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The State of Telangana & Ors.
v.
Dr. Pasupuleti Nirmala Hanumantha Rao Charitable Trust

(Civil Appeal No. 5321 of 2025)

14 May 2025

[Dipankar Datta and Manmohan,* JJ.]

Issue for Consideration

i) Whether alienation of land by the District Collector, Medak, Government of Andhra Pradesh vide order dated 08.02.2001 was a sale or alienation/allotment; ii) whether any condition was imposed pursuant to the alienation of land by the Government of Andhra Pradesh; iii) whether any condition/restriction imposed by the State Government would be violative of s.10 of the Transfer of Property Act, 1882.

Headnotes†

Telangana Land Revenue Act – ss.25 and 172 – Telangana Alienation of State Lands and Land Revenue Rules 1975 – rr.5 and 6 – Transfer of Property Act, 1882 – s.10 – Whether alienation of land by the District Collector, Medak, Government of Andhra Pradesh vide order dated 08.02.2001 was a sale or alienation/allotment:

Held: Alienation of land by appellant-state was not a sale but an allotment under a statutory scheme – The land in question is a Government land as per entries of record – Further, the respondent, being a charitable trust, had applied for allotment of land – A charitable trust can use land for charitable purposes only – The request of the Respondent-Trust was processed as per the instructions laid down in G.O.Ms. No.635 dated 02.07.1990 and the land in question was conditionally allotted by the District Collector, Medak, Government of Andhra Pradesh vide order dated 08.02.2001 – The alienation letter dated 08.02.2001 issued by the District Collector, Medak, which specifically records that sanction is accorded to alienation of Government land subject to payment of market value and subject to the three conditions – It was made clear that in case of deviation of the said three conditions, the land shall be resumed back by the Revenue authorities – Consequently, alienation of land by the District Collector, Medak, Government of

* Author

Andhra Pradesh vide order dated 08.02.2001 was not a sale, but an allotment under a statutory Scheme. [Paras 15-18]

Telangana Land Revenue Act – ss.25 and 172 – Telangana Alienation of State Lands and Land Revenue Rules 1975 – rr.5 and 6 – Transfer of Property Act, 1882 – s.10 – Whether any condition was imposed pursuant to the alienation of land by the Government of Andhra Pradesh:

Held: The allotment of land was conditional to the respondent-Trust's knowledge – The allotment was to be used for a charitable purpose only – Even in the respondent-Trust's understanding, the allotment of land was conditional – In response to the appellant's letter dated 23.11.2011, the respondent-Trust had specifically replied that there were no violations of the conditions laid down in the letter dated 08.02.2001 and the land was being utilized for the purpose for which it was allotted – It was also specifically averred in the writ petition filed by the respondent-Trust that as the appellant-State had offered the land as per G.O.Ms. No.635 dated 02.07.1990 subject to three conditions vide proceedings No.E3/7542/98 dated 08.02.2001, the respondent-Trust had followed the same 'scrupulously' – Consequently, the respondent-Trust's argument that no specific purpose of allotment was specified is false to the respondent-Trust's knowledge. [Paras 19, 20]

Telangana Land Revenue Act – ss.25 and 172 – Telangana Alienation of State Lands and Land Revenue Rules 1975 – rr.5 and 6 – Transfer of Property Act, 1882 – s.10 – Whether the High Court fell in error in making out a case of sale:

Held: High Court fell in error in making out a case of sale, ignoring the fact that the appellant-State had allotted land to the respondent-Trust under a statutory scheme of alienation/allotment. [Para 21]

Telangana Land Revenue Act – ss.25 and 172 – Telangana Alienation of State Lands and Land Revenue Rules 1975 – rr.5 and 6 – Transfer of Property Act, 1882 – s.10 – Whether any condition/restriction imposed by the State Government would be violative of Section 10 of the Transfer of Property Act, 1882:

Held: This Court is of the view that the appellant-State had allotted land to public trust for public purpose – In such a situation, the State cannot be put in the normal classical inter vivos party's position as public interest is supreme and must prevail – This Court is also of the opinion that Rules 1975 and the Board of Revenue Standing

Orders operate in a completely distinct space and are not eclipsed by s.10 of the TPA. [Para 23]

Telangana Land Revenue Act – ss.25 and 172 – Telangana Alienation of State Lands and Land Revenue Rules 1975 – Transfer of Property Act, 1882 – s.10 – Decision to cut a colony – A fraud on statute:

Held: The Respondent-Trust, despite having accepted the conditions of grant of alienation laid down under Condition No.6 of the Andhra Pradesh Board Standing Orders, violated these conditions as the said land was not used for the purpose for which it was granted, i.e. for the purpose of a Charitable Trust – On the contrary, a colony was cut on the said land, which was sub-divided into plots, some of which have already been sold to third parties vide different sale deeds in violation of the conditions of allotment – The decision to cut a colony in violation of the specific conditions on which land had been allotted cannot be termed as anything else but fraud on the statute. [Para 25]

Case Law Cited

Ramana Dayaram Shetty v. The International Airport Authority of India & Ors. **[1979] 3 SCR 1014 : (1979) 3 SCC 489;** *Natural Resources Allocation, In Re, Special Reference No.1 of 2012* **[2012] 9 SCR 311 : (2012) 10 SCC 1;** *Manohar Lal Sharma v. Principal Secretary & Ors.* **[2014] 8 SCR 446 : (2014) 9 SCC 516 – referred to.**

List of Acts

Transfer of Property Act, 1882; Telangana Land Revenue Act; Telangana Alienation of State Lands and Land Revenue Rules 1975.

List of Keywords

Allotment of land; Government land; Condition restricting the enjoyment of the land; Decision to cut a colony; Fraud on statute; Allotment under a statutory Scheme; Charitable Trust; Violation of the specific conditions.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5321 of 2025

From the Judgment and Order dated 05.07.2022 of the High Court for the State of Telangana at Hyderabad in WA No. 1328 of 2014

Appearances for Parties

Advs. for the Appellants:
S. Niranjan Reddy, Sr. Adv., Ms. Devina Sehgal, Ms. Palak Arora, S. Uday Bhanu.

Advs. for the Respondent:
Gaurav Agrawal, Sr. Adv., D. Abhinav Rao, Abhisek Das, Ms. Megha Shaw, Raghav Bherwani.

Judgment / Order of the Supreme Court

Judgment

Manmohan, J.

1. Present Appeal has been filed challenging the impugned judgment and final order dated 05th July, 2022 passed by the High Court for the State of Telangana at Hyderabad in Writ Appeal No.1328 of 2014, whereby the High Court dismissed the Writ Appeal filed by the Appellants herein and upheld the judgment and order dated 24th June, 2014 passed in W.P.(C) 28980/2013 passed by the learned Single Judge. It is pertinent to mention that both the Courts below held that the Respondent-Trust is the absolute owner of the land to the extent of Ac.3.01 gts.in Sy. No.72/31 situated at Chinnathimmapur village, Mulugu Mandal, Medak District, as the Appellant-State having sold the land on payment of market value could not have placed any condition restricting the enjoyment of the land and such restrictions were void under Section 10 of the Transfer of Property Act, 1882 (hereinafter referred to as 'TPA'). The relevant portion of the impugned order passed by the Division Bench is reproduced hereinbelow: -

> *"7. Thus, learned Single Judge noted that respondent had purchased the subject land on payment of market value from the Government. On such purchase, respondent became the owner of the subject land whereafter, the same ceased to be a Government land or an assignable land. Having sold the land on payment of market value, the Government could not have placed any condition restricting the enjoyment of the land by the land owner.*

8. We do not find any error or infirmity in the view taken by the learned Single Judge. No case for interference is made out."

ARGUMENTS ON BEHALF OF APPELLANT

2. Mr. S. Niranjan Reddy, learned senior counsel for the Appellant-State, submitted that the impugned judgments of the High Court were untenable in law, inasmuch as, they did not consider the statutory scheme under which the Appellant-State had allotted land to the Respondent-Trust. He pointed out that under Section 25 of Telangana Land Revenue Act (hereinafter referred to as 'Act'), the Commissioner/Collector can assign/set apart any land for the purpose of public benefit. He stated that to facilitate alienation of land, the State of Telangana has framed Telangana Alienation of State Lands and Land Revenue Rules 1975 (for short 'Rules 1975') under Section 172 of the Act. The relevant portion of Rules 5 and 6 of the said Rules 1975 are reproduced herein below: -

"5. (a) For every alienation of land requiring the sanction of the Board of Revenue or the State Government there shall be made an application by the Collector in the prescribed in Appendix I to these rules…….

6.(a) Every grant of Alienation of State land whether for religious Educational or any other public purpose always be subject to the following conditions:-

(1) The land shall be used ……..and for no other purpose.

(2) The Government may resume the land wholly or in part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In the event of such resumption, no compensation shall be payable for any improvements that may have been effected, or other works that may have been executed on the land by the grantee and the grantee shall not be entitled to the repayment of any amount that may have been paid to the Government for the grant. If there are buildings on the land the Government may direct the grantee to remove them."

3. He further stated that G.O.Ms. No.635 dated 02nd July, 1990 empowers the Commissioner, Land Revenue/ District Collectors to dispense Government lands by alienation on payment of market value. The relevant portion of the aforesaid G.O.Ms. is reproduced hereinbelow: -

> *"REVENUE DEPARTMENT*
>
> *G.O.Ms. No.635 Dated 2-7-1990*
>
> *1. G.O.Ms. No.73, Revenue dated 20.01.1975.*
>
> *2. From the Commissioner of land Revenue, Hyderabad D.G. Letter No.B1/653/90, dated 27.02.1990.*
>
> *ORDER:-*
>
> *The Andhra Pradesh (Telangana Area) Alienation of State lands and land Revenue Rules 1975, empower the Commissioner, Land Revenue land the District Collectors to dispense of Government lands by alienation to local Mediums and private institutions, Companies, Associations and private individuals on payment of market value. Illegible within certain limitations. Similar provisions is also available in B.S.O. 24 (empowering the Commissioner, land Revenue and District Collectors to dispose of Government land by alienation….."*

4. The relevant portion of the Board Standing Order 24 referred to in G.O.Ms. No.635 is reproduced hereinbelow:-

> *"6.* ***Condition for the grant of State land:- (i) Lands at the disposal of Government:-*** *A grant of State land whether for religious, educational or other public purpose should always contain the following conditions:-*
>
> *(1) The land shall be used ……and for no other purpose.*
>
> *(2) The Government may resume the land wholly or in part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In the event of such resumption no compensation shall be payable for any improvements that may have been effected, or other works that may have been executed on*

the land by the grantee and the grantee shall not be entitled to the repayment of any amount that may have been paid to the Government for the grant. If there are buildings on the land the Government may direct the grantee to remove them….."

5. He pointed out that in the present case, the District Collector, Medak vide order dated 08th February 2001, had allotted the subject land in exercise of the powers conferred under G.O.Ms. No. 635 (Revenue) dated 2nd July 1990. He emphasised that the only document on which the Respondent-Trust had relied upon to prove its title/ownership was the allotment letter issued under a statutory Scheme and not a sale deed.

6. He further stated that the allotment was made subject to certain conditions, and it was specifically stated that any deviation from the said conditions would result in the land being resumed back by the revenue authorities.

7. He contended that in the present case, the Appellant-State was not intending to sell the land but to allot the same to charitable trust for a charitable purpose for the benefit of public at large.

8. Additionally, Mr. Reddy drew the attention of this Court to the General Power of Attorney dated 18th June 2011 ("GPA") executed by the Respondent-Trust, *qua* the subject land. He contended that the Respondent-Trust had fraudulently executed a GPA without making any reference to the allotment letter dated 08th February, 2001 or the conditions on which the allotment of said land had been made. The relevant portion of GPA relied upon by him is reproduced hereinbelow: -

"*GENERAL POWER OF ATTORNEY*

KNOWN ALL MEN BY THE PRESENTS, THAT I Dr. P. HANUMANTH RAO S/O Dr. P. RAMA RAO, aged about 66 years…….

DO HEREBY NOMINATE, CONSTITUTE, APPOINT AND RETAIN

SYED JAVED……..AS MY TRUE AND LAWFUL ATTORNEY…..

WHEREAS I am the lawful owner, Pottedar and possessor of Agricultural Land bearing Sy.No.72/31, admeasuring Ac.3-01 Gts……having acquired the same from Smt. S. SHREE SUDHA W/O SRI SANGARAJU MANOHAR RAJU through a Regd. Sale Deed Vide Document No.859/1988, Dt: 09-03-1938 Regd. at SRO Gajwel, Medak District. Thereafter the Revenue officials have issued the Title Deed and Pattedar Passbooks vide title deed No.674409 and the Patta No.143 respectively.

WHEREAS, the said Smt. S. SHREE SUDHA W/O SRI SANGARAJU MANOHAR RAJU has purchased the said property from Shri MURTHY MURRAY S/O Late S.S. MURRAY through a Regd. Sale Deed vide Document No.695/1981, Dt. 03-07.1981 Regd. at SRO Gajwel, Medak District.

AND WHEREAS, I am intending to hand over the above property agricultural land bearing Sy.No. 72/31 an extend of Ac.3-01 gts., situated at CHINNA THIMMAPUR Village, Mulugu Mandal, Siddipet Revenue Division, Medak District A.P. (hereinafter called the SCHEDULE OF PROPERTY) which is more fully described in the schedule of property but due to personal work I am not looking after the affairs of the said property personally as such I am not in position to deal with the intending purchase, as such I hereby empower and authorize my Attorney Mr. SYED JAVED S/o late S.G. MOHIUDDIN to deal with all the matters contained to him with the following powers……"

9. Mr. Reddy lastly stated that the Power of Attorney holder had cut a colony by the name '*Eden Orchard*' on the land allotted to the Respondent-Trust and even some of the plots had been sold to third parties without disclosing the conditions on which the initial allotment had been made.

ARGUMENTS ON BEHALF OF RESPONDENT

10. *Per contra*, Mr. Gaurav Agrawal, learned senior counsel for the Respondent-Trust contended that the subject land was sold by the State Government after following the due procedure stipulated in G.O.Ms. No. 635 dated 02nd July, 1990, wherein the District Collector, Medak in consultation with the Commissioner of Land Revenue sold

the land to the Respondent-Trust on payment of market value. He emphasised that the said sale was made at market value and the same was not an allotment at any concessional rate.

11. He further stated that the said alienation contained a general condition that "*the land would be utilised only for the purpose for which it is allotted*" without actually specifying the exact purpose for the allotment. Therefore, he submitted that there was no restriction/condition imposed on the usage of the land by the Respondent-Trust herein and in any event, any such condition on usage would be violative of Section 10 of the TPA – as held by the High Court. Since Section 10 of the TPA was heavily relied upon by learned senior counsel for the Respondent-Trust, the same is reproduced herein below:-

> "***10. Condition restraining alienation****.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.*"

12. He further submitted that the resumption order dated 19th January 2012 was passed in violation of the principle of natural justice. He, however, stated that the said aspect was not considered by the learned Single Judge and the Division Bench, and therefore, if this Court was inclined to set aside the impugned orders, it should remand the matter back to the High Court for fresh adjudication on merits.

REJOINDER

13. In rejoinder, learned senior counsel for the Appellant-State submitted that Section 10 of the TPA operates in a completely different sphere as it applies in a case of inter vivos transfer, whereas allotment by the Appellant-State is different from a private party engaging in inter vivos transfers. He contended that the learned Single Judge and the Division Bench had erred in not making a distinction between sale and allotment of the subject land.

ISSUES

14. Having heard learned counsel for the parties and having perused the paper book, this Court is of the view that the following issues arise for consideration in the present proceedings, namely: -

    i. Whether alienation of land by the District Collector, Medak, Government of Andhra Pradesh vide order dated 8th February 2001 was a sale or alienation/allotment?

    ii. Whether any condition was imposed pursuant to the alienation of land by the Government of Andhra Pradesh? and

    iii. Whether any condition/restriction imposed by the State Government would be violative of Section 10 of the TPA?

REASONING

ALIENATION OF LAND BY APPELLANT-STATE WAS NOT A SALE BUT AN ALLOTMENT UNDER A STATUTORY SCHEME

15. Before answering the aforesaid issues, this Court is of the view that it is essential to outline the relevant facts. The land in question to the extent of Ac. 3.01 gts., falls under Sy. No.72/31 and is Government land as per entries of record and was declared as Government (Poramboke) land in the year 1989.

16. Further, the Respondent, being a charitable trust, had applied for allotment of land. A charitable trust can use land for charitable purposes only.

17. The request of the Respondent-Trust was processed as per the instructions laid down in G.O.Ms. No.635 dated 02nd July, 1990 and the land in question was conditionally allotted by the District Collector, Medak, Government of Andhra Pradesh vide order dated 8th February 2001 by virtue of the power conferred under the Telangana Alienation of State Lands and Land Revenue Rules, 1975 framed under Sections 25 and 172 of the Act and G.O.Ms.No.635 dated 2nd July 1990 read with Board Standing Order 24. The said fact is apparent from the alienation letter dated 8th February 2001 issued by the District Collector, Medak, which specifically records that sanction is accorded to alienation of Government land subject to payment of market value and subject to the following three conditions. It was made clear that in case of deviation of the said three conditions, the land shall be resumed back by the Revenue authorities. The

relevant portion of the alienation order dated 08th February 2001 is reproduced hereinbelow:

> *"1. That the above land should be utilized only for the purpose for which it is allotted.*
>
> *2. That the construction work should be completed within (2) years from the date of handing over possession of the land.*
>
> *3. That the trees should be planted in the open place."*
>
> *In case of any deviation of the above conditions the land shall be resumed back by the Revenue authorities…."*

18. Consequently, alienation of land by the District Collector, Medak, Government of Andhra Pradesh vide order dated 8th February, 2001 was not a sale, but an allotment under a statutory Scheme.

THE ALLOTMENT OF LAND WAS CONDITIONAL TO THE RESPONDENT-TRUST'S KNOWLEDGE

19. Though no specific purpose of allotment was mentioned, yet this Court is of the view that as the allotment was in favour of the Respondent-Trust, the allotment could be used for a charitable purpose only. Even in the Respondent-Trust's understanding, the allotment of land was conditional. This would be apparent from the fact that not only in the contemporaneous correspondence, but even in the writ petition filed, there was an admission by the Respondent-Trust that the allotment was made for a charitable purpose, and the land was being used for the said purpose. In response to the Appellant's letter dated 23rd November 2011, the Respondent-Trust had specifically replied that there were no violations of the conditions laid down in the letter dated 8th February 2001 and the land was being utilized for the purpose for which it was allotted. The relevant portion of the Respondent-Trust's reply dated 29th November 2011 is reproduced herein below: -

> "*…I, further state that* ***there are no such violations*** *in the* ***conditions laid down in*** *the District Collector Medak Proceedings No.E3/7542/98,* ***Dt.8.2.2001****.*
>
> *After taking the possession the above* ***land is being utilized for the purpose alienated. Class room, sheds were constructed within two years through our own funds****…"*
>
> (emphasis supplied)

20. It was also specifically averred in the writ petition filed by the Respondent-Trust that as the Appellant-State had offered the land as per G.O.Ms. No.635 dated 2nd July 1990 subject to three conditions vide proceedings No.E3/7542/98 dated 08th February 2001, the Respondent-Trust had followed the same *'scrupulously'*. Consequently, the Respondent-Trust's argument that no specific purpose of allotment was specified is false to the Respondent-Trust's knowledge.

HIGH COURT FELL IN ERROR IN MAKING OUT A CASE OF SALE

21. In fact, the case of the Respondent-Trust in its writ petition filed before the learned Single Judge was not that it was a case of sale, but it had been assured that, "*the alienation of land is amounting to sale…*". Consequently, this Court is of the view that the High Court fell in error in making out a case of sale, ignoring the fact that the Appellant-State had allotted land to the Respondent-Trust under a statutory scheme of alienation/allotment.

22. This Court is further of the view that when the Government decides to sell its land, as the Respondent-Trust would like this Court to believe, the Government can neither select a buyer nor can it fix a price unless and until the said decision is backed by a social or economic or welfare policy/purpose – which is admittedly absent in the present case. It is a settled law that the Government cannot distribute State's largesse and normally the State 'must' get the 'maximum value' of the resources, especially when State-owned assets are passed over to private individuals/entities unless there are good and cogent reasons for doing so in special circumstances. [See: ***Ramana Dayaram Shetty vs. The International Airport Authority of India & Ors., 1979 (3) SCR 1014; Natural Resources Allocation, In Re, Special Reference No.1 of 2012, (2012) 10 SCC 1*** and ***Manohar Lal Sharma vs. Principal Secretary & Ors., (2014) 9 SCC 516***].

STATUTORY SCHEME OF ALLOTMENT NOT ECLIPSED BY SECTION 10

23. This Court is of the view that the Appellant-State had allotted land to public trust for public purpose. In such a situation, the State cannot be put in the normal classical inter vivos party's position as public interest is supreme and must prevail. This Court is also of

the opinion that Rules 1975 and the Board of Revenue Standing Orders operate in a completely distinct space and are not eclipsed by Section 10 of the TPA.

GPA REFLECTS MALAFIDES OF THE RESPONDENT-TRUST (ALLOTEE)

24. In any event, in 2011, Dr. Pasupuleti Niramala Hanumantha Rao, without disclosing that he is a Trustee of the Respondent-Trust to whom the land had been allotted by the State Government, appointed Sri Syed Javed as G.P.A. holder under the Registration Deed No.148/11 dated 18th June 2011. It is pertinent to mention that the conditions on which the allotment had been made by the State Government were not mentioned/disclosed in the G.P.A. which reflects malafides of the Respondent-Trust (allottee).

DECISION TO CUT A COLONY – A FRAUD ON STATUTE

25. This Court is further of the view that the Respondent-Trust, despite having accepted the conditions of grant of alienation laid down under Condition No.6 of the Andhra Pradesh Board Standing Orders, violated these conditions as the said land was not used for the purpose for which it was granted, i.e. for the purpose of a Charitable Trust. On the contrary, a colony was cut on the said land, which was sub-divided into plots, some of which have already been sold to third parties vide different sale deeds in violation of the conditions of allotment. This Court is of the opinion that the decision to cut a colony in violation of the specific conditions on which land had been allotted cannot be termed as anything else but fraud on the statute.

CONCLUSION

26. Keeping in view the aforesaid findings, the impugned judgments dated 24th June 2014 and 05th July 2022 are set aside and the Appeal, is accordingly allowed. Pending applications, if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

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Gopal Dikshit
v.
United India Insurance Company Ltd.

(Civil Appeal No. 6623 of 2025)

19 May 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the National Commission dismissing complaint filed by appellant; and whether the cause of loss to the premises is due to the seepage water or the heavy rains in Delhi.

Headnotes†

Consumer Protection Act, 1986 – s.23 – House holder insurance policy – Second survey report – Reliability – Premises of the appellant insured with respondent-insurance company – Due to heavy downpour in Delhi, his premises severely flooded, resulted in extensive damage to the basement and the belongings lying there – First survey carried out, which stated that cause of loss was heavy rain – However, the second survey carried out since the report of first survey was not satisfactory – Appellant also sought opinion of two structural engineers – Respondent repudiated the claim of the appellant on the ground that damage to the building was caused by continuous seepage of water from the basement, which was not listed as a named peril under the insurance policy, thus, the resulting loss or damage not indemnifiable – National Commission dismissed the appellant's complaint – Correctness:

Held: In view of the concurrent findings in the certificates and first survey report, the damage to the insured premises was not caused by any inherent structural defect or seepage, but was instead a direct consequence of unprecedented and heavy rainfall experienced during the relevant period, which led to flooding of water into the basement – First survey, conducted promptly, had already comprehensively assessed the cause and extent of the

* Author

damage – Nothing on record to suggest that first survey was deficient or incomplete in any manner – Despite conducting a survey before, respondent proceeded to commission a second survey without furnishing any reasonable, cogent, or valid grounds justifying the necessity for a reassessment – Second survey report deviated from the reasons of the first survey report and curiously recorded that the damage to the premises was caused by seepage, rather than by flooding due to heavy downpour – Second survey report failed to counter or address the detailed and comprehensive observations made in the first survey report nor did it offer any explanation or new material facts that would warrant a reversal of the initial conclusion – This abrupt departure from the earlier findings, without explanation or justification, raises serious concerns about the reliability and objectivity of the second survey – In the absence of any substantive grounds to question the findings of the first survey, belated reassessment conducted by respondent is deemed arbitrary and without due basis – No reason to accept the second survey report and it is set aside – Contrary findings of National Commission set aside – Matter remanded back to determine the appropriate quantum of compensation payable to the appellant. [Paras 29-31]

Case Law Cited

Mahavir Road and Infrastructure Private Limited v. Iffco Tokio General Insurance Company Limited **[2019] 5 SCR 890 : (2019) 5 SCC 677 – distinguished.**

United India Insurance Co. Ltd. v. Dipendu Ghosh & Anr., **II (2009) CPJ 311 (NC) – referred to.**

List of Acts

Consumer Protection Act, 1986.

List of Keywords

Rejection of insurance claim; House holder insurance policy; Severe flood; Basement inundated with water; Survey report; Opinion of structural engineers; Seepage; Inherent structural defect; Direct consequence of unprecedented and heavy rainfall; Abrupt departure from findings of survey report; Arbitrary reassessment by insurance company; National Consumer Disputes Redressal Commission; Cause of loss to the premises due to seepage water

or heavy rains in Delhi; Second survey report; Extensive damage to basement; First survey report; Continuous seepage of water from the basement; Insurance policy; Indemnifiable; Belated reassessment; Compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6623 of 2025

From the Judgment and Order dated 07.12.2022 of the National Consumers Disputes Redressal Commission, New Delhi in CC No. 2287 of 2017

Appearances for Parties

Advs. for the Appellant:
Sukumar Pattjoshi, Sr. Adv., Siddhartha Chowdhury, Shaffi Mather, Rajesh Kumar.

Advs. for the Respondent:
Amit Kumar Singh, Ms. K Enatoli Sema, Ms. Chubalemla Chang, Prang Newmai.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. The present appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter the "Act") arises out of the impugned order dated 07.12.2022 passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (hereinafter "NCDRC") in Consumer Case No. 2287 of 2017 whereby NCDRC dismissed the complaint filed by the Appellant.

FACTUAL MATRIX

2. The complainant who is the Appellant herein is the owner of the premises situated at 50, Ishwar Nagar, Mathura Road, New Delhi, 110065 (hereinafter "Premises"). The Premises had a basement, ground floor, first floor and second floor. The entire building was insured with the opposite party who is the Respondent herein vide

House Holder Insurance Policy No. 2219042615P115431073 for Rs. 1.50 crores which was valid for the period from 13.03.2016 to 12.03.2017.

3. It is the case of the Appellant that due to a heavy downpour in New Delhi from 25.08.2016 to 31.08.2016, the Premises were severely flooded. During this period, the Appellant was out of Delhi from 24.08.2016 to 29.08.2016. Upon his return, he found that the basement of the Premises was inundated with water, resulting in extensive damage to the furniture, fittings, almirahs, books, and other belongings stored there. In an effort to prevent further deterioration, the Appellant installed a booster pump on 30.08.2016 to drain out the water from the basement. Despite this measure, the accumulated floodwater could not be completely drained out. Thereafter, the Surveyor, Mr. Akash Chopra, visited the Premises on 03.09.3016 and inspected the basement.

4. On 04.09.2016, the Appellant contacted Ms. Indu Singh by phone to inquire about the outcome of the survey conducted by Mr. Akash Chopra. Ms. Singh informed him that the report prepared by Mr. Chopra was not satisfactory and, therefore, she would assign another Surveyor to revisit the premises and reassess the damage. The Appellant also requested a copy of the preliminary survey report, but the Respondent did not provide it, avoiding the request without offering any explanation.

5. Second Surveyor, Mr. R.K. Singla visited the Appellant's Premises and conducted the survey again. In the meanwhile, the surveyor who visited the site on 03.09.2016, submitted its report on 06.09.2016 which stated that the cause of loss was due to heavy rain in Delhi on 25.08.2016 and water entered from the flooring, resulting in damages to the insured building and contents.

6. Additionally, on 07.09.2016 the Appellant sought the opinion of two structural engineers concerning the safety of the Premises. The opinion given by both of them indicated that the building was no longer fit for habitation and had become structurally unsafe and concluded that the Premises had to be vacated immediately and recommended that it be demolished and reconstructed.

7. On 10.09.2016, the Complainant once again contacted Ms. Indu Singh to inquire about the status of the survey. She reiterated that

the report was not satisfactory and requested the Appellant to visit her office on 12.09.2016 to clarify certain points. During this meeting, Ms. Indu Singh informed the Complainant that, due to the use of the term "seepage" in the survey reports, the insurance claim would not be admissible. Consequently, the final survey report was submitted on 18.10.2016.

8. Subsequently, on 23.11.2016, the Appellant received a letter from the Respondent formally repudiating the claim. The rejection was based on the ground that the damage to the building was caused by continuous seepage of water from the basement, which was not listed as a named peril under the insurance policy, therefore, the resulting loss or damage was not indemnifiable.

9. Being aggrieved and dissatisfied by the dismissal of the Appellant's claim, Consumer Case No. 2287 of 2017 was filed before NCDRC. However, the said complaint was dismissed by the NCDRC, which gives rise to the instant appeal.

10. Before delving into the merits of the case, we would like to consider the submissions made by the parties.

SUBMISSIONS MADE BY THE APPELLANT/COMPLAINANT

11. The learned counsel for the petitioner submitted that judgments of NCDRC have consistently held that "flood" means outpouring of water and on this analogy, it would include both inundation and seepage. Reliance was placed on ***United India Insurance Co. Ltd. v. Dipendu Ghosh & Anr. reported in II (2009) CPJ 311 (NC)***.

12. Moreover, it was submitted that NCDRC ought to have relied on the Meteorological Department Report stating that Delhi had rainfall during the period of 25.08.2016 to 31.08.2016. It was further submitted that it is a common practice in Delhi that on a particular day certain portions of Delhi received scanty rainfall whereas other pockets received heavy rainfall. In the case of the Appellant, the Ishwar Nagar area received heavy rainfall and as such there was flooding in the area.

13. Furthermore, the Appellant submitted that "seepage" refers to the slow and gradual flow of liquid from a source. In the present case, the basement had accumulated over 3 feet of water within a span of just three days while the Appellant was away from Delhi. The Appellant respectfully contended that such rapid and substantial

flooding cannot be classified as "seepage" as seepage does not result in the sudden inundation of a basement with three feet of water.

14. It was further submitted that in case there was seepage water in the basement, the same ought to have attracted the attention of the Appellant earlier and he ought to have taken adequate remedial measures to stop the seepage and not allowed the water to retain in the premises and get his belongings damaged.

15. Moreover, the first surveyor visited the site on 03.09.2016 while the 2nd Surveyor visited the site only on 09.09.2016 i.e. 10 days after the reporting of the incident to the Respondent. It was respectfully submitted that no prudent person would allow the water to stay in the premises for 10 days and further facilitate in destroying his belongings kept in the basement. The NCDRC ought to have relied on the Survey Report dated 06.09.2016 rather than the Survey Report dated 18.10.2016. It may not be out of place to state that once the survey was conducted on 09.09.2016, there was no occasion to submit the report on 18.10.2016 i.e. more than one month after conducting the survey. The same smacks of mala fide intentions on the part of the Respondent.

16. It was further contended that in its Report dated 06.09.2016, the Surveyor specifically states that the cause of loss was: "Due to heavy rains in Delhi on 25.08.2016 the water entered from the flooring, resulted in damages to the insured's building and contents." It is submitted that the Survey Report dated 06.09.2016 was never taken into consideration by the Respondent and instead the Respondent opted to go for another survey which was conducted 10 days after the incident occurred.

17. Moreover, the report of the engineer only stated the condition of the building which had nothing to do with the seepage water in the basement. In this behalf it was submitted that the Certificates issued by M/s Unique Consulting Engineers dated 07.09.2016 states that:

> *"Further, existing building was constructed having RCC frame. As time passes structure became old resulting corrosion in reinforcement due to water seepage in structural elements, i.e. reducing the strength of building.*
>
> *Hence, it is strongly recommended to dismantle existing building and reconstruct to meet present seismic parameters of the National Building Code of India; 2009."*

The said report only states the structural condition of the building and further states that there is water seepage in structural elements (not basement) which includes the iron rods etc., which are inserted in the soil. The said report nowhere discusses anything about the condition of the basement of the building. In the respectful submission the NCDRC had wrongly relied on the said Report to reject the legitimate claim of the Appellant.

18. Further, it was submitted that Surveyors appointed by the Respondent had categorically stated in their reports that there was heavy rainfall on 25.08.2016. It was submitted that the basement of the Appellant was perfectly dry when he left on 24.08.2016 but after his return on 29.08.2016 he found that the basement was flooded with water with water marks on the walls up to the window height.

19. It was submitted that it is not in dispute that the basement was flooded with water. The Respondent has denied the claim of the Appellant on the ground of seepage and appointed multiple surveyors, however, not once the Respondent has or their surveyors tried to trace the source of the water, nor appointed anybody to trace the source of water. The Respondent is completely silent about the source of water in the basement. The same is unfair practice on the part of the Respondent.

SUBMISSIONS MADE BY THE RESPONDENTS

20. Learned counsel for the Respondent vehemently argued that even if "seepage" encompasses both inundation and seepage, it is pertinent to note that each case is distinct and should be evaluated/assessed based on its individual set of circumstances and the specific terms laid out in the contract. Further, the case law cited by the Appellant in this context does not establish a universal interpretation applicable to all cases. It was submitted that the applicability of such precedents should be evaluated within the framework of the unique insurance policy under consideration. It was further submitted that the specific terms and conditions of the policy do not encompass seepage as a covered peril. Consequently, the rejection of the Appellant's claim aligns with the policy's provisions.

21. Further, it was contended that it is crucial to address the fact that the Appellant's claim timeline, ranging from 25th to 31st August 2016, raises substantial questions regarding its reliability and consistency, leaving

room for doubt as to whether it was introduced as an afterthought to buttress its claim by the Appellant. It is submitted that upon thorough examination of the Meteorological Report dated 25th to 31st August, 2016, submitted by the Appellant, it was observed by NCDRC that there is no mention of heavy rainfall on 25.08.2016. The relevant portion of the impugned order is reproduced hereinbelow for the sake of convenience:

> *"17. The Complainant, however, in the Consumer Complaint, alleged that the loss was caused during the period from 25th to 31st August, 2016, which appears to be an afterthought. We have carefully gone through the Meteorological Report dated 25th to 31st August, 2016, filed by the Complainant. Nowhere in the report is it mentioned that there was heavy rains on 25th August, 2016. The Policy covered the risk due to flood and inundation, amongst others. Meteorological Report does not show that there was such heavy rain in the area leading to flooding. Admittedly, the loss was caused due to seepage. The certificate of International Consultants and Technocrats Pvt. Ltd. dated 06.09.2016 as well as certificate issued by Unique Consulting Engineers dated 07.09.2016 make it abundantly clear that there was continuous ingress of seepage water into the foundation and basement, which corroded the reinforcement steel, making it weaker to sustain loads, especially the lateral loads. As seepage of water was not named in the insured perils, the Opposite Party rightly repudiated the claim."*

It was further submitted that while the insurance policy encompassed coverage for risks associated with flood and inundation, among other perils, the Meteorological Report did not provide substantial evidence to support the occurrence of significant rainfall in the specific area leading to flooding. It is pertinent to mention that the primary cause of the loss was attributed to seepage. This attribution is firmly supported by the certificates issued by both the structural engineers. Both certificates unequivocally confirm the existence of a continuous ingress of seepage water into the foundation and basement, which consequently resulted in the corrosion of the reinforcement steel. This corrosion, in turn, compromised the building's structural integrity,

particularly in its capacity to withstand loads, especially lateral ones. It is imperative to stress that the insurance policy did not explicitly include seepage of water among the insured perils. Consequently, the insurance company's decision to repudiate the claim was a justifiable response, consistent with the policy's terms and conditions and the distinct circumstances surrounding the loss.

22. Moreover, the Respondent considers it imperative to emphasize that the interpretation of "seepage" as a gradual process aligns with the prevailing circumstances in this case. The understanding of seepage, especially in the context of a basement or foundation, acknowledges its potential for a prolonged occurrence, as water gradually infiltrates and accumulates. It is submitted that seepage is not confined to insignificant or minimal quantities of water, but rather refers to the unauthorized infiltration of water into areas where it should not be, resulting in the progressive accumulation of water over time.

23. Furthermore, the certificates issued by International Consultants and Technocrats Pvt. Ltd. on 06.09.2016 underlines the continuous ingress of seepage water into the foundation and basement. It was also contended that the certificate issued by Unique Consulting Engineers dated 07.09.2016 accentuates that the building was designed according to the Indian Standard codes of the period when it was constructed in 1986. However, with the revision of seismic parameters, the existing structure no longer meets the updated requirements. Furthermore, the structure has aged over time, resulting in corrosion of reinforcement due to water seepage, consequently reducing its strength. Therefore, these expert certificates affirm that the significant damage and structural deficiencies were primarily attributed to continuous seepage of water into the foundation and basement, turning seepage into a persistent issue rather than an abrupt or isolated event.

24. Moreover, regarding the escalation of the water level in the basement during the Appellant's absence, it can still be reasonably attributed to seepage as it is conceivable that the water had been gradually infiltrating the area for an extended period, ultimately leading to a substantial accumulation. Hence, the NCDRC rightly dismissed the complaint of the Appellant after appreciating facts and circumstances of the case and the evidence on records.

25. It was further contended that both the Preliminary Report and the Final Survey Report unequivocally identified the cause of the loss as continuous seepage of water into the foundation and basement of the affected building. These reports provide a clear and consistent account of the circumstances leading to the damage. Furthermore, it was noteworthy that there was no mention of heavy rainfall causing significant damage in The Times of India editions dated 26.08.2016 and 27.08.2016. The absence of any news reports documenting rainfall-related damage during the relevant period supports the conclusions drawn in the reports submitted by the insurance company.

26. Furthermore, in this case, the certificate issued by M/s International Consultants & Technocrats Pvt. Ltd. played a pivotal role in assessing the cause of the loss. The certificate indicated that continuous seepage of water into the foundation and basement was the primary cause of the damage, rendering the building structurally unsound.

DISCUSSION AND ANALYSIS

27. We have carefully considered the submissions and perused the impugned judgment and materials on record. The point at issue for consideration is, whether, the cause of loss to the premises is due to the seepage water or the heavy rains in Delhi. In considering the arguments advanced by the Appellant, we are of the considered opinion that the impugned order passed by NCDRC is liable to be set aside. We shall now examine the various certificates issued by different authorities in relation to the said premises.

    (a) Observations made in the First Survey Report Dated 06.09.2016 - On perusal of the first survey report dated 06.09.2016 conducted by Mr. Akash Chopra on 03.09.2016, it can be observed that cause of loss noted in the report is heavy rains in Delhi on 25.08.2016, during which period, the water entered from the flooring and that resulted in damage to the Appellant's premises. It was further noted that based on the inspection, the report confirmed that water was found coming from the flooring and had not come from the main entrance and/or any openings. The aforesaid survey report was clear about the cause of loss to the said Premises.

    (b) Observations made in the certificate issued by M/s International Consultants & Technocrats Pvt. Ltd. dated 07.09.2016 - On

assessment of the amended certificate issued by them, which stated that the damage was due to the flooding of water into the basement which happened due to heavy rainfall, it can be comprehended that the damage to the premises was not due to seepage but was caused by flooding of water.

(c) Observations made in the certificate issued by Unique Consulting Engineers Dated 07.09.2016 - Upon a thorough review of the statement issued by them, it becomes evident that no causal link can be established between the subject matter of the certificate and the cause of damage that has occurred. The certificate in question specifically addresses water seepage affecting the structural elements of the building, noting a consequent reduction in the overall structural integrity. However, it makes no reference whatsoever to the basement area or any damage that may have occurred therein. Thus, the aforesaid certificate fails to substantiate any connection between the structural issues and the cause of damage in question in the premises. Therefore, we cannot take into consideration the aforesaid certificate and we concur with the submissions made by the learned counsel for the Appellant that the report nowhere discusses anything about the condition of the basement of the building.

(d) Observations made in the certificate issued by M/s Chordia Engineering Consultancy Services Dated 22.09.2016 - This certificate clearly notes that during the site visit conducted by the concerned representative, the basement of the insured premises was found to be flooded. This flooding was attributed to a heavy downpour that had occurred in the last week of August. As per the observations recorded, the ingress of water into the basement was a direct result of this excessive rainfall. Thus, the certificate establishes that the cause of damage was not due to any structural failure or seepage water but rather a consequence of the intense rainfall experienced during that period.

28. Upon a careful examination of the material on record, including the first survey report and certificates submitted by various technical experts, it is evident that the cause of damage to the insured premises was the flooding of water into the basement due to heavy rainfall in Delhi during the relevant period. The First Survey Report dated

06.09.2016 clearly attributes the damage to rainwater entering through the flooring following the downpour on 25.08.2016. Subsequently, the same cause is further corroborated by the certificates issued by M/s International Consultants & Technocrats Pvt. Ltd. and M/s Chordia Engineering Consultancy Services, both of which confirm that the flooding, and not seepage or structural failure, was the proximate cause of loss. Conversely, the certificate issued by Unique Consulting Engineers pertains solely to seepage affecting the structural elements of the building and is silent on the condition of the basement or the cause of damage in question. As such, this report does not assist in determining the cause of damage to the basement and therefore, as a result of such limitation, it cannot be relied upon for the present purpose. Further, the learned counsel for the Respondent relied upon the judgment of this court in ***Mahavir Road and Infrastructure Private Limited v. Iffco Tokio General Insurance Company Limited (2019) 5 SCC 677.*** However, the set of facts of the relied upon judgment are different from the instant case. In the said case, the Surveyor recorded that there was no evidence of any damage on account of flood water and only surface damage was found. In the case at hand, from the evidence presented before us it can be concluded that the cause of damage to the premises is due to heavy rainfall accounting for flooding in the basement.

29. In view of the concurrent findings in the certificates and first survey report aforementioned, we conclude that the damage to the insured premises was not caused by any inherent structural defect or seepage, but was instead a direct consequence of the unprecedented and heavy rainfall experienced during the relevant period, which led to flooding of water into the basement.

30. Proceeding further, our attention is drawn to the final survey and assessment report dated 18.10.2016, which was prepared following a second survey conducted on the insured premises approximately ten days after the occurrence of the said incident. It is pertinent to note that the first survey, conducted promptly on 03.09.2016, had already comprehensively assessed the cause and extent of the damage, and there is nothing on record to suggest that it was deficient or incomplete in any manner. Despite conducting a survey before, the Respondent proceeded to commission a second survey without furnishing any reasonable, cogent, or valid grounds justifying

the necessity for a reassessment. Subsequently, the second survey report dated 18.10.2016 deviated from the reasons of the first survey report and curiously recorded that the damage to the premises was caused by seepage, rather than by flooding due to heavy downpour. However, the second survey report failed to counter or address the detailed and comprehensive observations made in the first survey report dated 06.09.2016, nor did it offer any explanation or new material facts that would warrant a reversal of the initial conclusion. This abrupt departure from the earlier findings, without explanation or justification, raises serious concerns about the reliability and objectivity of the second survey. In the absence of any substantive grounds to question the findings of the first survey, we find that the belated reassessment conducted by the Respondent is deemed arbitrary and without due basis. In consequence thereof, we find no reason to accept the second survey report dated 18.10.2016 and the same is hereby set aside.

31. Accordingly, we set aside the contrary findings impugned before us and remand the matter back to the NCDRC for the limited purpose of determining the appropriate quantum of compensation payable to the Appellant in accordance with the policy terms and applicable law.

32. The civil appeal is accordingly disposed of.

33. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 27 : 2025 INSC 728

Hakim
v.
State of NCT of Delhi and Anr.

(Criminal Appeal No. 5304 of 2024)

19 May 2025

[Abhay S. Oka and Augustine George Masih,* JJ.]

Issue for Consideration

These instant two appeals assail concurrent findings of conviction u/s.326A of the Penal Code, 1860 and sentence thereof against accused no.1 and accused no.2 respectively appellants herein.

Headnotes†

Penal Code, 1860 – s.326A r/w. s.34 – It was alleged that three accused persons including both the appellants herein blocked the way of respondent-victim – Accused no.1-appellant and accused no.3 held the respondent-victim while accused no.2-appellant, poured acid over her and then ran away from the spot – Trial Court convicted all the accused persons – Both the appellants were sentenced to undergo rigorous imprisonment for life with fine of Rs.1,00,000/- – Accused no.3 was sentenced to rigorous imprisonment for 10 years and fine of Rs.50,000/- – The decision on conviction of both the appellants was affirmed by the High Court – Appellants filed SLP – Appellants contended that the prosecution has failed to establish that the claimed eye injury was result of pouring of acid on the respondent-victim and the prosecution also failed to show the source of procurement of the said substance:

Held: As per the evidence led by the prosecution, different Doctors appeared as prosecution witnesses who had treated the victim on various occasions i.e., PW-5, PW-8, PW-9, PW-10, PW-11, PW-12 and PW-14 – All of them have testified that the injuries on the skin and the deformity of the face, including loss of vision, albeit not fully i.e., 90% in the left eye of the respondent-victim were the result of serious Chemical Burn injuries – Therefore, this plea of the appellants fails – The question of the nature and contents of the alleged substance used and thrown on the victim would not arise

* Author

as the possibility of recovery of the same does not arise as the incident was committed at railway crossing adjacent to the railway line where all the accused ran away after committing the offence – However, chemical burns on the person of the respondent-victim are substantiated from testimonies and medical evidence – This ground also fails – As far a sentence is concerned, considering the role in the offence, age and ailments being suffered by the appellant-accused no.1, this Court is inclined to interfere and reduce the sentence and bring it at par with the sentence awarded to the accused no.3 for his role in holding the respondent-victim – The appellant-accused no.1 is, thus, sentenced to rigorous imprisonment for 10 years along with fine of Rs.50,000/- – As regards the appellant-accused no.2, it is observed that being an advocate, he was not only well read in law but owed a duty to the court being its officer requiring him to conduct with dignity, respect law and fellow beings – Having let down the community as a whole, this Court is not inclined to interfere with the sentence awarded to him vide the Trial Court Judgment, as affirmed by the Impugned Judgment. [Paras 26, 27, 42, 44]

Constitution of India – Art.136 – Scope and ambit of interference of this Court in a criminal appeal arising out of a Special Leave to Appeal Petition, where concurrent findings have been returned by the Courts below – Discussed. [Paras 12 and 13]

Sentencing – Relevant factors while determining sentence of a convict – Discussed. [Para 37]

Case Law Cited

Mst Dalbir Kaur and Others v. State of Punjab **[1977] 1 SCR 280 : (1976) 4 SCC 158;** *Pritam Singh v. State* **[1950] 1 SCR 453 : (1950) SCC 189;** *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* **[1983] 3 SCR 28 : (1983) 3 SCC 217;** *Murugan v. State of Tamil Nadu* **[2018] 5 SCR 677 : (2018) 16 SCC 96;** *State of Uttar Pradesh v. Wasif Haider and Others* **[2018] 14 SCR 1161 : (2019) 2 SCC 303;** *Kailash Gour and Others v. State of Assam* **[2011] 16 SCR 318 : (2012) 2 SCC 34;** *Sunil Kundu and Another v. State of Jharkhand* **[2013] 5 SCR 924 : (2013) 4 SCC 422;** *Karan Singh v. State of Haryana and Another* **[2013] 5 SCR 1166 : (2013) 12 SCC 529;** *Dayal Singh and Others v. State of Uttaranchal* **[2012] 10 SCR 157 : (2012) 8 SCC 263;** *Shahid Khan v. State of Rajasthan* **[2016] 2 SCR 284 : (2016) 4 SCC 96;**

Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel and Others Noor Aga v. State of Punjab and Another **[2008] 10 SCR 379 : (2008) 16 SCC 417;** *Hem Chand v. State of Haryana* **[1994] Supp. 4 SCR 295 : (1994) 6 SCC 727;** *State of Punjab v. Manjit Singh and Others* **[2009] 9 SCR 864 : (2009) 14 SCC 31;** *Bavo alias Manubhai Ambalal Thakore v. State of Gujarat* **[2012] 1 SCR 822 : (2012) 2 SCC 684;** *Ramnaresh and Others v. State of Chhattisgarh* **[2012] 3 SCR 630 : (2012) 4 SCC 257;** *Yogendra alias Jogendra Singh v. State of Madhya Pradesh* **[2019] 1 SCR 248 : (2019) 9 SCC 243;** *Hem Chand v. State of Haryana* **[1994] Supp. 4 SCR 295 : (1994) 6 SCC 727;** *State of Punjab v. Manjit Singh and Others* **[2009] 9 SCR 864 : (2009) 14 SCC 31;** *Bavo alias Manubhai Ambalal Thakore v. State of Gujarat* **[2012] 1 SCR 822 : (2012) 2 SCC 684;** *Jameel v. State of Uttar Pradesh* **[2009] 15 SCR 712 : (2010) 12 SCC 532;** *Gurmukh Singh v. State of Haryana* **[2009] 13 SCR 548 : (2009) 15 SCC 635 – referred to.**

List of Acts

Penal Code, 1860; Constitution of India.

List of Keywords

Voluntarily causing grievous hurt by using acid or corrosive substances; Pouring of Acid; Sentence; Relevant factors while determining sentence of a convict; Interference in sentence; Reduction of sentence; Article 136 of the Constitution; Interference of Supreme Court in a criminal appeal by special leave; Evidence appreciation; Procedural error; Ocular and medical evidence; Natural Justice; Re-evaluating evidence u/Art.136 of the Constitution; Motive or past enmity; Impulsive Act; Injury's gravity; Accused age and health; Post incident conduct of accused.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5304 of 2024

From the Judgment and Order dated 13.10.2022 of the High Court of Delhi at New Delhi in CRLA No. 209 of 2020

With

Criminal Appeal No. 5303 of 2024

Appearances for Parties

Advs. for the Appellant:
Mahabir Singh, Sr. Advs., Gagandeep Sharma, Veerendra Kumar, Ms. Preeti Singh.

Advs. for the Respondents:
Mrs. Sonia Mathur, Sr. Advs., Mukesh Kumar Maroria, Padmesh Mishra, Mrs. Chitrangda Rastravara, Arkaj Kumar, Mrs. Sansriti Pathak, Anukalp Jain, Mrs. Neelakshi Badauria, Sridhar Potaraju, Mrs. Vimla Sinha, Shiv Mangal Sharma, Raman Yadav, Sunil Kumar Jha, Amrendra Kumar Choubey, Amrit Anunay, Mithlesh Jha, Ms. Neetu Sharma, Ms. Shloka Vaidialingam, Shivain Vadialingam, Ms. Seita Vaidyalingam.

Judgment / Order of the Supreme Court

Judgment

Augustine George Masih, J.

1. These two appeals i.e., Criminal Appeal No. 5304 of 2024 and Criminal Appeal No.5303 of 2024 assail concurrent findings of conviction under Section 326A of the *Indian Penal Code, 1860* ("IPC 1860") and sentence thereof against Hakim ("Accused No.1") and Umesh ("Accused No.2") respectively Appellants herein, by the learned Additional Sessions Judge, Patiala House Courts, Delhi vide Order dated 29.01.2020 and by the High Court of Delhi vide Judgment dated 13.10.2022 ("Impugned Judgment"). The Appellants were sentenced to undergo rigorous imprisonment for life, and a fine of INR 1,00,000/- (Rupees One Lakh only) and in default, simple imprisonment for a period of one year.

2. Appellants, initially moved Petitions for Special Leave to Appeal (Criminal) No(s). 5874 of 2023 and 11118 of 2023 respectively, and delay was condoned in both the said petitions, *albeit* separately, and this Court issued notice only on the quantum of sentence. As the proceedings progressed, it was directed that the victim in the instant case, be also made a party and was accordingly impleaded as Respondent No.2 ("Respondent-Victim"). However, as the said petitions were taken up on 14.05.2024, the assertions made by the

erstwhile petitioners implied that they intended to even dispute the injuries caused to the Respondent-Victim. Thereafter, while reserving the judgments, leave to appeal was granted.

3. The incident, as alleged by the prosecution, is that on 08.06.2014, at about 11:30 p.m., Bablu ("Complainant"), husband of the Respondent-Victim, gave a written complaint at the Govind Nagar Police Station, Mathura, Uttar Pradesh which resulted into registration of FIR No.130 of 2014 dated 08.06.2014 ("FIR"), bearing Crime No. 228 of 2014.

4. As per the complaint, at 08:00 p.m. on 08.06.2014 the Respondent-Victim (PW-4) was heading back home, subsequent to her visit to the temple of Galteshwar Mahadev, along with his sister-in-law, Rajjo Devi (PW-6). It is stated that the sister-in-law was a few steps behind the Respondent-Victim when both the Appellants along with Gyani ("Accused No. 3") to take revenge blocked the way of the Respondent-Victim near the Govind Nagar railway crossing and told her that on account of she having moved a complaint against them to the police authorities earlier, she will face the consequences. Accused No.1 – Appellant and Accused No.3 held the Respondent-Victim while Accused No.2 – Appellant, poured acid over her and then ran away from the spot. Respondent-Victim started screaming in agony instantly. Rajjo Devi (PW-6) who was following the Victim took her to hospital and got her admitted. All the accused being their neighbours at Laxmi Nagar under the jurisdiction of Krishna Nagar Police Chowki of Kotwali Police Station, Mathura were known to each other.

5. Having recorded the statements of the Respondent-Victim (PW-4) and Rajjo Devi (PW-6) on 09.06.2014 and 11.06.2014 respectively, the Investigating Officer on completion of investigation filed the Final Report under Section 173 of the Code of Criminal Procedure, 1973 ("CrPC 1973"). Subsequent to the cognizance having been taken and on account of all the accused claiming to be not guilty, case was moved for trial before the District and Sessions Court, Mathura, Uttar Pradesh for offences under section 326A read with 34 IPC 1860.

6. During the pendency of the trial, at the behest of the Complainant, Transfer Petition (Criminal) No. 176 of 2015 was moved before this Court, seeking transfer of the trial to Delhi, which was allowed vide Order dated 01.09.2015.

7. A total of 14 witnesses were examined by the prosecution, the statements of the accused under Section 313 CrPC 1973 were recorded and 03 witnesses in defence were produced.

8. The Trial Court proceeded to convict the accused and pass the sentence as follows:

Name of the Accused	Position before us	Convicted under Section(s)	Sentence	Other details (Common)
Hakim	Appellant in Crl. Appeal No.5304/24 – Accused No.1	326A r/w 34 IPC 1860	Rigorous Imprisonment for life + fine of INR 01 Lakh i/d Simple Imprisonment for 01 year	Benefit of 428 CrPC 1973 to all accused. Out of the total fine, INR 1.25 Lakhs to be paid to the Respondent-Victim as compensation Convicts to be transferred to Tihar Jail, Delhi
Umesh	Appellant in Crl. Appeal No.5303/24 – Accused No.2	326A r/w 34 IPC 1860	Rigorous Imprisonment for life + fine of INR 01 Lakh i/d Simple Imprisonment for 01 year	
Gyani	Not a party – Accused No.3	326A r/w 34 IPC 1860	Rigorous Imprisonment for 10 years + fine of INR 50,000/- i/d Simple Imprisonment for six months	

9. Assailing the Trial Court Judgment, all three convicts moved in appeal before the High Court of Delhi through Criminal Appeal No 209 of 2020 (by Accused No.1 and Accused No.2) and Criminal Appeal No. 365 of 2021 (by Accused No.3). The Division Bench affirmed the findings on conviction of the Trial Court by observing that the guilt of all the accused/convicts was proved beyond reasonable doubt and duly supported by the evidence on record. The sentence *qua* Accused Nos.1 and 2 (appellants herein) was confirmed but qua Accused No.3 the same was reduced to 10 years from life imprisonment vide Impugned Judgment dated 13.10.2022. Furthermore, it was observed that the Respondent-Victim deserves a compensation of at least

INR 5,00,000/- (Rupees Five Lakhs) and balance amount thereof (subject to what is received from the convicts) shall be borne by the State of Uttar Pradesh under Uttar Pradesh Victim Compensation Scheme, 2014 as the offence was committed within the jurisdiction of State of Uttar Pradesh.

10. Aggrieved by the Impugned Judgment of the High Court of Delhi, the two Appellants have moved this Court as iterated above.

11. Before we proceed further in this matter, let us first peruse and consider the jurisprudence, as culled out over a period of time, on the scope and ambit of interference of this Court in a criminal appeal arising out of a Special Leave to Appeal Petition, where concurrent findings have been returned by the courts below, as in this case.

12. This Court in ***Mst Dalbir Kaur and Others v. State of Punjab***[1]***,*** while dealing with a petition under Article 136 of the Constitution of India, seeking interference in concurrent findings of conviction, reassessment of evidence and credibility of witnesses, reiterated the ratio as laid down by this Court in ***Pritam Singh v. State***[2] and observed that this Court would interfere only when exceptional and special circumstances exist, which result in substantial and grave injustice having done to the accused. Furthermore, also relying on other decisions of this Court, the Bench went on to summarize the principles governing interference of this Court in a criminal appeal by special leave as follows: (1) it does not interfere with concurrent findings based solely on evidence appreciation, even if another view is possible; (2) it avoids reappraisal unless there's legal or procedural error, misreading or inconsistency in evidence, e.g., clear contradiction between ocular and medical evidence; (3) it refrains from re-evaluating credibility of witnesses; (4) interference occurs where judicial process or natural justice is violated, causing prejudice; (5) it intervenes if findings are perverse or based on no evidence. Adding to the same, it clarified that this Court only ensures that the High Court has correctly applied these principles.

13. Strengthening this jurisprudence on interference, the decision in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***[3] observed that a

1 (1976) 4 SCC 158

2 (1950) SCC 189

3 (1983) 3 SCC 217

concurrent finding of fact cannot be reopened in an appeal by special leave unless it is shown that the finding is based on no evidence; or that it is perverse, being such that no reasonable person could have arrived at, even if, the evidence is taken at face value; or that the finding is founded on inadmissible evidence which, if excluded, would negate or seriously impair the prosecution case; or that vital evidence favouring the convict has been overlooked, disregarded, or wrongly discarded. Furthermore, while dealing with the question of reappraisal or reappreciation of the evidence in the context of minor discrepancies, it observed that minor discrepancies in a witness's testimony should not be given undue importance for several reasons. A witness cannot be expected to have a photographic memory or recall every detail, as the mind does not function like a video recorder. Witnesses are often overtaken by unforeseen events, and their faculties may not register all particulars. Observational abilities vary among individuals. People generally recall only the essence of conversations, not exact words. Time estimations are often rough guesses. Rapid events can confuse memory. Even truthful witnesses may, under court pressure or cross-examination, mix up facts or unconsciously fill gaps out of nervousness or fear.

14. By the same token, another Bench of this Court in ***Murugan v. State of Tamil Nadu***[4] reiterated the precedents, observing that it is a well-established legal principle that when the lower courts have returned concurrent findings of guilt against an accused based on proper appreciation of the evidence, this Court, while exercising jurisdiction under Article 136 of the Constitution of India, ordinarily refrains from re-evaluating the evidence afresh. Interference is warranted only if it is clearly demonstrated that the courts below failed to consider material evidence or that their conclusions suffer from perversity, irrationality, or other serious infirmities rendering the findings unreasonable or unjustified in law. In the absence of such grounds, the concurrent conclusions are not lightly disturbed by this Court.

15. With the above guiding principles in mind, we called upon the counsel for the parties to put forth their respective submissions.

16. Taking exception of the Impugned Judgment, learned Senior Advocate on behalf of the Appellants has pressed that they have

4 (2018) 16 SCC 96

been falsely implicated and that the prosecution has failed to prove the ingredients so as to attract the offence under Section 326A IPC 1860. To buttress this aspect, he submits that there is no claim of eye injury in the FIR or the statement of the Respondent-Victim or the medical record. Thereby, the prosecution has failed to establish that the claimed eye injury was result of pouring of acid on the Respondent-Victim by Accused No.2. Rather, reference to multiple hospitals by the Respondent-Victim was an attempt to obtain a suitable medical report with respect to the eye injury. Reference has been made to the statement of DW-2, who gave statement to the effect that he had seen the eye of the Respondent-Victim to be defective prior to the incident.

17. It was further contended that in order to prove the claim that an acid or a chemical was poured on the Respondent-Victim, the prosecution was to show the source of procurement of the said substance, which it failed. In such a situation, the conviction under Section 326A IPC 1860 is unsustainable in law. Alleged burns could, therefore, be caused by hot water. Arguing that such lapses are to the benefit of the accused, reliance was placed on decisions of this Court in ***State of Uttar Pradesh v. Wasif Haider and Others***[5]***, Kailash Gour and Others v. State of Assam***[6]***, Sunil Kundu and Another v. State of Jharkhand***[7]***, Karan Singh v. State of Haryana and Another***[8] and ***Dayal Singh and Others v. State of Uttaranchal***[9].

18. The learned Senior Advocate further went on to assert that there is an inordinate delay of 11 days in recording statements of witnesses PW-4 and PW-6, creating a serious doubt as per observations in ***Shahid Khan v. State of Rajasthan***[10]***,*** and ***Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel and Others***. Moreover, in the site plan prepared at the instance of PW-4, the presence of PW-6 is not indicated, therefore she is not an eye-witness. Apart from improvements in the testimony of Respondent-Victim, the prosecution has failed to establish the spot of occurrence owing to

5 (2019) 2 SCC 303

6 (2012) 2 SCC 34

7 (2013) 4 SCC 422

8 (2013) 12 SCC 529

9 (2012) 8 SCC 263

10 (2016) 4 SCC 96

contradiction in the statement of the Respondent-Victim and the site plan so prepared. Even further, as per PW-6, it was the police who took Respondent-Victim to the hospital, which does not match with the contents in the complaint.

19. Learned Senior Advocate on behalf of the Appellants further contented that the observation to the effect that the Investigating Officer was not bound to follow the Standard Operating Procedure prescribing detailed methodology *vis-à-vis* an acid attack case is not good in law. It is further submitted, while drawing equivalence with Standard Operating Procedures under the Narcotic Drugs and Psychotropic Substances Act, 1985, that such stringent procedures are mandatory in nature as held by this Court in ***Noor Aga v. State of Punjab and Another***[11] to safeguard the rights of the accused.

20. Learned Counsel states that Accused No.1 is a army personnel, aged above 70 years, and it is improbable for him to having been an accomplice in the said act.

21. On the basis of the above submissions, prayer has been made to allow the appeals and set aside the impugned judgments.

22. On the other hand, learned Senior Advocate appearing on behalf of the Respondent No.1 ("Respondent-State") and Respondent-Victim have supported the judgments of the Courts below.

23. Counsel on behalf of Respondent-Victim has referred to the evidence led by the prosecution to counter the submissions put forth by the Senior Counsel for the Appellants. He demolished the arguments of the Appellants and then contended that the courts below, while passing their respective judgments have considered all material evidence on facts and law laid down by this Court, and therefore, no interference is called for on the conviction and sentence as imposed on the Appellants. The appeals are devoid of merit deserving dismissal.

24. We have considered the arguments rendered by the parties before us.

25. The submissions, as have been made by the learned Senior Advocate for the Appellants, have to be considered and dealt with by restricting ourselves within the parameters and boundaries as laid down in the

11 (2008) 16 SCC 417

above referred judgements while navigating the jurisdictional field of interference.

26. Injury of the eye of the Respondent-Victim and the cause thereof, which stands questioned, requires to be dealt with first. As per the evidence led by the prosecution, different Doctors appeared as prosecution witnesses who had treated the victim on various occasions i.e., PW-5, PW-8, PW-9, PW-10, PW-11, PW-12 and PW-14. All of them have testified that the injuries on the skin and the deformity of the face, including loss of vision, *albeit* not fully i.e., 90% in the left eye of the Respondent-Victim were the result of serious Chemical Burn injuries. The doctors supported the prosecution's case on this count as well with regard to the cause and the injuries itself. Prosecution has produced and proved the photograph on the Aadhaar Card of the Respondent-Victim where it is reflected that she had normal eyes and face. Therefore, this plea of the Appellants fails.

27. The question of the nature and contents of the alleged substance used and thrown on the victim would not arise as the possibility of recovery of the same does not arise as the incident was committed at railway crossing adjacent to the railway line where all the accused ran away after committing the offence. However, chemical burns on the person of the Respondent-Victim are substantiated from testimonies and medical evidence as referred to above. This ground also fails.

28. The explanation relating to the delay in recording of statement of Respondent-Victim (PW-4) and PW-6 stands explained and substantiated on the basis of the medical documentary evidence. Further, it is stated that their family was under constant threat because of which all had to leave Mathura to save and protect themselves apart from the aspect of medical treatment of the victim. The fact that the statements were recorded immediately on their return to Mathura by the police is substantiated.

29. As to the veracity of the testimony of PW-6 as an eye-witness is concerned, suffice it to say that she was merely 10 paces away from the site of occurrence and thus was well positioned not only to hear the conversation but also to witness the specific act and role of the Appellants and third accused accosting and assaulting the Respondent-Victim before they ran away from the spot.

30. With regard to the non-following of the Standard Operating Procedure by the Investigation Officer. It is enough to mention here that the same are procedural guidelines and not mandatory. The prosecution has followed due procedure and measures in the investigation. Hence, no interference is required by this Court as far as the said contention is concerned.

31. On the submission as is being sought to be projected by the Counsel regarding improbability of Accused No.1 of having committed the act as an accomplice is concerned, it may be observed that the age has no bearing on the crime. Even further, the Appellant had regularly been appearing before the Trial Court when it was observed that he was maintaining good health then. The plea of improbability has no legal force in the presence of eye-witnesses and their testimony. This leads us to the non-acceptance of this submission as well of the Appellant's counsel.

32. In the light of the above, the judgements on which reliance have been placed by the Counsel for the Appellants would be of no avail both on facts and law.

33. Having perused and considered the Trial Court Judgment as well as the Impugned Judgment in detail as also the legal position, we find that both the courts below have dealt with the contentions raised by the Appellants in depth in the right perspective and we are in agreement with the concurrent findings thereof. Moreover, the case-at-hand does not fall within the circumstances permitting, requiring or calling for an interference by this Court, as have been discussed above. The view that the guilt of both, Accused No.1 and Accused No.2, has been proved beyond reasonable doubt is not only a plausible one but established. Hence, we are not inclined to interfere.

34. The decision on conviction of both the Appellants as rendered by the Trial Court and affirmed by the High Court of Delhi, being good in law, is accordingly upheld to the said effect.

35. Having considered the aspect of conviction of the Appellants, we shall now consider the sentence that was awarded by the Trial Court and affirmed by the High Court of Delhi as the senior Counsel for the Appellants has raised the plea for reduction thereof.

36. Learned Senior Counsel for the Appellants has prayed for leniency with regard to the sentence imposed upon them by the Courts below.

To the effect of reduction of sentence, reliance is placed on numerous decisions of this Court whereby this Court has taken into account the mitigating circumstances either for reducing the sentence or affirming the reduction by the concerned High Court. These being ***Hem Chand v. State of Haryana***[12]***, State of Punjab v. Manjit Singh and Others***[13]***, Bavo alias Manubhai Ambalal Thakore v. State of Gujarat***[14]***, Ramnaresh and Others v. State of Chhattisgarh***[15], and ***Yogendra alias Jogendra Singh v. State of Madhya Pradesh***[16]***.***

37. We have considered the decisions of this Court as relied upon by the Appellants, apart from others. In ***Jameel v. State of Uttar Pradesh***[17] this Court, while referring to the decision in ***Gurmukh Singh v. State of Haryana***[18] reiterated the relevant factors while determining sentence of a convict. These include: (a) motive or past enmity; (b) whether the act was impulsive; (c) the accused's intent or knowledge when causing injury; (d) whether death was immediate or occurred later; (e) the injury's gravity and nature; (f) the accused's age and health; (g) if the injury arose in a sudden fight without premeditation; (h) type and size of weapon and force used; (i) accused's criminal history; (j) if death resulted from shock despite non-fatal injury; (k) pending cases; (l) whether within family; and (m) post-incident conduct.

38. We have perused the Order on Sentence dated 29.01.2020 passed by the Trial Court, which has been brought on record by the Accused No.1. The Trial Court has duly considered the circumstances at-hand, including the mitigating and aggravating circumstances for all the convicts.

39. As to the Appellants, the Trial Court observing that they are a father-son duo, one being a retired army personnel and the other an advocate respectively, therefore, had aggravated their sentence resulting in life imprisonment with fine. While on the other hand, as to Accused No.3, the fact that he was 19 years old at the time

12 (1994) 6 SCC 727

13 (2009) 14 SCC 31

14 (2012) 2 SCC 684

15 (2012) 4 SCC 257

16 (2019) 9 SCC 243

17 (2010) 12 SCC 532

18 (2009) 15 SCC 635

the incidence took place and observing that he had a chance for reformation, the same was taken as a mitigating factor leading to the lesser sentence being imposed upon him i.e. 10 years with fine.

40. On that, the learned Senior Advocate on behalf of the Accused No.1 has pleaded for parity with the Accused No.3, who, while being convicted, was awarded the sentence of rigorous imprisonment for 10 years along with fine of INR 50,000/- and in default or non-payment of the said fine, simple imprisonment for six months. The prayer is based on the similarity of their role and involvement in the offence.

41. Senior Counsel has referred to I.A. No.209652 of 2023 where the Accused No.1 has filed his medical records. It appears, therein, that he is about 73 years old and even the Senior Medical Officer of Central Jail, Tihar has mentioned for the Appellant to be considered as "seriously sick patient" on 24.07.2023. He has multiple ailments, namely, anaemia, PSVT, CAD, Bronchial Asthma, Hypertension, BPH, CKD state-IV, and Epididymo-orchitis with LUTS and therefore, we are conscious of the said fact. He is also under treatment from the Departments of Urology and Nephrology at Safdarjung Hospital, Delhi.

42. Therefore, considering the role in the offence, age and ailments being suffered by the Appellant- Accused No.1, we are inclined to interfere and reduce the sentence and bring it at par with the sentence awarded to the Accused No.3 for his role in holding the Respondent-Victim. The Appellant-Accused No.1 (Hakim) is, thus, sentenced to rigorous imprisonment for 10 years along with fine of INR 50,000/- and in default or non-payment of the said fine, simple imprisonment for six months.

43. The Trial Court Judgment and the Order on Sentence dated 29.01.2020 stands modified to the said effect of the reduced sentence for the Appellant – Accused No.1 (Hakim).

44. As regards the Appellant-Accused No.2 (Umesh), it is observed that being an advocate, he was not only well-read in law but owed a duty to the court being its officer requiring him to conduct with dignity, respect law and fellow beings. Having let down the community as a whole, we are not inclined to interfere with the sentence awarded to him vide the Trial Court Judgment, as affirmed by the Impugned Judgment.

45. In the light of the above, the Criminal Appeal No. 5304 of 2024 preferred by Accused No.1 is partly allowed as mentioned above, while the Criminal Appeal No. 5303 of 2024 preferred by Accused No.2 stands dismissed.

46. Pending application(s), if any, also stand disposed of.

Result of the case: Criminal Appeal No. 5304 of 2024 is partly allowed.
Criminal Appeal No. 5303 of 2024 is dismissed.

†*Headnotes prepared by:* Ankit Gyan

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A.M. Kulshrestha
v.
Union Bank of India and Ors.

(Civil Appeal No. 7039 of 2025)

20 May 2025

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Whether the disciplinary proceedings including the charge sheet against the appellant ought to be quashed and set aside; whether the action of the respondent-Bank was mala fide and arbitrary in serving the charge sheet without receiving the first stage advice by the Central Vigilance Commission.

Headnotes†

Union of India Officer Employees' (Discipline & Appeal) Regulations, 1976 – Regulation 19 – Consultation with Central Vigilance Commission (CVC) – Respondent-Bank served charge sheet upon the appellant without waiting for the CVC's advice – Appellant sought quashing of charge-sheet, writ petition dismissed by High Court – Interference with:

Held: Regulation 19 stipulates that the Bank shall consult the CVC, wherever necessary, in respect of disciplinary cases having a vigilance angle – The CVC is consulted at two stages for its advice – The first stage advice is sought before the issuance of the charge sheet, and the second stage advice is either on receipt of the reply to the charge sheet or on receipt of the enquiry report – Respondent itself acknowledged that the case had a vigilance angle and consultation with the CVC was necessary, and therefore, it sought the opinion of the CVC – Therefore, it was not open for the Bank to serve the charge sheet without receiving and considering the first stage advice by the CVC – This was despite the statement made by the Executive Director in the earlier petition, filed by the appellant challenging the suspension order, stating that the charge sheet would only be served upon receipt of advice from the CVC – Actions of the respondent are mala fide and arbitrary – High Court

* Author

erred in holding that Regulation 19 was not mandatory – This issue was irrelevant as the Bank itself acknowledged that in the facts of the case, it was necessary to seek first-stage advice from the CVC – Disciplinary proceedings including the charge sheet are quashed and set aside – Union Bank of India Employees' Pension Regulation, 1995. [Paras 16, 17, 19-21, 22, 25]

List of Acts

Union of India Officer Employees' (Discipline & Appeal) Regulations, 1976; Union Bank of India Employees' Pension Regulation, 1995; Central Vigilance Commission Act, 2003; CVC's Vigilance Manual, 2017.

List of Keywords

Regulation 19 of Union of India Officer Employees' (Discipline & Appeal) Regulations, 1976; Central Vigilance Commission (CVC); Consultation with Central Vigilance Commission; Disciplinary proceedings; Charge-sheet served without receiving the first stage advice by the Central Vigilance Commission; Suspension order; Disciplinary cases having a vigilance angle; CVC's advice; CVC's first-stage advice; Delay in issuing the charge sheet; Superannuation; Disciplinary action; Sanctioning credit proposals; Vigilance proceedings; Consultation with the CVC mandatory or discretionary; Disciplinary proceedings and charge sheet quashed; Retiral benefits.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7039 of 2025

From the Judgment and Order dated 20.09.2019 of the High Court of Judicature at Allahabad in SPLA No. 963 of 2019

Appearances for Parties

Advs. for the Appellant:
Gopal Sankaranarayanan, Sr. Adv., Purushottam Sharma Tripathi, Akshat Kulshrestha, Tushar Srivastava, Ms. Shrya Nair, Ravi Chandra Prakash, Prakhar Singh.

Advs. for the Respondents:
O.P. Gaggar, Sachindra Karn.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

Leave granted.

1. This appeal is directed against the judgment and order dated 20th September, 2019 passed by the Division Bench of the High Court of Allahabad affirming the order of the Learned Single Judge dated 26th July, 2019, whereby the Writ Petition preferred by the appellant seeking quashing of the charge sheet served on him pursuant to disciplinary proceedings was dismissed.

FACTUAL ASPECTS

2. The appellant was an employee of the Union Bank of India *(hereinafter referred to as* "The Respondent Bank*")*, where he served for approximately 34 years from 1984 to 2018. He was promoted to the post of Deputy General Manager in 2016 and was due to retire on 30th June, 2019.

3. The Respondent Bank vide order dated 21st August, 2018, suspended the appellant pending further disciplinary action, alleging that the appellant, in his prior role as the Regional Head, Meerut, had adopted a very casual approach while sanctioning credit proposals in 16 accounts submitted by Mid-corporate Ghaziabad Branch. It was alleged that he sanctioned huge limits to newly incorporated firms without ensuring proper due diligence by the branch or processing officers. On 18th January, 2019, after approximately 6 months of the suspension order, a show cause notice was issued to the appellant, asking him to show cause as to why disciplinary action should not be initiated against him. On 27th March, 2019, another show cause notice was issued to the appellant incorporating the same omissions and commissions as alleged in the previous show cause notice, but in relation to other parties. The appellant made multiple representations to the Respondent Bank, requesting it to revoke his suspension. However, the same was of no avail.

4. The appellant preferred Civil Misc. Writ Petition No. 6976 of 2019 before the Hon'ble High Court of Allahabad against Order dated

21st August, 2018. The General Manager of the Respondent Bank (hereinafter referred to as, "General Manager") submitted personal affidavit dated 23rd May, 2019 before the Hon'ble High Court justifying the delay in issuing the charge sheet as attributable to the matter being referred to the Central Vigilance Commission (hereinafter referred to as, "the CVC") in terms of Regulation 19 of the Union of India Officer Employees' (Discipline & Appeal) Regulations, 1976 *(hereinafter referred to as, "1976 Regulations").* The relevant extract of the General Manager's affidavit is as follows:

> "32. That, the IAC has viewed/regarded the case of 16 officials, including that of appellant, as a Vigilance case.
>
> 33. That since the appellant being an Executive in TEGS-VI and as also the matter Involving other executive/officials, making it a composite case, in terms of Regulation 19 of Union Bank of India Officers Employee's (Discipline and Appeal) Regulations, 1976 and guidelines of the Central Vigilance Commission as circulated vide Circular NO. 07/04/15 dated 27.04.2015 (ANNEXURE CA - 4) the matter has been sent to the central Vigilance Commission for first stage advice.
>
> 34. That accordingly a request has been sent to Central Vigilance Officer (CVO) of the Bank to forward the matter on 23.04.2019 to Central Vigilance Commission (CVC) seeking their first stage. The advice of CVC is still awaited."

The Disciplinary Authority/Executive Director of the Respondent Bank (hereinafter referred to as, "Executive Director") submitted personal affidavit dated 13th June, 2019 before the High Court, *inter alia*, stating that the matter was referred to the CVC, and the charge sheet would be issued to the appellant on receipt of the CVC's advice. The relevant extract of the Executive Director's affidavit is as follows:

> **"27. That *on receipt of the advice of CVC*, the respondent bank shall be soon issuing Articles of Charge/Chargesheet** to the appellant along with other concerned officials who are found to be involved in the matter**"**
>
> (emphasis added)

On 18th June, 2019, the respondent-Bank served an ante-dated charge sheet of 10th June, 2019, to the appellant, in relation to the allegations levied in the show-cause notices. However, this charge sheet was served without receiving the CVC's advice.

5. Learned Single Judge of the High Court by Order dated 20th June, 2019 quashed Order dated 21st August, 2018 on the ground that continuing the suspension of the appellant since 21st August 2018 without even initiating or serving charge sheet for almost a year and that too at the fag end of the career of the appellant is wholly arbitrary and illegal. At the same time, the High Court granted liberty to the Respondent Bank to initiate any further proceedings that it may deem fit. Accordingly, the Executive Director issued a letter dated 28th June, 2019 to the appellant, stating that the disciplinary proceedings against him will continue and that he would not receive any pay, allowance or retiral benefits for the period till the completion of the disciplinary proceedings.

6. The appellant preferred Civil Misc. Writ Petition No. 10800 of 2019 before the Hon'ble High Court of Allahabad seeking quashing of the charge sheet dated 10th June, 2019 on the ground that the charge sheet was served without seeking the advice of the CVC, which violated the mandatory requirement under Regulation 19 of the 1976 Regulations. The appellant also sought a direction to the Respondent Bank to consider his case for payment of pension under the Union Bank of India Employees' Pension Regulation, 1995 and to pay the pension to the Appellant along with consequential relief.

7. The learned Single Judge by his judgement and order dated 26th July, 2019 dismissed the Writ Petition holding that no ground was made out to quash the charge sheet and directed the appellant to cooperate in the enquiry. The appellant challenged the said Order by filing Special Appeal No. 963 of 2019. The Division Bench by impugned Judgement and Order dated 20th September, 2019 dismissed the appeal, holding that it was not necessary to seek the CVC's advice before issuing the charge sheet.

RELEVANT PROVISIONS

8. The issues involved in this appeal require consideration of Regulation 19 of the 1976 Regulations, which reads as follows:

> "**Regulation 19.** Consultation with Central Vigilance Commission: The Bank *shall* consult the Central Vigilance Commission *wherever necessary*, in respect of all disciplinary cases having a vigilance angle"

The regulation requires the Respondent Bank to consult the CVC in respect of all disciplinary cases with a vigilance angle, wherever deemed necessary. The language of the rule stipulates a mandatory consultation obligation by the usage of the word 'shall', and at the same time grants the Respondent Bank a degree of discretion by limiting the consultation to 'wherever necessary'. A question may arise whether the said provision is mandatory or directory.

SUBMISSIONS

Submissions on behalf of the Appellant

9. The learned senior counsel appearing for the appellant submitted that Regulation 19 of the 1976 Regulations, by using the words 'shall consult', imposes a mandatory requirement on the Respondent Bank to seek the CVC's advice in all complaints involving allegations of corruption, before issuance of a charge sheet to an employee. In support of this contention, learned senior counsel referred to CVC's Circular No. 99/VGL/66 dated 28th September, 2000, Circular No. 24/4/04 dated 15th April, 2004 and Circular No. 07/04/15 dated 27th April, 2015. The relevant extracts of the circulars are reproduced herein:

> **Circular No. 99/VGL/66 dated 28th September, 2000**
>
> "3. The Commission, at present, is being *consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet*, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report."
>
> **Circular No. 24/4/04 dated 15th April, 2004**
>
> "3. It is clarified that investigation/inquiry reports on the complaints/cases arising out of audit and inspection, etc, involving a vigilance angle *will have to be referred to the Commission for advice* even if the competent authority in

the bank decides to close the case, if any of the officer involved is of the level for whom the Commission's advice is required."

