Prima Facie Case: Whether the Supreme Court correctly applied the principle in Abacha v State.

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INTRODUCTION

The case of *Abacha v State*[1] is an interesting one not so much because of the status of the appellant, or the calibre of the deceased or even the gravity of the offence - murder which carries the supreme penalty. Rather, what makes it interesting is the reliance by both parties to the appeal as well as the courts on the case of *Ikomi v State*.[2] The appellant seeking to quash the information on the ground that it discloses no *prima facie* case relied on the case of *Ikomi v State*. The respondent, represented by the Attorney General of Lagos State who opposed the application relied on the case of *Ikomi v State*. The trial court that refused the application relied on *Ikomi v State*. The Court of Appeal that affirmed the High Court judgment also relied on *Ikomi v State*. The dissenting judgment of Ejiwunmi JSC upholding the judgment of the trial and the lower courts relied on *Ikomi v State*.
Also, the majority judgment of the Supreme Court which overruled the judgments of both the trial and lower courts and quashed the information relied on *Ikomi v State*.

The question is: if all parties and all courts involved in this case agree that the case of *Ikomi v State* represents the position of the law on the principle of *prima facie* case, why did the Supreme Court in its majority decision in this case come to a conclusion that is at variance with the concurrent decisions of the High Court and the Court of Appeal both of which are consistent with the principle of *prima facie* case as enunciated in *Ikomi v State*?

The purpose of this paper therefore, is to examine the application of the principle of "*prima facie* case" to the case of *Abacha v State*. It will be shown that the principle as established and applied in *Ikomi v*

[1] [2002] FWLR (pt 118) 1224
[2] [1986] 1 NSCC 730

State was not followed or correctly applied in the case under review and that the dissenting judgment of Ejiwunmi JSC in the case under review accords more with the law and should be preferred.

FACTS OF THE CASE

The accused/appellant was charged at the Lagos High Court with 2 others before Kekere Ekun J. on a 4 count charge for the offences of conspiracy to murder, murder and accessory after the fact to murder of late Alhaja Kudirat Abiola. He was charged jointly with the other 2 accused persons for the offences of conspiracy to murder and murder but charged alone for 2 offences of accessory after the fact to murder. The facts, as stated by the prosecution and borne out by the proof of evidence were that, the appellant along with 2 others conspired to kill and did kill Alhaja Kudirat Abiola. It was evident that it was appellant's driver who drove the alleged killer on the date of the incident. The proof of evidence also showed that after the death of the deceased, security men went in search of the killers during which time the appellant scheduled a midnight meeting in Kano with the main suspects where it was agreed that the boys (the killers) should escape Nigeria and go to Niger Republic and he gave the boys $10,000 each through his Accountant.

After the information was filed and before his plea was taken at the trial court, the appellant brought an application to quash the information mainly on the ground that no *prima facie* case was made out to justify his trial. He contended that there was nothing in the proof of evidence linking him to the commission of the offences charged.

The Learned trial Judge, Kekere Ekun J., after careful consideration of the application and arguments of counsel on both sides held *inter alia*:

> It is well settled that conspiracy is generally a matter of inference from the collateral circumstances of the case . . . from the above stated facts, it is clear that the 3rd accused (applicant) has been linked with the commission of the offence charged in count 1 of the information. The various statements referred to above are such that require at least some

> explanation . . .I hold that the statements and depositions in the proof of evidence do establish a *prima facie* case against the accused requiring some explanation in respect of count 1 of the charge.[3]

On count 2, the learned trial judge, after a careful consideration of the provisions of S. 7 (b) of the Criminal Code held as follows:

> I am of the view that the facts already referred to above are sufficient to bring the 3rd accused (applicant) within the ambit of S. 7(b) for the purposes of preferring an information against him. I have considered the various authorities referred to by the Learned Senior Advocate. I am of the view that it would be premature at this stage to embark on an extensive consideration of what constitutes common intention. At this stage, all that is required is that a *prima facie* case be established. The standard of proof at this stage is not such as would lead to a conviction. The application to quash count 2 of the information is therefore refused [4].

On counts 3 & 4, the learned trial judge after an extensive review of the proof of evidence, particularly the statements of the 1st and 2nd accused as well as the applicant himself, concluded as follows:

> The facts as they stand suggest that the 3rd accused was aware that the persons he assisted were involved in the commission of the offence . . . with due respect to the learned Senior Advocate (counsel to the applicant) the court is not called upon at this stage to determine whether the prosecution would be able to secure a conviction. Only a *prima facie* case need be established and I hold that the proof of evidence satisfies this requirements.[5]

On the whole, relying on the case of *Ikomi v State*,[6] the application to quash the information for disclosing no *prima facie* case was dismissed and the applicant was called upon to take his trial.

