

ITEM NO.503

COURT NO.1

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 451/2019

SITA SOREN

Appellant(s)

VERSUS

UNION OF INDIA

Respondent(s)

(IA No. 58532/2019 - INTERVENTION APPLICATION)

Date : 20-09-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESH  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Raju Ramachandran, Sr. Adv.  
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Mr. Akshay Kaushik, Adv.  
Mr. Shashank Tiwari, Adv.  
Mr. M V Mukunda, Adv.  
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Mr. Pratap Shankar, Adv.  
Ms. Devyani Gupta, Adv.  
Ms. Tanvi Anand, Adv.

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Ms. Chinmayee Chandra, Adv.

Mr. K Parmeshwar, Adv.  
Mr. Udai Khanna, Adv.  
Mr. Akshay Amritanshu, Adv.  
Mr. Anmol Chandan, Adv.  
Mr. Ankur Talwar, Adv.  
Mr. Anandh Venkataramani, Adv.  
Mrs. Vijayalakshmi Venkataramani, Adv.  
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Ms. Mansi Sood, Adv.  
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Mr. Raman Yadav, Adv.  
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Mr. Arvind Kumar Sharma, AOR

Dr. Vivek Sharma, AOR

Mr. Anand Nandan, Adv.  
Mr. Aakarsh, Adv.  
Ms. Shivangi, Adv.  
Mr. Hasan Zubair Waris, Adv.  
Mrs. Mohd. Faiz, Adv.  
Ms. Savita Kumari, Adv.  
Mr. Amit Pawan, AOR

Mr Gopal Sankaranarayan, Sr. Adv.  
Mr. Ashwini Kumar Upadhyay, Adv.  
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Ms. Tanya Srivastva, Adv.  
Mr. Vishal Sinha, Adv.  
Ms. Shivani Vij, Adv.

Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The operative part of the reportable order reads as under :

“24 We are inclined to agree with the submission of the *Amicus Curiae* and Mr Gopal Sankarnarayan, senior counsel that the view which has been expressed in the decision of the majority in **PV Narasmaha Rao** requires to be reconsidered by a larger Bench. Our reasons *prima facie* for doing so are formulated below:

- (i) Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences. While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not *prima facie* appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the legislature of a state;
- (ii) Secondly, in the course of judgment in **PV Narasmiha Rao**, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge, if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and the member of the legislature would be liable to be prosecuted on a charge of bribery, if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words “in respect of” in Article 105(2) are construed to mean ‘arising out of’. In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and

(iii) Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority.

- 25 We have already noted above that efforts in seeking a review of the judgment in **PV Narasmiha Rao** and later in proceedings under Article 32 of the Constitution were not successful. One of us (Justice Dr. D.Y. Chandrachud), while delivering a concurrent opinion for a Bench of five judges in **Kalpna Mehta Vs Union of India**<sup>1</sup> (para 221) had occasion to observe that should the correctness of the view in **PV Narasmiha Rao** fall for reconsideration in an appropriate case, a larger bench may have to consider the issue. The view of the majority has serious ramifications for the polity and the preservation of probity in public life.
- 26 For the above reasons, *prima facie* at this stage, we are of the considered view that the correctness of the view of the majority in **PV Narasmiha Rao** should be reconsidered by a larger Bench of seven judges.
- 27 We accordingly request the Registry to place the papers before the Chief Justice for constituting a larger Bench of seven judges.”

(GULSHAN KUMAR ARORA)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
ASSISTANT REGISTRAR

(signed reportable order is placed on the file)