Circular No. 07/04/15 dated 27th April, 2015

"As per the existing scheme for consultation with the Commission, the CVOs of the Ministries / Departments and all other organisations *are required to seek the Commission's first stage advice* after obtaining the tentative views of Disciplinary Authorities (DAs) on the reports of the preliminary inquiry / investigation of *all complaints* involving allegation(s) of corruption or improper motive; or if the alleged facts prima-facie indicate an element of vigilance angle which are registered in the Vigilance Complaint Register involving Category-A officers (i.e., All India Service Officers serving in connection with the affairs of the Union, Group-A officers of the Central Govt. and the levels and categories of officers of CPSUs, Public Sector Banks, Insurance companies, Financial Institutions, Societies and other local authorities as notified by the Government u/s 8(2) of CVC Act, 2003) before the competent authority takes a final decision in the matter. Such references also include cases wherein the allegations on inquiry do not prima facie indicate any vigilance overtone / angle / corruption.

On a review of the scheme of consultation with the Commission and to expedite the processes of vigilance administration in the Ministries/Departments/Organisations, it has been decided that, henceforth after inquiry / investigation by the CVO in complaints / matters relating to Category-A officers as well as composite cases wherein, Category-B officers are also involved, if the allegations, on inquiry do not indicate prima facie vigilance angle / corruption and relate to purely non-vigilance / administrative lapses, the case would be decided by the CVO and the DA concerned of the public servant at the level of Ministry / Department / Organisation concerned. The CVO's reports recommending administrative / disciplinary action in non-vigilance /administrative lapses would, therefore, be submitted to the DA and if the DA agrees to the

> recommendations of the CVO, the case would be finalised at the level of the Ministry/ Department/ Organisation concerned. *In all such matters, no reference would be required to be made to the Commission seeking its first stage advice*. However, in case there is a difference of opinion between the CVO and the DA as to the presence of vigilance angle, the matter as also enquiry reports on complaints having vigilance angle though unsubstantiated would continue to be referred to the Commission for first stage advice. The provisions of the Vigilance Manual and the Special Chapter on Vigilance Management in Public Sector Enterprises, Public Sector Banks and Insurance Companies would stand amended to this extant."
>
> (underline supplied)

Relying on the circulars mentioned above, the learned senior counsel submitted that consultation with the CVC is a necessary pre-requisite for initiating disciplinary proceedings against an employee.

10. The learned senior counsel also drew attention to Section 8(1)(h) of the Central Vigilance Commission Act, 2003, wherein the CVC has been bestowed the function and power to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government. Attention was also drawn to Clause 7.9.1 of the CVC's Vigilance Manual, 2017, whereby Central Vigilance Officers of the Ministries/Departments and all other organisations are required to seek the Commission's first stage advice after obtaining the tentative views of Disciplinary Authorities on the reports of the preliminary inquiry/investigation of all complaints involving allegation(s) of corruption or improper motive; or if the alleged facts prima-facie indicate an element of vigilance angle.

11. Lastly, the learned senior counsel referred to affidavits dated 23rd May, 2019 and 13th June, 2019, filed by the General Manager and the Executive Director, respectively, before the Hon'ble High Court in Civil Misc. Writ Petition No. 6976 of 2019. Learned senior counsel stated that Respondents vide these two affidavits have admitted that the proceedings initiated against the appellant have a vigilance

angle and therefore the case has been referred to the CVC for their advice in terms of Regulation 19 of the 1976 Regulations. Thus, the Respondents are now estopped from seeking to initiate unilateral disciplinary proceedings against the appellant without obtaining the CVC's first-stage advice.

Submissions on behalf of the Respondents

12. The learned counsel appearing for the Respondents submitted that as per Clause 7.9.1 of the CVC's Manual, the Commission's first stage advice is required to be sought 'before the competent authority takes a final decision in the matter'. Learned counsel contends that the presentation of a charge sheet would not amount to taking the final decision in the matter, but would rather only amount to initiation of the disciplinary proceedings, and therefore, the charge sheet cannot be vitiated for not taking the CVC's advice.

13. The learned counsel further submitted that the Respondent Bank had sought the CVC's first-stage advice via their letter dated 17th May 2019; however, they received the CVC's response on 21st June 2019. The advice was taken as a matter of abundant caution. The learned counsel contended that the Rules or Regulations must not be interpreted in a manner that stalls or delays the disciplinary process until receipt of the advice from the CVC. The disciplinary proceedings against the delinquents cannot be frustrated solely on account of the CVC's inaction. Learned counsel also submitted that the pendency of vigilance proceedings does not bar the internal disciplinary proceedings by the Respondent Bank against an employee, and accordingly, the Respondent Bank could issue the charge sheet.

14. Lastly, the learned counsel submitted that it was incorrect to suggest that the Respondents have taken two contradictory and inconsistent stands in the two rounds of litigation before the Hon'ble High Court. Learned counsel denied that the charge sheet was prepared hastily and that the same was ante-dated and served only by email on account of any *mala fide* reasons, extraneous consideration, or personal bias. Moreover, learned counsel submitted that no prejudice was caused to the appellant on account of the serving of the charge sheet and the continuation of disciplinary proceedings against him.

CONSIDERATION OF SUBMISSIONS

15. In the present case, factual aspects are very relevant. Material factual aspects set out in a chronology are as under:-

a. The appellant was employed with the respondent Union Bank of India from the year 1984;

b. In the year 2016, he was promoted to the post of Deputy General Manager;

c. On 30th June 2019, the appellant was to be superannuated;

d. The appellant had a blemishless record till 21st August 2018, when the Bank suspended him. The allegation against the appellant was that, as the Regional Head at Meerut, he adopted a very casual approach while sanctioning credit proposals in 16 accounts sent by the Mid-corporate Ghaziabad branch. It is alleged that the appellant sanctioned huge limits to newly incorporated firms without ensuring proper diligence by the branch/processing officers;

e. On 18th January 2019 and 27th March 2019, two show cause notices were served upon the appellant, calling upon him to show cause why a disciplinary action should not be initiated against him;

f. As the representations made by the appellant for revoking suspension were not considered, the appellant filed a writ petition before the Hon'ble High Court of Allahabad to challenge the order of suspension. In the said writ petition, the General Manager filed his affidavit justifying the delay in issuing the charge sheet, stating that the matter was referred to the CVC for first-stage advice, but the advice was not received. He relied upon Regulation 19 of the 1976 Regulations. In the same writ petition, another affidavit dated 13th June 2019 was filed by the Executive Director stating that on receipt of advice from the CVC, Articles of charge/charge sheet will be issued to the appellant;

g. By the order dated 20th June 2019, the High Court quashed the order of suspension dated 21st August 2018 on the ground that continuing the suspension of the appellant from 21st August 2018 without even initiating or serving a charge sheet for almost a year was arbitrary and illegal. However, liberty was reserved to the Bank to initiate further proceedings; and

h. On 18th June 2019, without waiting for the CVC advice, a charge sheet dated 10th June 2019 was served upon the appellant. Thereafter, by a letter dated 28th June 2019, the Executive Director informed the appellant that the disciplinary proceedings against him would continue, and he would not receive any pay, allowances, or retiral benefits until the completion of the proceedings.

16. Regulation 19 of the 1976 Regulations stipulates that the Bank shall consult the CVC, wherever necessary, in respect of disciplinary cases having a vigilance angle. A reading of the regulation makes it clear that in cases where the Respondent Bank deems that the consultation is necessary due to the case having a vigilance angle, the Respondent Bank is required to seek the advice of the CVC. Therefore, while the learned counsel has argued the question of whether consultation with the CVC is mandatory or discretionary, in the facts of this case, it is not necessary for us to delve into the said question. The reason is that the Respondent Bank has itself acknowledged that the case had a vigilance angle and consultation with the CVC is necessary, and therefore, the Respondent Bank had sought the opinion of the CVC.

17. We have already quoted the relevant parts of the Circulars dated 28th September 2000, 15th April 2004 and 27th April 2015 issued by the CVC. As can be seen from the Circulars, the CVC is being consulted at two stages for its advice. The first stage advice is sought before the issuance of the charge sheet, and the second stage advice is either on receipt of the reply to the charge sheet or on receipt of the enquiry report. As can be seen from the affidavit dated 23rd May 2019, filed by the General Manager of the Bank, the first stage advice of the CVC has been sought. The affidavit dated 13th June 2019 filed by the Executive Director also clearly states that on the receipt of the advice of the CVC, the Bank shall issue a charge sheet to the appellant. As stated earlier, within five days of filing the said affidavit, the charge sheet dated 10th June 2019 was served upon the appellant. This was done without receiving the first stage advice from the CVC.

18. In its counter-affidavit, the Respondent Bank has admitted that the CVC's first-stage advice was sought on 17th May 2019. Notably, the advice was sought from the CVC nine months after the suspension

order. In fact, on 18th January 2019 and 27th March 2019, show-cause notices were issued to the appellant, calling upon him to show cause why disciplinary action should not be initiated against him.

19. Thus, the respondent-Bank accepted that Regulation 19 of the 1976 Regulations was applicable and therefore, first-stage advice of the CVC was sought. Even before getting the first stage advice, on 10th June 2019, the charge sheet was kept ready which was served upon the appellant on 18th June 2019. In this case, the Respondent Bank itself accepted the necessity of seeking first-stage advice from the CVC. Therefore, it was not open for the Bank to serve the charge sheet without receiving and considering the first stage advice by the CVC.

20. As stated earlier, only ten months before the date of superannuation, an order of suspension was served upon the appellant. This was done after 34 years of unblemished service. Although it was necessary to take the first stage advice of the CVC, the advice was sought only as late as on 17th May 2019. Twelve days before reaching the age of superannuation, a charge sheet was served upon the appellant, without receiving and considering the CVC's advice. This was despite the specific statement made by the Executive Director in the earlier petition on oath, which stated that the charge sheet would only be served upon receipt of advice from the CVC.

21. Once, the first stage advice of the CVC was called, it was the duty of the respondent-Bank to consider the advice and then take a decision to serve the chargesheet. Thus, the actions of the respondent-Bank are *mala fide* and arbitrary. The appellant was sought to be victimised at the fag end of his unblemished career of 34 years.

22. The High Court committed a gross error by holding that Regulation 19 of the 1976 Regulations was not mandatory. This issue was irrelevant, as the Bank had itself acknowledged that in the facts of the case, it was necessary to seek first-stage advice from the CVC. It is also pertinent to note that no record was placed in the High Court to indicate that the CVC report had been received.

23. Now, at this stage, it will be unjust to allow the respondent-Bank to resume disciplinary proceedings. Almost six years have passed since the superannuation of the Appellant.

24. Though the appellant will be entitled to all retiral benefits, he shall not be entitled to any back wages.

CONCLUSION

25. Accordingly, the disciplinary proceedings, including the charge sheet dated 10th June 2019, are hereby quashed and set aside. Although the appellant shall not be entitled to back wages and allowances, the Respondent Bank shall release all retirement benefits admissible on the basis that the appellant has superannuated as of 30th June 2019. The amount of retirement benefits due to the appellant in accordance with the law, shall be paid to the appellant within three months from today. The appeal is allowed on the above terms.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 55 : 2025 INSC 714

Siddhi Sandeep Ladda
v.
Consortium of National Law Universities and Another

(Civil Appeal No. 6907 of 2025)

07 May 2025

[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Consortium of National Law Universities-respondent no.1 has been framing questions for the Common Law Admission Test (CLAT); In an examination, several questions and/or the answers were found to be not suitable; The High Court had passed an order with regard to various questions.

Headnotes†

Education – Law Education – Common Law Admission Test – Framing of questions – Six questions in dispute – Each question dealt with individually – Respondent no.1 directed to amend the answer key, revise the marksheet and re-publish/ notify the final list of candidates forthwith. [Paras 10-22, 23-32, 33-38, 39-45, 46-50, 51-59]

Education – Law Education – Common Law Admission Test – Framing of questions – Deprecation of:

Held: This Court must express its deep anguish regarding the callous and casual manner in which the respondent no.1 has been framing questions for the Common Law Admission Test, an examination on the basis of which meritorious candidates get entry into the prestigious National Law Universities across the country – In academic matters, the Courts are generally reluctant to interfere, inasmuch as they do not possess the requisite expertise for the same – However, when the academicians themselves act in a manner that adversely affects the career aspirations of lakhs of students, the Court is left with no alternative but to interfere. [Paras 4, 8]

Case Law Cited

Disha Panchal and Others v. Union of India through the Secretary and Others, **2018 INSC 553 : [2018] 5 SCR 12 : (2018) 17 SCC 278 – referred to.**

* Author

List of Acts

Constitution of India; Contract Act, 1872.

List of Keywords

Education; Law education; Common Law Admission Test; Framing of questions; National Law Universities; Improper conduct of CLAT; Monitoring examination; Academic matters; Career aspirations.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6907 of 2025

From the Judgment and Order dated 23.04.2025 of the High Court of Delhi at New Delhi in LPA No. 1250 of 2024

With

Civil Appeal Diary No. 24223 of 2025

Appearances for Parties

Advs. for the Appellant:
K K Venugopal, Gopal Sankaranarayanan, Deepak Nargolkar, Sr. Advs., Soumik Ghosal, Siddhant Kohli, Vishal Sinha, Ms. Samruthi Gangadhar, Gaurav Singh, Ashutosh Chaturvedi, Dhanesh Relan, Krishan Kumar, Nitin Pal, Harsh Kumar Singh.

Advs. for the Respondents:
Raj Shekhar Rao, Balbir Singh, Sr. Advs., Ms. Pritha Srikumar Iyer, Arun Sri Kumar, Shubhansh Thakur, Wamic Wasim, Anurag, Hanuman Singh, Abhishek Anand, Rahul Kumar, M. P. Devanath, Sameer Rohatgi, Namat Suri, Kartikey Singh, Udhyam Mukherjee.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. These appeals take exception to the judgment and final order in LPA No.1250 of 2024 dated 23rd April 2025 passed by a Division Bench of the High Court of Delhi at New Delhi (hereinafter referred to as,

"High Court"). The Division Bench of the High Court was seized of the Letter Patents Appeals which were filed challenging the judgment and final order dated 20th December 2024 passed by a learned Single Judge of the High Court as well as a batch of Writ Petitions which were filed across various High Courts and which had been transferred to it by this Court.

3. We have heard Shri K. K. Venugopal and Shri Gopal Sankaranarayanan, learned Senior Counsel appearing for the Appellant; Shri Raj Shekhar Rao, learned Senior Counsel appearing for the Consortium of National Law Universities (hereinafter referred to as "Respondent No.1"); Shri Dhanesh Relan, learned counsel appearing for Respondent No.2; Shri Balbir Singh, learned Senior Counsel and other learned counsel appearing for the intervenor(s).

4. At the outset, we must express our deep anguish regarding the callous and casual manner in which the Respondent No.1 has been framing questions for the Common Law Admission Test (hereinafter referred to as, "CLAT"), an examination on the basis of which meritorious candidates get entry into the prestigious National Law Universities across the country.

5. This Court has on a previous occasion by way of a judgment in the case of ***Disha Panchal and Others v. Union of India through the Secretary and Others***[1]***,*** while dealing with a batch of petitions highlighting improper conduct of CLAT, observed thus:

> "**15.** We have dealt with the matter only from the stand point of how best to compensate the candidates who lost valuable time while undergoing test. We must record that we are not at all satisfied with the way the examination was conducted. The body which was given the task of conducting the examination was duty bound to ensure facilities of uninterrupted UPS and generator facility. The record indicates complete inadequacy on that point. We therefore direct Union of India in the Ministry of Human Resources and Development to appoint a Committee to look into the matter and take appropriate remedial

1 2018 INSC 553 : (2018) 17 SCC 278

> measures including penal action, if any, against the body which was entrusted with the task. The Committee so constituted shall also look into the aspect of having completely satisfactory arrangements in future so that no such instances are repeated or reoccur in coming years. **We must also observe that the idea of entrusting the task of monitoring the conduct of entire examination to different Law Universities every year also needs to be re-visited.** The agreement with the examination conducting body, which was placed on record indicates that as against the amount made over to such examination conducting body, the fees charged from the candidates are far in excess. The committee shall bestow consideration to all these aspects after having inputs from such sources as it may deem appropriate including Bar Council of India and make a detailed report to this Court within three months from today."
>
> (emphasis added)

6. It can thus be seen that this Court has constituted a committee to *inter-alia* look into the shortcomings in the conduct of CLAT. It can further be seen that this Court has specifically observed that the idea of entrusting the task of monitoring the conduct of the entire examination to different Law Universities every year also needs to be re-visited.

7. We are informed that though the said committee's report has been received, it has been placed before a Bench of this Court seized of WP(C) No. 600 of 2015 titled as "***Shamnad Basheer v. Union of India and Others***". The sole petitioner in the said matter, however, has passed away. We shall, accordingly, after dealing with the present matter pass an appropriate order in this regard.

8. Insofar as the present appeals are concerned, at the outset, we must state that in academic matters, the Courts are generally reluctant to interfere, inasmuch as they do not possess the requisite expertise for the same. However, when the academicians themselves act in a manner that adversely affects the career aspirations of lakhs of students, the Court is left with no alternative but to interfere.

9. From the impugned judgment and final order of the Division Bench of the High Court, it is clear that several questions and/or the answers thereto were found to be not suitable. The High Court had, therefore, passed an order with regard to various questions. However, in the present appeals, we are only concerned with six questions, i.e., **Question Nos. 56, 77, 78, 88, 115 and 116**. We shall deal with each question individually.

A. Question No. 56

10. The material provided alongwith Question No. 56 is as follows:

> "X. The 42nd Constitutional Amendment Act 1976 introduced the concept of environmental protection in an explicit manner into the Constitution though introduction of Article 48A and Article 51A(g). In many judgments, the Supreme Court ruled that both the State and its residents have a fundamental duty to preserve and protect their natural resources. The recent judgment obliquely makes way for an enforceable right, and a potential obligation on the state unless the same is overturned by an Act of Parliament.
>
> India is signatory of various international environmental conservation treaties under which India has the binding commitment to reduce carbon emission. During the COP 21, India signed Paris Agreement along with 196 countries, under which universally binding agreement was made to limit greenhouse gas emission to levels that would prevent global temperatures from increasing to more than 1.5 degree Celsius before the industrial revolution. India has committed to generating 50% of its energy through renewable resources and will generate 500 GW of energy from non-fossil fuels by 2030, reducing the carbon emission by 1 billion ton. Additionally, India has committed to achieve net zero carbon emission target by 2070.
>
> Supreme Court's March 21, 2024 verdict builds on the bulwark of jurisprudence in place since 1986, and, through various other judgments, the Supreme Court has recognized the right to clean environment along with right to clean air, water and soil free from pollution which is absolutely necessary for the enjoyment of life. Any disturbance with

these basic elements of environment would amount to violation of Article 21. It also establishes duty of the state to maintain ecological balance and hygienic environment. Although right to clear environment has existed, by recognizing the right against climate change it shall compel the states to prioritize environmental protection and sustainable development."

11. Question No. 56 and the answer options provided thereunder are as follows:

> "**56.** As per the aforementioned passage and decision of the Supreme Court:
>
> a. The fundamental duty to preserve and protect natural resources is upon the State only.
>
> b. Citizens alone have the fundamental duty to preserve and protect natural resources.
>
> c. Both the state and citizens have the duty to preserve and protect natural resources.
>
> d. State has the duty to maintain ecological balance and citizens have the right against climate change."

12. It can thus be seen that the answer option (a) that the fundamental duty to preserve and protect the natural resources is upon the State only, is totally wrong which is found to be so even on a perusal of the material provided.

13. Similarly, the answer option (b) that the citizens alone have the fundamental duty to preserve and protect natural resources, is equally wrong.

14. According to Respondent No.1, the answer option (d) that the State has the duty to maintain ecological balance and citizens have the right against climate change, is the correct option.

15. No doubt that if a candidate on a reading of the material provided and by applying logic and reason selects the answer option (d), it would be a correct answer.

16. However, before we reach a conclusion it will also be appropriate to refer to the answer option (c) which states that both the State and the Citizens have the duty to preserve natural resources.

17. Perusal of the first paragraph of the material provided by Respondent No.1 to answer Question No. 56 would reveal that it is stated in second sentence itself that in many judgments the Supreme Court ruled that both the State and its residents have a fundamental duty to preserve and protect their natural resources.

18. Shri Raj Shekhar Rao, learned Senior Counsel appearing for Respondent No.1, has attempted to justify the stand of Respondent No.1 by submitting that the phrase used in the second sentence is that "*it is the State and its residents*" who have a Fundamental Duty to protect and preserve their natural resources. According to Respondent No.1, therefore, the use of the word "citizens" as provided in answer option (c) is not appropriate and the only correct answer is option (d).

19. We are amazed that such a stand has been taken by Respondent No.1, which is expected to be led by scholars and experts in the field of legal education.

20. This Court, time and again, has emphasized that it is the duty of both the State and its citizens to protect and preserve the natural resources. We, therefore, fail to understand as to why a candidate who has marked answer option (c) should not be awarded the marks for this question.

21. Perusal of *paragraph 20* of the impugned judgment and final order passed by the Division Bench of the High Court would show that the High Court has come to the considered conclusion that option (d) is the only correct answer.

22. We, therefore, set aside the direction of the High Court *qua* Question No. 56 and further direct the Respondent No.1 to award positive marks to all the candidates who selected either answer option (c) or (d) and only those candidates who selected either answer option (a) or (b) should be given the negative marks in Question No. 56.

B. Question No. 77

23. Coming next to Question No. 77. The material provided for the said question is as follows:

> "XIII. The Contract Act 1872 deals with contract law in India, its rights, duties, and exceptions arising out of it. Section 2(h) of the Act gives us the definition of a contract,

which is simply an agreement enforceable by law. To understand the difference between void agreements and voidable contracts it is important to talk about sections 2(h), 2(a), 2(i), 2(d), 14, 16(3) and 15, 24-28 of the Indian Contract Act. Void agreements, are fundamentally invalid making them unenforceable by default.

These agreements cannot be fulfilled as they consist of illegal elements and they cannot be enforced even after subjecting it to both parties. However, in the case of voidable contract, the agreement is initially enforceable but it is later on denied at the option of either of the parties due to various reasons.

Unless rejected by a party, this contract will remain valid and enforceable. The party who is at the disadvantage due to any circumstance applicable to the contract has the ability to render the agreement void. A void agreement is void ab initio making it impossible to rectify any defects in it while voidable contracts can be rectified. In case of a void agreement, neither of the parties is subject to any compensation for any losses but voidable contracts have some remedies.

A valid agreement forms a contract that may again be either valid or voidable. The primary difference between a void agreement and voidable contract is that a void agreement cannot be converted into a contract."

23A. Question No. 77 and the options provided thereunder are as follows:

"**77.** An agreement made by an adult but involving a minor child where the signatory is a minor child himself, this agreement would be:

(a) A valid and enforceable agreement

(b) A voidable agreement

(c) A void agreement

(d) An agreement that cannot be enforced by the minor"

24. It is the contention of the Senior Counsel appearing on behalf of Respondent No.1, that even without having prior legal knowledge, upon reading of the material provided and by applying logic and reason, a candidate could have given the answer as answer option (b) i.e., a voidable agreement.

25. The Division Bench of the High Court has, however, in *paragraph 23* of the impugned judgment and final order come to the considered conclusion that to answer the said question, a candidate would require prior knowledge of law. The High Court, therefore, held Question No. 77 to be "Out of Syllabus" and directed that it be excluded and treated as withdrawn.

26. Even before us, it is sought to be urged by the learned counsel appearing on behalf of the Respondent No. 2 so also by the learned Senior Counsel/counsel appearing for the intervenors that answering the said question would not be possible unless a candidate has prior knowledge of law, specifically the Indian Contract Act, 1872. It is further contended that in the absence of such knowledge, it is not possible to give the correct answer to the said question.

27. It is clear that the modality that is adopted by Respondent No.1 in setting the question paper is one of providing basic information in the form of reading material which precedes the question or set of questions.

28. Perusal of the material provided for Question No. 77 would clearly reveal that if a candidate applies logic and reason, they would be able to make out a distinction between what is a void agreement, what is a voidable agreement and what is a valid and enforceable agreement.

29. A reading of the aforesaid material makes it amply clear that unless rejected by a party, a *voidable contract* will remain *valid and enforceable*. The party who is at a disadvantage due to any circumstance applicable to the contract has the ability to render the agreement *void*.

30. It is thus clear that an agreement made by an adult but involving a minor child where the signatory is a minor child himself, would not make such an agreement either valid and enforceable, or void or an agreement that cannot be enforced by the minor but it will make it a *voidable* agreement i.e., it will be rendered *void ab initio* when the minor who has signed it chooses to reject the same.

31. As such, we find that even without having any prior knowledge of law, upon appreciation of the material provided and by applying logic and reason, a candidate can arrive at the answer to Question No.77.

32. We, therefore, set aside the direction of the High Court *qua* Question No. 77 and further direct the Respondent No.1 to give positive marks to all those candidates who have given the answer as option (b) to the said question and all those candidates who have selected either option (a), (c) or (d) shall be given negative marks.

C. Question No. 78

33. Next is Question No. 78. The material provided for answering the said question is the same as that for Question No. 77.

34. Question No. 78 and the options provided thereunder are as follows:

> "**78.** Which of the following scenarios would most likely result in a void agreement?
>
> a. An agreement signed by someone under duress
>
> b. A contract with mutually agreed terms to sell a house.
>
> c. An agreement to pay 10 lakhs on getting a government job.
>
> d. A contract with a minor who understands the terms."

35. It is the contention of the learned counsel appearing on behalf of the Respondent No. 2 that the most appropriate answer is not option (c).

36. It is, however, the contention of the learned Senior Counsel appearing on behalf of Respondent No.1, that answer option (c) would be the correct answer.

37. The Division Bench of the High Court in *paragraph 25* of the impugned judgment and final order has also rejected the contentions raised therein with regard to the deletion of Question No. 78.

38. We are in agreement with the High Court that the answer option (c) is the correct answer for Question No. 78. We, therefore, do not interfere with the finding of the High Court insofar as Question No. 78 is concerned.

D. Question No. 88

39. Coming next to Question No. 88. The material provided for the said question is as follows:

> "Read the information carefully and answer the questions based on the seating arrangement:
>
> > "Ram, Shyam, Rohit, Mohit, Rohan, Sohan, Mohan, Rakesh and Suresh are sitting around a circle facing the centre. Rohit is third to the left of Ram. Rohan is fourth to the right of Ram. Mohit is fourth to the left of Suresh who is second to the right of Ram. Sohan is third to the right of Shyam. Mohan is not an immediate neighbour of Ram."

40. Question No. 88 and the options provided thereunder are as follows:

> "**88.** Who is second to the left of Rakesh?
>
> (a) Ram
>
> (b) Mohan
>
> (c) Mohit
>
> (d) Data inadequate"

41. We are informed that Respondent No.1 has itself deleted question No. 85, which reads thus:

> "**85.** What is Rakesh's position with respect to Rohan?
>
> (a) Eighth to the right of Ram
>
> (b) Fourth to the left
>
> (c) Fifth to the right
>
> (d) Fifth to the left"

42. It was the contention of the learned Senior Counsel appearing on behalf of the Respondent No.1 before the Division Bench of the High Court that the answer to Question No. 88 should be option (d).

43. The Division Bench of the High Court in *paragraph 33* of the impugned judgment and final order had decided not to interfere with the answer provided by Respondent No.1 to Question No. 88 i.e., answer option (d).

44. We, however, find that there is not a significant difference between Question No. 85 and 88. The material provided for Question No. 88 is also the same as that for Question No. 85. In our view, therefore, if the Respondent No.1 thought it fit to delete Question No. 85, it ought to have deleted Question No. 88 as well.

45. We, therefore, set aside the direction of the High Court *qua* Question No. 88 and further direct Respondent No.1 to delete Question No. 88.

E. Question Nos. 115

46. Next, we come to Question No. 115. The material provided for the said questions is as follows:

> "XXI. According to the estimates of the World Inequality Report 2022, in India, men earn 82 percent of the labour income, whereas women earn 18 percent of it. A woman agriculture field labourer makes Rs. 88 per day lesser than her male counterpart, according to the Ministry of Agriculture's data for 2020-21. While a man is paid Rs. 383 a day on an average, a woman makes a mere Rs. 294 a day. The gap in their daily wages is more than the cost of two kilograms of rice. This gap differs from State to State. Field laborers, for instance, make the most money in Kerala. While a man gets Rs. 789 per day, a woman is paid Rs. 537. While this is the highest amount paid to a woman labourer in a State, it is also Rs. 252 lesser than what her male counter part was paid. As of 2020-21, Tamil Nadu has the highest gender wage gap among agriculture field laborers at 112 per cent. It is followed by Goa (61 per cent) and Kerala. The wage gap in the lowest in Jharkhand and Gujarat (6 per cent), but the women laborers there get paid Rs. 239 and Rs. 247 per day, respectively.
>
> Men earn more than women across all forms of work, the gap greatest for the self-employed. In 2023, male self-employed workers earned 2.8 times that of women. In contrast, male regular wage workers earned 24% more than woman and male casual workers earned 48% more. The gender gap in earnings is still a persistent phenomenon. However, there are differences in trends. The gender gap has increased for self-employed workers, while falling for regular wage workers. Male regular wage workers earned

34% more than women from 2019 to 2022, with the gap falling to 24% in 2023."

47. Question No. 115 and the options provided thereunder are as follows:

> "115. If the wages paid to men working in agricultural sector in Goa are Rs. 335 on an average, what is the amount of wages paid to women in the region.
>
> (a) Rs. 204 approx.
>
> (b) Rs. 330 approx.
>
> (c) Rs. 239 approx.
>
> (d) None of these"

48. It can be seen that the Division Bench of the High Court, in *paragraph 44* of the impugned judgment and final order, came to the conclusion that as the Respondent No.1 had itself given a wrong option as the answer, marks shall be granted to only those candidates who had attempted the Question No. 115.

49. We, however, on a perusal of the material provided, find that for answering Question No. 115, the candidates will have to undergo a detailed mathematics analysis, which is not expected in an objective test.

50. We, therefore, set aside the direction issued by the Division Bench of the High Court *qua* Question No. 115 and further direct Respondent No.1 to delete Question No. 115.

F. Question No. 116

51. Last, we come to Question No. 116. The material provided for answering the said question is the same as that for Question No. 115.

52. Question Nos. 116 and the options provided thereunder are as follows:

> "116. With reference to the information in Ques. 115 above, which region of the below mentioned states offers the least wages to the women workers in any sector.
>
> (a) Gujarat
>
> (b) Goa
>
> (c) Kerala
>
> (d) Jharkhand"

53. Perusal of Question No. 116 reveals that the said question is based on the information provided in Question No. 115. Therefore, if Question No. 115 is deleted, Question No. 116 must also be deleted as a necessary corollary.

54. The Division Bench of the High Court, however, found that there was a cross referencing error in Question No. 116 in Sets 'B', 'C' and 'D' only. It, therefore, in *paragraph 46* of the impugned judgment and order directed that all candidates with Sets 'B', 'C' and 'D' be granted marks. The same relief was not granted to candidates with Set 'A' since Set 'A' did not have this error.

55. Shri Rao, learned Senior Counsel for Respondent No.1 submits that the finding of the Division Bench of the High Court is correct but the consequential direction is not appropriate. It is further fairly submitted that Respondent No.1 is willing to withdraw the question across all four sets so as to ensure that all candidates are scored out of the same total number of questions.

56. We find that in order to put all the candidates on equal footing, Question No. 116 be deleted from all the Sets as well.

57. We, therefore, set aside the direction of the Division Bench of the High Court *qua* Question No. 116 and further direct Respondent No.1 to delete Question No. 116.

58. In the result, we dispose of the appeals and all the intervention/ impleadment application(s), by modifying the judgment and final order dated 23rd April 2025 passed by the Division Bench of the High Court to the above extent.

59. We direct the Respondent No.1 to amend the answer key, revise the marksheet and re-publish/notify the final list of candidates forthwith and commence with the counselling within 2 weeks from today.

60. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 69 : 2025 INSC 739

Smt. Shaifali Gupta
v.
Smt. Vidya Devi Gupta & Ors.

(Special Leave Petition (Civil) No. 4673 of 2023)

20 May 2025

[Pankaj Mithal* and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Issue arose as to the correctness of the order passed by the court of first instance as well as the High Court rejecting the application u/Ord.VII r.11 CPC; and whether the property in respect of which the suit, claim or action has been brought about is a benami property or not.

Headnotes†

Code of Civil Procedure, 1908 – Ord.VII r.11 – Benami Transaction (Prohibition) Act, 1988 – ss.2(8), 2(9), 4 – Rejection of plaint – Benami property – Suit for partition, possession, declaration, mandatory and permanent injunction and for accounting with regard to the properties alleged to be family properties, by the mother and younger son against the elder son and his family – Some of the properties were sold by the defendant no.2-wife of the elder son in favour of defendant nos.5 and 6-subsequent purchasers and as such the sales were alleged to be void – In the suit, the subsequent purchasers moved an application u/Ord.VII r.11 contending that the suit was not maintainable in view of the provisions of Benami Act – Court of first instance as well as High Court rejected the application – Challenge to, by defendant no.2 and subsequent purchasers:

Held: Defendant no.2 neither moved application u/Ord.VII r.11 nor filed any revision challenging the order of the court of first instance, thus, not a person aggrieved and cannot be permitted to assail the impugned orders – She acquiesced to the jurisdiction of the trial court and by her conduct accepted the order of the court of first instance and chosen to contest the suits on merits – Defendant nos.5 and 6 are only subsequent purchasers of some

* Author

of the properties and cannot claim any knowledge of the nature of the property in the hands of the original owners – They are not the right person to move application u/Ord.VII r.11 for the rejection of the plaint as allegedly barred by s.4 of the Benami Act – Plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business – Properties are not described as benami in the name of any member of the family – From the plaint reading, the suit properties cannot ex-facie be held to be benami properties in respect whereof the suit may not be maintainable in view of s.4 – It is only where the property is benami and does not fall within the exception that a suit may be said to be barred – Issue whether the property is benami and is not covered by the exception, is to be decided on the basis of evidence and not on mere averments contained in the plaint – Defendants have to adduce evidence to prove the property to be benami – Courts below did not commit any error of law in rejecting the application u/Ord.VII r.11 – Plea that plaint is also hit by s.14 of 1956 Act was never raised and argued before either of the courts below, thus the defendants cannot be permitted to raise such a plea for the first time in the Special Leave Petition – s.14 does not bar or prohibit a suit in respect of such a property, thus, in the absence thereof, the suit plaint is not liable to be rejected as barred by law – Courts below rejected the application filed by the subsequent purchasers u/Ord. VII r.11 and have refused to reject the plaint as barred by any statute, meaning thereby the parties at liberty to contest the suit on merits – In view thereof, the defendants have not suffered any prejudice and no miscarriage of justice so as to permit them to avail the discretionary jurisdiction u/Art.136 – Constitution of India – Art.136 – Hindu Succession Act, 1956 – s.14. [Paras 17, 18, 25-32]

Case Law Cited

Popat and Kotecha Property v. State Bank of India Staff Association **[2005] Supp. 2 SCR 1030 : (2005) 7 SCC 510;** *Pawan Kumar v. Babu Lal* **[2019] 5 SCR 1141 : (2019) 4 SCC 367 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Benami Transaction (Prohibition) Act, 1988; Hindu Succession Act, 1956.

Smt. Shaifali Gupta v. Smt. Vidya Devi Gupta & Ors.

List of Keywords

Maintainability of suit; Benami transaction; Joint Hindu Family property; Acquiesced to jurisdiction of trial court; Benami property; Discretionary jurisdiction; Rejection of plaint; Subsequent purchasers; Acquiesced to the jurisdiction; Subsequent purchasers; Joint Hindu Family properties.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4673 of 2023

From the Judgment and Order dated 26.09.2022 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in CR No. 324 of 2019

With

Special Leave Petition (Civil) No. 4674 of 2023

Appearances for Parties

Advs. for the Petitioner:
Navin Pahwa, Sr. Adv., Rajul Shrivastav, Ms. Charu Ambwani, Mohit D. Ram, Anubhav Sharma.

Advs. for the Respondents:
Kavin Gulati, Apoorv Kurup, Navin Pahwa, Sr. Advs., Sudipto Sircar, Anuj Tyagi, Ms. Akshita Agarwal, Mohit D. Ram, Anubhav Sharma, Rajul Shrivastav, Ms. Charu Ambwani.

Judgment / Order of the Supreme Court

Judgment

Pankaj Mithal, J.

1. These two special leave petitions have been preferred, one by the contesting defendant No.2 to the suit and the other by one of the subsequent purchasers (defendant No.5) of some of the suit properties against the rejection of an application under Order VII Rule 11 of Code of Civil Procedure[1] by the court of first instance as well as the High Court in revision.

1 *In short 'CPC'*

2. Special Leave Petition (C) No.4673/2023[2] preferred by the main contesting defendant to the suit is taken up as the lead case, therefore, the facts as stated therein and the parties as described therein shall be narrated and taken as a base.

3. The two plaintiffs i.e. the mother and the son being Smt. Vidya Devi Gupta (plaintiff No.1) and Shri Sudeep Gupta (plaintiff No.2) instituted a Regular Suit No.630A/2018 against the other son of plaintiff No.1 i.e. Sandeep Gupta (defendant No.1) and his wife Smt. Shaifali Gupta (defendant No.2). In the said suit, the two sons of the defendant No.1 namely Siddharth Gupta and Shantanu Gupta were arrayed as defendant Nos.3 and 4. The wife of the plaintiff No.2, Smt. Shalini Gupta and his son Sankalp Gupta were added as defendant Nos.8 and 9. In addition to the above family members, Deepak Lalchandani and Surya Prakash Mishra were also arrayed as defendant Nos.5 and 6 being the subsequent purchasers of some of the properties mentioned in the plaint.

4. The aforesaid suit is for partition, possession, declaration, mandatory & permanent injunction and for accounting with regard to the properties alleged to be the family properties purchased out of the funds of the joint family or derived from the income from the joint family business. In other words, the suit is basically between the family members. The mother and one son on one side and the other son and his family on the other side. The children of both the sons are non-active or passive parties.

5. According to the plaint allegations, the father of the two sons referred to above i.e. Shanti Prakash Gupta was into a tailoring business. Gradually his tailoring business came to an end. He died in the year 1977. He had no immovable or movable property at the time of his death.

6. In the year 1982, the two sons jointly started a tailoring business from a rented shop in New Market, TT Nagar, Bhopal, in the name of 'Himalaya Tailors'. This business was started by them by selling some jewellery of their mother i.e. plaintiff No.1. The said business was carried on by both of them together but the younger brother (plaintiff No.2) was appointed and declared to be the sole proprietor.

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2 *Smt. Shaifali Gupta vs. Smt. Vidya Devi Gupta & Ors.*

7. The family, sometime in 1990, purchased a house in Harshwardhan Nagar and they started residing in it. They lived there jointly at least up to the year 2011. It appears that the elder son (defendant No.1) along with his family started residing in a house in Shalimar Park which was jointly purchased by the family from the income of the joint family business in the year 2014.

8. Side by side the tailoring business, the elder son (defendant No.1) had started a fabric business in the name of Hemi Textiles in the year 1986.

9. A shop was purchased by the family in the New Market, TT Nagar, Bhopal, from the combined income of the family business of Himalaya Tailors and the Hemi Textiles.

10. It is averred in the plaint that from the original joint family business of 'Himalaya Tailors', both the parties purchased several properties in the name of different persons of the family. All the properties were purchased out of the joint family funds or the income derived from the joint family business. It was categorically asserted that the properties have been purchased in the name of the plaintiffs and the defendants or the members of the family and were the joint properties of the Joint Hindu Family. The said properties were described in paragraph 6 of the plaint. Some of the properties mentioned in paragraph 6 of the plaint at Serial Nos.19, 20 and 21 were sold by Shaifali Gupta (defendant No.2), wife of the elder son, in favour of defendant Nos.5 and 6 and as such it has been alleged that the said sales are void.

11. It is on the basis of the above averments that the suit for declaration, partition, injunction in respect of the suit properties was instituted by the mother (plaintiff No.1) and the younger son (plaintiff No.2). In the said suit, the subsequent purchasers defendant Nos.5 and 6 moved an application purported to be under Order VII Rule 11 CPC contending that the suit is not maintainable in view of the provisions of Benami Transaction (Prohibition) Act, 1988[3]. It is made clear that no such application was filed by the main contesting defendants to the suit i.e. by the elder brother or his family members. They never alleged that the suit is not maintainable or is barred by any provision of the statute.

3 *Hereinafter referred to as 'the Benami Act'*

12. The above application was contested by the plaintiffs and a reply was filed stating that the Benami Act (as amended in 2016) came into force w.e.f. 11.01.2016 and all the family properties were purchased prior to the above date and as such the suit would not be hit by the said Act. The suit is not for adjudication of any matter in relation to *benami* transaction as envisaged in the Benami Act rather it is a suit essentially under the Hindu Succession Act, 1956[4]. The suit properties are Hindu Joint Family properties and the relief claimed in the suit is purely in respect of the said properties and as such it does not stand prohibited by the Benami Act. The said Act nowhere bars the institution of a suit for a partition, declaration or injunction in connection with the properties belonging to the Hindu Joint Family. Moreover, the objections raised by defendant Nos.5 and 6 to the maintainability of the suit are mixed questions of fact and law and are to be considered only on the basis of the pleadings and the evidence of the parties and not at the threshold on the basis of the plaint allegations alone.

13. The court of first instance by the order impugned dated 25.02.2019 after elaborately discussing the plaint averments, came to the conclusion that the issue whether suit properties are the Joint Hindu Family properties or are the properties of the individual family members and whether they are liable for partition, is a question dependent upon facts to be adjudicated upon after the parties have adduced evidence. On the averments made in the plaint, the suit is not barred by any law and in view of the judgment in the case of ***Popat and Kotecha Property vs. State Bank of India Staff Association***[5], the provisions of Order VII Rule 11 CPC are not attracted. Accordingly, application under Order VII Rule 11 CPC was rejected.

14. Aggrieved by the aforesaid decision, the subsequent purchasers i.e. defendant Nos.5 and 6 filed Civil Revision No.324/2019. The said revision has been dismissed by the impugned judgment and order dated 26.09.2022 holding that the trial court has rightly held that the issue as to whether the properties belong to the Joint Hindu Family properties or they have been purchased from the joint hindu family funds is to be proved by the parties on the basis of evidence. The

4 Hereinafter referred to as 'the Act'

5 (2005) 7 SCC 510

plaint of the suit is not liable to be rejected as from the averments made therein it cannot be said that it is barred by any statutory provision of law.

15. The decision of the court of first instance rejecting the application under Order VII Rule 11 CPC was not challenged by the main contesting parties i.e. the elder brother and his wife (defendant Nos.1 and 2) or their children.

16. After having failed in the two courts below in getting the plaint rejected in exercise of powers under Order VII Rule 11 CPC, Deepaklal Chandani (defendant No.5) alone has preferred Special Leave Petition (C) No.4674/2023 whereas Special Leave Petition (C) No.4673/2023 has been preferred by the Shaifali Gupta (defendant No.2).

17. At the very outset, it is pertinent to mention that Shaifali Gupta (defendant No.2) had neither moved application under Order VII Rule 11 CPC for the rejection of the plaint nor she has filed any revision challenging the order of the court of first instance rejecting such an application moved by the defendant Nos.5 and 6. Therefore, she is not a person aggrieved by the rejection of the application under Order VII Rule 11 and cannot be permitted to assail the impugned orders. She has acquiesced to the jurisdiction of the trial court and has by her conduct accepted the order of the court of first instance and chosen to contest the suits on merits.

18. The defendant Nos.5 and 6 are only subsequent purchasers of some of the properties. They cannot claim any knowledge of the nature of the property in the hands of the original owners. They cannot have any personal knowledge as to if the said properties in the hands of the original owners are Joint Hindu Family property or are their individual properties or they have been acquired *benami* by the family members or are the properties possessed by the female hindu in absolute sense. In such a situation, they are not the right person to move application under Order VII Rule 11 CPC for the rejection of the plaint as allegedly barred by Section 4 of the Benami Act.

19. We have heard Shri Navin Pahwa, learned senior counsel for the petitioner(s) and Shri Kavin Gulati, learned senior counsel for the respondents.

20. The submission of learned counsel for the defendants is twofold. First, the suit is barred by Section 4 read with Section 14 of the

Act, as some of the suit properties are in the exclusive name of the defendant No.2 and as such would be treated in entirety as her personal properties and would not be amenable to partition. Secondly, the suit is hit by Section 4 of the Act. Lastly, since the properties stand exclusively in the name of different persons, no party can claim joint ownership or right of partition in respect thereof.

21. In response to the above argument, Shri Kavin Gulati, learned senior counsel for the plaintiffs, submitted that the bar of Section 4 read with 14 of the Act, was never raised by the defendants in their application under Order VII Rule 11 CPC and the said point was not argued on their behalf either before the court of first instance or before the High Court. Therefore, they are not entitled to raise the said plea for the first time before this Court. Moreover, the above provisions do not bar a suit of such a nature in respect of joint family property in any manner. Secondly, the suit is also not barred by Section 4 of the Act, as according to the plaint averments, all the properties were purchased from the nucleus of the joint family, may be in the exclusive name of some of the family members. They fall in the exempted category as per Section 2(9)(A) Exception (ii) of the Benami Act.

22. He further submitted that upon the simple reading of the plaint allegations, the suit is not barred by any provision of law and, therefore, Order VII Rule 11 (d) does not stand attracted so as to reject the plaint. The defence or the issues raised by the defendants are factual in nature which are dependent upon the facts to be proved *inter se* the parties on the basis of the evidence to be adduced.

23. Section 4 of the Benami Act bars the suit, claim or action in respect of a property held *benami* by person at the behest of the person claiming to be its true owner. It reads as under:

> ***"4(1).*** *No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property."*

24. The above provision bars an action in respect of 'property held *benami*'. However, whether the property in respect of which the suit, claim or action has been brought about is a *benami* property or not, is the issue of prime consideration.

25. The plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business. The properties are not described as *benami* in the name of any member of the family. Therefore, from the plaint reading, the suit properties cannot *ex-facie* be held to be *benami* properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act.

26. The Benami Act further defines '*benami* property' and '*benami* transaction' under Sections 2 (8) and 2 (9) of the said Act. *Benami* property is the property which is the subject matter of *benami* transaction whereas *benami* transaction is a property held by a person in respect whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person.

27. In such circumstances, whether a property is a *benami,* has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property if *benami* falls in the exception. It is only where the property is *benami* and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is *benami* and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be *benami*.

28. In ***Pawan Kumar vs. Babu Lal***[6], a similar issue arose before this Court in a matter concerning rejection of plaint under Order VII Rule 11 (d) CPC. This Court held that for rejecting a plaint, the test is whether from the statement made in the plaint it appears without doubt or dispute that the suit is barred by any statutory provision. Where a plea is taken that the suit is saved by the exception to the *benami* transaction, it becomes the disputed question of fact which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order VII Rule 11 CPC.

6 (2019) 4 SCC 367

29. The ratio of the above case squarely applies to the facts of the case at hand. Accordingly, in our opinion, the courts below have not committed any error of law in rejecting the application under Order VII Rule 11 CPC on the above score.

30. As regard the contention that the plaint is also hit by Section 14 of the Act, it is important to point out that no such specific plea was taken by the defendants in the application under Order VII Rule 11 CPC. Such a plea was never raised and argued before either of the courts below. There is no finding by any court on the above aspect. Therefore, it has rightly been submitted by the counsel for the plaintiff that the defendants cannot be permitted to raise such a plea for the first time in the Special Leave Petition without there being any foundation to that effect.

31. More importantly, Section 14 of the Act simply provides that the property possessed by a female Hindu shall be held by her as a full owner. It does not bar or prohibit a suit in respect of such a property. Therefore, in the absence of any bar contained in the above provision, the suit plaint is not liable to be rejected as barred by law.

32. The courts below have rejected the application filed by defendant Nos.5 and 6 under Order VII Rule 11 CPC and have refused to reject the plaint as barred by any statute. It means that the parties are at liberty to contest the suit on merits. They have right to get the necessary relevant issues framed in the suit including that of suit being barred by any provision of law and if any such issue is framed, it will be open for the court to consider the same on merits after the parties have led evidence. In such a situation, the defendants have not suffered any prejudice and there is no miscarriage of justice so as to permit them to avail the discretionary jurisdiction of this Court under Article 136 of the Constitution of India.

33. Accordingly, we do not deem it necessary to entertain these Special Leave Petitions and the same are dismissed.

Result of the case: Special Leave Petitions dismissed.

[†]*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 79 : 2025 INSC 756

Pinky Meena
v.
The High Court of Judicature for Rajasthan at Jodhpur & Anr.

(Civil Appeal No. 7091 of 2025)

22 May 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the appellant was wrongly discharged from service as a Civil Judge on the ground of non-disclosure of past government service as a Teacher and having obtained LL.B. and B.Ed degree simultaneously, and LL.M. degree as a regular student while being in service as a teacher.

Headnotes†

Rajasthan Judicial Service Rules, 2010 – rr.14, 44-46 – Appellant was discharged from service as a Civil Judge on the ground of non-disclosure of past government service as a Teacher – Sustainability:

Held: Non-disclosure of past government service cannot be a ground for discharging the appellant – On the date of interview, the appellant was no longer a government servant as she had tendered her resignation much prior to the interview – Thus, the question of disclosing the past government service was not a material irregularity or a serious misconduct for which she ought to be discharged from service especially when she has successfully completed her training without any blemish – Further, misconduct, if any, in respect of obtaining LL.B. and B.Ed degree simultaneously or in respect of LL.M. degree related to the service period prior to being a Judicial Officer when she was serving as a Teacher with the Government of Rajasthan – Show cause notice and discharge order quashed – Appellant to be reinstated in service with all consequential benefits – Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. [Paras 17, 18, 27, 32]

Service Law – Probation – Termination from service – On account of unsuitablility for the job *vis-à-vis* owing to a

* Author

misconduct – Effect – Duty of Courts – Discussed – Articles 14, 16 – Rajasthan Judicial Service Rules, 2010 – rr.14, 44-46. [Paras 24, 26]

Judiciary – Greater participation of women in judiciary, emphasized – Importance of advancing women's greater participation in the judiciary, stated. [Paras 28- 30]

Case Law Cited

Shamsher Singh v. State of Punjab **[1975] 1 SCR 814 : (1974) 2 SCC 831;** *Raj Kumar v. Union of India* **[1968] 3 SCR 857;** *Rajasthan Rajya Vidyut Prasaran Nigam Ltd. v. Anil Kanwariya* **[2021] 7 SCR 710 : (2021) 10 SCC 136;** *Hari Singh Mann v. State of Punjab,* **AIR 1974 SC 2263;** *State of Punjab and another v. Sukh Raj Bahadur* **[1968] 3 SCR 234;** *H.F. Sangati v. Registrar General, High Court of Karnataka* **[2001] 2 SCR 83 : (2001) 3 SCC 117;** *Rajesh Kohli v. High Court of Jammu & Kashmir and others* **[2010] 11 SCR 699 : (2010) 12 SCC 783;** *Rajasthan High Court, Jodhpur v. Akashdeep Morya & Anr.,* **2021 INSC 485 : [2021] 10 SCR 723;** *Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation* **[2007] 10 SCR 1124 : (2007) 10 SCC 71 – referred to.**

List of Acts

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958; Rajasthan Judicial Service Rules, 2010; Constitution of India.

List of Keywords

Rajasthan Judicial Service (RJS); Civil Judge and Judicial Magistrate; Discharge from service; Non-disclosure of past government service; Not a material irregularity or a serious misconduct; Discontinued from service; Termination from service; Government Teacher; Teacher Grade–II; Education Department, Government of Rajasthan; No longer a government servant; Tendered resignation much prior to the interview; Probationer; Probation period; Suppression of material information; Misconduct; LL.B. and B.Ed degree obtained simultaneously, Degree obtained in the same year; LL.M. degree; University of Rajasthan; Judicial Officer; No Objection Certificate (NOC); Show cause notice and discharge order quashed; Termination *simpliciter*; Full Court; Reinstatement in service with consequential benefits; Principles

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of natural justice violated; Judiciary; Women's greater participation in the judiciary; Gender equality; Representation of women in the judiciary.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7091 of 2025

From the Judgment and Order dated 24.08.2023 of the High Court of Judicature for Rajasthan at Jaipur in DBCWP No. 6752 of 2020

Appearances for Parties

Advs. for the Appellant:
P.S.Patwalia, Sr. Adv., Mayank Jain, Parmatma Singh, Madhur Jain, Ms. Aakriti Dhawan, Arpit Goel.

Advs. for the Respondents:
Ms. Aishwarya Bhati, ASG, Mukul Kumar, Ms. Anupriya Srivastava, S. Udaya Kumar Sagar, Tushar Singh.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. The present appeal is arising out of order dated 24.08.2023 passed in D.B.Civil Writ Petition No. 6752 of 2020 by the High Court of Judicature for Rajasthan Bench at Jaipur (hereinafter referred to as "High Court") dismissing the writ petition preferred by the appellant. The High Court by way of the aforesaid order has declined relief to the appellant against show cause notice dated 17.02.2020 and the discharge order dated 29.05.2020.

3. The facts of the case reveal that the appellant before this Court is holding a degree in Bachelor of Arts, Bachelor of Education, Bachelor of Laws and Masters in Law, and was serving as Teacher Grade–II in the Education Department, Government of Rajasthan with effect from 30.12.2014. The facts further reveal that an advertisement was issued by the High Court inviting applications for the post of Civil Judge and Judicial Magistrate on 18.11.2017. Pursuant to her

application for the post of Civil Judge and Judicial Magistrate, she was selected for the post in question. The appointment order was issued on 11.02.2019 and the appellant joined as a trainee RJS on 06.03.2019, and completed her training successfully on 07.03.2020. Vide order dated 06.03.2020, the appellant was kept under Awaiting Posting Order ("APO") and later her headquarter was changed vide order dated 23.03.2020 from Jodhpur to District and Sessions Judge, Jaipur Metro. A notice was issued to her on 17.02.2020 directing her to furnish a pointwise explanation to certain queries raised by the High Court and a reply was submitted by her on 02.03.2020. The show cause notice was issued under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and an Inquiry Report was also submitted in the matter. The Inquiry Report was placed before the Full Court of the High Court, and the Full Court arrived at a conclusion not to continue the appellant in service as she was a probationer and no certificate in respect of completion of probation period was issued by the High Court. The appellant being aggrieved by the order discharging her from service dated 29.05.2020 preferred a writ petition before the High Court and the High Court has dismissed the same.

4. The show cause notice issued by the respondent sought explanation from the appellant on five counts which are detailed as under:

> *"a) While studying in LL.B. first year, the petitioner also obtained degree of B.Ed. in the same year, thus fraudulently succeeding in showing attendance in both the courses. The contention of the petitioner is that she did not obtain the degree of LL.B and B.Ed. in the same year. As per the Ordinance No.168A of the Ordinance Handbook of Rajasthan University, a candidate cannot appear in two main examinations in the same year. As per the petitioner, LL.B First Year Examination is not main examination for obtaining the degree of LL.B.*
>
> *b) The petitioner while being in Government job as a Teacher did her LL.M. and again fraudulently succeeded in showing attendance in both the courses. The petitioner has given the explanation that she did not show her attendance fraudulently at two places simultaneously because generally no regular classes are held for LL.M. in the University.*

c) The petitioner concealed the fact of her employment in Government job as a Teacher in the checklist submitted at the time of interview of RJS. To this the petitioner has given her explanation to the effect that, there were no columns in Checklist for Interview wherein she was required to say that she was employed in Government service. The petitioner submitted that she had filled her checklist on 02.11.2018, whereas the petitioner submitted her resignation from the government service on 25-10-2018 and had stopped reporting to service.

d) The petitioner did not obtain any permission or 'No Objection Certificate' from the Education Department for appearing in the RJS Examination. To this the petitioner has given explanation that there is no provision in RJS Rules to obtain prior permission from the employer for appearing in RJS examination.

e) The petitioner upon selection in RJS concealed this information from the High Court as well as from Education Department and joined the judicial services after resignation on medical grounds. To this the petitioner has explained that as on the date of joining RJS, the petitioner was not in Government service, therefore, no information was required to be furnished by the petitioner."

5. The aforesaid allegations reveal that the appellant while in service of the Education Department of the State of Rajasthan obtained LL.B. and B.Ed degree in the same year, obtained LL.M. degree while being in service as a teacher showing her attendance as a regular student, and did not obtain permission from the employer while participating in the RJS examination meaning thereby No Objection Certification was not obtained by her from the State Government. It was also alleged that she concealed her resignation from government service while joining as a Civil Judge.

6. Learned counsel for the appellant has vehemently argued before this Court that so far as the allegation in respect of completing LL.B. and B.Ed courses together is concerned, misconduct, if any, was committed by the appellant while serving the Education Department and not while on probation in the judicial service, but the Education Department has not taken any action in the matter and the same

cannot be a ground to discharge her as a Civil Judge. Learned Senior Counsel for the appellant has also argued before this Court that the appellant at the relevant point of time when she submitted her application form was no longer in service in the Education Department of the State of Rajasthan and on the contrary, she has successfully completed her probation period without any blemish. Learned Senior Counsel has further argued that the appellant had resigned from the government job while joining the Rajasthan Judicial Service and in case the order is not set aside, she will be rendered jobless. It has also been argued that she is a tribal girl and has proved her worth by clearing the Rajasthan Judicial Service examination, hence, no purpose is going to be served by throwing her out especially when she has completed her training with flying colours.

7. Learned Senior Counsel has vehemently argued before this Court that a show cause notice was certainly issued to the appellant and a detailed inquiry also took place in the matter which was conducted by the Registrar (Vigilance) and the said inquiry took place behind the back of the appellant without appointing a Presenting Officer or without giving any chance to the appellant to explain before the Inquiry Officer; no effective hearing was afforded to the appellant nor the inquiry report was furnished to the appellant.

8. Learned Counsel has placed reliance on ***Shamsher Singh Vs. State of Punjab*** *1974 (2) SCC 831* to contend that the order discontinuing the services of the appellant is a stigmatic order as it was based upon an inquiry report holding the appellant guilty of the alleged misconduct. The order is violative of principles of natural justice and fair play as well as violative of Article 311 of the Constitution of India.

9. Learned Senior Counsel has further argued before this Court that the present case is not a case where the appellant has suppressed material information relating to any criminal incidents. He has drawn the attention of this Court towards the application form submitted by the appellant which is on record and his contention is that on the date the form was submitted by the appellant, she was not in government service. A prayer has been made by the appellant for setting aside the order of discharge as well as the order passed by the High Court of Rajasthan.

10. The Respondent/High Court of Judicature for Rajasthan at Jodhpur has filed a detailed and exhaustive reply and on oath has stated that

the appellant has pursued B.Ed and LL.B. degree simultaneously which is not permissible as per the provisions of Ordinance 168-A and Ordinance 168-B of the Hand Book of University of Rajasthan and, therefore, the appellant has misconducted herself. The respondents have admitted the factum of issuance of advertisement for the post of Civil Judge cadre on 18.11.2017 and have stated that the requirement of obtaining 'No Objection Certificate' ("NOC") from the employer was a necessary requirement and the appellant did not obtain an NOC before joining as a Civil Judge.

11. The respondents have further stated that the appellant while serving as a Government Teacher has pursued LL.M. from 2015 to 2017 and obtained degree from University of Rajasthan as a regular student without obtaining permission from the Education Department, and therefore, she has again misconducted herself.

12. The respondents have stated that a fact finding report was prepared by the Registrar (Vigilance) after seeking an explanation from the appellant and the allegations levelled in the show cause notice were established in the inquiry report. The respondents have further stated that the appellant has failed to disclose her earlier status of a government teacher in the application form and, therefore, the Full Court was justified in passing a resolution to discontinue her services and consequently, the order of discharge was issued in the matter.

13. The respondents have placed heavy reliance on Rules 44, 45, and 46 of the Rajasthan Judicial Service Rules, 2010, to contend that the appellant was a probationer and her probation period has neither been extended nor has she been confirmed rightly by the respondents as the Full Court has held that she is unfit for confirmation. The respondents have also placed reliance upon Rule 14 of the Rajasthan Judicial Service Rules, 2010, which deals with "*Employment by irregular or improper means".* The respondents have further placed reliance on ***Raj Kumar Vs. Union of India*** *(1968) 3 SCR 857;* ***Rajasthan Rajya Vidyut Prasaran Nigam Ltd. Vs. Anil Kanwariya*** *(2021) 10 SCC 136;* ***Hari Singh Mann Vs. State of Punjab*** *AIR 1974 SC 2263;* ***State of Punjab and another Vs. Sukh Raj Bahadur*** *(1968) 3 SCR 234;* ***and H.F.Sangati Vs. Registrar General, High Court of Karnataka*** *(2001) 3 SCC 117;* ***Rajesh Kohli Vs. High Court of Jammu & Kashmir and others*** *(2010) 12 SCC 783;* ***and Rajasthan High Court, Jodhpur Vs. Akashdeep Morya & Anr.*** *2021 INSC 485* and prayed for dismissal of the writ petition.

14. Heard learned counsel for the parties at length and perused the case file thoroughly.

15. The undisputed facts of the case reveal that the appellant belongs to the Scheduled Tribe category and holds a Bachelor degree in Arts, Bachelor degree in Law, Bachelor degree in Education and Master's degree in Law. The appellant started her service career on 30.12.2014 by joining as a Government Teacher Grade-II in the Education Department of the Government of Rajasthan. The advertisement was issued on 18.11.2017 inviting applications for the Rajasthan Judicial Service Examination – 2017 and the appellant did submit her application in the prescribed form for the post in question. The appellant was successful in the preliminary examination and it is noteworthy to mention here that the appellant was also suffering from lymphadenopathy tuberculosis during this period. She was successful in the main examination as well and thereafter, was called for the interview on 09.10.2018. The appellant submitted her resignation vide letter dated 25.10.2018 from the post of Grade-II Teacher which was accepted on 28.12.2018. The appellant, at the time of interview, submitted a check list of documents provided by the Deputy Registrar (Examination) of the Rajasthan High Court, on 02.11.2018 and the appellant on the said date had resigned from her employment and, therefore, she has not mentioned about her being in government service in the check list. The final result was declared on 04.11.2018 declaring the appellant as a successful candidate.

16. Unfortunately, one Mr. Abhishek Verma filed a complaint against the appellant before the Rajasthan High Court, Jodhpur and this was the triggering factor for the entire action against the appellant herein. The appellant was appointed as a Civil Judge and Judicial Magistrate by an order dated 11.02.2019 on probation for a period of two years and she successfully completed one year RJS induction training from 06.03.2019 to 07.03.2020. Again, a complaint was filed by one Mr. Ram Niwash Meena on 22.03.2019 against the appellant before the High Court of Judicature for Rajasthan at Jodhpur and based upon the complaint of Mr. Ram Niwash Meena, Registrar (Vigilance) issued a show cause notice on 17.02.2020. The appellant did submit her reply to the show cause notice and an inquiry was held *without* participation of the appellant; however, the inquiry officer granted a personal hearing to the appellant. The appellant was not issued any

posting order and finally the Full Court based upon the said inquiry report arrived at a conclusion to discontinue the appellant from service by holding that she is not fit for confirmation in the Rajasthan Judicial Service and finally a discharge order was issued against her on 29.05.2020. Against the discharge order, the appellant filed a writ petition before the High Court, however, the same was dismissed which is impugned before this Court.

17. This Court has carefully gone through the show cause notice dated 17.02.2020 issued to the appellant and a bare perusal of the same establishes that misconduct, if any, in respect of obtaining LL.B. and B.Ed degree simultaneously relates to the service period prior to being a Judicial Officer. Similarly, in respect of LL.M. degree also, she was not a Judicial Officer and she was serving as a Teacher Grade-II in the Education Department of Government of Rajasthan. So far as the allegation with regarding to suppression of material information regarding past government service, the appellant submitted resignation on 25.10.2018 from the post of Teacher Grade-II and on the date of interview i.e. on 02.11.2018, she was required to furnish certain information as per the check list and it is a fact that on the date of interview, she was no longer a government servant as she had tendered her resignation and in those circumstances, there is certainly an omission on the part of the appellant in not mentioning about her past record of government service.

18. This Court is of the considered opinion that as the appellant had submitted her resignation on 25.10.2018 much prior to her interview, which was conducted on 02.11.2018, the question of disclosing the past government service is certainly not a material irregularity or a serious misconduct for which she ought to be discharged from service especially when she has successfully completed her training without any blemish. Another important aspect of the case is that the appellant was suffering from lymphadenopathy tuberculosis since March 2018, and she was admitted to the hospital on and off and, therefore, the alleged suppression should not come in her way leading to discharge from service. This is certainly not a case where the appellant has suppressed criminal antecedents, which may materially affect her commitment to the judiciary.

19. The appellant has not submitted an NOC from the employer and an explanation has rightly been furnished by the appellant before

this Court as well as the Inquiry Officer that at the relevant point of time when she appeared for the interview and when the result was declared, she had submitted her resignation. In the considered opinion of this Court, non-disclosure of past government service cannot be a ground for discharging the appellant.

20. Rules 44, 45 and 46 of the Rajasthan Judicial Service Rules reads as under:

> *"**44. Probation.**- All persons appointed to the service in the cadre of Civil Judge and District Judge by direct recruitment shall be placed on probation for a period of two years:*
>
> *Provided that such of them as have previous to their appointment to the service officiated on temporary post in the service may be permitted by the Appointing Authority on the recommendation of the Court to count such officiation or temporary service towards the period of probation.*
>
> ***45. Confirmation**.- (1) A probationer appointed to the service in the cadre of Civil Judge shall be confirmed in his appointment by the Court at the end of his initial or extended period of probation, if the Court is satisfied that he is fit for confirmation.*
>
> *(2) A person appointed to the service in the cadre of Senior Civil Judge by promotion shall be substantively appointed by the Court in the cadre as and when permanent vacancies occur.*
>
> *(3) A probationer appointed to the service in the cadre of District Judge by direct recruitment shall be confirmed in his appointment by the Court at the end of his initial or extended period of probation, if the Court is satisfied that he is fit for confirmation.*
>
> *(4) A person appointed to the service in the cadre of District Judge by promotion on the basis of merit-cum-seniority or by Limited Competitive Examination shall be confirmed in his appointment by the Court on availability of permanent vacancies in the cadre.*
>
> ***46. Unsatisfactory progress during probation and extension of probation period**.- (1) If it appears to the*

Court, at any time, during or at the end of the period of probation that a member of the service has not made sufficient use of the opportunities made available or that he has failed to give satisfactory performance, the Appointing Authority may, on recommendations of the Court, discharge him from service: Provided that the Court may, in special cases, for reasons to be recorded in writing, extend the period of probation of any member of the service for a specified period not exceeding one year.

(2) An order sanctioning such extension of probation shall specify the exact date up to which the extension is granted and further specify as to whether the extended period will be counted for the purpose of increment.

(3) If the period of probation is extended on account of failure to give satisfactory service, such extension shall not count for increments, unless the authority granting the extension directs otherwise.

(4) If a probationer is discharged from service during or at the end of the initial or extended period of probation under sub-rule (1), he shall not be entitled to any claim whatsoever."

21. Rule 46 deals with unsatisfactory progress during probation and extension of probation period. The aforesaid statutory provision of law certainly empowers the employer to extend the probation period and in case the performance of an employee during the probation period is unsatisfactory, it also gives a right to the employer to discharge the probationer. It is nobody's case that the performance of the appellant during the probationary period was unsatisfactory. In fact, she has successfully completed her training with flying colours and, therefore, by no stretch of imagination could her services be put to an end in the manner and method it has been done by the respondents.

22. The respondents have also placed heavy reliance on Rule 14 of the Rajasthan Judicial Service Rules, 2010, which reads as under:

***"14. Employment by irregular or improper means**.- A candidate who is or has been declared by the Recruiting Authority or the Appointing Authority, as the case may*

be, guilty of impersonation or of submitting fabricated or tampered with documents or of making statements which are incorrect or false or of suppressing material information or using or attempting to use unfair means in the examination or interview or otherwise resorting to any other irregular or improper means for obtaining admission to the examination or appearance at any interview shall, in addition to rendering himself liable to criminal prosecution, be debarred either permanently or for a specified period,-

(a) by the Recruiting Authority or the Appointing Authority, as the case may be, from admission to any examination or appearing at any interview held by the Recruiting Authority for selection of candidates, or

(b) by the Government from employment under the Government."

23. This Court has carefully gone through the aforementioned statutory provision of law which deals with employment by irregular or improper means. In the present case, at the best, it can be held that there was an omission on the part of the appellant in informing the employer about her past government service. Further, a reasonable explanation has also been provided by the appellant regarding her past government service by stating that at the time of submission of check list, the appellant was not in government service and, therefore, in those circumstance, she was not required to mention the same. In the considered opinion of this Court, the appellant has been awarded capital punishment for a minor irregularity (omission).

24. The services of a probationer could result either in a confirmation in the post or ended by way of termination *simpliciter*. However, if a probationer is terminated from service owing to a misconduct as a punishment, the termination would cause a stigma on him. If a probationer is unsuitable for a job and has been terminated then such a case is non-stigmatic as it is a termination *simpliciter*. Thus, the performance of a probationer has to be considered in order to ascertain whether it has been satisfactory or unsatisfactory. If the performance of a probationer has been unsatisfactory, he is liable to be terminated by the employer without conducting any inquiry. No right of hearing is also reserved with the probationer and hence, there would be no violation of principles of natural justice in such a case.

25. As noted, if a termination from service is not visited with any stigma and neither are there any civil consequences and nor is founded on misconduct, then, it would be a case of termination *simpliciter*. On the other hand, an assessment of remarks pertaining to the discharge of duties during the probationary period even without a finding of misconduct and termination on the basis of such remarks or assessment will be by way of punishment because such remarks or assessment would be stigmatic. According to the dictionary meaning, stigma is indicative of a blemish, disgrace indicating a deviation from a norm. Stigma might be inferred from the references quoted in the termination order although the order itself might not contain anything offensive. Where there is a discharge from service after prescribed probation period was completed and the discharge order contain allegations against a probationer and surrounding circumstances also showed that discharge was not based solely on the assessment of the employee's work and conduct during probation, the termination was held to be stigmatic and punitive *vide* ***Jaswantsingh Pratapsingh Jadeja vs. Rajkot Municipal Corporation, (2007) 10 SCC 71.***

26. Even though a probationer has no right to hold a post, it would not imply that the mandate of Articles 14 and 16 of the Constitution could be violated inasmuch as there cannot be any arbitrary or discriminatory discharge or an absence of application of mind in the matter of assessment of performance and consideration of relevant materials. Thus, in deciding whether, in a given case, a termination was by way of punishment or not, the courts have to look into the substance of the matter and not the form.

27. Further, the order discharging the appellant from service violates principles of natural justice, as the appellant was not provided an opportunity to be heard during the enquiry that was required to be conducted. At this juncture, reliance is placed on ***Shamsher Singh v. State of Punjab*** *(1974) 2 SCC 831*, which clarified that:

> *"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper*

enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount of removal from service within the meaning of Art. 311 (2) of the Constitution."

28. To holistically understand women's effective participation in the Judiciary, it is important to look at three main phenomena: (I) the entry of women into the legal profession; (II) the retention of women and growth of their numbers in the profession; and (III) the advancement of women, in numbers, to senior echelons of the profession.

29. Many have stressed that increased diversity within a judiciary, and ensuring judges are representative of society, enables the judiciary as a whole to better respond to diverse social and individual contexts and experiences. It is a recognition of this fact that a greater representation of women in the judiciary, would greatly improve the overall quality of judicial decision making and this impacts generally and also specifically in cases affecting women.

30. Advancing women's greater participation in the judiciary also plays a role in promoting gender equality in broader ways:

    a. *Female judicial appointments, particularly at senior levels, can shift gender stereotypes, thereby changing attitudes and perceptions as to appropriate roles of men and women.*

    b. *Women's visibility as judicial officers can pave the way for women's greater representation in other decision-making positions, such as in legislative and executive branches of government.*

    c. *Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.*

31. The country will greatly benefit from a judicial force that is competent, committed and most importantly, diverse. The appellant has shown great perseverance by fighting societal stigmas and gaining a rich education that will ultimately benefit the judicial system and the democratic project. This Court is of the opinion in the peculiar facts and circumstances of the case that the impugned show cause notice as well as the order of discharge deserve to be set aside and are accordingly set aside.

32. Accordingly, the appeal is allowed and the show cause notice dated 17.02.2020 and the discharge order dated 29.05.2020 are quashed. The appellant shall be entitled to reinstatement in service forthwith with all consequential benefits, including, fixation of seniority as per the merit list in the examination in question, notional fixation of pay, except back wages. It is further clarified that the respondent shall treat the appellant as to have successfully completed her probation period and the appellant shall be treated as a confirmed employee.

33. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 94 : 2025 INSC 763

Chandra Bhan Singh
v.
State of Uttar Pradesh & Others

(Civil Appeal No. 12314 of 2024)

23 May 2025

[Abhay S. Oka and Augustine George Masih,* JJ.]

Issue for Consideration

Challenge to the Demand Notices issued to the Appellants demanding 10% of the total bid amount to be deposited with the concerned District Mineral Foundation(s) (DMF).

Headnotes†

Mines and Minerals (Development and Regulation) Act, 1957 – ss.9B, 14, 15, 15A – Uttar Pradesh Minor Minerals (Concession) Rules, 1963 – rr.21, 23(3), 54, 68 – District Mineral Foundation Trust Rules, 2017 – r.10(2) – Appellant was a successful bidder for mining of minor mineral i.e., sand and was allotted a tender – Demand Notice was issued calling upon the Appellant to deposit 10% amount of the deposited title amount with the DMF – Appellant challenged the Demand Notice before the High Court contending that the amount claimed was contrary to s.9B, 1957 Act – Challenge rejected – Sustainability:

Held: s.9B, 1957 Act would not be applicable in the light of s.14 thereof – s.14 makes it clear that ss.5 to 13 of the 1957 Act would not be applicable to the present case as the mineral which is sought to be mined is a minor mineral i.e., sand – Plea of the Appellant based on s.9B(5) is misplaced – State Government has been empowered u/s.15A to determine and fix the amount – The empowerment being there under the Statute conferred on the State to determine the amount and the fixation thereof for minor minerals cannot be faulted with – Demand Notice issued to the Appellant requiring him to deposit 10% of the title amount i.e. the total amount payable for the minor minerals to be extracted was under and in accordance with the statutory Rules i.e., r.10(2), 2017 Rules – Demand Notice and the impugned judgment passed by the High Court is upheld, implying liability of the Appellant towards the DMF Trust. [Paras 17, 18, 20, 21, 24, 26]

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* Author

Mines and Minerals (Development and Regulation) Act, 1957 – Uttar Pradesh Minor Minerals (Concession) Rules, 1963 – rr.68, 21, 23(3), 54 – District Mineral Foundation Trust Rules, 2017 – Appellant was a successful bidder for mining of minor minerals i.e., sand and was allotted a tender – In pursuance to the tender allotted and in consonance with the requirements of the Policy decision dated 22.04.2017, Demand Notice was issued calling upon the Appellant to deposit 10% amount of the deposited title amount with the DMF – Plea of the appellant that the Policy decision itself is not sustainable as the due process for issuance thereof as provided for in r.68, 1963 Rules was not adhered to:

Held: There was a reasoned decision at the end of the State for exercising its powers u/s.68, 1963 Rules which fulfills the requirement of the Rule – Further, an Order was also passed by the Lucknow Bench of the High Court in a PIL which had permitted and required the exercise of powers u/r.68, 1963 Rules by the State – This was because of the peculiar situation which was being faced by the State for the total ban on mining activity having been imposed leading to the stopping and delaying of construction and other development works, both in the Government sector as well as the private sector – Exercise of such power when the vital projects were being adversely affected would fall within the purview of r.68 empowering the State to proceed to frame such a Policy – Therefore, no fault in the whole process and procedure adopted by the State. [Para 15]

List of Acts

Mines and Minerals (Development and Regulation) Act, 1957; Uttar Pradesh Minor Minerals (Concession) Rules, 1963; District Mineral Foundation Trust Rules, 2017.

List of Keywords

Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957; Deposit of the amount as per the royalty fixed in Second Schedule of the Mines and Minerals 1957 Act; Rule 68 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963; District Mineral Foundation Trust Rules, 2017; Demand Notice; 10% of total bid amount; District Mineral Foundation(s) (DMF); Mining of minor minerals; Policy decision dated 22.04.2017.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12314 of 2024

From the Judgment and Order dated 15.11.2017 of the High Court of Judicature at Allahabad in CMWP No. 54052 of 2017

With

Civil Appeal No(s). 12315 and 12316 of 2024

Appearances for Parties

Advs. for the Appellant:
Manish Singhvi, Rakesh Dwivedi, Mukesh Prasad, Sr. Advs., Satish Kumar, Ms. Megha Karnwal, Lalit Rajput, Aditya Thorat, Ms. Awantika Manohar, Ms. Mayan Prasad, Ms. Parul Dhurvey (for M/s. AP & J Chambers).

Advs. for the Respondents:
Ms. Aishwarya Bhati, A.S.G., Vishnu Shankar Jain, Ms. Mani Munjal, Ms. Marbiang Khongwir.

Advs. for the Intervenors:
Vanshdeep Dalmia, Amit Upadhyay, Ms. Anisha Jain, Ms. Shambhavi Singh.

Judgment / Order of the Supreme Court

Judgment

Augustine George Masih, J.

1. The instant batch of appeals challenge the respective Demand Notices issued by the District Magistrate/District Officer to the Appellants demanding 10% of the total bid amount to be deposited with the concerned District Mineral Foundation(s) (hereinafter, "DMF").

2. Since the issue involved in all these appeals is common, the facts are being taken from Civil Appeal No.12314 of 2024, which assails the Judgement dated 15.11.2017 passed by the High Court of Allahabad (hereinafter, "Impugned Judgment") and has been taken as the lead case.

3. The facts, as culled out from the said Civil Appeal are that Chandra Bhan Singh, who was a successful bidder for mining of minor minerals

i.e., sand (hereinafter, "Appellant") was allotted a tender. In pursuance to this tender and in consonance with the requirements as has been laid down by the Policy decision dated 22.04.2017, the Appellant had been called upon to deposit an amount of ₹54,12,960/- being 10% amount of the deposited title amount of ₹5,41,29,600/- in favour of the District Mineral Foundation Trust, Kanpur (hereinafter, "DMF Trust") apart from 2% stamp fee on the same vide Demand Notice dated 25.10.2017. It needs mention here that as per the terms for allotment and the Mining Permit dated 16.10.2017, the Appellant as required, had deposited the amount payable for the approved mining quantity at the rate of ₹630/- per cubic meter of sand as per his bid totalling ₹5,41,29,600/-.

4. This Demand Notice dated 25.10.2017 had been challenged by the Appellant before the High Court through a writ petition asserting that the said amount as has been claimed would be contrary to the provisions of Section 9B of the *Mines and Minerals (Development and Regulation) Act, 1957* (hereinafter, "1957 Act"), which required deposit of the amount as per the royalty fixed in Second Schedule of the 1957 Act. The said challenge before the High Court failed vide the Impugned Judgment dated 15.11.2017 leading to the filing of the present appeal.

5. The learned Senior Counsel for the Appellant has asserted that the Policy decision dated 22.04.2017 itself is not sustainable as the due process for issuance thereof as provided for in Rule 68 of the *Uttar Pradesh Minor Minerals (Concession) Rules, 1963* (hereinafter, "1963 Rules") have not been adhered to. Going by and referring to the said Rule, it has been submitted that it enables relaxation of the Rules whereas by way of the impugned Policy in fact the amount which has been claimed is much more than the one which has been fixed in First Schedule, as appended along with the 1963 Rules. He, therefore, asserts that the Policy as well as the Demand Notice is unsustainable.

6. Referring to Section 9B of the 1957 Act, it has been contended that the DMF, as has been formulated and conceptualized, provides for charging and deposit of amount in addition to the royalty equivalent to such percentage of the royalty paid in terms of the Second Schedule of the 1957 Act which would not be exceeding one-third of such royalty, as may be prescribed by the Central Government.

He asserts that going by the said Schedule, when rate has been fixed by the State at 10% of the royalty, the amount payable would be limited to that extent and the demand on the bid amount as a whole is unsustainable. Apart from that, reference has also been made to Section 15 of the 1957 Act, which confers powers on the State Government to make Rules in respect of minor minerals. He on the basis of sub-Section (4) thereof asserts that Section 9B would be applicable for all intents and purposes and not merely for constitution, composition and functioning of the DMF, which includes the amount in addition to the royalty required to be deposited with it. State cannot claim an amount which is contrary to the rate as has been fixed by the Central Act.

7. The learned Senior Counsel for the Appellant has made reference to Rule 54 which deals with deposit of royalty for the total quantity of the mineral allowed to be extracted under the Permit. It is further submitted that under Rule 21 of the 1963 Rules, royalty had to be paid at the rates specified in First Schedule of the 1963 Rules. Counsel on this basis has asserted that the High Court erred in coming to a conclusion that Rule 21 and Rule 54 would not be applicable. On the above grounds, prayer has been made for setting aside the Impugned Judgment and allowing the appeal.

8. On the other hand, learned Additional Solicitor General for the Respondent-State has defended the Impugned Judgment by asserting that the provisions of Sections 9 and 9B of the 1957 Act would not be applicable to the case in hand in light of Section 14 of the said Act, which provides that Sections 5 to 13 would not apply to minor minerals. She, on this basis submits that reliance on Section 9B by the Appellant is misplaced. That apart, with reference to Section 15 of the 1957 Act, it is asserted that the State Government, by Notification in the Official Gazette, stands empowered to make Rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Under sub-Section (4) of Section 15, Government without prejudice to sub-Sections (1), (2) and (3), by Notification could make Rules for regulating the provisions of the Act, which includes the manner in which the DMF Trust shall work for the interest and benefit of the persons and affected areas as provided in sub-Section (2) of Section 9B. Similarly, for composition and functions of the DMF Trust, reference has been made to sub-Section (3) of Section 9B. She, on

this basis, asserts that applicability of Section 9B is restricted to and for the purposes as have been specified in Section 15 and nothing beyond that. This, in any case, has to be regulated on the basis of the Rules to be framed by the State Government. Reference has further been made to Clause (c) of sub-Section (4) of Section 15 which empowers the State Government to fix and regulate the amount of payment to be made to the DMF Trust by the mining concession holders of minor minerals as provided in Section 15A which, in turn, empowers the State to prescribe the payment to be made of the amount to the DMF Trust. On this basis, it is asserted that the rate of 10% of the amount as has been fixed by the State to be deposited with the DMF Trust, cannot be faulted with.