Dissatisfied with the ruling, the appellant appealed to the Court of Appeal which, in a unanimous decision, dismissed the appeal relying

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[3] This is part of the trial court's ruling reproduced at pp.1357-1359 of the Report in the Abacha case.
[4] Ibid at P. 1256
[5] Ibid at 1360 para. B-D
[6] Supra

on the case of *Ikomi v State*, among others. Further dissatisfied, the appellant appealed to the Supreme Court, contending in the main, that the Court of Appeal was in error for affirming the High Court Ruling, there being no *prima facie* case made out against him from the proof of evidence to warrant his being called upon to stand trial. The Supreme Court, by a majority decision of 4 to 1 (with Ejiwunmi JSC dissenting), allowed the appeal and quashed the information. It held that the prosecution did not make out a *prima facie* case to justify putting the appellant on trial.

Belgore JSC who read the lead judgment of the court held as follows:

> In the matter now at hand, there is nothing linking the appellant with the crimes on the indictment than suspicion. To say members of the armed forces and the police are on an operation other than war or control of riot and in that capacity carry fire arms is not strange. It is not right to presume that going on an operation is a *prima facie* case of embarking on a criminal act; that is not only wrong but it is unjust. Otherwise, any soldier or policeman carrying arms will be committing an offence. The appellant was in the office of Al-Mustapha and Sergeant Jabila (alias Rogers) happened to meet him there; he never heard what the two whispered before guns were given to Sgt. Jabila. Both Rogers and Al-Mustapha never averted to this in their statements. In fact, there is not enough indication of the precise date. I therefore find a great merit in the appeal. The giving of the guns may be for an entirely different operation.[7]

On the charge of accessory after the fact, His Lordship opined *inter alia*:

> In English Common law, which found its way into our practice, an accomplice can be made a witness for the prosecution and this is done where without the evidence of that accomplice, conviction cannot be achieved in the trial. This is a different case and a peculiar one for that matter. Sgt Jabila (alias Rogers) gave a graphic description of his involvement that if voluntary must amount to confession. He has not been

[7] *Abacha v State* (supra) p.1287-1288 para.H-B

charged with any offence. The charges relating to "accessory after the fact" are clear - murder of Mrs. Abiola by Mohammed Abdu (a.k.a. Katako) and Mohammed Aminu - but the alleged criminals have not been charged. At any rate, the giving of money to these two persons has not amounted to screening them - from justice on the facts of proofs of evidence attached to the information.[8]

REVIEW OF THE CASE

In examining whether the Supreme Court's decision in *Abacha v State* was correct, it may be prudent to bear in mind the following questions which emerged from the proof of evidence:

1. Was it a co-incidence that the appellant who was not a soldier was present when guns were being handed over to the killer soldier?
2. Was it a co-incidence that the appellant heard that "the boys" were going on assignment?
3. Was it a co-incidence that the appellant arranged to get a plane for "the boys" from among his friend's airlines?
4. Was it a co-incidence that the appellant instructed his personal driver, Katako to go to Lagos and drive killer to anywhere he wanted to go?
5. Was it a co-incidence that when "the boys" had a problem with the car they were to use for their assignment, they had to get in touch with the appellant instead of Al-Mustapha, their boss?
6. Was it a co-incidence that the appellant's personal driver drove the killer throughout the period and indeed, allegedly drove him on the day and at the hour that the killer shot at Alhaja Kudirat Abiola?
7. Was it a co-incidence that when the newspapers started commenting and pointing their searchlights at Rogers and the other boys for the murder of Kudirat, the boys had to get in touch with the appellant instead of Al-Mustapha, their boss?
8. Was it a co-incidence that the appellant had to be at the meeting where the decision was taken that the boys should escape to Niger Republic?
9. Was it a co-incidence that the appellant promised to make $10,000 ready for each of the boys to go to Niger Republic?

[8] Ibid at P 1289 - 1299 para G - A.

