. was attracted.

Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one-commission of an offence; second - by an Indian citizen; and third-that it should have been committed outside the country. Out of the three there is no dispute that the appellant is an Indian citizen. But so far the other two are concerned the allegations in the complaint are that the conspiracy to forge and cheat the bank was hatched by the appellant and others in India. Whether it was so or not, cannot be gone into at this stage.

What is the claim then? Two fold one the appellant was in Dubai at the relevant time when the offence is alleged to have been committed. Second, since the bills of lading and exchange were prepared and were submitted to the Emirates National Bank at Dubai and the Payment too was received at Emirates National Bank in Dubai, the alleged offence of forgery and cheating were committed outside India. Is that so? Can the offence of conspiracy or cheating or forgery on these allegations be said to have been committed outside the country? Substantive law of extra-territory in respect of criminal offences is provided for by Section 4 of the IPC and the procedure to inquire and try it is contained the Section 188 Cr.P.C. Effect of these sections is that an offence committed by an Indian citizen outside the country is deemed to have been committed in India. Proviso to Section 188 Cr. P.C. however provides the safeguard for the NRI to guard against any unwarranted harassment by directing, "that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

Since the proviso begins with a *non obstinate* clause its observance is mandatory. But is would come into play only if the principal clause is applicable, namely, it is established that an offence as defined in clause 'n' of Section 2 of the Cr.P.C. has been committed and it has been committed outside the country.

What has to be examined at this stage is if the claim of the appellant that the offence under Section 120B read with Section 420 and Section 471 of the IPC were committed outside the country. An offence is defined in the Cr. P.C. to mean an

A act or omission made punishable by any law for the time being in force. None of the offences for which the appellant has been charged has residence as one of its ingredients. The jurisdiction to inquire or try vests under Section 177 in the Court in whose local jurisdiction the offence is committed. It is thus the commission of offence and not the residence of the accused which is decisive of jurisdiction. When two or more persons agree to do or cause to be done an illegal act or an act B which is illegal by illegal means such agreement is designated a criminal conspiracy under Section 120A of the IPC. The ingredients of the offence is agreement and not the residence. meeting of minds of more than two persons is the primary requirement. Even if it is assumed that the appellant was at Dubai and he entered into an agreement with his counterpart sitting in India to do an illegal act in India the offence of conspiracy came into being when agreement was reached C between the two. The two minds met when talks oral or in writing took place in India. Therefore, the offence of conspiracy cannot be said to have been committed outside the country. In *Mobarik Ali Ahmed* v. *The State of Bombay* AIR 1957 SC 857 this court while dealing with the question of jurisdiction of the Courts to try an offence of cheating committed by a foreign national held that the offence of D cheating took place only when representation was made by the accused sitting in Karachi to the complaints sitting in Bombay. The argument founded on corporeal presence was rejected and it was observed :

"What is, therefore, to be seen is whether there is any reason to think that a foreigner not corporeally present at the time of the commission of the commission E of the offence does not fall within the range of persons punishable therefor under the Code. It appears to us that the answer must be in the negative unless there is any recognised legal principle on which such exclusion can be founded or the language of the Code compels such a construction".

F If a foreign national is amenable to jurisdiction under Section 179 of the Cr. P.C. a NRI cannot claim that the offence shall be deemed to have been committed outside the country merely because he was not physically present.

Preparation of bill of lading at Dubai or payment at Dubai were not isolated acts. They were part of chain activities between the appellant and his associates G with whom he entered into agreement to cheat the bank at Chandigarh. Any isolated act or omission committed at Dubai was insufficient to constitute an offence. The illegal act of dishonestly inducing the bank at Chandigarh was committed not by preparation of bill at Dubai but its presentation in pursuance of agreement to cheat. The submission thus founded was on residence or on preparation of bills of lading or encashment at Dubai are of no consequence.

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Nor is there any merit in the submission that even part of the offence would attract Section 188 as the section operates when offence is committed outside India. An offence is committed when all the ingredients are satisfied. The section having used the word offence it cannot be understood as part of the offence. Section 179 Cr.P.C. empowers a court to try an offence either at a place where the offence is committed or the consequences ensue. On the allegations in the complaint the act or omissions were committed in India. In any case the consequence of conspiracy, cheating and forging having taken place at Chandigarh the offence was not committed outside the country therefore the provisions of Sec. 188 Cr. P.C. were not attracted.

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ORDER

For reasons given by us in our concurring but separate orders the appeal fails and is dismissed.

Parties shall bear their own costs.

VPR. Appeal dismissed.