9. Reference has also been made to sub-Rule (2) of Rule 10 of *District Mineral Foundation Trust Rules, 2017* (hereinafter, "2017 Rules") as have been framed by the State Government, where in addition to the royalty every Permit holder is required to deposit with the DMF Trust, an amount which is equivalent to the 10% of the royalty or as may be prescribed by the State Government from time to time. On this basis, it is asserted by her that 10% of the royalty amount would be payable in case no other amount is prescribed by the State Government. In situations where amount or rate has been prescribed other than 10% of the royalty, the said amount or rate shall prevail. In the present case, what has been fixed and prescribed is 10% of the total amount deposited by the bidder.

10. As regards the challenge to the Policy decision dated 22.04.2017, the learned ASG has asserted that the said Policy had not been challenged before the High Court and thus, the same cannot be challenged before this Court now. Furthermore, it is under this Policy which is now sought to be questioned that the e-tender was floated in which the Appellant had participated and succeeded. The Appellant, therefore, cannot be permitted to turn around and challenge the very Policy under which he had sought benefit and had actually availed as well. The terms and conditions were clear from the very beginning, with there being no ambiguity. On the above referred basis, prayer has been made for dismissal of the appeals.

11. We have considered the submissions as have been made by the Counsel for the parties and with their assistance have gone through the pleadings and records.

12. For the sake of brevity, the facts are not being reiterated, as they are not in dispute.

13. Broadly speaking the challenge in the present appeal to the Demand Notice is based upon the Policy decision dated 22.04.2017 as issued by the Respondent-State under which the e-tender process was initiated leading to the Appellant participating therein and succeeding followed by the allotment of the tender and issuance of the Mining Permit. The ground pressed into service is of non-compliance/violation of the procedure as required to be followed under Rule 68 of the 1963 Rules which enabled the State Government to, in relaxation of the 1963 Rules, grant mining lease.

14. In pursuance of the order passed by this Court on 24.09.2024, the original records relating to the process of finalising the decision resulting in the issuance of the communication dated 22.04.2017 with reference to Rule 68 of the 1963 Rules were produced before the Court on 15.10.2024 which was perused and a copy of the original file was retained on record.

15. On considering the records as produced, the process which has been followed while considering, evaluating and deliberating the factors which weighed while assigning reasons for coming to the conclusion have been perused by us. The same finds reflected, projected and mentioned in the letter dated 22.04.2017 after due consideration at different levels upto the highest competent authority leading to a reasoned decision at the end of the State for exercising its powers under Rule 68 of the 1963 Rules which is found to be fulfilling the requirement of the Rule. It would not be out of way to mention here that an Order dated 18.04.2017 was passed by the Lucknow Bench of the High Court in a Public Interest Litigation which had permitted and required the exercise of powers under Rule 68 of 1963 Rules by the State. This was because of the peculiar situation which was being faced by the State for the total ban on mining activity having been imposed leading to the stopping and delaying of construction and other development works, both in the Government sector as well as the private sector. Exercise of such power in those circumstances when the vital projects were being adversely affected would fall within the purview of Rule 68 empowering the State to proceed to frame such a Policy and therefore, we find no fault in the whole process and procedure adopted by the State.

16. The challenge, thus, is limited to the extent of the amount required to be deposited at the end of the Appellant in the DMF Trust. The Appellant asserts that the amount payable would be 10% of the amount of royalty as have been laid down in Second Schedule of the 1957 Act with reference to Section 9B(5) or under sub-Rule (2) of Rule 10 of the 2017 Rules as framed by the State of Uttar Pradesh. On this basis, it is being sought to be asserted that nothing beyond 10% of the royalty amount as provided under the Schedule referred to above could be called upon to be deposited in the DMF Trust. Demand Notice dated 25.10.2017 requiring the Appellant to deposit 10% of the amount of the title amount would be much beyond the liability of the Appellant as per the Statute. Demand cannot be in excess of the one which is prescribed under the Statute or the Rules.

17. This contention of the Appellant is unsustainable firstly on the ground that Section 9B of the 1957 Act would not be applicable in the light of Section 14 of the said Act, which reads as follows:-

> *"**14. Sections 5 to 13 not to apply to minor minerals –** The provisions of sections 5 to 13 inclusive shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals."*

18. A perusal of Section 14 would make it clear that Sections 5 to 13 of the 1957 Act would not be applicable to the present case as the mineral which is sought to be mined is a minor mineral i.e., sand. The plea therefore of the Appellant based on Section 9B(5) is misplaced and thus, unacceptable.

19. The applicability and the effect of Section 9B (2) and (3) is limited to the extent as has been mentioned in Clause (a) and (b) of sub-Section (4) of Section 15 of the 1957 Act, which reads as follows:-

> **"15. Power of State Government to make rules in respect of minor minerals –**
>
> …
>
> *(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-*
>
> *(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons*

and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A."

20. A perusal of the above would itself make it clear that Clauses (a) and (b) are to operate within the domain for which they have been incorporated and permitted to function. The said sub-Clauses do not deal with the amount to be charged or deposited in the DMF. This aspect has been dealt with and provided for under Clause (c) of sub-Section (4) of Section 15, which refers to amount of payment to be made by the concession holder in the DMF under Section 15A. Meaning thereby, the State Government has been empowered under Section 15A to determine and fix the amount. Section 15A reads as follows:-

> *"**15A. Power of State Government to collect funds for District Mineral Foundation in case of minor minerals. -** The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are caried on."*

21. The empowerment being there under the Statute conferred on the State to determine the amount and the fixation thereof for minor minerals cannot be faulted with. The impugned Demand Notice thus being in consonance with the Statutory provisions cannot be said to be illegal or unsustainable.

22. Reference with regard to sub-Rule (2) of the Rule 10 of 2017 Rules would also not come to the rescue of the Appellant. The same reads as follows:-

> *"**10. Contribution to the Trust Fund.***
>
> *…*
>
> ***(2) In case of minor minerals-***
>
> *The holder of every mineral concession/permit shall in addition to the royalty, pay to the Trust of the district in which*

the mining operations are carried on, an amount which is equivalent to 10% of royalty or as may be prescribed by the State Government from time to time."

23. A perusal of above Rule 10(2) would show that apart from the royalty, an amount of 10% of the royalty is payable to the DMF Trust of the district in absence of any prescribed amount by the State Government. However, in case an amount is prescribed by the State Government then the said rate or amount would prevail and be payable at the end of the holder of the mineral concession or permit.

24. In the present case, the tender notice dated 11.05.2017, the Approval Letter (Letter of Intent) dated 01.06.2017 and the Mining Permit dated 16.10.2017, it was made amply clear with regard to the amount required to be deposited by the Appellant. The Demand Notice dated 25.10.2017 issued to the Appellant requiring him to deposit 10% of the title amount i.e. the total amount payable for the minor minerals to be extracted was under and in accordance with the statutory Rules i.e., Rule 10(2) of the 2017 Rules.

25. As regards the applicability of Rules 21 and 54 of the 1963 Rules, which have been sought to be pressed into service by the Appellant to support his claim, the same would not cut any ice in the light of Rule 23(3) of the 1963 Rules. For ready reference Rule 23(3) is reproduced hereinbelow:-

"23. Declaration of area for auction/tender/auction-cum-tender lease

…

(3) On the declaration of the area or areas under sub-rule (1) the provisions of chapters II, III and VI of these rules shall not apply to the area of areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter."

A perusal of the above makes it clear that in case of e-tender process is being followed, Chapter II, III and VI of these Rules would not apply. Rule 21 falls in Chapter III whereas Rule 54 falls in Chapter VI and, therefore, the said Rules would not be operative, rather not available to be used. This argument, therefore, also fails.

26. In view of the above, we do not find any merit in the appeal and, therefore, the same is dismissed. The Impugned Judgment dated 15.11.2017 passed by the Division Bench of the High Court of Allahabad is upheld along with the Demand Notice dated 25.10.2017, implying liability of the Appellant as towards the DMF Trust.

27. In light of the decision in Civil Appeal No.12314 of 2024, the other two connected appeals, being Civil Appeal Nos.12315-16 of 2024 also stand dismissed.

28. There shall be no orders as to costs.

29. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 105 : 2025 INSC 768

Kasireddy Upender Reddy
v.
State of Andhra Pradesh and Ors.

(Criminal Appeal No. 2808 of 2025)

23 May 2025

[J.B. Pardiwala* and R. Mahadevan, JJ.]

Issue for Consideration

Whether the arrest of the appellant's son was *per se* illegal for want of supply of appropriate and meaningful grounds of arrest, as alleged.

Headnotes†

Constitution of India – Art.22 – When not violated – Appellant filed writ petition before High Court seeking a writ of *habeas corpus* on the ground that his son was illegally arrested by CID as appropriate grounds for arrest were not furnished at the time of arrest and thus, the arrest was violative of Art.22 – Writ petition dismissed – Sustainability:

Held: If a person is arrested on a warrant, the grounds for reasons for the arrest is the warrant itself; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest – If he is arrested without a warrant, he must be told why he has been arrested – If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial – In order to inform him that he has committed a certain offence, he must be told of the acts done by him which amounts to the offence – He must be informed of the precise acts done by him for which he would be tried; informing him merely of the law applicable to such acts would not be enough – The information of the grounds of arrest must be provided to the arrested person in a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands – The mode and method of communication must be such that the object of the constitutional safeguard is achieved – Appellant's son was arrested for specific offences as mentioned in the grounds of arrest – The grounds of arrest show that the requirement in terms of para 21(b) as laid

* Author

down in Vihaan Kumar's case is fulfilled – No merit in this appeal – Bharatiya Nagarik Suraksha Sanhita, 2023 – ss.47, 48, 35 – Code of Criminal Procedure, 1973 – s.41(1). [Paras 25, 36]

Constitution of India – Art. 22 – Judgment of Supreme Court in Vihaan Kumar v. State of Haryana and another – Constitutional protections against arbitrary arrest and detention – Rights of individuals upon arrest – Principles of law explained in Vihaan Kumar, enumerated. [Paras 15, 18]

Case Law Cited

Vihaan Kumar v. State of Haryana and another, **2025 SCC OnLine SC 269;** *State of Bombay v. Atma Ram* **[1951] 1 SCR 167 : (1951) SCC 43 : AIR 1951 SC 157 (C) – relied on.**

Magan Lal Jivabhai, in re, **AIR 1951 Bom 33(D);** *Vimal Kishore Mehrotra v. State of Uttar Pradesh,* **AIR 1956 All 56 – referred to.**

Hooper v. Lane **(1857) 6 HLC 443 : 10 ER 1368 (G);** *Christie v. Leachinsky* **(1947) AC 573;** *McNabb v. United States of America* **(1943) 318 US 332 (H);** *United States v. Cruikshank* **(1876) 92 US 542 – referred to.**

List of Acts

Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973.

List of Keywords

Article 22 of the Constitution of India; Grounds of arrest; Arrested on a warrant; Arrested without a warrant; Appropriate and meaningful grounds of arrest; At the time of arrest; Writ of habeas corpus; *Vihaan Kumar* case; Information of the grounds of arrest; Sufficient knowledge of the basic facts; Arrest by CID.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2808 of 2025

From the Judgment and Order dated 08.05.2025 of the High Court of Andhra Pradesh at Amravati in WP No. 10858 of 2025

With

SLP (CRL.) No. 5691 of 2025

Appearances for Parties

Advs. for the Appellant:
Mahesh Jethmalani, Navin Pahwa, Ponnavolu Sudhakar Reddy, Sr. Advs., Ramesh Allanki, Ms. Aruna Gupta, Shriharsha Peechara, Syed Ahmad Naqvi, Alabhya Dhamija, Shreevardhan Dhoot, M. Bala Krishna, T. Vijaybhaskar Reddy, Yash Gupta, Krishna Kumar Singh, Ms. Serena Jethmalani, Ajay Awasthi, Ms. Mugdha Pande, Vaibhav Thaledi, Yashaswi SK Chocksey, Krishna Kumar Singh.

Advs. for the Respondents:
Sidharth Luthra, Siddharth Aggarwal, Sr. Advs., Guntur Pramod Kumar, Ms. Prerna Singh, Samarth Krishan Luthra, Ms. Rajni Gupta.

Judgment / Order of the Supreme Court

Judgment

J.B. Pardiwala, J.

CRIMINAL APPEAL NO. 2808 OF 2025
(@ SLP (CRIMINAL) No. 7746 OF 2025)

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Andhra Pradesh at Amaravati dated 8.05.2025 in W.P. No. 10858 of 2025 by which the writ petition filed by the appellant herein seeking a writ of habeas corpus on the ground that his son *viz.* Kessireddy Raja Shekhar Reddy came to be illegally arrested by the CID and is in unlawful detention, came to be dismissed.

3. The facts giving rise to this appeal may be summarised as under:

   a. The son of the appellant herein, namely, Kessireddy Raja Shekhar Reddy came to be arrested on 21.04.2025 in connection with Crime No. 21 of 2024 dated 23.09.2025 registered with CID Police Station, Mangalagiri for the offence punishable under Sections 420, 409 read with Section 120-B of the Indian Penal Code respectively (for short, the "IPC") (Now Sections 318, 316(5) read with Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 respectively (for short, the "BNS")).

b. It appears from the materials on record that on 19.04.2025 the son of the appellant herein was arrayed as accused no. 1 by way of an entry in the case diary.

c. The son of the appellant was arrested at around 6 P.M. from the Hyderabad Airport. At the time of arrest, the grounds of arrest were supplied to him and later were also served on his father i.e. the appellant herein.

d. Pursuant to the arrest, the son of the appellant was brought to Vijayawada and was produced before the jurisdictional magistrate i.e. the Special Judge for SPE and ACB cases, Vijayawada at 5.15 P.M. on 22.04.2025 i.e. within 24 hours of the arrest.

d. It appears that police remand was prayed for and the same came to be granted *vide* order dated 22.04.2025 passed by the Special Judge for SPE and ACB cases.

e. The operative part of the remand order reads thus:

> *"12. Remand report further reveals that, police have to examine several witnesses and has to apprehend several Government and non Government officials and investigation is only at preliminary stage and police requires time to conduct thorough investigation in this case. Therefore, request for remand of Al is accepted, hence, Al is remanded to judicial custody under Section 187 of BNSS till 6.5.025, for the offences under Sections 420, 409, 120 B IPC and Sections 7, 7A and 8, 13(1)(b) , 13 (2) of P.C.Act, Al is hereby ordered to be kept in District Jail, Vijayawada under proper escort.*
>
> *Sd/-P.Bhaskara Rao*
> *SPL. JUDGE FOR SPE AND ACB*
> *CASES-CUM-III ADJ. VIJAYAWADA"*

f. The appellant preferred a writ petition under Article 226 of the Constitution before the High Court and prayed for a writ of *habeas corpus* on the ground that the arrest of his son was *per se* illegal and therefore, his continued detention in jail could be said to be unlawful and thereby, violative of Article 21 of the Constitution.

g. The writ of *habeas corpus* was prayed for essentially on the ground that although the grounds of arrest were served upon the appellant's son at the time of his arrest, yet such grounds were not meaningful and were just an eyewash. The grounds of arrest lacked in material particulars.

h. It was argued before the High Court that if appropriate grounds for arrest are not furnished at the time of arrest then the arrest would be violative of Article 22 of the Constitution read with Sections 47 and 48 respectively of the Bharatiya Nagarik Suraksha Sanhita, 2023 respectively (for short, the "BNSS").

i. The High Court adjudicated the writ petition filed by the appellant herein and ultimately *vide* the impugned judgment and order dismissed the same holding as under:

> *"11. In the present case, both the provisions of law as well as the grounds for arrest, can be made out, on a conjoint reading of the notice under Section 47, the grounds of arrest, 48 of BNSS and the remand report which were all served on the detenue prior to the hearing of his remand application. The learned Special Judge, had specifically recorded that even the remand report had been served on the detenue prior to the commencement of the hearing before the Special Judge. The copy of the remand report, filed by the respondents, show that the detenue had signed a copy of the remand report as service of the said grounds of arrest on him. In view of the earlier judgment of this Court, it must be held that the requirements of Article 22 of the Constitution of India as well as the provisions of BNSS have been complied.*
>
> *xxx xxx xxx*
>
> *13. In Vihaan Kumar vs. State of Haryana and Another's case, neither the detenue nor his relatives or family members had been served with any document. In such circumstances, as can be seen from the same passage, the Hon'ble Supreme Court had held that in the absence of service of the remand report, mere inclusion of grounds of arrest in the*

remand report would not be sufficient compliance of Article 22 of the Constitution of India or Section 47 of BNSS. In the present case, the Special Judge had recorded that the remand report had been served on the detenue and the copy of the remand report, containing the signature of the detenue, produced by the respondents would also fortify this position. Sri P. Sudhakar Reddy contends that papers were served on the detenu after the hearing in the remand application and as such, there is no compliance of Article 22 of the Constitution of India. This contention does not appear to be correct inasmuch as the Special Judge had recorded, in the remand order, that the remand report had been served on the detenue. In these circumstances, this Court does not find any reason to interfere with the order of remand.

14. Accordingly, this Writ Petition is dismissed. However, this would not preclude the detenue from availing of his remedies under law for being set at liberty. There shall be no order as to costs."

4. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

5. Mr. Mahesh Jethmalani, the learned Senior Counsel, made oral submissions and has also filed his written submissions. The written submissions read thus:

"A) That since 25.03.2025, the Respondent State has issued notices under Section 179 of the BNSS to appear before them. The accused has challenged these notices and the said challenge is a subject matter of Petition tagged along with the instant case. On 21.04.2025 at 5 PM, the Petitioner sent a WhatsApp message to the Investigating Officer that he would appear before him on 22.04.2025 at 10 AM. Pursuant to the said Section 179 notices, the accused travelled from Goa to Hyderabad, Telangana en route to Vijayawada, Andhra Pradesh and reached Hyderabad Airport at 6 PM. On his disembarking the accused was

arrested and taken to Vijayawada, Andhra Pradesh. The Petitioner's son was never cited as an Accused in the FIR, was in the eyes of the Respondent State a witness as disclosed by the Section 179 Notices sent to him and was always of the impression that he was wanted as a witness to which he even acceded on 21.04.2025. The Petitioner's son was not an accused person at the time of his arrest on 21.04.2025 and there was no evidence of his complicity in any crime. The Respondent's case (see para 6 of the Impugned Judgment of the High Court) is that the Petitioner's son was made an accused on 19.04.2025 by way of an entry in the Case Diary. The Case Diary is not a public document like an FIR and so there was no public document disclosing that the Petitioner's son was an accused person in the case. Admittedly, in the same Paragraph 6 of the Impugned Order, the intimation of such inclusion as filed with a Special Judge for SPE and ACB Cases, Vijayawada, Andhra Pradesh on 22.04.2025, i.e., after his arrest on the previous day. The Petitioner's son's arrest was without any basis and illegal.

B) Further, events post the arrest of the Petitioner's son clearly discloses the groundless basis of his arrest as also the mala fide intent behind it. In the course of his investigation post his arrest, the Petitioner's son was informed that he should make a Statement implicating the then Chief Minister of the State of Andhra Pradesh – Shri Y. S. Jagan Mohan Reddy, for alleged illegalities in the liquor excise policy that was being investigated. Shockingly, present during his investigation were 2 'mediators'. The case of the Respondent has disclosed in the Remand Application of the next day (Second paragraph @ Page 88 of the SLP) was that the accused refused to sign on an alleged confession. It is clear from the said averments in the Remand Application that the 'mediators' were introduced to pressurize the Petitioner's son into making a 'confession' implicating the Former Chief Minister of the State of Andhra Pradesh – Shri Y. S. Jagan Mohan Reddy. The entire conspectus of facts that transpired during interrogation discloses glaring illegalities, including the

presence of the 'mediators'. The fact that the Petitioner's son refused to sign the alleged 'confession' is clear proof that he was being forced to make a confession, which he refused. In sum, the events that transpired from the evening of 21.04.2025 till 22.04.2025, establishes that the Petitioner was not an accused until the time he refused to comply with the pressure of the 'mediators' and the police. It is reiterated that the arrest of the Petitioner's son as an Accused was baseless and mala fide.

> *"During the course of interrogation, the above noted accused admitted the facts and his guilt about the commission of offences. The entire confession got drafted in the presence of mediators Chavalam Gopala Krishna S/o Narasimha Rao, 40 Years, VRO 2, Nunna and Mohd Sirajuddin, S/o Kutubiddin, 40 Yrs, VRO-1, Kundavari Kandrika under a cover of mahazar and seized a mobile phone 14 Funtouch OS vivo Y18t having IMEI number 869933078319375 (Slot 1), 869933078319367 (Slot 2) and SIM card of number +917559260506 and for investigation purpose duly signed by the mediators. However, the accused refused to sign on the above confessional statement. The mediators endorsed the same."*

C) That the grounds of arrest served on the Petitioner on 21.04.2025 were in total non compliance of Article 22 of the Constitution of India and Section 47 of the BNSS for the following reasons:

i. It has been laid down in a number of decisions of this Hon'ble Court that the grounds of arrest are not an empty formality. This principle has been enunciated with greater rigour in recent judgments (see: Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 and Vihaan Kumar v. State of Haryana & Anr., 2025 SCC OnLine SC 269 : SLP(Crl) 13320 of 2024) that the whole rational behind communicating the grounds of arrest is to enable the Petitioner's son's counsel to meet the Police case in remand proceedings and for bail. In the grounds of arrest served on the Petitioner on 21.04.2025, the substantive

offences were Sections 409 and 420 IPC. While the Section numbers were mentioned, the ingredients of the offence find no mention in the furnished grounds. Thus, in so far as Section 409 IPC is concerned, there is not a whisper about the ingredient of entrustment, the property entrusted and the manner of misappropriation or conversion to the accused's use. Similarly, as far as Section 420 IPC is concerned, the ingredients of deception, fraudulent or dishonest inducement and the property delivered pursuant to such inducement are all significantly absent. The grounds of arrest therefore did not even remotely disclose how the offences alleged were made out. It is submitted that this was the case because there was no ground to arrest the Petitioner's son and his arrest was illegal and mala fide.

ii. Article 22 of the Constitution requires that the grounds of arrest shall be informed to the person arrested "as soon as may be". In Paragraph 5 of the Impugned Judgment of the High Court, it is recorded that, "The learned Advocate General would submit that the grounds of arrest as well as the provisions of the law were made known to the detenue, in writing, by virtue of service of the notice of arrest under Section 47, the grounds of arrest under Section 48 and the remand report." It is submitted that a remand report cannot in law be grounds of arrest contemplated under Article 22 or Section 47 of the BNSS, save perhaps when the Accused is produced in Court for remand and furnished with a Remand Application immediately on his production. Else a remand report can never comply with the requirement of the obligation to furnish grounds as soon as may be in Article 22 or 'forthwith' communication of such grounds prescribed by Section 47 BNSS. In admitting that the remand report was part of the grounds of arrest and that it was served on the accused on 22.04.2025, the Respondent State has violated the mandate of "as soon as may be" in Article 22 and 'forthwith' in Section 47 BNSS. It is important to emphasize that Article 22 mandates that "no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds of such arrest…". The Constitutional mandate was thus

violated because the Petitioner's son was detained in custody post arrest without being informed "as soon as may be" of the complete grounds for arrest. Further, what he was provided with at the time of his arrest was grounds of arrest which did not spell out the particulars of the offences alleged.

iii. In addition, Section 47 of the BNSS mandates that what should be 'forthwith' communicated to an arrested person is the full particulars of the offence. Fully cognizant of the fact that the grounds of arrest served on the Petitioner's son on 21.04.2025 did not disclose the offence under Section 409 and 420 IPC, the remand report of 22.04.2025 added the substantive offences of Sections 7, 7A, 8 and 13(1)(b) read with 13(2) Prevention Corruption Act, 1988. Thus the 'full particulars of the offence' for which the Petitioner's son was arrested was not furnished to him 'forthwith'.

iv. That the invocation of offences under the Prevention of Corruption Act, 1988 in the remand report as grounds for arrest of the Petitioner's son is vitiated by patent illegality. The Petitioner could not have been arrested for offences under the Prevention of Corruption Act, in view of the provisions of Section 17A of the said Act It is the Respondent State's case that they could only invoke the offences under the Prevention of Corruption Act on 22.04.2025 as they had not received the requisite sanction under Section 17A at the time of the Petitioner's son's arrest. The sanction order under Section 17A (Pages 66 – 67 of the SLP) is dated 21.04.2025. Moreover, the sanction sought and granted on 21.04.2025 was only in respect of a public servant by the name Shri Dodda Venkat Satya Prasad. There was no sanction granted for investigation for the offences under the Prevention of Corruption Act for the Petitioner's son. Granting of Sanction is not akin to taking of cognizance by a Court where cognizance is taken of offences and not of offenders. Section 17A of the Prevention of Corruption Act prohibits any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant under this act where

the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duty. Thus under Section 17A, the sanctioning authority has to examine the case of every public servant separately to determine whether the provisions of that Section apply to him so that sanction may be granted or refused. The Ministry of Personnel, Public Grievances and pensions (Department of Personnel and training) has on 17.09.2021 issued SOPs for the processing of cases under Section 17A of the Prevention of Corruption Act, 1988 (Annexure P – 10 @ Page 5 in Vol 2). Clause 4.6 of the SOP mandates as under:

> *"4.6. Separate proposals shall be made in respect of each public servant, where a composite offence is alleged against more than one public servant."*

Thus, where a composite offence is alleged against more than one public servants, a separate proposal shall be made in respect of each public servant. There is neither a sanction proposal nor grant of such sanction in respect of the Petitioner's son. The invocation of offences under the PC Act against him and the contention that the remand report which contains these offences constituted the grounds of arrest within the meaning of Article 22 of the Constitution and Section 47 of the BNSS is manifestly untenable. In invoking offences against the Prevention of Corruption Act as part of the grounds of arrest, the Respondent State has committed a manifest illegality, as in the absence of the requisite sanction, under Section 17A of the Prevention of Corruption Act, read with Clause 4.6 of the SOP of the Ministry of Personnel, Public Grievances and pensions (Department of Personnel and training) dated 03.09.2021, the grounds of arrest were untenable and consequently the arrest and detention in custody of the Petitioner's son was patently illegal."

6. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the arrest of the accused may be declared as illegal thereby, rendering his continued detention unlawful.

SUBMISSIONS ON BEHALF OF THE STATE

7. Mr. Siddharth Luthra, the learned Senior Counsel made oral submissions on behalf of the State while opposing this appeal and has also filed his written submissions. The written submissions read thus:

> *"**1.** Crime No. 21 of 2024 dated 23.09.2025 was registered in CID P.S., Mangalagiri under Sections 420,409 r/w 120-B I.P.C. **(FIR@Pg39-49 of SLP)**. On 19.04.2025,the son of the present Petitioner being Kessireddy Raja Shekhar Reddy **(hereinafter referred to as A1)** was arrayed as Accused A1 by way of an entry in the Case Diary **Refer-Para 6 of the impugned order & Para 9 of the Counter Affidavit filed by the State before the High Court (Ann P13 @ Pg 23, relevant at Pg 26 of IA No.128534/2025 for Addl. Documents).***
>
> ***2.** On 21.04.2025 at 6 PM, Accused No 1 was arrested from the Hyderabad Airport. At the time of arrest, Grounds of Arrest were supplied to him and served on his father as well **(Grounds of Arrest @ Pg13-14 of IA No.128534/2025 for Addl. Documents)**. A perusal of the said Grounds of Arrest would show complete compliance with the directions in **Vihaan Kumar v. State of Haryana; 2025 SCCOnLine SC 269 @ Para21**, wherein this Hon'ble Court directed that information of grounds of arrest must be provided "in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person…"*
>
> ***3.** Pursuant to arrest, A1 was brought to Vijayawada and produced before the jurisdictional magistrate i.e. the Ld. Special Judge for SPE & ACB Cases Vijayawada at 5.15 PM on 22.04.2025 i.e. within 24 hours of arrest, thereby complying with all requirements as well as Article 22(2) of the Constitution. In the Remand Order dated …, the Ld. Magistrate inter alia noted in para 2, that A1 stated that he had not been ill-treated in custody and that he had received the Remand Report with enclosures **(Pg 106 of SLP)**. After considering all aspects, including the nature of the allegations, the Ld. Magistrate ordered for A1 to be remanded **(Remand Order @ Pg106-113 of SLP),** and*

the same was upheld by way of the impugned order. It is humbly submitted that the arrest and remand of A1 do not suffer from any infirmity.

4. *In pursuance of Article 22(2), the procedural aspects are set out in the BNSS/Cr.P.C. Section 57 & 58 of the BNSS (formerly Section 56 and 57, Cr.P.C.) deals with the procedure to be followed upon arrest. Section 187 BNSS (Section167, Cr.P.C.) provides the procedure when investigation can't be completed in 24hours. S. 57 These provisions i.e. S. 57/58/187 BNSS have to be read together &the requirement of law is to produce the arrestee before the jurisdictional magistrate within 24 hours. If the period of 24 hours is expiring and the detenu cannot be produced before the jurisdictional Magistrate, then he/she must be produced before the nearest Magistrate. Indisputably the detenu was produced before the jurisdictional Magistrate within 24 hours.*

5. *This exposition of law has been time and again reinforced by this Hon'ble Court; notably in* ***State of U.P. v. Abdul Samad; AIR 1962 SC 1506 @ Para 14***, ***Chaganti Satyarayana v. State of A.P. (1986) 3 SCC 141 @ Para12*** *and more recently reiterated in* ***Gautam Navlakha v. NIA; (2022) 13 SCC 542 @ Para 102****.*

6. *The Calcutta High Court in* ***In Re: Nagendranath Chakravarti; 1923 ILR Vol. LI 402****, interpreting S. 61 & 167 CrPC 1898 (equivalent to S. 58 BNSS) observed that,*

> *"…the intention of the Legislature, having regard to sections 61 and 167 and to the requirements of justice generally, is that an accused person should be brought before a Magistrate competent to try, or commit with as little delay as possible…."*

7. *In this regard, any reliance on* ***Priya Indoria v. State of Karnataka; (2024) 8 SCC254*** *by the Petitioner is entirely misplaced. That case dealt with issues relating to anticipatory bail, and observations in this regard was in the passing and are obiter. That judgment doesn't consider the law laid down by earlier judgments of this Hon'ble Court including in* ***Re: Nagendranath Chakravarti supra***

*and **Gautam Navlakha supra (2JJ)**, and is therefore per incuriam in this regard.*

Section 17A of the Prevention of Corruption Act

***8.** On 21.04.2025, in Vijayawada, the IO had made a request for the addition of sections 7, 7A, 8, 13(1)(b) and 13(2) of the Prevention of Corruption Act and made a request for approval under sec 17A of the Act with respect to co-accused D.Venkata Satya Prasad. Approval under Section 17-A was granted on 21.04.2025 in Vijayawada. Upon reaching Vijayawada, on 22.04.2025, A1 was served with the Arrest Memo containing the above mentioned sections of the Prevention of Corruption Act and the same was received by A1 and is in case diary.*

***9.** A1 was only an "IT Advisor" to the Government of Andhra Pradesh who was running his business in Hyderabad at the relevant time. The scope of the Petitioner's duties as an "IT Advisor" had no relation at all to the excise/liquor policy, as has been repeatedly averred by the Petitioner himself **(Pg G & Pg 123of SLP)**. Earlier, in his Reply to a Notice u/sec 179 BNSS, A1 himself clearly stated that "..based on publicly available information, I understand that the case pertains to an excise-related matter in Andhra Pradesh. However, I am unable to ascertain any direct or indirect link in the case from my end…"*

***10.** It is submitted that the approval under Section 17A is person-specific **(as admitted by the Petitioner himself, Ground F @ Pg123 of the SLP)**, required when the alleged offence is "relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties." In the present case, the allegations against A1 with respect to the perpetration of the liquor scam are in no way relatable to his function as an IT Advisor, therefore there is no requirement for approval under Section 17A of the Prevention of Corruption Act."*

ANALYSIS

8. Since the entire case revolves around the question whether the arrest of the appellant's son could be said to be *per se* illegal for want of

supply of appropriate and meaningful grounds of arrest, we should look into few provisions of the Constitution as well as the BNSS.

9. Article 21 of the Constitution reads thus:

> *"21. Protection of life and personal liberty-*
>
> *No person shall be deprived of his life or personal liberty except according to procedure established by law."*

10. Article 22 of the Constitution reads thus:

> *"22. Protection against arrest and detention in certain cases. -(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*
>
> *(3) Nothing in clauses (1) and (2) shall apply— (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.*
>
> ***(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless— (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*
>
> *Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b) such person is detained*

in accordance with the provisions of any law made by Parliament under subclauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

**(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);*

***(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and*

*(c) the procedure to be followed by an Advisory Board in an inquiry under ***[sub-clause (a) of clause (4)]."*

11. Sub-section (1) of Section 41 of Code of Criminal Procedure (for short the "Cr.P.C.") lists cases where the police may arrest a person without a warrant. The corresponding provision in the BNSS is Section 35. Section 41 of the Cr.P.C. reads thus:

"41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable

suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police office is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this subsection, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate."

(emphasis added)

12. Section 47 of the BNSS reads thus:

> *"47. Person arrested to be informed of grounds of arrest and of right to bail. –*
>
> *(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.*
>
> *(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."*

13. Section 48 of the BNSS reads thus:

> *"48. Obligation of person making arrest to inform about the arrest, etc., to relative or friend. –*
>
> *(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district.*
>
> *(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.*
>
> *(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.*
>
> *(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."*

14. We shall now look into the grounds of arrest which were provided to the appellant's son in writing at the time of his arrest and also to the appellant as the father of the person arrested. The same reads thus:

"GROUNDS OF ARREST IN RESPECT OF SRI KESSIREDDY RAJA SHEKHAR REDDY (A1) IN CR. NO. 21/2024 U/S 420, 409, 120(B) IPC OF CID P.S. MANGALAGIRI

This is a case of Conspiracy, Cheating, Criminal breach of trust, Corruption and Money Laundering which caused huge wrongful loss to the state exchequer/Distilleries and wrongful gain to influential individuals/ Few Distilleries/ Few Suppliers to a tune of more than Rs. 3200 Crores, that occurred between October 2019 and March 2024 in AP State Beverages Corporation Limited, Vijayawada and reported to CID PS on 23-09-2024 at 22-00 hrs. The complainant Sri Mukesh Kumar Meena, I.A.S., Principal Secretary Government of Andhra Pradesh vide Memo No. Rev-01/CPE/20/2024-VIG-IV, Dated: 20.09.2024, lodged a complaint based on the enquiry report with title ***"Report on Liquor Procurement and Market Manipulation (2019-2024)"*** *submitted by a five member committee of APSBCL. The committee found the following manipulations,*

1. Suppression of the established popular brands and unfair discrimination in allocation of OFS over a period of time leading to almost disappearance of some popular brands from the market.

2. Favorable/Preferential allocation of orders to certain new brands in violation of the existing norms giving them undue market share and competitive advantage over the existing brands in the market.

3. The procurement system was shifted to manual process giving scope for manipulation of OFS against the previous system of automated OFS issuance compromising the integrity of the process in order to implement the two manipulations mentioned above.

On which a case in Cr.No.21/2021 U/s 409,420, 120(B) IPC of CID PS, AP, Mangalagiri was registered by the SHO (Y.Srinivasa Rao, DSP, AP, Mangalagiri)/CID PS, AP, Mangalagiri on 23.09.2024 at 22.00 hrs and submitted the copies of FIRs to all the concerned.

Grounds of Arrest:

Investigation done so far reveals prima facie case of Conspiracy, Cheating, Criminal breach of trust and Corruption

1. You are the key person in organizing the kickback driven liquor trade in AP during 2019-2024. You along with Vasudeva Reddy, Satya Prasad, Midhun Reddy, Vijaya Sai Reddy, Sajjala Sridhar Reddy and others hatched conspiracy, suppressed popular brands, promoted blue-eyed brands and caused wrongful gain about Rs. 3200 Crores towards kickbacks to the liquor syndicate through public servants by corrupt practices.

2. In pursuance of the conspiracy, you have controlled issuance of OFSs to suppliers based on kickbacks received. You used to get sales data, calculate the kickback amounts, and used to collect kickbacks through Booneti Chanakya and others regularly.

3. You have threatened SPY Agro Industries Pvt. Ltd., and took over the control of SPY accounts and managed their accounts without their consent. You are further responsible for transfer of money from the bank accounts of SPY Agro Industries Pvt. Ltd., to lot of shell companies.

4. You are responsible for floating of Adan Distillery Pvt Ltd and manufacture of brands like Supreme Blend etc., in some bottling units as a part of the conspiracy.

5. After collecting kickbacks, you used to send the same to P.V.Mithun Reddy and others.

6. Further, you have organized entire business of Leela brand in AP by appointing your henchman Varun as head of operations as a part of the conspiracy.

7. You invested the crime proceeds in various real estate, Infra, Entertainment, chemical and mobility companies.

8. As a part of the conspiracy, you caused lot of wrongful loss to the APSBCL and to the State Exchequer.

9. You have been absconding and not appearing before the Investigation officer in response to notices U/s 179 BNSS.

On the above grounds and as the investigation is not yet completed, your arrest is necessary for further investigation of the case. You are hereby arrested.

Sd/-
21/4/25
I/c Investigating Officer,
Dy. Supdt. Of Police
SIT, Vijaywada."

15. The pathbreaking judgment of this Court in the case of ***Vihaan Kumar v. State of Haryana and another*** reported in 2025 SCC OnLine SC 269 serves as a pivotal reference point in Indian jurisprudence regarding the rights of individuals upon arrest. The judgment in ***Vihan Kumar*** *(supra)* has profound implications for the enforcement of Article 22 of the Constitution across the country. It underscores the judiciary's commitment to upholding constitutional protections against arbitrary arrest and detention. This decision sets a clear precedent that the investigating agency/ police officer/ authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual's arrest, beyond citing broad provisions of law. A clear dictum has been laid in ***Vihaan Kumar*** *(supra)* that the law enforcement agencies must exercise greater diligence in communicating the precise grounds of arrest in order to avoid unlawful detention claims. The decision further reinforces the right to legal recourse through *habeas corpus* petitions, empowering individuals to challenge the legality of their detention effectively.

16. In ***Vihaan Kumar*** *(supra)*, this Court eruditely speaking through Justice Abhay S. Oka made some very important observations which we must reproduce as under:

"Therefore, as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The grounds should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of ***Pankaj Bansal v. Union of India*** *reported in (2024) 7 SCC 576,*

this Court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing. Article 22(1) also incorporates the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. This requirement incorporated in Article 22(1) also ensures that the grounds for arresting the person without a warrant exist. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

14. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will

also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

15. We have already referred to what is held in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal (supra). This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal[1] are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

16. An attempt was made by learned Senior counsel appearing for 1st respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a chargesheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge sheet. Accepting such arguments, with great respect to the learned senior counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge sheet and order of cognizance will not validate

an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

17. Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the first respondent can arrest him again. At this stage, it is not necessary to decide the issue.

18. In the present case, 1st respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10th June 2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the 1st respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

19. An argument was sought to be canvassed that in view of sub-Section (1) of Section 50 of CrPC, there is an option to communicate to the person arrested full particulars of the offence for which he is arrested or the other grounds for the arrest. Section 50 cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 50 will attract the vice of unconstitutionality. Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The 'other grounds for such arrest' referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in

Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is the corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS.

20. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights.

CONCLUSIONS

21. Therefore, we conclude:

a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the

same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

*f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the viol*ation of Articles 21 and 22 of *the Constitution is established."*

(Emphasis supplied)

17. Justice N. Kotiswar Singh while fully concurring with the views expressed by Justice Abhay S. Oka added a few lines of his own as under:

*"**2.** The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in the case of Pankaj Bansal (supra) so as to be meaningful to serve the intended purpose which has been reiterated in Prabir Purkayastha (supra). The said constitutional mandate has been incorporated in the statute under Section 50 of the CrPC (Section 47 of BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50A of the CrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1) of the CrPC.*

> ***3.*** *The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."*
>
> (Emphasis supplied)

18. Thus, the following principles of law could be said to have been laid down, rather very well explained, in ***Vihaan Kumar*** *(supra)*:

    a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.

    b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.

c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).

d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).

e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.

19. We must clarify one important aspect of ***Vihaan Kumar*** *(supra)*. In ***Vihaan Kumar*** *(supra)* the case was that there was an absolute failure on the part of the police to provide the grounds of arrest. In ***Vihaan Kumar*** *(supra)* reliance was placed upon the entry in the case diary which recorded that the appellant therein was arrested after informing him of the grounds of arrest. In the case at hand, it is not in dispute that the grounds of arrest were supplied to the arrestee, however, the case put up is that those grounds are not meaningful and are bereft of necessary essential information.

20. In this appeal our endeavor would be to consider whether the grounds of arrest supplied to the appellant's son at the time of his arrest could be said to be meaningful and sufficient enough to give a broad idea to the person arrested of the accusations levelled and as to why he was being taken into custody.

21. Having looked into the grounds of arrest which were supplied to the son of the appellant at the time of his arrest, it is difficult for us to take the view that the grounds do not make any sense or are not meaningful or are just an eyewash.

22. In the case of ***State of Bombay*** **v.** ***Atma Ram*** reported in 1951 SCC 43 : AIR 1951 SC 157 (C), it was held by this Court that, the test is whether the communication of the grounds of arrest is sufficient to enable the detained person to make a representation at the earliest opportunity.

23. Similarly in the case of ***Magan Lal Jivabhai, in re***, AIR 1951 Bom 33(D), it was held that, the only possible and reasonable construction that can be put upon the language of Article 22(6) is that the detaining authority, while furnishing grounds of detention, is required to state the facts on account of which he is satisfied that the detention is necessary in the interest of the security of the State, maintenance, of public order, etc.

24. The only privilege a detaining authority can claim against the disclosure of facts is on the grounds of public interest. If no facts at all leading to the detention of a detenu are to be mentioned in the grounds which are to be furnished to him, then obviously the intention underlying the enactment of Article 22(6) would be frustrated.

25. In both the cases referred to above, the persons had been detained under the provisions of Preventive Detention Act. The information to be supplied to such a person is governed by Clause (5) of Article 22. In the present case, the son of the appellant has been arrested for specific offences as mentioned in the grounds of arrest. His case is governed by Clause (1) and not by Clause (5) of Article 22. However, under both the clauses, certain information has to be supplied to the person arrested and detained.

26. Under Clause (1), the ground for arrest has to be communicated to the person arrested. Under Clause (5) the grounds on which the order of detention has been made has to be communicated to the person detained.

27. The object underlying the provision that the grounds of arrest should be communicated to the person arrested has been very succinctly explained in ***Vihaan Kumar*** *(supra)*. On learning about the grounds

for arrest, the person concerned will be in a position to make an application before the appropriate Court for bail, or move the High Court for a writ of *habeas corpus*. Further, the information will enable the arrested person to prepare his defence in time for the purposes of his trial. For these reasons, it has been provided by the Constitution that, the ground for the arrest must be communicated to the person arrested as soon as possible.

28. For the purposes of Clause (1) of Article 22, it is not necessary for the authorities to furnish full details of the offence. However, the information should be sufficient to enable the arrested person to understand why he has been arrested. The grounds to be communicated to the arrested person should be somewhat similar to the charge framed by the Court for the trial of a case.

29. The rule in Article 22(1) that a person upon being arrested must be informed of the grounds of arrest is similar to, though not exactly identical with, the rules prevailing in England and in United States of America. The rule prevailing in England is that

> *"in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on a charge made known to the person arrested"; (per Viscount Simon L.C. in — 'Christie v. Leachinsky (1947 AC 573 at p. 586(F)."*

30. It is a rule of common law and is described in different languages by different authorities, but the meaning is the same; the arrested person must be told for what he is arrested or be informed of the cause of his arrest. In the United States the accused has the constitutional right "to be informed of the nature and cause of the accusation"; see 6th Amendment to the American Constitution. In ***Hooper* v. *Lane***, (1857) 6 HLC 443 : 10 ER 1368 (G), one of the reasons for the rule was said to be that the person arrested should know whether he is or is not bound to submit to the arrest. In ***Christie v. Leachinsky*** reported in (1947) AC 573 Lord Simonds observed at page 591 as thus:

> *"Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that*

> *he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? ……. Blind, unquestioning obedience is the law of tyrants and of slaves: it does not yet flourish on English soil".*

31. Professor Glanvile L. Williams in his article "Requisites of a Valid Arrest" in (1954) Criminal Law Review, at page 16, criticised the reason given by Lord Simonds as "somewhat legalistic" because very few people know the law of arrest in such a way that they can decide on the spot whether the arrest to which they are being subjected to is legal. In his opinion, the true reason is a different one, e.g., the reason given by Viscount 11th Simon L.C. in the same case at page 588 in the following words:

> *"If the charge on suspicion of which the man if arrested is then and there made known to him, he has the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken with the result that further inquiries may save him from the consequences of false accusation."*

32. Another reason given by Lord Simonds at page 592 is that the arrested person may without a moment's delay take such steps as will enable him to regain freedom. One more reason is that it acts as a safeguard against despotism and over-zeal. As remarked by Professor Glanville L. Williams *(supra)*, at page 17:

> *"the rule has the effect of preventing the police from arresting on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have power to arrest".*

33. In ***McNabb* v. *United States of America*** reported in (1943) 318 US 332 (H), Frankfurter, J. observed at page 343:

> *"Experience has therefore counselled that safeguards must be provided against the dangers of the overzealous as well as the despotic ……. Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard".*

34. In ***United States* v. *Cruikshank*** reported in (1876) 92 US 542, it was observed by Waite C.J. that the accused is given the right to have a specification of the charge against him in order that he may decide whether he should present his defence by motion to quash, demurrer or plea.

35. The debates of the Constituent Assembly which framed the Constitution are relevant for the purpose of ascertaining the reason behind the insertion of a certain Article in the Constitution. In the Draft of the Constitution, the Article corresponding to the Article under consideration was Article 15A. The reason given for the inclusion of the said Article was that it contained safeguards against illegal or arbitrary arrests (9 Constituent Assembly Debates, p. 1497).(See: ***Vimal Kishore Mehrotra v. State of Uttar Pradesh,*** AIR 1956 All 56)

36. If a person is arrested on a warrant, the grounds for reasons for the arrest is the warrant itself; if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told of the acts done by him which amounts to the offence. He must be informed of the precise acts done by him for which he would be tried; informing him merely of the law applicable to such acts would not be enough. (See: ***Vimal Kishore Mehrotra*** *(supra))*

37. In the overall view of the matter more particularly having gone through the grounds of arrest we have reached the conclusion that the requirement in terms of para 21(b) as laid down in ***Vihaan Kumar*** *(supra)* could be said to have been fulfilled.

38. In view of the aforesaid, we do not find any merit in this appeal. The same is accordingly dismissed.

39. It is needless to clarify that it shall be open for the person arrested *viz.* Kessireddy Raja Shekhar Reddy and in judicial custody as on date to apply for regular bail before the competent court. If any regular bail application is pending as on date, the same shall be taken up for hearing at the earliest and be decided in accordance

with law keeping in mind the well-settled principles governing the grant of regular bail.

40. Pending application, if any, also stands disposed of.

SLP (CRL.) No. 5691 OF 2025

1. In view of the judgment and order pronounced in Criminal Appeal @ SLP (CRL.) No. 7746 of 2025, it is needless for us to now go into legal issues raised in the present petition. We believe that it would be just an academic exercise for us. However, the question of law is kept open. The petition is disposed of accordingly.

Result of the case: Matters disposed of.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 139 : 2025 INSC 777

Sakhawat and Anr.
v.
State of Uttar Pradesh

(Criminal Appeal No. 4571 of 2024)

23 May 2025

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court upholding the conviction of the appellants under various sections of Penal Code, 1860, when the prosecution failed to conduct fair investigation and had suppressed affidavits of the eyewitnesses.

Headnotes†

Penal Code, 1860 – ss.34, 302, 307 – Murder – Failure to carry fair investigation – Appellants-accused convicted for murder of deceased and sentenced to life imprisonment whereas acquittal of accused no.1 – Bail applications by appellants – Sessions court relied on the affidavits of two eye-witnesses and granted bail – High Court upheld the order of the trial court – Correctness:

Held: Three out of four eyewitnesses admittedly filed the affidavits during the bail hearing of the accused, stating that the accused not involved – Investigating Officer did not controvert the affidavits by filing a counter-affidavit, though time was granted to him – Thus, by failing to carry out further investigation on the basis of affidavits, the prosecution failed to carry out a fair investigation – Moreover, prosecution tried to suppress the affidavits – Serious doubt created about the truthfulness of the versions of three prosecution witnesses-eye witnesses before the Court – As the prosecution did not conduct a fair investigation and suppressed important material in the form of affidavits of the prosecution witnesses-eye witnesses, unsafe to convict the appellants only on the basis of the testimony of the informant – Failure to conduct further investigation

* Author

based on the affidavits goes to the root of the matter – Failure to recover the weapons of offence also relevant – Failure on the part of the High Court and the Session Court to consider the cross-examination of Investigating Officer and the suppression of the affidavits by the prosecution – High Court overlooked these highly relevant aspects – Thus, the impugned judgment set aside and the appellants acquitted of the offences alleged against them. [Paras 20-24, 26]

Practice and procedure – Record of trial court not to be referred as "lower court record" – Reiteration of the direction issued by this Court – Describing any Court as a "Lower Court" against the ethos of our Constitution – High Courts to take note of the said direction and act upon the same. [Para 25]

List of Acts

Constitution of India; Penal Code, 1860.

List of Keywords

Murder; Life imprisonment; Injured witness; Material prosecution witnesses; Fair trial; Affidavits in favour of accused; Supplementary statements of witnesses; Counter-affidavit; Failure to carry out fair investigation; Suppression of important material; Failure to recover weapons; Lower court; Lower court record; Ethos of Constitution.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4571 of 2024

From the Judgment and Order dated 09.10.2018 of the High Court of Judicature at Allahabad in CRLA No. 2670 of 1982

Appearances for Parties

Advs. for the Appellant:
Manoj Prasad, Sr. Adv., Vikrant Singh Bais.

Advs. for the Respondents:
K Parameshwar, Sr. A.A.G., Sudeep Kumar, Ms. Kanti, Ms. Manisha, Ms. Rupali.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL BACKGROUND

1. This appeal has been filed against the judgment dated 9th October, 2018 of the High Court of Allahabad. The impugned judgment upheld the conviction of the appellant nos. 1 and 2 for the offences punishable under Section 302 and Section 307 read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC'). Both of them were sentenced to suffer life imprisonment.

2. First Information Report (for short, 'the FIR') dated 5th May, 1981 was registered against the accused no. 1 (Abrar), appellant no. 1/accused no. 2 (Sakhawat) and appellant no. 2/accused no. 3 (Mehndi) for the aforementioned offences. The case of the prosecution is that PW-4 (Amir Hussain) was sleeping under a Babool tree, and the deceased (Sukha) was sleeping in his hut. On the intervening night of 4th/5th May, 1981, PW-4 (Amir Hussain) woke up at 2 a.m. to the sound of a firearm being shot. PW-5 (Allah Baksh) and PW-6 (Mohd. Hanif) also arrived at the scene where they heard a voice from the hut of the deceased (Sukha) and a firearm shot. They saw appellant no. 1 armed with a country-made pistol, appellant no. 2 armed with a knife, and accused no. 1 armed with a *danda*. The accused allegedly had a scuffle with the deceased and PW-7 (Nanhi), who were allegedly in an illicit relationship. Appellant no. 2 inflicted an injury to the neck of PW-7 using his knife. The accused fled and the deceased was found trembling on account of injuries near his hut, and eventually succumbed to the injuries.

3. On 16th October 1982, the Trial Court convicted appellant no. 1 and appellant no. 2 for the offences alleged against them, and a sentence of life imprisonment was imposed. The Trial Court acquitted the accused no. 1 as he had only held a *danda* and no injury marks were found on the deceased or PW-7 that were made using a *danda*.

4. The present appellants are accused nos. 2 and 3. They had preferred an appeal before the High Court. By the impugned judgment, the High Court confirmed the judgment of the Trial Court.

5. The prosecution has examined 10 witnesses to prove their case. PW-1 (Dr. R. M. Bhardwaj) is the doctor who conducted the autopsy of the deceased, PW-2 (Dr. K. Chandra) is the doctor who examined the injuries of PW-7, and PW-3 (Dr. Pratibha Gupta) is the gynaecologist who examined PW-7. PW-4 (Amir Hussain) is the informant/complainant who has been examined as an eye witness to the offence. He was sleeping just a few steps away when he heard noises and rushed to the scene of the crime. PW-5 (Allah Baksh) and PW-6 (Mohd. Hanif) have been examined as eye-witnesses and arrived at the crime scene on hearing a gunshot. PW-7 is an injured witness who was allegedly in an illicit relationship with the deceased and was declared hostile when she claimed that PW-4 and accused no. 1 shot the deceased and wounded her. PW-8 (Raj Bahadur Singh) is the constable who accompanied the dead body for autopsy. PW-9 (Noora) was acquainted with both the deceased and PW-7 and deposed on the existence of a relationship between the deceased and PW-7. PW-10 (Harpal Singh) is the Investigating Officer who initiated the inquest proceedings, drew a site map, made seizures and recorded statements of witnesses.

SUBMISSIONS

6. Learned senior counsel appearing for the appellants has taken us through the evidence of the prosecution witnesses. He submitted that both PW-5 (Allah Baksh) and PW-6 (Mohd. Hanif) had sworn affidavits at the time of consideration of bail applications of the appellants. Those affidavits were in favour of the accused. Though both the witnesses during their cross-examination have denied having filed such affidavits, the defence witnesses have proved the fact that such affidavits were filed. He pointed out that PW-5 stated that he had gone to the police station along with PW-4 and was detained at the police station. However, PW-6, son of PW-5, says that PW-5 had not gone to the police station.

7. Learned senior counsel submitted that there was no material on record to show that the deceased and PW-7 were maintaining an illicit relationship. He submitted that evidence of PW-7 shows that PW-4 and one Abrar are the real culprits. They have falsely implicated the brothers of PW-7. He pointed out that although the incident occurred at 2:00 am on 5th May 1981, the FIR was lodged only at 6:30 am. Inquest of the dead body of deceased was done at 11:30 am. The

postmortem was conducted at 03:40 pm. He submitted that this delay creates a doubt about the veracity of the prosecution's case. He submitted that the recovery of articles (weapons of offence) was not proved. Even the Forensic Science Laboratory Report (for short, the FSL Report) is not placed on record. He submitted that there are contradictions in the versions of PW-5 and PW-6, which make the evidence vulnerable.

8. Learned senior counsel appearing for the State pointed out that the evidence of PW-5 and PW-6, which clearly ascribes roles to the appellants, has gone unchallenged as there was neither any material contradiction nor any omission brought on record. He submitted that even evidence of PW-4 is reliable and deserves acceptance. He pointed out that PW-7 turned hostile and therefore, her evidence will have to be kept out of consideration. He also pointed out that there are concurrent findings of fact by both the Trial Court and the High Court. By relying on the testimonies of PW-4, PW-5, and PW-6, and in the absence of any perversity in the findings of the Trial Court and the High Court, there is no reason to interfere with the impugned judgments.

CONSIDERATION

9. We have carefully perused the evidence of the material prosecution witnesses. PW-4 is the first informant. He stated that he knew the appellants. He stated that accused no. 1 and the appellants were present in the Court. He stated that accused no. 1 and appellant no. 1 were real brothers, and appellant no. 3 was their cousin. He pointed out that the appellant no. 1 and accused no. 1 were the brothers of the injured witness, PW-7. He stated that the deceased had an illicit relationship with PW-7. He stated that he was doing joint farming with the deceased. He described the incident that took place at 2:00 a.m. He stated that the deceased was sleeping in his hut, and he was sleeping under a Babool tree. When he heard the sound of a gunshot, he opened his eyes and found that PW-5 and PW-6 had come there. He heard a voice from inside the hut saying, "Brother, you have done this wrong". Thereafter, another gunshot was heard. He stated that he switched on a torchlight and looked towards the hut. He saw appellant no.1 with a country-made pistol in his hand. Appellant no. 2 had a knife in his hand, and accused no. 1 had a danda in his hand. They were clinging to PW-7. When

the witness raised an alarm, all three accused ran away. He stated that PW-7 had a bullet wound on her stomach and a knife wound on her back. He stated that the deceased had already died. In the cross-examination, he stated that he did not see the illicit relationship between the deceased and PW-7. He stated that this was a common discussion in the village. On the second sound of firing, while answering the question in the cross-examination about who fired the gunshot and at whom, PW-4 stated that he had only heard the sound of the second gunshot. He denied the suggestion that the police came to the village between 10:00 am and 11:00 am and arrested him. He also denied the suggestion that the police had kept him in custody till the next day.

10. Now, we come to the evidence of PW-5. He identified the three accused before the Court. He stated that at 2:00 am, he was sleeping in his hut along with PW-6 (Mohd. Hanif). He was awakened by the sound of a firearm. He went near the hut of the deceased (Sukha) with a three-cell torch, when he saw that accused no. 1, appellant no. 1 and appellant no. 2 were clinging to PW-7, who was telling them, "Brother, you had done wrong". Thereafter, the second sound of fire came. Then the three accused fled. He stated that appellant no. 1 was carrying a country-made pistol and appellant no. 2 was carrying a knife. In the cross-examination, he was confronted with the affidavit marked as 'A' by giving a suggestion that this affidavit was verified by him at the time when an application for bail of the appellants was considered. Witness denied having executed any such affidavit. He reiterated that he did not submit any affidavit. However, he has not been confronted with the specific parts of the affidavit during his cross-examination. He stated that he went to the police station at 8:00 am and was there until 8:00 am the next day. He stated that the Sub-Inspector left the police station after recording the report and directed that the witness should not be allowed to go. He stated that his son, PW-6 (Mohd. Hanif), did not visit the police station. The statement of PW-5 that the appellants were present with a country-made revolver and a knife, and were clinging to PW-7, has also not been challenged in the cross-examination at all.

11. Now, we come to the evidence of PW-6 (Mohd. Hanif). He stated that at 02:00 am on the date of the incident, he was sleeping at home with his father, PW-5. His eyes opened after hearing a sound of firing. Thereafter, he, along with PW-5 (Allah Baksh), went towards

the hut of the deceased (Sukha). He stated that PW-4, who was sleeping under a babool tree, also woke up. He heard a voice saying, "Brother, I am telling the truth and will tell everyone that you have done wrong". Then they heard one more gunshot. He stated that PW-4 and PW-5 were carrying a torch, and in the light of the torch, they saw the three accused clinging to PW-7. He also stated that appellant no. 1 was having a country-made pistol in his hand and appellant no.2 had a knife in his hand. When they shouted and ran towards the accused, all three accused fled away. PW-6 was confronted, in cross-examination, by showing an affidavit marked as 'B'. He denied having submitted any such affidavit. On the presence of appellants with a country-made gun and a knife, respectively, there was no serious cross-examination. Thus, his version about hearing two gunshots, the accused clinging to PW-7, and the accused carrying weapons has gone unchallenged.

12. As regards the injury to PW-7, PW-2 (Dr. K. Chandra), a Medical Officer who examined PW-7, stated that there were multiple gunshot wounds. There was an incise wound of 6cm X 2cm, which was muscle deep on the front and left side of the neck. Four abrasions were found. He stated that the incised wound could have been caused by a knife. There is hardly any cross-examination on this aspect.

13. PW-1 (Dr. R. M. Bhardwaj), a Senior Radiologist who had examined the body of the deceased, stated that a firearm wound having a size of 3cm x 2cm, which was in the chest cavity, deep in front of the left side chest, just below the left nipple, was seen. He stated that the firearm injury was sufficient in the ordinary course to cause death.

14. PW-7 was declared hostile. She tried to make out a case that it was PW-4 who shot her in the stomach, and that one, Abrar, stabbed her in her neck.

15. DW-1 is one Chhangu, who was the Pradhan of the village. He was examined to show that PW-4 was arrested and was kept in lockup for two days. He stated that affidavits of PW-5 and PW-6 were prepared in his presence in Rampur Kachehri. He stated that after the typist typed the affidavits, he read over them. DW-1 stated that the Oath Commissioner read over the affidavits to them. He stated that the deponents had put their thumb impressions below the statements. We find that in the examination-in-chief, he was not shown the affidavits marked as 'A' and 'B'.

16. DW-2 is Mumtaz Ali, who was working with an advocate in his office. He stated that PW-5 and PW-6 put their thumb impressions in his presence, and he had verified the same. DW-3 (Radhyeshyam, Advocate) was the Oath Commissioner who stated that PW-5 and PW-6 affirmed affidavits before him, which were marked as 'A' and 'B'. DW-4 (Pradeep Kumar Gupta) is the clerk of the Oath Commissioner who claimed to have read over the affidavits to PW-5 and PW-6. DW-2 (Mumtaz Ali) identified his signatures as attesting witness on statements marked as 'A' and 'B'.

17. We must record here that in the cross-examination of PWs-4, 5 and 6, no material contradictions and omissions have been brought on record. The cross-examination, unfortunately, is very sketchy. But, there is something which goes to the root of the matter. Under Article 21 of the Constitution of India, the accused is entitled to a fair trial. Even the Police are under an obligation to carry out a fair investigation. This is a crucial aspect of fairness. The objective of the investigation is to ensure that the real culprits are brought to justice. The legal system must ensure that an innocent person is not punished.

18. We have perused the entire trial Court record. The appellant no.1 made an application for bail before the Sessions Court. Appellant No. 2 and accused no.1 made another application. The order sheet of the bail application made by the appellant no.1 shows that the affidavits were produced in the bail application, and time was granted by the Session Court to file a counter-affidavit to the Investigating Officer. Bail was granted to the appellant no.1,by observing that all the eyewitnesses except PW-4 (complainant) have given their affidavits stating that the appellant no.1 was not the person who shot at the deceased. The order also refers to the affidavit of PW-7 (Nanhi), which is on record of the bail application. In the affidavit, she states that PW-4 (Amir Hussain) and one Akbar are the assailants of the deceased who injured her. Accused no.1 and appellant no.2 were granted bail by the Sessions Court by relying upon the affidavit of PW-7 (Nanhi).

19. There is something very crucial that the High Court and the Sessions Court have missed. In the cross-examination of PW-10 (Harpal Singh), Investigating Officer, the following questions were put:

> **"Que.** Except complainant other eyewitnesses had submitted their affidavits on behalf of accused persons in this Court at the time of bail, you had not filed any counter affidavit to those affidavits?
>
> **Ans.** Witnesses were not found available to me as such I could not verify as to whether they had filed affidavits or not and on account of this reason I could not file any counter-affidavit also.
>
> **Que.** Whether you had gone in search of those witnesses in regard to counter affidavit yourself or you had sent someone?
>
> **Ans.** I had gone personally.
>
> **Que.** You have not recorded anything in case diary about searching witnesses for counter-affidavit?
>
> **Ans.** No, Sir, I had closed case diary after completing investigation.
>
> **Que.** Have you recorded any entry in C.D. about tracing witnesses for counter-affidavit?
>
> **Ans.** I do not recollect.
>
> **Que.** When you did not find witnesses available whether you moved any application before court that you could not find witnesses available as such time be extended?
>
> **Ans.** I had reported to Government counsel about not finding witnesses available.
>
> **Que.** From copy of affidavit of injured Nanhi you had come to know this fact that Amir Hussain has committed murder?
>
> **Ans.** Copy of the said affidavit had reached to me and such fact was lying mentioned in that affidavit.**"**

20. Thus, the fact that PW-5 and PW-6 had submitted the affidavits in the bail application in favour of the accused is admitted by the investigating officer. Even the affidavit of PW-7 (Nanhi) is admitted. Though there is a defence evidence adduced to prove the execution of the affidavits by PW-5 and PW-6, marked as Annexure 'A' and 'B', the police did not conduct an investigation by sending the affidavits

and admitted thumb impressions of the witnesses for examination by an expert. Thus, three major prosecution witnesses, who were the eyewitnesses, had admittedly filed the affidavits before the Session Court stating that the present appellants were not the culprits. The Session Court relied upon the affidavits for granting bail to the accused. After getting the knowledge of the affidavits, it was the duty of the Investigating Officer to record supplementary statements of these three eyewitnesses about the affidavits and the contents of the affidavits. He has come out with a lame excuse that he did not controvert the said affidavit by filing a counter-affidavit, as the witnesses could not be traced. If the presence of the witness is required during the investigation, there are elaborate provisions in the Code of Criminal Procedure, 1973 (for short, 'the CrPC') for procuring the presence of the witnesses. PW-10 has not explained what efforts he has made to call PW-5 to PW-7 to record their further statements.

21. Thus, the scenario which emerges is that three out of four eyewitnesses had admittedly filed the affidavits during the bail hearing of the accused, stating that the accused were not involved. For whatever reason, the investigating officer did not controvert the affidavits, though time was granted to him. In fact, the stand taken by the affidavit of PW-7 is that PW-4 and Akbar are the assailants who killed the deceased and who injured her.

22. Thus, by failing to carry out further investigation on the basis of the said affidavits, the prosecution has failed to carry out a fair investigation. Moreover, the prosecution tried to suppress the affidavits.

23. Therefore, there is a serious doubt created about the truthfulness of the versions of PW-5 to PW-7 before the Court. It is pertinent to note that PW-5 was detained at the police station for 24 hours before his statement was recorded. A serious doubt is created whether these witnesses are telling the truth. Then, what survives is the evidence of PW-4. PW-7 in the affidavit has stated that, in fact, PW-4 was the assailant. As the prosecution has not conducted a fair investigation and has suppressed important material in the form of affidavits of PW-5 to PW-7, it is unsafe to convict the appellants only on the basis of the testimony of PW-4. The failure to conduct further investigation based on the affidavits goes to the root of the matter. The failure to recover the weapons of offence also becomes relevant in the background of these circumstances.

24. Therefore, this is a case where there is failure on the part of the High Court and the Session Court to consider the cross-examination of PW-10 and the suppression of the affidavits by the prosecution. These highly relevant aspects have been completely overlooked by the High Court.

25. Before we part with the judgment, we reiterate the direction issued in the order dated 8th February 2024, that the record of the Trial Court should not be referred to as "Lower Court Record". Describing any Court as a "Lower Court" is against the ethos of our Constitution. The Registry has issued a Circular dated 28th February 2024 for giving effect to the order. The High Courts must take note of the above direction and act upon the same.

26. Therefore, the appeal succeeds. The impugned judgments and orders insofar as the appellants are concerned are hereby set aside, and the appellants are acquitted of the offences alleged against them. Their bail bonds stand cancelled.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 150 : 2025 INSC 782

Amol Bhagwan Nehul
v.
The State of Maharashtra & Anr.

(Criminal Appeal No. 2835 of 2025)

26 May 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Issue arose as regards the correctness of order passed by the High Court dismissing the petition whereby the appellant sought quashing of criminal case against him that the appellant forcibly had sexual intercourse with the complainant on false promise of marriage.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Quashing of criminal case – Complainant alleged that the appellant forcibly had sexual intercourse with her on false promise of marriage – Complaint made and chargesheet filed against appellant u/ss.376, 376(2)(n), 504, 506 IPC – Appellant sought quashing of criminal case – High Court dismissed the petition – Correctness:

Held: It does not appear from the record that the consent of the complainant was obtained against her will and merely on an assurance to marry – Narrative of complainant does not corroborate with her conduct – Consent of complainant as defined u/s.90 IPC also cannot be said to have been obtained under a misconception of fact – No material to substantiate "inducement or misrepresentation" on the part of appellant to secure consent for sexual relations without having any intention of fulfilling said promise – Criminal prosecution against the appellant is probably with an underlying motive and disgruntled state of mind – No reasonable possibility that complainant or any woman being married before and having a child of four years, would continue to be deceived by the appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her – Not a case where there was a false promise to marry to begin with – Consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the

* Author

State – Ingredients of the offence u/ss.376 (2)(n) or 506 IPC not established – Appellant is just 25 years of age, and has a lifetime ahead of him, thus, in the interest of justice, the proceedings quashed at this stage itself – Impugned judgment set aside – Penal Code, 1860 – ss.376, 376(2)(n), 504, 506. [Paras 8-12]

Case Law Cited

State of Haryana v. Bhajan Lal **[1990] Supp. 3 SCR 259 : (1992) Supp. 1 SCC 335 – relied on.**

Naim Ahmed v. State (NCT) of Delhi **[2023] 1 SCR 1061 : 2023 SCC Online SC 89 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Quashing of criminal case; Forcible sexual intercourse on false assurance of marriage; Unnatural sex; Consent obtained under misconception of fact; Inducement or misrepresentation; Promise; Coercion or threat of injury; Criminal prosecution with underlying motive and disgruntled state of mind; Sexual assault; Invoking criminal machinery of State; Blotting identity of individual accused of heinous offence; Prevent abuse of process of law; Interest of justice.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2835 of 2025

From the Judgment and Order dated 28.06.2024 of the High Court of Judicature at Bombay in CRWP No. 3181 of 2023

Appearances for Parties

Advs. for the Appellant:
Sandeep Sudhakar Deshmukh, Nishant Sharma, Ankur S. Savadikar.

Advs. for the Respondents:
Bharat Bagla, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Nar Hari Singh, Amit Balasaheb Thorat.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. This Appeal by special leave is directed against the Impugned Order dt. 28.06.2024 passed by the High Court of Judicature at Bombay in Crl. W.P. No. 3181 of 2023 whereby the Petition u/s 482 of the Code of Criminal Procedure, 1973 (**'CrPC'**) seeking quashing of the Criminal Case C.R. No. 490/2023 dt. 31.07.2023 for offences punishable u/s 376, 376(2)(n), 377, 504 & 506 of the Indian Penal Code (hereinafter "IPC") registered at Karad Taluka Police Station, Satara *qua* the Appellant was dismissed. *Vide* an amendment to the Petition, the Appellant also challenged the chargesheet filed on 26.09.2023 and the proceedings in RCC no. 378/2023 pending before the Additional Sessions Judge, Karad.

3. The Criminal Case C.R. No. 490/2023 dt. 31.07.2023 at Police Station Karad Taluka, Dist. Satara was registered at the behest of a Complaint filed by the Complainant/Respondent no. 2 alleging that during the period 08.06.2022 till 08.07.2023, the Appellant forcibly had sexual intercourse with her on the false assurance of marriage. The Complainant/Respondent no. 2 who had been previously married, had obtained *Khulanama* from her ex-husband and had been residing with her 4-year-old son at her parental home in Kalegaon, Karkad Dist since 2021; while the Appellant, a 23-year-old student of *Bachelor of Science (Agriculture) at Krishna College of Agriculture, Rethre BK, Taluka Karad District, Satara* was residing as a tenant next door, with three other men since 25.05.2022. The sequence of events as recorded in the FIR 490/2023 dt. 31.07.2023 are as under:

   3.1 The parties became acquainted on 08.06.2022, which turned into a friendship and they soon began interacting more frequently. The relationship blossomed into love, but it is stated that the Complainant/Respondent no. 2 repeatedly denied to make physical relations with the Appellant.

   3.2 It is alleged the case of the Complainant that in July 2022, the Appellant had entered the house of the Complainant/Respondent

no. 2 at night, and said that once she obtains divorce from her husband, the Appellant would instantly marry her and on this pretext had sexual intercourse with her, despite her denial. It is stated that since then, the parties continued meeting outside and having meals together; however later on 21.09.2022 on the occasion of the Appellant's birthday, when the Complainant/ Respondent had visited the Rajyog Lounge, Varunji Phata, Airport Karad, the Appellant again had sexual intercourse with her on the assurance of marriage. Thereafter, the Appellant allegedly borrowed money from the Complainant/Respondent no.2 on various occasions & used her car, Hyundai Verna No. MH-12-HZ-9559 for his personal use.

3.3 In January 2023, the parties visited Pushkar Lodge, Ogalewadi, Karad, where the Appellant told the Complainant that he had not informed his family about their relationship, however, he would marry her once her divorce was finalized. Allegedly, despite her objection, the Appellant on this assurance of marriage, again had sexual intercourse with the Complainant/Respondent no. 2 and there is a specific allegation that he committed unnatural sex with her. It is alleged that soon thereafter, the Appellant had reduced his interactions with the Complainant/Respondent no. 2, did not answer her phone calls and left for his hometown at Ahmednagar.

3.4 On 08.07.2023, the Complainant/Respondent no. 2 visited his native village in Ahmednagar and met his parents and other relatives, who refused to marry the Appellant with Complainant/ Respondent no. 2 as they belonged to different religions. Allegedly, when the Complainant refused to leave, the parents of the Appellant, his brother and his uncle pushed her aside by beating and abusing her. The Complaint dt. 31.07.2023 was registered after 23 days of the alleged incident at PS Taluka Karad, Dist. Satara.

4. The Appellant on the other hand, has narrated the sequence differently, stating that during the alleged period of incidence, when he had been assigned a program at Village Kalegaon, Tq. Karad. Dist. Satara for five months, he became acquainted with the Complainant/Respondent no. 2 as his neighbor. The Appellant has denied the allegations of having forced sexual intercourse with the

Complainant/Respondent no. 2 on the assurance of marriage, and stated that it was in-fact the Complainant/Respondent no. 2 who had approached him with proposals and would regularly visit his college, which even led to grievances raised with the college faculty. *Vide* a written Complaint dt. 24.07.2023 with the Police Inspector, Karad Taluka PS Satara, the father of the Appellant has alleged that the Complainant/Respondent no. 2 had been harassing his son & had taken him to different lodges against his will and had threatened to implicate him in false rape cases, if he refused to marry her. A Non-Cognizable Offence Information Report (**NCR**)[1] dt. 24.07.2023 had been registered pursuant to a threatening phone call received on 22.07.2023 at 10:30 pm in the night, on the Appellant's mobile number from another mobile, allegedly threatening that she will beat him by entering his house and destroy his family.

5. Pursuant thereto that the FIR had been maliciously registered against him and that no *prima-facie* case u/s 376, 376(2)(n), 377, 504 & 506 IPC could be made out against him, the Appellant sought anticipatory bail from the Additional Sessions Judge, Karad, which was granted vide Order dt. 23.08.2023. The Additional Sessions Judge, while granting bail to the Appellant made the following remarks:

> *"9. In this backdrop the point cannot be side lined that the victim is matured to understand the significance and morality to which she is consenting. The prosecutrix who is major lady gives consent even on any of the aforesaid assumption and she had sexual intercourse with applicant/ accused, she will be under all circumstances and in all respect considered to be a consenting party. This coupled with the fact that day after day, week after week and month after month, this arrangement continued until the day of reckoning when she complained that promise of marriage is not fulfill or that all this while she was being fedup of this false assurance. Whatever be the worth of promise or assurance, in law informant is deemed to have given consent on her own accord as far as sexual intercourse is concerned. When two young male and female having attained the age of discretion get attracted to each other and*

1 *Section 155 of the Code of Criminal Procedure, 1973.*

due to emotional and passionate attachment succumbed to temptation of sexual relationship then such mental and voluntary participation does not come in the way of granting bail. Hence, accused is entitled for pre-arrest bail. The apprehension shown by prosecution will be safeguarded by imposing conditions……."

6. The Appellant then preferred Crl. W.P. No. 3181 of 2023 seeking quashing of the C.R. No. 490/2023 dt. 31.07.2023 & the proceedings emanating therefrom before the High Court of Judicature at Bombay, and in the meanwhile, the investigation culminated into a charge-sheet 26.09.2023 before the Additional Sessions Judge, Karad.

7. The learned counsel for the Appellant contends that the High Court has erred in dismissing the Petition u/s 482 CrPC insofar as the criminal proceedings in the present case constitute an abuse of process of law, and is well within the categories as contemplated by this Court in **State of Haryana Vs Bhajan Lal**[2]. It is argued that the allegations of forcible sexual assault and unnatural sex are highly improbable as there is no medical evidence to adduce that forcible sexual assault and unnatural sex had been committed upon the Complainant/Respondent no. 2 and that allegations of rape are unsustainable as the relationship between the parties being two mature adults was purely consensual in nature. It is argued that the captioned FIR is registered after a delay of 13 months from the date of the alleged incident, which is considerable to cast doubt on the veracity of the allegations made by the Complainant/Respondent no. 2, especially when she sustained her relationship with the Appellant since the alleged incident.

8. Having heard both sides in this case and after carefully considering the material on record, the following attributes come to the fore:

   (a) Even if the allegations in the FIR are taken as a true and correct depiction of circumstances, it does not appear from the record that the consent of the Complainant/Respondent no. 2 was obtained against her will and merely on an assurance to marry. The Appellant and the Complainant/Respondent no. 2 were acquainted since 08.06.2022, and she herself admits that

2 (1992) Supp. 1 SCC 335.

they interacted frequently and fell in love. The Complainant/ Respondent no. 2 engaged in a physical relationship alleging that the Appellant had done so without her consent, however she not only sustained her relationship for over 12 months, but continued to visit him in lodges on two separate occasions. The narrative of the Complainant/Respondent no. 2 does not corroborate with her conduct.

(b) The consent of the Complainant/Respondent no. 2 as defined under section 90 IPC also cannot be said to have been obtained under a misconception of fact. There is no material to substantiate "inducement or misrepresentation" on the part of the Appellant to secure consent for sexual relations without having any intention of fulfilling said promise. Investigation has also revealed that the *Khulanama,* was executed on 29.12.2022 which the Complainant/Respondent no. 2 had obtained from her ex-husband. During this time, the parties were already in a relationship and the alleged incident had already taken place. It is inconceivable that the Complainant had engaged in a physical relationship with the Appellant, on the assurance of marriage, while she was already married to someone else. Even otherwise, such promise to begin with was illegal and unenforceable *qua* the Appellant.

(c) There is no evidence of coercion or threat of injury to the Complainant/Respondent no. 2, to attract an offence under section 506 IPC. It is improbable that there was any threat caused to the Complainant/Respondent no. 2 by the Appellant when all along the relationship was cordial, and it was only when the Appellant graduated and left for his hometown to Ahmednagar, the Complainant/Respondent no. 2 became agitated. We also cannot ignore the conduct of the Complainant/Respondent no. 2 in visiting the native village of the Appellant without any intimation, which is also unacceptable and reflects the agitated and unnerved state of mind of the Complainant/Respondent no. 2. For the same reason, the criminal prosecution against the Appellant herein is probably with an underlying motive and disgruntled state of mind.

(d) There is also no reasonable possibility that the Complainant/ Respondent no. 2 or any woman being married before and

having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly[3] to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.

10. As demonstrated hereinabove, the ingredients of the offence under Sections 376 (2)(n) or 506 IPC are not established. The present case squarely falls under categories enumerated in Para 102(5) & 102(7) as identified by this Court in **State of Haryana Vs Bhajan Lal (supra)** for the exercise of powers u/s 482 CrPC by the High Court so as to prevent the abuse of process of law. Para 102 reads as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

3 *Naim Ahmed Vs State (NCT) of Delhi (2023) SCC Online SC 89.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. Taking into consideration that the Appellant is just 25 years of age, and has a lifetime ahead of him, it would be in the interest of justice that he does not suffer an impending trial and, therefore, the proceedings emanating from C.R. No. 490/2023 dt. 31.07.2023 are quashed at this stage itself.

12. Consequently, the Appeal is allowed and the Impugned Order dt. 28.06.2024 passed by the High Court of Judicature at Bombay in Crl. W.P. No. 3181 of 2023 is set aside. Accordingly, C.R. No. 490/2023 dt. 31.07.2023 registered at Karad Taluka Police Station, Satara and proceedings emanating therefrom in RCC no. 378/2023 pending before the Additional Sessions Judge, Karad are quashed, and Appellant is discharged. Bail bonds, if any, also stand cancelled.

13. Pending applications, if any, stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 160 : 2025 INSC 657

Renuka Prasad
v.
The State Represented by Assistant Superintendent of Police

(Criminal Appeal No(s). 3189-3190 of 2023)

09 May 2025

[Sudhanshu Dhulia and K. Vinod Chandran,* JJ.]

Issue for Consideration

Whether the High Court erred in reversing the acquittal and convicting the accused persons based on the testimony of the IOs which was founded only on s.161, CrPC statements of the witnesses; whether present was a case of two probable views, in which case the one favourable to the accused ought to be taken.