10. Was it a co-incidence that the appellant's accountant, upon his instructions, did give $10,000 to each of the boys and they went to Niger Republic?
11. As rightly observed by his Lordship, it is not strange to see soldiers and policemen carry arms during operations and riots. But, in this case, was there any claim of any riot? Or better still, is it not strange that a soldier of the rank of a sergeant would go about with arms and ammunition of the quantum and sophistication described by the self confessed killer in a civilian vehicle driven by a civilian driver?
12. What Military operation could Rogers go for alone that Major Al-Mustapha who was the *defacto* 2nd-in-command in the Abacha regime could not provide a military vehicle for such operation except the appellant's car?
13. In his statement at p.1351-1352 of the report, Rogers stated: 'the weapon are numbered two (2) with about (10-15) ten to fifteen packet of 50 rounds each of 9mm linger'. What military operation in a civil society, other than a full scale war situation, would a soldier embark upon with so much lethal materials? If the statement is anything to go by, does the connection of the appellant with him and the provision of his car and driver not call for explanation?[9]

It is not intended to supply all the answers to these questions in this write-up. However, it is submitted, with the greatest respect, that if Their Lordships had adverted their minds to these questions, perhaps, the fact that what was before the court was not the guilt or otherwise of the appellant but, rather, a simple issue of whether there is any ground to call on the appellant to offer explanation, the verdict would have been different.

It has become a well established principle of law that there must be a *prima facie* case before a court can call on an accused person to stand his trial. The whole idea is the protection of the constitutional right of the accused person. Section 36 (5) of the constitution provides for the presumption of innocence of the accused person and this presupposes

[9] See the full text of Barnabas Jabila (alias Rogers)' statement at pp. 1351- 1352

that for a person to stand trial there must be a ground to proceed as to do otherwise would amount to asking the accused to establish his innocence rather than the prosecution establishing his guilt. This can be seen clearly in the case of *Ohwovoriole v. Federal Republic of Nigeria*.[10] Here, the court held *inter alia*:

> No citizen should be put to the rigours of trial in a Criminal proceeding, unless available evidence points, *prima facie*, to his complicity in the commission of a crime.

As earlier indicated, the issue before the court was whether the proof of evidence disclosed a *prima facie* case against the appellant. What, then, is *prima facie* case?

Although the term: "*prima facie* case" does not lend itself to easy definition, a careful examination of decided cases will certainly bring out the meaning. It is important to mention at the outset that the question whether a *prima facie* case has been made out in a particular case to warrant the suspect to take his plea or his trial is at the discretion of the trial judge. The discretion here is not an indulgence of a judicial whim, but the exercise of judicial judgment based on facts and guidance by law.[11]

In *R. v. Coker*,[12] Hubbard J. held that a submission that there is no *prima facie* case means that there is no evidence on which the court could convict even if the court believed the evidence given.

In *Ajidagba v IGP*[13] the Supreme Court held that the term simply means, "ground for proceeding." Expatiating on the meaning of the phrase, "*prima facie* case" the court maintained:

The term so far as we can find has not been defined either in the English or in Nigerian Courts. In an Indian case, however, we find the following dicta:

What is meant by *prima facie* (case)? It only means that there is ground for proceeding . . . But a *prima facie* case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty . . . and evidence discloses a *prima*

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[10] [2003] FWLR (pt. 141) 2019 at 2037 paras B-C

[11] *Ohwovoriole v. Federal Republic of Nigeria* (supra)

[12] [1952] 20 NLR 62

[13] [1958] 3 FSC 5. See also *Ajiboye v State* [1994] 8 NWLR pt 364 p. 587

facie case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused.[14]

In *Ikomi v State*,[15] Chief F.R.A. Williams (SAN), relying on the case of *Atanda v A.G., Western Nigeria*[16] argued in his brief of argument that *prima facie* case means there is a clear case on the depositions. Rejecting this submission, Nnamani JSC who read the lead judgment held:

> I must say that the requirement of a "clear case on the deposition" before consent can be granted is rather putting it too high. In fact, this is almost the same as saying that consent should not be granted if on the evidence in the depositions, a trial would not lead to conviction. Such postulation is certainly not in accord with the authorities. . . a court will not quash an indictment because an examination of the deposition has led it to the conclusion that the prosecution will not succeed[17].

At p. 741 lines 30 – 35, His Lordship concluded:

> It is sufficient, if the depositions and statements attached to the information disclose a *prima facie* case against the accused person. The question ought to be this: from these depositions is it probable that the accused persons are linked with the offence in the information? S. 324 CPA although more relevant to committal proceedings, gives some assistance as to what is *prima facie* case. It provides that:
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> Where there is a conflict of evidence, the magistrate shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt.