Headnotes†

Appeal against acquittal – Code of Criminal Procedure, 1973 – s.161 – Penal Code, 1860 – s.302 r/w s.120B – Murder – 71 out of the total 87 witnesses including eye-witnesses turned hostile – Trial Court acquitted the accused persons – High Court reversed the acquittal and convicted the accused relying on the testimony of the IOs based only on the statements of the witnesses recorded u/s.161, CrPC – Sustainability:

Held: Unsustainable – High Court erred in relying on the statements made by the witnesses u/s.161, CrPC as affirmed by the IO, in violation of s.162, CrPC – What is revealed in the investigation to the IO has to be clearly established before Court by oral testimony or other evidence, failing which the Court cannot base a conviction on the predilection of the IO that a particular circumstance was revealed in the investigation – Statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from the s.161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible u/s.162, CrPC – Merely because the IOs spoke of such statements having been made by the witnesses during investigation, does not give

* Author

them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt – High Court reversed the order of acquittal of the Trial Court on mere surmises and conjectures relying wholly on the testimony of the IOs, who merely regurgitated the statements recorded u/s.161 and the voluntary statements of the accused – Prosecution failed to prove the allegations raised and charged against each accused – Judgment of the High Court reversed, accused acquitted. [Paras 14, 19, 26, 48, 49]

Appeal against acquittal – Murder – Hostile witnesses – Trial Court acquitted the accused persons – High Court reversed the acquittal – Whether present was a case of two probable views, in which case the one favourable to the accused ought to be taken:

Held: No – In the present case, there are no two views coming forth from the evidence – The only view that comes forth is that the prosecution failed to prove the allegations raised and charged against each of the accused, more by reason of all the witnesses turning hostile for reasons unknown – Whatever be the reason behind such hostility, it cannot result in a conviction, based on the testimony of the IOs which is founded only on s.161, CrPC statements and voluntary statements of accused; the former violative of s.162, CrPC and the latter in breach of ss.25, 26, Evidence Act – Code of Criminal Procedure, 1973 – ss.161, 162 – Evidence Act, 1872 – ss.25-27. [Para 48]

Evidence Act, 1872 – ss.25-27, 30 – Confession u/s.27 not relied upon:

Held: Confessions allegedly made by A1 regarding the sites where the conspiracy was hatched and the money transacted does not lead to any discovery of fact – The narration about the conspiracy and the money transactions are not admissible and the mere pointing out of two sites does not lead to any discovery of fact, when the narration is eschewed – The clothes and machetes allegedly, worn by A5 & A6 and used by them to commit the crime, were recovered on the confession statement of A3, the alleged conspirator – However,

neither the clothes nor machetes are connected to A5 & A6 who were alleged to have committed the crime nor is A3, an alleged conspirator even accused of having been involved in the crime proper, that is the murder of the deceased – Confession u/s.27 cannot be relied upon and no aid can be drawn from it to implicate the other accused – The sites pointed out by A1, did not lead to any discovery of a fact and it is hit by ss.25 and 26 . [Paras 39, 45]

Case Law Cited

Govt. of NCT of Delhi v. Sunil **[2000] Supp. 5 SCR 144 : (2001) 1 SCC 652;** *Rizwan Khan v. State of Chhattisgarh* **[2020] 7 SCR 546 : (2020) 9 SCC 627 – distinguished.**

Ramesh v. State of Haryana **[2016] 8 SCR 936 : (2017) 1 SCC 529;** *Chandrappa v. State of Karnataka* **[2007] 2 SCR 630 : (2007) 4 SCC 415;** *State, State of H.P. v. Pardeep Kumar* **[2018] 2 SCR 656 : (2018) 13 SCC 808;** *State of Bombay v. Kathi Kalu Oghad* **[1962] 3 SCR 10;** *Mohd. Khalid v. State of W.B.* **[2002] Supp. 2 SCR 31 : (2002) 7 SCC 334;** *Mehboob Ali v. State of Rajasthan* **[2015] 10 SCR 553 : (2016) 14 SCC 640;** *Kali Ram v. State of H.P.* **[1974] 1 SCR 722 : (1973) 2 SCC 808;** *R. Shaji v. State of Kerala* **[2013] 3 SCR 1172 : (2013) 14 SCC 266;** *Rajendra Singh v. State of U.P.* **[2007] 8 SCR 834 : (2007) 7 SCC 378;** *State (NCT of Delhi) v. Navjot Sandhu* **[2005] Supp. 2 SCR 79 : (2005) 11 SCC 600;** *H.P. Admn. v. Om Prakash* **[1972] 2 SCR 765 : (1972) 1 SCC 249;** *State of Maharashtra v. Damu* **[2000] 3 SCR 880 : (2000) 6 SCC 269;** *Rumi Bora Dutta v. State of Assam* **[2013] 3 SCR 801 : (2013) 7 SCC 417;** *Raja v. State of Haryana* **[2015] 3 SCR 947 : (2015) 11 SCC 43;** *Pandurang Kalu Patil v. State of Maharashtra* **[2002] 1 SCR 338 : (2002) 2 SCC 490;** *John Pandian v. State* **[2010] 15 SCR 1012 : (2010) 14 SCC 129;** *Kashmira Singh v. State of Madhya Pradesh* **[1952] 1 SCR 526 : (1952) 1 SCC 275;** *Haricharan Kurmi v. State of Bihar* **[1964] 6 SCR 623;** *State v. Chhaganlal Gangaram Lavar,* **1954 SCC OnLine Bom 69 – referred to.**

Athappa Goundan, In re, **1937 SCC OnLine Mad 76;** *Naresh Chandra Das v. King-Emperor,* **1941 SCC OnLine Cal 178 – referred to.**

Pulukuri Kottaya v. Emperor, **AIR 1947 PC 67 – referred to.**

Renuka Prasad v.
The State Represented by Assistant Superintendent of Police

List of Acts

Penal Code, 1860; Evidence Act, 1872; Criminal Procedure Code, 1973.

List of Keywords

Appeal against acquittal; Testimony of the Investigating Officers (IOs); Testimony of IO founded only on Section 161, CrPC statements of the witnesses; Conviction based on the testimony of the IOs based only on Section 161, CrPC statements; Statements made by the witnesses under Section 161, CrPC; Witnesses turning hostile; Hostility of witnesses at trial; Eye-witnesses turned hostile; Sibling rivalry; Section 27, Evidence Act, 1872; Failed to identify the assailants; Homicidal death; Conspiracy; Confession; Motive; Preparation; Two reasonable views possible; No two views; Presumption of innocence of the accused until proved guilty; Voluntary statements of accused; Discovery of a fact; Recovery of the machetes, the weapons used in the offence; Recovery of the clothes; Seizure of currency; Test identification parade (TIP); Seizures and recoveries; Prosecution failed to prove the allegations raised and charged.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 3189-3190 of 2023

From the Judgment and Order dated 27.09.2023 and 05.10.2023 of the High Court of Karnataka at Bengaluru in CRLA No. 870 of 2017

With

Criminal Appeal No(s). 3399 and 85-86 of 2024

Appearances for Parties

Advs. for the Appellant:
Ratnakar Dash, Siddharth Luthra, Sr. Advs., G.Sivabalamurugan, Selvaraj Mahendran, C.adhikesavan, Ms. Ratan Priya Pradhan, Harikrishnan P.v, C.kavin Ananth, Mrs. Vaijayanthi Girish, Girish Ananthamurthy, Ayush Kaushik, Sougat Pati.

Advs. for the Respondent:
Aman Panwar, A.A.G., V. N. Raghupathy, Shrey Brahmbhatt.

Judgment / Order of the Supreme Court

Judgment

K. Vinod Chandran, J.

1. Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye-witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants.

2. The prosecution alleged that due to differences arising from sharing of assets of the father; an entrepreneur who set up several educational institutions, A1 and his brother, PW4, were at loggerheads. The deceased an employee of one of the institutions, later allotted to the share of A1, resigned to join an institution managed by PW4, after the division of assets. The enmity of A1 arises, according to the prosecution, due to the active involvement of the deceased in the sibling rivalry, aligning himself with PW4, to the hilt. A1 along with his employees A2 to A4 engaged A5 and A6, through A7, an Advocate, to murder the deceased. A5 and A6 is said to have carried out the brutal murder, hacking the deceased to death, in front of his son, PW8, at 07:45 pm on 28.04.2011. PW8, immediately contacted his relatives and the deceased was rushed to the hospital where he breathed his last at 08:40 pm on the same day.

3. The first information statement (FIS) was lodged by PW8, leading to the registration of the crime and the resultant investigation. As was said, 87 witnesses were led in trial to speak about the homicide, the motive, the meeting of minds leading to the conspiracy, the preparation, what transpired after the incident and the arrest, recovery, chemical analysis and so on and so forth; all in vain for most turned hostile, especially the ones who were relevant. The Trial Court acquitted the accused finding no support for the prosecution case from the large number of witnesses arrayed to prove the various aspects leading to the murder, all of whom, except the official witnesses, turned hostile.

The Division Bench of the High Court reversed the acquittal and convicted A1 to A6 under Section 302 read with Section 120-B of the Indian Penal Code, 1860. The acquittal of A7 by the Trial Court was affirmed by the High Court.

4. A1 has filed one of the appeals in which Mr. Siddharth Luthra, learned Senior Counsel, appeared for the accused/appellant. Mr. Ratnakar Dash, learned Senior Counsel appeared in the other appeals filed by A2 to A6. Mr. Aman Panwar, learned Additional Advocate General appeared for the State. Heard both the learned Senior Counsel appearing for the appellants and the learned Additional Advocate General and perused the records.

5. The Division Bench at the outset, dealt with the judgment in ***Chandrappa v. State of Karnataka***[1] wherein this Court had set out the general principles regarding powers of the Appellate Court in dealing with an appeal from an acquittal. The principles are trite; extract having been made in the impugned judgment, we would not repeat. We are tasked to find out whether the principles have been followed scrupulously by the Division Bench in setting aside the order of acquittal. Whether, while exercising the full power conferred in an appeal to review, reappreciate and consider the evidence led in the case, the Division Bench has been circumspect, keeping in mind the trite fundamental principle that the presumption of innocence available to the accused, under the general law, stands fortified and strengthened by reason of the order of acquittal. Whether, the Trial Court has been absolutely unreasonable in taking a view that there was insufficient evidence to bring home a conviction in the case and whether it was a case of two probable views, in which case the one favourable to the accused ought to be taken.

6. PW8 is the eyewitness who spoke of the incident but failed to identify the assailants or the weapons recovered, despite the FIS having categorically stated his ability to identify them, who suddenly came out of the bushes; when he and his father were taking a stroll, brutally hacked his father and fled on their foot. While MO6 and MO7, spectacles and mobile of the deceased seized by the police from the scene of occurrence, was identified, the witness could neither identify either of the appellants; A5 and A6. The weapons

1 (2007) 4 SCC 415

were not even confronted to PW8, since he expressed his inability to identify them. PW8's knowledge of the motive, spoken of in the statement under Section 161 of the Cr.P.C, was denied. PW 1 & PW9 were the persons who came to the scene of occurrence, as per the prosecution case, immediately after the incident, who also saw two persons running away. PW1 completely denied his presence at the scene of occurrence, while PW9 spoke only of having seen one person running away. PW9 deposed of seeing the injured and his son, the latter of whom was advised to call relatives. He called the Police and summoned an ambulance, but even before its arrival, the injured was taken to the hospital in a pick-up van. The statement made by PW1 and PW9, under Section 161, regarding their ability to identify the persons who were running away and their awareness of the motive; being residents of the locality and the conspiracy having been hatched by reason of the sibling rivalry of prominent persons of the locality, were all denied.

7. PW2, the brother of the deceased, PW3, his uncle and PW10, his wife, were examined to prove the inquest and also the motive. All of them saw the injured at the hospital, spoke of the injuries numbering twenty-five, admitted of the inquest and identified the dress and other personal effects of the deceased, seized by the police from the body. PW2, though spoke of his brother's employment with A1 and subsequent resignation due to a disagreement, did not support the prosecution case of an active enmity between the deceased and A1 by reason of the allegiance to PW4, the brother of A1; a departure from his Section 161 statement. Curiously, the wife of the deceased also denied her statement to the police that A1 had insulted and threatened the deceased. PW3 was the uncle of the deceased who along with PW2 and PW10 saw the deceased at the hospital. There were a number of witnesses examined to prove the motive, the conspiracy and the incidental circumstances, leading eventually to the murder of the deceased, all of whom turned hostile. The Appellate Court though accepted that all these witnesses turned hostile, looked at the story projected by the prosecution as spoken of in the Section 161 statements of the witnesses, which the witnesses did not accept, in the box, at the trial before Court.

8. PW4, the brother of A1, to whom was aligned the deceased, and a star witness to speak on the motive, admitted the division of the properties between the brothers but denied any long-standing

enmity between them. He also denied that he wrote a letter to his father complaining about the actions of A1. A photocopy of the said letter confronted to him, at the trial, was denied, though he admitted that the signature seen therein was similar to his. The effort of the prosecution to prove the various aspects leading to the crime and what happened afterwards; (i) of the conspiracy; hatched through the meetings carried out by the accused, purportedly to prove the meeting of minds, the inquiries made to find out the contract killers, persons approached for owning up the crime; (ii) preparation; like, the purchase of machetes, procurement of fake number plates to be affixed in a motorbike and pick up van, used to escape from the crime scene and reach the hide out; and the (iii) motive itself; through employees of the Medical College, PW57 to PW62 & PW72, including the Administrative Superintendent and the Principal of the College, to establish the enmity between A1 and PW4, all of which collapsed like a pack of cards, when all of these witnesses turned hostile. The motive, conspiracy, preparation made before, and what transpired after the crime, as projected by the prosecution remained a mere scripted story as discernible from the Section 161 statements; not established in the trial.

9. Surprisingly, all the panch witnesses who attested the various recoveries, like cash seized from A2 to A5, the weapons used, and the clothes worn by the accused, when the crime was committed, also turned hostile. We will deal with Exhibit P49, recovery of the machetes, the weapons used in the offence and Exhibit P50, recovery of the clothes worn by A5 and A6 at the time of the crime, a little later, which has to be considered along with the FSL report and the result of analysis coming forth. We also notice that there were two Mahazars produced as Annexure P51 and P54, wherein A1 allegedly confessed and pointed out the place where the conspiracy was carried out and the money transfer occurred. This, however, is not a confession under Section 27 of the Indian Evidence Act, 1872, since there was no tangible object recovered from the two sites pointed out, leading to the discovery of a fact. The confession statement regarding the conspiracy, of course cannot at all be relied upon, being hit by Sections 25 & 26 of the Evidence Act. The other witnesses examined to prove the aggravating circumstances also turned hostile in which event the Court turned to the evidence of the Investigating Officers, PW's 83, 84 and 87.

10. Commencing the analysis of evidence the High Court first held that undisputedly Ramkrishna met with a homicidal death, which is also the conclusion of the Trial Court from which there is no reason for us to differ. The evidence of PW8, who was an eye witness and PW9, who saw the hacked body of the deceased immediately after the incident, coupled with the evidence of PWs 2, 3 and 10, brother, uncle and wife, who saw the body of the deceased at the hospital and spoke of the injuries sustained, clearly established the brutal attack on the deceased. The post-mortem report and the cause of death as spoken of by the Doctor, PW74, also established the homicidal death caused by the cutting wounds inflicted on the deceased, which were also ante-mortem. We need not further deal with the issue and fully agree with the Trial Court and the High Court that the deceased was brutally murdered.

11. The High Court having found that all the witnesses except the official witnesses turned hostile looked at the evidence of the official witnesses especially the Investigating Officers and the recoveries made in the course of investigation. The High Court also relied on two decisions of this Court, ***State, Govt. of NCT of Delhi v. Sunil***[2] and ***Rizwan Khan v. State of Chhattisgarh***[3] to find that the courts need not always feed on a distrust of police officers. We have to emphasize that the proposition coming out of the said decisions were in the context of recoveries made under Section 27 of the Evidence Act or the seizures effected on search or interception.

12. In ***Sunil and another***[2], the recovery of a blood-stained knickers was eschewed by the High Court since there were no independent witnesses. A distinction was drawn from a case of recovery, under information supplied by the accused and a discovery made on a search, where there is an insistence on having independent witnesses, under Chapter VII of the Code. It was held that it is fallacious to hold that every recovery under Section 27 must necessarily be attested by independent witnesses and it is for the Police Officer to have such witnesses present to provide further veracity to the recovery. But there could be circumstances in which there were no witnesses present or none had agreed to affix his signature on the mahazar, which cannot always lead to the evidence of recovery being eschewed, especially

2 (2001) 1 SCC 652

3 (2020) 9 SCC 627

when the testimony of the Police Officer is not shown to be tainted in any manner and is also found to be credible. It was held that it is archaic and a colonial hangover that actions of the Police Officer should be approached with primal distrust, always. ***Rizwan Khan***[3] was a three Judge Bench decision which affirmed ***Sunil & another***[2] to hold that if the police witnesses are found to be reliable and trust worthy, no error can be attributed to the conviction entered relying upon such testimony. Therein, it was a case of recovery of a narcotic substance from a motor-cycle in which the accused were travelling, search having been conducted on interception of the vehicle. The panchnama witnesses turned hostile but the evidence of the Police Officers, found to be trust worthy was relied upon.

13. ***State of H.P. v. Pardeep Kumar***[4], again was a case in which there were no independent witnesses to attest the recovery of the contraband, since none were available due to the severe cold on that day. The conviction was based on the testimony of seizure of contraband from the accused, as testified by the Police Officers. We cannot digress from the above proposition as laid-down by this Court but only raise a caution, insofar the recovery made under Section 27, in the context of the findings of the High Court, in the instant case, having to be necessarily connected to the crime and the accused, failing which the recovery is of no consequence. We also have to observe that the confession can only be with respect to the discovery of a fact leading to the recovery of a material object and cannot be with respect to any confession as to the actual crime as has been held in ***Pulukuri Kottaya v. Emperor***[5].

14. The High Court having stated the principle, went on to examine the evidence of PW's 83, 84 and 87. PW83 commenced the investigation, to whom was handed over the letter, MO40, allegedly written by PW4 to his father; which however, was denied by PW4 in his testimony. The High Court discussing PW83's evidence specifically referred to the Section 161 statements made by PWs 1, 5, 6, 9, 12, 13, 26 and 51, which were affirmed to have been made by them before the Police as spoken of by PW83. Observing that in cross-examination of PW83 but for general suggestions, which were denied by him there was nothing to discredit him and hence the testimony of PW83 is

4 (2018) 13 SCC 808

5 AIR 1947 PC 67

not affected, the Division Bench held there is no reason to discard it. We are afraid that the High Court seriously erred in relying on the statements made by the witnesses under Section 161, as affirmed by the Investigating Officer, clearly in violation of Section 162 and the specific use to which Section 161 statements can be put to, as we will further elaborate, a little later. It's also pertinent that the conspiracy angle spoken of by PW83, is what has been stated to him by A7, clearly inadmissible in evidence.

15. The evidence of PW84 with respect to seizure of currency worth Rs.8,50,000/- and two mobile phones respectively from the staff quarters of A5 and the person of A6, on information, the source of which has not been disclosed was emphasised. The arrest of A3, the seizure of Rs.2,00,000/- and a mobile phone from A3 were also relied on. The Trial Court had placed no reliance on these recoveries finding it to be not admissible under Section 27; which the High Court was not impressed with and found it to be permissible under Section 102 of Cr.P.C. Seizure under Section 102, unless it is linked to the crime cannot be relied on to convict the accused for murder on the conspiracy alleged. But more relevant is the fact that only the bundles of the money recovered were identified in Court, by PW78, an ASI who accompanied PW84 at the time of seizure and PW84, since there was no proper inventory taken of the cash recovered. Further though PW84 spoke of the cash recovered being in bundles with slips showing the name of the banks, no attempt was made to find out its source from the Banks. The money hence was not connected to the crime and the Call Data Records of the mobile phones were not proved in the trial.

16. Now we come to the IO, who concluded the investigation and filed charge-sheet, PW87, before whom A3, A5 and A6 were produced by PW84, after which the investigation was carried out by PW87. It was PW87's testimony that the voluntary statements of A3 led to A2, from whose staff quarters Rs.2,58,000/- and two mobile phones were recovered. A1 was also arrested, who is said to have given statements about his enmity with PW4 and also the deceased. These voluntary statements and the confession statements of A3, under Section 27 also led PW87 to Amarajyothi Farms, from where the weapons (MO 10 & MO 11) and a motorcycle (MO 49) were recovered as per Ex.P49 Mahazar and MO12 to MO15 clothes worn by A5 & A6 were recovered as per Ex.P113, Mahazar. PW87's testimony also spoke

about PW5 who was close to the deceased having spoken of the enmity between A1 and PW4; denied in Court by PW5. A reading of PW87's statement would reveal that she has just spoken of the voluntary statements made by the various accused and there is no investigation worthy of reliance spoken of by the witness. We are reminded of the extract in ***State of Bombay v. Kathi Kalu Oghad***[6], an eleven Judge Bench, of a quote attributed to Sir James Fitzjames Stephen, the principal draftsman of the Evidence Act:

> *"If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law "to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence".*
>
> *(Stephen, History of Criminal Law, p. 442)*

17. The High Court has placed heavy reliance on the testimonies of PW's 83, 84 and 87, the IOs, with the assertion that they were unshaken in cross-examination and reliance was placed on the affirmation of the statements made by the witnesses under Section 161, which the witnesses did not speak themselves in the box, at the trial. We cannot but observe that, though reliance is said to be placed on the testimony of the IOs' this would in fact be a reliance placed on Section 161 statements as spoken of by the IOs which is egregiously wrong. The High Court in paragraph 85 speaks of the affirmation of statements given by witnesses examined by PW87 and records that though these were denied by the witnesses, a reading of the cross-examination of PW87 indicates that she had not been discredited and the suggestions made to her in cross were denied. The reliance placed on the so called voluntary statements of the accused and the statements made under Section 161 as recorded by PW87, based on the decisions afore-cited cannot be countenanced.

18. As we noticed, the decisions cited by the High Court regarding the testimony of the Police Officers before Court not liable to be treated

6 (1962) 3 SCR 10

with distrust, was specifically with respect to recoveries made under Section 27 and the seizures of contraband. Seizure often is on surprise interception or on information received, which principle cannot be imported to the affirmation of the statements made by the witnesses during investigation under Section 161; if they do not subscribe to it at trial. Merely for the IO having spoken about such a statement having been made, it cannot be treated as gospel truth. Nor can the voluntary statements of the accused relied on except to the extent of the discovery of fact, on information supplied, which would be a strong implicating circumstance if, and only if, there is a link established to the crime.

19. In this context, we also have to specifically notice paragraph 86 where some of the responses by PW87 were discussed to add further credibility to her testimony; which in fact runs counter to the prosecution case. The test identification parade had not given any result, which was stated to be not an argument against the prosecution. We perfectly agree, since even if there was an identification at the stage of investigation, as per the precedents, it only aids the investigation and cannot lead to a conviction, unless the accused are identified in the box at the time of trial, in Court, which in the present case has not occurred. PW87 admitted to a suggestion that when she interrogated the family members of the deceased, none talked about the existing differences between the deceased and A1. The said admission was rubbished on the ground that, to another suggestion in the same vein, PW87 firmly denied it and this was because her investigation revealed involvement of A1; a presumptuous finding without any legal basis. What has been revealed in the investigation, to the IO, has to be clearly established before Court by oral testimony or other evidence, failing which the Court cannot base a conviction on the predilection of the IO that a particular circumstance was revealed in the investigation.

20. The discrepancy regarding the statements made by her with respect to the clothes of A5 and A6 was attempted to be explained away. We would not dwell on the discrepancy since nothing comes out of the recovery made under Section 27. The recovery was made on a confession statement by A3 and not A5 or A6. Further, the statement attributed to A3 as spoken of by PW 87 marked as exhibit P 113 is *"The machetes used in this murder is kept in a gunny bag in the*

last room of the first floor of the farmhouse of Renuka Prasad at Ajjavara-Addangaya-Mavinapalla. The blood-stain clothes which were worn by Sharan and Bhavani Shankar during the offence and the Kannada number plate which was affixed to the Hero Honda Splendour bike during the offence are kept near the water pump in a plastic cover; and if you come with me, I will show them to you." (sic) The reference to murder and offence has to be completely eschewed and the fact discovered is only the concealment of the weapons and the dress which information supplied is by A3 who even according to the prosecution, was not involved in the crime proper, of murder. Further, while recording the Mahazar for recovery, the shirt and pants recovered were said to be of A5 and a shirt and jeans of A6. Nothing was done to verify whether MO12 – MO15 items of dress would fit A5 & A6. PW87 in fact admits that she did not ask A5 and A6 to wear it nor was it verified from a tailor as to whether the dress recovered would fit A5 & A6. There is no statement made by A3 regarding the handing over of the weapons & dress, by A5 & A6 to A3, which in any event would have to be proved independently. The identification of A5 & A6, of their dress at the time of recovery also is inadmissible. The mere recovery of dress under Section 27, that also through a confession statement of an alleged conspirator, does not implicate A5 or A6 who were alleged to be the assailants who killed the deceased. Pertinently the site or farm from which the recoveries were made was not proved to be owned by A1.

21. Insofar as the crime is concerned, the eye witness PW8 and the persons who reached the occurrence immediately thereafter, PW1 and PW9, admittedly did not identify the accused. PW8 being a young boy of 15 at the time of incident, the Division Bench was of the opinion that it was quite natural that he was not able to identify the accused. It was also observed from his statement that, it was the police who informed him about A5 & A6 having committed the murder. As far as PW1 is concerned looking at the evidence of PW9, it has been found that PW1 had stated a deliberate falsehood before Court; which again, would not enable the Court to look at his Section 161 statement. PW9 also did not identify the accused and he spoke only of seeing one person running away. Obviously since no reliance could be placed on the evidence of PW8, PW1 & 9, to pin the crime on A5 & A6, the Division Bench went on to look at the circumstances attempted to be established at the trial; being

the motive, the conspiracy, the preparation, seizure of incriminating materials and the FSL report. Before leaving the eye-witnesses testimony, we cannot but notice that the prosecution never attempted to confront PW8 with the clothes recovered as MO12 to MO15, said to have been worn by A5 & A6, at the time when the crime was committed. Neither was it shown to PW9, who at least spoke of having seen one person running away from the scene.

22. On the question of motive, the Division Bench examined the evidence of PW4, the brother of A1, PW10, the wife of the deceased and PWs 6, wife of PW4, PW7, their son & PWs 11 to 13, relatives of A1 & PW4, all of whom turned hostile. The employees in the institutions of PW4 & A1 also denied their former statements of enmity between the brothers and the alleged ill will of A1 against the deceased. PW4 denied the letter which was produced as MO40 before Court. However, the Division Bench has relied on MO40 and its contents on the ground that PW83 had stated that PW4 came to the Police Station and handed over the xerox copy of a 14-page letter. We are unable to accept the reasoning of the Division Bench especially since MO40 was confronted to PW4, when he was examined and he denied having written such a letter. The letter hence was not proved, though marked through the IO. Merely because PW83, the IO, submitted that it was handed over to him by PW4 at the time of investigation, that cannot be a reason to place reliance on MO40 or to look into its contents to find enmity existing between A1 and PW4 and threats having been levelled against the deceased, by A1.

23. The High Court further places reliance on PW10's testimony or rather the statements made by her in the Section 161 statement on the reasoning that the wife will definitely be aware of the reasons behind the murder. She cannot be believed, if it is deposed that she is not aware of anything, was the finding. A statement made by PW10 that, she knew about A1 having insulted and levelled threats against the deceased; confronted to PW10 but denied, was relied upon, finding that it was affirmed by PW83. PW4 was also found to have resiled from his earlier statement under Section 161 because the sister of PW4 and A1 had filed a suit against them which was being jointly contested by them; a mere surmise to place heavy reliance on the Section 161 statements made by PW4. According to us the motive insofar as A1 having inimical feelings against the deceased, for having meddled in the affairs of the institutions and the division of assets, does not stand proved. PW4 only admitted to certain differences

between the brothers with reference to the running of a mess in the college and there was no reference to the deceased in so far as the specific dispute spoken of. We find absolutely no reason to find the motive established.

24. The next aspect dealt with by the High Court was on the conspiracy and preparation for the crime. Rightly reliance was placed on ***Mohd. Khalid v. State of W.B.***[7] wherein it was opined that conspiracies are not hatched in the open and when done in secrecy, it is very difficult for direct evidence to be produced relating to the conspiracy and the Court would have to fall back upon circumstantial evidence, which also has to be based on inferences made from the various circumstances proved from the acts and omissions of the accused. The Division Bench while referring to the various witnesses who were produced to prove the conspiracy first looked at the evidence of PW71, a Director of one of the institutions, also the wife of A1 and PW72, who was an employee in the same institution. PW71 though denied the various documents alleged to have been produced before Court, the Division Bench presumed that her testimony was a deliberate falsehood intended to save her husband. PW72 had produced the salary certificate of A2 issued by him in the capacity of in-charge Principal of the Dental College. The aforesaid evidence was relied on to find close acquaintance of A1 with A2 to A4, the former being the employer of the latter three persons. Insofar as the conspiracy hatched, the Court relied on the voluntary statements made by A3, A5 and A6 before PW87 and relied on ***Mehboob Ali v. State of Rajasthan***[8]. The testimony of PW87 regarding the sites, where discussions were held and money changed hands, pointed out through the voluntary statements made by A1, was relied on by the Division Bench. In addition, Section 161 statements of PW61 to PW64 who had resiled from their statements in the testimony before Court regarding A3 having been seen with A5 and A6 in a hotel on 28.04.2011, was also relied upon. As far as the preparation made, since the witnesses examined for proving the same also turned hostile, the evidence of the police officers were reckoned and the story as spoken of by the IOs were elaborately discussed, which in effect is based on the Section 161 Statements made by the various witnesses, before the police.

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7 (2002) 7 SCC 334

8 (2016) 14 SCC 640

25. Section 162 of the Criminal Procedure Code, 1898 was dealt with in ***Kali Ram v. State of H.P.*** [9] to hold that the provision makes it plain that '*the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1) or for the purposes mentioned in sub-section (2)*' (sic para-17). The said principle was reiterated with reference to Section 162 under the Criminal Procedure Code, 1973 in ***R. Shaji v. State of Kerala***[10]. It was held by this Court that '*statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction'* (sic para-25). It was further held that though the object of the statement of witness recorded under Section 164 is two-fold, there is no proposition that if the statement of a witness is recorded under Section 164 before a Magistrate, the evidence of such witness in Court should be discarded. ***Rajendra Singh v. State of U.P.*** [11] was a case in which the High Court, as in the present case, relied upon the statements of six witnesses, recorded by the IO under Section 161 Cr.P.C., to enter a finding that the respondent could not have been present at the scene of crime, as he was present in the meeting of the Nagar Nigam at Allahabad. It was unequivocally held that '*a statement under Section 161 Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso'* (sic para-6). It was found that the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding on the alibi claimed by one of the accused.

26. The statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from the Section 161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible under Section 162 of the Cr.P.C. Merely because the IOs spoke of such statements having been made by

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9 (1973) 2 SCC 808

10 (2013) 14 SCC 266

11 (2007) 7 SCC 378

the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt. We are unable to find either the motive, the conspiracy or the preparation or even the crime itself to have been established in Court, at the trial through the witnesses examined before Court. The witnesses had turned hostile, for reasons best known to themselves. The only inference possible, on the witnesses turning hostile is that either they have been persuaded for reasons unknown or coerced into resiling from the statements made under Section 161 or that they had not made such statements before police officers. Merely because the story came out of the mouth of the IO, it cannot be believed and a legal sanctity given to it, higher than that provided to Section 161 statements under Section 162 of the Cr.P.C.

27. The High Court has also relied on voluntary statements made regarding the sites where discussions were held, and the money was transferred, by A1 itself, to further find the conspiracy relying on ***Mehboob Ali***[8]. That was a case in which, pursuing the voluntary statements of the accused arrested, on the charge of dealing in counterfeit notes, the kingpin was arrested, from whose possession fake notes were recovered. In the present case but for the accused having pointed out the various places where allegedly discussions were held and money was transacted, there was no fact discovered from the site, or any recovery made of a concealed object which could lead to an inference of a culpable fact.

28. Now we come to the seizures and recoveries relied on by the Court, again as spoken of by the Investigating Officer since the independent witnesses who attested the mahazars turned hostile. The significant recoveries made were of cash from the possession of A2 to A6, the clothes alleged to have been worn by A5 & A6 when the crime was committed, the weapons with which the crime was committed and the vehicles in which the getaway was carried out. As far as the vehicles are concerned even the eyewitnesses, either PW1 or PW9, who were at the crime scene immediately after the commission of the offence, did not speak of A5 & A6 having fled on a motor bike. The specific allegation of PW8, the eyewitness, in his FIS was that while himself and his father were strolling, at the scene of occurrence, suddenly two persons emerged from the bushes, hacked his father

to death and ran away, obviously on foot. This was the statement made by both PW1 and PW9, the former of whom turned completely hostile, and the latter did not speak of any motor bike. The recovery of the motor bike hence is of no consequence. The pickup van is said to have been used for reaching the hide out, which is said to be a farm. There was no incriminating material found from the pickup van connecting this vehicle to the crime.

29. Insofar as the clothes are concerned, we cannot but notice that the analysis report indicates that the recovered dress materials had blood stains on it which were analyzed to be human blood of 'O' group, and the post-mortem certificate indicates the deceased to be of 'O+' group. It is trite that this alone cannot implicate the accused since there should be a clear connection established of the recovered items with the accused and the crime. Especially in this case, where the clothes were not recovered on the confession statement of A5 & A6, who are alleged to have committed the crime. The weapons, as were the clothes, were recovered on the confession statement of A3, from the farm. Though, the High Court went on to find that A5 & A6 had handed over the clothes and the weapons to A3 to hide, this has to be proved by the prosecution and cannot be based on the so called voluntary statements made by the accused. A3, A5 & A6 were arrested on the same day and they were taken together, allegedly in pursuance of the confession statement made by A3. The identification said to have been made by A5 & A6 at the time of recovery, to the police officers, again is not a confession made under Section 27 and would be hit by Sections 25 and 26 of the Evidence Act.

30. ***Athappa Goundan, In re***[12], was relied on heavily in the impugned judgment by the Division Bench to bring in the confession under Section 27, to inculpate the accused other than those who confessed, under Section 30 of the Evidence Act. Therein the confession specifically spoke of the murder by the person in police custody and also offered to produce two bottles, a rope and a cloth gag, which was used to commit the murder. These objects were recovered on the same being pointed out by the accused. The Court opined that the objects produced, not being incriminating in nature, their production would be irrelevant unless they were connected with the murder;

12 1937 SCC OnLine Mad 76

when there was no evidence to connect the objects to the murder, apart from the confession. It was hence held that any information which served to connect the object discovered with the offence charged was admissible under Section 27. ***Pulukuri Kottaya***[5] held:

> *"Their Lordships are unable to accept this reasoning. The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 something which is not there, and admitting in evidence a confession barred by Section 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."*
>
> *(Paragraph 10)*

31. ***Naresh Chandra Das v. King-Emperor***[13]*,* in a dissenting judgment held that so much of the statements leading to the discovery of a fact is admissible, but still, for the fact discovered to be made relevant, the prosecution has to supply independent evidence and for this purpose the confessional statement cannot be utilised, since it would offend Section 25 and Section 26 of the Evidence Act. It was held that *"If the prosecution cannot bring in any evidence aliunde, connecting the fact discovered with the offence, the prosecution may have to fall". (sic)*

32. ***Pulukuri Kottaya***[5] considering the impact of Section 27 held that the disclosure, under Section 27, is with reference to the concealment of some object and not the object itself, which object recovered must be connected to the crime to pin the guilt on the accused, who was instrumental in making the recovery by supplying the information of concealment. The confession under Section 27, if speaking of the crime itself, that portion is not admissible evidence, since it would offend Sections 25 and 26. We extract paragraph 9 which dealt with the effect and impact of Section 27:

13 1941 SCC OnLine Cal 178

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban

will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

(underlined by us for emphasis)

33. ***State (NCT of Delhi) v. Navjot Sandhu***[14] traced the history of case law and described ***Pulukuri Kottaya***[5] as a *locus classicus* which set at rest much of the controversy centring around the interpretation of Section 27. The first requirement, according to the learned Judges was that the IO should depose that he discovered a fact in consequence of the information received from an accused person in police custody, which fact was not in the knowledge of the police officer. The information or disclosure should necessarily be free from any element of compulsion and only so much of the information as relating distinctly to the fact thereby discovered can be proved and nothing more. The Section explicitly clarifies that confession is not taboo, but the confessional part which is admissible is only such information or part of it, which relates distinctly to the facts

14 (2005) 11 SCC 600

discovered, by means of the information furnished. The rationale behind the provision was held to be that, if a fact is discovered in consequence of the information supplied, it offers some guarantee that the information is true and can therefore, be safely allowed to be admitted in evidence as an incriminating circumstance against the accused.

34. In ***H.P. Admn. v. Om Prakash***[15], there was a recovery made of a dagger from under a stone, on the concealment being informed to the police and the accused also pointed out the person from whom he had purchased the dagger. While the former statement was admissible under Section 27, the latter was held to be inadmissible. The concealment of a knife, which the police were not aware of, when discovered by the information supplied, then the information of concealment is reliable. However, if the person from whom the knife is purchased is pointed out, it cannot be said to be discovered, if nothing is found or recovered from him, as a consequence of the information furnished by the accused.

35. The State in its written submission has relied on ***State of Maharashtra v. Damu***[16]**,** ***Rumi Bora Dutta v. State of Assam***[17]**,** ***Raja v. State of Haryana***[18]**,** to buttress its contention regarding the admissibility of the disclosure statements. In ***Damu***[16]**,** the dead body was recovered from a site, to which site, it was carried by the 2nd & 3rd accused, in the former's motorcycle and thrown in the canal. Since the dead body was recovered prior to the disclosure made, the statement was found to be inadmissible under Section 27. But a broken piece of glass was recovered from the spot, pointed out by A3, which correctly fitted into the broken tail lamp of the motorcycle recovered from the house of A2. This provided credence to the confession statement of the accused, despite the dead body having been recovered, antecedent to the information. ***Navjot Sandhu***[14] *(supra),* affirmed ***Om Prakash***[15] ***and Damu***[16] and held that *"discovery of a fact would not comprehend a pure and simple mental fact or state of mind relating to a physical object, dissociated from the recovery of a physical object." (sic)*

15 (1972) 1 SCC 249

16 (2000) 6 SCC 269

17 (2013) 7 SCC 417

18 (2015) 11 SCC 43

36. In this context, we must notice ***Pandurang Kalu Patil v. State of Maharashtra***[19], wherein ***Pulukuri Kottaya***[5] was followed and it was reiterated that the fact discovered is not equivalent to the object produced. The information regarding concealing of the article of the crime, it was held, does not lead to discovery of the article but this leads to the discovery of the fact that the article was concealed at the indicated place, within the knowledge of the accused.

37. In ***Rumi Bora Dutta v. State of Assam***[17]**,** the confession of the accused led to the discovery of a knife and skipping rope and the medical evidence corroborated the fact that the deceased died because of strangulation and there was also a stab injury on his chest. The weapons concealed by the accused and recovered on their information had a direct nexus with the injuries found in the post-mortem report. In ***Raja v. State of Haryana***[18]**,** there was a recovery of knife and blood-stained clothes and ashes of a burnt blanket. The blood-stained clothes and the weapons were sent to the FSL, whose report clearly indicated blood stains on the clothes and the knife, despite absence of matching of the blood group. Relying on ***John Pandian v. State***[20], it was held that the accused has not offered any explanation as to how the human blood was found on the clothes and the knife, which was an incriminating circumstance.

38. With the above principles in mind when we look at the recoveries made, even if the testimonies of the IOs are believed, that there was an unexplained stash of money recovered from the person and the residential accommodations of A2 to A6, they were not recoveries under Section 27. The recovery was akin to a seizure, not one made on the information supplied or confession recorded. Further, there is nothing connecting the cash with the crime. As we held, even the Mahazar did not carry out a proper inventory, of the cash recovered and the identification made in Court, was of the bundles in which the cash was seized. A question arises as to how the accused came in possession of such huge amounts of cash, which if found to be beyond their means and sources of income, proceedings will have to be initiated elsewhere and unless there is a connection clearly

19 (2002) 2 SCC 490

20 (2010) 14 SCC 129

established of the money having been transacted, in furtherance of the conspiracy, which is totally lacking in the above case, the recovery cannot aid the prosecution.

39. The clothes and machetes allegedly, worn by A5 & A6 and used by them to commit the crime, were recovered on the confession statement of A3, the alleged conspirator. True, there were blood stains on the clothes and the machetes, which were found to be of 'O' group, matching the blood group of the accused as found from the post-mortem report. A3, we have pertinently observed is not alleged to have committed the crime proper, i.e. the hacking of the deceased victim. There is also no independent evidence to prove that A5 & A6 handed over the clothes and the machetes to A3. The confession statement of A3 that the clothes and machetes were handed over to him by A5 & A6 is the history, which has to be cogently proved by evidence aliunde. The fact discovered is the concealment of the clothes and the machetes, by A3, which fact of concealment has to be connected to the actual crime. In the present case neither are the clothes or machetes connected to A5 & A6 who are alleged to have committed the crime nor is A3, an alleged conspirator even accused of having been involved in the crime proper, that is the murder of the deceased. Further, it was not even verified whether the clothes recovered fit A5 & A6, in which context they owe no explanation insofar as the blood found on the clothes. Confessions allegedly made by A1 regarding the sites where the conspiracy was hatched and the money transacted does not lead to any discovery of fact. The narration about the conspiracy and the money transactions are not admissible and the mere pointing out of two sites does not lead to any discovery of fact, when the narration is eschewed.

40. The High Court has laboured on Section 30 of the Evidence Act to hold that the confession of a co-accused can be used against the other accused. It was held, Section 30 would bring within its ambit even a Section 27 confession in addition to an extra-judicial confession or one made under Section 164 of the Cr.P.C.; the last two of which is totally absent in the present case. In so far as Section 30 is concerned ***Kashmira Singh v. State of Madhya Pradesh***[21]***,*** held so :

21 (1952) 1 SCC 275

> *"The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."*

41. A Constitution Bench in ***Haricharan Kurmi vs. State of Bihar***[22]***,*** held that a confession as mentioned in Section 30 is not evidence under Section 3 of the Evidence Act. We extract from paragraph 13 of the said decision:

> *"… The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh*[(1952) 1 SCC 275] *where the decision of the Privy Council in Bhuboni Sahu Case has been cited with approval."*

42. ***Athappa Goundan's*** [12] case was held to be wrongly decided, by the Privy Council in ***Pulukuri Kottaya***[5]. When even the recovery made based on a confession under Section 27, by itself cannot inculpate the person who made such a confession, if there is no independent

22 (1964) 6 SCR 623

evidence otherwise connecting the fact discovered to the crime, there is no question of such a confession being made use of, to inculpate the other accused under Section 30 of the Evidence Act.

43. Before leaving the impact and effect of Section 27 and Section 30, we cannot but reiterate the caution expressed in ***Pandurang Kalu Patil***[19] wherein was impugned a judgment of a Division Bench of the High Court of Bombay which disagreed with the ratio in ***Pulukuri Kottaya*[5]*.*** In that context this Court referred to the judgment in ***State v. Chhaganlal Gangaram Lavar***[23] and an extract was made from page 6 paragraph 10 which is as below:

> *"So long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon us, and when we say that the decisions of the Privy Council are binding upon us, what is binding is not merely the point actually decided but an opinion expressed by the Privy Council, which opinion is expressed after careful consideration of all the arguments and which is deliberately and advisedly given."*

44. It was held that ***Pulukuri Kottaya*[5]** was considered and tested by this Court time and again and on all such occasions, its ratio was re-affirmed, lately, as we noticed in ***Navjot Sandhu*[14]*.*** The attention of the Division Bench of the High Court of Karnataka obviously was not drawn to the decision in ***Pulukuri Kottaya*[5] ,** of the Privy Council, affirmed and reaffirmed by the Supreme Court of India, in which, the Full Bench decision of the Madras High Court in ***Athappa Goundan***[12], relied on in the impugned judgment, had been overruled.

45. In the present case, we have already held that the confession under Section 27 cannot be relied upon and there is no question of any aid being drawn from it to implicate the other accused. As far as the sites pointed out by A1, we have found that it did not lead to any discovery of a fact and it is hit by Section 25 & 26 of the Evidence Act.

46. We cannot but observe that the judgment of the High Court reversing the order of acquittal of the Trial Court proceeds on mere surmises

23 1954 SCC OnLine Bom 69

and conjectures relying wholly on the testimony of the Investigating Officers, who merely regurgitated the statements recorded under Section 161 and the voluntary statements of the accused. As has been rightly pointed out in ***Ramesh v. State of Haryana***[24] when the statements recorded under Section 161 of the Code of Criminal Procedure is resiled from, there arises a possibility that the police coerced such statements, but considering the huge prevalence of such instances, as in the present case, of the entire witnesses turning hostile, there could be various other factors also. It could be for fear of deposing against the accused, political pressure, pressure from family or society and even instances of monetary consideration. We do not think that the High Court could have relied on the decision to hold that the reason for the enblock hostility of witnesses at trial, could only be due to the influence wielded by the accused who had even persuaded the wife of the deceased to turn hostile; which reasoning is presumptuous and fallacious.

47. We quite understand the consternation of the learned Judges, in the cold-blooded murder of a person, carried out in front of his own son where the investigation though elaborate, it collapsed miserably at the trial, where the prosecution witnesses; all of them, turned hostile. We share the consternation of the learned Judges but that is no reason for us to rely on Section 161 statements or the story scripted by the investigating agency based on the so called voluntary statements and the recoveries made, which the prosecution failed to prove to have a nexus with the crime. We also notice that there was a test identification parade carried out, in which also PW1, PW8 and PW9 failed to identify the assailants. We make this observation fully conscious of the principle that a TIP is only to aid the investigation but keeping in mind the fact that it could always lend support to an identification made in Court, which unfortunately in the present case was not made either in Court or at the stage of investigation. We find absolutely no reason to sustain the conviction entered by the High Court, reversing the order of acquittal.

48. Though ***Chandrappa***[1] was specifically noticed by the High Court, the principles were not rightly appreciated, while setting aside the

24 (2017) 1 SCC 529

order of acquittal. It has been emphasized that when there are two reasonable views possible from the evidence led, the one favouring the accused should be adopted, especially since the presumption of innocence of the accused until proved guilty, a fundamental tenet of criminal jurisprudence, stands further strengthened by the order of acquittal. In the present case, we are afraid that there are not even two views coming forth from the evidence. The only view that comes forth is that the prosecution completely failed to prove the allegations raised and charged against each of the accused, more by reason of all the witnesses paraded before Court, at the trial, having turned hostile for reasons unknown. Whatever be the reason behind such hostility, it cannot result in a conviction, based on the testimony of the Investigating Officers which is founded only on Section 161 statements and voluntary statements of accused; the former violative of Section 162 of the Cr.P.C and the latter in breach of Sections 25 & 26 of the Evidence Act.

49. We cannot but say that the High Court has egregiously erred in convicting the accused on the evidence led and has jumped into presumptions and assumptions based on the story scripted by the prosecution without any legal evidence being available. Truth is always a chimera and the illusion surrounding it can only be removed by valid evidence led, either direct or indirect, and in the event of it being circumstantial, providing a chain of circumstances with connecting links leading to the conclusion of the guilt of the accused and only the guilt of the accused, without leaving any reasonable doubt for any hypothesis of innocence. We can only accede to and share the consternation of the Division Bench of the High Court, which borders on desperation, due to the futility of the entire exercise. That is an occupational hazard, every judge should learn to live with, which cannot be a motivation to tread the path of righteousness and convict those accused somehow, even when there is a total absence of legal evidence; to enter into a purely moral conviction, total anathema to criminal jurisprudence. With a heavy heart for the unsolved crime, but with absolutely no misgivings on the issue of lack of evidence, against the accused arrayed, we acquit the accused reversing the judgment of the High Court and restoring that of the Trial Court.

50. Criminal Appeals are allowed.

51. The accused shall be released forthwith, if in custody and not required in any other case and if already released on bail, their bail bonds shall stand cancelled.

52. Pending applications, if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 190 : 2025 INSC 772

Vinod Infra Developers Ltd.
v.
Mahaveer Lunia & Ors.

(Civil Appeal No. 7109 of 2025)

23 May 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Whether the High Court erred in rejecting the plaint filed by the appellant u/Or.VII, r.11, CPC, 1908.

Headnotes†

Code of Civil Procedure, 1908 – Or.VII, r.11 – Registration Act, 1908 – ss.17, 49, 23 – Transfer of Property Act, 1882 – s.54 – Appellant-company (owner of the subject property) filed suit for declaratory reliefs alleging that despite the revocation of the agreement to sell and the power of attorney authorising Respondent No.1 to sell the subject property, Respondent No.1 executed the impugned sale deeds in respect of the subject property – Respondents filed application u/Or.VII,r.11, dismissed by Trial Court – High Court allowed the application and rejected the plaint in its entirety – Interference with:

Held: A plaint cannot be rejected in its entirety merely because one of the prayers or reliefs sought is legally untenable, so long as other reliefs are maintainable and based on independent causes of action – Selective severance of reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts – High Court's wholesale rejection of the plaint without appreciating that the reliefs claimed flowed from multiple and distinct causes of action was an improper application of Or.VII, r.11 – On facts, serious triable issues arise which must be adjudicated by a competent civil court – Impugned order set aside, order of the trial court restored. [Paras 9.5, 9.6, 14]

Code of Civil Procedure, 1908 – Or.VII, r.11 – Rejection of plaint – Law with respect to, stated. [Para 8]

Rajasthan Tenancy Act, 1955 – s.207 – When not applicable – Plea of the respondents that u/s.207, suits relating to khatedari rights and recovery of possession based on tenancy or

* Author

mortgage issues fall within the exclusive jurisdiction of the revenue courts and as the appellant themselves claimed to be khatedari tenants seeking restoration of such rights upon cancellation of the sale deeds hence, the suit lied outside the jurisdiction of the civil court:

Held: Issues relating to title of immovable property fall exclusively within the jurisdiction of civil courts and not revenue authorities – Revenue entries are administrative in nature and intended only for fiscal purposes – Issues raised in the plaint pertain to ownership, validity of sale deeds, and declaration of title, which are civil in nature and, therefore, triable exclusively by a civil court – In view of this, the applicability of s.207 which bars the jurisdiction of civil courts in matters relating to khatedari rights and recovery of possession based on tenancy does not arise in the present case – However, by rejecting the plaint and reversing the trial Court's well-reasoned order, the High Court assumed jurisdiction not vested in it at this preliminary stage committing a jurisdictional error. [Para 10]

Case Law Cited

Central Bank of India v. Prabha Jain, **2025 INSC 95 : [2025] 2 SCR 263;** *Suraj Bhan v. Financial Commissioner* **[2007] 5 SCR 155 : (2007) 6 SCC 186;** *Jitendra v. State of Madhya Pradesh and Others,* **2021 SCC OnLine SC 802;** *S. Kaladevi v. V.R. Somasundaram* **[2010] 4 SCR 515 : (2010) 5 SCC 401;** *Muruganandam v. Muniyandi (Died) through LRs,* **2025 SCC OnLine SC 1067;** *Suraj Lamp & Industries (P) Ltd. v. State of Haryana* **[2011] 11 SCR 848 : (2012) 1 SCC 656;** *Cosmos Co. Operative Bank Ltd v. Central Bank of India & Ors.,* **2025 SCC OnLine SC 352;** *Tajender Singh Ghambhir and Another v. Gurpreet Singh and Others* **[2014] 10 SCR 527 : (2014) 10 SCC 702 – relied on.**

Pyare Lal v. Shubhendra Pilania and Others **[2019] 1 SCR 717 : (2019) 3 SCC 692 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Transfer of Property Act, 1882; Rajasthan Tenancy Act, 1955.

List of Keywords

Order VII Rule 11 of CPC; Rejection of plaint; Triable issues; Multiple and distinct causes of action; Independent causes

of action; Unregistered documents; Inadmissible in evidence; Power of attorney; Agreement to sell; Revocation of power of attorney; Impugned sale deeds executed; Competent civil court; Unregistered agreement to sell, Power of attorney; Security for the loan; Redeem the mortgaged property; Mutation; Revenue records; Transfer of ownership; Mortgage; Sections 17, 23 and 49 of the Registration Act, 1908; Suit for specific performance not filed; Jurisdiction of civil courts; Insufficient court fee; High Court assumed jurisdiction not vested in it; Preliminary stage, Jurisdictional error; Khatedari rights; Recovery of possession based on tenancy or mortgage.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7109 of 2025

From the Judgment and Order dated 31.01.2025 of the High Court of Judicature for Rajasthan at Jodhpur in SBCRP No. 99 of 2023

Appearances for Parties

Advs. for the Appellant:
C. Aryaman Sundaram, Dr. Manish Singhvi, Sr. Advs., Apurv Singhvi, Zafar Inayat, Ms. Shalini Haldar, D.K. Devesh.

Advs. for the Respondents:
Dr. Abhishek Singhvi, Sr. Adv., Sumit Chander, Yash Johri, Saransh Vij, Gurdeep Chauhan, Ms. Barnali Basak, Ms. Mahak Dua, Amit Agarwal, Nitin Mishra.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

Leave granted.

2. Aggrieved by the order dated 31.01.2025 passed by the High Court of Judicature for Rajasthan at Jodhpur[1] in S. B. Civil Revision Petition No. 99/2023, the appellant / plaintiff has preferred the present Civil Appeal. By the said order, the High Court allowed the Civil Revision

1 Hereinafter referred to as "the High Court"

Petition filed by Respondent Nos. 1 to 4, set aside the order dated 14.07.2023 passed by the Additional District Judge No. 7, Jodhpur, and rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**"CPC"**).

3. The facts of the case as projected by the appellant are as follows:

3.1. The appellant company claims to be the owner of the agricultural land purchased in the year 2013, comprising Khasra No.175, 175/2, 175/4, 175/5, 175/6, 175/7 admeasuring 18 bighas 15 biswas situated in Village Pal, District Jodhpur (**"subject property"**), and they obtained a loan of Rs.7,50,00,000/- from Respondent No.1. On 23.05.2014, the Board of Directors of the appellant company passed a resolution authorising their Managing Director Mr. Vinod Singhvi, and authorised representative Mr. Mahaveer Lunia (Respondent No.1), to sell the subject property. Pursuant to the said Board resolution, on 24.05.2014, Mr. Vinod Singhvi executed unregistered power of attorney and agreement to sell in favour of Respondent No.1, concerning the subject property.

3.2. Subsequently, on 12.08.2015, the original sale deeds through which the appellant company had purchased the subject property were impounded by the Collector of Stamps for insufficient stamp duty. The appellant company challenged this action by filing a revision petition before the Rajasthan Tax Board, which allowed the revision and remanded the matter to the Collector of Stamps for re-adjudication. In the meanwhile, the appellant company handed over the original documents pertaining to the suit property to the private respondents as security for the loan obtained by them.

3.3. In April, 2022, when the appellant company approached the private respondents to settle the loan and retrieve the original documents, the respondents failed to respond. Consequently, on 24.05.2022, the Board of Directors of the appellant company passed a resolution revoking the authority granted to Respondent No.1, thereby invalidating all the actions related thereto and declaring them as *non-est*. Accordingly, the power of attorney was also revoked on 27.05.2022.

3.4. Despite the same, Respondent No.1 executed sale deeds dated 13.07.2022 and 14.07.2022 which were registered on

19.07.2022 in his favour and Respondent Nos.2 to 4 in respect of the subject property. Based on these sale deeds, their names were also mutated in the revenue records.

3.5. Aggrieved, the appellant company instituted Original Civil Suit bearing No.122 of 2022 before the District Court, Jodhpur, against Respondent Nos.1 to 4, as well as concerned government authorities, and developer, seeking the reliefs of declaration, possession, and permanent injunction in respect of the subject property.

3.6. During the pendency of the aforesaid suit, Respondent Nos.1 to 4 filed an application under Order VII Rule 11 CPC seeking rejection of the plaint, which was dismissed by the Additional District Judge No.7, Jodhpur Metropolitan, by order dated 14.07.2023. Challenging this order, Respondent Nos.1 to 4 filed S.B. Civil Revision Petition No.99 of 2023 before the High Court, which was allowed by the impugned order dated 31.01.2025, thereby rejecting the plaint. Aggrieved by the same, the appellant has preferred this appeal before us.

4. The contentions of the learned counsel for the appellant are summarized as under:

4.1. The High Court erred in rejecting the plaint under Order VII Rule 11 CPC. It is settled law that a plaint can only be rejected if it is manifestly vexatious or does not disclose any right to sue. In the present case, the cause of action concerning the sale deeds dated 13.07.2022 and 14.07.2022 which were registered on 19.07.2022 subsequent to the cancellation of power of attorney, clearly raises triable issues of title and fraud, which cannot be dismissed as 'academic'.

4.2. The suit was based on two separate and distinct causes of action: (i) the unregistered agreement to sell dated 24.05.2014 being in the nature of a mortgage; and (ii)the execution of the sale deed(s) dated 13.07.2022 and 14.07.2022, which were registered on 19.07.2022, subsequent to the revocation of the power of attorney on 27.05.2022. The High Court erroneously treated the entire plaint as unsustainable based on the alleged invalidity of the first cause of action, without adjudicating upon the second.

4.3. The Board Resolution and the General Power of Attorney executed in favour of Respondent No.1 were revoked on 24.05.2022 and 27.05.2022, respectively. Hence, the execution of sale deeds thereafter is *non-est* in law and raises serious questions of validity, which must be tried by a civil court.

4.4. Under sections 17, 23 and 49 of the Registration Act, 1908, an unregistered agreement to sell is inadmissible in evidence for the purpose of transferring title. No steps were taken to register the agreement to sell dated 24.05.2014, nor was any suit for specific performance filed by the private respondents. Thus, the document has no legal sanctity in establishing ownership or rights in immovable property.

4.5. It is well settled that title to immovable property can only be adjudicated by a competent civil court and not by revenue authorities. Reliance was placed on ***Suraj Bhan v. Financial Commissioner***[2] and ***Jitendra v. State of Madhya Pradesh and Others***[3], wherein it was held that revenue entries are for fiscal purposes and do not confer title.

4.6. The appellant has specifically pleaded that the transaction represented by the agreement to sell was in fact a mortgage arrangement. This brings the case within the exceptions to Section 92 of the Indian Evidence Act, 1892 thereby permitting oral and extrinsic evidence to establish the true nature of the transaction.

4.7. The appellant was and remains willing to repay Rs. 19 crores in order to redeem the mortgaged property. The refusal of Respondent No. 1 to co-operate and his unilateral execution of sale deeds amounts to an infringement of the appellant's substantive rights.

4.8. The appellant relies on the decision of this Court in ***Central Bank of India v. Prabha Jain***[4], which holds that if even one cause of action in a plaint survives, the entire plaint must be tried. The doctrine of severance does not apply to reject an entire plaint based on a partial defect.

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2 (2007) 6 SCC 186

3 2021 SCC OnLine SC 802

4 2025 INSC 95

With these submissions, the learned counsel seeks to allow this appeal by setting aside the impugned order passed by the High Court and restoring the plaint to its original position on the file.

5. Per contra, the learned counsel for Respondent Nos.1 to 4 made the following submissions:

5.1. All documents executed between the parties, including the agreement to sell dated 24.05.2014, clearly reflect a sale transaction. There is no reference to a mortgage or loan in any document between 2014 and 2022. The claim that the transaction was a mortgage is an afterthought, introduced only at the time of filing the civil suit in November, 2022. Thus, the plaint discloses no cause of action, as the entire narrative is based on an unregistered agreement to sell.

5.2. The High Court rightly held that the plaint was drafted in a manner intended to abuse the judicial process by disguising a completed sale transaction as a mortgage and claiming reliefs without proper pleadings or court fee.

5.3. As per Section 207 of the Rajasthan Tenancy Act, 1955, suits relating to *khatedari* rights and recovery of possession based on tenancy or mortgage issues fall within the exclusive jurisdiction of the revenue courts. The appellant themselves claimed to be *khatedari* tenants seeking restoration of such rights upon cancellation of the sale deeds. Hence, the suit lies outside the jurisdiction of the civil court.

5.4. The appellant has merged the claim for redemption of mortgage into declaratory reliefs without separately praying for redemption or paying the necessary court fee. This improper pleading supports the High Court's conclusion that the suit is not maintainable.

5.5. Regarding mutation entries in the respondents' favour, it is submitted that once the sale deeds are validly executed and registered, the corresponding mutation is a natural administrative consequence.

5.6. The High Court's view is consistent with binding precedents including ***Pyare Lal v. Shubhendra Pilania and Others***[5],

5 (2019) 3 SCC 692

wherein, it was held that suits for declaration of *khatedari* rights must be adjudicated by revenue courts.

5.7. The High Court correctly exercised its jurisdiction under Order VII Rule 11 CPC in rejecting the plaint at the threshold, given the absence of a valid cause of action, jurisdictional infirmities, and procedural impropriety in the reliefs sought by the appellant.

Thus, the learned counsel submitted that the impugned order passed by the High Court does not warrant any interference by this Court.

6. We have heard the learned counsel appearing for both sides and perused the materials available on record.

7. Seemingly, the appellant, claiming ownership of the subject property (agricultural land), instituted a suit for declaratory reliefs, primarily asserting that despite the revocation of the power of attorney, Respondent No.1 proceeded to execute sale deeds in respect of the subject property. Elaborating further, the appellant stated that they had borrowed Rs. 7,50,00,000/- from Respondent No. 1 in May, 2014. In connection with this loan, the appellant executed a board resolution, a power of attorney, and an agreement to sell in favour of Respondent No. 1, which were all unregistered documents. The appellant contended that these documents were not intended to effect transfer of ownership, but were executed as security for the loan, thereby constituting a mortgage in substance, and that, the board resolution and power of attorney were revoked on 24.05.2022 and 27.05.2022 respectively. It was further stated that the appellant is ready and willing to repay Rs. 19 crores to redeem the property. The appellant also sought a declaration that the sale deeds dated 13.07.2022 and 14.07.2022 (registered on 19.07.2022) executed by Respondent No. 1 in his favour and in favour of Respondent Nos. 2 to 4, are void and ineffective, having been executed on the basis of the revoked instruments. Further, a decree for possession was prayed for, along with a permanent injunction restraining Respondent Nos. 1 to 4 and Respondent No. 7 (developer) from alienating, altering, or undertaking any construction or agricultural activity on the property.

7.1. During the pendency of the suit, Respondent Nos. 1 to 4 filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the grounds that it disclosed no cause of action, no mortgage existed, the valuation was incorrect, and the requisite court fee had not been paid.

7.2. The trial Court (Additional District Judge, Jodhpur) dismissed the Order VII Rule 11 application, holding that triable issues were raised. However, the High Court allowed the application and rejected the plaint in its entirety, resulting in the present appeal.

8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC.

9. Admittedly, the appellant is the owner of the subject property. As stated in the plaint, the appellant received Rs. 7.5 crores from Respondent No. 1 in 2014 through cheques, in consideration of which, unregistered power of attorney and agreement to sell were executed, purportedly based on a board resolution. Subsequently, those documents were revoked by the appellant on 24.05.2022 and 27.05.2022 respectively. Despite the revocation and the fact that the documents were unregistered, Respondent No. 1 executed sale deeds on 13.07.2022 and 14.07.2022, which were registered on 19.07.2022, in his favour and in favour of Respondent Nos. 2 to 4. As per the settled law, in the absence of registration, such documents do not confer valid authority to transfer title. Sections 17 and 49 of the Registration Act, 1908, clearly state that unregistered documents required to be registered are inadmissible in evidence for the purpose of conveying title or completing a sale transaction, and can only be admitted for collateral purposes or in a suit for specific performance. This legal position has been well established in ***S. Kaladevi v. V.R. Somasundaram***[6]*,* wherein, it was held as follows:

> *"10. Section 17 of the 1908 Act is a disabling section. The documents defined in clauses (a) to (e) therein require registration compulsorily. Accordingly, sale*

6 (2010) 5 SCC 401

of immovable property of the value of Rs.100 and more requires compulsory registration. Part X of the 1908 Act deals with the effects of registration and non- registration.

11. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:

"S.49. Effect of non-registration of documents required to be registered.- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any

collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs.100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

13. Recently in K.B. Shah and Sons (P) Ltd v. Development Consultant Ltd, this Court noticed the following statement of Mulla in his Indian Registration Act, (7th Edn., at p. 189):

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it....."

This Court then culled out the following principles: (K.B. Saha Case, SCC p. 577, para 34)

"1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

> *3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
>
> *4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
>
> *5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*
>
> *To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."*

The aforementioned decision was followed by this Court in ***Muruganandam v. Muniyandi (Died) through LRs***[7], wherein the following passage is pertinent:

> *"9. Having considered the matter in detail, we are of the opinion that the prayer of the appellant in the interlocutory application falls under proviso to Section 49 of the Registration Act which provides that an unregistered document affecting immovable property may be received as evidence of a contract in a suit for specific performance. The proviso also enables the said document to be received in evidence of a collateral transaction. Section 49 reads as follows:*
>
> *"49. Effect of non-registration of documents required to be registered.- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882, to be registered shall –*

7 2025 SCC OnLine SC 1067

(a)affect any immovable property comprised therein, or

(b)confer any power to adopt, or

(c)be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."

10. In Kaladevi (supra), this Court has held that an unregistered document may be received as evidence of a contract in a suit seeking specific performance. …"

In the present case, Respondent No.1 has not instituted any suit for specific performance. Moreover, the power of attorney relied upon was unregistered and had already been revoked prior to the execution of the sale deeds. Therefore, Respondent No.1 cannot rely on the unregistered documents to assert any proprietary rights and had no valid authority to execute the impugned sale deeds.

9.2. Additionally, Section 54 of the Transfer of Property Act, 1882, categorically provides that a contract for the sale of immovable property does not, by itself, create any interest in or charge on such property. In the present case, the appellant has contended that the agreement to sell dated 24.05.2014 was, in substance, a transaction executed as security for the loan amount received from Respondent No. 1, and was effectively in the nature of a mortgage, and they are now ready and willing to repay the loan amount and redeem the mortgaged property. As already stated, the agreement to sell, power of attorney, and other connected documents relied upon by Respondent No. 1 were unregistered, and therefore, in law, cannot confer any title,

interest, or ownership rights in respect of the subject property. It is also significant to note that these documents were expressly revoked by the appellant on 24.05.2022 and 27.05.2022 – prior to the execution of the impugned sale deeds. Moreover, Respondent No. 1 has not filed any suit for specific performance of the alleged agreement to sell, which further renders his claim untenable. In the absence of a suit for specific performance, the agreement to sell cannot be relied upon to claim ownership or to assert any transferable interest in the property. This legal position has been conclusively laid down by this Court in ***Suraj Lamp & Industries (P) Ltd. v. State of Haryana***[8], wherein, it was held that unregistered agreements to sell, even if coupled with possession, do not convey title or create any interest in the immovable property. It was further clarified that such documents are insufficient to complete a sale unless duly registered and followed by appropriate conveyance. The relevant paragraphs of the said judgment are extracted below:

> *"16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr. (1977) 3 SCC 247, observed: (SCC pp.254-55, paras 32-33 & 37)*
>
> > *"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prasad v. Ram Mohit Hazra [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of*

8 (2012) 1 SCC 656

contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word `transfer' is defined with reference to the word `convey'. The word `conveys' in Section 5 of Transfer of Property Act is used in the wider sense of conveying ownership...

37....that only on execution of conveyance, ownership passes from one party to another...."

17. In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [2004 (8) SCC 614] this Court held:

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor

transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

Scope of power of attorney

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nehata [2005 (12) SCC 77], this Court held:

"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

…

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

23. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi

High Court, in Asha M. Jain v. Canara Bank [94 (2001) DLT 841], that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/ WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/ GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

9.3. This Court reaffirmed the same position in ***Cosmos Co. Operative Bank Ltd v. Central Bank of India & Ors***[9], where it was reiterated that title and ownership of immovable property

9 2025 SCC OnLine SC 352

can only be conveyed by a registered deed of sale. The following observations are significant:

> *"25. The observations made by this Court in Suraj Lamp (supra) in paras 16 and 19 are also relevant.*
>
> *.....*
>
> *26. Suraj Lamp (supra) later came to be referred to and relied upon by this Court in Shakeel Ahmed v. Syed Akhlaq Hussain, 2023 SCC OnLine SC 1526 wherein the Court after referring to its earlier judgment held that the person relying upon the customary documents cannot claim to be the owner of the immovable property and consequently not maintain any claims against a third-party. The relevant paras read as under:—*
>
> *"10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.*
>
> *11. Law is well settled that no right, title or interest in immovable property can be conferred without a*

registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:

(i). Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar (2018) 7 SCC 639

(ii). Balram Singh v. Kelo Devi Civil Appeal No. 6733 of 2022

(iii). Paul Rubber Industries Private Limited v. Amit Chand Mitra, SLP(C) No. 15774 of 2022.

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view."

9.4. Furthermore, in *M.S. Ananthamurthy v. J. Manjula,* this Court undertook a comprehensive analysis of the statutory provisions and precedents, and reaffirmed that an unregistered agreement to sell does not and cannot by itself create or transfer any right, title, or interest in immovable property. The following paragraphs are pertinent in this regard:

"47. It is a settled law that a transfer of immovable property by way of sale can only be by a deed

of conveyance. An agreement to sell is not a conveyance. It is not a document of title or a deed of transfer of deed of transfer of property and does not confer ownership right or title. In Suraj Lamp (supra) this Court had reiterated that an agreement to sell does not meet the requirements of Sections 54 and 55 of the TPA to effectuate a 'transfer'.

…

51. Section 17(1)(b) prescribes that any document which purports or intends to create, declare, assign, limit or extinguish any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property is compulsorily registerable. Whereas, section 49 prescribes that the documents which are required to be registered under Section 17 will not affect any immovable property unless it has been registered.

….

53. Even from the combined reading of the POA and the agreement to sell, the submission of the appellants fails as combined reading of the two documents would mean that by executing the POA along with agreement to sell, the holder had an interest in the immovable property. If interest had been transferred by way of a written document, it had to be compulsorily registered as per Section 17(1)(b) of the Registration Act. The law recognizes two modes of transfer by sale, first, through a registered instrument, and second, by delivery of property if its value is less than Rs. 100/-."

Accordingly, it is abundantly clear that the unregistered agreement to sell dated 24.05.2014 cannot, under any circumstance, create or convey any right, title or interest in favour of Respondent No.1 under Section 54 of the Transfer of Property Act, 1882. The subsequent revocation of authority further nullifies any claim to title based on such documents.

9.5. Furthermore, Section 23 of the Registration Act mandates that any document required to be registered must be presented for

registration within four months from the date of its execution. This requirement has not been fulfilled in the present case, as the power of attorney and the agreement to sell, both executed in 2014, remain unregistered. Despite the execution of the agreement to sell on 24.05.2014, no attempt was made by Respondent No.1 to have it registered within the stipulated period. This inaction further supports the appellant's contention that the said agreement is not only inadmissible under Sections 17 and 49 of the Act, but also legally ineffective due to non-compliance with the mandatory requirement of timely registration. The failure to seek specific performance or register the document within the period prescribed under Section 23 renders the foundational document unenforceable in law. That apart, the revocation of the Board Resolution and Power of Attorney prior to the execution of the impugned sale deeds vitiates the authority under which those deeds were executed by Respondent No.1. Accordingly, serious triable issues arise, which must be adjudicated by a competent civil court.

9.6. However, the High Court erred in treating the second cause of action – pertaining to the sale deeds registered on 19.07.2022 – as merely "academic", and proceeded to reject the plaint in its entirety without undertaking a judicial examination of this distinct issue. This approach is contrary to the well settled legal principle that a plaint may be rejected under Order VII Rule 11 CPC only if, on a plain reading of the plaint, it discloses no cause of action or falls within the other narrowly defined grounds under the said provision, such as under-valuation, insufficient court fees, or bar by any law. In this context, we may place reliance on the judgment in *Central Bank of India* (supra), wherein, this Court while examining the jurisdiction of civil courts in disputes involving immovable property and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, held that a plaint cannot be rejected in its entirety merely because one of the prayers or reliefs sought is legally untenable, so long as other reliefs are maintainable and based on independent causes of action. The relevant paragraphs are extracted below:

"15. The plaintiff in her suit has prayed for 3 reliefs:

a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati.

b) The second relief is in relation to a mortgage deed executed by Parmeshwar Das Prajapati in favour of the bank.

c) The third relief is for being handed over the possession of the suit property.

24. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order VII, Rule 11 of the CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order VII, Rule 11 of the CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order VII Rule 11 of the CPC.

25. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B."

Therefore, the High Court's wholesale rejection of the plaint, without appreciating that the reliefs claimed flowed from multiple and distinct causes of action – particularly one arising after the revocation of the power of attorney – amounts to an improper application of Order VII Rule 11 CPC. Selective severance of reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts.

9.7. Although the private respondents contend that the power of attorney was notarized, a consent letter was executed, and the transaction was reflected in the income tax records – while also asserting possession over the subject property and alleging that the suit was instituted merely to harass and disturb such possession – these are all matters that require adjudication during trial. Such factual disputes cannot be resolved at the stage of considering an application under Order VII Rule 11 CPC. Therefore, these contentions, even if raised, do not furnish a valid ground for rejection of the plaint at the threshold.

10. The appellant further contends that the mutation of the respondents' names in the revenue records, based on disputed sale deeds, cannot be treated as conclusive proof of title, which is a matter for adjudication by a competent civil court. It is well settled that issues relating to title of immovable property fall exclusively within the jurisdiction of civil courts and not revenue authorities. Revenue entries are administrative in nature and intended only for fiscal purposes. This position has been consistently upheld by this court, including in *Suraj Bhan v. Financial Commissioner* and *Jitendra v. State of Madhya Pradesh (surpa).* It is also to be reiterated that the issues raised in the plaint pertain to ownership, validity of sale deeds, and declaration of title, which are civil in nature and, therefore, triable exclusively by a civil court. In view of this, the applicability of Section 207 of the Rajasthan Tenancy Act, 1955 – which bars the jurisdiction of civil courts in matters relating to khatedari rights and recovery of possession based on tenancy – does not arise in the present case. However, by rejecting the plaint and reversing the trial Court's well-reasoned order, the High Court assumed jurisdiction not vested in it at this preliminary stage, thereby committing a jurisdictional error.

11. Another contention raised by the appellant is that the suit cannot be dismissed merely on the ground of insufficient court fee. The law mandates that the plaintiff be afforded an opportunity to rectify such deficiency. Only upon failure to comply, can the plaint be rejected. This principle was affirmed by a three-Judge Bench of this Court in ***Tajender Singh Ghambhir and another v. Gurpreet Singh and Others***[10], wherein, it was held as follows:

10 (2014) 10 SCC 702

"7. While referring to the provisions of sub-sections (2) and (3) of Section 6, we shall refer to "plaint" which for the purposes of this discussion may be read to include "memorandum of appeal" as well. Sub-section (2) of section 6 provides that in plaint in which sufficient court fee has not been paid, such plaint shall not be acted upon unless the plaintiff makes good the deficiency in court fee within such time as may from time to time be fixed by the court. Sub-section (3) provides that if a question of deficiency in court fee in respect of any plaint is raised and the court finds that the court fee paid is insufficient, it shall ask the plaintiff to make good the deficiency within the time which may be granted and in case of default, the plaint shall be rejected. The main provision of sub-section (3) mandates the court to record a finding whether court fee paid is sufficient on the question being raised by the officer concerned under section 24-A. It further provides that in answer to that question if the court finds that court fee paid is deficient, the court may allow the plaintiff to make up that deficiency within time so fixed by the court. Then there is a proviso appended to sub-section (3) which provides that the court may, for sufficient reasons to be recorded, proceed with the suit if security is given by the plaintiff for payment of the deficiency in court fee within time that may be granted by the court. It, however, requires the court not to deliver the judgment till such time deficiency is not recovered and if the deficiency in court fee is not made good within such time as the court may from time to time allow, the court may dismiss the suit or appeal.

8. The scheme of the above provisions is clear. It casts duty on the court to determine as to whether or not court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by the court. The important thread that runs through sub-sections (2) and (3) of section 6 of the 1870 Act is that for payment of court fee, time must be granted by the court and if despite the order of the court, deficient court fee is not paid, then consequence as provided therein must follow."

12. Furthermore, the contention of the private respondents that the appellant handed over the impounded documents, based on which the sale deeds were executed and mutation effected, are again factual matters to be examined at trial and not at the stage of Order VII Rule 11 CPC. That apart, the decisions relied upon by the respondents are of no assistance as they are factually distinguishable.

13. In light of the above, we find that the trial court rightly held that the issues are triable and that the application filed under Order VII Rule 11 CPC was without merit. In contrast, the High Court erred in overturning this finding and rejecting the plaint in its entirety.

14. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside, and the order of the Additional District Judge is restored. Consequently, the plaint is directed to be taken on the file of the trial Court, which shall proceed with the suit in accordance with law, uninfluenced by any observations made in this judgment. The parties shall bear their own costs.

15. Connected Miscellaneous Application(s), if any, shall stand closed.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 216 : 2025 INSC 778

In Re: Right To Privacy of Adolescents

(Suo Motu Writ Petition (C) No. 3 of 2023)

23 May 2025

[Abhay S. Oka* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Issue arose as regards sentencing the accused; about the rehabilitation of the victim and her child; and about adopting measures for adolescent well being and child protection.

Headnotes†

Protection of Children from Sexual Offences Act, 2012 – s.6 – Penal Code, 1860 – ss.363 and 366 – Sentencing of the accused – Rehabilitation of the victim and her child – Measures for adolescent well being and child protection – On facts, girl aged fourteen years victim under the POCSO Act – Victim married the accused and had a child with him – Acquittal of the accused for the offences punishable under the 2012 Act and IPC by the High Court, since the victim and the accused wanted to continue their cohabitation – In appeal thereagainst, this Court set aside the judgment of the High Court and restored the conviction of the accused for the offences punishable u/ ss.376(2)(n) and 376(3) IPC and s.6 of the POCSO Act – Issue as regards sentencing the accused and the suo motu writ petition as regards objectionable observations made in the impugned judgment:

Held: Final report of the Committee concludes that though the incident was seen as a crime in law, the victim did not treat it as one – In law, no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute – However, the society, the family of the victim and the legal system have done enough injustice to the victim, she has been subjected to enough trauma and agony and would add to the injustice by sending her husband to jail to undergo imprisonment – There has been failure to provide both social and economic justice to the victim, failure of the concept of welfare state, complete failure of the society and the legal system – However,

* Author

as compared to the situation when the incident took place, victim is better placed today and is comfortable with her small family – Earlier she did not get any opportunity to make informed choice, and now, she is desperate to save her husband and is emotionally committed to him and has become very possessive of her small family – To remedy the situation, the Court to ensure that the accused is not separated from the victim, and the State and the society to ensure that the family is rehabilitated – Exercising the jurisdiction u/Art.142, though the accused stands convicted, he will not undergo sentence – State to act as a true guardian of the victim and her child; to provide a better shelter to the victim and her family; to bear the expenditure of the education of the victim till Xth standard, the degree course, if she desires to pursue, and can offer her free vocational training after her Xth standard; to bear the entire expenditure of the education of the child up to Xth standard and ensure that she is educated in a very good school; and to take the assistance of NGOs for securing debts incurred by victim – State to file compliance report regarding implementation of the said directions – Secretary, Ministry of Women and Child Development to appoint Committee of experts to deal with the suggestions of amici curiae, and thereafter submit detailed report. [Paras 23-31]

Case Law Cited

Shilpa Sailesh v. Varun Sreenivasan **[2023] 5 SCR 165 : (2023) 14 SCC 231;** *K. Dhandapani v. State,* **2022 SCC OnLine SC 1056;** *Sankar v. State of Tamil Nadu,* **Curative Petition (Criminal) 3/2023;** *Elumalai v. Inspector of Police,* **Crl. Appeal No. 674 of 2018;** *Gian Singh v. State of Punjab* **[2012] 8 SCR 753 : (2012) 10 SCC 303 – referred to.**

Ajay Kumar v. State (NCT of Delhi), **2022 SCC OnLine Del 3705;** *Vijayalakshmi v. State,* **2021 SCC OnLine Mad 317;** *Ranjit Rajbanshi v. State of West Bengal,* **2021 SCC OnLine Cal 2470 – referred to.**

List of Acts

Protection of Children from Sexual Offences Act, 2012; Penal Code, 1860; Constitution of India; Code of Criminal Procedure, 1973; Juvenile Justice (Care and Protection of Children) Act, 2015.

List of Keywords

Sentencing; Rehabilitation of victim and her child; Adopting measures for adolescent well being and child protection; Suo motu writ petition; Final report of the Committee; Minimum punishment; Family of the victim; Imprisonment; Social and economic justice; Concept of welfare state; Failure of society and legal system; Make informed choice; Jurisdiction u/Art.142; Guardian of victim and her child; Better shelter to victim and her family; Expenditure of education of the victim; Degree course; Free vocational training; Assistance of NGOs; Public-spirited citizens; Debts incurred by victim; Secretary, Ministry of Women and Child Development; Suggestions of amici curiae.

Case Arising From

ORIGINAL/APPELLATE JURISDICTION: Suo Motu Writ Petition (Civil) No. 3 of 2023

(Under Article 32 of The Constitution of India)

With

Criminal Appeal No. 1451 of 2024

Appearances for Parties

By Courts Motion.

Ms. Madhavi Divan, Ms. Liz Mathew, Sr. Advs./Amicus Curiae, Ms. Nidhi Khanna, Ms. Aishani Narain, Sameer Choudhary, Ms. Aandrita Deb, Ms. Bagavathy Vennimalai, Ms. Mallika Agarwal.

Advs. for the Appellants:
Huzefa Ahmadi, Sr. Adv., Kunal Mimani, Abhinav Rana.

Adv. for the Respondents:
Abhijit Sengupta.