In *Ohwovoriole v. Federal Republic of Nigeria*[18] the appellant, a Senior Advocate of Nigeria was alleged to have committed some offences along with 3 others in the course of the subject matter before the Judicial Commission of Inquiry for the investigation of the

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[14] Ibid at p. 227 and reproduced at p. 1277 in the *Abacha* case.

[15] [1986] 1NSCC 730

[16] [1965] NMLR 225

[17] Ibid p. 740 Lines 30 - 35.

[18] supra

management of Nigeria Airways (1983-1999). The Attorney General of the Federation sought and obtained the consent of a High Court Judge pursuant to section 185 (b) of the CPC. The appellant brought an application to quash the charge on the ground that there was no *prima facie* case but the application was refused by the trial court. An appeal to the Court of Appeal was also dismissed. The appellant further appealed to the Supreme Court which allowed the appeal. In allowing the appeal, the court distinguished *prima facie* case from proof. It held:

> A *prima facie* case means that there is ground for proceeding. But a *prima facie* case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty. The evidence discloses a *prima facie* case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused[19]

What is not in doubt from the available authorities is that at the stage where the question whether a *prima facie* case has been made out to justify the grant of consent or leave, the only thing the judge considers is the proof of evidence before him along with the copy of the proposed charge. The proof of evidence, of course, includes the statement of witnesses including statement (if any) made by the accused himself. It is our humble opinion that in reaching a decision whether there is a *prima facie* case in any particular case, what the judge should do is that after considering the facts before him, the judge should ask himself:

i) From the proposed charge before me and the proof of evidence, has an offence been committed? If the answer is in the affirmative, he asks further:
ii) Is the accused person linked to the commission of the offence?

If the answers to these two questions are in the affirmative, then a *prima facie* case exists. The standard of proof at this stage is not such as would lead to a conviction. In other words, the court is not called upon at this stage to determine whether the prosecution would be able to secure a conviction.

No doubt, these principles had been correctly applied in *Ikomi v State* relied upon by the Supreme Court in deciding the case under review. Unfortunately, it does not appear that *Ikomi v State* was correctly

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[19] Ibid at p.2044 paras. E-F.

applied in the case under review. It may be appropriate at this stage to examine in some details, the facts of that case. In that case, the 1st accused/appellant a judge of the High court of Bendel State was charged jointly with 2 others for the murder of one P.C. Ugbede who was on guard duty at the 1st appellant's house on the fateful night. The proof of evidence showed that the 1st appellant's quarters where the trio lived was fenced round and had two iron gates which used to be permanently locked if not in use. The keys to the main gate were kept by the 2nd & 3rd appellants. On the fateful night, the gate was locked after the deceased, P. C. Ugbede reported for duty. There was no indication that the gate was opened until the next morning when the constable's mutilated body was discovered. Apart from the 3 appellants and the 1st appellant's two daughters, no other person was in the compound that fateful night.

The Attorney General of Bendel State obtained the consent of the Chief Judge of the state to file an information. The appellants now brought an application to quash the information on the ground that there was no *prima facie* case against them. The application was refused. An appeal to the court of Appeal was dismissed and the further appeal to the Supreme Court was also dismissed. The Supreme Court was unanimous in its decision that an indictment cannot be quashed merely on the ground that a doubt exists on whether the prosecution could secure a conviction. Coker JSC held:

> Even though the quality of the evidence seems extremely tenuous and might possibly lead to the discharge of the accused persons if no further evidence is adduced at the trial, I am however unable to say that his discretion in granting consent was not judicially exercised. His duty at that stage was not to appraise the evidence in the statements of proposed witnesses. His duty was to decide whether there was reasonable material before him on which the suspects could reasonably be called to stand trial for the offence. An Attorney General is not the Judge of the case but a prosecutor of the charge. His responsibility was not to decide the merit of the case but to ensure that the charge is not preferred irresponsibly, solely to embarrass, harass or persecute. It is immaterial and not enough that if the judge himself were the Attorney

General, he would not have advised preferment of the information on those materials.[20]

Applying these principles to the case under review, that is, *Abacha v State*, one then wonders why the Supreme Court had difficulty in calling upon the appellant to stand his trial in view of his linkages with the offence.