Advs. for the Intervenors:
Ms. Aishwarya Bhati, A.S.G., Shiv Mangal Sharma, A.A.G., Chinmayee Chandra, Ms. Archana Surve Shinde, Dr. N. Visakamurthy, Anuj Bhandari, Ms. Astha Sharma, Ms. Nidhi Khanna, Anuj Bhandari, Ms. Nidhi Jaswal, Ms. Ankita Sharma, Arjun D Singh, Kunal Mimani, Aravindh S.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. Criminal Appeal No.1451 of 2024 has been preferred by the State of West Bengal, being aggrieved by the judgment and order dated 18th October 2023, passed by a Division Bench of the High Court of Judicature at Calcutta. In Suo Motu Writ Petition (C) No.3 of 2023, this Court's attention was drawn to certain objectionable observations made in the aforesaid judgement. While dealing with the same, this court took note of the systemic failure of the State to protect the victim, resulting in her fate and wellbeing being ultimately tied up with that of the accused. Accordingly, in this judgement, we are dealing with the issue of sentencing of the accused arising out of the criminal appeal and the Suo Motu Writ Petition. We are also dealing with the issue of rehabilitation of the victim and her child.

2. The learned Special Judge appointed under the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') convicted the accused for the offences punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the Indian Penal Code, 1860 (for short, 'the IPC'). For the offence punishable under Section 6 of the POCSO Act, the accused was sentenced to undergo rigorous imprisonment for twenty years and pay a fine of Rs.10,000/-. For the offences punishable under Sections 363 and 366 of the IPC, the accused was sentenced to undergo rigorous imprisonment for four years and five years respectively and was also ordered to pay a fine of Rs. 2,000/-and Rs. 5,000/- respectively. Though the learned Special Judge under the POCSO Act came to the conclusion that the accused was guilty of the offences punishable under clause (n) of sub-section (2) and sub-section (3) of Section 376 of the IPC, in view of the sentence imposed for the offence punishable under Section 6 of the POCSO Act, no separate punishment was imposed. The accused preferred Criminal Appeal (DB) 14 of 2023 before the Calcutta High Court against the conviction. The High Court by the Impugned Judgement dated 18th October 2023 purported to exercise its jurisdiction under Article 226 of the Constitution of India

read with Section 482 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") to set aside the conviction of the accused for the aforesaid offences.

3. This Court by a detailed judgement dated 20th August 2024, set aside the impugned judgment of the High Court and restored the verdict of the learned Special Court to the extent of the conviction of the accused for the offences punishable under clause (n) of sub-section 2 and sub-section (3) of Section 376 of the IPC and Section 6 of the POCSO Act. This Court confirmed the acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC. However, the sentencing was postponed for the reasons recorded in the judgment. In paragraph 2 of the said judgment, the basic facts of the case have been mentioned and in paragraph 3, the findings recorded by the High Court have been mentioned. Paragraphs 2 to 5 of the judgment are relevant which read thus:

> **"2.** The victim girl was fourteen years old at the time of the incident. The victim's mother lodged a First Information Report (FIR) on 29th May 2018. The victim's mother stated in her complaint that the victim, who was her minor daughter, escaped from her home at 5:30 p.m. on 20th May 2018 without informing anyone. On inquiry, it was found that the accused enticed her to leave her house. The accused did so with the help of his two sisters. The victim's mother repeatedly visited the house of the accused and requested him to facilitate the return of her daughter. However, the victim did not come back. A female child was born to the victim. Admittedly, the accused is the biological father of the child. There was a gross delay in the investigation, and the accused was arrested on 19th December 2021. The chargesheet was filed on 27th January 2022 against the accused for the offences for which he was convicted. In addition, the accused was charged with the offence punishable under Section 9 of the Prohibition of Child Marriage Act, 2006. The prosecution examined seven witnesses. We may note here that as the learned Special Judge under the POCSO Act found that there was no evidence of marriage between the victim and the accused, the charge under Section 9 of the 2006 Act was held as not substantiated.

3. By the impugned judgment, the High Court held that the offences punishable under Sections 363 and 366 of the IPC were not made out, and therefore, the High Court acquitted the accused for the said two offences. Considering the factual scenario that the High Court noticed, it purported to exercise its jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr. PC') to set aside the conviction of the accused for the offences punishable under Section 6 of the POCSO Act and sub-sections 2(n) and (3) of Section 376 of the IPC. The High Court noted that the mother of the victim had disowned her and therefore, the victim was continuously residing with the accused along with their minor child.

4. The Suo Motu writ petition was initiated based on the directions issued by the Hon'ble Chief Justice of India for challenging the impugned judgment. The State Government has preferred the criminal appeal to challenge the order of acquittal.

5. Considering the nature of the observations made by the High Court and the findings recorded by it, this Court appointed Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel, as *amicus curiae* to assist the Court. Both of them have rendered valuable assistance to the Court. Along with them, Ms. Nidhi Khanna, Advocate-on-Record, has also assisted the Court. We have heard Mr.Huzefa Ahmadi, the learned senior counsel appearing for the State Government and the learned counsel representing the accused and the victim. The learned senior counsel for the State Government has taken a fair stand. The accused and the victim are on the same page and want to continue their cohabitation."

4. In paragraphs 15 and 15.1, this Court has dealt with the objectionable portions of the impugned judgment of the High Court. Thereafter, this Court also dealt with the exercise of plenary powers of the High Court under Section 482 of the CrPC to quash the order of conviction. In paragraphs 23 and 23.1, this Court held thus:

"23. There are various decisions of this Court holding that the High Court can exercise jurisdiction under Section 482 of the Cr.PC to quash a prosecution on the grounds of settlement or by consent. One such judgment is in the case of ***Gian Singh v. State of Punjab & Anr., (2012) 10 SCC 303***. Paragraph 58 of the said decision reads thus:

> **"58.** Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. **In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all.** However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such

offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

(emphasis added)

23.1 Therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution."

4.1 In paragraphs 24 and 25, this Court highlighted the helpless position in which the victim of the offences under the POCSO Act was placed. Paragraphs 24 and 25 read thus:

> **"24.** The situation in which the victim was placed after the commission of the offence needs a bit of elaboration. As noted earlier, the victim left her house on 20th May 2018, and her mother filed a complaint on 29th May 2018. On 1st June 2018, PW-5 (ASI Gopal Chandra Saha) brought the victim from the house of the accused to the police station. After her medical examination was conducted, she was sent for safe custody at Alor Disha Child Line at Champahati. PW-2, mother of the victim, without giving any particulars stated that she got her daughter back from Narendrapur Sanlaap home. She claimed in the cross-examination that the victim remained in her house for one year and, later on, went back to the house of the accused. She admitted that she never went to the home of the accused, not even to see her grandchild. The victim's parents completely abandoned her, at least from the year 2019.

> **25.** Ms Madhavi Divan, the learned *amicus curiae*, rightly emphasized that no opportunity was made available to a girl of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether she could have made an informed choice at the age of fourteen or fifteen.**"**

5. From paragraphs 26 to 36, this Court has elaborately dealt with the failure of the State to perform its obligation to take care of the victim of the offence under the POCSO Act who was only fourteen years old. This Court referred to the constitutional obligation of the State. This Court also held that the existing statutes have enough provisions to address this kind of situation. Though, under the existing law, the State could have taken adequate care of the poor victim, it was not done. Therefore, very elaborate conclusions were recorded by referring to specific provisions of the POCSO Act and the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act'). Ultimately, in paragraphs 37 and 38, this Court has noted the effect of the failure of the State, its machinery as well as the collective failure of society at large. Paragraphs 37 and 38 read thus:

> **"37.** It is the responsibility of the State to take care of helpless victims of such heinous offences. Time and again, we have held that the right to live a dignified life is an integral part of the fundamental right guaranteed under Article 21 of the Constitution of India. Article 21 encompasses the right to lead a healthy life. The minor child, who is the victim of the offences under the POCSO Act, is also deprived of the fundamental right to live a dignified and healthy life. The same is the case of the child born to the victim as a result of the offence. All the provisions of the JJ Act

regarding taking care of such children and rehabilitating them are consistent with Article 21 of the Constitution of India. Therefore, immediately after the knowledge of the commission of a heinous offence under the POCSO Act, the State, its agencies and instrumentalities must step in and render all possible aid to the victim children, which will enable them to lead a dignified life. The failure to do so will amount to a violation of the fundamental rights guaranteed to the victim children under Article 21. The police must strictly implement sub-section (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.

38. Unfortunately, in our society, due to whatever reasons, we find that there are cases and cases where the parents of the victims of the offences under the POSCO Act abandon the victims. In such a case, it is the duty of the State to provide shelter, food, clothing, education opportunities, etc., to the victim of the offences as provided in law. Even the child born to such a victim needs to be taken care of in a similar manner by the State. After the victim attains the majority, the State will have to ensure that the victim of the offence can stand on his/her legs and, at least, think of leading a dignified life. That is precisely what Section 46 of the JJ Act provides. Sadly, in the present case, there is a complete failure of the State machinery. Nobody came to rescue the victim of the offence, and thus, for her survival, no option was left to her but to seek shelter with the accused.**"**

6. Paragraph 40, 40.1 and 41 discuss the issue of rehabilitation of the victim and her child. The operative portion of the judgment in paragraph 44 is relevant, which reads thus:

"44. Hence, we pass the following order:

(a) The impugned judgment of the High Court is set aside and the judgment of the Special Court is restored to the extent of the conviction of the accused for the offences

punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. Accordingly, the accused stands convicted. The acquittal of the accused for the offences punishable under Sections 363 and 366 of the IPC is confirmed. The appeal is partly allowed. The issue regarding sentencing will be considered after receiving the report of the committee in terms of clause (h) below.

(b) We direct the Government of West Bengal to constitute a committee of three experts, including a clinical psychologist and a social scientist. The State Government may take the assistance of NIMHANS or TISS for constituting the committee. A child welfare officer shall be appointed to assist the committee as its coordinator and secretary;

(c) The committee shall be formed within three weeks from today;

(d) Within one week from the date of formation of the committee, the State Government shall provide all the material particulars/details of the benefits which it is willing to extend to the victim as stated in paragraph 5 of the note submitted on 9th May 2024 by the learned senior counsel appearing for the State;

(e) Thereafter, the committee shall meet the victim of the offences at such a place as it desires to communicate what the State Government is offering to her. The Committee must also inform the victim about the availability of the benefits of the scheme of the Government of India. The duty of the committee shall be to help the victim to make an informed choice whether she wants to continue to remain in the company of the accused and his family or wants to avail of the benefits offered by the State Government. This exercise will naturally require meetings with the victim on multiple occasions. In what manner this task should be performed is left to the committee to decide;

(f) The committee members must perform their duties very carefully and sensitively while ensuring that the victim does not develop a feeling of insecurity. While doing the exercise,

the committee will endeavour to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members;

(g) The State Government and its officials shall render all possible facilities and help to the committee members;

(h) The coordinator of the committee shall submit a report in a sealed cover to this Court by 18th October 2024 through the Advocate-on-Record for the State Government. The report can be a preliminary report or a final report. The report should contain the details of the interactions with the victim and the opinion and recommendations of the committee. The committee is free to give its opinion on the action which would be in the best interest of the victim and her child; and

(i) We direct the Registry to forward copies of this judgment to the Secretaries of Law and/or Justice Departments of all the States and Union Territories. The Secretaries shall convene meetings of the Secretaries of the concerned departments and other senior officials. The object of holding such meetings is to ensure that appropriate directions are issued to all concerned to strictly implement the provisions of Section 19(6) of the POCSO Act and the relevant provisions of the JJ Act, which we have elaborated above. The State/Union Territories must create machinery to do so. The State/Union Territories shall also assist the victims in getting the benefits under the scheme of the Government of India and the scheme of NALSA, which we have referred to above. In the meetings, the issue of framing Rules by the States to give effect to the provisions of Section 46 of the JJ Act, shall also be considered. The Secretaries shall forward the compliance reports to the Secretary of the Ministry of Women and Child Development, Government of India, within a period of two months from today. The Secretary of the Ministry of Women and Child Development shall compile the reports and submit an exhaustive report before this Court within three months from today. A copy of this judgment shall also be forwarded to the Secretary to the Ministry of Women and Child Development, Government of India."

7. Broadly, there are three issues which we are considering. The first issue is of sentencing the accused. The second issue is about the rehabilitation of the victim and her child. The third issue is a wider issue about adopting measures for adolescent wellbeing and child protection which goes to the root cause of the problem in our changing society.

8. As far as sentencing is concerned, we cannot deal with the issue without understanding the reports of the Committee appointed by this Court. There are two reports of the Committee: preliminary report and final report. This Court interacted with the members of the Committee and the victim on 3rd April 2025. The order of this Court dated 3rd April 2025 reads thus:

> **"**We have interacted with the following members of the Committee of Experts:
>
> (1) Dr. Pekham Basu, Assistant Professor, Centre for Equity and Justice for Children and Families, School of Social Work, Tata Institute of Social Science, Mumbai – Expert Member,
>
> (2) Smt. Jayita Saha, Clinical Psychologist, Pavlov Hospital & COE, CNMCH, Kolkata, Health and Family Welfare Department, Government of West Bengal – Expert Member and
>
> (3) Mr. Sanjeeb Rakshit, District Social Welfare Officer, South 24 Parganas – Member Secretary.
>
> At the outset, we must compliment the role played by the three experts and the assistance they have rendered to the Court and to the learned senior counsel appointed as *amicus curiae*.
>
> We have heard the victim.
>
> We are not recording in detail what actually transpired, but we are of the view that the victim needs a financial help. After the victim completes her 10th Board Examination, we will have to explore the possibility of whether any vocational training can be given to her or whether part-time employment can be extended to her.

> On this aspect, we will need the help of the West Bengal State Legal Services Authority. We, therefore, issue notice to the Member Secretary of the West Bengal State Legal Services Authority, returnable on 1st May, 2025. To be listed at 2.00 p.m.
>
> We also request the Member Secretary to interact with the learned senior counsel appointed as *amicus curiae* and also the learned counsel for the State of West Bengal so that the Member Secretary can be made aware about the nature of help and assistance required from the State Legal Services Authority.
>
> The Registry is directed to forward a copy of this order directly to the Member Secretary of the West Bengal Legal Services Authority.
>
> We request the Member Secretary to remain present before the Court on the returnable date through video conference.
>
> The learned senior counsel appearing for the State of West Bengal was present today. We request him to take instructions from the officers of the State in what manner the State can extend the helping hand to the victim.
>
> We will consider the submissions of the learned counsel on that day. The learned counsel are free to file supplementary note. The State can also file its response well in advance."

9. The preliminary report of the Committee is dated 16th October 2024. The report recorded the victim's struggles while tackling the legal system for securing the release of the accused. The report further noted that the legal battle has resulted in the family suffering emotionally and financially, and accordingly the committee recommended financial assistance for the child and educational and financial rehabilitation for the victim.

10. This Court on 24th October 2024, perused the preliminary report submitted by the Committee. Upon examination, the Court ordered the Committee to inform the victim about educational/ vocational training which can be extended to her at the cost of the State Government to ensure that she earns a better livelihood. The State Government was also directed to take all possible steps to provide

good quality education to the child of the victim. This court further ordered the State Government to ensure that proper nutritious food is made available to the child.

11. The Committee submitted its final report on 28th January 2025. The final report provides details of all the interviews conducted by the Committee, including those of the victim, the accused, their respective families, teachers and management personnel at the school of the victim, investigating police officers, personnel at the welfare home—Sanlaap Sneha Home, and other relevant stakeholders.

12. The final report highlights the inadequate, inefficient implementation of the POCSO Act. In particular, the final report emphasizes the "collective failure of the systems that are there to protect a girl child". It states that the loopholes are glaring, and that the elopement, the living in/marriage of the victim, the birth of a child—all were preventable. The final report specifically highlights:

    a) the failure of the Child Protection Committees at the village level;

    b) the inadequate implementation of the State of West Bengal's "Kanyashree Prakalpa Scheme";

    c) the inaction of the designated Child Welfare Officer at the local police station;

    d) lack of provision of free legal aid;

    e) lack of sufficient and effective counsellors from both genders in schools and even welfare homes;

    f) high frequency of elopements by children in class 8 and above;

    g) stigmatisation of girls in similar situations as the adolescent victim in the present case;

    h) irregularities and delays in the investigation of such crimes;

    i) inadequate accessibility to judicial fora and corruption and financial exploitation by touts, members of the Bar etc.; and

    j) lack of awareness and sensitisation among family, and public officials in respect of the POCSO Act and the sexual, emotional, and mental well-being of children.

13. The final report concludes that in this particular case, it was not the legal crime which caused trauma on the victim, rather it was the

legal battle which ensued consequent to the crime that is taking a toll on the victim. In the light of this, the final report recommended that it would be in the best interest of the victim and her child that the family unit stays intact, so that the accused father may be able to participate in the child's upbringing. Further, the report also recommended providing financial, legal and educational support to the victim and her child.

SUBMISSIONS

14. Very detailed submissions were made by Ms. Madhavi Divan and Ms. Liz Mathew, the learned senior counsel appointed as *amicus curiae*. The learned *amici* have submitted that the sentencing of the accused would have to be examined in light of the findings in the final report, as well as the interaction with the victim, which has conclusively shown that the victim wishes to continue residing with the accused, and has expressed her fervent desire for preservation of his liberty.

15. The learned *amici curiae* have, therefore, recommended three alternatives in relation to sentencing the accused, which are as under:

    a) Firstly, learned *amici* submitted that this Court can consider exercising its powers under Article 142 to remit, reduce or suspend the sentence. This court in ***Shilpa Sailesh v. Varun Sreenivasan***[1] delineated the contours of the power under the said Article, stating that as long as "complete justice" required by the "cause or matter" is achieved without violating fundamental principles of general or specific public policy, the exercise of the power and discretion under Article 142(1) is valid and as per the Constitution of India. The learned *amici* submitted that, in the present case, the minimum sentencing provisions under POCSO Act must be considered in the light of the evolving welfare interests of both the victim and her child. The learned *amici* have reiterated that this Court has exercised this power in similar cases of conviction under the POCSO Act including in ***K. Dhandapani v. State***[2], ***Sankar v. State of Tamil Nadu***[3] and ***Elumalai v. Inspector of Police***[4].

1 (2023) 14 SCC 231

2 2022 SCC OnLine SC 1056

3 Curative Petition (Criminal) 3/2023

4 Crl. Appeal No. 674 of 2018

b) Secondly, the learned *amici* have submitted that this court can consider remitting the sentence of the accused by the State of West Bengal under Section 432 CrPC (Section 473 BNSS). However, in the facts of the present case the *amicus curiae* were of the opinion that this Court ought to exercise its jurisdiction under Article 142 to reduce the sentence of the accused to the sentence already served in order to do complete justice between the parties.

c) Thirdly, the learned *amici* have submitted that the power of High Court's to quash ongoing criminal proceedings under Section 482 of the CrPC needs to be examined. In ***Gian Singh v. State of Punjab***[5], this court has cautioned that such power may only be exercised to secure the ends of justice or to prevent abuse of the process of any court. The learned *amici* have highlighted the different approaches taken by High Courts. The Delhi High Court in ***Ajay Kumar v. State (NCT of Delhi)***[6] and the Madras High Court in ***Vijayalakshmi v. State***[7] have interpreted the statement of objects and reasons of the POCSO Act as not intending to criminalize consensual romantic relationships between adolescents. The Madras High Court, in several cases has adopted a legal interpretation that consensual acts do not fulfil the requirement of 'assault' in the offence of 'penetrative sexual assault.' Similarly, the Calcutta High Court in ***Ranjit Rajbanshi v. State of West Bengal***[8] has held that the POCSO Act defines "penetration" as a unilateral act by the accused, and therefore in cases of consensual intercourse, the act of penetration may not solely be attributed to the accused. Various High Courts have also considered the impact such prosecution has on the victim and have proceeded to quash the proceeding if pursuing the case would harm the victim. Similarly, the impact of prosecution on the accused has also been considered. In these cases, the learned *amici* have submitted that it will be pertinent to determine whether the victim has given 'informed consent', which must be done by interacting with the victim,

5 (2012) 10 SCC 303

6 2022 SCC OnLine Del 3705

7 2021 SCC OnLine Mad 317

8 2021 SCC OnLine Cal 2470

considering compromise memos and examining the statements given by the victim under Sections 161 and 164 of the CrPC. Further, in this light, the learned *amici* have stressed on the need to identify relevant factors to be considered by High Courts while quashing proceedings under the POCSO Act, in order to curtail inconsistent approaches towards the same.

16. Broadly, the learned *amici* in relation to sentencing of the accused have submitted that the underlying rationale in the present case should be to prevent the disruption of an existing family unit, mitigate further hardship to the victim and her child/children, and to balance strict statutory mandates with the principles of proportionality and complete justice. The learned *amici* contended that while the POCSO Act serves an essential purpose in protecting minors from sexual exploitation, its rigid application in cases of adolescent relationships can lead to outcomes that may not align with the best interests of the prosecutrix and her dependents. In light of this jurisprudence, this Court was requested to consider adopting a similarly nuanced approach in the present case to ensure that justice is served in both letter and spirit.

17. The learned *amici* have also sought supplementary directions to the effect that the facilities that have been made available to the victim by the State Government be continued till the child of the victim attains majority, and the victim attains education till the level of graduation, whichever is later. Further, learned *amici* have sought a direction to the Child Welfare Committee at the local level to apprise the victim of her rights as a married woman, and the options available to her in the unfortunate event of a marital discord.

18. In light of the experience gained in the present case, the learned *amici curiae* have also sought broader directions for ensuring that such cases can be prevented or dealt with in a better manner in the future:

    a) The first direction pertains to the overall adolescent well-being and comprehensive sexuality education. The learned *amici* have drawn our attention to various government and non-governmental initiatives that have been introduced to enhance adolescent wellbeing, provide access to crucial health information, and ensure child protection. These initiatives focus on emergency assistance, digital education, peer-led

awareness, and community-driven outreach programs. Some programs, such as Childline India, provide immediate rescue and support services for children in distress, while digital platforms like Saathiya Salah and Hello Saheli aim to bridge the gap in sexual and reproductive health education. Other efforts, such as Project X, emphasize comprehensive sexuality education through structured classroom interventions. Despite these initiatives, the learned *amici* have highlighted that the UNESCO, The Journey Towards Comprehensive Sexuality Education: Global Status Report (2021) points out that in India, education policies on life-skills-based HIV and sexuality education is at secondary education-level only. In light of this, the learned *amici* have advocated for comprehensive sex education in India, stating that without systematic policy reforms, improved teacher training, and a more inclusive curriculum, India will continue to struggle in addressing rising adolescent health issues, misinformation, and the stigma surrounding sexual and reproductive health education.

b) The second direction sought for by the learned *amici* relates to the implementation of a data collection mechanism for improving institutional accountability. The learned *amici* have submitted that to ensure effective policy making, real-time accountability, and targeted interventions, it is crucial to establish a structured data collection mechanism at the state level. The absence of comprehensive, standardized data has often led to fragmented policy implementation, making it difficult to track progress and address gaps in enforcement. By collecting real-time data on key indicators—including sex education implementation, counselling services, POCSO case tracking, and child marriage monitoring—governments can enhance transparency and responsiveness in tackling these critical issues. Further, the learned *amici* have submitted that integrating this data into a real-time dashboard will provide a publicly accessible, transparent mechanism for monitoring progress, holding institutions accountable, and making informed policy decisions.

CONSIDERATION

19. The preliminary report of the Committee indicates that in 2017, the victim met the accused through her neighbour who happened to be

the sister of the accused. At that time, their ages were 13 and 25 years respectively. It is claimed that over a period of time they fell in love and on 20th May 2018, the victim left her home. She married the accused at a temple. Within nine days, on 29th May 2018, the victim's mother lodged a police complaint. As a result of registration of the FIR, the police placed the victim in Narendrapur Sanlaap home. She was there for a month, and thereafter, she was sent back to her parents. She resumed her education at school and was promoted to class 10. While she was studying in class 10, she once again left her parental home and started living with the accused. Perhaps this period was very crucial in her life as she felt stigmatised and humiliated, as recorded in the preliminary report. She noticed that the entire village was discussing her case. Her siblings were taunting her. She was subjected to the vigilance of her mother, who accompanied her to school and tuition classes. Given these circumstances, the victim might have felt compelled to leave her home.

20. The victim continued to stay with the extended family of the accused, which consists of his parents, uncle, aunts, his five brothers and one sister. In May 2021, the victim gave birth to a daughter. After her delivery, she stayed with her parents for about two weeks, and thereafter, she went back to the house of the accused. When the daughter was seven months old, the police arrested the accused. The Committee noted that the arrest shattered both the victim and her daughter. For days, her daughter cried due to the absence of her father. The Committee recorded that the daughter remains traumatised due to separation anxiety. As can be seen from the report of the Committee, the two year period when the accused was in custody, was the toughest period for the victim. She had to run from pillar to post to defend the accused. She spent large amounts by way of payment of fees to lawyers for his release. The figures of the amount she spent as noted in the final report of the Committee are startling. At different stages, she paid a total amount of Rs. 40,000/- to the advocates. In addition, she claims to have paid a sum of Rs. 10,000/- to an advocate "for winning the case". She spent a sum of Rs. 20,000/- to get copies of the chargesheet and Rs. 7,000/- for getting duplicate copies of the court papers. Shockingly, she paid Rs. 18,000/- to a tout who promised to get bail for her husband. Thus, she ended up spending more than Rs. 2 lakhs by incurring debt for defending the accused. She has borrowed a sum of Rs. 2 lakhs and

now, she is in a debt trap. In fact, the Committee records that the indebtedness has become vicious. The only redeeming feature is that during the period of imprisonment of the accused, her marital family took care of her and her daughter.

21. Now, we come to the economic condition of the victim and the accused. The family of the accused is very poor. At present, the victim, the accused and her daughter are staying in a temporary shelter enclosed by brick walls, but the roof is of tarpaulin. This house has no door. The accused is uneducated and is working as a daily wage labourer. Apparently, he is working very hard. It is noted by the Committee that both the victim and her husband are very keen on ensuring that their daughter gets education. They are taking precautions to ensure that they do not have another child. Now, there is improvement in the relationship between the victim and her parents. The victim's parents looked after her when she was unwell.

22. The final report of the Committee is more elaborate. It describes the huge burden placed on the victim in dealing with her family's responsibilities. The final report records that the economic status of the victim's family is marginally better than that of her husband. The Committee has noted that the relationship of the victim with her husband follows the triangular theory of love, which states that intimacy, passion and commitment are the main criteria for consummate love. Initially, passion and intimacy may have taken the center stage, but now, the Committee notes that without any coercion from her husband, the victim is deeply committed to him. The Committee notes that now the victim is different. She is ably looking after her responsibilities as a wife and mother. It also notes the victim's apprehension to save her husband from punishment. The figures of the money spent by her, which we have quoted earlier, were only in relation to the trial stage. The final report records that she has almost spent Rs.1,35,000/-. The figures stated make it obvious that she has been exploited. This is evident from the fact that she had to pay Rs.60,000/- for grant of bail, Rs.25,000/- for securing acquittal, Rs.15,000/- for filing a case in this Court and Rs. 25,000/- towards air fare, to enable her husband's advocate to appear before this Court. Now, the victim is showing signs of maturity. She actively engages with adolescent girls in the area and encourages them to study and think rationally about relationships.

23. The facts of this case are an eye opener for everyone. It highlights the lacuna in our legal system. The final report concludes that though the incident was seen as a crime in law, the victim did not accept it as one. The Committee records that it was not the legal crime that caused any trauma to the victim, but rather, it was the consequences that followed, which took a toll on her. What she had to face as a consequence was the police, the legal system and the constant battle to save the accused from punishment. At the same time, she took care of her daughter to the best of her abilities, notwithstanding the huge financial burden she carried. In fact, the final conclusion in the report is an eye opener. The relevant part of the final report reads thus:

> "In conclusion, a heinous crime causes trauma in the psyche of the victim. In this case, the law saw it as a crime, the victim did not. Hence, the legal crime did not cause any trauma on this particular victim. It was the consequences thereafter – the police personnel, the legal system, the battle to save her husband and do the best for her daughter while having a financial burden, which is taking its toll on her. A young woman, who refuses to be called a "Victim", fighting for her husband needs all the support that can be made available. It would be in the best interest of the child if the family structure can be restored."

24. What troubles us is the issue of sentencing. The reports of the Committee stare at our faces. Though the victim did not treat the incident as a heinous crime, she suffered because of it. This was because at an earlier stage, the victim could not make an informed choice due to the shortcomings of our society, our legal system and her family. In fact, she did not get any opportunity to make informed choice. The society judged her, the legal system failed her, and her own family abandoned her. Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.

25. After having read the reports and having interacted with the Committee as well as the victim, we are of the view that if we send the accused to jail, the worst sufferer will be the victim herself. As compared to the situation in 2018, she is better placed today. Now she is comfortable with her small family. She along with the accused,

is concentrating on their daughter and they want to ensure that she gets quality education. At the same time, as recorded in the final report, the victim is attending school and is desperate to complete her school education. Though the State has offered to enroll her in some vocational course, she is keen on completing her education, at least up to graduation.

26. In law, we have no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute. However, in this case, the society, the family of the victim and the legal system have done enough injustice to the victim. She has been subjected to enough trauma and agony. We do not want to add to the injustice done to the victim by sending her husband to jail. We as Judges, cannot shut our eyes to these harsh realities. Now, at this stage, in order to do real justice to the victim, the only option left before us is to ensure that the accused is not separated from the victim. The State and the society must ensure that the family is rehabilitated till the family settles down in all respects.

27. Ultimately, this Court is bestowed with extraordinary jurisdiction under Article 142 for the sole object of ensuring that the highest Court of the land is in a position to do substantial justice in its truest sense. In the context of this situation, sadly, true justice lies in not sentencing the accused to undergo imprisonment. This case is not going to be a precedent and should not be a precedent. This case is an illustration of the complete failure of our society and our legal system. All that the system can do for the victim now, is to help her fulfil her desire of completing her education, settling down in life, providing a better education to her daughter and ensuring overall better living conditions for her family.

28. This year we have completed 75 years of the Constitution on 26th January. The Constitution contemplates the State to be a welfare state. The Constitution guaranteed social and economic justice to all the citizens. In this case, there is a failure to provide both social and economic justice to the victim. The facts of the case indicate failure of the concept of welfare state. To remedy the situation in this case, it is the obligation of the State Government to act as the true guardian of the victim and her child and ensure that they settle down in life and lead a happy, healthy and constructive life ahead.

29. In furtherance of the aforementioned, this Court by order dated 24th October 2024 directed the State of West Bengal to extend educational facilities and ensure the provision of proper and nutritious food for the child of the victim. Furthermore, by order dated 3rd April 2025, this Court directed the State to look into the feasibility of imparting vocational training or offering part-time employment to the victim, upon completion of her 10th Board Examination. In compliance with the aforesaid orders, the State has taken the following steps:

    a) The victim has been offered enrollment under various welfare schemes aimed at ensuring better nutrition and education for herself and her child vide Memo No. 1806/SWD(S24P) dated 18.11.2024.

    b) As per the desire of the victim, she has been admitted to Bhadrapara Gilarchat High School on 31st December 2024 and is currently studying in the 10th standard.

    c) The child of the victim has been enrolled at the local Anganwadi Centre and is receiving cooked food under the Supplementary Nutrition Programme of the Integrated Child Development Services.

    d) The child of the victim has been enrolled under the Sponsorship Programme of Mission Vatsalya with effect from January 2025, vide Order dated 17th January 2025. Under the said scheme, an amount of Rs. 4,000/- is transferred to the beneficiary's account in the first week of every month until the child attains the age of 18 years.

    The State has further submitted that since the victim has expressed her desire to complete her graduation, following the successful completion of her Board Examination, and subject to her consent, appropriate arrangements can be made to enroll the victim in a vocational training course of her choice at a suitable institution.

30. The learned senior counsel appointed as *amicus curiae* have come out with very important suggestions which we have highlighted in the earlier part of this judgement. This Court cannot leave this case by simply making an attempt to take care of the family of the victim. This Court will have to carry it further by taking forward the suggestions of the learned *amici curiae*. For carrying forward the

suggestion of the learned *amici*, we propose to implead the Union of India through the Ministry of Women and Child Development, so that more effective orders can be passed.

31. Hence, we pass the following order:

a) We exercise our extraordinary jurisdiction under Article 142 of the Constitution of India and hold that though the accused stands convicted, he will not undergo sentence for the reasons stated earlier;

b) We direct the State to take following measures:

i) To act as a true guardian of the victim and her child;

ii) To provide a better shelter to the victim and her family within a period of few months from today;

iii) To bear the entire expenditure of the education of the victim till Xth standard examination and if she desires to take up education for a degree course, till the completion of degree course. After she passes her Xth standard examination, the State can offer her vocational training, obviously, at the cost of the State;

iv) To bear the entire expenditure of the education of the child up to Xth standard and ensuring that she is educated in a very good school in the vicinity of the place of residence of the victim; and

v) To endeavour to take the assistance of NGOs or public-spirited citizens for the purpose of securing the debts incurred by the victim as a one-time measure.

c) We direct the State to file compliance report giving details of the implementation of the directions contained in clause (b) above. The first compliance report shall be filed by 15th July 2025. Thereafter, compliance reports shall be filed after the interval of every six months. The first compliance report will be considered on 25th July 2025. We direct the Registry to list the case on 25th July 2025.

d) Issue notice to the Union of India through the Secretary of the Ministry of Women and Child Development. The notice is made returnable on 25th July 2025. A copy of the judgement dated 20th August 2024 and this judgement shall accompany notice;

e) Immediately on service of notice, the Secretary of the Ministry of Women and Child Development shall appoint a Committee of experts to deal with the suggestions of the learned *amici curiae*. Senior officers of the State shall be a part of the Committee. If necessary, the Committee can also consult the learned senior counsel appointed as *amici curiae*. Immediately on service of notice, the Secretary shall constitute a Committee. The members of the Committee constituted by this Court shall be permanent invitees to the said Committee; and

f) The Committee will submit a detailed report before the returnable date to this Court. To consider the implementation of the suggestions of the learned *amici curiae* based on the said report, this Court will pass further directions from time to time;

32. We were immensely benefitted by the reports of the Committee appointed by this Court. We must acknowledge the contribution of the Committee members. We record our appreciation for the service rendered by Ms.Madhavi Divan and Ms.Liz Mathew, the learned *amici curiae*. We must also record that Shri Huzefa Ahmadi, the learned senior counsel appearing on behalf of the State, has ably assisted the Court as the Officer of the Court.

Result of the case: Directions issued and matter listed for compliance.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 242 : 2025 INSC 790

Batlanki Keshav (Kesava) Kumar Anurag
v.
State of Telangana & Anr.

(Criminal Appeal No. 2879 of 2025)

29 May 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Issue arose as to the correctness of the order passed by the High Court whereby the petition filed by the appellant seeking quashing of the FIR for the offences punishable u/s.376(2)(n) IPC and s.3(2)(v) of the SC/ST(POA) Act, 1989, was rejected.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – s.376(2)(n) – Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(2)(v) – Quashing of FIR – Allegations of establishing sexual relations under false promise of marriage – Complaint by *de-facto* complainant against the appellant that written agreement between the parties that the appellant would marry the complainant – Later, the appellant and his mother started showing reluctance to the marriage – Allegedly appellant compelled the complainant to indulge in sexual intercourse – Subsequently, the appellant blocked the complainant's calls and messages – Complainant filed FIR u/ss.417 and 420 IPC against the appellant – Thereafter, another FIR filed alleging that the appellant established sexual relations with the complainant against her wishes on multiple occasions – Appellant filed petition for quashing of the subsequent FIR, which was rejected – Correctness:

Held: No *prima facie* material on record to substantiate the allegations of cheating or sexual intercourse under a false promise of marriage against the appellant – Allegations levelled in the two FIR's at great variance and the inherent contradictions in the two reports over the same subject matter cannot be reconciled – D*e-facto* complainant is a highly educated woman aged 30 years – Inherently improbable that the complainant would have forgotten

* Author

or omitted to mention the incidents of sexual intercourse made under a false promise of marriage while filing the first FIR because all the incidents had already taken place as per the version of the complainant before filing of the first FIR – Also, the de-facto complainant had filed similar FIR against an Assistant Professor of the University, where she was studying – Chats on record along with the additional documents depict the stark reality about the behavioral pattern of the *de-facto* complainant who appears to be having manipulative and vindictive tendency – Thus, the appellant absolutely justified in panicking and backing out from the proposed marriage upon coming to know of the aggressive sexual behaviour and the obsessive nature of the *de-facto* complainant – Even assuming that the appellant retracted from his promise to marry the complainant, it cannot be said that he indulged in sexual intercourse with the *de-facto* complainant under a false promise of marriage or that the offence was committed by him with the *de-facto* complainant on the ground that she belonged to the Scheduled Castes/Scheduled Tribes community, which was not referred in first FIR – Thus, this allegation set out in the subsequent FIR lodged almost after seven months nothing but sheer exaggeration which must be discarded – Allowing prosecution of the appellant to continue in the impugned FIR would be a travesty of justice and gross abuse of the process of Court – Impugned FIR nothing but a bundle of lies full of fabricated and malicious unsubstantiated allegations levelled by the complainant – Thus, the two FIR's and all proceedings, quashed in entirety. [Paras 22-31]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Scheduled Tribes (Prevention of Atrocities) Act, 1989.

List of Keywords

False promise of marriage; Quashing of FIR; Written agreement; Sexual relations; Retracted from promise to marry; Obsessive nature of *de-facto* complainant; Inherent contradictions in two FIRs; Highly educated women; *Ante-date*; Manipulative and vindictive tendency; Trying to "get a green card holder"; Invest on the next victim; Travesty of justice; Unsubstantiated allegations; Abuse of the process of Court; Behavioral pattern of the complainant; Aggressive sexual behaviour; Scheduled Castes/Scheduled Tribes community.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2879 of 2025

From the Judgment and Order dated 13.12.2022 of the High Court for the State of Telangana at Hyderabad in CRLP No. 1759 of 2022

Appearances for Parties

Advs. for the Appellant:
Gagan Gupta, Sr. Adv., Kuldeep Jauhari, Sahil Ahuja, Anubhav Tyagi, Satish Kumar Tripathi, Prashant Joshi, Amish Aggarwala.

Advs. for the Respondents:
Kumar Vaibhaw, Ms. Devina Sehgal, Yatharth Kansal.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. Leave granted.

3. Despite service of notice, respondent No.2-*de-facto* complainant[1] has not put in appearance.

4. The appellant herein seeks to assail the order dated 13th December, 2022, passed by the High Court for the State of Telangana at Hyderabad,[2] whereby the petition[3] filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973[4] seeking quashing of the FIR bearing Crime No. 103 of 2022 registered at the Police Station Madhapur, Cyberabad, for the offences punishable under Section 376(2)(n) of the Indian Penal Code, 1860[5] and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989,[6] was rejected.

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1 Hereinafter, being referred to as the 'de-facto complainant'.

2 Hereinafter, being referred to as the 'High Court'.

3 Criminal Petition No. 1759 of 2022.

4 Hereinafter, being referred to as the 'CrPC'.

5 Hereinafter, being referred to as the 'IPC'.

6 Hereinafter, being referred to as the 'SC/ST(POA) Act'.

5. Succinctly stated, the facts essential for disposal of the appeal are noted hereinbelow.

6. The *de-facto* complainant i.e., respondent No.2 filed a complaint before Police Station Madhapur alleging *inter alia* that she had earlier filed a complaint against the accused i.e., appellant herein, and during the course of enquiry of the said complaint, the appellant approached the police station along with his mother J. Vijayalakshmi and a resolution was arrived at, between the parties in the presence of the Inspector of Police to the effect that the appellant would marry the *de-facto* complainant and get the marriage registered at the registration office or the Arya Samaj Mandir. A written agreement to this effect was drawn up and affirmed by the *de-facto* complainant and the appellant by affixing their signatures. However, the accused appellant and his mother started showing reluctance to the marriage on one pretext or the other. They made up an excuse that the next auspicious date for solemnizing the marriage was only on 26th August and stopped communicating with the *de-facto* complainant or her family about wedding arrangements, etc. The accused appellant then started mentally harassing the complainant with reference to the complaint she had filed at the police station. When she expressed a desire to discuss the wedding arrangements and resolve the issues about the family's cold behaviour, the accused appellant went to the *de-facto* complainant's house on 24th June, 2021 and compelled her to indulge in sexual intercourse without ever intending to go through with the marriage ceremonies. Being perturbed, the *de-facto* complainant went to the police station on 25th June, 2021 and reported that the accused appellant was not keeping his word and was showing reluctance in abiding by the terms of the agreement. On the same night, the accused appellant's mother called the *de-facto* complainant's parents. On 26th June, 2021, the accused appellant visited the *de-facto* complainant and pressurized her to withdraw the complaint and inform the Inspector of Police that all the allegations levelled by her against him were false. This incident was reported by the *de-facto* complainant to the SHE Team Police. Inspite thereof, the accused appellant did not mend his ways and he along with his mother continued to harass the *de-facto* complainant and raised new demands about the wedding.

7. Following this, the *de-facto* complainant expressed her apprehension to the accused appellant that she had doubts about his intent to marry

her. She shared the details of the Telangana State Government's marriage registration procedure with the accused appellant, but he refused to pay any heed to her. The *de-facto* complainant then told the accused appellant that if he failed to apply for a slot for registration of their marriage as per the Telangana State Government's marriage registration procedure, she would be left with no option but to infer that the appellant had no intention of marrying her. Subsequently, the accused appellant blocked the *de-facto* complainant's calls and messages. On 29th June, 2021 the mother of the accused appellant called the *de-facto* complainant and gave her false information that the whereabouts of her son were unknown, and that he had gone missing. Upon confirming from reliable sources, the *de-facto* complainant came to know that the said information was patently false. She alleged that the accused appellant had no intention of marrying her and he along with his mother were manipulating and cheating her.

8. On this complaint, FIR bearing Crime No. 751 of 2021 came to be registered at the Police Station Madhapur (Guttala), Cyberabad on 29th June, 2021 for the offences punishable under Sections 417 and 420 of IPC and investigation was commenced. The anticipatory bail application[7] preferred by the accused appellant in connection with the aforesaid FIR came to be allowed by the XV Additional Metropolitan Sessions Judge, Ranga Reddy District at Kukatpally *vide* order dated 30th September, 2021.

9. The *de-facto* complainant filed yet another complaint before Police Station Vanitha, Kozhikode City, Kerala which came to be registered as FIR bearing Crime No. 13 of 2021 alleging therein that the complainant had come into contact with the accused appellant through 'Bharath Matrimony' website whilst the accused appellant was residing in the United States of America. They agreed to marry each other, and the date of the marriage was fixed on 6th January, 2021. However, the accused appellant avoided the scheduled date and returned to the United States of America without marrying her. Upon coming back to India, he established sexual relations with the *de-facto* complainant against her wishes in her room located at Subhashini Nilayam, Cyberabad on multiple occasions. These incidents allegedly occurred on 4th May, 2021; 11th May, 2021; 28th May, 2021 and 7th June, 2021. Thereafter, the accused appellant

7 Crl. M.P. No. 946 of 2021.

refused to marry her saying that she belonged to a lower caste. Since the Police Station Vanitha at Kozhikode City, did not have jurisdiction to entertain the said FIR, the same was forwarded to the Police Station Madhapur, District Cyberabad where the impugned FIR bearing Crime No. 103 of 2022 dated 1st February, 2022, came to be registered for the offences punishable under Section 376(2)(n) of IPC and Section 3(2)(v) of SC/ST(POA) Act.

10. Aggrieved, the accused appellant preferred quashing petition[8] under Section 482 of CrPC seeking quashment of the FIR bearing Crime No. 103 of 2022 registered at Police Station Madhapur. The said petition came to be disposed of by the High Court *vide* order dated 13th December, 2022, with the following observations: -

> "5. It is not disputed that after registration of the Crime No.751 of 2021, the petitioner accused and the 2nd respondent complainant did not live together. On the basis of allegations made in Crime No.751 of 2021, the XV Additional Metropolitan Sessions Judge, Ranga Reddy District at Kukatpally vide Crl.M.P.No.946 of 2021 granted the relief of anticipatory bail to this petitioner.
>
> 6. Since the petitioner and de facto complainant never stayed together after the complaint in FIR No.751 of 2021 before Madhapur Police Station on 29.06.2021, nor any transactions had taken place in between them, this Court deems it appropriate to direct the Investigating Officer in respect of FIR No.103 of 2022 pending on the file of Station House Officer, Madhapur Police Station, Cyberabad, to conclude the investigation without taking any coercive steps against the petitioner-accused. Further, the petitioner-accused shall co-operate with the Investigating Officer as and when required for the purpose of investigation."

11. The said order is under challenge in this appeal by special leave.

12. Learned counsel appearing for the accused appellant has placed on record certain photographs of the *de-facto* complainant depicting that she is trying to indulge in self-harm. The translated transcripts of the call recordings purportedly exchanged between the accused appellant and the *de-facto* complainant have also been placed on

8 CRLP No. 1759 of 2022.

record to buttress the submission that the *de-facto* complainant was suffering from Obsessive Compulsive Disorder (OCD) and was repeatedly pressurizing the accused appellant to indulge in sexual relations. The *bona fides* of the accused appellant are clear since the very inception and the same is evident from the fact that he had made all logistic arrangements for the marriage, including booking of the venue/hotel, etc. However, it was only after observing the aggressive sexual behaviour of the *de-facto* complainant that the accused appellant panicked and was compelled to back out from the union with the *de-facto* complainant.

13. Learned counsel further urged that the FIR No. 751 of 2021 came to be registered by the *de-facto* complainant against the accused appellant on 29th June, 2021. In this FIR, a reference to merely one incident dated 24th June, 2021, is made, wherein the accused appellant had indulged in sexual relations with the *de-facto* complainant. In the subsequent FIR bearing Crime No. 103 of 2022, which was impugned before the High Court, the *de-facto* complainant exaggerated and manipulated the facts and alleged that the accused appellant indulged in forcible sexual relations with her on multiple occasions by deceiving her under a false promise of marriage. The incidents of sexual intercourse which are set out in the impugned FIR are dated 4th May, 2021; 11th May, 2021; 28th May, 2021 and 7th June, 2021. Learned counsel urged that if, at all, any such incident had occurred with the complainant on these dates, she would not have omitted to mention about the same in her previous FIR i.e., Crime No. 751 of 2021.

14. It was further contended that the *de-facto* complainant is an educated woman aged 30 years and if, at all, any physical relations were established between her and the appellant, the same were with her own free will and consent and there was no element of force, coercion or deception on the part of the appellant.

15. Learned counsel has also placed on record reports under Section 173(2) of CrPC, submitted after investigation of FIR No. 751 of 2021 and FIR No. 103 of 2022, by way of additional documents to point out that the complainant is habitual of lodging such complaints. He thus urged that the High Court erred in rejecting the prayer made by the accused appellant to quash the impugned FIR, which is nothing short of a gross abuse of the process of law.

16. *Per contra*, learned counsel for the State opposed the submissions made on behalf of the appellant's counsel.

17. Learned counsel urged that in the present case, the accused appellant was acting with *mala fide* intention since the very inception as he developed sexual relations with the *de-facto* complainant on the false promise that he would marry her and later, he resiled from the promise. It was further urged that as serious allegations of forceful sexual relations are levelled against the accused appellant, this Court should refrain from entertaining the prayer of quashing of the FIR made on behalf of the accused appellant.

18. We have heard and considered the submissions advanced by learned counsel for the accused appellant and learned counsel representing the respondent-State.

19. At the outset, we may note that the police has already submitted a closure report dated 6th June, 2024, in FIR No. 751 of 2021 whereas, a chargesheet dated 30th August, 2024, has been filed in FIR No. 103 of 2022. The closure report in the FIR No. 751 of 2021 which has been placed on record, indicates that previously also, i.e., on 23rd January, 2019, the *de-facto* complainant had lodged a similar complaint at the Police Station, Osmania University, Hyderabad City accusing one 'Dr. Ranjit Thankappan', who at the time was working as Assistant Professor in the Department of Communication at Osmania University, for identical allegations of cheating and sexual exploitation on the pretext of a false promise of marriage.

20. With reference to the aforesaid findings, it was contended on behalf of the accused appellant that the *de-facto* complainant is habitual of lodging such complaints and has falsely implicated the accused appellant in the present FIR for oblique motives.

21. The respondent-State has filed a counter affidavit wherein it is stated that the police has found the offences proved against the accused appellant after thorough investigation of FIR No. 103 of 2022. However, the pertinent assertions made in the petition regarding the *de-facto* complainant suffering from Obsessive Compulsive Disorder, her threats of self-harm and the genuineness of the transcriptions of the chats which took place between the accused appellant and the *de-facto* complainant have not been disputed/denied.

22. Upon appreciating the facts and circumstances narrated above and having given thoughtful consideration to the allegations as set out

in the FIR and the chargesheet placed on record by the accused appellant, we find that there is no material what to say of *prima facie* material on record to substantiate the allegations of cheating or sexual intercourse under a false promise of marriage against the accused appellant. The allegations levelled in FIR No. 751 of 2021, dated 29th June, 2021, and the impugned FIR No. 103 of 2022 are at great variance and the inherent contradictions in the two reports over the same subject matter cannot be reconciled.

23. The *de-facto* complainant is a highly educated woman aged 30 years. In FIR No. 751 of 2021, she has only alleged about a single sexual encounter dated 24th June, 2021. On the contrary, in the impugned FIR No. 103 of 2022 which came to be lodged on 1st February, 2022, 4-5 such incidents have been referenced each of which *ante-date* the FIR No. 751 of 2021. It is thus inherently improbable that the complainant would have forgotten or omitted to mention these incidents of sexual intercourse made under a false promise of marriage while filing the earlier FIR No. 751 of 2021 because all the incidents had already taken place as per the version of the complainant up to 7th June, 2021 whereas, the FIR No. 751 of 2021 came to be lodged on 29th June, 2021.

24. A very interesting fact which emerges upon perusal of the closure report in FIR No. 751 of 2021 is that the *de-facto* complainant had filed a similar FIR against an Assistant Professor of Osmania University, where she was studying.

25. In the chats which have been placed on record along with the additional documents, the *de-facto* complainant, who is referred to by the name 'Muffin', has admitted that she was manipulative and was trying to "get a green card holder". At one point of time, she also stated that it would not be difficult for her to trap the next one. In the very same breath, she mentions that she would not waste time with the accused appellant and needs to "invest on the next victim". She also mentions that she would irritate her victims to the extent that they dump her, and she could happily start with the next one. She also stated that she was using the accused appellant.

26. These chats depict the stark reality about the behavioral pattern of the *de-facto* complainant who appears to be having manipulative and vindictive tendency.

27. Thus, in our opinion, the accused appellant was absolutely justified in panicking and backing out from the proposed marriage upon coming

to know of the aggressive sexual behaviour and the obsessive nature of the *de-facto* complainant.

28. Hence, even assuming that the accused appellant retracted from his promise to marry the complainant, it cannot be said that he indulged in sexual intercourse with the *de-facto* complainant under a false promise of marriage or that the offence was committed by him with the *de-facto* complainant on the ground that she belonged to the Scheduled Castes/Scheduled Tribes community.

29. It is also relevant to mention here that in FIR No. 751 of 2021, the *de-facto* complainant has not even made a whisper about the accused appellant dumping her on the ground of her caste. Thus, apparently this allegation which has been set out in the subsequent FIR No. 103 of 2022 lodged almost after seven months is nothing but a sheer exaggeration which must be discarded.

30. Having considered the entirety of facts and circumstances as available on record, we are of the firm opinion that allowing prosecution of the accused appellant to continue in the impugned FIR No. 103 of 2022 would be nothing short of a travesty of justice in addition to being a gross abuse of the process of Court. The impugned FIR No. 103 of 2022 is nothing but a bundle of lies full of fabricated and malicious unsubstantiated allegations levelled by the complainant. The facts on record clearly establish the vindictive and manipulative tendencies of the complainant and these aspects have a great bearing on the controversy.

31. Resultantly, FIR bearing Crime No. 103 of 2022 dated 1st February, 2022, FIR bearing Crime No. 751 of 2021 dated 29th June, 2021, and all proceedings sought to be taken as a consequence thereof, are quashed in entirety.

32. The appeal is allowed accordingly.

33. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 252 : 2025 INSC 694

National Spot Exchange Limited
v.
Union of India & Ors.

(Writ Petition (Civil) No. 995 of 2019)

15 May 2025

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether the Secured creditors would have priority of interest over the assets attached under the Provisions of Prevention of Money Laundering Act, 2002, (PMLA) and Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act), by virtue of the provisions of SARFAESI Act, 2002 and RDB Act, 1993; whether the properties of the Judgment Debtors and Garnishees attached under the Provisions of MPID Act, 1999 would be available for the execution of the decrees against Judgment Debtors in view of the Provision of Moratorium under Section 14 of the IBC, 2016.

Headnotes†

Prevention of Money Laundering Act, 2002 (PMLA) – Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – s.4 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – s.26E – Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) – Constitution of India – Article 246 – Commodity Exchange Platform of National Spot Exchange Limited committed payment defaults and fraud of about Rs.5,600 Crores – Secured creditors, if would have priority of interest over the assets attached under the PMLA and MPID Act, by virtue of the SARFAESI Act and RDB Act:

Held: No priority of interest can be claimed by the Secured Creditors against the properties attached under the MPID Act – The provisions of MPID Act would override any claim for priority of interest by the Secured Creditors in respect of the properties

* Author

which have been attached under the MPID Act – Monies or deposits of depositors/investors, who were allegedly defrauded by the Financial Establishment, and for the recovery of which the MPID Act has been enacted, could not be said to be a "debt" contemplated in s.26E of the SARFAESI Act, and hence also the provisions of s.26E are not attracted to the facts of the case – Order passed by the Supreme Court Committee on 10.08.2023 upheld. [Paras 43, 44, 53]

Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – ss.4, 4(2), 5, 7 – Insolvency and Bankruptcy Code, 2016 – s.14 – The properties of the Judgment Debtors and Garnishees attached under the MPID Act, if would be available for the execution of the decrees against Judgment Debtors in view of the provision of moratorium u/s.14, IBC:

Held: Yes – Properties of the Judgment Debtors and Garnishees attached under the provisions of the MPID Act, would be available for the execution of the decrees against the Judgment Debtors by the Supreme Court Committee, despite the provision of moratorium u/s.14, IBC – Order passed by the Supreme Court Committee on 08.01.2024 upheld. [Paras 52, 53]

Constitution of India – Article 246, 254; Seventh Schedule – Federal Structure Doctrine – Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) – Prevention of Money Laundering Act, 2002 (PMLA) – Conflict between the laws made by the Parliament and the law made by the State Legislature – Overlapping of legislative fields – Whether the MPID Act covers or relates to the same subject matter as covered under the Central Legislations i.e., SARFAESI Act and RDB Act as also PMLA:

Held: State of Maharashtra was within its legislative competence to enact the MPID Act, the subject matter of which in pith and substance was relatable to Entries 1, 30 and 32 of the State List (List II) of the Seventh Schedule of the Constitution of India – The subject matter of PMLA is traceable to the Entry-13 of Union List

(List-I) of Seventh Schedule – Further, both SARFAESI and RDB Act have been enacted with regard to the matter pertaining to "Banking," which subject matter is relatable to the Entry 45 "Banking" falling in the Union List (List-I) of Seventh Schedule – Considering the pith and substance of the State and the Central Legislations in question, the Central Legislations i.e., SARFAESI Act or RDB Act cannot be permitted to prevail over the State Legislation i.e., MPID Act, merely because the Central Legislations are enacted by the Parliament – Since all these Acts have separate field of operations, provisions of SARFAESI Act or RDB Act cannot be permitted to override the provisions of MPID Act, a validly enacted State Legislation for the subject matter falling in List-II- State List, otherwise it would tantamount to violation of federal structure doctrine envisaged in the Constitution – MPID Act would prevail in the State of Maharashtra in respect of the specific subject matter for which the said Act was enacted, in view of Clause (3) of Article 246. [Paras 34-37, 40, 41]

Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – s.4, 4(2), 5, 7 – Insolvency and Bankruptcy Code, 2016 – ss.14, 238 – If there is any inconsistency between the MPID Act and the IBC:

Held: No – A conjoint reading of ss.4, 5 and 7, MPID Act makes it clear that though s.4(2) states about the attached properties being vested in the Competent Authority appointed by the Government, such vesting would be subject to the orders passed by the Designated Court – There is no inconsistency between the MPID Act and the IBC – In absence of any inconsistency having been brought on record, between the provisions contained in the MPID Act and in the IBC, s.238 of IBC, which gives overriding effect to the IBC over the other Acts for the time being in force, cannot be said to have been attracted – Constitution of India – Article 254. [Paras 50, 51]

Constitution of India – Article 246(1), (2), (3); Seventh Schedule-List-I, II and III – Distribution of legislative powers between the Union and State Legislature – Principle of Federal Supremacy:

Held: A three-fold distribution of legislative power between the Union and the States made in the three Lists in the Seventh Schedule r/w Article 246, exhibits the Principle of Federal supremacy – Thus, in case of inevitable conflict between Union and State powers, the

Union power as enumerated in List-I shall prevail over the State power as enumerated in Lists-II and III, and in case of overlapping between Lists II and III, the latter shall prevail. [Para 26]

Constitution of India – Article 142 – Powers under – Plea of the intervenors that exercising powers u/Article 142, this Court appointed the Supreme Court Committee conferring upon the committee wide powers for the execution of the decrees/ orders/awards, which virtually superseded the statutory provisions contained in the Acts like SARFAESI Act, RDB Act, PMLA, IBC, etc. – Scope of powers u/Article 142, discussed. [Paras 13, 14, 19]

Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – s.4 – Insolvency and Bankruptcy Code, 2016 – s.14 – Constitution of India – Article 254; Seventh Schedule – List I-III:

Held: MPID Act has been validly enacted by the Government of Maharashtra for the matters falling in List-II- State List, and therefore would prevail in the State of Maharashtra – The MPID Act having been enacted for the matters relatable to the Entries-1, 30 and 32 in List-II-State List, and the IBC having been enacted for the matters relatable to the Entry-9 in List-III- Concurrent List, the provisions of Article 254 would not be attracted – The issue of repugnancy or conflict as contemplated in Article 254 would arise only when the State Legislation and the Central Legislation, both, are relatable to the Entries contained in List-III-Concurrent List of Seventh Schedule – In the instant case, there is also no overlap or inconsistency between the provisions contained in the IBC and MPID Act – s.14 of IBC has the connotation which is very much different from s.4 of MPID Act – s.14 of IBC is consequent upon the order passed by the Adjudicating Authority declaring Moratorium – However, so far as the attachment of properties u/s.4 of the MPID Act is concerned, it is beyond the realm of the Debtor-Creditor relationship as contemplated in the IBC. [Para 47, 48]

Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act) – Object:

Held: MPID Act was enacted by the State of Maharashtra to protect the interest of depositors of the Financial Establishments –

It was enacted in the public interest to curb the unscrupulous activities of the Financial Establishments, who had defaulted to return the deposits of the public in the State of Maharashtra. [Paras 24, 47]

Prevention of Money Laundering Act, 2002 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Recovery of Debts and Bankruptcy Act, 1993 – Object – Discussed. [Paras 21-23]

Case Law Cited

Supreme Court Bar Association v. Union of India & Another **[1998] 2 SCR 795 : (1998) 4 SCC 409;** *Shilpa Sailesh v. Varun Sreenivasan* **[2023] 5 SCR 165 : (2023) 14 SCC 231;** *State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.* **[2010] 2 SCR 979 : (2010) 3 SCC 571;** *M/s Hoechst Pharmaceuticals Ltd. and Ors. v. State of Bihar and Ors* **[1983] 3 SCR 130 : (1983) 4 SCC 45;** *Kartar Singh v. State of Punjab* **[1994] 2 SCR 375 : (1994) 3 SCC 569;** *Rajiv Sarin and Another v. State of Uttarakhand and Ors.* **[2011] 9 SCR 1012 : (2011) 8 SCC 708;** *Sonal Hemant Joshi and Ors. v. State of Maharashtra and Ors.* **(2012) 10 SCC 601;** *State of Maharashtra v. 63 Moons Technologies Ltd.* **[2022] 10 SCR 465 : (2022) 9 SCC 457;** *K.K. Baskaran v. State* **[2011] 3 SCR 527 : (2011) 3 SCC 793;** *Mardia Chemicals Ltd and Ors. v. Union of India and Ors.* **[2004] 3 SCR 982 : (2004) 4 SCC 311;** *Union of India and Another v. Delhi High Court Bar Association and Others* **[2002] 2 SCR 450 : (2002) 4 SCC 275;** *ITC Limited v. Agricultural Produce Market Committee and Others* **[2002] 1 SCR 441 : (2002) 9 SCC 232;** *State of West Bengal v. Kesoram Industries Limited and Others* **[2004] 1 SCR 564 : (2004) 10 SCC 201;** *Innoventive Industries Ltd. v. ICICI Bank and Another* **[2017] 8 SCR 33 : (2018) 1 SCC 407 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Maharashtra Protection of Investors and Depositors Act, 1999; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Recovery of Debts and Bankruptcy Act, 1993; Constitution of India; Forward Contracts (Regulation) Act, 1952.

List of Keywords

Commodity Exchange Platform; National Spot Exchange Limited (NSEL); NSEL Scam; Payment defaults and fraud; Secured Creditors; Priority of interest over the assets attached under the Provisions of Prevention of Money Laundering Act, 2002, (PMLA) and Maharashtra Protection of Investors and Depositors Act, 1999; Recovery of monies lost by the traders; Properties of the judgment debtors and garnishees attached; Supreme Court committee; Constitutional validity of the Maharashtra Protection of Investors and Depositors Act, 1999; Debts due to the Secured Creditor have to be paid in priority; Fraudulent Default by a Financial Establishment; Security interest; Garnishee; Sale and purchase of commodities; Traders duped; Priority of interest of the charge over the attached properties; Speedy recovery of the outstanding amount; Doctrine of pith and substance; Powers under Article 142 of Constitution of India; Article 246 of Constitution of India; Federal Structure Doctrine; Principle of Federal Supremacy; Seventh Schedule of the Constitution of India; List-I, II and III.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 995 of 2019

(Under Article 32 of The Constitution of India)

Appearances for Parties

Advs. for the Petitioner:
Atul Nanda, Sr. Adv., Ms. Diksha Rai, Ms. Rameeza Hakeem.

Advs. for the Respondents:
Amit Sibal, Sr. Adv., Aditya Verma, Y Suryanarayana, Vijay Kumar Singh, Ms. Shivani Tandon, Prem Prakash, Mukesh Kumar Maroria, Arvind Kumar Sharma, Aaditya Aniruddha Pande, Sachin Patil, Himanshu Chaubey, Vikalp Mudgal, Shashwat Anand, Ms. Abha Jain, Ashok Kumar Gupta II, Bijoy Kumar Jain, Bhaskar Aditya, Ankur Mittal, Ms. Sanjana Saddy, Mohd. Zahid Hussain, Y. Raja Gopala Rao, Gopal Singh, Ms. Arti Singh, Chand Qureshi, Shashank Singh, Sumit Sinha, Ratish Kumar Sharma, Ananta Prasad Mishra, Sanyat Lodha, B. K. Satija, Nitesh Ranjan, Sanjay Kapur, Shiv Sagar Tiwari, Ms. Anindita Mitra, Ajay Kumar, Satish Vig, Anand Varma, Navneet R., Nikhil Jain, Ritwik Parikh, Rajat Sehgal, Ms. Shisba Chawla.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. While considering the validity of the orders dated 10.08.2023 and 08.01.2024 passed by the Supreme Court Committee appointed by this Court vide the order dated 04.05.2022, following two questions were framed by this Court to be heard in priority on the basis of the categorisation of the Applications filed in the captioned Writ Petition vide the Order dated 02.04.2024.

> "(i) whether the Secured creditors would have priority of interest over the assets attached under the Provisions of Prevention of Money Laundering Act, 2002, (PMLA) and Maharashtra Protection of Investors and Depositors Act, 1999 (MPID Act), by virtue of the Provisions of SARFAESI Act, 2002 and RDB Act, 1993; (In view of order dated 10.08.2023 passed by the Committee)
>
> (ii) whether the properties of the Judgment Debtors and Garnishees attached under the Provisions of MPID Act, 1999 would be available for the execution of the decrees against Judgment Debtors in view of the Provision of Moratorium under Section 14 of the IBC, 2016; (In view of the Order dated 08.01.2024 passed by the Committee)"

2. The genesis of the Writ proceedings, is the scam which took place at the Commodity Exchange Platform of the Petitioner Company – National Spot Exchange Limited (NSEL), a company registered under the Companies Act, 1956, on 18.05.2005. It is promoted by 63 Moons Technologies Limited (Formerly Financial Technologies India Limited), which holds 99.99% of total share capital of the company and the National Agricultural Cooperative Marketing Federation of India Limited (NAFED) holds 0.01% of total share capital of company. The Exchange Platform of the NSEL committed payment defaults and fraud aggregating to about Rs.5,600 Crores vis-à-vis their trading counterparts numbering about 13,000 traders who traded through its Members/ brokers.

PRELUDE

3. Brief facts germane for deciding the above stated two priority questions of law are as under: -

   i. The Petitioner – National Spot Exchange Limited (hereinafter referred to as the "NSEL") provided an electronic platform for trading of commodities between willing buyers and willing sellers through NSEL's Members/ brokers representing them. On 05.06.2007, the Department of Consumer Affairs issued an Exemption Notification to the NSEL under Section 27 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "FCRA"), exempting forward contracts of one day duration for sale and purchase of commodities traded on the NSEL from operation of the provisions of the FCRA. The NSEL commenced its operations in October, 2008.

   ii. The trading on the Exchange Platform of the Petitioner could be undertaken only by the registered Members of the exchange either on their own behalf or on behalf of their clients. At the request of their clients, the Members of NSEL would place orders for buying/ selling commodities. When the orders placed by willing buyers and willing sellers of a particular commodity would get matched automatically on NSEL's Exchange Platform, based on the price and time priority, it would result in a trade.

   iii. The NSEL launched contracts for buying and selling of commodities with different settlement periods ranging from T+0, T+1, T+2 days to T+36 days. In the said Contracts, 'T' meant the Trade date, that is the date on which the trade is executed on the exchange and '+ 2' or '+ 25' referred to the number of business days, after which the delivery of the commodity and payment of price (that is settlement of transaction) was to be affected by the buying Member and the selling Member as the case may be. At the end of the day all trades would get clubbed and the obligation of respective Members of NSEL would be generated.

   iv. Thereafter, the funds "Pay – in" obligation would be intimated to the Members of NSEL whose clients purchased the commodities, and the funds "Pay – out" obligation would be intimated to the

Members of NSEL whose clients sold the commodities. Similarly, the commodity "Pay-in" obligation would be intimated to the Members of NSEL whose client sold the commodities and the commodity "Pay-out" obligation would be intimated to the Members of NSEL whose clients purchased the commodities. Based on the intimation from the exchange, the clients would have to fulfil their respective obligations through the Members of the NSEL, through whom they had traded, on the Exchange Platform.

v. On 27.04.2012, the Department of Consumer Affairs, Government of India issued a Show Cause Notice to the NSEL as to why action should not be initiated against it for permitting transactions in alleged violation of exemption granted to it under the FCRA, vide the notification dated 05.06.2007.

vi. On 12.07.2013, the Department of Consumer Affairs, directed the NSEL to give an undertaking that no further contracts shall be launched until further instructions, and that all existing contracts shall be settled on due dates. Accordingly, the NSEL gave an undertaking to the Department of Consumer Affairs on 22.07.2013.

vii. On 31.07.2013, the NSEL suspended its Exchange operations and called upon its Members to *inter alia* complete their respective delivery and payment obligations for the outstanding trades as on 31.07.2013. In July 2013, 13,000 persons who traded on the platform of the NSEL claimed to have been duped by about 24 trading Members, who defaulted in payment of their obligations amounting to approximately Rs.5,600/- Crores.

viii. An FIR in this regard was registered by the M.R.A. Marg, Police Station vide C.R. No.216 of 2013, which was transferred to and lodged in the EOW Police on 30.09.2013 as C.R. No.89 of 2013. Several suits also came to be filed by the traders who were allegedly duped on the trading platform. One Suit being No.173 of 2014 came to be filed in the Bombay High Court, as a representative suit under Order 1 Rule 8 of the Code of Civil Procedure, 1908. The NSEL filed third party notices in the said suit for recovery of Rs.5,600/- Crores against its 24 defaulter members.

ix. According to the NSEL, in the process of recovery proceedings filed by it, the decrees/ awards of about Rs.3,365 Crores out of Rs.5,600 Crores were passed against the defaulters. Additionally, the Enforcement Directorate also had attached assets worth approximately Rs.1740.59 Crores of the defaulters under the PMLA 2002. The provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act") were also added to the said F.I.R. in October 2013, as a result of which the State of Maharashtra also attached movable and immovable properties worth about Rs.8,548 Crores belonging to the 24 defaulters, the Directors and Sister concerns of the NSEL and its Directors and Promoters, in order to ensure recovery of the monies allegedly lost by the genuine trading clients on the NSEL's platform.

x. Since the NSEL had also filed various Proceedings and the Suits, some of them having been decreed also, it was finding it difficult to file execution proceedings at various Courts. The NSEL, therefore filed the captioned Writ Petition seeking directions for the Consolidation of the Proceedings before the Committee appointed by the Bombay High Court vide the order dated 02.09.2014 in Notice of Motion No.240 of 2014 in Suit No.173 of 2014 and seeking other directions.

xi. This Court on 04.05.2022 for safeguarding of the interests of the Investors / Claimants passed the following Order: -

"O R D E R

Writ Petition(s)(Civil) No(s). 995/2019

The limited contours of the controversy before us emanating from the present proceedings is the safeguarding of the interests of the investors/ claimants.

In respect of the aforesaid, learned counsel for the petitioner had canvassed before us on 22.02.2022 that the way out would be that the properties attached by the respondent(s) are sold and monies brought into Court. This is in the context of decrees passed

for the benefit of the petitioner where the same very properties which were attached were sought to be utilized to satisfy the claims. He thus, suggested that once the monies are brought in, even the claims of the petitioners/investors can be satisfied and one will know exactly what is the balance amount which remains as otherwise both the processes are going on at cross purposes even though the properties from which recoveries can be made are attached.

We thus, called upon the respondents to look into the aforesaid notwithstanding that the petitioner may also be an organization which as been charged, concerned as we were with the investors' money and properties remaining attached simplicitor could not be the solution for investors' money for which decrees had been passed. It is only on liquidation of those properties could the monies be distributed to satisfy the claims of the investors.

We requested the parties to work out a scenario to sub-serve the aforesaid objective and a synopsis was filed on behalf of the petitioner setting out the relevant dates and suggesting solution for speedy recovery of victims annexing thereto the details of decrees, arbitral awards obtained by the petitioner and execution proceedings thereof.

The ground work has been done by the parties and more or less they were in agreement on most issues. The other remaining issues have also been ironed out during the Court proceedings.

In view of the aforesaid, we are inclined to exercise our powers under Article 142 of the Constitution of India with the objective of attaining a holistic solution for speedy recovery of the outstanding amounts to be distributed to be investors.

The agreed terms have been placed before us which are being incorporated in this order as under: -

"(i) A high powered committee of a Hon'ble Mr. Justice (Retd.) [ ], who has consented for the same, is hereby constituted (hereinafter referred to as the "Supreme Court Committee"). The Supreme Court Committee may in its discretion, hold meetings/hearings at Mumbai.

(ii) The proceedings for execution of all the decrees/orders/arbitral awards listed in Annexure-1, particular of which are set out in Annexure-2, currently pending in various Courts across the country, are hereby transferred to the Supreme Court Committee, for speedy execution thereof.

(iii) Against 5 additional Defaulters, the Committee appointed by Bombay High Court has crystallised the liability and the report of the said Committee is pending acceptance before Bombay High Court, details whereof are set out in Annexure-3. In the event the petitioner is granted decree/order by Bombay High Court in any or all of these matters, then the petitioner shall be at liberty to file the proceedings for execution of such decrees/orders before the Supreme Court Committee, and the Supreme Court Committee shall have the power to execute such decrees/orders.

(iv) In proceedings where the petitioner has already obtained decrees/orders against the Defaulters, the petitioner is seeking further decrees/orders against other persons as well. In the event the petitioner is granted decree/order by the Bombay High Court in any or all of these matters, then the petitioner shall be at liberty to file the proceedings for execution of such decrees/orders before the Supreme Court Committee, and the Supreme Court Committee shall have the power to execute such decrees/orders.

(v) The petitioner shall be at liberty to apply to this Hon'ble Court in case there are further decrees/orders/arbitral awards obtained by it against the Defaulters or any other person in relation to the NSEL payment default for the purposes of filing execution thereof directly before the Supreme Court Committee.

(vi) The Supreme Court Committee shall have all the powers of a civil court executing a decree or an order or an arbitral award under the Code of Civil Procedure, 1908 for speedy execution of the above decrees/orders/abitral awards.

(vii) In execution of the above decrees/orders/ arbitral awards, the Supreme Court Committee shall be entitled to sell the properties of the judgment-debtors notwithstanding the attachment thereof by respondent No.2(ED) under the PMLA and/or by respondent No.3 (State of Maharashtra) under the MPID Act, to the extent of recovering the amount of the decree/order/arbitral award.

(viii) For the purposes of executing decrees/ orders/awards to the extent they are not satisfied by recovery from the properties attached by the respondents or any of them as aforesaid, the Supreme Court Committee shall be at liberty to apply to this Hon'ble Court for suitable orders for attaching and/or liquidating properties of persons against whom decrees have been passed or of persons against whom the decrees can be executed as provided in the Code of Civil Procedure, 1908 or properties of persons to whom money trail from the judgment debtors has been traced by the respondents or any of them.

(ix) The Competent Authority appointed by respondent No.3(State of Maharashtra) has

already opened an account with (a) Bank of India (for collection) and (b) AXIS Bank (for distribution). The sale proceeds so realized shall be deposited in either of these Bank Accounts at the discretion of the Supreme Court Committee.

(x) The Competent Authority appointed by respondent No.3 (State of Maharashtra) under MPID Act has invited claims from the victims and verified them to check genuineness and entitlement thereof.

(xi) The Competent Authority appointed by respondent No.3 (State of Maharashtra) under MPID Act shall file a report with the Supreme Court Committee setting out the names of the claimants and the amount that is due and payable to each of them, for passing necessary orders/directions/reverification, if required for equitable distribution of the sale proceeds to the victims from the accounts mentioned in Clause (ix) above.

(xii) The Supreme Court Committee shall be entitled to co-opt the services of such experts (such as Advocates, Chartered Accountants, Valuers etc.) and support staff as it may consider necessary for efficient and speedy execution of task assigned to it.

(xiii) Hon'ble Mr. Justice [ ] shall be entitled to fix such remuneration for himself and for other persons co-opted by him as he deems fit commensurate with the responsibilities assigned to them.

(xiv) In the first instance, the Competent Authority appointed by Respondent No.3(State of Maharashtra) under MPID Act shall bear all the expenses required to be incurred for the functioning of the Supreme Court Committee,

including but not limited to remuneration, fees, physical infrastructure etc. and shall keep proper accounts of the same.

(xv) As and when any monies are realised by the Supreme Court Committee in accordance with the process set out above, the Competent Authority appointed by respondent No.3 (State of Maharashtra) under MPID Act shall be reimbursed by this Hon'ble Court for the expenses incurred by it under paragraph (xiv) above on submission of proper accounts for the same.

(xvi) The Supreme Court Committee shall have liberty to apply to this Hon'ble Court for any further orders and/or directions as it may consider necessary for efficient and speedy execution of the task assigned to it.

(xvii) Any person aggrieved by an order and/or direction passed by the Supreme Court Committee shall be entitled to move this Hon'ble Court.

(xviii) All the parties and the authorities shall render all necessary assistance and cooperation to the Supreme Court Committee.

(xix) Needless to say that respondent No.2(ED) and/or respondent No.3 (State of Maharashtra) shall continue to attach further properties of the defaulters as per the money trail found by them during investigation and inform the Supreme Court Committee of such further attachment. Upon receipt of such intimation, the Supreme Court Committee shall be entitled to liquidate such further attached properties of the defaulters after hearing them, but only to the extent necessary for satisfaction of the decree/orders/arbitral awards obtained by the petitioner against such defaulters."

We may note that insofar as the list of decrees, orders, awards and attachment against defaulters are concerned, we are not setting them out as part of the order though submitted as the annexure annexing along with the details of the execution proceedings as Annexure-2. The liability of the defaulters crystallized by the High Court Committee is pending before the Bombay High Court has been set out as Annexure-3. This material can always be placed before the high-powered committee of an Hon'ble Judge appointed by this Court.

We may note that both the State of Maharashtra and Enforcement Directorate would naturally like to assist the Committee in all manners and the Committee will have the power to seek information from any one and run its affairs as expeditiously as possible.

On further discussion in the Court, it is agreed that a single Member Committee may be appointed who would have the assistance of all concerned.

With the consent of parties, Hon'ble Justice Pradeep Nandrajog, retired Chief Justice of the Bombay High Court, whose consent has been taken, is appointed as the Single Member Committee for the said purpose to carry out the task. The learned Judge will fix his own fee. Insofar as the sitting of the Committee is concerned, it has already been mentioned aforesaid that it can be at the discretion of the Committee to hold proceedings in Delhi or Mumbai or for that matter anywhere else.

The arrangements for the sitting of the Committee shall be made by the Competent Authority as also the necessary arrangements for stay of the learned Judge and all other expenses including travel.

We would like to keep the matter pending and request the learned Judge to give a status report in about six months.

List after the status report is received."

xii. In view of the afore stated Order dated 04.05.2022 passed by this Court, the Supreme Court Committee comprising of Justice (Retd.) Mr. Pradeep Nandrajog (hereinafter referred to as the S.C. Committee) was constituted. The Proceedings for execution of all decrees/ orders/ arbitral awards listed in Annexure-1 of the said Order, the particulars of which were set out in Annexure-2 thereof, pending in various Courts across the country were transferred to the S.C. Committee. The decrees/ orders already obtained and in respect of which the decree holder had not yet commenced the execution proceedings were also directed to be executed by the S.C. Committee. In the proceedings where decree holder had obtained decrees/ orders and was seeking further decrees/ orders against other persons as well, and upon being granted the same by the Bombay High Court, were also to be executed by the S.C. Committee. The proceedings against the parties, i.e., the defaulters, against whom the liability had been crystallised by the Committee appointed by the Bombay High Court, in the event, the decree holder was granted decrees/ orders by the Bombay High Court, such decrees for execution were also permitted to be transferred to the S.C. Committee for their execution. Qua future decrees/ awards or orders obtained by the decree holder, a liberty was granted to the decree holder to apply to the Supreme Court for execution of such decrees/ orders by the S.C. Committee.

xiii. As transpiring from the impugned Order dated 10.08.2023 passed by the S.C. Committee, one Modern India Limited, Shree Rani Sati Investment and Finance Private Limited, Modern Derivatives and Commodities Private Limited and F. Pudumjee Investments Company Private Limited had filed a Suit on the Original Side of Bombay High Court, impleading Financial Technologies India Limited (now known as 63 Moons Technologies Limited) as the Defendant No.1 and the NSEL as Defendant No.2, apart from 36 other Individuals and Companies who were impleaded as the Defendant Nos. 3 to 38. The said Suit was registered as Suit no.173 of 2014. The NSEL - Defendant No.2 took out third party notices in the said Suit against its Trading Members who had defaulted in their funds “Pay – in” obligations, resulting in decrees being passed

against such Trading Members and their lands by the Bombay High Court in favour of the NSEL. Additionally, in some cases the Arbitral awards were obtained by the NSEL against some of the defaulting Trading Members. Therefore, such defaulting Trading Members of the NSEL were the Judgment Debtors, on whom the liability was affixed in respect of the Third-party proceedings in the Suit No. 173 of 2014. In separate actions, the Enforcement Directorate under the provisions of the PMLA and the Competent Authority under the provisions of MPID Act had also attached the properties belonging to the Judgment Debtors who were the defaulting Trading Members of the NSEL.

xiv. During the course of Execution Proceedings before the S.C. Committee, a few Financial Creditors of some of the Judgment Debtors (the Secured Creditors) had filed Applications seeking intervention on the ground that in the capacity as Secured Creditors they would have priority of interest of the charge over the attached properties of the Judgment Debtors.

4. In view of the afore stated factual matrix, the S.C. Committee raised an issue as to "Whether the Secured creditors would have priority of interest over assets attached under the Provisions of PMLA, 2002, and MPID Act, by virtue of the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002") and the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the "RDP Act")?"

5. The S.C. Committee addressing the said issue concluded vide the Order dated 10.08.2023 that given the overriding effect, the secured property being in the nature of proceeds of crime, as held by the Attachment orders, no priority of interest can be claimed by the Secured Creditors against such attached property. As regard the properties attached under the MPID Act, on which the Secured Creditors laid their claims, the S.C. Committee further concluded that the provisions of the MPID Act, would override any claim for priority of interest by the Secured creditors in respect of the property which has been attached under the MPID Act.

6. It further appears that during the course of proceedings before the S.C. Committee another issue that was raised for determination, was

"whether properties of the Judgment Debtor and Garnishees attached under the MPID Act would be available to the said Committee for execution of decrees against the Judgment Debtor in terms of the Order dated 04.05.2022 passed by the Supreme Court, in W.P. (C) No. 995 of 2019, in view of the commencement of Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC, for short) , on account of the initiation of Insolvency Proceedings against the Judgment Debtors." A similar issue also arose with regard to the commencement of the interim Moratorium under Section 96 of IBC in respect of the Garnishees in their capacity as personal Guarantors of a Corporate Debtor.