One of the materials before the learned trial judge on the basis of which she granted consent to file the information was the statement of the appellant himself which was reproduced at pp. 1260-1261 of the report. The statement concerning the discussion the appellant had with Major Ado in the latter's house reads *inter alia*:

> The basic theme of the discussion was that there were a lot of questions being asked about the killing of Kudirat, the live attempt on Mr. Alex Ibru and Mr. Abraham Adesanya. During the talks, he expressed a lot of fear about the issues and that something should be done about it. That he believed that since the boys were around they should be immediately resettled somewhere before additional measures were taken. It was then resolved that Mohammed and Aminu should be taken care of first before others were relocated. It was suggested that they should be given ten thousand dollars so to take care of them for some time before additional measures could be put in place. . .
> . . . it was then we agreed that the boys should be looked for and spoken to leave the country. Major Ado had to go back Lagos (sic) for his duties. We then asked Mohammed Katako to locate the other and ask them to come to Kano and see me. This was also possible because Mohammed Katako had engagements to (sic) in Abua. Eventually, Aminu and Katako came to see me in Gidado Road in Kano when I instructed my Accountant, Ibrahim Aminu to source ten thousand dollars each of both for them which he confirmed to me he had given and they had collected from him.

Even from the above statement alone, a few curious questions naturally come to mind: for example, if the appellant has no connection with the killing and the attempted killings, what should unsettle him about the questions being asked? Why should he be

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[20] Ibid at 756 Lines 3-13

concerned that something should be done about it? Why should he invite the boys to Gidado Road, which as a matter of common knowledge is the home of the Abachas in Kano? Why should he be the one to ask his Accountant to source for ten thousand dollars for each of them to leave the country knowing full well that the boys were being looked for by security agents? And if as the Supreme Court opined, the various events culminating in the present state of affairs were purely military affairs, why was the appellant, a civilian so involved? The ultimate question is: if the appellant knew so much, why didn't the Supreme Court allow him to come to court and let the state benefit from the volume of information he has to unravel the nagging questions surrounding the killing and attempted killings?

It is respectfully submitted that if the series of events ranging from the exchange of arms, arrangement of flight, provision of personal car and driver by the appellant to the alleged murderers are all coincidences, the events succeeding the death of Kudirat as confessed above by the appellant is a case of another coincidence too many. The right thing for the Supreme Court to have done in the circumstance was to dismiss the appellant's appeal and order him to take his plea and stand his trial.

Ejiwunmi JSC appears to have seen through the facts more clearly when in his dissenting judgment, he pointed out the following linkages of the appellant with the offences charged:[21]

1) Appellant was in Major's office when Rogers came in and was instructed to bring a bag from the corner of the room – the bag was opened in the presence of the appellant and it revealed that guns were in the bag. He heard that they were going on an assignment.
2) Katako was the appellant's personal driver
3) Appellant instructed Katako to go to Lagos to drive Rogers to anywhere he wanted to go.
4) Katako did drive Rogers and the gang who appellant described as "his boys" and as stated in his statement.
5) That when the gang (otherwise his boys) needed a car for their mission, Rogers contacted appellant who directed that

[21] At pp 1355-1356

his driver, Katako be put on the line. Katako then spoke to appellant and was instructed to take one of his vehicles. Katako duly collected the vehicle with which he drove the gang around fulfilling the assignment (mission).

6. That it was during the execution of the assignment that Kudirat Abiola was killed by Rogers.

7) Subsequently, Rogers started "singing" i.e. telling the story of the event. Revealing or giving evidence (information) concerning the event. Katako and others became apprehensive of the possibility of their being arrested for the murder of Kudirat Abiola.

8) They contacted the appellant who had a midnight meeting in Kano in the house of X.

9) Appellant agreed at that meeting to make money available to them to escape to Niger Republic so as to avoid their being arrested. Appellant instructed his Accountant to give Katako and X the sum of $10,000 U.S. Dollars each.

10) The Accountant duly paid the money to them.

11) Katako and X upon receipt of the money fled to Niger Republic though they returned later to Nigeria.