7. The S.C. Committee vide the Order dated 08.01.2024 concluded *inter alia* that as regards the properties which were attached under Section 4 of the MPID Act prior to imposition of the respective dates of Moratorium of the Judgement Debtor or Garnishee under Section 14 or Section 96 of IBC, the property having been vested in the Competent Authority appointed by the State of Maharashtra, such properties were not liable to be made part of Insolvency Proceedings, and could be available to the said Committee for realisation in terms of the Order dated 04.05.2022 passed by the Supreme Court. It further concluded that as regards the properties which were sought to be attached after the date of commencement of Moratorium (if any) or assets of Judgment Debtor/ Garnishee/ Corporate Debtor which were not yet attached under the Provisions of the MPID Act, the decree holder would be entitled to pursue its claim as a Financial Creditor/ Secured Financial Creditor, as the case may be in such individual cases under the Provisions of the IBC.

8. Being aggrieved by the aforestated two Orders dated 10.08.2023 & 08.01.2024 passed by the Supreme Court Committee, some SLPs came to be filed before this Court. The said SLPs were permitted to be converted into Interlocutory Applications (IAs) in the present Writ Petition filed by the NSEL.

SCOPE OF ARTICLE 142

9. At the outset learned Counsels appearing for the Applicants/ Intervenors have raised the preliminary objections against the order passed by this Court on 04.05.2022, by submitting that this Court

while exercising powers under Article 142 of the Constitution of India, had appointed the S.C. Committee and issued directions conferring upon the said committee wide powers with regard to the execution of the decrees/orders/awards, which had virtually superseded the statutory provisions contained in the Acts like SARFAESI Act, RDB Act, PMLA, IBC, etc. According to them, while exercising the powers under Article 142, the express statutory provisions cannot be circumvented or ignored, particularly when the exercise of such powers comes directly in conflict with what has been expressly provided in the statute.

10. Article 142(1) is reproduced hereunder for ready reference:

> **"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-**
>
> **(1)** The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
>
> **(2)** ……..."

11. In our opinion, the law with regard to the scope of the exercise of powers of under Article 142 of the Constitution of India is quite well settled. In ***Supreme Court Bar Association Vs. Union of India & Another***[1]***,*** a Constitution Bench elaborately discussed the plenary powers of this Court under Article 142 and held as under:

> **"47.** The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist

1 (1998) 4 SCC 409

independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties.

It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see K. Veeraswami v. Union of India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.

49. In Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] a Bench of this Court observed: (SCC p. 458, para 23)

> "23. The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the

parties but not in disregard of the relevant statutory provisions."

50. Dealing with the powers of this Court under Article 142, in Prem Chand Garg v. Excise Commr., U.P. [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] it was said by the Constitution Bench:

"In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. In this connection, we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can, therefore be no conflict between Article 142(1) and Article 32. In the case of K.M. Nanavati v. State of Bombay [AIR 1961 SC 112 : (1961) 1 SCR 497] on which the Solicitor General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated

the application of the rule of harmonious construction. The said rule can have no application to the present case, because on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32. The existence of the said power is itself in dispute, and so, the present is clearly distinguishable from the case of K.M. Nanavati [AIR 1961 SC 112 : (1961) 1 SCR 497] ."

51-54……

55. Thus, a careful reading of the judgments in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] ; the Delhi Judicial Service Assn. case [(1991) 4 SCC 406 : (1991) 3 SCR 936] and Mohd. Anis case [1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251] relied upon in V.C. Mishra case [(1995) 2 SCC 584] show that the Court did not actually doubt the correctness of the observations in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . As a matter of fact, it was observed that in the established facts of those cases, the observations in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] had "no relevance". This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be ignored by this Court while exercising powers under Article 142.

56. As a matter of fact, the observations on which emphasis has been placed by us from the Union Carbide case [(1991) 4 SCC 584] , A.R. Antulay case [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] and Delhi Judicial Service Assn. case [(1991) 4 SCC 406 : (1991) 3 SCR 936] go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while

> exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case [(1991) 4 SCC 584] either expressly or by implication and on the contrary, it has been held that the Apex Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in V.C. Mishra case [(1995) 2 SCC 584] that the law laid down by the majority in Prem Chand Garg case [AIR 1963 SC 996: 1963 Supp (1) SCR 885] is "no longer a good law".

12. In ***Shilpa Sailesh Vs. Varun Sreenivasan***[2]***,*** another Constitution Bench while considering the scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India, after due deliberations held as under: -

> **"19.** Given the aforesaid background and judgments of this Court, the plenary and conscientious power conferred on this Court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme. It should not contravene a fundamental and non-derogable principle at the core of the statute. Even in the strictest sense [Some jurists have opined that the judgments on the powers of this Court under Article 142(1) of the

2 (2023) 14 SCC 231

Constitution of India can be divided into three phases. The first phase till late 1980s is reflected in the judgments of Prem Chand Garg v. Excise Commr., 1962 SCC OnLine SC 10 : AIR 1963 SC 996 and A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372, which inter alia held that the directions should not be repugnant to and in violation of specific statutory provision and is limited to deviation from the rules of procedure. Further, the direction must not infringe the Fundamental Rights of the individual, which proposition has never been doubted and holds good in phase two and three. The second phase has its foundation in the ratio of the judgment of the eleven-Judge Constitution Bench of this Court in Golak Nath v. State of Punjab, 1967 SCC OnLine SC 14 : AIR 1967 SC 1643, dealing with the doctrine of prospective overruling, which held that Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice, the only limitation thereon being reason, restraint and injustice. In Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406, this Court observes that any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court to issue any order or direction to do "complete justice" in any "cause" or "matter". Finally, the moderated approach has its origin in Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584, which holds that this Court, in exercising powers under Article 142 and in assessing the needs of "complete justice" of a "cause" or "matter", will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The judgment of Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, applies cautious and balanced approach, to hold that Article 142 being curative in nature and a constitutional power cannot be controlled by any statutory provision, but this power is not meant to be exercised ignoring the statutory provisions

or directly in conflict with what isexpressly provided in the statute. At the same time, it observes that this Court will not ordinarily discard a statutory provision governing the subject, except perhaps to balance the equities between the conflicting claims of the parties to "iron out the creases" in a "cause or matter" before it. [See Rajat Pradhan, "Ironing out the Creases : Re-examining the Contours of Invoking Article 142(1) of the Constitution", (2011) 6 NSLR 1; Ninad Laud, "Rationalising 'Complete Justice' under Article 142", (2021) 1 SCC J-30; and Virendra Kumar, "Notes and Comments : Judicial Legislation Under Article 142 of the Constitution : A Pragmatic Prompt for Proper Legislation by Parliament", (2012) 54 JILI 364]. As observed by us, the ratio as expounded in Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584 holds good and applies.] , it was never doubted or debated that this Court is empowered under Article 142(1) of the Constitution of India to do "complete justice" without being bound by the relevant provisions of procedure, if it is satisfied that the departure from the said procedure is necessary to do "complete justice" between the parties. [See Prem Chand Garg (Prem Chand Garg v. Excise Commr., 1962 SCC OnLine SC 10 : AIR 1963 SC 996, para 13.]

20. Difference between procedural and substantive law in jurisprudential terms is contentious, albeit not necessary to be examined in depth in the present decision [However, this aspect has been, to some extent, examined in paras 24 to 37, 56 and 57 herein.] , as in terms of the dictum enunciated by this Court in Union Carbide Corpn. [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] and Supreme Court Bar Assn. [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , exercise of power under Article 142(1) of the Constitution of India to do "complete justice" in a "cause or matter" is prohibited only when the exercise is to pass an order which is plainly and expressly barred by statutory provisions of substantive law based on fundamental considerations of general or specific public policy.

> **21.** As explained in Supreme Court Bar Assn. [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , the exercise of power under Article 142(1) of the Constitution of India being curative in nature, this Court would not ordinarily pass an order ignoring or disregarding a statutory provision governing the subject, except to balance the equities between conflicting claims of the litigating parties by ironing out creases in a "cause or matter" before it. In this sense, this Court is not a forum of restricted jurisdiction when it decides and settles the dispute in a "cause or matter". While this Court cannot supplant the substantive law by building a new edifice where none existed earlier, or by ignoring express substantive statutory law provisions, it is a problem-solver in the nebulous areas. As long as "complete justice" required by the "cause or matter" is achieved without violating fundamental principles of general or specific public policy, the exercise of the power and discretion under Article 142(1) is valid and as per the Constitution of India. This is the reason why the power under Article 142(1) of the Constitution of India is undefined and uncatalogued, so as to ensure elasticity to mould relief to suit a given situation. The fact that the power is conferred only on this Court is an assurance that it will be used with due restraint and circumspection. [See DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622.]"

13. In view of the above proposition of law laid down by the Constitution Benches of this Court, there remains no shadow of doubt that the exercise of power under Article 142(1) of the Constitution of India being curative in nature, the Supreme Court would not ordinarily pass an order ignoring or disregarding a statutory provisions governing the subject, except to balance the equities between conflicting claims of the litigating parties by ironing out creases in a "cause or matter" before it. Therefore, even while exercising the powers under Article 142, the Supreme Court has to take note of the express provisions of any substantive statutory law and accordingly regulate the exercise of its power and discretion to do complete justice between the parties in the pending "cause or matter" arising out of such

statutes. Though, the powers of this Court cannot be controlled by any statutory provisions, when the exercise of powers under Article 142 comes directly in conflict with what has been expressly provided in a statute, ordinarily, such power should not be exercised. Article 142 cannot be used to achieve something indirectly what cannot be achieved directly.

14. In the light of the aforestated legal position with regard to the scope and ambit of the powers under Article 142, if the facts of the present case are appreciated particularly with regard to the circumstances under which this Court had thought it proper to exercise the said powers, it appears that the Court had passed the order on 04.05.2022 keeping in mind the interest of the investors/claimants and with the objective of attaining a holistic solution for speedy recovery of the outstanding amount to be distributed to the investors.

15. Since the money collected by NSEL from the investors fell under the definition of "deposit" as per Section 2(c) of the MPID Act, the State of Maharashtra invoking the provisions of Section 4(1)(ii) of MPID Act, had attached the properties and monies of the defaulting promoters, directors, managers and members of the NSEL by issuing various notifications. However, the total value of the attached properties was not sufficient for repayment to the depositors due to various reasons such as some of the properties were taken on rent by the members of NSEL from others, while some properties were mortgaged with the banks, against which proceedings under the SARFAESI Act were going on, and against some of the members of NSEL, insolvency proceedings were initiated.

16. The Government of Maharashtra therefore having been satisfied that the attached properties of the Financial Establishment–NSEL were not sufficient for repayment, attached the properties of the promoters of the NSEL i.e., M/s. 63 Moons Technologies Limited, by issuing various Notifications under Section 4 of the MPID Act, which were subsequently ratified by the Government of Maharashtra in exercise of the powers conferred under Section 4(1) and Section 5 of the MPID Act, vide the Notification dated 19.09.2018, produced on record along with the captioned writ petition.

17. From the submissions, it further appears that several other civil and criminal proceedings were instituted by the claimants who lost

their monies, against the NSEL, its parent company-63 Moons, 24 defaulters/ Members/brokers, etc. The traders who lost their monies had also filed civil suits in Bombay High Court against the NSEL and others. One of such suits was filed as a Representative suit, being no. 173 of 2014 under Order 1, Rule 8 of C.P.C. in which the Bombay High Court had appointed a three-member committee to crystalise the liabilities of the defaulting members and to act as the Receiver and Commissioner to deal with the assets of defaulting members. In the said Representative suit, the NSEL took out third party notices against its defaulters for recovery of monies lost by the traders. The NSEL had also filed separate suits and arbitration proceedings against other defaulters, and had obtained Decrees and Arbitral awards of about Rs. 3,365 Crores against the defaulters. Since, it was becoming very difficult for the NSEL to get such decrees executed expeditiously because properties of the defaulters were situated at multiple jurisdictions, the NSEL filed the captioned writ petition before this Court seeking consolidation of the Decrees etc. as prayed for therein.

18. In the backdrop of these proceedings, this Court had passed the order on 04.05.2022 exercising the powers under Article 142(1) of the Constitution of India with the objective of attaining a holistic solution for the speedy recovery of the outstanding amounts to be distributed to the investors. As stated earlier, this Court vide the said Order had constituted the committee conferring upon it all the powers of civil court for the speedy execution of the decrees/orders/arbitral awards, and had further directed that the S.C. Committee shall be entitled to sell the properties of the Judgment Debtors notwithstanding the attachment thereof by the Enforcement Directorate under the PMLA and/or by the State of Maharashtra under the MPID Act to the extent of recovery the amount of the decree/order/arbitral award. This Court vide the said order, thus had transferred the proceedings for execution of all the decrees/orders/arbitral awards, which were pending in various courts across the country, for speedy execution thereof. It was also clarified therein that against five additional defaulters, the committee appointed by the Bombay High Court had crystalised the liability and the report was pending for acceptance before the Bombay High Court. Therefore, if the NSEL was granted decree or order by the Bombay High Court in any of these matters, then the

NSEL shall be at liberty to file proceedings for execution of such decrees/orders before the S.C. Committee. The petitioner NSEL was also granted liberty in the said order to apply to this Court, in case there were further decrees/orders/awards obtained by it against the defaulters for the purpose of filing execution thereof before the S.C. Committee.

19. It is true that while passing the said order on 04.05.2022 under Article 142(1) of the Constitution of India, this Court probably would not have contemplated the possibility of the legal issues, with regard to the conflict of the provisions contained in the SARFAESI Act, RDB Act, PMLA and MPID Act, which were subsequently raised before the S.C. Committee. We do, therefore, find substance in the submissions made by the learned counsel appearing for the applicants-Secured Creditors that while exercising the powers under Article 142, the express provisions in the other relevant Statutes should not be ignored, particularly when the exercise of powers under Article 142, would directly be in conflict with what has been express provisions in such Statutes. It is also true that when this Court passed the Order dated 04.05.2022, it had the potentiality of being in conflict with other Statutes like SARFAESI Act, RDB Act, IBC etc. as also the potentiality of adversely affecting the rights of the Secured Creditors for enforcing the security interest created in the properties of the borrowers (in the instant cases the defaulters of NSEL) under the SARFAESI Act and RDB Act. However, the said contentions raised by the Secured Creditors have lost its significance at this stage, when the said Order dated 04.05.2022 has already been implemented by constituting the S.C. Committee and all the proceedings mentioned in the order have already stood transferred to the said Committee for the execution of the decrees/orders/awards as directed therein. Also, we cannot be oblivious to the fact that such exercise of powers under Article 142 was for the speedy recovery of monies lost by the defaulters and investors, and for doing the complete justice to the aggrieved Traders. Nonetheless, the issues with regard to the interplay and the alleged conflict of the provisions of the said four statutes having been raised, and aptly decided by the S.C. Committee, and now again raised before this Court, we shall deal with those issues as elicited from the orders dated 10.08.2023 and 08.01.2024 passed by the S.C. Committee.

QUESTION: (i)

20. So far as the question, as to "whether the Secured Creditors would have priority of interest over the assets attached under the provisions of PMLA and MPID Act, by virtue of the provisions of SARFAESI Act and RDB Act," is concerned, it would be beneficial to first refer to the Objects and Reasons and the relevant provisions of the said Statutes, as also of the Constitution of India.

21. The RDB Act was enacted to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions, and for the matters connected therewith and incidental thereto, as at the relevant time, the Banks and the Financial Institutions were experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The said Act came into force on 24.06.1993. Relevant provisions thereof read as under:-

> **"31B. Priority to secured creditors**.—Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.
>
> *Explanation*. —For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.
>
> **32-33……..**
>
> **34. Act to have over-riding effect. -** (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or

in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

22. As the long title of the SARFAESI Act suggests, it was enacted to regulate the securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a central database of security interests created on property rights, and for matters connected therewith or incidental thereto. SARFAESI Act came into force w.e.f. 21.06.2002. Section 26E having been relied upon by the learned counsels for the Secured Creditors, the same is reproduced as under:

> **26E. Priority to secured creditors**. --Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.
>
> *Explanation*. --For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

Section 35 thereof providing an overriding effect, reads as under:

> "**35. The provisions of this Act to override other laws. -** The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law

for the time being in force or any instrument having effect by virtue of any such law."

23. So far as PMLA is concerned, as transpiring from its objects and reasons, since money laundering had posed a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty, some of the international communities had taken the initiatives to obviate such threats. The Parliament therefore considering the resolutions and declarations passed by the General Assembly of United Nations, and to prevent money laundering and to provide for confiscation of property derived from, or involved in money laundering and for the matters connected therewith and incidental thereto, had passed the PMLA, which came into force w.e.f. 01.07.2005. Section 71 thereof pertaining to the overriding effect of the Act, reads as under: -

> **"71. Act to have overriding effect. -** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

24. The MPID Act was enacted by the State of Maharashtra to protect the interest of depositors of the Financial Establishments and matters relating thereto. Some of the provisions of the said Act being germane for deciding the issues involved in the present proceedings, the same are reproduced hereunder: -

Section 2(c) defines "'deposit"'. The relevant part thereof reads as under: -

> **"2. (c)** "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-

Section 2(d) defines "Financial Establishments", which reads as under: -

> "**2(d) Financial Establishment** means any person accepting deposit under any scheme or arrangement or

in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);"

Section 3 of MPID Act pertains to the Fraudulent Default by a Financial Establishment, which reads as under: -

"**3. Fraudulent default by Financial Establishment**.- Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Explanation - For the purpose of this section, a Financial Establishment, which commits defaults in repayment of such deposit with such benefits in the form of interest, bonus, profit or any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently."

Section 4 pertains to the attachment of properties on default of return of deposits, which reads as under: -

> **"4. Attachment of properties on default of return of deposits.** - (1) Notwithstanding anything contained in any other law for the time being in force-
>
> **(i)** where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed, -
>
> **(a)** to return the deposit after maturity or on demand by the depositor; or
>
> **(b)** to pay interest or other assured benefit; or
>
> **(c)** to provide the service promised against such deposit; or
>
> **(ii)** where the Government has reason to believe that any Financial Establishment is acting in the calculated manner detrimental to the interests of the depositors with an intention to defraud them;
>
> and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment, either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property or the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.
>
> **(2)** On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment

and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation**."**

Section 7 thereof pertains to the powers of Designated Court regarding attachment. The same reads as under: -

"**7. Powers of Designated Court regarding attachment**.- (1) Upon receipt of an application under Section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under Section 4, a notice accompanied by the application and affidavits evidence, if any, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.

(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 5 of 1908 and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (I) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less then the value that is required for repayment to the depositors of such Financial Establishment."

Section 14 of MPID Act provides for the overriding effect of the Act, which reads as under: -

"14. Act to override other laws. - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or

any custom or usage or any instrument having effect by virtue of any such law.**"**

25. So far as the relevant provisions of Constitution of India are concerned, Article 246 which pertains to the subject matter of laws made by the Parliament and the Legislatures of the States reads as under:

> **"246. Subject-matter of laws made by Parliament and by the Legislatures of States**
>
> **(1)** Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> **(2)** Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> **(3)** Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> **(4)** Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Article 254 deals with the inconsistencies between laws made by Parliament and laws made by the Legislatures of States, which reads as under:

> **"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**
>
> **(1)** If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or

to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

ANALYSIS:

26. It is trite that the Court, while interpreting the statutes which have arguably the conflicting provisions, has to keep in mind the Federal structure embedded in our Constitution, as a Basic Structure. As per Article 246(1) of the Constitution, notwithstanding anything contained in Clauses (2) and (3), the Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List-I in the Seventh Schedule, referred to as "the Union List". As per Article 246(2), notwithstanding anything in Clause (3), the Parliament and subject to Clause (1), the State Legislature have power to make laws on any of the matters enumerated in List-III in the Seventh Schedule referred to as the "Concurrent List". As per Article 246(3), subject to Clauses (1) and (2) of Article 246, the Legislature of any State has exclusive powers to make laws for such State, or any part thereof, with respect to any of the matters enumerated in List-II in the Seventh Schedule, referred to as the "State List". Thus, a

three-fold distribution of legislative power between the Union and the States made in the three Lists in the Seventh Schedule of the Constitution read with Article 246, exhibits the Principle of Federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List-I shall prevail over the State power as enumerated in Lists-II and III, and in case of overlapping between Lists II and III, the latter shall prevail. In view of such distribution of Legislative powers, situations have arisen where two legislative fields have apparently overlapped. In such situations, this Court has held that it would be the duty of the courts to ascertain as to what degree and to what extent, the authority to deal with the matters falling within these classes of subjects exists in each of such legislatures, and to define the limits of their respective powers.

27. A Constitution Bench in ***State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.***[3]***,*** has aptly clinched the issue of distribution of legislative powers between the Union and the State Legislature, thus-

> **"25.** The non obstante clause in Article 246(1) contemplates the predominance or supremacy of the Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III (Concurrent List). The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II, which is not capable of reconciliation, the power of Parliament to legislate with

3 (2010) 3 SCC 571

respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.

26. Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between the Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an overlapping between Lists II and III, the latter shall prevail.

27. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over the State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists. Thus, there is no quarrel with the broad proposition that under the Constitution there is a clear demarcation of legislative powers between the Union and the States and they have to confine themselves within the field entrusted to them. It may also be borne in mind that the function of the lists is not to confer powers; they merely demarcate the legislative field. …."

28. A Three-Judge Bench of this Court in the case of ***M/s Hoechst Pharmaceuticals Ltd. and Ors. vs. State of Bihar and Ors***[4], has succinctly dealt with the issue of repugnancy as contemplated in Article 254 of the Constitution of India. Paragraph 67 thereof reads as under: -

> **"67.** Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for

4 (1983) 4 SCC 45

resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See *Zaverbhai Amaidas* v. *State of Bombay* [(1954) 2 SCC 345 : AIR 1954 SC 752 : (1955) 1 SCR 799 : 1954 SCJ 851 : 1954 Cri LJ 1822]; *M. Karunanidhi* v. *Union of India* [(1979) 3 SCC 431 : 1979 SCC (Cri) 691 : AIR 1979 SC 898 : (1979)

3 SCR 254 : 1979 Cri LJ 773] and *T. Barai* v. *Henry Ah Hoe* [(1983) 1 SCC 177 : 1983 SCC (Cri) 143]."

29. Again, a Constitution Bench of this Court while discussing the doctrine of pith and substance in the case of ***Kartar Singh vs. State of Punjab***[5], observed thus: -

> **"60.** This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."

30. Another Constitution Bench in ***Rajiv Sarin and Another vs. State of Uttarakhand and Ors.***[6]**,** has aptly dealt with the issue as to when the repugnancy as contemplated in Article 254 would be attracted, and it held thus: -

> **"33.** It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament cannot exist

5 (1994) 3 SCC 569

6 (2011) 8 SCC 708

together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.

34-44. ……..

45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject."

31. Since in the instant case, the issue with regard to the conflict between the provisions of the laws made by the Parliament and the law made by the State Legislature, has been raised, let us examine

as to whether the said legislation i.e., MPID covers or relates to the same subject matter as covered under the Central Legislations i.e., SARFAESI Act and RDB Act as also PMLA.

32. It may be noted that the constitutional validity of the MPID Act is no longer *res integra* in view of the decisions in case of ***Sonal Hemant Joshi and Ors. vs. State of Maharashtra and Ors.***[7] and in case of ***State of Maharashtra vs. 63 Moons Technologies Ltd.***[8]***.*** This Court in ***63 Moons Technologies Ltd. (supra)*** relying upon the earlier decision in case of ***Sonal Hemant Joshi and Ors. (supra)***, after discussing the various provisions of MPID Act particularly with regard to the definitions of "Deposit" and "Financial Establishment," held in paragraph 91 and 92 as under: -

> **"91.** The validity of the MPID Act was specifically dealt with in two decisions of this Court in *State of Maharashtra* v. *Vijay C. Puljal* [*State of Maharashtra* v. *Vijay C. Puljal*, (2012) 10 SCC 599 : (2013) 1 SCC (Civ) 541 : (2013) 1 SCC (Cri) 1082] and *Sonal Hemant Joshi* v. *State of Maharashtra* [*Sonal Hemant Joshi* v. *State of Maharashtra*, (2012) 10 SCC 601 : (2013) 1 SCC (Civ) 543 : (2013) 1 SCC (Cri) 1084] . In both the decisions, this Court upheld the constitutional validity of the MPID Act in view of the earlier decision in *Baskaran* [*K.K. Baskaran* v. *State*, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] . In *Soma Suresh Kumar* v. *State of A.P.* [*Soma Suresh Kumar* v. *State of A.P.*, (2013) 10 SCC 677 : (2014) 1 SCC (Civ) 90 : (2014) 1 SCC (Cri) 378] , a two-Judge Bench of this Court upheld the provisions of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 following the earlier decisions in *Baskaran* [*K.K. Baskaran* v. *State*, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] and *New Horizon Sugar Mills* [*New Horizon Sugar Mills Ltd.* v. *State of Pondicherry*, (2012) 10 SCC 575 : (2013) 1 SCC (Civ) 516 : (2013) 1 SCC (Cri) 1061] .

7 2012 (10) SCC 601

8 2022 (9) SCC 457

> **92.** Having discussed the judgments of this Court on the constitutional validity of the State legislations governing financial establishments offering deposit schemes, including the MPID Act, there is no reason for us to reopen the question. This Court has held that the MPID Act is constitutionally valid on the grounds of legislative competence and when tested against the provisions of Part III of the Constitution.**"**

33. This Court in ***Sonal Hemant Joshi and Ors. (supra)*** had upheld the constitutional validity of the MPID Act in view of the decision in case of ***K.K. Baskaran vs. State***[9], in which the Court was dealing with the identical legislation enacted by the State of Tamil Nadu, namely T.N. Protection of Interest of Depositors (in Financial Establishments) Act, 1997, enacted with the object to ameliorate the situation of the depositors from the clutches of fraudulent Financial Establishments, who had duped the investor/public by offering high rates of interest on deposits, and committed deliberate fraud in repayment of the principals and interests after maturity of such Deposits. In the said decision, the Court had opined that the impugned Tamil Nadu Act was in pith and substance relatable to the Entries 1, 30 and 32 of the State List (List-II) of Seventh Schedule. It further held that the Financial Institutions/Establishments as contemplated in the Tamil Nadu Act did not come either under the Reserve Bank of India Act or Banking Regulation Act. It further held that the Tamil Nadu Act was not focussed on the transaction of banking or acceptance of deposit, but was focussed on remedying the situation of the depositors who were deceived by the fraudulent Financial Establishments. The said Act was intended to deal with neither the Banks which did the business of Banking and were governed by the Reserve Bank of India Act and the Banking Regulation Act, nor the Non- Banking Financial Companies enacted under the Companies Act. In the case of Tamil Nadu Act, the attachment of properties was intended to provide for an effective and speedy remedy to the aggrieved depositors for the realisation of their dues. Hence, the Reserve Bank of India Act, the Banking Regulation Act or the Companies Act did

9 (2011) 3 SCC 793

not occupy the field which the impugned Tamil Nadu Act occupied, though the latter might incidentally have trenched upon the former. The Court in the said judgment specifically disagreed with the full-Bench judgment of the Bombay High Court, whereby the MPID Act was held unconstitutional. Subsequently, the Court in ***Sonal Hemant Joshi and Ors.*** (supra), specifically relied upon the said judgment in case of ***K.K. Baskaran*** and upheld the constitutional validity of the MPID Act. The said judgment was also relied upon by the three-Judge Bench in ***State of Maharashtra vs. 63 Moons Technologies*** (supra).

34. In view of the above, there remains no shadow of doubt that the State of Maharashtra was within its legislative competence to enact the MPID Act, the subject matter of which in pith and substance was relatable to Entries 1, 30 and 32 of the State List (List-II) of the Seventh Schedule of the Constitution of India.

35. The PMLA was enacted to implement the international resolutions and declarations made by the General Assembly of United Nations, and prevent money laundering as also to provide for confiscation of properties derived therefrom or involved in money laundering. The subject matter of PMLA therefore is traceable or relatable to the Entry-13 of Union List (List-I) of Seventh Schedule.

36. So far as the SARFAESI Act is concerned, the constitutional validity of the said Act was upheld by a Three-Judge Bench in the case of ***Mardia Chemicals Ltd and Ors. vs. Union of India and Ors.***[10]***.*** The said Act was enacted by the Parliament to regulate securitization and re-construction of financial assets and enforcement of security interest and to provide for a central database of security interest created on property rights. The RDB Act was enacted to provide establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for the matters connected therewith or incidental thereto. Therefore, both SARFAESI and RDB Act have been enacted with regard to the matter pertaining to "Banking," which subject matter is relatable to the Entry 45 "Banking" falling in the Union List (List-I) of Seventh Schedule.

10 (2004) 4 SCC 311

37. As held by the Constitution Bench in ***Union of India and Another vs. Delhi High Court Bar Association and Others***[11]***,*** under Entry 45 of List-I, it is Parliament alone which can enact a law with regard to the conduct of business by the Banks. Recovery of dues is an essential function of any Banking Institution. In exercise of its legislative power relating to Banking, the Parliament can provide the mechanism by which monies due to the Banks and Financial Institutions can be recovered.

38. However, merely because the SARFAESI Act and RDB Act which are enacted in respect of the subject matter falling in List-I and having been enacted by Parliament, they could not be permitted to override the MPID Act, which is validly enacted for the subject matter falling in List-II – State List. If such an interpretation is permitted to be made, it would amount to denuding the State of its legislative power to enact and enforce legislation, which is within the exclusive domain of the State, and it would offend the very principle of Federal Structure set out in Article 246 of the Constitution of India, held to be a part of the basic structure of Constitution of India.

39. In this regard, a very pertinent observation made by the majority in the Constitution Bench of five Judges in ***ITC Limited vs. Agricultural Produce Market Committee and Others***[12] deserve to be referred to. In the said case, the contention put forth by the Union of India was that 'tobacco' was covered solely by a later Special Central Legislation that is the Tobacco Boards Act, 1975 (List I- Entry 52 – Industries) denuding the State legislation to levy market fee on such Tobacco under the earlier enacted Bihar Agricultural Produce Markets Act, 1960 (List II – Entry 24 – Markets). In the said case, the majority held the view that while maintaining Parliamentary Supremacy, one cannot give a go-by to the Federalism which has been held to be basic feature of the Constitution of India, and thereby whittling the powers of the State Legislature. The precise observations made by Sabharwal J., in this regard are reproduced: -

> "**58.** True, the parliamentary legislation has supremacy as provided under Articles 246(1) and (2). This is of relevance

11 (2002) 4 SCC 275

12 (2002) 9 SCC 232

> when the field of legislation is on the Concurrent List. While maintaining parliamentary supremacy, one cannot give a go-by to the federalism which has been held to be a basic feature of the Constitution (see *S.R. Bommai* v. *Union of India* [(1994) 3 SCC 1]).
>
> **59.** The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy as contemplated by some of its articles."

In the said Judgment Ruma Pal J., in her concurring opinion observed in Para 94 as under: -

> **"94.** Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [*A.S. Krishna* v. *State of Madras*, AIR 1957 SC 297 : 1957 SCR 399, *Chaturbhai M. Patel* v. *Union of India*, (1960) 2 SCR 362, 373, *State of Rajasthan* v. *G. Chawla*, AIR 1959 SC 544, *Ishwari Khetan Sugar Mills (P) Ltd.* v. *State of U.P.*, (1980) 4 SCC 136, 146-47] This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail."

40. In view of the above position of law settled by the Constitution Bench, it is held that considering the pith and substance of the State and the Central Legislations in question, the Central Legislations

i.e., SARFAESI Act or RDB Act cannot be permitted to prevail over the State Legislation i.e., MPID Act, merely because the Central Legislations are enacted by the Parliament. Since all these Acts have separate field of operations, provisions of SARFAESI Act or RDB Act cannot be permitted to override the provisions of MPID Act, which is a validly enacted State Legislation, otherwise it would tantamount to violation of federal structure doctrine envisaged in the Constitution. The respective legislative powers of the Union and the States are traceable to Articles 245 to 254 of the Constitution. The State *qua* the Constitution is Federal in structure, and independent in its exercise of legislative and executive power. Therefore, if provisions of SARFAESI Act or RDB Act are permitted to override the provisions of MPID Act, then the legislative powers of the State Legislature would be denuded which would tantamount to subverting the law enacted by the State Legislature.

41. It is true that sometimes the overlapping of legislations enacted with regard to the matters relatable to different Entries in List-I and List-II in Seventh Schedule may occur, however in that case also as held by the Constitution Bench in ***State of West Bengal vs. Kesoram Industries Limited and Others***[13]***,*** though, the List-I has priority over List-III and List-II, and List-III has priority over List-II, the predominance of Union List would not prevent the State Legislature from dealing with any matter within List-II, even if it may incidentally affect any item in List-I. In the case at hand, the SARFAESI Act and RDB Act having been enacted by the Parliament for the subject matter falling in List-I and the MPID Act having been enacted by the State Legislature for the subject matter falling in List-II in the Seventh Schedule, the latter would prevail in the State of Maharashtra in respect of the specific subject matter for which the said Act was enacted, in view of Clause (3) of Article 246.

42. It was next sought to be submitted by learned counsels appearing for the Secured Creditors that in view of Section 26E of the SARFAESI Act, the debts due to the Secured Creditor have to be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local

13 2004 (10) SCC 201

authority, and therefore, the security interest of the Secured Creditors in respect of the properties attached under MPID Act should be given priority. We do not find any merit in the said submission. Apart from the fact that Section 26E has come into force with effect from 1st September, 2016, it gives right to the Secured Creditor, after the registration of security interest, to be paid in priority over all other debts and revenues, taxes etc. payable to the Central Government or State Government or local authority.

43. In the instant case, the attachment of the properties over which the Secured Creditors is said to have security interest, have been attached under Section 4 of the MPID Act. Such properties are believed to have been acquired by the Financial Establishment i.e. NSEL either in its own name or in the name of other persons from out of deposits collected by the Financial Establishment. All such properties and assets of the Financial Establishment and the persons mentioned in the said provision, vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court. Such monies or deposits of depositors/ investors, who have been allegedly defrauded by the Financial Establishment, and for the recovery of which the MPID Act has been enacted, could not be said to be a "debt" contemplated in Section 26E of the SARFAESI Act, and hence also the provisions of Section 26E could not be said to have been attracted to the facts of the case.

44. In that view of the matter, it is held that no priority of interest can be claimed by the Secured Creditors against the properties attached under the MPID Act and that the provisions of MPID Act would override any claim for priority of interest by the Secured Creditors in respect of the properties which have been attached under the MPID Act.

QUESTION (ii): -

45. This takes us to the Second question as to "Whether the properties of Judgment Debtors and Garnishees attached under the MPID Act would be available for the execution of decrees against the Judgment Debtors in view of the provisions of Moratorium under Section 14 of the IBC, 2016?"

46. The bone of contention raised by the learned counsel appearing for the NSEL and the State of Maharashtra is that the properties of the

Judgement debtor/Garnishees having already stood attached under the provisions contained in Section 4 of the MPID Act, much prior to coming into force of the IBC, 2016 and there being no retrospective operation of Section 14 pertaining to Moratorium, such attached properties under the MPID Act would no longer be available as the properties of the Corporate Debtor to be considered for the purpose of Resolution Plan under the IBC. According to them, on the issuance of Notification under Section 4 of the MPID Act, the attached the properties would vest in the Competent Authority appointed by the State Government, and therefore such properties would no longer be the properties of the judgment debtor or of the Garnishee, and therefore would be outside the scope of operation and application of IBC. Per contra the learned counsel for the Judgment Debtor/Garnishees have contended that the IBC being a complete and exhaustive Code in itself would override the provisions of the MPID Act.

47. As stated earlier, the MPID was enacted in the public interest to curb the unscrupulous activities of the Financial Establishments, who had defaulted to return the deposits of the public in the State of Maharashtra. The constitutional validity of the said Act has been upheld by this Court in ***Sonal Hemant Joshi and Ors.*** (supra) and in ***State of Maharashtra vs. 63 Moons Technologies Ltd.*** (supra). As discussed while answering the first question, it was held that the MPID Act has been validly enacted by the Government of Maharashtra for the matters falling in List-II- State List, and therefore it would prevail in the State of Maharashtra. On the other hand, IBC has been enacted to consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders. The subject matter of IBC being "Bankruptcy and Insolvency", is relatable to the Entry 9 of List III-Concurrent List. The MPID Act having been enacted for the matters relatable to the Entries-1, 30 and 32 in List-II-State List, and the IBC having been enacted for the matters relatable to the Entry-9 in List-III- Concurrent List, the provisions of Article 254 would not be attracted. As per the settled legal position discussed earlier, the issue of repugnancy or conflict as contemplated in Article 254 would arise only when the State Legislation and the Central

Legislation, both, are relatable to the Entries contained in List-III-Concurrent List of Seventh Schedule. A beneficial reference of the decision in case of ***Innoventive Industries Ltd. vs. ICICI Bank and Another***[14] be made in this regard.

48. In the instant case, there is also no overlap or inconsistency between the provisions contained in the IBC and MPID Act. As such, Section 14 of IBC has the connotation which is very much different from Section 4 of MPID Act. The proceedings under the IBC arise out of the Debtor-Creditor relationships of the parties. As per Section 14 of IBC, which pertains to the Moratorium, a declaration has to be made to an order by the Adjudicating Authority prohibiting the acts mentioned therein. Therefore, Section 14 of IBC is consequent upon the order passed by the Adjudicating Authority declaring Moratorium.

49. However, so far as the attachment of properties under Section 4 of the MPID Act is concerned, it is beyond the realm of the Debtor-Creditor relationship as contemplated in the IBC. On the publication of the Order of Attachment of Properties by the Government to protect the interest of the Depositors of the Financial Establishment, such properties and assets of the Financial Establishment and the persons mentioned in sub-section (1) of Section 4, would forthwith vest in the Competent Authority appointed by the Government, pending further orders from the Designated Court. The procedure and powers required to be followed by the Designated Court after the receipt of the application from the Competent Authority under Section 5, have been prescribed in Section 7 of the MPID Act. As per the said procedure contained in Section 7, the Designated Court is required to issue a notice calling upon the Financial Establishments or to any other person whose property is attached and vested in the Competent Authority, to show cause as to why the Order of Attachment should not be made absolute. If no cause is shown or no objections have been raised before the Designated Court, the Designated Court can pass the order making the Order of Attachment absolute and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the properties attached.

14 (2018) 1 SCC 407

50. Thus, a conjoint reading of Section 4, 5 and 7 of the MPID Act, makes it clear that though Section 4(2) states about the attached properties being vested in the Competent Authority appointed by the Government, such vesting would be subject to the orders passed by the Designated Court. We therefore see no inconsistency between the provisions contained in the MPID Act and the IBC.

51. In absence of any inconsistency having been brought on record, between the provisions contained in the MPID Act and in the IBC, Section 238 of IBC, which gives overriding effect to the IBC over the other Acts for the time being in force, cannot be said to have been attracted.

52. In that view of the matter, it is held that the properties of the Judgment Debtors and Garnishees attached under the provisions of the MPID Act, would be available for the execution of the decrees against the Judgment Debtors by the S.C. Committee, despite the provision of Moratorium under Section 14 of the IBC.

53. For the reasons stated above, the Question No. (i) is answered in the negative and the Question No.(ii) is answered in the affirmative. As a consequence, thereof, both the Orders passed by the Supreme Court Committee on 10.08.2023 and 08.01.2024 stand vindicated and upheld.

54. Let the IAs challenging the orders dated 10.08.2023 and 08.01.2024 passed by the S.C. Committee, be dealt with and decided, in the light of the findings recorded in this judgment.

Result of the case: Questions answered.

†*Headnotes prepared by:* Divya Pandey

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(Civil Appeal No. 7277 of 2025)

02 June 2025

[Sudhanshu Dhulia and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Whether the conveyance of the suit land by the original plaintiff dated 02.11.1971 in favour of defendant no.1 could have been done and, the same having been done, could be sustained in law; whether the subsequent release of the charge created on the suit land by the Society upon receiving the entire dues having been paid by the plaintiff, would give retrospectivity to the said release so as to validate and ratify the Sale Deeds dated 02.11.1971 and 15.07.1972; against whom or between whom, if at all, any alienation under Section 48(e), Maharashtra Co-operative Societies Act, 1960 is applicable for the said acts resulting in the same being void.

Headnotes†

Maharashtra Co-operative Societies Act, 1960 – s.48(e) – Plaintiff, a member of the Co-operative Society obtained a loan from the Society and created a charge on his ancestral property (the suit land) in favour of the Society – Later, plaintiff also obtained loan from defendant no.1 and executed a Registered Sale Deed dated 02.11.1971 of the suit land in his favour and defendant no.1 executed a re-conveyance deed – However, defendant no.1 executed a Registered Sale Deed in favour

* Author

of defendant no.2 in respect of certain portion of the suit land – Plaintiff sought possession and re-conveyance of the suit land – Trial Court declared sale deed dated 02.11.1971 as void u/s.48 and ordered re-conveyance of suit land in favour of plaintiff – Eventually, Single Judge set aside the decree of possession and dismissed the plaintiff's suit – Appeal dismissed by Division Bench – Challenge to:

Held: s.48(e) declares void any transaction by a member-loanee against the society, where he/she alienates such immovable property on which a charge is created under declaration – Alienation of any such property on which a charge is created in favour of the concerned co-operative society by way of declaration is beyond the capacity of the owner/member who has declared it as a charged property, until the amount, for which the charge was created along with the interest, is repaid in full – However, even if a part of the amount due is paid then the society may, on an application moved by the member, release from charge such part of the property, as it may deem proper having regard to the outstanding amount – The right to sue or get a declaration qua any alienation made by a loanee is available only to the society in favour of whom the property under a declaration was charged – Thus, with regard to a transaction, unless the society comes forward to seek its nullification/setting aside, the same would be a voidable action and not void ab initio – Neither the amount for which the charge was created was repaid to the Society either in full or in part nor any such application for part-release was either filed before or accepted by the Society prior to the sale deed dated 02.11.1971 in favour of defendant no.1 – The Society had itself resolved to release the charge on the suit land on 27.08.1973 – It never moved before any forum for enforcing its charge over the suit land or raised any grievance w.r.t either of the Sale Deeds – Plaintiff cannot be allowed to benefit from his own wrong – Single Judge and the Division Bench committed no error – No merit in the appeal. [Paras 20-22, 24, 25, 32-34]

Maharashtra Co-operative Societies Act, 1960 – s.48(e), directory:

Held: s.48(e) which says that any alienation made in contravention of the provisions of clause (d) shall be void has to be read as directory to the extent that the same can be acted upon only at the instance of the party aggrieved (viz. the society concerned) upon whom the right has been created under the statute. [Para 25]

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List of Acts

Maharashtra Co-operative Societies Act, 1960; Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

List of Keywords

Alienation under Section 48(e) of the Maharashtra Co-operative Societies Act, 1960; Co-operative Society; Member of the Co-operative Society; Member-loanee; Charge created on immovable property under declaration; Charge created on ancestral property; Charge on the suit land; Charge created on ancestral property (the suit land) in favour of the Co-operative Society; Release of the charge created on the suit land; Alienation of charged property; Conveyance of the suit land; Re-conveyance deed; Sale deed; Loan obtained from the Society; Kendal Bk. Vividh Karyakari Seva Sahakari Sanstha Limited; Decree of possession; Possession and re-conveyance of suit land; Bonafide purchase; Benefit from own wrong; Voidable action; Not *void ab initio*; Directory; *Ex injuria sua nemo habere debet*.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7277 of 2025

From the Judgment and Order dated 15.01.2019 of the High Court of Judicature at Bombay at Aurangabad in LPA No. 33 of 1998

Appearances for Parties

Advs. for the Appellants:
Sandeep Sudhakar Deshmukh, Nishant Sharma, Ankur S. Savadikar.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Leave granted.

2. The present appeal impugns the Final Judgment and Order dated 15.01.2019[1] in Letters Patent Appeal (hereinafter abbreviated as 'LPA') No.33/1998 in First Appeal No.624/1992 (hereinafter referred to as the 'Impugned Order') passed by the High Court of Judicature at Bombay, Bench at Aurangabad (hereinafter referred to as the 'High Court'), whereby the appeal preferred by the appellants was dismissed and Judgment and Order dated 17.09.1993 [**1994 MhLJ 558**] in First Appeal No.624/1992 passed by the learned Single Judge of the High Court was affirmed. The learned Single Judge differed with the Judgment and Order dated 27.03.1980 in Special Civil Suit No.49/1973 passed by the learned Civil Judge, Senior Division, Ahmednagar (hereinafter referred to as the 'Trial Court') and set aside the decree of possession so granted by the Trial Court.

PARTIES:

3. The appellants before us, along with respondent no.5, are the Legal Representatives (hereinafter abbreviated to 'LRs') of the original plaintiff. Respondent no.1 is the original defendant no.1 and respondents no.2 to 4 are the LRs of the original defendant no.2. Despite valid service of notice, no one has entered appearance on behalf of respondents no.1, 2, and 5. Though, when the matter was heard and judgment was reserved by this Court, learned counsel for respondents no.3 and 4 was not present, however, subsequently, in terms of the Order dated 17.12.2024, a note of written submissions has been filed on their behalf, which is taken on record.

FACTUAL MATRIX:

4. For the sake of convenience and clarity of facts, the parties shall be referred to as per their status/position in the suit. The suit property is

1 Cause Title corrected by the High Court *vide* Speaking to Minutes Order dated 11.09.2019.

agricultural land bearing Survey No.30 situated at Village Kendal Bk., Taluka Rahuri, Ahmednagar, Maharashtra admeasuring 15 Acres and 17 *Guntha* (hereinafter referred to as the 'suit land'). The suit land was the ancestral property of the original plaintiff-Machhindranath. On 20.04.1956, the plaintiff enrolled as a member of the *Kendal Bk. Vividh Karyakari Seva Sahakari Sanstha* Limited (hereinafter referred to as the 'Society'), which, admittedly, is a registered Co-operative Society in terms of the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act'). Thereafter, the plaintiff obtained a loan from the Society, which was to be repaid by 09.11.1971, and created a charge on the suit land in favour of the Society. A declaration to this effect was made by the plaintiff on 15.08.1969 and subsequently, Mutation Entry no.3346 came to be recorded on 09.09.1969 mentioning this declaration.

5. As things stood, the plaintiff found himself in a financial crunch and approached defendant no.1 for a loan of Rs.5,000/- (Rupees Five Thousand). Defendant no.1 was none other than the plaintiff's nephew as also his son-in-law. Defendant no.1 extended such loan and as security, the plaintiff executed a Registered Sale Deed dated 02.11.1971 of the suit land in his favour. On the same day, a document styled as '*Ram Ram Patra*' (hereinafter referred to as the 'Reconveyance Deed') was executed by defendant no.1 mentioning that the total value of suit land is around Rs.25,000/- (Rupees Twenty-Five Thousand) and that he would re-convey the suit land on repayment of Rs.5,000/- (Rupees Five Thousand). Mutation Entry no.3520 came to be recorded in the name of defendant no.1 *qua* the suit land on 24.12.1971.

6. On 15.07.1972, defendant no.1 executed a Registered Sale Deed in favour of defendant no.2 in respect of 10 Acres of the suit land for a consideration of Rs.30,000/- (Rupees Thirty Thousand). As a consequence of the said Sale Deed dated 15.07.1972, Survey No.30 came to be divided in two parts. The land sold to defendant no.2 was Survey No.30/1 and the remaining portion became Survey No.30/2. On knowledge of the Sale Deed executed by defendant no.1 in favour of defendant no.2, the plaintiff approached the Trial Court on 28.02.1973 by filing Special Civil Suit No.49/1973 seeking possession of Survey Nos.30/1 and 30/2 and a direction for re-conveyance of the same along with mesne profits. After the institution of the suit,

defendant no.2 filed an application to the Society to strike off its charge on the suit land. *Vide* a Resolution dated 03.04.1973, the Society resolved that the charge would be struck off only after a compromise takes place in respect of the land. However, subsequently, by a Resolution dated 27.08.1973 passed by the Society, the suit land came to be released by the Society from its charge, on account of repayment of the loan by the plaintiff.

7. After considering the evidence placed on record by the parties, the Trial Court held, *vide* Order dated 27.03.1980, that the Sale Deed dated 02.11.1971 was void under Section 48 of the Act and that defendant no.2 had failed to prove that he was a *bonafide* purchaser for value without notice. However, on the question of bar under the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the 'Fragmentation Act'), the Trial Court found that the alienation was in pursuance of the Certificate granted under the Fragmentation Act. In the result, Trial Court passed a decree for possession of the suit land with direction to defendant no.1 to execute the deed of reconveyance of the suit land in favour of the plaintiff after receiving Rs.5,000/- (Rupees Five Thousand) from him.

8. Against the decree *supra*, defendant no.2 initially approached the High Court of Judicature at Bombay by filing First Appeal No.457/1980, which was later transferred to the Aurangabad Bench and re-numbered First Appeal No.624/1992. The learned Single Judge *vide* Order dated 14.10.1988 remanded the matter to the Trial Court, by framing four additional issues. On remand, the Trial Court considered the four issues with fresh evidence of the parties, and *vide* Order dated 28.04.1989 found that the Society was a registered resource society having majority of its members as agriculturists and that the Society was sub-classified as service resource society. After receipt of the decision of the Trial Court on the four additional issues, the learned Single Judge dismissed the appeal and confirmed the decree of possession. Against this, defendant no.2 filed LPA No.1/1990, which was allowed by a Division Bench and the matter was remanded to the learned Single Judge for fresh reconsideration on all issues. Pursuant thereto, the learned Single Judge reconsidered the evidence and allowed the first appeal thereby setting aside the decree of possession and dismissing

the suit brought by the plaintiff. Aggrieved by these findings, the original plaintiff (predecessor-in-interest of the appellants) filed LPA No.33/1998 before the Division Bench, dismissal whereof has been occasioned *vide* the Impugned Order.

SUBMISSIONS BY THE APPELLANTS:

9. Learned counsel for the appellants submitted that the mandate of Section 47(2) of the Act very specifically creates an embargo on transfer of land in any manner without previous sanction/permission of the Society and as per Section 47(3) of the Act, transfer made in contravention of sub-section (2) is void. Further, the charge of Society was recorded in accordance with Section 48(a) and Section 48(d) of the Act again creates an embargo from alienating the whole or any part of the land specified in the declaration submitted while creating charge under Section 48(a) and further, Section 48(e) declares such alienations in contravention of Section 48(d) as void. Admittedly, the Sale Deed executed on 15.07.1972 by original defendant no.1 in favour of defendant no.2, is without any such sanction and therefore void in terms of Sections 47(3) and 48(e) of the Act. It was canvassed that the subsequent removal of charge by the Resolution dated 27.08.1973 is inconsequential.

10. It was pointed out that defendant no.1 had not contested the suit. It was only the subsequent purchaser/defendant no.2 who did so. Admittedly, defendant no.2 had no presence at the time of the execution of the Registered Sale Deed dated 02.11.1971 or the reconveyance deed of even date executed between the plaintiff and defendant no.1. Therefore, defendant no.2 cannot falsify the Sale Deed dated 02.11.1971 and his case had to be limited to that of a *bonafide* purchaser for value without notice. The Trial Court specifically observed, on perusal of substantial evidence, that the plaintiff had proved the true nature of the transaction executed on 02.11.1971 and that defendant no.2 was not a *bonafide* purchaser on account of the series of admissions extracted from him during cross-examination.

11. The learned Single Judge, on remand, had set aside the decree by interpreting Sections 47 and 48 of the Act. The evidence of Narsing Sonar (Assistant Registrar, Co-Operative Societies at Rahuri), Karbhari Shete (Chief Secretary of the Society) and Ram Krishna

Hapse (Secretary of the Society) has been accepted which proves existence of charge on the date when the Sale Deed dated 15.07.1972 was executed *inter-se* the defendants. Although the learned Single Judge observed that the cooperative societies mentioned in Section 48 of the Act must be protected against defaults in the matter of recoveries, however, significance is given to the release of charge dated 27.08.1973 and it was held that such release would impliedly restore *status quo ante,* which is legally impermissible.

12. It was submitted that the specific finding of the Trial Court recorded in order dated 27.03.1980 at Paragraph 15 pertaining to defendant no.2 not being *bonafide* purchaser for value without notice, has not been disturbed. This finding had remained unchallenged for absence of any ground in the appeal. Further, findings about the validity of the Sale Deed dated 02.11.1971 had attained finality as they had not been challenged by defendant no.1. The Impugned Order, it was submitted, committed an error in concurring with the learned Single Judge to hold that since the suit land was released from the charge of the Society on 27.08.1973, the same would validate the Sale Deed dated 15.07.1972. It was vehemently argued that the patent error committed by the Impugned Order is in not considering that the prior permissions contemplated under Sections 47 and 48 of the Act were required on the date of the Sale Deed i.e. 15.07.1972 and subsequent release of charge would not have any retrospective effect as such *post-facto* approval is not contemplated in the Act, and thus, is inconsequential.

13. With regard to the Sale Deed dated 02.11.1971, it was submitted that same will have to be appreciated based on the surrounding circumstances which would include not only the Reconveyance Deed dated 02.11.1971 but also the act of creating charge by Mutation Entry no.3520 on 24.12.1971, which was in teeth of the declaration submitted by plaintiff in terms of Section 48(a) of the Act and the evidence of the office-bearers of the Society. More so for on that date under Mutation Entry No. 3346 dated 09.09.1969, the name of the Society was already mutated with regard to the suit land, but the said Society was neither noticed nor its consent was taken. On consideration of the aforesaid facts, it will be crystalized that the true nature of the Sale Deed dated 02.11.1971 is that of a conditional sale. Reliance was placed on Paragraphs 13, 14 & 21-24 of the decision in ***C S Venkatesh v A S C Murthy*, (2020) 3 SCC 280**.

14. Lastly, it was submitted that concurrent finding of fact has never been an embargo against the power of judicial review in the nature of Article 136 of the Constitution of India, which in fact invokes the concept of extraordinary civil appellate jurisdiction and the same has been appreciated and reiterated by this Court from time to time and recently in ***State of Rajasthan v Shiv Dayal*, (2019) 8 SCC 637** wherein it was held that concurrent findings can always be interfered with, when it is pointed out that the finding of fact in question is *de hors* the pleadings and a misinterpretation of the material on record. On these grounds, learned counsel prayed that the appeal be allowed and for restoration of the Judgment and Order passed by the Trial Court.

SUBMISSIONS BY RESPONDENTS NO.3 AND 4:

15. Learned counsel for the respondents no.3 and 4 submitted that the Impugned Order rightly considered provisions of the law and dismissed the plaintiff's suit. The plaintiff failed to prove that the sale transaction between himself and defendant no.1 was a contract or reconveyance or loan transaction. Further, the plaintiff was conscious and aware about the charge of the Society and having still entered into the Sale Deed dated 02.11.1971 with defendant no.1, cannot be allowed to take the benefit of his own wrong and claim that the sale is void *ab initio* in terms of Sections 47 and 48 of the Act.

16. It was submitted that the plaintiff had not placed on record any evidence to show that the market value of the suit land was higher than Rs.5,000/- (Rupees Five Thousand) in the year 1971. Therefore, the contention of the plaintiff that the suit land was sold for inadequate consideration is unacceptable. Further, the defendants proved the execution of the Sale Deed dated 15.07.1972 by defendant no.1 in favour of defendant no.2 after receipt of consideration of Rs.30,000/- (Rupees Thirty Thousand). Moreover, the Sale Deed dated 15.07.1972 is a registered document and the endorsement of the Sub-Registrar shows his presence and that consideration of Rs.30,000/- (Rupees Thirty Thousand) was duly received. Hence, validity of the Sale Deed dated 15.07.1972 has been proved.

17. It was submitted that there are concurrent findings in favour of the defendants and there is no perversity in the Impugned Order warranting interference by this Court. On these grounds, learned counsel prayed for dismissal of the appeal.

ANALYSIS, REASONING AND CONCLUSION:

18. Having heard learned counsel for the parties and going through the record, including written submissions as filed by the parties concerned, we find that there are multiple factors requiring consideration. The main issue is as to whether the conveyance of the suit land by the original plaintiff dated 02.11.1971 in favour of defendant no.1 could have been done and, the same having been done, could be sustained in law.

19. On the aforesaid point, there is no dispute with regard to the application of Section 48 of the Act which provides that when on any immovable property a charge has been created in favour of any society by any member by way of a declaration in pursuance of a loan, then there is an embargo on alienating such property during the subsistence of the charge. In this regard, sub-sections (c), (d) and (e) of Section 48 of the Act are relevant. The concerned Section is extracted hereunder:

> '***48. Charge on immovable property of members, borrowing from certain societies.—****Notwithstanding anything contained in this Act or in any other law for the time being in force—*
>
> *(a) any person who makes an application to a society of which he is a member, for a loan shall, if he owns any land or has interest in any land as a tenant, make a declaration in the form prescribed. Such declaration shall state that the applicant thereby, creates, charge on such land or interest specified in the declaration for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances (if any), required by him which the society may make to him as such member, subject to such maximum as may be determined by the society, together with interest on such amount of the loan and advances;*
>
> *(b) any person who has taken a loan from a society of which he is a member, before the date of the coming into force of this Act, and who owns any land or has interest in land as a tenant, and who has not already made such*

a declaration before the aforesaid date shall, as soon as possible thereafter, make a declaration in the form and to the effect referred to in clause (a); and no such person shall, unless and until he has made such declaration, be entitled to exercise any right, as a member of the society;

(c) a declaration made under clause (a) or (b) may be varied at any time by a member, with the consent of the society in favor of which such charge is created;

(d) no member shall alienate the whole or any part of the land or interest therein, specified in the declaration made under clause (a) or (b) until the whole amount borrowed by the member together with interest thereon, is repaid in full:

Provided that, it shall be lawful to a member to execute a mortgage / bond in respect of such land or any part thereof in favour of an Agriculture and Rural Development Bank or of the State Government under the Bombay Canal Rules made under the Bombay Irrigation Act, 1879 or under any corresponding law for the time being in force for the supply of water from a canal to such land, or to any part thereof:

Provided further that, if a part of the amount borrowed by a member is paid the society with the approval of the Central Bank to which it may be indebted may, on an application from the member, release from the charge created under the declaration made under clause (a) or (b), such part of the movable or immovable property specified in the said declaration, as it may deem proper, with due regard to the security of the balance of the amount remaining outstanding from the member;

(e) any alienation made in contravention of the provisions of clause (d) shall be void;

(f) subject to all claims of the Government in respect of land revenue or any money recoverable as land revenue, and all claims of the Agriculture and Rural Development Bank in respect of its dues, in either case whether prior in time or subsequent, and to the charge (if any) created under an award made under the Bombay Agricultural Debtors Relief Act, 1947 or any corresponding law for the

time being in force in any part of the State, there shall be a first charge in favour of the society on the land or interest specified in the declaration made under clause (a) or (b), for and to the extent of the dues owing by the member on account of the loan;

(g) and in particular, notwithstanding anything contained in Chapter X of the Maharashtra Land Revenue Code, 1966, the Record of Rights maintained there under shall also include the particulars of every charge on land or interest created under a declaration under clause (a) or (b), and also the particulars of extinction of such charge.

Explanation - For the purposes of this section the expression "society" means; (i) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members, or (ii) Any society, or any society of the class of societies, specified in this behalf by him State Government, by a general or special order.'

20. From a reading of the aforesaid provision, there is no ambiguity with regard to the import of the Section. Alienation of any such property on which a charge is created in favour of the concerned cooperative society by way of declaration is totally beyond the capacity of the owner/member who has declared it as a charged property, until the amount, for which the charge was created along with the interest, is repaid in full. However, even if a part of the amount due is paid then a society may, on an application moved by the member, release from charge such part of the property, as it may deem proper having regard to the outstanding amount.

21. In the present case, there is no denial to the fact that the charge on the suit land as declared by the plaintiff was prior to the date of him executing the Sale Deed dated 02.11.1971 in favour of defendant no.1. It is also not in dispute that neither the amount for which the charge was created was repaid to the Society either in full or in part nor any such application for part-release was either filed before or accepted by the Society prior to the said sale. Thus, at first glance, it appears to be an open-and-shut case that the said Sale Deed dated 02.11.1971 was void as per Section 48(e) of the Act. Further,

the subsequent Sale Deed dated 15.07.1972 by respondent no.1/ original defendant no.1 in favour of defendant no.2 on this analogy would also have to be held to be void. However, we hasten to add that a deeper probe is required as to what extent the theory of the sale being void *ab initio* had to be applied has not been spelt out by the statute and, thus is required to be gone into depending upon the specific and relevant facts and circumstances of each case as also the ancillary background. Therefore, for the time being, the Court would move to the other issue and thereafter take a final view having regard to the overall picture which emerges, for the final disposal of the instant case.

22. Coming to the other issue which is as to whether the subsequent release of the charge created on the suit land by the Society upon receiving the entire dues having been paid by the plaintiff, would give retrospectivity to the said release so as to validate and ratify the Sale Deeds dated 02.11.1971 and 15.07.1972? Under Section 48(d) of the Act, a society has the power to release from charge any part of the land specified in the declaration. Further, Section 48(c) of the Act relates only to variation of the declaration, but by obvious and necessary implication, it would include conclusion/release of the charge itself, in case the entire dues of a society are satisfied by the member who made the declaration. In the present case, the Society had itself resolved to release the charge on the suit land on 27.08.1973. For all practical purposes, the interest of the Society has not suffered.

23. The emphasis of the plaintiff before this Court is that the Trial Court as well as the learned Single Judge had, in the first round of litigation, held in his favour and both the Sale Deeds dated 02.11.1971 and 15.07.1972 were declared void and the suit seeking reconveyance was decreed. This raises another question which needs to be answered i.e., against whom or between whom, if at all, any alienation under Section 48(e) of the Act is applicable for the said acts resulting in the same being void?

24. In this regard, the conduct of the member/person who has under a declaration created a charge upon property in lieu of any loan obtained from a society would be important. Section 48(e) of the Act declares void any transaction by a member-loanee against the society, where he/she alienates such immovable property on which

a charge is created under declaration. Thus, the primal purpose is to safeguard the interest of the society which advanced the loan. As a corollary, the right to sue or get a declaration *qua* any alienation made by a loanee rests and is available only to the society in favour of whom the property under a declaration was charged. It would, therefore, not be within the domain of the member-loanee who himself commits a breach to take a stand that the act done by him should be declared void, without the society coming forward before an appropriate forum to set aside such alienation. The law cannot, and does not, reward a person for his/her own wrongs. In ***Sindav Hari Ranchhod v Jadev Lalji Jaymal*, (1997) 7 SCC 95**, Section 49 of the Gujarat Cooperative Societies Act, 1961, a provision *in pari materia* to Section 48 of the Act, was involved, and the Court observed:

> '***8.*** *In our view, this submission on behalf of the learned counsel for the respondents cannot be sustained. It is true that no relief was claimed by the plaintiffs against the Society but the grievance made by the plaintiffs in substance was of course on behalf of the Society and whether such Society was covered by Section 49 or not and whether such Society had waived its statutory right or not in favour of Original Defendant 1 were all questions which could have been thrashed out only in the presence of the Society which conspicuously was not joined as at least a proper party. It is also pertinent to note that the Society has not challenged these sale deeds executed by Defendant 1 at any time. The plaintiffs also failed to lead evidence for showing how Section 49(1) got attracted on the facts of the present case, despite having full opportunity before the trial court to prove their case on this issue. They could not be given a second innings just for the asking as is done in the impugned order. Consequently the plaintiffs could not legitimately and effectively challenge the sale transactions entered into by their father in favour of the alienees namely Defendants 15 and 10 on the ground of violation of Section 49(1) of the Act. In our view on the facts of the present case, therefore, there was no occasion for the High Court for ordering any remand as on the main issue the plaintiffs had failed, hence the suit ought*

to have been dismissed against all the defendants instead of only against some of them as ruled by the High Court. Consequently, this appeal is required to be allowed and the plaintiffs' suit against appellant — Defendant 15 also is liable to be dismissed as on merits the plaintiffs had failed to effectively challenge the sale transactions entered into by their father in favour of Defendant 15.'

(emphasis supplied)

25. In the present case, it is also not in dispute that the Society, in whose favour the charge was created on the land in question, never moved before any forum for enforcing its charge over the suit land or raised any grievance with regard to either of the Sale Deeds. Thus, the situation which emerges is that Section 48(e) of the Act which says that any alienation made in contravention of the provisions of clause (d) shall be void has to be read as directory to the extent that the same can be acted upon only at the instance of the party aggrieved (*viz*. the society concerned) upon whom the right has been created under the statute. In other words, with regard to a transaction, unless the society comes forward to seek its nullification/setting aside, the same would at best be a voidable action and not void *ab initio*. The distinction between '*void*' and '*voidable*' was considered by the Court in ***Dhurandhar Prasad Singh v Jai Prakash University*, (2001) 6 SCC 534**:

'***16.*** *The expressions "void and voidable" have been the subject-matter of consideration before English courts times without number. In the case of Durayappah v. Fernando [(1967) 2 All ER 152: (1967) 2 AC 337: (1967) 3 WLR 289 (PC)] the dissolution of the Municipal Council by the Minister was challenged. Question had arisen before the Privy Council as to whether a third party could challenge such a decision. It was held that if the decision was a complete nullity, it could be challenged by anyone, anywhere. The court observed at p. 158 E-F thus:*

> *"The answer must depend essentially on whether the order of the Minister was a complete nullity or whether it was an order voidable only at the election of the Council. If the former, it*

> *must follow that the Council is still in office and that, if any councillor, ratepayer or other person having a legitimate interest in the conduct of the Council likes to take the point, they are entitled to ask the court to declare that the Council is still the duly elected Council with all the powers and duties conferred on it by the Municipal Ordinance."*

17. *In the case of McC (A minor), In re [(1985) 1 AC 528 : (1984) 3 All ER 908: (1984) 3 WLR 1227 (HL)] the House of Lords followed the dictum of Lord Coke in Marshalsea case [(1612) 10 Co Rep 68 b: 77 ER 1027] quoting a passage from the said judgment which was rendered in 1613 where it was laid down that where the whole proceeding is coram non judice which means void ab initio, the action will lie without any regard to the precept or process. The Court laid down at AC p. 536 thus: (All ER pp. 912h-i, 913a-b)*

> *"Consider two extremes of a very wide spectrum. Jurisdiction meant one thing to Lord Coke in 1613 when he said in Marshalsea case [(1612) 10 Co Rep 68 b: 77 ER 1027] Co Rep, at p. 76a:*
>
> > *'… when a court has jurisdiction of the cause, and proceeds inverso ordine or erroneously, there the party who sues, or the officer or Minister of the court who executes the precept or process of the court, no action lies against them. But when the court has not jurisdiction of the cause, there the whole proceeding is coram non judice, and actions will lie against them without any regard of the precept or process….'*
>
> *The Court of the Marshalsea in that case acted without jurisdiction because, its jurisdiction being limited to members of the King's household, it entertained a suit between two citizens neither of whom was a member of the King's*

household. Arising out of those proceedings a party arrested 'by process of the Marshalsea' could maintain an action for false imprisonment against, inter alios, 'the Marshal who directed the execution of the process'. This is but an early and perhaps the most-quoted example of the application of a principle illustrated by many later cases where the question whether a court or other tribunal of limited jurisdiction has acted without jurisdiction (coram non judice) can be determined by considering whether at the outset of the proceedings that court had jurisdiction to entertain the proceedings at all. So much is implicit in the Lord Coke's phrase 'jurisdiction of the cause'."

18. *In another decision, in the case of Director of Public Prosecutions v. Head [1959 AC 83: (1958) 1 All ER 679: (1958) 2 WLR 617 (HL)] the House of Lords was considering the validity of an order passed by the Secretary of State in appeal preferred against judgment of acquittal passed in a criminal case. The Court of Criminal Appeal quashed the conviction on the ground that the aforesaid order of the Secretary was null and void and while upholding the decision of the Court of Criminal Appeal, the House of Lords observed at AC p. 111 thus: (All ER p. 692g-i)*

"This contention seems to me to raise the whole question of void or voidable; for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because you cannot continue a nullity. The licence to Miss Henderson would be a nullity. So would all the dealings with her property under Section 64 of the Act of 1913 [Mental Deficiency Act]. None of the orders would be admissible in evidence. The Secretary of State would, I fancy, be liable in damages for all of the ten years during which she was

> *unlawfully detained, since it could all be said to flow from his negligent act; see Section 16 of the Mental Treatment Act, 1930.*
>
> *But if the original order was only voidable, then it would not be automatically void. Something would have to be done to avoid it. There would have to be an application to the High Court for certiorari to quash it."*

19. *This question was examined by the Court of Appeal in the case of R. v. Paddington Valuation Officer, ex p Peachey Property Corpn. Ltd. [(1965) 2 All ER 836: (1966) 1 QB 380: (1965) 3 WLR 426 (CA)] where the valuation list was challenged on the ground that the same was void altogether. On these facts, Lord Denning, M.R. laid down the law, observing at p. 841 thus:*

> *"It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent — acting within his jurisdiction — exercised that jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside."*

20. *de Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, 5th Edn., para 5-044, have summarised the concept of void and voidable as follows:*

> *"Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of*

> *outside jurisdiction, it was said to be invalid, or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."*

21. *Clive Lewis in his work Judicial Remedies in Public Law at p. 131 has explained the expressions "void and voidable" as follows:*

> *"A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant."*

22. *Thus the expressions "void and voidable" have been the subject-matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a*

declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.'

(emphasis supplied)

26. Another aspect of importance is the fact that ultimately, the dues of the Society have been cleared, may be by the plaintiff himself, but the result is that the same has also been followed up by acceptance and release by the Society i.e., the suit land stood released from charge on and with effect from 27.08.1973.

27. Another factual aspect raised by the appellants is that the suit land is highly undervalued as the consideration is only Rs.5,000/- (Rupees Five Thousand) though the same ought to have been Rs.25,000/- (Rupees Twenty-Five Thousand). This contention cannot be given much importance considering the relationship between the parties i.e., the defendant no.1 being the son-in-law and nephew of the plaintiff. Further, no material to buttress/support the claim of the valuation being Rs.25,000/- (Rupees Twenty-Five Thousand) was ever produced before any of the Courts below. Thus, a bald statement on a purely factual aspect has rightly not been accepted by the Courts. We too do not propose to chart a different course on this.

28. Before, however, forming a final view, this Court is also required to consider the plea of the appellants that on 02.11.1971, after execution of the Sale Deed by the plaintiff in favour of respondent no.1/ defendant no.1, immediately a reconveyance deed under the name and style of '*Ram Ram Patra*' was also executed, which stipulated that upon Rs.5,000/- (Rupees Five Thousand) being repaid by the plaintiff to the respondent no.1/ defendant no.1, he would re-convey the land to the plaintiff. This document would not be of

any help to the appellants mainly because cognizance of the same cannot be taken in view of the document not being executed either on stamp paper or registered and, additionally, being in the writing of a different scribe *vis-a-vis* the registered Sale Deed of even date. Moreover, the plaintiff while executing the registered Sale Deed on 02.11.1971 in favour of defendant no.1 has clearly stated that the suit land was free of any encumbrance(s), which, in our opinion, negates the argument urged that the sale was a conditional sale and not a full-fledged sale.

29. Though neither discussed in any of the Orders nor argued by any party, a serious doubt arises in the mind of the Court inasmuch as it cannot be believed that a valid reconveyance deed would not specify any time-period and also not provide for any escalation in the amount to be returned in lieu of reconveyance i.e., to say that for an indefinite period the land would remain with defendant no.1, but whenever the plaintiff wants, he can ask for its reconveyance by paying merely Rs.5,000/- (Rupees Five Thousand). Besides being iniquitous, this also demonstrates that such term could not have been incorporated, if at all there was a genuine reconveyance deed. Had it really been agreed between the parties that the suit land was to be reconveyed upon the money being returned, the money to be returned would be commensurate with escalation for the period for which it was not returned by providing for some increase, either quantified or by prescribing a rate of interest and most importantly an outward time-limit. These are conspicuous by their absence in the Reconveyance Deed.

30. It is also noteworthy that the plaintiff has nowhere stated that he ever approached defendant no.1 for re-conveying the suit land. The only stand taken was that he was ready to return Rs.5,000/- (Rupees Five Thousand) and that the Court may pass a decree directing reconveyance for the sum of Rs.5,000/- (Rupees Five Thousand). This itself dilutes the claim inasmuch as the cause of action would arise when the plaintiff asserted that he was ready, willing and offered to pay the amount to defendant no.1, who refused to accept such payment of Rs.5,000/- (Rupees Five Thousand). Absent such averment, no relief can enure to the plaintiff.

31. Apropos the rights of the parties *inter-se*, the Court would only observe that defendant no.2 was a *bonafide* purchaser from respondent

no.1/defendant no.1, on the date the Sale Deed was executed on 15.07.1972, for the reason that such transaction was made on the basis of the title which was apparent from the Sale Deed dated 02.11.1971 in favour of respondent no.1/defendant no.1. This would not have given any occasion to defendant no.2 to be cautious or under any impression, much less knowledge, that the property bought by him was encumbered on the date of purchase.

32. Undoubtedly, the present case comes under a unique category where a person on the one hand comes before a Court seeking that his own actions be nullified on the ground that it was void and on the other hand wants relief in his favour, which is consequential to and traceable to his own wrong. It would not be proper for a Court of law to assist or aid such person who states that the wrong he committed be set aside and a relief be granted *de hors* the wrong committed, after condoning the same. In the present case, the plaintiff cannot be allowed to benefit from his own wrong and the Court will not be a party to a perpetuation of illegality. In ***Ram Pyare v Ram Narain*, (1985) 2 SCC 162**, a 3-Judge Bench of this Court, in the circumstances therein, did not void a transaction even though the transaction was void being prohibited by law. The principle that no party can take advantage of his/her own wrong i.e. *ex injuria sua nemo habere debet* is squarely attracted. In ***Kusheshwar Prasad Singh v State of Bihar*, (2007) 11 SCC 447**, it was held:

> '***13.*** *The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.*
>
> ***14.*** *In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that*

where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. *In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:*

> *"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

16. *It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".*'

(emphasis supplied)

33. On an overall circumspection, the learned Single Judge and the Division Bench have not committed any error.

34. In the light of the discussions made and reasons recorded hereinabove, we do not find any merit in the present appeal. Accordingly, the appeal stands dismissed.

35. No order as to costs. I.A. No.42744/2020 is closed.

36. Registry is directed to prepare Decree Sheet accordingly.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 331 : 2025 INSC 803

Ghanshyam Soni
v.
State (Govt. of NCT of Delhi) & Anr.

(Criminal Appeal No. 2894 of 2025)

04 June 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Issue arose whether the cognizance on the complaint u/ss.498A rw s.34 IPC was taken beyond the limitation period as mandated u/s.468 CrPC; and whether the prima facie case u/ss.498A rw s.34 IPC was made out against the appellant-husband or his family.

Headnotes†

Code of Criminal Procedure, 1973 – s.468 – Penal Code, 1860 – ss.498A, 34 – Bar to taking cognizance after lapse of the period of limitation – Allegations of cruelty and dowry demand against the appellant-husband and in-laws, by the respondent no.2-wife – Both parties police officer – Filing of complaints by respondent no.2, and withdrawal of one – Thereafter, respondent no.2 registered FIR against the appellant and her in-laws for commission of offences u/ss.498A, 406 and 34 and chargesheet was filed – Magistrate framed charges only u/ss.498A rw s.34 – Revision Petition by the appellant that allegations against him and his family were false; that the complaint was lodged after an inordinate delay of 3 years; and that the cognizance on the complaint was taken beyond the limitation period – Sessions Court discharged the appellant and the in-laws for the offences u/ss.498A and 34 holding that the Magistrate took cognizance of time-barred case – High Court set aside the order passed by the Sessions Court – Correctness:

Held: For the computation of the limitation period u/s.468 the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance – Magistrate is well within his powers to take cognizance of a complaint filed within a period of three years from

* Author

the date of the commission of offence as mandated u/s.468 – Simply because the cognizance is taken at a later stage, but the complaint was filed within the specified period from the commission of the offence, the complainant cannot be put to prejudice and the complaint cannot be discarded as time-barred – High Court was right in holding that considering the date of commission of offence and the date of filing of complaint, the complaint was lodged by the complainant within the period of limitation of three years as per s.468 – Not a case where the complaint or the issuance of process is *ex-facie* barred by limitation – Magistrate rightly took cognizance of the offence u/s.498A and the question of applicability or exercise of powers u/s.473 CrPC does not arise – Furthermore, the scrutiny of the allegations in the FIR and the material on record reveals that no *prima facie* made out against the appellant or his family – Divorce decree of their marriage, has already been passed, and has attained finality – Upon consideration of the relevant circumstances and that the alleged incidents pertain to the year 1999 and since then the parties have moved on with their respective lives, it would be unjust and unfair if the appellants are forced to go through the tribulations of a trial – In the interest of justice, and in exercise of power u/Art.142, the FIR and the chargesheet are quashed and set aside. [Paras 11-19]

Case Law Cited

Preeti Gupta & Anr. v. State of Jharkhand & Anr. **[2010] 9 SCR 1168 : [2010] 7 SCC 667**; *Bharat Damodar Kale & Anr. v. State of Andhra Pradesh* **[2003] 8 SCC 559;** *Kamatchi v. Lakshmi Narayanan* **[2022] 15 SCC 50 – relied on.**

K. Subba Rao v. State of Telangana Represented by Its Secretary, Department of Home & Ors. **(2018) 14 SCC 452**; *Jaydedeepsinh Pravinsinh Chavda & Ors. v. State of Gujarat,* **2024 INSC 960 : [2024] 12 SCR 439;** *Rajesh Chaddha v. State of Uttar Pradesh,* **2025 INSC 671;** *Dara Lakshmi Narayana & Ors. v. State of Telangana & Anr.*, **2024 INSC 953 : [2024] 12 SCR 559;** *Sarah Mathew v. Institute Cardio Vascular Diseases by Its Director Dr. K. M. Cherian & Ors.* **[2013] 12 SCR 674 : [2014] 2 SCC 62 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Dowry Prohibition Act, 1961.

List of Keywords

Cognizance on the complaint; Limitation period; Allegations of cruelty and dowry demands; Chargesheet; Inordinate delay; Discharging the accused; Time-barred case; Sessions Court; Date of commission of offence; Date of filing of complaint; Divorce decree.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2894 of 2025

From the Judgment and Order dated 01.04.2024 of the High Court of Delhi at New Delhi in CRLMC No. 1227 of 2009

With

Criminal Appeal No. 2895 of 2025

Appearances for Parties

Adv. for the Appellant:
Yusuf.

Advs. for the Respondents:
Vikramjeet Banerjee, A.S.G., Mukesh Kumar Maroria, Ms. Anita Sahani, Ms. Vanshaja Shukla, B K Satija, Kamlendra Mishra, Udai Khanna, Siddharth Sinha, Tathagat Sharma, Raman Yadav, Ms. Sunanda Shukla, Jasmeet Singh, Saif Ali, Pushpendra Singh Bhadoriya, Vijay Sharma, Pranav Menon, Saurav.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. The captioned Appeal is filed assailing the Impugned Judgment/Final Order dt. 01.04.2024 passed by the High Court of Delhi in Crl. MC No. 1227/2009 whereby the Order/Judgment dt. 04.10.2008 passed by Additional Sessions Judge Delhi ("**Sessions Court**") in CR No. 87/2008 discharging the Appellant for the offence u/s 498A Indian Penal Code, 1860 in FIR No. 1098/2002 dt. 19.12.2002 registered with PS Malviya Nagar, was set aside.

3. The criminal machinery was set in motion with the Complaint dt. 03.07.2002 filed by the Complainant wife/Respondent no.2 culminating into the FIR No. 1098/2002 dt. 19.12.2002 registered with PS Malviya Nagar, against the Appellant husband and her in-laws for commission of offences under sections 498A, 406 & 34 IPC. The factual conspectus is briefly stated as under:

3.1 As per the FIR, the marriage between the Appellant husband and the Complainant wife, Respondent no. 2 herein was solemnized on 28.02.1998 according to Buddhist rites and ceremonies. It is averred that the entire cost of the ceremonies had been arranged by the Complainant, according to the best of their financial abilities. At the time, both the parties were serving as Sub-Inspectors with the Delhi Police.

3.2 It is alleged that soon after her marriage, the Complainant learnt about the greedy and abusive nature of the Appellant and his family members, who constantly taunted her and ridiculed her for bringing insufficient dowry. Purportedly, the mother-in-law, Smt. Bhagwati and five of her sisters-in law, namely Geeta, Lata, Misiya, Hemlata and Gayatri constantly fueled conflict, and instigated the Appellant against the Complainant. The father-in-law hurled abuses at the Complainant and her family, allegedly saying that their family had adopted Buddhism to simply evade the traditions of dowry.

3.3 The Appellant and his family consistently raised demands for more dowry and allegedly made a specific demand for Rs. 1.5 Lakhs in cash, a Car and a separate house for the Appellant amongst other petty things. The Complainant averred that despite serious effort, her father was unable to meet the said demands which led to her being subjected to serious physical & mental atrocities at the hands of her husband and in-laws.

3.4 It is alleged that on 27.04.1999, the Appellant husband and her mother-in-law, Smt. Bhagwati had beaten up the Complainant with fists, blows for not fulfilling their needs. The Complainant who hurt her wrist in the incident, had to put on a bandage for a month, and her parents took her to their house, where she remained on medical rest for twenty days. However, even after her return from her parental home with Rs. 50,000/- in cash, her late father-in-law and her sisters in law (except one)

berated her for her inability to fulfill their demands and being a burden on the family.

3.5 On 04.09.1999, the Appellant allegedly took out a dagger and threatened the Complainant that he would kill her if she failed to fulfill the demands, particularly that of his sister. It is alleged that on 05.09.1999, the sister-in-law, Ms. Lata had allegedly threatened the Complainant in front of the father-in-law and the Appellant husband that since she is to return to her house in Jaipur in 2-3 days, her demand of a "*mangalsutr*a" be fulfilled within 2 days, or else the 3rd day would be the last day for the Complainant in that house. Since she was not able to fulfill the demands, the Complainant was allegedly beaten up and thrown out of the matrimonial house on 08.09.1999. The Complainant was not allowed to take with her any of her belongings including her own motorcycle, jewelery or clothes and was left to fend for herself. Aggrieved, she reported the incidents of cruelty and filed a Complaint on the same day with PS Prasad Nagar, Delhi vide DD No. 31 dt. 08.09.1999. It is the case of the Complainant that since the incident, she had been living with her parents.