Certainly, these linkages are sufficient to support a finding that a prima facie case was made out against the appellant and the Learned Justice himself did not mince words in doing so when he held as follows:

> Even from the statement of the appellant, I think the courts below were right to have held that a *prima facie* case was established against him calling upon him to face his trial. From the statements of Aminu and Katako, and the admissions made by the appellant himself in his statements to the police, I cannot see how the appellant would not be called upon to explain his conduct with regard to counts 3 & 4. He readily admitted that he gave ten thousand dollars to each of them to flee the country and escape justice. Is that the conduct of a person who had nothing to hide? Surely, it cannot be right that he has no explanation to make in respect of that conduct. More so that the murder of Kudirat Abiola is a well known fact in this country and beyond…It is for these reasons given herein that I am unable to go along with my learned brothers to allow the appeal. On the facts here, except Ikomi Vs the State (Supra) is not being followed, the proper order to make is to

> dismiss the appeal. The facts here are glaringly much stronger than in Ikomi (Supra) where this court refused to quash the information and ruled that Ikomi must face his trial. To hold otherwise, is in my respectful view, to submit to the tyranny of the majority in its capricious interpretation of settled principles laid down in *Ikomi v State (Supra)*[22]

It is therefore, submitted that the dissenting judgment of Ejiwunmi, JSC, in the case under review accords more with the law on prima facie case as established and applied in Ikomi's case which was purportedly relied upon in the majority decision.

It is further respectfully submitted that the Learned Justices of the Supreme Court were also wrong in substituting their discretion for that f the lower courts. It is settled law that an appellate court should not substitute its discretion for that of the trial or lower court. The fact that if the appellate court were confronted with the same set of facts at first instance, it would have come to a different conclusion is immaterial. The law is also well settled that where a judicial discretion has been exercised bonafide, uninfluenced by irrelevant consideration and not arbitrarily or illegally by the lower court, an appellate court will ordinarily not interfere.[23] The only instance where the appellate court would interfere with the exercise of a trial court's discretion is where the decision is perverse or reached on a wrong principle which was not the case in the case under review. Consequently, whenever there are concurrent decisions of two lower courts, the attitude of the Supreme Court has been not to disturb the decision unless the decision is erroneous or perverse.[24]

In view of the foregoing, the Supreme Court ought to have been weary of departing from the concurrent finding of the two lower courts especially as there was no indication that such finding was perverse. As Aniagolu JSC held in *Ikomi v State:*

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[22] Ibid 1369 para. D - E

[23] *University of Lagos v. Algoro* [1985] 1 NWLR (pt. 1) 143; *Woluchem v Gudi* [1981] 5 SC 291; *Ebba v. Ogodo* (1984) 4 SC 84.

[24] *Amusa v. State* [2003]FWLR (pt. 148) 1296 at 1304; *Awoyoolu v Aro* [2006] AFWLR (pt. 308) 1319.

> Where the judge has exercised his discretion in granting his consent… an appeal court should not interfere with the said discretion provided that he acted within jurisdiction unless as stated in *R v Flynn* (1961) 45 CAR 268 at 277, the appellate court feels satisfied either that he exercised the discretion on wrong principles or that he had failed to give weight to matters which he should have had in mind when exercising the discretion.[25]

We submit therefore, that the Supreme Court, with due respect, was wrong to have substituted its own discretion for that of the lower courts without justification. After all, it was the same Supreme Court that had earlier stated per Coker JSC In *Ikomi v. State* that:

> I have come to the conclusion that the material before the Chief Judge at the time he gave his consent was sufficient however slight to support the information even though another judge given the same statements as the Chief Judge could, equally with justification, have refused to give his consent. The line between the two is very thin and not one in which a court of Appeal should interfere. It would be otherwise if no offence is disclosed or the suspect is not remotely connected with the offence.[26]

Therefore, unless a decision of a trial or lower court based on exercise of discretion suffers from any of the vices mentioned above, it will be wrong to interfere with such exercise as the Supreme Court has done in the case under review.

CONCLUSION

From all that have been stated above and the authorities reviewed, the present writer is of the view that the majority judgment of the Supreme Court in the above case cast a new cloud on the principle of prima facie case as clearly and lucidly established in the case of *Ikomi v State.* From the facts of the Abacha case, the only interpretation one can reasonably give to this decision is that there is no prima facie case unless the evidence on the record before the trial court is enough to prove the guilt of the accused beyond reasonable doubt. That will be a bad precedent indeed. It is respectfully submitted therefore, that in the future, this decision should be treated as one of few decisions of the Supreme Court that simply stand

[25] Ibid p. 754 Lines 25 - 30

[26] *Ikomi v State* (Supra) p. 756 Lines 15 – 20.

alone. It should not be used as a precedent as to do so will amount to re-writing the case of *Ikomi v State* and all other decisions taken based on the same. It is in this light that the dissenting judgment of Ejiwunmi JSC is to be preferred to the majority judgment in the Abacha case. It is hoped that the Supreme Court, at the earliest opportunity would overrule itself on this case.