3.6 It is further alleged that on 06.12.1999, the Complainant while returning from her shift at the Palam Airport was allegedly beaten up by the Appellant, who threatened her to withdraw the earlier Complaint alleging domestic violence against him and his family. The Complainant, who was pregnant at the time, had allegedly hit the railing and purportedly sustained an injury on the right side of the ear. She reported the incident by filing a Complaint at PS Palam Airport vide DD No. 35 dated 06.12.1999.

3.7 The Complainant gave birth to a daughter on 27.04.2000. It is alleged that neither the Appellant nor any of his family members came to visit her or their new-born daughter at the hospital or at her parents' house. Even at that stage, when the Complainant was in dire need, the Appellant or his family did not return her belongings. The Complainant alleges that the Appellant, who did not bother to visit her own daughter, assaulted the Complainant wife during the advanced stage of pregnancy and did not incur any expenditure towards the

birth of the child, and yet enjoyed paternity leave for more than 15 days from the Department.

3.8 On 03.07.2002, the Complainant filed a formal Complaint with the Deputy Commissioner of Police, CAW Cell, New Delhi through proper channels, wherein she gave elaborate details of the alleged incidents and the torture meted out to her since her marriage on 28.02.1998. Pursuant to the said Complaint, FIR No. 1098/2002 dt. 19.12.2002 was registered at PS Malviya Nagar, under sections 498A, 406 & 34 IPC against the Appellant husband and her in-laws.

3.9 The Charge-sheet in the captioned case was filed on 27.07.2004 under sections 498A, 406 & 34 IPC and the Metropolitan Magistrate, Delhi ("**Magistrate**") took cognizance on the very same day. Vide Order dt. 04.06.2008, the Magistrate framed charges under section 498A read with Section 34 IPC and dropped the charge under section 406 IPC.

3.10 Aggrieved by the Order dt. 04.06.2008 passed by the Magistrate, the Appellant filed Criminal Revision Petition No. 87/2008 before the Sessions Court, Delhi. Apart from the submissions that the allegations against him and his family are false, it was the assertion of the Appellant that the alleged incidents of cruelty pertain to the year 1999, whereas she lodged a Complaint on 03.07.2002 after an inordinate delay of 3 years. It was averred that the cognizance on the Complaint was only taken on 27.07.2004, which is beyond the limitation period as provided under section 468 of the Code of Criminal Procedure, 1973 ("**CrPC**").

3.11 The Sessions Court vide Order dt. 04.10.2008 within its powers of revision, discharged the Appellant, his mother and her five sisters for the offences under section 498A & 34 IPC. It was observed that the Magistrate had taken cognizance of a time-barred case as cognizance was taken on 27.07.2004 of the alleged incidents of cruelty pertaining to the year 1999 i.e. after five (05) years of the commission of the alleged offence, whereas the limitation period for an offence punishable under

Section 498A is three (03) years.[1] The Sessions Court held that the Magistrate did not have the inherent powers to condone delay under section 473 CrPC at the time of framing of charges, and even if it was authorized to condone such delay, it could not have done so in the present case where the chances of false implication of the Appellants were apparent.

3.12 The Sessions Court further remarked that the possibility of false implication cannot be ruled out since the Complainant wife was a police officer trained to tackle tough and high-pressure situations and such an offence in question could not have been committed against her. The said remarks are reproduced as under:

> "In the present case unlike the Ramesh's case (supra) relied upon by the learned trial court in the impugned order the complainant is a police officer and is supposed to be a tough person used to deal with hard situations, by virtue of her job which includes her handling the criminals besides tough and hard job of police officer. Such a strong-and tough person is not only almost immune to be pressurized but also can be harsh and strong in reaction to other persons going against her-wishes. A woman police officer knowing the law and rules pertaining to crime detection and investigation and trial before court, therefore, cannot be equated to an .oppressed housed wife who is subjected to cruelty by her husband and in laws and the aforesaid observation in Arun Vyas's case seems to apply to such a wife and not to a strong woman police officer wife dealing with hardened criminals daily in discharge of her official duties. However, it cannot always be a case that a woman wife working in police is an aggressor and not subject to cruelty. She can also be subjected to cruelty by her husband and in laws. But when she being conversant with law on the subject has roped in the five sisters which include four married sisters of her husband besides

1 Section 468(2)(c) of the Code of Criminal Procedure 1973.

aged mother in law and father in law (since deceased) of the complainant, the possibility of false implication of accused persons cannot be ruled out particularly when as per the statement u/s 161 CrPC of mother of complainant, the complainant wife came to her parents in September 199 due to marriage of her sister but accused husband did not take her back to matrimonial home. When the Complainant wife is in full know of investigation procedure and law and by living separate from the revisionists since September 1999 has lodged FIR/Complaint in 2002, there certainly is unexplained delay in lodging the FIR."

3.13 Aggrieved thereby, the Complainant filed the Petition under section 482 CrPC assailing the Judgement dt. 04.10.2008 before the High Court of Delhi. The High Court vide Impugned Judgment and final Order dt. 01.04.2024 allowed the Petition, and set aside the Order dt. 04.10.2008 passed by the Sessions Court, observing that the findings of the Sessions Court were perverse.

3.14 The captioned Appeal is against the Impugned Judgment and final Order dt. 01.04.2024 passed by the High Court of Delhi. During the course of the proceedings before this Court, the Appellant has also filed an Application under Article 142 of the Constitution of India seeking quashing of the FIR No. 1098/2002 dt. 19.12.2002.

4. It has been argued on behalf of the Appellants that the High Court had erred in setting aside the Order dt. 04.10.2008 passed by the Sessions Court, which was well-reasoned and passed after due consideration of the material on record. It was vehemently argued that the present case was time-barred and the Magistrate could not have taken cognizance in light of the bar under Section 468 CrPC. Also, the Magistrate after taking cognizance on 27.07.2004 could not have reviewed its own order, subsequently at the stage of framing of charges.

5. Even otherwise, it was contended that the Magistrate can only condone the said delay only at the time of taking cognizance and in terms of section 473 CrPC, only after a proper explanation of delay. It is borne from the record that the first complaint by the Complainant

was lodged on 08.09.1999 and undisputedly, the Complainant has been residing separately since then. The second Complaint was filed on 06.12.1999 which was withdrawn by the Complainant on 12.12.1999, and it was only on a Complaint filed on 03.07.2002 that the captioned FIR No. 1098/2002 dt. 19.12.2002 was registered. It was argued that since all the three Complaints mention the same incidents of cruelty in the year 1999, there is no explanation with regard to the inordinate delay in filing the FIR dt. 19.12.2002, more than three years after the alleged incidents and the delay could not have been condoned for any reason whatsoever. It has been urged by the learned counsel that the allegations in the FIR are false, and no *prima facie* case can be made out against the Appellant or his family, even after the perusal of the material on record.

6. *Per contra*, it is argued by the learned counsel for the Complainant/ Respondent no. 2 that it cannot be assumed at this stage when the trial is yet to commence that the Complaints filed by her are false, simply because she is a police officer. Since there were specific allegations against the Appellant of physically and mentally harassing the complainant, it was argued that the Sessions Court could not have discharged him without the Appellant standing the test of trial.

7. It was further argued that the last alleged offence was committed on 06.12.1999, and complaints were filed both on 06.12.1999 and 03.07.2002 which is well-within the three year limitation period in terms of section 468 CrPC. The relevant date to compute the limitation period under the said provision is the date of filing of the Complainant or date of institution of proceedings, and even otherwise, an offence under section 498A is a continuing offence, and there are serious allegations made against the Appellant and his family, even after September or December 1999.

8. Learned counsel for the State also supports the case of the prosecution and has prayed for the dismissal of the Appeal.

9. We have heard Learned counsel for the parties and have carefully perused the material on record.

10. A perusal of the FIR shows that the allegations made by the complainant are that in the year 1999, the Appellant inflicted mental and physical cruelty upon her for bringing insufficient dowry. The Complainant refers to few instances of such atrocities, however the allegations are generic, and rather ambiguous. The allegations

against the family members, who have been unfortunately roped in, is that they used to instigate the Appellant husband to harass the Complainant wife, and taunted the Complainant for not bringing enough dowry; however, there is no specific incident of harassment or any evidence to that effect. Similarly, the allegations against the five out of six sisters that they used to insult the Complainant and demanded dowry articles from her, and upon failure beat her up, but there is not even a cursory mention of the incident. An allegation has also been made against a tailor named Bhagwat that he being a friend of the Appellant instigated him against the Complainant, and was allegedly instrumental in blowing his greed. Such allegations are merely accusatory and contentious in nature, and do not elaborate a concrete picture of what may have transpired. For this reason alone, and that the evidence on record is clearly inconsistent with the accusations, the version of the Complainant seems implausible and unreliable. The following observation in **K. Subba Rao v. State of Telangana Represented by Its Secretary, Department of Home & Ors.**[2], fits perfectly to the present scenario:

> "6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

11. As regards the Appellant, the purportedly specific allegations levelled against him are also obscure in nature. Even if the allegations and the case of the prosecution is taken at its face value, apart from the bald allegations without any specifics of time, date or place, there is no incriminating material found by the prosecution or rather produced by the complainant to substantiate the ingredients of "cruelty" under section 498A IPC, as recently observed in the case of **Jaydedeepsinh Pravinsinh Chavda & Ors. v. State of Gujarat**[3] **and Rajesh Chaddha v. State of Uttar Pradesh**.[4] The Complainant has admittedly failed to produce any medical records or injury reports, x-ray reports, or any witnesses to substantiate her allegations. We

2 (2018) 14 SCC 452

3 2024 INSC 960

4 2025 INSC 671

cannot ignore the fact that the Complainant even withdrew her second Complaint dt. 06.12.1999 six days later on 12.12.1999. There is also no evidence to substantiate the purported demand for dowry allegedly made by the Appellant or his family and the investigative agencies in their own prudence have not added sections 3 & 4 of the Dowry Prohibition Act, 1961 to the chargesheet.

12. In this respect, the Sessions Court has applied its judicial mind to the allegations in the FIR & the material on record, and has rightly discharged the Appellants of the offences under section 498A & 34 IPC. Notwithstanding the said observation by the Sessions Court that the possibility of false implication cannot be ruled out, the discharge of the Appellant merely because the Complainant is a police officer is erroneous and reflects poorly on the judicial decision making, which must be strictly based on application of judicial principles to the merits of the case. On the other hand, the High Court vide the Impugned Order has traversed one step further and overtly emphasised that simply because the Complainant is a police officer, it cannot be assumed that she could not have been a victim of cruelty at the hands of her husband and in-laws. We agree with the sensitive approach adopted by the High Court in adjudicating the present case, however a judicial decision cannot be blurred to the actual facts and circumstances of a case. In this debate, it is only reasonable to re-iterate that the Sessions Court in exercise of its revisionary jurisdiction and the High Court in exercise of its inherent jurisdiction under section 482 CrPC, must delve into the material on record to assess what the Complainant has alleged and whether any offence is made out even if the allegations are accepted *in toto*. In the present case, such scrutiny of the allegations in the FIR and the material on record reveals that no *prima facie* is made out against the Appellant or his family. It is also borne from the record that the divorce decree of their marriage, has already been passed, and the same has never been challenged by the Complainant wife, and hence has attained finality. Upon consideration of the relevant circumstances and that the alleged incidents pertain to the year 1999 and since then the parties have moved on with their respective lives, it would be unjust and unfair if the Appellants are forced to go through the tribulations of a trial.

13. It is rather unfortunate that the Complainant being an officer of the State has initiated criminal machinery in such a manner, where the aged parents-in-law, five sisters and one tailor have been arrayed

as an accused. Notwithstanding the possibility of truth behind the allegations of cruelty, this growing tendency to misuse legal provisions has time and again been condemned by this Court. The observations in **Dara Lakshmi Narayana & Ors. v. State of Telangana & Anr.**[5], **Preeti Gupta & Anr. v. State of Jharkhand & Anr.**[6] aptly captures this concern.

14. In addition, we are also of the considered view that the Complaint dt. 03.07.2002 filed by the Complainant was not time barred and was filed within the ascribed period of three years from the date of the commission of the offence. *In arguendo*, even if the assertion of the Appellants is considered to be true that the allegations pertain to the year 1999, and there is no material change from the first Complaint dt. 08.09.1999 and the final Complaint dt. 03.07.2002, it cannot be construed that the same was not within the time frame of limitation simply because cognizance was taken by the Magistrate two years later vide Order dt. 27.07.2004.

15. It is a settled position of law that for the computation of the limitation period under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.[7] The dicta laid down in the case of **Bharat Damodar Kale & Anr. v. State of Andhra Pradesh**[8] makes it unequivocally clear that the Magistrate is well within his powers to take cognizance of a complaint filed within a period of three years from the date of the commission of offence as mandated under section 468 CrPC. The relevant portion is reproduced as under:

> *"**50.** The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would*

5 2024 INSC 953

6 (2010) 7 SCC 667

7 Sarah Mathew Vs Institute Cardio Vascular Diseases by Its Director DR K. M. Cherian & Ors. (2014) 2 SCC 62

8 (2003) 8 SCC 559

lead to perpetuate injustice and defeat the primary object of procedural law.

51. *The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution.*

52. *In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.*

53. *In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by*

> *the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible."*

16. The following observation in **Kamatchi v. Lakshmi Narayanan**[9] also re-iterates the said position, and further holds that simply because the cognizance is taken at a later stage, but the Complaint was filed within the specified period from the commission of the offence, the Complainant cannot be put to prejudice and her Complaint cannot be discarded as time-barred.

> "It is, thus, clear that though Section 468 of the Code mandates that 'cognizance' ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over."

17. The observations made by the High Court in respect of computation of the limitation period is the correct appreciation of facts, and it is right in holding that "*considering the date of commission of offence as 08.09.1999 and the dale of filing of complaint as 03.07.2002, this Court finds that the Complaint was lodged by the Petitioner within a period of* ***two years and ten months*** *from the date of commission of alleged offence, which is within. the period of limitation of three years as per Section 468 of CrPC*."

18. Therefore, this is certainly not a case where the Complaint or the issuance of process is *ex-facie* barred by limitation, that the question

9 (2022) 15 SCC 50

of condonation of delay would arise. It is therefore clarified that the Magistrate had rightly taken cognizance of the offence under section 498A and the question of applicability or exercise of powers under section 473 CrPC as erroneously observed by the Sessions Court, does not even arise and need not be delved into at this stage.

19. In the interest of justice, and in exercise of our powers under Article 142 of the Constitution of India, we deem it fit and appropriate to quash and set aside the FIR No. 1098/2002 dt. 19.12.2002 registered with PS Malviya Nagar and the Chargesheet dt. 27.07.2004.

20. Both the Criminal Appeals are accordingly allowed.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 346 : 2025 INSC 805

Union of India
v.
M/s Kamakhya Transport Pvt. Ltd. Etc. Etc.

(Civil Appeal No(s). 7376-7379 of 2025)

05 June 2025

[Sanjay Karol* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the Courts below had rightly held that the Railway authorities could not have raised the demand notice after the delivery of goods.

Headnotes†

Railways Act, 1989 – s.66 – Power to require statement relating to the description of goods – Appellant raised demand notices alleging misdeclaration of goods, for consignments sent through the Railways – Respondents paid the demands raised but sought refund of the amount paid contending that the demand notices issued after the delivery of the goods were illegal – Claim allowed by Railway Tribunal – Appeals dismissed by High Court – Interference with:

Held: A consignee/owner of goods/person having charge of goods who has brought goods for the purpose of carriage has to give the Railway authorities a written statement regarding the description of the goods, to enable them to charge the appropriate rate of carriage – Under sub-sec.(4), if the statement is found to be materially false, the Railway authority is empowered to charge the goods at the required rate – No reference is made to the stage at which such a charge can be made, i.e., either before or after delivery – Thus, the legislative intent is to permit levy of charge under this Section, at either stage and not at a specific one – High Court erred in holding that penal charges can only be applied prior to the delivery of goods – Impugned order set aside – Railway Claims Tribunal Act, 1987. [Paras 14, 18, 20]

Case Law Cited

Jagjit Cotton Textile Mills v. Chief Commercial Superintendent N.R. and Ors. **[1998] 2 SCR 1065 : (1998) 5 SCC 126 – referred to.**

Union of India v. Megha Technical & Engineers Pvt. Limited, **Decision of Gauhati High Court in W.A. Nos. 71-74 of 2013 – referred to.**

* Author

List of Acts

Railways Act, 1989; Railway Claims Tribunal Act, 1987.

List of Keywords

Description of goods; Misdeclaration of goods; Consignments sent through the Railways; Demand notices; Demand notices issued after the delivery of the goods; Goods for carriage; Appropriate rate of carriage; Levy of charge; Stage of levy of charge; Before or after delivery; Railway authorities; Railway Claims Tribunal; Refund; Punitive charges after delivery of goods; Consignee; Owner of goods; Person having charge of goods; Penal charges; Prior to the delivery of goods.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 7376-7379 of 2025

From the Judgment and Order dated 20.12.2021 passed by the Gauhati High Court in MFA Nos. 80 and 57 of 2016 and MFA Nos. 29 and 28 of 2017

Appearances for Parties

Advs. for the Appellant:
K.M. Nataraj, A.S.G., Amrish Kumar, Mrs. Ameyavikrama Thanvi, Vatsal Joshi, B.k.satija, Chinmayee Chandra, Gaurang Bhushan, Sudarshan Lamba.

Advs. for the Respondents:
Divyansh Rathi, Himanshu Makkar, Gunjan Kumar.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave granted.

2. The present appeals arise from the final judgment and order dated 20th December 2021 passed by the Gauhati High Court in MFA Nos.80 of 2016, 57 of 2016, 29 of 2017 and 28 of 2017 respectively,

whereby the order dated 19th January 2016 of the Railway Claims Tribunal, Guwahati Bench in OA Nos.229/12, 184/12, 228/12 and 185/2012 respectively came to be affirmed.

Brief facts

3. The brief facts giving rise to this appeal are that the Appellant raised demand notices of varied amounts dated 13th October 2011, 7th April 2012, 29th October 2011, as also 7th April 2012 respectively against the respondents, alleging mis-declaration of goods; for consignments sent through the Indian Railways. The respondents paid the demands raised and thereafter, preferred separate claim petitions under Section 16 of the Railway Claims Tribunal Act, 1987, before the Railway Claims Tribunal[1], Guwahati Bench, seeking a refund of the amount paid. It was stated therein that the demand notices being issued after the delivery of the goods were illegal in view of Sections 73 and 74 of the Railways Act, 1989[2].

4. The Tribunal, allowed the claim petitions *vide* a common order dated 19th January 2016, and directed for refund of the amount paid in the following manner, along with interest @ 6% per annum :

Claimant (Respondent herein)	O.A. number	Amount refunded
C.M. Traders	184/12	Rs. 4,47,965/-
Vinayak Logistics	185/12	Rs. 4,97,342/-
Kamakhya Transport Pvt. Ltd.	228/12	Rs. 3,07,902/-
	229/12	Rs. 15,12,959/-

5. The Tribunal placed reliance on the judgment of the Gauhati High Court in ***Union of India v. Megha Technical & Engineers Pvt. Limited***[3], whereby the Court had held that a demand under Section 83 of the Act has to be raised before delivery of the goods, to conclude that the Appellant could not have imposed punitive charges, after delivery of goods to the consigner and if such action was required, then the principles of natural justice have to be followed.

1 Hereafter "the Tribunal"

2 Hereafter "the Act"

3 W.A. Nos. 71 – 74 of 2013, Gauhati High Court.

6. Aggrieved thereof, the appellant, preferred an appeal before the High Court of Gauhati, stating therein that the Tribunal failed to consider that the consignments were booked by declaring the items to be one category, however, the loaded items were found to be different from the category declared.

7. The High Court, *vide* its impugned judgment and order, dismissed the appeals of the appellant. The Court made the following observations :

   (a) Both Section 74 of the Act and Rule 1820 of the Railway Commercial Manual II, 1991, permit recovery of dues before the delivery of goods.

   (b) The scope of Section 83 of the Act has been dealt by this Court in ***Jagjit Cotton Textile Mills v. Chief Commercial Superintendent N.R. and Ors.***[4], wherein it was held that punitive charges are required to be raised by the Railway authorities before delivery is caused.

   (c) From a perusal of Sections 73 and 78 of the Act, it is revealed that penal charges can be claimed prior to the delivery of goods, but not thereafter.

8. Dissatisfied, the appellant-Railway authorities are now before us. We have heard the learned Additional Solicitor General for the appellant and the learned counsel for the respondents.

Case of the Appellant - Railway Authorities

9. The significant point raised by the appellant is that the Courts below have erroneously treated the dispute at hand, as one dealing with overloading of the wagon which is governed by Section 73 of the Act. Meanwhile, the case of the appellant is that the consignments were found to be different, from what had been declared, and, consequently, the appellant imposed a penalty under Section 66 of the Act.

10. Furthermore, the High Court's reliance on ***Jagjit Cotton Textile*** (supra), is erroneous, since the factual matrix of that case pertained to overloading of the wagon and right to lien. Moreover, the High Court has failed to take into consideration, the plain language of Section 83, which permits detainment of goods after delivery.

4 (1998) 5 SCC 126.

Case of the Respondents

11. We have perused the written submissions filed by the respondents. The significant point raised by the respondents is that since the demand notices were raised after the delivery of goods, Section 66 of the Act would not be applicable, and the Courts below have rightly held in favor of the Respondents.

Issue for consideration

12. In the attending facts and circumstances, the question which arises for consideration before this Court is whether the Courts below have rightly held that the Railway authorities could not have raised the demand notice after the delivery of goods.

Our view

13. As per the appellant - the Railway authorities, Section 66 is applicable which is found in Chapter IX of the Act, which seeks to regulate the carriage of goods. Section 66 reads as follows:

> **"66. Power to require statement relating to the description of goods.—**
>
> (1) The owner or a person having charge of any goods which are brought upon a railway for the purposes of carriage by railway, and the consignee or the endorsee of any consignment shall, on the request of any railway servant authorised in this behalf, deliver to such railway servant a statement in writing signed by such owner or person or by such consignee or endorsee, as the case may be, containing such description of the goods as would enable the railway servant to determine the rate for such carriage.
>
> (2) If such owner or person refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to refuse to accept such goods for carriage unless such owner or person pays for such carriage the highest rate for any class of goods.
>
> (3) If the consignee or endorsee refuses or neglects to give the statement as required under sub-section (1) and

> refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to charge in respect of the carriage of the goods the highest rate for any class of goods.
>
> (4) If the statement delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of such goods such rate, not exceeding double the highest rate for any class of goods as may be specified by the Central Government.
>
> (5) If any difference arises between a railway servant and such owner or person, the consignee or the endorsee, as the case may be, in respect of the description of the goods for which a statement has been delivered under sub-section (1), the railway servant may detain and examine the goods.
>
> (6) Where any goods have been detained under sub-section (5) for examination and upon such examination it is found that the description of the goods is different from that given in the statement delivered under sub-section (1), the cost of such detention and examination shall be borne by such owner or person, the consignee or the endorsee, as the case may be, and the railway administration shall not be liable for any loss, damage or deterioration which may be caused by such detention or examination."
>
> (Emphasis supplied)

14. It is borne from the above that a consignee/owner of goods/person having charge of goods who has brought goods for the purpose of carriage has to give the Railway authorities a written statement regarding the description of the goods, to enable them to charge the appropriate rate of carriage. Under sub-section (4), if the statement is found to be materially false, the Railway authority is empowered to charge the goods at the required rate. No reference is made to the stage at which such a charge can be made, i.e., either before or after delivery. Consequently, it can be seen that the legislative intent had to be, to permit levy of charge under this Section, at either stage and not at a specific one.

15. Meanwhile, the High Court has considered Sections 73 and 78 of the Act, relating to the overloading of the wagon. They read as follows :

> "**73**. Punitive charge for overloading a wagon.—Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:
>
> Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.
>
> .....
>
> **78**. Power to measure, weigh, etc.—Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to— (i) re-measure, re-weigh or re-classify any consignment; (ii) re-calculate the freight and other charges; and (iii) correct any other error or collect any amount that may have been omitted to be charged."
>
> (Emphasis supplied)

16. We have perused the demand notices annexed as Annexure P-1 dated 13th October, 2011, Annexure P-2 dated 29th October, 2011, Annexure P-3 dated 7th April, 2012 and Annexure P-4 dated 7th April, 2012. It is evident from the contents thereof that the demand was raised for misdeclaration by the respondents. No reference has been made to the overloading of wagon, to which Section 73 applies. More so, even the claim petitions do not propose that the demand notices have been for the overloading of wagon. T herefore, in our view, Section 66 applies to the present *lis*.

17. Furthermore, we are not inclined to accept the submission of the respondents that the demand notices annexed to the petition are not

genuine in nature. No evidence has been led to that effect and, more over, the claim petitions are silent on such averments. Therefore, in the absence of evidence to the contrary, we are inclined to find the demand notices to be genuine.

18. Before parting with the appeals at hand, we notice that the High Court has held that penal charges can only be applied prior to the delivery of goods on the basis of the exposition in ***Jagjit Cotton Textile*** (supra). The respondents have also placed reliance on the same judgment to submit that penal charges can be imposed only prior to the delivery of goods. We find such an approach to be erroneous and not in furtherance of the exposition in ***Jagjit Cotton Textile*** (supra). The relevant paragraph, as relied upon by the respondents, is as follows :

> "**22**. Again Section 54(1) states that the Railway Administration may impose conditions not inconsistent with the Act or with any general rules made thereunder, "with respect to the receiving, forwarding or delivery of any animal or goods". In our view one such "condition" could be by directing that penal charges could be collected before delivering the goods."

19. From a perusal of the above, it is clear that when this Court observed "*one such 'condition' could be by directing that penal charges could be collected before delivering the goods*", it was a suggestion, to explain the conditions that could be imposed by the Railway Administration under Section 54(1). Moreover, the above exposition in ***Jagjit Cotton Textile*** (supra), was made in the context of Section 54 only, while the facts of this case pertain to Section 66 of the Act.

20. In view of the above, the impugned order dated 20th December, 2021 passed by the Gauhati High Court in MFA Nos.80 of 2016, 57 of 2016, 29 of 2017 and 28 of 2017, is hereby set aside. In the attending facts and circumstances of this case, the civil appeals are allowed.

Pending applications, if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 354 : 2025 INSC 809

Dhanya M
v.
State of Kerala & Ors.

(Criminal Appeal No. 2897 of 2025)

06 June 2025

[Sanjay Karol* and Manmohan, JJ.]

Issue for Consideration

Whether the preventive detention of the detenu is in accordance with law.

Headnotes†

Kerala Anti-Social Activities (Prevention) Act, 2007 – ss.3, 2(j), (o) – Order of detention u/s.3(1), if sustainable:

Held: No – s.2(j) states that a person who indulges in activities "harmful to maintenance of public order" is covered by the Act – In the present case, the facts and circumstances do not fall under the category of a public order situation – The detention order does not state any reason as to how the actions of the detenu were against the public order of the State – Given the extraordinary nature of the power of preventive detention, no reasons were assigned by the detaining authority, as to why and how the actions of the detenu warranted the exercise of such an exceptional power – State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention – Exercise of power u/s.3 was not justified in law – Order of detention and the impugned judgment of the High Court affirming the said order passed by the District Magistrate u/s.3(1), are set aside – Kerala Money Lenders Act, 1958 – Kerala Prohibition of Charging Exorbitant Interest Act, 2012 – Penal Code, 1860 – SC/ST Prevention of Atrocities Act, 1989. [Paras 17, 19, 21-23]

Kerala Anti-Social Activities (Prevention) Act, 2007 – ss.2(j), (o), 3, 7, 12 – Scheme and object of the Act – Discussed. [Paras 12-15]

Constitution of India – Art.22 – Preventive detention – Extraordinary power, exercise of:

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* Author

Held: Preventive detention is an extraordinary power that must be used sparingly – It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature – The power of preventive detention is an exception to Art.21 and, therefore, must be applied as an exception to the main rule and only in rare cases. [Para 9]

Case Law Cited

Rekha v. State of Tamil Nadu **[2011] 4 SCR 740 : (2011) 5 SCC 244;** *Mortuza Hussain Choudhary v. State of Nagaland and Ors.,* **2025 SCC Online SC 502;** *Icchhu Devi v. Union of India* **[1981] 1 SCR 640 : (1980) 4 SCC 531;** *Banka Sneha Sheela v. State of Telengana* **[2021] 8 SCR 978 : (2021) 9 SCC 415;** *SK. Nazneen v. State of Telangana* **(2023) 9 SCC 633;** *Nenavath Bujji etc. v. State of Telangana & Ors.,* **2024 SCC OnLine SC 367;** *Ameena Begum v. State of Telengana* **[2023] 11 SCR 958 : (2023) 9 SCC 587 – referred to.**

List of Acts

Kerala Anti-Social Activities (Prevention) Act, 2007; Kerala Money Lenders Act, 1958; Kerala Prohibition of Charging Exorbitant Interest Act, 2012; Penal Code, 1860; SC/ST Prevention of Atrocities Act, 1989; Constitution of India.

List of Keywords

Preventive detention; Detenu; Order of detention; Detention order; "harmful to maintenance of public order"; Public order situation; 'goonda'; 'notorious goonda'; 'known goonda'; District Magistrate; Detaining authority; Cancellation of bail of the detenu; Writ of Habeas Corpus; State of Kerala; Anti-social activities; Illegal detention; Power of preventive detention; Extraordinary power; Detention order set aside.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2897 of 2025

From the Judgment and Order dated 04.09.2024 of the High Court of Kerala at Ernakulam in WPCRL No. 874 of 2024

Appearances for Parties

Advs. for the Appellant:
Ajay Prabhu S, Amit Sangwan, Sibi Kargil, Ms. R. Shase.

Advs. for the Respondents:
Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

2. The present appeal arises from the final judgment and order dated 4th September, 2024 passed by the High Court of Kerala at Ernakulam in WP(CRL)No.874/2024, whereby the order dated 20th June, 2024 passed by the District Magistrate, Palakkad, directing the husband of the appellant, Rajesh[1] to be kept under preventive detention in prison in terms of Section 3 of Kerala Anti-Social Activities (Prevention) Act, 2007[2] was affirmed.

3. The brief facts giving rise to the present appeal are that the detenu is running a registered lending firm in the name of 'Rithika Finance'. On 20th June, 2024, the District Magistrate, Palakkad, issued an order of detention under Section 3(1) of the Act, in furtherance of Recommendation No.54/Camp/2024-P-KAA(P)A dated 29th May, 2024 by the Palakkad District Police Head. It was stated therein that the detenu is a 'notorious goonda' of the district and is a threat to the society at large. The following cases were considered for such declaration:

   i. Crime No.17/2020 under Section 17 of Kerala Money Lenders Act, 1958, and Section 3, 9(1)(a) of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, at the Kasaba Police Station.

   ii. Crime No.220/2022 under Section 3 read with Section 17 of Kerala Money Lenders Act, 1958,

1 Hereinafter "detenue"

2 Hereinafter "the Act"

and Section 9(a)(b) read with Section 3 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, at the Town South Police Station.

iii. Crime No.221/2022 under Section 294(b), 506 (I) of the Indian Penal Code, 1860, and Section 3 read with Section 17 of Kerala Money Lenders Act, 1958, and Section 9 (a)(b) read with Section 3 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012.

iv. Crime No.401/2024 under Sections 341, 323, 324, 326 of the Indian Penal Code, 1860; Section 17 of Kerala Money Lenders Act, 1958; Section 4 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, and Section 3(2), (va), 3(1)(r), 3(1)(s) of the SC/ST Prevention of Atrocities Act, 1989.

4. Consequently, the detenu was taken into custody. Aggrieved by the order of detention dated 20th June, 2024, the appellant filed a writ petition before the High Court of Kerala assailing the order of detention and praying for a writ of Habeas Corpus to Respondent No.1 - the State of Kerala, against the illegal detention of her husband, Rajesh.

5. Vide the impugned Judgment and Order, the High Court of Kerala dismissed the challenge laid to the order of detention with the following findings:

a. Whether the cases against the detenu will result in an acquittal, is not an exercise that can be carried out by the detaining authority while passing the order of preventive detention.

b. In writ jurisdiction under Article 226 of the Constitution, the Court does not sit in an appeal against decisions taken by the authorities on the basis of the materials placed before it.

c. Procedural safeguards have been complied with in the impugned action.

6. Aggrieved thereof, the appellant has preferred an appeal before this Court. The significant point of challenge taken by the appellant is that in all cases against the detenu, he is on bail and is complying with the conditions laid down by the Court.

7. We have heard the learned counsel for the parties and perused the written submissions filed. *Vide* order dated 10th December 2024, the detenu was released by this Court, since the maximum period of detention under the Act was completed.

8. The question that arises for consideration before this Court is - whether the preventive detention of the detenu is in accordance with law.

9. It is well settled that the provision for preventive detention is an extraordinary power in the hands of the State that must be used sparingly. It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature. The power of preventive detention finds recognition in the Constitution itself, under Article 22(3)(b). However, this Court has emphasized in ***Rekha v. State of Tamil Nadu***[3] that the power of preventive detention is an exception to Article 21 and, therefore, must be applied as such, as an exception to the main rule and only in rare cases.

10. The above position was succinctly summarized by this Court, recently in ***Mortuza Hussain Choudhary v. State of Nagaland and Ors.***[4], as follows :

> "2. Preventive detention is a draconian measure whereby a person who has not been tried and convicted under a penal law can be detained and confined for a determinate period of time so as to curtail that person's anticipated criminal activities. This extreme mechanism is, however, sanctioned by Article 22(3)(b) of the Constitution of India. Significantly, Article 22 also provides stringent norms to be adhered to while effecting preventive detention. Further, Article 22 speaks of the Parliament making law prescribing the conditions and modalities relating to preventive detention. The Act of 1988 is one such law which was promulgated by the Parliament authorizing preventive detention so as to curb illicit trafficking of narcotic drugs and psychotropic substances. Needless to state, as preventive deprives a person of his/her individual liberties by detaining him/her

3 (2011) 5 SCC 244

4 2025 SCC Online SC 502

> for a length of time without being tried and convicted of a criminal offence, the prescribed safeguards must be strictly observed to ensure due compliance with constitutional and statutory norms and requirements."
>
> (Emphasis supplied)

11. Furthermore, given the extraordinary nature of the power of preventive detention, this Court in ***Icchhu Devi v. Union of India***[5], placed the burden on the detaining authority to prove that such actions are in conformity with the procedure established by law, in consonance with Article 21. Similarly, in ***Banka Sneha Sheela v. State of Telengana***[6], this Court reiterated that an action of preventive detention has to be checked with Article 21 of the Constitution and the statute in question.

12. At this stage, we must advert to the scheme and object of the Act, under which the impugned detention order has been passed. The object of the Act is to provide for effective prevention of certain anti-social activities in the State of Kerala. Section 2(j) defines 'goonda' as a person who indulges in activities that are harmful to the maintenance of public order, either directly or indirectly. It includes persons who are bootleggers, counterfeiters, drug offenders, and loan sharks, amongst others. Section 2(o) lays down the classification for a 'known goonda', which is a goonda who has been -

    i. Found guilty of an offence which falls under the categories mentioned in Section 2(j); or

    ii. Found in any investigation or competent Court on complaints initiated by persons in two separate instances not forming part of the same transaction, to have committed any act within the meaning of the term 'goonda' as defined in Section 2(j).

13. Under Section 3 of the Act, the District Magistrate so authorized or the Government, may make an order directing detention of a 'known goonda', to prevent commission of anti-social activities within the State of Kerala.

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5 (1980) 4 SCC 531

6 (2021) 9 SCC 415

14. Section 7 mandates disclosure of the grounds of detention to the detenu along with relevant documents within five days of the preventive detention.

15. Section 12 of the Act specifies that the period of detention for any person shall not exceed six months.

16. Coming to the attending facts and circumstances, we are of the considered view that the exercise of power under Section 3 of the Act, was not justified in law.

17. From perusal of Section 2(j), it is evident that a person who indulges in activities "harmful to maintenance of public order" is sought to be covered by the Act. This Court in ***SK. Nazneen v. State of Telangana***[7] had emphasized on the distinction between public order as also law and order situations :

> "**18.** In two recent decisions [*Banka Sneha Sheela* v. *State of Telangana*, (2021) 9 SCC 415 : (2021) 3 SCC (Cri) 446; *Mallada K. Sri Ram* v. *State of Telangana*, (2023) 13 SCC 537 : 2022 SCC OnLine SC 424] , this Court had set aside the detention orders which were passed, under the same Act i.e. the present Telangana Act, primarily relying upon the decision in *Ram Manohar Lohia* [*Ram Manohar Lohia* v. *State of Bihar*, 1965 SCC OnLine SC 9] and holding that the detention orders were not justified as it was dealing with a law and order situation and not a public order situation."
>
> (Emphasis supplied)

18. Similarly, in ***Nenavath Bujji etc. v. State of Telangana & Ors.***[8], this Court observed :

> "**32.** The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and could be affected by only such contravention,

7 (2023) 9 SCC 633

8 2024 SCC OnLine SC 367

> which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different."
>
> (Emphasis supplied)

19. In consonance with the above expositions of law, in our view, the attending facts and circumstances do not fall under the category of a public order situation. The observations made in the detention order do not ascribe any reason as to how the actions of the detenu are against the public order of the State. As discussed above, given the extraordinary nature of the power of preventive detention, no reasons are assigned by the detaining authority, as to why and how the actions of the detenu warrant the exercise of such an exceptional power.

20. Moreover, it has been stated therein by the authority that the detenu is violating the conditions of bail imposed upon him in the cases that have been considered for passing the order of detention. However, pertinently, no application has been filed by the respondent-State in any of the four cases, alleging violation of such conditions, if any, and moreover, have not even been spelt out here.

21. This Court in ***SK. Nazneen*** (supra), had observed that the State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention, which is not the appropriate remedy. Similarly, in ***Ameena Begum v. State of Telengana***[9], this Court observed :

> "59. … It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention."
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> 60. In Vijay Narain Singh v. State of Bihar [Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : 1984 SCC (Cri) 361], Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)
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> > 32. … It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised

9 (2023) 9 SCC 587

> in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."
>
> (Emphasis supplied)

22. Keeping in view the above expositions of law, we have no doubt that the order of detention cannot be sustained. The circumstances pointed out in the order by the detaining authority may be ground enough for the State to approach the competent Courts for cancellation of bail, but it cannot be said that the same warranted his preventive detention. We clarify that if such an application for cancellation of the detenu's bail is made by the respondent-State, the same must be decided uninfluenced by the observations made hereinabove.

23. Therefore, the order of detention dated 20th June, 2024 and the impugned judgment dated 4th September, 2024 passed by the High Court of Kerala at Ernakulam in WP(CRL.) No.874/2024 are hereby set aside. In the attending facts and circumstances of this case, the appeal is allowed.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 364 : 2025 INSC 806

M/s Balaji Traders
v.
The State of U.P. & Anr.

(Criminal Appeal No. 2899 of 2025)

05 June 2025

[Sanjay Karol* and Manoj Misra, JJ.]

Issue for Consideration

Whether the High Court was justified in observing that since no offence of extortion u/s.383 IPC is made out, consequently, no offence u/s.387 IPC would be made out.

Headnotes†

Penal Code, 1860 – ss.383, 387 – On 22.05.2022, when the complainant was heading towards his house, the accused, along with three unknown persons carrying rifles in their hands, stopped and threatened him to close down his business of betel nut – They further threatened that he could carry on the business only if he would pay five lakhs per month to the accused person – On the complainant's refusal, the accused persons not only beat him but also tried to kidnap him – Complainant filed complaint u/s.200 CrPC – Trial Court found a *prima facie* case against the accused person and issued summons to him u/s.387 IPC – Accused person filed application u/s.482 CrPC before the High Court for quashing of summoning order – The High Court quashed the summoning order – Correctness:

Held: A glance over all the Sections related to extortion would reveal a clear distinction being carried out between the actual commission of extortion and the process of putting a person in fear for the purpose of committing extortion – It can be said in terms of ss.386 (an aggravated form of 384 IPC) and 387 IPC that the former is an act in itself, whereas the latter is the process; it is a stage before committing an offence of extortion – The Legislature was mindful enough to criminalize the process by making it a distinct offence – Therefore, the commission of an offence of extortion is not *sine qua non* for an offence under this Section – It is safe to

* Author

deduce that for prosecution u/s.387 IPC, the delivery of property is not necessary – As far as quashing is concerned, it is settled that the power of quashing should be exercised sparingly with circumspection in the 'rarest of rare cases' and not as an ordinary rule – The reasoning adopted by the High Court is, on the face of it, flawed and misplaced – When the Legislature has created two separate offences with distinct ingredients and punishments, then assigning the essential ingredient of one to another is not a correct approach adopted by the High Court – Putting a person in fear would make an accused guilty of an offence u/s.387 IPC; it need not satisfy all the ingredients of extortion provided u/s.383 IPC – The instant case is not fit for quashing as the two essential ingredients for prosecution u/s.387 IPC have been *prima facie* disclosed in the complaint, (a) that the complainant has been put in fear of death by pointing a gun towards him; and (b) that it was done to pressurize him to deliver Rs.5 lakhs – Thus, the impugned order dated 28.06.2024 is set aside, and the proceedings emanating from Complaint Case are restored to the file of the Trial Court. [Paras 9, 10, 18, 25, 26, 27]

Case Law Cited

Tolaram Relumal v. State of Bombay **[1955] 1 SCR 158 : (1954) 1 SCC 961 – followed.**

R.S. Nayak v. A.R. Antulay **[1986] 2 SCR 621 : (1986) 2 SCC 716;** *B.N. John v. State of U.P.,* **2025 SCC OnLine SC 7;** *Dalip Kaur v. Jagnar Singh* **[2009] 10 SCR 264 : (2009) 14 SCC 696;** *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra* **[2021] 4 SCR 1044 : (2021) 19 SCC 401;** *M. Narayanan Nambiar v. State of Kerala,* **1962 SCC OnLine SC 85;** *R. Kalyani v. Janak C. Mehta* **[2008] 14 SCR 1249 : (2009) 1 SCC 516 – relied on.**

Dhananjay @ Dhandhanjay Kumar Singh v. State of Bihar **[2007] 2 SCR 206 : (2007) 14 SCC 768;** *State of Haryana v. Bhajan Lal* **[1990] Supp. 3 SCR 259 : (1992) Supp. 1 SCC 335;** *Inder Mohan Goswami v. State of Uttaranchal* **[2007] 10 SCR 847 : (2007) 12 SCC 1;** *Motibhai Fulabhai Patel & Co. v. R. Prasad,* **1968 SCC OnLine SC310;** *Dilip Kumar Sharma v. State of M.P* **[1976] 2 SCR 289 : (1976) 1 SCC 560;** *Radha Ballabh v. State of U.P* **(1995) Supp. 3 SCC 119;** *Gursharan Singh v. State of Punjab* **[1996] Supp. 5 SCR 705 : (1996) 10 SCC 190;** *Somasundaram v. State* **[2020] 10 SCR 27 : (2020) 7 SCC 722 – referred to.**

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List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Extortion; Section 387 of IPC; Actual act of extortion; Putting a person in fear for the purpose of committing extortion; Delivery of property; Ingredients of extortion; Quashing; Power of quashing.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2899 of 2025

From the Judgment and Order dated 28.06.2024 of the High Court of Judicature at Allahabad in A482 No. 19550 of 2024

Appearances for Parties

Advs. for the Appellant:
Anilendra Pandey, Ms. Priya Kashyap, Raj Ranjay Singh.

Advs. for the Respondents:
Shariq Ahmed, Tariq Ahmed, Sunil Kumar Verma, Vinay Vats, Mohammad Modassir Shams, M/s. Ahmadi Law Offices.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

1. The instant appeal, preferred by appellant-complainant, arises out of the judgment and order dated 28th June, 2024 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.19550/2024 whereby the summoning order dated 28th August, 2023 as well as entire proceedings of Complaint Case

No.58 of 2022 under Section 387 of the Indian Penal Code, 1860[1] has been quashed.

2. Brief facts that led to the present appeal are :

The complainant, namely, Prof. Manoj Kumar Agrawal, is a proprietor of a firm M/s. Balaji Traders, carrying out the business of betel nut leaves. Sanjay Gupta[2], allegedly started a business under the same name, and litigations are pending between the parties with respect to Trademark and Copyright claims. On 22nd May, 2022, when the complainant was heading towards his house, the accused, along with three unknown persons carrying rifles in their hands, stopped and threatened him to close down his business of betel nut. They further threatened that he could carry on the business only if he would pay five lakhs per month to the accused person. On the complainant's refusal, the accused persons not only beat him but also tried to kidnap him. On failure of police to register First Information Report[3], he approached the Court by filing a complaint u/s 200 of the Code of Criminal Procedure, 1973[4].

3. Pursuant to this complaint, the Trial Court[5] after analyzing the oral and documentary evidence available, found a prima facie case against the accused person and issued summons to him u/s 387 IPC.

4. Being aggrieved, the accused person approached the High Court by filing a Miscellaneous Application under section 482 CrPC for quashing of summoning order dated 28th August, 2023.

5. The High Court, while referring to various judicial pronouncements, observed that to make out a case of extortion, one of the essential ingredients is to deliver any property or valuable security under threat by the complainant to the accused; and that such ingredient was missing in the instant case as no money was handed over to the accused person. It further observed that since no offence of extortion under Section 383 IPC is made out, consequently, no offence under Section 387 IPC would be made out, thus, finding it a fit case to be quashed.

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1 Hereinafter referred to as 'IPC'

2 Hereinafter 'accused'

3 FIR

4 Hereinafter referred to as 'CrPC'

5 Court of Additional Sessions Judge/Special Judge(Dacoit Prabhav Area) Jalaun Place Orai

SUBMISSIONS OF THE PARTIES

6. Learned Counsel for the petitioner submits that the Trial Court rightly issued summons on the basis of the statements of witnesses and the complainant, and the High Court wrongly relied on the judgments dealing with 384 IPC and not 387 IPC.

7. Learned Counsel for respondent No.2, while relying on ***Dhananjay @ Dhandhanjay Kumar Singh v. State of Bihar***[6] submits that since the essential ingredient of extortion, i.e., delivery of property, is not met, consequently, the charge under Section 387 IPC cannot be sustained. Respondent No.2, who is running a similar business to that of the complainant, had lodged an FIR against the complainant, as such the instant FIR is directly linked to the respondent's enforcement of his Intellectual Property Rights and made as a counterblast to the respondent's lawful actions. Further reliance is placed on ***State of Haryana v. Bhajan Lal***[7]; and ***Inder Mohan Goswami v. State of Uttaranchal***[8], submitting that criminal prosecution should not be used as an instrument of harassment, or for seeking personal vendetta with an ulterior motive of pressurizing the accused. Further, placing reliance on ***Motibhai Fulabhai Patel & Co. v. R. Prasad***[9]; ***Dilip Kumar Sharma v. State of M.P.***[10]; and ***Tolaram Relumal v. State of Bombay***[11], it is submitted that since penal statutes have to be construed and interpreted strictly, section 387 IPC is an aggravated form of extortion and cannot be stretched to cover mere threats, without any delivery of property or valuable security.

POSITION OF LAW

8. Before adverting to the facts of the present case, it is imperative to acknowledge that IPC provides for offences, their ingredients, and their distinct punishments. The relevant Sections of extortion defined in Chapter XVII of IPC are reproduced below :

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6 (2007) 14 SCC 768

7 (1992) Supp. 1 SCC 335

8 (2007) 12 SCC 1

9 1968 SCC OnLine SC 310

10 (1976) 1 SCC 560

11 (1954) 1 SCC 961

"Section 383 defines Extortion: Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Section 384 Punishment for extortion: Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both;

Section 385 Putting person in fear of injury in order to commit extortion-Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 386 Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Section 387 Putting person in fear of death or of grievous hurt, in order to commit extortion: Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to

> commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under Section 377 of this Code, may be punished with imprisonment for life.
>
> Section 389. Putting person in fear or accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life."
>
> (Emphasis Supplied)

9. A glance over all the Sections related to extortion would reveal a clear distinction being carried out between the actual commission of extortion and the process of putting a person in fear for the purpose of committing extortion.

10. Section 383 defines extortion, the punishment therefor is given in Section 384. Sections 386 and 388 provide for an aggravated form of extortion. These sections deal with the actual commission of an act of extortion, whereas Sections 385, 387 and 389 IPC seek to punish for an act committed for the purpose of extortion even though the act of extortion may not be complete and property not delivered. It is in the process of committing an offence that a person is put in fear of injury, death or grievous hurt. Section 387 IPC provides for a stage prior to committing extortion, which is putting a person in fear of death or grievous hurt '*in order to commit extortion',* similar to Section 385 IPC. Hence, Section 387 IPC is an aggravated form of 385 IPC, not 384 IPC.

11. Having deliberated upon the offence of extortion and its forms, we proceed to analyze the essentials of both Sections, i.e., 383 and 387 IPC, the High Court dealt with.

12. The essential ingredients of extortion under Section 383 IPC, as laid down by this Court in ***R.S. Nayak v. A.R. Antulay***[12], are :

> "**60.** …The main ingredients of the offence are:
>
> (*i*) the accused must put any person in fear of injury to that person or any other person;
>
> (*ii*) the putting of a person in such fear must be intentional;
>
> (*iii*) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and
>
> (*iv*) such inducement must be done dishonestly.
>
> Before a person can be said to put any person in fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. …"

13. But a perusal of Section 387 IPC reveals its essential ingredients, to be :

    (a) Accused must have put a person in fear of death or grievous hurt;

    (b) Such an act must have been done *in order to* commit extortion;

    The expression *'in order to*' has been defined in the following ways:

> "*in order to*" : for the purpose of[13]
>
> "*in order to*" : with the purpose of doing[14]

    '*in order to commit extortion*' clearly reveals that it is in the process of committing the offence of extortion.

14. Thus, it can be said in terms of Sections 386 (an aggravated form of 384 IPC) and 387 IPC that the former is an act in itself, whereas

12 (1986) 2 SCC 716

13 *Merriam-Webster*

14 Concise Oxford English Dictionary, Tenth Edition 1999

the latter is the process; it is a stage before committing an offence of extortion. The Legislature was mindful enough to criminalize the process by making it a distinct offence. Therefore, the commission of an offence of extortion is not *sine qua non* for an offence under this Section. It is safe to deduce that for prosecution under Section 387 IPC, the delivery of property is not necessary.

15. *In* ***Radha Ballabh v. State of U.P.***[15], this Court, while dealing with a case wherein ransom was demanded for releasing the child, observed that it could not be punishable under Section 386 IPC as no ransom was extorted. Therefore, the conviction was correctly made under Section 387 IPC. Similarly, in ***Gursharan Singh v. State of Punjab***[16], the Court upheld the conviction under Section 387 IPC where money extorted was not paid.

16. Further, in ***Somasundaram v. State***[17] a three-Judge Bench of this Court upheld the conviction under Section 387 IPC, along with other provisions, on the facts, where the deceased was tied with an iron chain and rope to a cot and threatened to part with crores of rupees or else execute the document in their favour. On his failure to do so, the deceased was killed. Thus, even though there was no delivery of property, the conviction was upheld by observing that Section 387 IPC is a heightened, more serious form of the offence of extortion in which the victim is put in fear of death or grievous hurt.

17. After going through the penal provisions related to extortion, it is also imperative to peruse the necessary principles of quashing, laid down by this Court through various judicial pronouncements which govern the jurisdiction of the High Court under Section 482 CrPC.

18. This Court in ***B.N. John v. State of U.P.***[18], reiterated several principles of quashing criminal cases/complaints/FIR as laid down, back in the days in ***Bhajan Lal*** (supra) :

> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of

15 (1995) Supp. 3 SCC 119

16 (1996) 10 SCC 190

17 (2020) 7 SCC 722

18 2025 SCC OnLine SC 7

decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under

which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In ***Dalip Kaur v. Jagnar Singh***[19] -

11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta [(2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567] is attracted, which are as under: (SCC p. 523, para 15)

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

19 (2009) 14 SCC 696

> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."
>
> (Emphasis supplied)

A three-Judge Bench of this Court, while summarizing the principles of quashing in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra***[20], has held that the power of quashing should be exercised sparingly with circumspection in the 'rarest of rare cases' and not as an ordinary rule :

> "**13.4.** The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)
>
> **…**
>
> **13.7.** Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.
>
> **…**
>
> **13.15.** When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the Court has to permit the investigating agency/police to investigate the allegations in the FIR."

OUR VIEW

19. It is a well-settled principle of law that penal statutes must be given strict interpretation. The Court ought not to read anything into a statutory provision that imposes penal liability.

20 (2021) 19 SCC 401

20. A Constitution Bench of this Court in ***Tolaram Relumal*** *(supra)* has observed :

> **"8.** …and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent for the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in *London & North Eastern Railway Co.* v. *Berriman* [*London & North Eastern Railway Co.* v. *Berriman*, 1946 AC 278 at p. 295 (HL)] : (AC p. 295)
>
> > "… Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language."

21. In ***M. Narayanan Nambiar v. State of Kerala***[21], this Court reiterated the observations made by the Privy Council in respect of the interpretation of penal statutes :

> "**10.** A decision of the Judicial Committee in '*Francis Hart Dyke (Appellant) and Henry William Elliott, and the owners of the steamtug or Vessel* '*Gauntlet*' [Law Reports Privy Council Appeals (4) 1872, p. 184] cited by the learned counsel as an aid for construction neatly states the principle and therefore may be extracted : Lord Justice James speaking for the Board observes at p. 19:
>
> > "No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be

21 1962 SCC OnLine SC 85

> included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

22. A three-Judge Bench of this Court has also observed in ***Dilip Kumar Sharma*** (supra) that a penal provision must be strictly construed; that is to say, in the absence of clear, compelling language, the provision should not be given a wider interpretation.

23. This Court in ***R. Kalyani v. Janak C. Mehta***[22], while discussing the strict interpretation of penal statutes has held :

> "37. Maxwell in The Interpretation of Statutes (12th Edn.) says:
>
> > "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."
>
> 38. In Craies Statute Law (7th Edn. at p. 529) it is said that penal statutes must be construed strictly. At p. 530 of the said treatise, referring to U.S. v. Wiltberger [5 L Ed 37 : 18 US (5 Wheat.) 76 (1820)] it is observed, thus:

22 (2009) 1 SCC 516

> "The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

24. The scope of the provision cannot be extended by reading into it words which are not there. Section 387 IPC, being a penal provision, has to be strictly interpreted, and no condition/essential ingredient can be read into it that the Statute/Section does not prescribe. Since there is no ambiguity in the ingredients of Section 387 IPC, the observations of ***Tolaram Relumal*** (supra) as contended by the learned counsel appearing for Respondent No.2 would not come to his rescue.

25. The reasoning adopted by the High Court is, on the face of it, flawed and misplaced. When the Legislature has created two separate offences with distinct ingredients and punishments, then assigning the essential ingredient of one to another is not a correct approach adopted by the High Court. Nowhere does the Section say that extortion has to be committed while putting a person in fear of death or grievous hurt. Instead, it is the other way around, that is to say, putting a person in fear of death or grievous hurt to commit extortion. Extortion is not yet committed; it is in the process of committing it that a person is put in fear. Putting a person in fear would make an accused guilty of an offence under Section 387 IPC; it need not satisfy all the ingredients of extortion provided under Section 383 IPC. The High Court ought not to have relied on ***Dhananjay*** (supra) as that case, on the face of it, is clearly distinguishable on facts, the reason being it dealt with allegations of 384 IPC not 387 IPC, and discussed the elements of extortion.

26. Without going into the merits of the case, we are of the view that the instant case is not fit for quashing as the two essential ingredients for prosecution under Section 387 IPC, as discussed *supra* have been *prima facie* disclosed in the complaint, (a) that the complainant has been put in fear of death by pointing a gun towards him; and (b) that it was done to pressurize him to deliver Rs.5 lakhs. The High Court, while quashing, has wrongly emphasized the fact that the said amount was not delivered; it failed to consider whether the money/property was delivered or not, is not even necessary as the accused is not charged with Section 384 IPC. The allegations of putting a person in fear of death or grievous hurt would itself make him liable to be prosecuted under Section 387 IPC. The natural corollary thereof is that the allegation of the criminal case being a counterblast is negated.

27. With the aforesaid observations, the appeal is accordingly allowed. The impugned order dated 28th June, 2024 is set aside, and the proceedings emanating from Complaint Case No.58 of 2022 are restored to the file of the Trial Court. Parties are directed to appear before the Trial Court on 12th August, 2025. Parties are further directed to fully cooperate and the hearing is expedited.

Pending application(s), if any, are disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 380 : 2025 INSC 808

Greater Mohali Area Development Authority (GMADA) Through Its Estate Officer (H)
v.
Anupam Garg Etc.

(Civil Appeal No(s). 7392-93 of 2025)

04 June 2025

[Sanjay Karol* and Prasanna B. Varale, JJ.]

Issue for Consideration

Matter pertains to correctness of the order passed by the National Commission imposing liability on the Development Authority to pay for interest paid by the respondents-buyers for loans secured for the flat, on account of delay in delivery of possession of flats.

Headnotes†

Consumer Protection Act, 1985 – Compensation – Liability of the Development Authority to pay interest on the loan taken by the buyers for delay in delivery of flats/plots – On facts, consumer complaint by the buyer for refund of money paid on account of delay in delivery of flat – Direction by the State Commission to the Development Authority to refund the entire amount deposited by the buyers in respect of securing flats along with 8% interest and additional costs for mental harassment, litigation and the interest paid by buyers to the Bank for the loans secured to arrange for the funds to be invested in the project – Appeal thereagainst dismissed – Interference with, as regards the award of interest on the loan taken by buyers to be paid to the Development Authority:

Held: Commission was to compute an amount as compensation, in which one of the factors would be that in order to secure a property in the scheme floated by the Development Authority, the buyers had taken out a loan and would be liable to pay interest thereon – However, this order does not permit the interest on the loan, in its entirety, to be saddled by the authority responsible for the housing scheme and the delay – Orders of the Commissions does not reveal any exceptional or strong reasons for the interest on the loan taken by the buyers to be paid by the Development Authority – Whether the buyers of the flat do so by utilizing their

* Author

savings, taking a loan for such purpose or securing the required finances by any other permissible means, is not a consideration that the developer of the project is required to keep in mind – The one who is buying a flat is a consumer, and the one who is building it is a service provider – That is the only relationship between the parties – If there is a deficiency or delay in service, the consumer is entitled to be compensated for the same – Repayment of the entire principal amount along with 8% interest thereon, as stipulated in the contract, alongside the clarification that there would be no other liability on the authority, sufficiently meets this requirement – Amount of interest awarded is the compensation to the investment maker for the amount of money and the time he has been denied the fruits of that investment – 8% interest awarded on the entire amount that is being invested, is the compensation for being deprived of the investment of money – Apart from this no amount of interest on the loan taken by the buyers could have been awarded. [Paras 13, 15, 17, 18]

Case Law Cited

National Seeds Corporation Ltd. v. M. Madhusudan Reddy **[2012] 2 SCR 1065 : (2012) 2 SCC 505;** *Greater Mohali Area Development Authority v. Priyanka Naiyyar,* **1st appeal No. 1456 of 2016;** *Bangalore Development Authority v. Syndicate Bank* **[2007] 7 SCR 47 : (2007) 6 SCC 711;** *GDA v. Balbir Singh* **[2004] 3 SCR 68 : (2004) 5 SCC 65;** *DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda* **[2019] 7 SCR 1061: (2020) 16 SCC 318 – referred to.**

List of Keywords

Compensation; Consumer; Scheme of Residential flats; Greater Mohali Area Development Authority; Interest paid on loans for investing in project; Delay in delivery of possession of flats; Additional costs for mental harassment and litigation; Service provider; Deficiency or delay in service.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 7392-7393 of 2025

From the Judgment and Order dated 01.04.2019 of the National Consumers Disputes Redressal Commission, New Delhi in FA Nos. 1852 and 1853 of 2018

Appearances for Parties

Advs. for the Appellant:
Ms. Vagisha Kochar, Ms. Nancy Shah, Prashant Manchanda.

Advs. for the Respondents:
Gagan Gupta, Sr. Adv., Ananta Prasad Mishra, Saurabh Gupta, Jasbir Singh.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol J.

Leave Granted.

2. Under challenge in these appeals is a judgment and final order dated 1st April, 2019 passed in First Appeal Nos. 1852 of 2018 and 1853 of 2018 by the National Consumer Disputes Redressal Commission, New Delhi[1], at the instance of Greater Mohali Area Development Authority[2], who is aggrieved by the order dated 1st March, 2018 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh[3], whereby the State Commission partly allowed the respondents' complaints (being CC No.438 of 2017 filed by respondent Anupam Garg; and CC No.439 of 2017 filed by respondent Rajiv Kumar) against GMADA directing the latter to refund the entire amount deposited by both parties in respect of securing flats in the residential scheme launched by it along with 8% interest thereon as also paying additional costs for mental harassment, litigation and the interest paid by the respondents to the State Bank of India, for the loans that they had secured to arrange for the funds required to be invested in the project.

3. For the sake of convenience we only illustrate the facts of CC No.438 of 2017 filed by Anupam Garg, which are similar to the facts being in CC No.439 of 2017 filed by Rajiv Kumar. The sequence of events and background (as per CC 438 of 2017), as have been culled out by the Commissions, leading up to these appeals are:

1 NCDRC

2 GMADA

3 State Commission

3.1 GMADA launched a scheme of residential flats termed 'Purab Premium Apartments' to be constructed in the Sector 88 locality, at Mohali in the year 2011. Anupam Garg secured an application form for a 2-BHK + Servant Room Residential Apartment-Type II upon payment of 10% of the total consideration of ₹ 55 lakhs, i.e., ₹ 5,50,000/- as earnest money.

3.2 The allotment of the flats took place through a 'draw of lots' on 19th March, 2012. He was successful and a Letter of Intent[4] was issued in his favour on 21st May, 2012. It provided details regarding price, payment schedule, possible plans of payment, locations where payment can be deposited, particulars of ownership, possession, management and maintenance and other general terms and conditions. The relevant extracts of the LOI are as follows:

> "**PAYMENT SCHEDULE**
>
> 2.1 For Initial 30%
>
> (i) Payment of Rs.1100000 (Eleven Lakhs Only) being 20 % price of the apartment is to be made by 22.6.2012 to complete 30% of the apartment.
>
> (ii) In case of failure to make the payment within stipulated period, the amount paid shall be refunded with 10% deduction and allotment cancelled. However, this period can be further extended up to 30 days with 2% Penalty, up to 60 days with 3 % penalty and up to 90 days with 5 % penalty on prior written request.
>
> 2.2 **For Balance Payment of 65%**
>
> Plan-A
>
> A sum of Rs.33,96,250/- (Thirty three lakhs ninety six thousand two hundred fifty only) being balance 65% of tentative price of apartment within 60 days of the issue of LOI with a rebate of 5% on the balance amount payable.

4 LOI

Plan-B

A sum of Rs. 35,75,000 (Thirty five lakhs seventy five thousand only) being balance 65% of the tentative price can be paid with 12% interest in 6 half yearly instalments from the date of issue of LOI, Payment schedule mentioned as under:-

2.3 **For Balance Payment of 5%**

(i) The balance amount of Rs.275000/- (Two lakhs seventy five thousand Only) being 5% of the tentative price of apartment shall be payable at the time of possession.

(ii) Delays in payment of instalments shall result in cancellation of the allotment. However, on request establishing genuine grounds, delays up to 12 months can be condoned by the Estate Officer, by charging 18% interest for the period of delay. Delays beyond 12 months shall not be condoned under any circumstances and shall result in cancellation of allotment and refund of the amounts paid, after forfeiture of 10% of the amount. Possession shall not be handed over till all dues are cleared.

(iii) In case of fully paid apartments, the enhancement in price (due to the reasons laid down in para 1(ii), shall have to be paid within 90 days of such demand without payment of any interest or in 6 Half Yearly instalments along with interest @ 12 per annum. In other cases the enhancement shall be built into balance instalments.

(iv) All payments shall be made by a bank draft drawn in favour of Estate Officer GMADA…

OWNERSHIP AND POSSESSION

(I) Allotments shall be on free hold basis.

(II) Possession of apartment shall be handed over after completion of development works at site in a period of 36 months from the date of issuance

of Letter of Intent. In case for any reason, the Authority is unable to deliver the possession of apartments within stipulated period, allottee shall have the right to withdraw from the scheme by moving an application to the Estate Officer, in which case, the Authority shall refund the entire amount deposited by the applicant along with 8 % interest compounded annually. Apart from this, there shall be no other liability of the Authority.

(III) The ownership and possession of apartments shall continue to vest with Greater Mohali Area Development Authority until full payment is made of outstanding dues in respect of said apartment.

(IV) The allottee shall be required to execute a Deed of Conveyance in prescribed format and manner within 90 days of payment of entire money. The expenses of registration and execution of Conveyance Deed shall be borne by the allottee.

(V) There shall be bar on sale of the apartment till 2 years after handing over of possession or 5 years from date of issuance of LOI whichever is earlier.

(VI) The floor of the apartment shall be allocated through draw of lots."

3.3 The scheduled date of delivery of possession was 21st May, 2015. It has been alleged that on his visit to the development site in May, 2015, the respondent found no development commensurate to the time that had passed. Since it did not appear likely that possession of the flat would be delivered to the respective owners for another 2-3 years, he resolved to opt out of the scheme.

3.4 He approached the concerned official in this regard, who apparently informed him that if he chooses to pursue this route, GMADA would pay him the deposited amount, along with 8% interest thereon, from 21st May, 2015, till the date of payment.

3.5 Given that no relevant document stipulated such a condition, the respondents filed a consumer complaint (CC No.197 of 2016), which was withdrawn due to certain technical reasons. Shortly after, GMADA issued a letter of allotment-cum-offer of possession dated 29th June, 2016, stating that the 'numbering draw' was held on 5th January, 2016 and he had been allotted 'Apartment No.902, Tower No.7, Block C, Floor 8, Type 2'.

3.6 Upon visiting the allotted flat, of which he has allegedly been in possession as of now, he found that various changes were made to the project itself, as also in the facilities and amenities provided therein, unilaterally.

4. It is in the aforesaid backdrop that the complaint, the subject matter of these appeals, came to be filed.

5. The State Commission's findings can be summarized *inter alia* as under :

a) There is no substance to the allegation that the facilities to be provided by GMADA have not been provided. There are no photographs to substantiate this, nor is there any report issued by a competent person to prove the absence of these facilities in the project.

b) The presence of an arbitration clause would not bar the jurisdiction of the State Commission, in view of the findings of this Court in ***National Seeds Corporation Ltd. v. M. Madhusudan Reddy***[5].

c) GMADA cannot stop the respondents from seeking a refund of their money because it was concluded that there is no proof on record that the authority completed the project within the stipulated time. Such desire to seek a refund is also not without precedent as GMADA had already extended this facility to another allottee.

d) It is an undisputed position that the respondents had paid a substantial amount of consideration towards the flats they were to receive and only a small portion of the total consideration remained to be paid.

5 (2012) 2 SCC 505

e) The respondents were entitled to withdraw from the scheme. GMADA cannot be accorded any benefit on the ground that they had offered possession to the respondents on 29th June, 2016, which is more than a year after the stipulated date of completion.

6. Having come to the conclusions as above, the State Commission passed the following order:

> "17. In view of the above discuss, the Consumer Complaint No.438 of 2017 is accepted and the opposite party is directed to refund the entire deposited amount of Rs.50,46,250/- to the complainant along with interest at the rate of 8%, compounded annually under Clause 3(II) of the Letter of Intent, Ex. C-2. The opposite party shall also pay a compensation of Rs.60,000/- to the complainant for mental tension and harassment suffered by him and Rs.30,000/-, as costs of litigation. The opposite party shall also pay the interest paid by the complainant to State Bank of India on the loan taken from it and paid to the opposite party for the purchase of the flat, as charged by the Bank from the complainant.
>
> 18. In view of reasons and discussion held in Consumer Complaint No.438 of 2017, the Consumer Complaint No.439 of 2017 accepted and the opposite party is directed to refund the entire deposited amount of Rs.41,29,619/- to the complainant, along with interest at the rate of 8%, compounded annually under Clause 3(II) of the Letter of Intent, Ex. C-2. The opposite party shall also pay a compensation of Rs.60,000/- to the complainant for the mental tension and harassment suffered by him and Rs.30,000/- as costs of litigation. The opposite party shall also pay the interest paid by the complainant to State Bank of Hyderabad and State Bank of India on the loan taken from it and paid to the opposite party for the purchase of the flat as charged by the Bank from the complainant."
>
> (Emphasis supplied)

7. GMADA carried the matter in appeals to NCDRC. In the impugned order, reference is made to ***Greater Mahali Area Development***

Authority v. Priyanka Naiyyar[6], which was also referred to by the State Commission, where the Commission had granted compensation of ₹2 lakhs to the complainant in addition to the 8% interest, which was to be given on account of the fact that the interest charged by the bank in the case was @ 10.75%. It was concluded that there was no merit in the appeals which were dismissed on the grounds of delay and merit, along with costs quantified at ₹20,000/- each to be paid to both the respondents herein.

8. Aggrieved by this order, GMADA is before us. Notice was issued on 8th November, 2019 limited to that part of the order by which interest has been awarded on the loan taken by the respondent-Anupam Garg from the State Bank of India in addition to the 8% compounded interest already granted.

9. We have heard the learned counsel for the parties.

10. The appellants' case is that casting liability for the respondents' loan upon GMADA is not a position under law. In contrast, the respondents argue to the contrary, stating that the Commissions have the requisite authority to grant compensation over and above what is agreed in the contract. It is their case that the terms of the agreement cannot circumscribe the authority of the Commission to award just compensation.

11. In ***Bangalore Development Authority v. Syndicate Bank***[7], this Court having surveyed several other judgments, laid down seven principles regarding grant/non-grant of relief to an allottee who is aggrieved by non-delivery or delay in delivery of plots/flats. This case is covered by the first one, which is as follows :

> "(*a*) Where the development authority having received the full price, does not deliver possession of the allotted plot/flat/house within the time stipulated or within a reasonable time, or where the allotment is cancelled or possession is refused without any justifiable cause, the allottee is entitled for refund of the amount paid, with reasonable interest thereon from the date of payment to date of

6 1st appeal No. 1456 of 2016

7 (2007) 6 SCC 711

refund. In addition, the allottee may also be entitled to compensation, as may be decided with reference to the facts of each case."

12. The observations made in ***GDA v. Balbir Singh***[8] are also important when it comes to the determination of compensation. It was held as under :

> "…Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/ paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/ injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.
>
> **9.** That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/ plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in

8 (2004) 5 SCC 65

such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts are collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer."

13. The entitlement of compensation, therefore, is not in dispute. A reference to ***Balbir Singh*** (supra) shows that compensation can take different forms, considering the facts and circumstances at hand. Determination has to be made, keeping in view the stage of the work completed, where the service provider has lapsed in duty and the loss caused thereby etc. Uniformity is foreign to such determination. Here only we may observe that the State Commission, as well as NCDRC's reliance on ***Priyanka Nayyar*** (supra) is misplaced. In that case, ₹ 2 lakhs was given as compensation, taking into account that the complainant had suffered interest in the loan taken at the rate of 10.75%. It was not given as payment for the interest itself. By placing reliance on this order, against which one special leave petition indeed stands dismissed, what was open for the commission

to do was to, in the attending facts and circumstances, compute an amount as compensation, in which one of the factors would be that in order to secure a property in the scheme floated by the GMADA, the respondents had taken out a loan and would be liable to pay interest thereon. However, this order does not permit the interest on the loan, in its entirety, to be saddled by the authority responsible for the housing scheme and the delay, which is the genesis of the dispute.

14. We are supported in this view by the findings made by a coordinate Bench of this Court in ***DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda***[9], which is extracted as under :

> "15. The District Forum under the Consumer Protection Act, 1986 ("the 1986 Act") is empowered inter alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb. The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and has no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages @ Rs 10 per square foot per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there have to be exceptional and strong reasons for Scdrc/Ncdrc to award compensation at more than the agreed rate."
>
> (Emphasis supplied)

15. A perusal of the judgment and orders of the Commissions does not reveal any exceptional or strong reasons for the interest on the loan

9 (2020) 16 SCC 318

taken by the respondents to be paid by GMADA. That apart, whether the buyers of the flat do so by utilizing their savings, taking a loan for such purpose or securing the required finances by any other permissible means, is not a consideration that the developer of the project is required to keep in mind. For, so far as they are concerned, such a consideration is irrelevant. The one who is buying a flat is a consumer, and the one who is building it is a service provider. That is the only relationship between the parties. If there is a deficiency or delay in service, the consumer is entitled to be compensated for the same. Repayment of the entire principal amount along with 8% interest thereon, as stipulated in the contract, alongside the clarification that there shall be no other liability on the authority, sufficiently meets this requirement.

16. In ***DLF Homes Panchkula (P) Ltd.*** (supra), it was also observed as follows:

> *"***17.** This Court in a judgment reported as *Irrigation Department, State of Orissa* v. *G.C. Roy* [*Irrigation Department, State of Orissa* v. *G.C. Roy*, (1992) 1 SCC 508] examined the question as to whether an arbitrator has the power to award interest pendente lite. It was held that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation which may be called interest, compensation or damages. Thus, keeping in view the said principle laid down in the aforesaid judgment, the amount of the interest is the compensation to the beneficiary deprived of the use of the investment made by the complainant. Therefore, such interest will take into its ambit, the consequences of delay in not handing over his possession. In fact, we find that the learned Scdrc as well as Ncdrc has awarded compensation under different heads on account of singular default of not handing over possession. Such award under various heads in respect of the same default is not sustainable."
>
> (Emphasis supplied)

17. What flows from the above is that the amount of interest awarded is the compensation to the investment maker for the amount of money and the time he has been denied the fruits of that investment. The

8% interest awarded in this case on top of the entire amount that is being invested, is the compensation for being deprived of the investment of that money. Apart from this no amount of interest on the loan taken by the respondents could have been awarded.

18. We clarify that we have in no way held that the Commission is not empowered to give compensation, generally. For that reason, we do not interfere with the award of certain amounts on account of mental agony and litigation costs. We have only interfered with that part of the order as set out in the notice. It has come on record that the amount deposited before the State Commission does not include the amount of interest on the loan. In view of the above discussion, we hold that there is no requirement for GMADA to make any further deposit. The amount as it stands currently, be dispersed to the respondents.

19. The appeals are allowed. Pending applications, if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 394 : 2025 INSC 810

Amlesh Kumar
v.
The State of Bihar

(Criminal Appeal No. 2901 of 2025)

09 June 2025

[Sanjay Karol* and Prasanna B. Varale, JJ.]

Issue for Consideration

Whether in the attending facts and circumstances, the High Court could have accepted a submission of the Sub-Divisional Police Officer, to conduct narco-analysis test of all the accused persons (including the appellant) and other witnesses, during the investigation; whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record; whether an accused can voluntarily seek a narco-analysis test, as a matter of an indefeasible right.

Headnotes†

Constitution of India – Art.20(3) and Art.21 – Code of Criminal Procedure, 1973 – s.439 – The High Court accepted the submission of the Sub-Divisional Police Officer, Mahua, that she would conduct narco-analysis test of all the accused persons (including the appellant herein) and other witnesses, during the investigation – Correctness:

Held: There was no reason for the High Court to accept a submission by the Investigating Officer, stating that they will conduct a narco-analysis test of all the accused persons – Such a submission and its acceptance, is in direct contravention to the judgment of this Court in Selvi, being hit by the protections u/ Arts.20(3) and 21 of the Constitution – Moreover, it is settled law that while entertaining an application for grant of bail, the Court has to take into consideration the allegations against the accused; period of custody undergone; nature of evidence and the crime in question; likelihood of influencing witnesses and other such relevant grounds – It does not involve entering into a roving enquiry or accepting the use of involuntary investigative techniques – Therefore, the High Court has erred in accepting a submission to carry out a narco-analysis test of all accused persons by the Investigating Officer. [Paras 10, 11, 13]

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* Author

Evidence, 1872 – s.27 – Whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record:

Held: This Court in Selvi had considered voluntary narco-analysis tests and opined that the reports thereof cannot be admitted directly into evidence – Information that is discovered, as a consequence thereof, can be admitted with the aid of s.27 of the Evidence Act, 1872 – It is settled that in the absence of supporting evidence, a conviction cannot be based solely on such information – Therefore, a report of a voluntary narco analysis test with adequate safeguards as well in place, or information found as a result thereof, cannot form the sole basis of conviction of an accused person. [Paras 14, 15, 16]

Evidence – Voluntary narco-analysis test – Whether an accused can voluntarily seek a narco analysis test, as a matter of an indefeasible right:

Held: The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage – The appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial – However, there is no indefeasible right with the accused to undergo a narco-analysis test, for upon receipt of such an application the concerned Court, must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-analysis test. [Para 21]

Case Law Cited

Selvi and Ors. v. State of Karnataka **[2010] 5 SCR 381 : (2010) 7 SCC 263;** *Sangitaben Shaileshbhai Datana v. State of Gujarat* **(2019) 14 SCC 522;** *Vinobhai v. State of Kerela,* **2025 SCC Online SC 178;** *Manoj Kumar Soni v. State of M.P.,* **2023 SCC OnLine SC 984 – relied on.**

Rajesh Talwar v. CBI, **2013 SCC Online All 5533;** *Dominic Luis v. State,* **2014 SCC Online Bom 452;** *Mohd. Samir v. State,* **2017 SCC Online Bom 19;** *Ashwini Kumar Upadhyay v. Union of India,* **2023 SCC Online Del 3816;** *Louis v. State of Kerala,* **2021 SCC Online Ker 4519;** *State of Gujarat v. Sanjay Kumar Kanchanlal Desai,* **2014 SCC Online Guj 6150;** *Navjeet Kaur v. State of Punjab,* **2015 SCC Online P&H 15351 – referred to.**

Books and Periodicals Cited

B R Sharma, Forensic Science in Criminal Investigation & Trials, Sixth Edition, 2020 – Paragraph 32.1.1

List of Acts

Constitution of India; Code of Criminal Procedure, 1973; Evidence, 1872.

List of Keywords

Narco-analysis test; Forced or involuntary narco-analysis test; Regular bail; Right against self-incrimination; Right to privacy; Indefeasible right; Article 20(3) of the Constitution of India.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2901 of 2025

From the Judgment and Order dated 09.11.2023 of the High Court of Judicature at Patna in CRLM No. 71293 of 2023

Appearances for Parties

Gaurav Agrawal, Sr. Adv./Amicus Curiae, Manan Garg.

Advs. for the Appellant:
Mithilesh Kumar Singh, Ashutosh Kumar Singh, Mrs. Manju Singh, Aditya Durgvanshi, Saumitra Singh, Apurva Pandey.

Advs. for the Respondent:
Anshul Narayan, Prem Prakash.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

2. The present Appeal arises from the impugned Order dated 9th November 2023 passed in Criminal Miscellaneous No.71293 of 2023 by the High Court of Judicature at Patna, whereby the Court

accepted the submission of the Sub-Divisional Police Officer, Mahua, that she would conduct narco-analysis test of all the accused persons (*including the Appellant herein*) and other witnesses, during the investigation.

3. Aggrieved thereof, the Appellant is before us. The significant ground of challenge taken is that the acceptance of such a submission by the High Court is in direct contravention of the exposition of law laid down by this Court in ***Selvi and Ors. v. State of Karnataka***[1], wherein it was observed that forceful subjection of an individual to techniques, such as the narco-analysis test, violates personal liberty enshrined under Article 21 of the Constitution of India.

4. The brief facts giving rise to the Appeal at hand are as follows:

   4.1. On 24th August 2022, FIR No.545 of 2022 was registered at P.S. Mahua under Sections 341, 342, 323, 363, 364, 498(A), 504, 506 and 34 of the Indian Penal Code, 1860[2], against the Appellant (husband) and his family. It was stated by the complainant therein that her sister got married to the Appellant on 11th December 2020, and thereafter, the accused persons had been making repeated demands for dowry and beating her. On 22nd August 2022, she received a call from the Appellant, informing that her sister had run away from the matrimonial home. Despite searching, she is unable to locate her sister and suspects foul play by the accused persons (including the Appellant).

   4.2. The case of the Appellant is that on 21st August 2022, while en route to Ayodhya, his wife got off the bus at Baabali Chawk for nature's call but never returned. He filed a complaint before P.S. Jahangir Ganj, recorded as GD No. 038, on 28th August 2022.

   4.3. The admitted position is that the missing person (wife) has not been found to date. The mother, father and brothers of the Appellant have been granted bail by the High Court of Judicature at Patna.

   4.4. The Appellant's prayer for regular bail came to be rejected *vide* Order dated 1st August 2023 passed by the Sessions Judge,

1 (2010) 7 SCC 263.

2 Hereinafter 'IPC'.

Vaishali at Hajipur in B.P.No.1141 of 2023. The Court was not inclined to grant bail on the basis of the allegations made in the FIR, as well as the confessional statements of the co-accused, who stated that they had thrown the missing person in the river Saryu on the intervening night of the 21st and 22nd August 2022.

4.5. Dissatisfied with the Order of the Sessions Judge, the Appellant approached the High Court of Judicature at Patna for grant of a regular bail *vide* Crl. Misc. No.71293 of 2023. *Vide* the impugned interim Order, the High Court accepted the submission of the Sub-Divisional Police Officer, Mahua, that she will conduct a narco-analysis test of all the accused persons and posted the case for hearing on 12th July 2024. The relevant portion thereof is extracted below, for ready reference :

> "2. Pursuant to the order dated 07.11.2023, the SubDivisional Police Officer, Mahua and the S.H.O. Mahua are present in the court.
>
> 3. The S.D.P.O. Mahua, assures this court that she will take further steps in the investigation to find out details about the missing woman and for that she has further submitted that she will get narco test of all the accused persons and other witnesses, if required in the investigation.
>
> 4. List this case on 12.07.2024.
>
> 5. On the next date of hearing, the investigation report shall be produced by the learned APP."
>
> (Emphasis supplied)

4.6. Aggrieved thereof, the Appellant has preferred the present Appeal before this Court.

5. We have heard the learned counsel for the Appellant and the learned Addl. Standing Counsel on behalf of the Respondent State. After hearing the parties in part, vide Order dated 22nd April 2025, this Court appointed Mr. Gaurav Agrawal, Senior Advocate, as an *Amicus Curiae* to assist the Court, given the issues involved. We have heard the learned *Amicus Curiae* and the learned counsel for the parties as also perused the written submissions filed.

6. Consequently, the issues which arise for consideration of this Court are :

   i. Firstly, whether in the attending facts and circumstances, the High Court could have accepted such a submission.

   ii. Secondly, whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record.

   iii. Lastly, whether an accused can voluntarily seek a narco-analysis test, as a matter of an indefeasible right.

7. For the purposes of clarity, a narco-analysis test is an interrogation method whereby a suspect of a crime is injected with a psychoactive drug under controlled conditions to suppress their reasoning power or the ability to determine what is good/bad for themselves.[3] As submitted by the learned *Amicus Curiae*, the drug used for this test is sodium pentothal, which is also used in higher dosages for inducing general anesthesia in surgeries.

8. However, conducting such tests on persons accused of committing a crime raises serious questions, *vis-à-vis*, the constitutional protection granted from compulsion to become a witness against oneself under Article 20(3). The constitutional validity of this test, along with similar tests like the polygraph test, came to be challenged before this Court in ***Selvi*** (supra). After an elaborate discussion, this Court (three-Judge Bench) held involuntary administration of this test to be hit by Articles 20(3) and 21 of the Constitution. The following principles came to be expounded:

   8.1. Articles 20 and 21 of the Constitution are non-derogable and sacrosanct rights to which the judiciary cannot carve out exceptions;

   8.2. Involuntary administration of narco-analysis and similar tests is in contravention of the protection given by Article 20(3) of the Constitution, i.e. the right against self-incrimination;

   8.3. The results of such involuntary tests cannot be considered as 'material evidence' in the eyes of the law;

3 B R Sharma, Forensic Science in Criminal Investigation & Trials, Sixth Edition, 2020 – Paragraph 32.1.1.

8.4. Conducting such tests in the absence of consent violates 'substantive due process' – which is an essential element required for restraining one's personal liberty. Permitting such tests may lead to a disproportionate exercise of police powers;

8.5. The boundaries of privacy of a person are also breached when these tests are conducted without consent; and

8.6. For voluntary tests, it must be ensured that appropriate safeguards are in place. Moreover, the results of the same cannot be admitted directly as evidence. Pertinently, any fact or information that is discovered subsequent thereto, with the help of the information supplied in the result, can be admitted into evidence with the aid of Section 27 of the Indian Evidence Act 1872.

9. From the above exposition of law, it is clear that under no circumstances, is an involuntary or forced narco-analysis test permissible under law. Consequently, a report of such involuntary test or information that is discovered subsequently is also not *per se* admissible as evidence in criminal or other proceedings.

10. Adverting to the facts at hand, we cannot find a reason in the High Court accepting a submission by the Investigating Officer, stating that they will conduct a narco-analysis test of all the accused persons. Such a submission and its acceptance, is in direct contravention to the judgment of this Court in ***Selvi*** (supra), being hit by the protections under Articles 20(3) and 21 of the Constitution.

11. Moreover, we fail to understand how such an endeavour was accepted by the High Court when adjudicating an application for regular bail under Section 439 of the Code of Criminal Procedure, 1973. It is settled law that while entertaining an application for grant of bail, the Court has to take into consideration the allegations against the accused; period of custody undergone; nature of evidence and the crime in question; likelihood of influencing witnesses and other such relevant grounds. It does not involve entering into a roving enquiry or accepting the use of involuntary investigative techniques. In similar circumstances, where the High Court had ordered lie detector, brain mapping and narco-analysis tests, this Court in ***Sangitaben Shaileshbhai Datana v. State of Gujarat***[4], observed :

4 (2019) 14 SCC 522.

> "**6**. Having heard the counsel for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is a prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.
>
> **7**. In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini trial indeed. This assumption of function of a trial court by the High Court is deprecated."
>
> (Emphasis supplied)

12. We are not inclined to accept the submission of the Respondent-State that since modern investigative techniques are the need of the hour, the High Court was correct in accepting the submission that narco-analysis test of all accused persons will be conducted. While the need for modern investigative techniques may be true, such investigative techniques cannot be conducted at the cost of constitutional guarantees under Articles 20(3) and 21.

13. Therefore, the first question framed is answered in the negative. The High Court has erred in accepting a submission to carry out a narco-analysis test of all accused persons by the Investigating Officer.

14. In the course of proceedings, the issue of undergoing a narco-analysis test voluntarily came to be raised, which brings us to the second question framed. As discussed above, this Court in ***Selvi*** (supra) had considered voluntary narco-analysis tests and opined that the reports thereof cannot be admitted directly into evidence. Information that is discovered, as a consequence thereof, can be admitted with the aid of Section 27 of the Indian Evidence Act, 1872.

15. The evidentiary value of information received through the aid of Section 27 is no longer *res integra*. This Court in ***Vinobhai v. State of Kerela***[5], while placing reliance on ***Manoj Kumar Soni v. State of M.P.***[6] held that in the absence of supporting evidence, a conviction cannot be based solely on such information. It was observed:

> "8. ….. The law relating to the evidentiary value of recovery made under Section 27 of the Indian Evidence Act, 1872 is settled by this Court in the case of *Manoj Kumar Soni* v. *State of M.P.*. Paragraph 22 of the said decision reads thus:—
>
> > **"22.** A doubt looms : can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. **Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt."**
>
> Therefore, in our view, the appellant's guilt was not proved beyond a reasonable doubt."

16. Consequently, in our view, a report of a voluntary narco-analysis test with adequate safeguards as well in place, or information found as a result thereof, cannot form the sole basis of conviction of an accused person. The second question is, therefore, answered in the negative.

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5 2025 SCC Online SC 178.

6 2023 SCC OnLine SC 984.

17. Adverting to the last question framed, the learned *Amicus Curiae* has pointed out that there has been a divergence of views taken by High Courts on the issue as to whether a narco-analysis test can be claimed by an accused as a matter of right. Given the suspect nature of a report of narco-analysis, the *Amicus Curiae* submitted that this position must be clarified.

18. On the one hand, there is High Court of Judicature at Allahabad in ***Rajesh Talwar v. CBI***[7]; High Court of Bombay in ***Dominic Luis v. State***[8] and ***Mohd. Samir v. State***[9]; High Court of Delhi in ***Ashwini Kumar Upadhyay v. Union of India***[10]; High Court of Kerala in ***Louis v. State of Kerala***[11]; High Court of Gujarat in ***State of Gujarat v. Sanjay Kumar Kanchanlal Desai***[12] and High Court of Punjab & Haryana in ***Navjeet Kaur v. State of Punjab***[13], have held that an involuntary narco-analysis test cannot be relied on and have taken an overall view of the circumstances when an accused has sought a narco-analysis test himself.

19. On the other hand, there is Rajasthan High Court, which in ***Sunil Bhatt v. State***[14], held that the accused can seek a narco-analysis test at a relevant stage in view of the statutory right to lead evidence in defence under Section 233 of the Criminal Procedure Code.

20. In our view, as rightly submitted by the learned *Amicus*, the above view of the Rajasthan High Court cannot be sustained. It cannot be said that undergoing a narco-analysis test is part of the indefeasible right to lead evidence, given its suspect nature, and moreover, we find the same to be in the teeth of the judgment of this Court in ***Selvi*** (supra). It had been categorically observed:

> "**240.** We must also contemplate situations where a threat given by the investigators to conduct any of the impugned tests could prompt a person to make incriminatory

7 2013 SCC Online All 5533.

8 2014 SCC Online Bom 452.

9 2017 SCC Online Bom 19.

10 2023 SCC Online Del 3816.

11 2021 SCC Online Ker 4519.

12 2014 SCC Online Guj 6150.

13 2015 SCC Online P&H 15351.

14 2022 SCC Online Raj 1443.

statements or to undergo some mental trauma. Especially in cases of individuals from weaker sections of society who are unaware of their fundamental rights and unable to afford legal advice, the mere apprehension of undergoing scientific tests that supposedly reveal the truth could push them to make confessional statements. Hence, the act of threatening to administer the impugned tests could also elicit testimony. It is also quite conceivable that an individual may give his/her consent to undergo the said tests on account of threats, false promises or deception by the investigators. For example, a person may be convinced to give his/her consent after being promised that this would lead to an early release from custody or dropping of charges. However, after the administration of the tests, the investigators may renege on such promises. In such a case the relevant inquiry is not confined to the apparent voluntariness of the act of undergoing the tests, but also includes an examination of the totality of circumstances.

253. We are of the view that an untrammelled right of resorting to the techniques in question will lead to an unnecessary rise in the volume of frivolous litigation before our courts.

264. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with Section 27 of the Evidence Act, 1872."

(Emphasis supplied)

21. In view of the above exposition in ***Selvi*** (Supra), the third question is answered in the following terms :

The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage. We deem it appropriate to add, that the appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial. However, there is no indefeasible right with the accused to undergo a narco-analysis test, for upon receipt of such an application the concerned Court, must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-analysis test. We deem it appropriate to reproduce and reiterate the guidelines issued in ***Selvi*** (Supra) in this regard as follows :

> "**265.** The National Human Rights Commission had published *Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused* in 2000. These Guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the "narcoanalysis technique" and the "Brain Electrical Activation Profile" test. The text of these Guidelines has been reproduced below:
>
> (*i*) No lie detector tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
>
> (*ii*) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
>
> (*iii*) The consent should be recorded before a Judicial Magistrate.
>
> (*iv*) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
>
> (*v*) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional" statement to the Magistrate but will have the status of a statement made to the police.

(*vi*) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(*vii*) The actual recording of the lie detector test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(*viii*) A full medical and factual narration of the manner of the information received must be taken on record."

22. Before parting with this appeal, we place on record our appreciation for the learned *Amicus Curiae*, Mr. Gaurav Agrawal, Senior Advocate, in extending his invaluable assistance to the Court.

23. Keeping in view the above discussion, we have no doubt that the impugned Order cannot be sustained. Consequently, the impugned Order dated 9th November 2023 passed in Criminal Miscellaneous No. 71293 of 2023 by the High Court of Judicature at Patna is hereby set aside.

24. The bail application of the Appellant, pending if any, to be decided in accordance with law.

25. In the attending facts and circumstances of this case, the Appeal is allowed.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 407 : 2025 INSC 800

Vaibhav
v.
The State of Maharashtra

(Criminal Appeal No. 1643 of 2012)

04 June 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

In a case based on circumstantial evidence where there were missing links in the chain of circumstances, whether the finding of the High Court regarding the conviction of the appellant for offences u/ss.302, 201 r/w s.34, Penal Code, 1860 and s.5 r/w s.25(1)(a), Arms Act, 1959 was sustainable in light of the evidence on record.

Headnotes†

Circumstantial evidence – Missing links in the chain of circumstances – Accidental gunshot injury – Appellant was convicted u/ss.302, 201 r/w s.34, Penal Code, 1860 and s.5 r/w 25(1)(a), Arms Act, 1959 for the murder of his friend – Defence of the appellant that the deceased had accidentally shot himself with the pistol belonging to the appellant's father:

Held: The present is a case of an accidental gunshot injury and the possibility of a homicidal death is very weak in the present case – Imprints on the pistol had not been matched with the appellant and therefore, it cannot be concluded that the trigger was pulled by the appellant – Courts below failed to examine whether the defence of the appellant that the deceased on finding the service pistol of the appellant's father, got curious, picked it up, started looking into it with one eye from a close distance and accidentally pressed the trigger, was a probable defence or not – The theory put across by the appellant is fairly probable and is supported by medical evidence including the examination of the bullet injury and trajectory – Contrarily, the conclusion drawn by the Courts below is not supported by medical evidence and is not consistent with the bullet injury and trajectory – The subsequent conduct of the appellant of removing the dead body and concealment of articles was a natural result of fear of his father and was consistent with the

* Author

theory of accidental death – A young boy in first year of college, with no criminal background and with no motive in sight, would certainly have become scared on seeing that his friend has accidentally shot himself in the living room of his house with the pistol belonging to his father – In a case purely based on circumstantial evidence, the chain of circumstances must be complete and consistent with the conclusion of guilt only and must not support a contrary finding – Circumstantial evidence on record is not consistent and leaves a reasonable possibility of an alternate outcome of innocence of the appellant – High Court erred in arriving at the finding of guilt and upholding the judgment of Trial Court – Appellant acquitted for offences u/s.302, IPC and s.5 r/w s.25(1)(a), Arms Act – However, conviction u/s.201, IPC is sustained and he is sentenced for the period already undergone. [Paras 18, 20, 22, 26, 27, 29]

Evidence Act, 1872 – s.8 – Subsequent conduct – Case based on circumstantial Evidence – Evidentiary burden – To be discharged by the prosecution *vis-à-vis* the accused – Appellant was convicted for the murder of his friend – Defence of the appellant that the deceased had accidentally shot himself in the living room of the appellant's house with the pistol belonging to appellant's father – Courts below relied on subsequent conduct of the appellant like removal of the dead body, concealment of articles and drew adverse inference:

Held: Primary burden is on the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence – Prosecution's version suffered from inherent inconsistencies and doubts, and thus, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden – Undoubtedly, in a case based on circumstantial evidence, facts indicating subsequent conduct are relevant facts u/s.8, Evidence Act – Equally, the inconsistencies in the version of the appellant are also relevant however, the occasion to examine the version/defence of the appellant could have arisen only if the prosecution had succeeded in discharging its primary burden beyond reasonable doubt – The inability of an accused to offer plausible explanation on certain aspects would not automatically absolve the prosecution of its evidentiary burden, which must be discharged first and beyond doubt – Evidence Act, 1872 – s.8. [Para 21]

Gunshot cases – Nature of death whether suicidal, accidental or homicidal not ascertainable from direct evidence – Factors to be examined by the Court, stated. [Para 19]

Circumstantial evidence – Motive, relevance of – Accidental gunshot injury – Absence of motive – Appellant was convicted for the murder of his friend – Defence of the appellant that the deceased had accidentally shot himself in the living room of the appellant's house with the pistol belonging to appellant's father:

Held: In a case based on circumstantial evidence, motive is relevant – However, it is not conclusive of the matter – But a complete absence of motive may weigh in favour of the accused – Testimonies of prosecution witnesses revealed that the appellant and the deceased were friends and there was no ill-will between them – Even the father of the deceased testified to that effect – In cases purely based on circumstantial evidence, the absence of motive could raise serious questions and might even render the chain of evidence as doubtful because the presence of motive explains the circumstantial evidence – For instance, in the facts of the present case, any evidence of enmity between the appellant and the deceased would have made suspicious the act of the appellant of taking the deceased to his home prior to his death – However, since the evidence suggests that they were friends, the fact that the appellant brought him home could not be termed as *per-se* incriminating – Therefore, motive explains the circumstances on record and enables the Court to draw better inference in a case based on circumstantial evidence. [Paras 23, 25]

Case Law Cited

Anwar Ali & Anr. v. State of Himachal Pradesh **[2020] 9 SCR 878 : (2020) 10 SCC 166;** *Shivaji Chintappa Patil v. State of Maharashtra* **[2021] 2 SCR 617 : (2021) 5 SCC 626;** *Nandu Singh v. State of Madhya Pradesh (now Chhattisgarh),* **Criminal Appeal No. 285 of 2022 – referred to.**

List of Acts

Penal Code, 1860; Arms Act, 1959; Evidence Act, 1872.

List of Keywords

Accidental gunshot injury; Accidental death; Circumstantial evidence; Bullet injury and trajectory; Service pistol; Homicidal death; Removal of the dead body; Concealment of articles; Burden beyond reasonable doubt; Preponderance of probabilities; Absence of motive; Subsequent conduct; Chain of evidence; Inconsistencies in the chain of circumstances; Cleaning up the crime scene; Disappearance of evidence; Mere suspicion, no matter how grave, cannot take the place of proof; No direct evidence; Alternate outcome; Innocence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1643 of 2012

From the Judgment and Order dated 13.06.2012 of the High Court of Bombay at Nagpur in CRLA No. 57 of 2012

Appearances for Parties

Advs. for the Appellant:
Vipin Sanghi, Sr. Adv., Satyajit A. Desai, Siddharth Gautam, Ananya Thapliyal, Abhinav K. Mutyalwar, Sachin Singh, Ms. Anagha S. Desai.

Advs. for the Respondent:
Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Adarsh Dubey.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. This is a tale of two friends, Vaibhav and Mangesh, who were studying at Bagla Homeopathy Medical College, Arvat Chandrapur, Maharashtra. They were students of first year and often used to commute together on their two-wheelers. On the fateful day of 16.09.2010, both friends left the college together on the scooter belonging to Mangesh, had tea at the tea stall of PW-3 and arrived at Vaibhav's house in the afternoon. When Mangesh's father/PW-1

discovered late in the evening that his son had not reached home, he tried to find out and eventually lodged a missing report. The next day, on 17.09.2010, the dead body of Mangesh was found and accordingly, the present criminal case came to be registered against unknown persons.

2. Investigation commenced and a supplementary statement of PW-1 was recorded wherein he raised suspicion against Vaibhav, Mangesh's friend, classmate, scooter partner and appellant before us in the present appeal. Upon investigation, the police prepared the chargesheet wherein the appellant was alleged to have caused death of deceased Mangesh by shooting him by the gun belonging to the appellant's father/PW-12.

3. Upon trial, the Trial Court found that the appellant had killed Mangesh using the service gun belonging to his father when he came to drop him after college. Thereafter, the appellant called his friends Vishal and Akash (juvenile at the time of incident) for helping him in the disposal of the dead body. The appellant was found guilty for the commission of the offences under Sections 302, 201 read with Section 34 of Indian Penal Code, 1860 (hereinafter referred as "IPC" for brevity) and Section 5 read with 25(1)(a) of Arms Act, 1959. His friend Vishal was also found guilty for the commission of the offence under Section 201 read with Section 34 of IPC. Both the convicts had preferred separate appeals before the Bombay High Court and both the appeals came to be disposed of by the impugned judgment, wherein the conviction of the appellant was upheld and Vishal was acquitted for want of evidence. The present appeal assails the said impugned judgment dated 13.06.2012 passed in Criminal Appeal No. 57/2012.

IMPUGNED JUDGMENT

4. While upholding the conviction of the appellant, the High Court appreciated the testimonies of the prosecution witnesses and acknowledged that the case is based on circumstantial evidence as no direct evidence of the alleged act could be found. After examining the testimonies of the prosecution witnesses, the High Court observed that the material against the accused could be summed up as follows:

> *"17. The material evidence adduced by the prosecution an admitted by the defence which are necessary for the decision of this appeal are enumerated thus:-*

(a) PW12 Khushal Tijare, father of the deceased, is a Police Officer to whom the 9mm pistol was entrusted along with 30 rounds.

(b) The accused and the deceased were known to each other.

(c) On 16.9.2010, PW12 Khushalrao had kept the pistol under the mattress in his bedroom.

(d) A1 and the deceased had been to the house of A1. On 16.9.2010 after 3 p.m. nobody was at home.

(e) A1 called upon his father telephonically and demanded the keys of the rear door which leads to the abandoned quarter.

(f) PW12 informed A1 that the keys were behind the wall.

(g) On 16.9.2010, the deceased was lastly seen in the company of the accused as admitted by him.

(h) On 16.9.2010 after 8 p.m., PW1 was searching for his son and in the course of searching visited the house of A1 to inquire about Mangesh and that A1 informed PW1 that he had lastly seen Mangesh at 4 p.m.

(i) A1 visited the house of PW1 at 10 p.m. on 16.9.2010 and inquired about Mangesh. He returned home. His parents were at home. However, he did not disclose anything.

(j) On 17.9.2010, A1 visited the house of PW1 i.e. father of Mangesh at 9 a.m. Thereafter he revisited the house of PW1 with four friends and assured PW1 that they would search for Mangesh and made PW1 believe that Mangesh was alive.

(k) After the dead body was noticed in the courtyard behind the residential house of A1 and was being removed from the spot, A1 accompanied the Police still pretending ignorance about cause of death of Mangesh.

(l) The admission of A1 that his acquaintance with the deceased was just one month prior to the incident.

(m) The admission of A1 as a defence witness that when he went to change his clothes in his room, Mangesh was

sitting on the bed in the living room, A1 heard the noise of firearm and came in the living room and found Mangesh lying on the ground with the pistol in his hand and that pistol was of his father.

(n) The admission of defence witness A1 that as soon as he saw Mangesh lying on the ground with the pistol, his first reaction was that he took the pistol and kept under the mattress of the bed i.e. the place where it was left by his father. Yet he has stated that he had no knowledge as to where his father had left the pistol. This contention cannot be believed.

(o) The admission of A1 that out of fear he removed the dead body from the living room and took it to the courtyard on the rear side of his house, that he cleaned the floor due to fear.

(p) The admission of A1 that when he had gone to change his clothes, Mangesh had not left the living room. Therefore, Mangesh had no access to the bed room and location of the pistol from beneath the mattress within a span of few minutes.

(q) The fact that although there was memorandum of recovery of clothes and it was not followed by a seizure, coupled with the statement of A1 that he had given it to the Police but they said that it was not required. The act of the accused disposing the cartridge at a particular place, showing the place to the Police, attempting to search the bullet at that place and yet not finding it.

(r) The explanation of PW12 below Exh.83 which is denied in the cross-examination of PW12.

(s) The sanction order issued by the District Magistrate for prosecuting the accused showing that the weapon of assault was used in the offence."

5. The High Court laid great emphasis on the fact that after the death of Mangesh, the appellant had tried to stifle the investigation by removing evidence. It observed thus:

> *"20. The fact that the accused attempted to stifle the investigation is relevant under Section 8 of the Indian Evidence Act. The fact of fear as deposed by A1, accepted by the accused is relevant."*

6. On a careful perusal of the impugned judgment, it could be seen that the High Court has heavily relied upon Section 8 of the Indian Evidence Act, 1872 (*hereinafter referred as "Evidence Act"*) to draw inferences from the subsequent conduct of the appellant, especially removal of the dead body, concealment of clothes, visits by the accused to the residence of PW-1 pretending to enquire about the deceased etc. As regards the causal link between the appellant and the alleged act, the High Court observed that the link was established as the 9 mm pistol belonging to the father of the appellant had caused the death of the appellant. The following para is indicative of the same:

> *"23. …In the present case, the accused has himself admitted the weapon to be the service pistol of his father and that it was in the hand of deceased when he first saw him. The prosecution has led cogent and convincing evidence to prove that Mangesh had sustained the bullet injury with the same 9mm pistol. There is no ambiguity of the identity or description of weapon. The link evidence between the crime and the accused is established beyond reasonable doubt and by the admission of the accused himself and his father."*

7. The appellant had taken two primary defenses before the High Court – impossibility of homicidal death in light of the trajectory of the bullet and report of PW-9 which pointed towards accidental death. Both the contentions were turned down in the impugned judgment assigning different reasons. While rejecting the former contention, the High Court again adverted to the subsequent conduct of the appellant and observed thus:

> *"22. The learned counsel for the accused also pleaded that it appears from the evidence that the bullet was fired from a close range of 15cm would show that it is accidental. He has argued that there was no blackening around the eye. The direction in which the bullet had travelled through the eye to the occipital region would show that it is a case*

> *of accidental firing. The counsel has further argued that falsity of defence or giving a false explanation does not provide an additional link and cannot be made a ground for conviction. In the present case, it is not the falsity of defence which is being considered and, therefore, we have referred to Section 8 of the Indian Evidence Act. The accused had prepared a good ground and given false explanation or rather made up a new story at the threshold i.e. even prior to investigation, at the time of investigation and, therefore, his conduct indicates the act of guilty mind."*

8. On the second aspect, the High Court observed that it was not obligatory for PW-9 to have given her opinion regarding the cause of death, as the cause of death was well known and was "*admitted by the accused on oath*". The relevant part of the impugned judgment reads thus:

> *"28. The learned counsel has heavily relied upon the deposition of PW9 wherein it is stated that she cannot say as to whether the death is accidental or homicidal. We have already discussed that it is not obligatory on the part of the Doctor to give the cause of death when the cause is known and is established by the cogent and convincing evidence and moreover admitted by the accused on oath."*

THE CHALLENGE

9. Taking exception to the impugned judgment, Ld. Counsel on behalf of the appellant submits that the High Court did not examine the grounds taken by the appellant. It is submitted that as per the evidence of PW-9, the trajectory of the bullet was such that it had exited from the downward portion of the skull of the deceased and then hit the ventilator above the door. It is submitted that such a trajectory was only possible in case of a suicidal death and not homicidal. It is further submitted that the courts below have erred in not appreciating the testimony of PW-9, who had clearly deposed that she could not ascertain the cause of death and could not tell with certainty whether the death was suicidal or homicidal.

10. Relying upon medical jurisprudence, it is further submitted that in cases of accidental injuries by fire arm, bullet is hit from a close

distance. Further, in such cases, the injury is often singular. It is submitted that in the present case, both the elements of accidental death are present and the Courts below erred in not appreciating so.

11. As regards the conduct of the appellant after the incident, it is submitted that the appellant has categorically deposed that the death of Mangesh was caused by his father's pistol at his residence. He has also deposed that as he heard the gunshot, he came out and saw the dead body of Mangesh lying in pool of blood. He got scared of his father and tried to clean up the scene and in doing so, he removed the dead body of the deceased and cleaned the blood by using phenyl. It is further submitted that there was no motive for the appellant to have caused the death of Mangesh and the relationship between the appellant and the deceased was friendly. To buttress this submission, it is submitted that in a case based on circumstantial evidence, absence of motive is a crucial fact which renders the prosecution case doubtful.

12. It is further submitted that the Courts below had placed undue burden upon the appellant to offer explanation for certain circumstances and his subsequent conduct. It is contended that it was for the prosecution to prove its case beyond reasonable doubt and mere inability of the appellant to explain certain aspects could not be read against him to arrive at a finding of guilt. Lastly, it is submitted that in a case based on circumstantial evidence, if two views are possible, the Court must lean in favour of the view favourable to the accused.

DISCUSSION

13. We have carefully considered the grounds of appeal, respective submissions advanced at Bar and have heard both sides at length. We may now consider the principal issue whether the finding of the High Court regarding the conviction of the appellant is sustainable in light of the evidence on record.

14. In the factual matrix of the present case, it could be observed at the outset that certain facts stand duly admitted. We may first consider such facts. The cause of death of the deceased is undisputed, as it is admitted that the deceased was shot by the service pistol belonging to PW-12, the father of the appellant. Although, the investigating officer did not obtain any ballistic report to ascertain the nexus between

the bullet injury and the service pistol of PW-12, however, it could be seen from the record that the nexus has not been questioned by the defence. In fact, both the appellant and PW-12 have admitted that the bullet was shot from the pistol of PW-12 which was lying in the house. Furthermore, PW-11 has also confirmed that when the service pistol was re-deposited by PW-12, one bullet was missing from the sanctioned number of bullets.

15. Going further, it is also admitted that the appellant had indeed removed the dead body of the deceased and had cleaned up the scene of crime. It is also a matter of record that the discoveries made under Section 27 of Evidence Act were not challenged by the appellant as the appellant had admitted that various articles belonging to himself and the deceased, and connected with the alleged incident, were discovered in furtherance of his disclosures. All these aspects, however, assume greater relevance for the offence under Section 201 IPC. Insofar as the offences under Section 302 IPC and Section 25 of Arms Act are concerned, the prosecution case leaves us wanting for answers. No doubt, the deceased was shot by the pistol belonging to the father of the appellant and in the house of the appellant, but the pertinent question that craves for an answer is – *who pulled the trigger?* Despite two rounds of litigation, the question is yet to find an answer.

16. In a case based on circumstantial evidence, answers to such questions are not found on the face of the record. Rather, the truth is found concealed in the layers of incriminating and exonerating facts, and the Court is required to arrive at a judicial finding on the basis of the best possible inference which could be drawn from a comprehensive analysis of the chain of circumstances in a case. As per the record and the analysis carried out by the Courts below, the circumstances weighing against the accused could briefly be summarized as:

    i. The presence of deceased at the house of the appellant prior to and at the time of incident;

    ii. Admitted removal of dead body of the deceased by the appellant;

    iii. Admitted removal, concealment and subsequent discovery of various articles as per the disclosure made by the appellant;

    iv. Fatal gunshot by the pistol lying in the house of the appellant;

v. Subsequent conduct of the appellant in trying to show concern to the father of the deceased despite knowing about the death;

vi. Failure of the appellant to explain certain circumstances such as the manner in which the pistol fell in the hands of the deceased, how was it re-concealed etc.

17. Having observed the incriminating circumstances, we may now advert to the circumstances which leave missing links in the chain of the prosecution. Such instances include the doubt expressed by PW-9 regarding the nature of death, trajectory of bullet, possibility of accidental injury etc. The case of the appellant is that a proper appreciation of the exonerating circumstances would make the version of the prosecution highly improbable and doubtful. We may now examine the same by first considering the version of PW-9. Notably, PW-9 has deposed regarding the trajectory of the bullet as it entered and exited the skull of the deceased. PW-9 had also annexed a diagram of the trajectory, which revealed that the bullet entered through the eye of the deceased and exited from the lower part of the skull from the back. It would have been possible to reconcile this trajectory with the version of homicidal death. However, questions arise when the journey of the bullet is analyzed after it exited from the lower part of the skull. For, after taking an exit from the lower skull, the bullet hit against a ventilator which was installed above the door of the living room. Admittedly, the ventilator was installed at a height significantly higher than the height of the deceased, thereby meaning that the bullet travelled upwards after it left the skull of the deceased. The version of the prosecution is simply that the appellant shot the deceased in the eye and there has been no effort to prove the directions of entry or exit or to explain the inward or outward journey of the bullet. The prosecution version remains acceptable only till the point of entry of the bullet through the eye, but it starts becoming cloudy when the upward trajectory of the bullet is analyzed further, as discussed above.

18. In usual course of things, such trajectory of the bullet could have been possible only if the deceased was sitting and looking downwards towards the barrel of the pistol from a close distance. It was only then that the bullet could have hit the ventilator despite exiting from the lower part of the skull. In fact, this is precisely the defence of the appellant - that the deceased, on finding the service pistol of PW-12,

got curious, picked it up, started looking into it with one eye from a close distance and accidentally pressed the trigger. The probability of the version put across by the appellant is on the higher side as compared to the version put across by the prosecution, which simply does not give any explanation for the trajectory of the bullet.

19. In gunshot cases wherein the nature of death – suicidal, accidental or homicidal – is not ascertainable from direct evidence, multiple factors are taken into account for arriving at a conclusion. Such factors include, but are not limited to, the point of entrance, the size of wound, direction of wound, position of wound, possible distance of gunshot, number of wounds, position of weapon, trajectory of bullet after entering into the human body, position of exit wound (if bullet has exited), direction of exit wound, direction of the bullet after exit, distance travelled by the bullet after exit, nature of final impact on surface (if any) etc. All such factors, to the extent of their applicability to the facts of the case, need to be examined by the Court before arriving at a judicial finding of fact. Undoubtedly, no such analysis could be found in the impugned judgment. The High Court merely brushed aside the defence of the appellant by referring to the subsequent conduct of the appellant and by raising adverse inference on that basis.

20. Similarly, the inconclusive opinion of PW-9 regarding the death being homicidal or suicidal/accidental was also a relevant fact. No doubt, PW-9 was not bound to give a conclusive opinion as observed by the High Court, however, it ought to have been examined whether the failure to do so had a bearing on the judicial determination of the real cause of death. The nature of death ought to have been examined in light of the surrounding circumstances discussed above, which weigh against the possibility of a homicidal death. The appellant has also placed reliance on medical jurisprudence regarding the nature of injuries in accidental or suicidal gunshot cases. More often than not, in accidental gunshot cases, the injury is found to be singular and inflicted from a close range. The present case ticks the boxes of an accidental gunshot injury, both in theory and in fact. Contrarily, the aforesaid discussion indicates that the possibility of a homicidal death is very weak in the present case. It must also be kept in mind that the imprints on the pistol have not been matched with the appellant and therefore, no direct nexus exists to conclude

that the trigger was pulled by the appellant. On this aspect as well, we may note with dismay that the High Court rejected the defence of the appellant by simply observing that the homicidal death of the deceased was '*admitted'* by the appellant on oath. There is no such admission qua the nature of death. Contrarily, the appellant had deposed on oath that the death was 'accidental', a version that he has carried consistently up to this Court.

21. Having said so, we may now examine what weighed with the High Court to arrive at the finding of guilt of the appellant. On a careful reading of the impugned judgment, one would unmistakably note that the subsequent conduct of the appellant in indulging in destruction of evidence weighed heavily against him in the mind of the Court. The inability of the appellant to explain certain aspects also weighed against him. Undoubtedly, in a case based on circumstantial evidence, facts indicating subsequent conduct are relevant facts under Section 8 of the Evidence Act. Equally, the inconsistencies in the version of the appellant are also relevant. However, the occasion to examine the version/defence of the appellant could have arisen only if the prosecution had succeeded in discharging its primary burden beyond reasonable doubt. In criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. In the present case, the version of the prosecution suffers from inherent inconsistencies and doubts, as discussed above, and in such a scenario, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden. The High Court fell in a grave error in doing so, as it placed greater reliance on the loopholes in the appellant's version without first determining whether the chain of circumstances sought to be proved by the prosecution was complete or not. Pertinently, the inability of an accused to offer plausible explanation on certain aspects would not automatically absolve the prosecution of its evidentiary burden, which must be discharged first and beyond doubt.

22. In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas, the former is expected to discharge its burden beyond reasonable

doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in the facts and circumstances of the case. The present case, we are afraid, reveals that the defence taken by the accused since the beginning of the case was not tested by the Trial Court and the High Court. Despite a specific defence taken by the appellant before both the Courts, the Courts simply did not examine the same in the manner required by law. The probability of the version put across by the appellant ought to have been tested against the circumstantial theory of the prosecution. In other words, it was incumbent upon the Courts below to have examined whether the defence taken by the appellant was a probable defence or not. The failure to do so has certainly resulted into a failure of justice and it is sufficient to reopen the evidence in the instant appeal, as we have done.

23. We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would *ipso facto* dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance ought to be incorporated as one leaning in favour of the accused. In ***Anwar Ali & Anr. v. State of Himachal Pradesh***[1], this Court analyzed the position of law thus:

> *"24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to*

1 (2020) 10 SCC 166

reject the prosection case. It is also true and as held by this Court Suresh Chandra Bahri v. State of Bihar[2] *that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu*[3]*, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under:*

> *"25. In State of U.P. v. Kishanpal*[4]*, this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)*
>
> > *'38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.*
> >
> > *39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye- witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of*

2 (1995) Supp. 1 SCC 80

3 Babu v. State of Kerala, (2010) 9 SCC 189

4 (2008) 16 SCC 73

> *the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.'*
>
> *26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N.*[5]*)"*

24. In the subsequent decision in ***Shivaji Chintappa Patil v. State of Maharashtra***[6]***,*** this Court relied upon the decision in Anwar Ali and observed as under:-

> *"27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive....."*

More recently, in ***Nandu Singh v. State of Madhya Pradesh (now*** Chhattisgarh***)***[7], the position was reiterated by this Court in the following words:

> *"10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."*

25. Thus, a complete absence of motive, although not conclusive, is a relevant factor which weighs in favour of the accused. No doubt, the final effect of such absence on the outcome of the case shall depend upon the quality and weight of surrounding evidence. In the present case, the testimonies of prosecution witnesses have invariably revealed that the appellant and the deceased were friends and there was no ill-will between them. Even the father of the deceased has testified to that effect. The relevance of motive in a case of homicide has been a subject of prolonged discussion. Ordinarily, in cases

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5 (2009) 9 SCC 152

6 (2021) 5 SCC 626

7 Criminal Appeal No. 285 of 2022

involving direct evidence of the commission of crime, motive has little role to play as presence or absence of motive is immaterial if the commission of the crime stands proved through other evidence. Even otherwise, motiveless crimes are not unknown to the society. However, in cases purely based on circumstantial evidence, the absence of motive could raise serious questions and might even render the chain of evidence as doubtful. It is so because the presence of motive does the job of explaining the circumstantial evidence. For instance, in the facts of the present case, any evidence of enmity between the appellant and the deceased would have made suspicious the act of the appellant of taking the deceased to his home prior to his death. However, since the evidence suggests that they were friends, the fact that the appellant brought him home could not be termed as *per-se* incriminating. Therefore, motive explains the circumstances on record and enables the Court to draw better inference in a case based on circumstantial evidence.

26. As regards the subsequent conduct of the appellant, before parting, we may also note that the same was consistent with the theory of accidental death. That his act of removal of the dead body and concealment of articles was a result of fear of his father - is quite natural. A young boy studying in first year of college, with no criminal background and with no motive in sight, would certainly have become scared on seeing that his friend has accidentally shot himself in the living room of his house with the pistol belonging to his father and is lying in a pool of blood. The subsequent conduct of cleaning up the scene and restoring the living room in its original shape, although punishable in law, does not become so unnatural that it could be made the basis to convict him for the commission of murder without additional evidence to that effect. More so, when such conclusion is not consistent with the surrounding evidence on record, especially medical evidence, as discussed above.

27. No doubt, the subsequent acts of cleaning up the crime scene and making false enquiries amount to disappearance of evidence and raise grave suspicion against the appellant. However, mere suspicion, no matter how grave, cannot take the place of proof in a criminal trial. The suspicion ought to have been substantiated by undeniable, reliable, unequivocal, consistent and credible circumstantial evidence, which does not leave the probability of any other theory. In the present

case, the theory put across by the appellant is fairly probable and is supported by medical evidence including the examination of the bullet injury and trajectory. Contrarily, the conclusion drawn by the Courts below is not supported by medical evidence and is not consistent with the bullet injury and trajectory, as discussed above. We have come far since our acknowledgement that in a case purely based on circumstantial evidence, it must be established that the chain of circumstances is complete. Such chain must be consistent with the conclusion of guilt only and must not support a contrary finding. The rigid principles underlying an examination based on circumstantial evidence are based on the premise that the very act of arriving at a finding of guilt on the basis of inferences must be performed with great caution and margin of error must be kept at a minimum. Having said so, we may also observe that naturally, there could be some inconsistencies in the chain of circumstances in the natural course of things and mere presence of inconsistencies does not automatically demolish the case of the prosecution. However, the prosecution must be able to explain the inconsistencies to the satisfaction of the Court. For, the ultimate test is the judicial satisfaction of the Court. In the present case, the counter probabilities and inconsistencies in the chain of circumstances have not been explained.

28. Momentarily, even if it is believed that the view taken by the Courts below is a possible view, it ought to have been examined whether a reasonable counter view was possible in the case. It is a time-tested proposition of law that when a Court is faced with a situation wherein two different views appear to be reasonably possible, the matter is to be decided in favour of the accused. The benefit of a counter possibility goes to the accused in such cases.

29. In light of the foregoing discussion, we hereby conclude that the High Court has erred in arriving at the finding of guilt and in upholding the verdict of the Trial Court. The circumstantial evidence on record is not consistent and leaves a reasonable possibility of an alternate outcome i.e. of innocence of the appellant on the charges of murder and illegal usage of fire arm. Accordingly, the impugned order and judgment are partially set aside to the extent of conviction of the appellant for the offences punishable under Sections 302 IPC and Section 5 read with 25(1)(a) of Arms Act. Consequently, the appellant is acquitted for the offences under Section 302 of IPC and Section 5

read with 25(1)(a) of Arms Act. His conviction under Section 201 IPC is sustained and he is sentenced for the period already undergone by him, for reasons discussed above.

30. The captioned appeal stands disposed of in the aforesaid terms. Interim application(s), if any, shall also stand disposed of.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 427 : 2025 INSC 801

Harinagar Sugar Mills Ltd. (Biscuit Division) & Anr.
v.
State of Maharashtra & Ors.

(Civil Appeal No. 7372 of 2025)

04 June 2025

[Sanjay Karol* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

(i) Whether letter dated 25.09.2019 sent by the Deputy Secretary of State Government can be construed to be an order - Connectedly, whether the appellants would be entitled to the relief of deemed closure, as on 27.10.2019 by virtue of the deeming fiction present in s. 25-O(3) of the Industrial Disputes Act, 1947; (ii) What would be the meaning of the phrase 'appropriate Government' and whether in the facts of this case, it was the appropriate Government acting in the matter of the closure - if not what is the effect in law, thereof.

Headnotes†

Industrial Disputes Act, 1947 – s.25-O(1), 25-O(3) – Industrial Dispute (Maharashtra) Rules, 1957 – r.82-B(1) – Appellant-HSML was engaged in biscuit manufacturing exclusively for BIL under Job Work Agreements (JWA) – JWA was terminated by BIL – Resultantly, applications for closure of business were made to the competent authorities on 26.08.2019 – By a letter dated 25.09.2019 sent by Dy. Secretary, State Government informed HSML that they failed to disclose their efforts to prevent closure, nor had they given cogent reasons for closure and were, therefore, asked to resubmit their application – By way of reply dated 10.10.2019, HSML furnished the particulars as asked for – It is to be noted that the 60-day period provided for u/s. 25-O(3) of the Act ran out on 27.10.2019 – On 04.11.2019, HSML was once again asked to resubmit their application as authorities found response of HSML lacking – HSML in their response contended that by virtue of s.25-O(3), the permission of closure is deemed to have been granted – The Deputy Commissioner sent to HSML two letters, dated 20.11.2019 and 22.11.2019 asking them to be present for a meeting on 26.11.2019, and conveying to them that the State Government was yet to grant permission for closure – Letters

* Author

dated 04.11.2019, 20.11.2019 and 22.11.2019 were challenged before High Court – High Court, by the impugned judgment, dismissed the writ petitions – Correctness:

Held: There is nothing on record to show that the Dy. Secretary was duly authorised to conduct communication and/or accept or reject applications for closure made by industrial units – The concerned authority in that regard is only the Minister – There is no express authority resting with the Deputy Secretary – Reliance cannot be placed on internal noting to establish compliance with procedure – s.25-O specifically provides "by order and for reasons to be recorded in writing," and so, reasons are a statutory necessity – When the minister is the sole authority, endorsement of a view taken by an undisclosed officer of the Ministry cannot be said to be an 'application of mind' by the competent authority – The decision had to be top down and not otherwise – The necessary conclusion is that the letter dated 25.09.2019 addressed by the Deputy Secretary to HSML cannot be constituted to be an order since such order to resubmit the application was without any authority since it was not the appropriate Government acting in that regard and not an order rejecting or accepting the application – The appropriate Government failed to make and communicate any order on the application for closure – The deemed closure would, therefore, come into effect – In that view of the matter, application dated 28.08.2019 was complete in all respects, and the 60-day period for the deemed closure to take effect would be calculable from said date – Also, the Deputy Secretary was not the appropriate Government who could have asked HSML to revise and resubmit the application for closure – That authority is only vested with the Minister concerned. [Paras 15, 16, 17, 18, 22]

Industrial Disputes Act, 1947 – s.25-O – Scope of:

Held: i) The right to close the business is subject to the interest of the general public; ii) any application seeking permission for closure must disclose adequate and genuine reasons which the authority has to have regard for; iii) in certain cases, however, even if the reasons are genuine and adequate, it does not mean that permission to close ought to be granted; iv) if it is found that the reasons are generally adequate, and despite that the appropriate Government decides for refusal of permission of foreclosure, then the interest of the general public involved in that particular case must be "compelling" and "overriding"; v) financial difficulty on its own cannot constitute the reason for shutting down the business –

An employer must demonstrate exceptional circumstances or an impossibility of running the business. [Para 13]

Constitution of India – Art.19(1)(g) – Freedom of trade, profession, occupation and business – Right to shut down business – Elucidated:

Held: If there exists the freedom to set up and run a trade/business as one sees fit, necessarily, there has to be a set of rights vesting with the proprietor/owner to take decisions as may be in his best interest – At the same time, law does not permit such owner or proprietor to take any and all decisions without having considered and accounted for the impact that it shall have on the employees or workers that are part of this establishment – This is evidenced by the s. 25-O of the Industrial Disputes Act, 1947 providing for a detailed procedure to be followed when a person wishes to 'shut shop', but concomitant providing that if the concerned Government does not take action with reasonable expediency, the business owner should not be saddled with the costs and responsibilities of running the business indefinitely, till such time the authority arrives at a proper and just decision – The sum and substance are that Art. 19(1)(g) includes the right to shut down a business but is, of course, subject to reasonable restrictions. [Para 10]

Case Law Cited

Cooverjee B. Bharucha v. Excise Commr. **[1954] SCR 873 : (1954) 1 SCC 18;** *Hindustan Antibiotics Ltd. v. Workmen* **[1967] 1 SCR 652 : 1966 SCC OnLine SC 106;** *Excel Wear v. Union of India* **[1979] 1 SCR 1009 : (1978) 4 SCC 224;** *Orissa Textile and Steel v. State of Orissa* **[2002] 1 SCR 309 : (2002) 2 SCC 578 – followed.**

Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. **[1999] 2 SCR 505 : (1999) 6 SCC 82;** *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* **[1990] 2 SCR 826 : (1990) 3 SCC 280 – relied on.**

Bachhittar Singh v. State of Punjab **[1962] Supp. 3 SCR 713 : AIR 1963 SC 395;** *Sethi Auto Services Station v. DDA* **[2008] 14 SCR 598 : (2009) 1 SCC 180;** *Shanti Sports Club v. Union of India* **[2009] 13 SCR 710 : (2009) 15 SCC 705;** *State of Haryana v. Hitkari Potteries* **(2001) 10 SCC 74;** *Sree Meenakshi Textile Mills Ltd. v. Madurai Textile Workers Union (CITU) & Ors.,* **1979 (38) FLR 213;** *Pimpri Chinchwad New Township Development Authority v.*

Vishnudev Coop. Housing Society **[2018] 11 SCR 310 : (2018) 8 SCC 215;** *Mahabir Jute Mills Ltd. v. Shibban Lal Saxena* **[1976] 1 SCR 168 : (1975) 2 SCC 818 – referred to.**

List of Acts

Constitution of India; Industrial Dispute (Maharashtra) Rules, 1957; Industrial Disputes Act, 1947.

List of Keywords

Closure of business; Closing down an undertaking; Permission of closure; Closure application; Job work agreement; Efforts to prevent closure; Not given cogent reasons for closure; *Functus officio*; Workers' unions; Form XXIV-C prescribed u/r.82-B(1) of the Industrial Dispute (Maharashtra) Rules, 1957; Form XXIV-B prescribed u/r.82-B(1) of the Industrial Dispute (Maharashtra) Rules, 1957; Relief of deemed closure; Deeming fiction in s.25-O(3) of Industrial Disputes Act, 1947; Freedom of trade, profession, occupation and business; Appropriate government; Right to shut down a business; Minister of Labour; Internal noting; Non-application of mind; Minister is the sole authority; Top Down decision; Order without authority; Communication without legal sanction; Sub-delegation to officer.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7372 of 2025

From the Judgment and Order dated 17.02.2023 of the High Court of Judicature at Bombay in WP No. 3447 of 2019

With

Civil Appeal No. 7373 of 2025

Appearances for Parties

Advs. for the Appellants:
Mukul Rohatgi, Sr. Adv., Ms. Nina Nariman, Abhay Jadeja, Praveen Kumar, Arun Unikrishnan, Ms. Pragya Baghel, Ms. Sunaina Kumar.

Advs. for the Respondents:
Shailesh S. Pathak, Nitin S. Tambwekar, Seshatalpa Sai Bandaru, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Shrirang B. Varma, Sourav Singh, Jitendra Kumar Tripathi, Aditya Mishra, Ratish Kumar Sharma.

**Harinagar Sugar Mills Ltd. (Biscuit Division) & Anr. v.
State of Maharashtra & Ors.**

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

This judgment, for clarity and ease of reference, is divided as follows:

TABLE OF CONTENTS*

Leave Granted.

THE APPEALS

2. These appeals by special leave, question the correctness of a judgment and order passed by the High Court of Judicature at Bombay, dated 17th February 2023[1], in Writ Petition No.3447 of 2019 and Writ Petition No.3397 of 2019, preferred by the appellants herein in Civil Appeal arising out of SLP(C)No.4268 of 2019 and by the appellant in Civil Appeal arising out of SLP(C)No.4565 of 2023, respectively.

1 Hereinafter 'impugned judgment'

* Ed. Note: Pagination as per the original Judgment.

BACKGROUND TO THE WRIT PETITIONS

3. The factual backdrop in which the writ petitions came to be filed is indisputably identical. As such we refer to the facts of the first appeal, which are as below :

3.1 Harinagar Sugar Mills Limited (Biscuit Division)[2] is a company incorporated under the Companies Act, 1956 and was engaged in biscuit manufacturing for Britannia Industries Limited[3].

3.2 Such manufacturing by HSML had been exclusively for BIL, and had been ongoing for more than three decades, under Job Work Agreements[4], granted by the latter to the former and extended from time to time.

3.3 JWA was terminated by BIL with effect from 20th November 2019, vide letter dated 24th May 2019, stating that the 180-day notice period, as mandated by clause 20.3.1 of the JWA signed on 22nd May 2007, would begin from 1st June 2019. The letter is extracted as under :-

"ANNEXURE P/1

BRITANNIA INDUSTRIES LIMITED
Prestige Shantiniketan, White Field Main Road
Mahadevpura Post, Bengaluru-560048

Without prejudice
By Speed Post/Courier/Email

Date: 24th May 2019

To,
M/s Harinagar Sugar Mills Limited
207, Kalbaddevi Road,
Mumbai-400002, Maharashtra, India

CC: World Trade Centre, Centre-1, 10th Floor, Caffe Parade, Mumbai-400 005

2 Abbreviated as 'HSML'

3 Abbreviated as 'BIL'

4 Abbreviated as 'JWA'

Harinagar Sugar Mills Ltd. (Biscuit Division) & Anr. v. State of Maharashtra & Ors.

Kind Attention : Mr. Ashok Kumar Jasrpuria

Sub : Termination of the job work Agreement

Ref: a. Job work Agreement dated 22nd May, 2007.

b. Job Work Agreement Renewal dated 23rd Oct, 2013 (effective from 18th Feb 2013 till 17th Feb 2023)

Dear Sir,

We refer to job work agreement dated 22nd May, 2007 entered for period of 10 years effective from 21st February, 2003 and renewed on same terms and conditions for another period of 10 years effective from 18th February, 2013 whereby based on your representations, we have appointed you as our Contract Manufacturer on the terms and conditions contained therein.

Pursuant to clause 20.3.1 of the Job Work Agreement, we hereby serve you One Hundred Eight (180) days written notice commencing from 1st June 2019 ("Effective date"). The business relationship between the parties under the Agreement shall stand terminated on the close of business hours of 27th November, 2019.

You are requested to discontinue the operations under the agreement accordingly upon termination and cease to the know-how-return, all copies of the Know-how without retaining any part thereof, and deliver entre quantity of goods manufactured, ingredients, packing material and Raw Material etc. which are in your possession or custody as per the terms of the agreement.

Further, you are requested to return all the documents containing information relating to products and Intellectual Property Rights of the Company and refrain from sharing, exchanging or selling or making any copies, summaries or transcripts of confidential information of the Company.

Sd/-
Britannia Industries Ltd."

(Emphasis supplied)

3.4 Resultantly, applications for closure of business were made to the competent authorities on 26th August 2019, as per Form XXIV-C prescribed under Rule 82-B(1) of the Industrial Dispute (Maharashtra) Rules, 1957 read with Section 25-O(1) of the Industrial Disputes Act, 1947[5]. The workers of HSML were informed vide closure notices dated 28th August 2019. The letter is extracted below:

"**HARINAGAR SUGAR MILLS LIMITED**
(BISCUIT DIVISION)
Conductors of the Factory & Business of
Shangrilla Food Products Limited
Regd. Office : 207 Katbadevi Road, Mumbai-400002

Pl. Correspondence to:
L.B.S. Marg. Bhandup (W),
Mumbai-400078.

Ref No.

Dated : 28.08.2019

From-XXIV-C
(To be submitted in triplicate)
[See Rule 82-B(1)]

From of application for permission of closure to be made by an employer under sub-Section (1) of Section 25-O of the Industrial Disputes Act, 1947 (14 of 1947)

To,
The Secretary to the Government of Maharashtra Industries, Energy and Labour Department, Mantralaya, Mumbai-32.

Sir,
Under Section 25-O of the Industrial disputes Act, 1947 (14 of 1947), I hereby inform you that I propose to close down the undertaking specified below.

5 Hereinafter, 'the Act'

M/s Harinagar Sugar Mills Ltd. (Biscuit Division), (herein after referred to as Biscuit Division), L.B.S. Marg, Bhandup (W), Mumbai-400078 w.e.f. 28/11/2019.

The Biscuit Division had entered into, a job, work agreement with M/s Britannia Industries Ltd. (BIL) to manufacture biscuits of Britannia brand. BIL used to forward to the Biscuit Division its weekly plan as per the market demand of various varieties of Britannia Brand. The Biscuit Division then used to manufacture the biscuits as per the plan forwarded by BIL in the factory premises A written termination notice was received by the Biscuit Division on 31-05-2019 from BIL stating that the business relationship between the parties shall stand terminated on the close of business hours, of 27/11/2019. Thus BIL has terminated the job work agreement with the Biscuit Division and the said Division has no other manufacturing avenue, since the said Division was manufacturing biscuits only for BIL. In view of the above, the Biscuit Division has no other alternative but to close down, the manufacturing activities.

2. The number of workmen whose service will be terminated on account of the closure of the undertaking is 178 permanent workmen.

3. Permission is solicited for the proposed closure.

4. I hereby declared that in the event of approval for the closure being granted every workmen in the undertaking to whom sub-section (9) of the said section 25-O applies will be given notice and paid compensation as specified in section 25N of the Industrial Disputes Act, 1947 (14 of 1947), as if the workman had been retrenched under that section.

Yours faithfully
For Harinagar Sugar Mills Ltd. (Biscuit Division)

Sd/- Illegible
(Authorised Signatory)

CC: 1) The Commissioner of Labour,
Maharashtra, Mumbai

2) The Industries Commissioner,
Maharashtra, Mumbai

3) The Joint Director of Industries, Mumbai"

(Emphasis supplied)

3.5 Letter dated 25th September 2019 sent by the Deputy Secretary, Government of Maharashtra, informed HSML that they failed to disclose their efforts to prevent closure, nor had they given cogent reasons for closure. They were, therefore, asked to resubmit their application. This letter forms an important aspect of the respondents' case before the High Court and, therefore, it would be appropriate for it to be extracted. It reads :

"**ANNEXURE P/5**

Government of Maharashtra

No. Closure-82019/C.No.3/L-2
Industry, Energy & Labour Dept.
Madam Cama Road
Hutama Rajguru Chowk
Mantralaya, Mumbai-400032

Dated : 25TH September, 2019

To,
Authorised Signatory,
M/s. Hari Nagar Sugar Mills Limited,
L.B.S. Marg, Bhandup (W)
Mumbai-400 078.

Subject:- Application for obtaining permission U/s. 25(O)(1) for closing down establishment of M/s Hari Nagar Sugar Mills Ltd. at L.B.S. Marg, Bhandup (W), Mumbai-78

Reference: Your application dated 28/8.2019.

Sir,

With reference to the above referred application, you as authorised signatory of M/s. Hari Nagar Sugar Mills Ltd. have submitted an application to the Government on 28/8/2019 u/s 25(O)(1) of the Industrial Disputes Act, 1947 for closing down the unit at L.B.S. Marg, Bhandup (W) Mumbai-78.

2. On reviewing the said application it is observed that the job contract agreement signed by M/s. Hari Nagar Sugar Mills Ltd. with M/s. Britania Industries Ltd. for production of biscuits will be cancelled with effect from 27.11.2019 and therefore the management of the Company has given the reason that the said Biscuit Division will not be able to provide any work in the said Division, and therefore the application to obtain permission to close down said Biscuit Division was submitted to the Government on 28.08.2019.

3. However, no pros and cons about the efforts for not closing down the said Unit were discussed/ enlisted in the said application. Also, any justifiable and consummate reasons were also not provided for closing down the said Division. Therefore, it will be possible to take action only if you can submit the application again by providing explanation regarding other efforts initiated by you for not closing down the Division, providing justifiable as well as consummate rationale for this action.

Yours faithfully,
Signed
Dy. Secretary, Govt. of Maharashtra

Copy :

1. Hon. Labour Commission, Kamgar Bhavan, C-20, E-Block, Bandra-Kurla Complex, Bandra (E), Mumbai-400 051.

2. Private Secretary to Hon. Minister (Labour)"

(Emphasis supplied)

3.6 By way of reply dated 10th October 2019, HSML furnished the particulars as asked for. It is to be noted here that the 60-day period provided for under Section 25-O(3) of the Act ran out on 27th October 2019. The said letter reads as under :

"**Annexure P/6**

HARINAGAR SUAR MILLS LIMITED
(BISCUIT DIVISION)
Conductors of the Factory & Business of
Shangrilla Food Products Limited
Regd. Office : 207 Katbadevi Road, Mumbai-400002

Pl. Correspondence to :
L.B.S. Marg. Bhandup (W),
Mumbai-400 078.

Ref. No.76/19-20 Date: 10.10.2019

To
Shri S.M. Sathe,
The Dy. Secretary,
State of Maharashtra
Mantralaya Mumbai

Sub: Permission sought under Section 25-(O)(I) of Ld. Act for closure of M/s. Harinagar Sugar Mills Ltd. (Biscuit Division)

Ref: Your letter dated 25.09.2019.

On 01.10.2019 we have received your letter dated 25.09.2019 with regard to the aforesaid subject.

It is a fact that for last 32 years, the Company used to do job work of manufacturing biscuits only for Britannia Industries Ltd. For manufacturing biscuits for Britannia Industries Ltd., the raw material as well as necessary plant and machinery used to be provided and installed by Britannia Industries Ltd. After receiving termination of Job work agreement from BIL, the Company Immediately persuaded the management of BIL to continue agreement and the job work with the Company. However, said persuasion did not work or yield

any result. The Company had then approached other biscuit manufacturers such as M/s. Mondelez India Limited and Us. ITC Ltd. On 15.07.2019, the top management of the Company had meeting with Mr. T. Arunkumar, CMO, Manager of M/s. Mondelez India Limited and then as per his requirement had forwarded e-mail on 24.07.2109. However, thereafter there was no response. Similarly the top management of the Company had discussed with Mr. Divi of M/s. ITC, Foods. However, on 17.07.2019 Mr. Div replied that there is no requirement of contract manufacturing unit to them at present. Once again on 24.07.2019 mail was forwarded to Mr. Divi of M/s. ITC Foods but there was no response to the said mail. We enclose copies of e-mails forwarded to M/s. Mondelez India Ltd. and Ms. ITC Foods The management of the Company had also talked and discussed with Mr. Ajay Chauhan of Parle Biscuits to provide job work to the Company. However, there was no positive response even from Parle Biscuits.

The reason for closing down the manufacturing activities is there is no job work which can be done in the said factory. As stated in the closure application the company for last 32 years was doing only the job work for Britannia Industries Ltd. And the efforts mentioned hereinabove will support the contention of the company that there is no other way out but to close its manufacturing operation.

For Harinagar Sugar Mills Ltd.
(Biscuit Division)
Sd/-
Authorised Signatory)"

(Emphasis supplied)

3.7 The authorities once again found the response lacking. *Vide* letter dated 4th November 2019 said that their earlier response did not, once again, cover all aspects, i.e., the possibility of the employees' absorption into other manufacturing divisions and also the possibility of HSML moving to the production of other goods, apart from biscuits. They were once again asked to resubmit their application.

3.8 On 22nd November 2019 HSML, in their response, contented that by virtue of Section 25-O(3) of the Act, the permission of closure is deemed to have been granted, and the authorities have now become *functus officio*. The workers' unions also opposed the closure, registering the same *vide* letter dated 4th November 2019. They cited 'ulterior motives' and lack of *bona fide* reasons.

3.9 The Deputy Commissioner, Labour, sent to HSML two letters, dated 20th and 22nd of November 2019 asking them to be present for a meeting on 26th November 2019, and conveying to them that the State Government was yet to grant permission for closure and as such, they should not close down the business on 27th November 2019, respectively.

3.10 Workers' unions on the same day as their letter also approached the Industrial Tribunal seeking to restrain HSML from going forward with the closure. An ad-interim order came to be passed by the Tribunal, granting said relief.

3.11 These letters dated 4th November 2019, 20th November 2019 and 22nd November 2019 were the subject matter of challenge before the High Court.

THE IMPUGNED JUDGMENT

4. The proceedings before the High Court, the culmination of which was the judgment impugned in these appeals, were as follows: -

4.1 Order dated 28th November 2019 records the statement of Mr. Ravi Kadam, Senior Counsel appearing for HSML that the salaries for the month of November shall be paid without insisting that the employees attend work. It is also recorded therein that the employees shall maintain peace and harmony.

4.2 On the next date, i.e., 12th December 2019 it was directed that the salaries for December be paid on or before 6th January 2020.

4.3 Arguments were heard and concluded on 7th February 2023.

4.4 The findings in the impugned judgment can be summarised thus :

Firstly, the Court discussed the scheme of Section 25-O of the Act and found that an application for closure has to be made to a competent

authority at least 90 days prior to the date from which the closure is sought to be made effective; the reasons for such closure must be clearly stated; on receipt of such application, the 'appropriate Government' is to make an enquiry; provide an opportunity for hearing all concerned - workmen, employer and persons interested in closure, and then pass a reasoned order, also keeping in view interests of the general public. Section 25-O(3) provides that if such an appropriate authority fails to communicate an order made thereby, granting or denying permission within 90 days of the application being preferred, it shall be deemed that the permission was granted at the expiry of 60 days. Other parts of Section 25 of the Act were also taken note of such as the power of review, the remaining in force of the order of the competent authority for a period of one year etc.

Secondly, it was observed that the case of the petitioners (appellants before us) was that orders had not been passed by the competent authority within the statutorily prescribed time frame, and consequently, the deeming fiction provided for in the Act would come into force and permission of closure would be deemed granted upon the expiry of 60 days from the application, since more than 90 days had passed since such making of application. The stand of the State was also taken into account - which was that the communication dated 25th September 2019 constituted an order refusing the grant of requisite permission. It would be appropriate to extract the consideration made by the High Court, of these contrasting submissions. It is as follows :

> "24. The first objection of Mr. Naidu is that even if communications dated 25 September 2019 were to be assumed as decisions, the decisions are not taken by the authority, viz. Hon'ble Minister for Labour but the same is taken by the Depute Secretary. To counter the contention, the State Government has placed on record the file noting on the basis of which the communications dated 25 September 2019 were issued. The file noting would indicate that note was prepared by Desk Officer on 30 August 2019 stating that as per notification dated 25 June 2013, the powers under Section 25-O (2) are conferred upon the Hon'ble Minister for Labour. It is further stated that the petitioners' applications were required to be forwarded to the Hon'ble Minister for further action. However, there appears to be an endorsement in hand

> writing towards the end of the noting to the effect that petitioners failed to furnish complete and cogent reasons in their applications. The noting was approved by various officers in the hierarchy and finally came to be approved by Hon'ble Minister with a remark accepting hand written endorsement with further direction that the establishment should be intimated to file application with cogent reasons. In accordance with the above decision of the Hon'ble Minister, the letters dated 25 September 2019 were addressed to petitioners. We therefore repel the objection of the petitioners that the decision in communication was not taken by the Hon'ble Minister."

Thirdly, the contention of HSML that the application dated 28th August 2019 was complete in all respects and it ought to have been treated as such was considered. It was submitted that the letter dated 10th October 2019 (reproduced supra) was in response to the authorities asking them to resubmit. They supplied thereby, additional reasons for closure and the steps taken to prevent that eventuality. It was held that since the undisputed position is that vide letter dated 10th October 2019 HSML sought to furnish additional reasons, that *ipso facto* would amount to an acceptance that the application was not complete in all respects. That being the case, the deeming fiction would not come into play. Since the application was deficient, the State Government need not pass orders thereon. It was thereafter held as under:

> "30.…The fact that authority was not convinced with the application of the petitioner and had communicated that cogent reasons are not spelt out in the application would be sufficient to conclude that the authority did not grant the application for closure. What was contemplated by letter dated 25 September 2019 was "re-submission" of the application. Petitioners however chose to add reasons to the pending applications on 10 October 2019. Petitioners failed to submit fresh applications by providing statement of reasons as directed by State Government vide letters dated 25 September 2019. This is the reason why the State Government was once again required to convey to petitioners that they were required to resubmit the applications by subsequent communications dated 4

November 2019. It is only after receipt of letters dated 4 November 2019 petitioners took a stand of deemed permission under Section 25-O(3) of the ID Act in their letters dated 22 November 2019.

31. We are therefore unable to accept the contention raised on behalf of the petitioners that the closure applications filed by them on 28 August 2019 were complete in all respects so as to trigger deemed permission under provisions of Section 25 O(3) on expiration of period of 60 days. Petitioners themselves accepted the position that the closure applications were incomplete by seeking to adduce reasons for closure by letters dated 10 October 2019. It therefore cannot be held that the establishments of the petitioners are deemed to have been closed on expiration of period of 60 days from the date of submission of closure applications dated 28 August 2019."

The Writ petitions were dismissed.

SUBMISSIONS OF THE PARTIES

5. We have heard Mr. Mukul Rohatgi, learned Senior Counsel for the appellant - HSML as also the learned counsel appearing for the respondents.

A. Appellants

i. The impugned judgment is based on an erroneous reliance on the 'wrong form', which originated out of a submission of learned Counsel for the State. Reliance was placed by the learned Division Bench on Form XXIV and instead, it should have considered Form XXIV-C.

ii. The finding that the applications were incomplete is based on a misunderstanding/misapplication of the forms.

iii. Noting in the internal office file cannot be used to construe what constitutes an order. Reference is made to ***Bachhittar Singh v. State of Punjab***[6]; ***Sethi Auto Services Station v.***

6 AIR 1963 SC 395

DDA[7]; and ***Shanti Sports Club v. Union of India***[8] to submit that the internal file noting does not constitute an order. Furthermore, even such a contention that the letter dated 25th September 2019 is based on such noting is belied, for it does not say so. Instead, it only asks for details of the efforts made to avoid closure.

iv. An application for closure can only be disposed of by an order in accordance with Section 25-O(2). If it is not so done, what has been provided for in Section 25-O(3) will kick in.

v. The previous iteration of Section 25-O was struck down by this Court *vide* its judgment in ***Excel Wear v. Union of India***[9] on the ground that it did not prescribe a time limit for deciding the applications for closure. It was found that the restrictions were not in accordance with Article 19(6) of the Constitution of India. The amended iteration was upheld *vide* judgment in ***Orissa Textile and Steel v. State of Orissa***[10], wherein it was held that the requirement to conduct an enquiry, give a hearing, pass a reasoned order, and also the time limit was the curing of defects present in the previous version of the section. It has been so submitted by the appellants to show that the 60-day requirement is mandatory. If not so observed, it would violate Article 19(1)(g).

vi. It has not been shown by the respondents, how the applications made by the appellants are defective/ incomplete. Providing of further information cannot mean that the original application was defective. The decision in ***State of Haryana v. Hitkari Potteries***[11] was relied upon to show that even when the application was belatedly rejected on the ground that it was incomplete in certain respects, this Court held the deemed permission to be granted.

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7 (2009) 1 SCC 180

8 (2009) 15 SCC 705

9 (1978) 4 SCC 224

10 (2002) 2 SCC 578

11 (2001) 10 SCC 74

vii. The 60-day time period provided for in the Act cannot be extended, including on the pretext of resubmission of the application for closure. There were two letters issued by the State authority, one on 25th September 2019 and the other on 4th November 2019, with the latter one being beyond the said time period. Thereafter were two further letters dated 20th and 22nd November 2019 directing their presence for a meeting, both clearly beyond the time limit. Further, it is said that there is no provision for resubmission. Permitting the same would unsettle the scheme of the law.

viii. The Labour Minister is the "appropriate Government" within the meaning of the Act, hence all actions contemplated under Section 25-O could have been undertaken by him only. No further delegation thereof is provided for or permissible without notification to such effect under Section 39 of the Act. Be that as it may, it has been held in ***Orissa Textile and Steel*** (supra) that sub-delegation of *quasi* judicial function is impermissible. No communication has been addressed by the 'appropriate Government' within the time frame.

ix. The letter dated 25th September 2019 is by no means an order. Had it been so, there was no basis for the State's further letters. In fact, letter dated 4th November 2019 makes reference to the application for closure dated 28th August 2019. Said letter was also not marked to the workmen/their representatives which is a requirement under Section 25-O(2).

B. Respondents

The Workers Union, namely the Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) has filed written submissions. Their stand is that the impugned judgment is justified and takes the correct interpretation of facts and law. It has been argued therein, *inter alia*, that :

i. The first response of the State to the closure application, i.e., letter dated 25th September 2019 is not within the sphere of challenge.

ii. The communication which took place regarding the alleged closure of HSML and Shangrila[12] total approximately 300 workers, and non-inclusion of their recognised union in such discussions is absolutely detrimental to the interests of these workers.

iii. The intent of Section 25-O is to protect the fundamental rights of the employees, i.e., livelihood. The stand of the State is in consonance therewith, keeping in view important factors such as genuineness and adequacy of reasons.

iv. No question of law arises in the present matter which requires or would justify, the interference of this Court under its jurisdiction under Article 136 of the Constitution of India.

v. The deeming provision under Section 25-O(3) of the Act has to be read in continuation with Section 25-O(1) thereof. Since the employees were never informed of the enquiry as contemplated under Section 25-O(2) of the Act and the same never took place, closure cannot be deemed to have been granted thereunder.

vi. The incompleteness of the applications was accepted by the appellants themselves since they produced additional reasons. Also, the argument of respondent No.1 that internal noting of the file being used to show that the file had not been delayed, has been adopted by the Respondent-Union.

vii. Since the learned Industrial Tribunal had granted stay on 26th November 2019, and the writ petition subject matter of these appeals, was filed before the High Court on the same day, there has been no effective order of closure thus far.

viii. The question of Respondent-State as to whether the workers could be accommodated in other ongoing concerns under the control of the HSML – was justified. None of the monetary proposals have been accepted by the workers as placed before the Court and so, they are entitled to full benefits of Section 25-O(6) of the Act.

12 Appellants in the connected SLP

ix. In furtherance of their submissions, reliance is placed on a judgment of the High Court of Judicature at Madras in ***Sree Meenakshi Textile Mills Ltd. v. Madurai Textile Workers Union (CITU) & Ors.***[13]

QUESTIONS TO BE CONSIDERED

6. Having heard the learned counsel at length and captured their submissions as above, the following questions would fall for our consideration :

A. Whether letter dated 25th September 2019 can be construed to be an order - Connectedly, whether the appellants would be entitled to the relief of deemed closure, as on 27th October 2019 by virtue of the deeming fiction present in Section 25-O(3) of the Act?

B. What would be the meaning of the phrase 'appropriate Government' and whether in the facts of this case, it was the appropriate Government acting in the matter of the closure - if not what is the effect in law, thereof?

ANALYSIS AND DISCUSSION

7. At the outset, two aspects must be taken note of. One is that the Constitution of India under Article 19 provides for the freedom of trade, profession, occupation and business. Meaning thereby that all citizens of the country have freedom to choose a location of their choice and run it as they deem it fit, subject to the reasonable restrictions that may be made by the legislature. When it comes to industry which is covered under Article 19, the field of the statute is occupied by the Industrial Disputes Act, 1947. As such, its scope must be set out.

First

In ***Cooverjee B. Bharucha v. Excise Commr.***[14], a Bench of five learned Judges, while dismissing an application under article 32 of the Constitution of India arising from the grant of license to sell

13 1979 (38) FLR 213

14 (1954) 1 SCC 18

country liquor to a person, allegedly in contravention of the Rules set out for such purpose, i.e., in a manner, which according to the petitioner, violated his right under Article 19(1)(g), held :

> "**7.** Article 19(1)(*g*) of the Constitution guarantees that all citizens have the right to practise any profession or to carry on any occupation or trade or business, and sub-section (6) of the Article authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard-and-fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community…"

Second

A Constitution Bench of this Court in ***Hindustan Antibiotics Ltd. v. Workmen***[15] held as below noting the object of industrial law :

> "**9.** At the outset, it will be convenient to consider the question of principle. The object of the industrial law is two-fold, namely, (*i*) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (*ii*) by that process, to bring about industrial peace which would in its turn accelerate

15 1966 SCC OnLine SC 106

productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour."

This Court in ***Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.***[16], in the paragraphs extracted below, discusses the intent of the legislation and its history, in the following terms :

> **"5.** ...The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve cooperation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the Statement of Objects and Reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure the end. Conciliation is the most important and desirable way to secure that end. In dealing with industrial disputes, the courts have always emphasized the doctrine of social justice, which is founded on the basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the courts have to give them a construction which should help in achieving the object of the Act.
>
> **6.** The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provided for courts of enquiry and Conciliation Boards and forbade

16 (1999) 6 SCC 82

strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the settlement of industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lockouts during the pendency of the conciliation or adjudication proceedings. The Industrial Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8-10-1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March 1947 and became the law w.e.f. 1-4-1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of a welfare State implies an end to the exploitation of workmen and as a corollary to that collective bargaining came into its own. The legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is

to give succour to weaker sections of society which is a prerequisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be the lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of society keeping in view the fast-changing social norms of a developing country like India. It appears to us that the High Court has adopted a casual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act."

8. Since both the questions that arise for our consideration are intertwined, they shall be taken up together. The instant dispute pertains to the closure of HSML and Shangrila, industrial units engaged in manufacturing for BIL. Section 25-O of the Act deals with this situation. The extract as it relates to the dispute herein, reads :

"[25-O. Procedure for closing down an undertaking.—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer,

the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

…"

9. Sub-section 1 states that an employer who wants to close down his business concern must, write to the concerned 'appropriate Government'-

(a) at least 90 days before the date of intended closure;

(b) stating reasons for such closure;

(c) undertaking that the copy of this application has been served on the representatives of the workmen.

As per sub-section (2), the appropriate is to,

(a) Making a suitable enquiry;

(b) After providing a reasonable opportunity of hearing to the employer, the workmen and those interested in the closure of such business;

(c) And considering the genuineness, adequacy of reasons, interests of the general public & all other relevant factors;

by an order in writing, recording reasons, grant or refuse such permission. Such an order is to be communicated to the employer and the workmen.

Sub-section (3) deems the grant of permission for closure as requested if the appropriate Government does not, within sixty days of the application, make an order.

10. If there exists the freedom to set up and run a trade/business as one sees fit, necessarily, there has to be a set of rights vesting with the proprietor/owner to take decisions as may be in his best interest. At the same time, it is true that the law does not permit such owner or proprietor to take any and all decisions without having considered and accounted for the impact that it shall have on the employees or workers that are part of this establishment. This is evidenced by the provision extracted above providing for a detailed procedure to be followed when a person wishes to 'shut shop', but concomitant providing that if the concerned Government does not take action with reasonable expediency, the business owner should not be saddled with the costs and responsibilities of running the business indefinitely, till such time the authority arrives at a proper and just decision. The sum and substance are that Article 19(1)(g) includes the right to shut down a business but is, of course, subject to reasonable restrictions. This interplay of Article 19(1)(g) and Section 25-O of the Act engaged in the attention of a Constitution Bench of this Court in ***Excel Wear*** (supra), when it was cast with considering the constitutionality of Section 25-O as it then stood. It has subsequently been amended, challenged before this Court and upheld in ***Orissa Textile and Steel*** (supra), which we will discuss further ahead.

11. In ***Excel Wear*** (supra), N.L Untwalia, J., writing for the Court made some pertinent observations which we see fit to reproduce with profit :

> "20… But then, as pointed out by this Court in *Hatisingh case* the right to close down a business is an integral part of the right to carry it on. It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry on a business at all. The extreme proposition urged on behalf of the employers by equating the two rights and placing them at par is not quite apposite and sound. Equally so, or rather, more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral part of the right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it

cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(*g*) of the Constitution."

12. A Constitution Bench in ***Orissa Textiles*** (supra) through Variava J., observed as follows about the current iteration of Section 25-O :

"**18.** We also see no substance in the contention that the amended section merely deals with the procedural defects pointed out in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] and does not deal with the substantive grounds set out in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] . In our view the amended Section 25-O is very different from Section 25-O (as it then stood). It is now more akin to Section 25-N (as it then stood) the constitutional validity of which was upheld in *Meenakshi Mills case* [(1992) 3 SCC 336 : 1992 SCC (L&S) 679] . In *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] it has been accepted that reasonable restrictions could be placed under Article 19(6) of the Constitution. *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] recognizes that in the interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. The amended Section 25-O lays down guidelines which are to be followed by the appropriate government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of the general public, not to allow closure for some time.

> Similarly, if the establishment is manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time, interest of the general public may require not to allow closure for a particular period of time. We must also take a note of sub-section (7) of the amended Section 25-O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate government could direct that provision of sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that the amended Section 25-O recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of the general public."
>
> (Emphasis supplied)

13. What can be deduced regarding the scope of section 25-O from the above extract is –

    i. the right to close the business is subject to the interest of the general public;

    ii. any application seeking permission for closure must disclose adequate and genuine reasons which the authority has to have regard for;

    iii. in certain cases, however, even if the reasons are genuine and adequate, it does not mean that permission to close ought to be granted;

    iv. if it is found that the reasons are generally adequate, and despite that the appropriate Government decides for refusal of permission of foreclosure, then the interest of the general public involved in that particular case must be "compelling" and "overriding";

v. financial difficulty on its own cannot constitute the reason for shutting down the business. An employer must demonstrate exceptional circumstances or an impossibility of running the business.

14. In the instant facts, the application for closure was duly addressed to the authority, which was acknowledged to be on 28 August 2019. The Deputy Secretary, Ministry of Labour Government of Maharashtra, responded on 25 September 2019 stating that no sufficient reasons had been provided for closure. The letter read- *"it will be possible to take action only if you can submit the application again by providing explanation regarding other efforts initiated by you for not closing down the Division, providing justifiable as well as consummate rationale for this action."* Hereby, it was informed that action could not be taken on the application as it stood and that they would have to resubmit with better particulars.

15. It is contended by HSML that the Deputy Secretary made such an order without the requisite authority since he was not the "appropriate Government" to deal with applications under section 25-O. As such, the order to revise and resubmit would be *non-est* in law. It is an undisputed position, as also noted by the High Court, that the powers under section 25-O rest with the Minister. There is no difficulty in that respect. The State Government, being the appropriate Government, has delegated its power specifically to the Minister for Labour. Section 39 of the Act provides for such a situation. It reads :

> "39. Delegation of powers.- The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,--
>
> (a) where the appropriate Government is Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and
>
> (b) where the appropriate Government is a State Government by such officer or authority subordinate to the State Government as may be specified in the notification."

There is nothing on record to show that the Deputy Secretary has been duly authorised to conduct communication and/or accept or reject applications for closure made by industrial units. The concerned authority in that regard is only the Minister. If it is considered that the Minister for Labour himself represents the State Government or is merely an agent of the State Government, then for the Deputy Secretary to act, there ought to have been a notification in that respect. Otherwise, if the Minister for Labour is a delegate of the State Government, then there has to be a notification therefor as well. According to the impugned judgment, a notification to this effect dated 25 June 2013 is present. However, the same is not on record. The Respondent-State has contended that the internal noting placed on record before the High Court shows that the file had travelled up to the Minister, and, therefore, any action consequent to such approval by the Minister is in accordance with the law.

16. We find it difficult to accept this contention for two reasons. There is no express authority resting with the Deputy Secretary. This we have already observed. Second, reliance cannot be placed on internal noting to establish compliance with procedure. This Court in ***Pimpri Chinchwad New Township Development Authority v. Vishnudev Coop. Housing Society***[17], in a case pertaining to proceedings under the Land Acquisition Act, 1894 concerning the issue of whether the State is at liberty to withdraw from an acquisition, held *" …a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity;…"*. [Also see ***Bachhittar Singh*** (supra); ***Sethi Auto Services Station*** (supra); and ***Shanti Sports Club*** (supra)].

Hypothetically, assuming that the letter dated 25 September 2019 was sent to HSML with the approval of the Minister, as allegedly shown by the internal noting in the office file, and was thereby issued by the competent authority, even in that case, we find the 'order' to be lacking. The order accepting or rejecting an application for closure is undoubtedly an administrative order. It is noted that the file originated from the desk officer and travelled up through the desks of various authorities and made its way to the Minister. One of these

17 (2018) 8 SCC 215

authorities, it is unclear which one made the noting that the closure application did not disclose cogent reasons. The Minister endorsed this finding and noted in the file that they should be asked to submit the application afresh. This is tried to be shown as a decision of the Minister. For the competent authority to take a decision, as the law understands it, there has to be 'application of mind'. The question that needs to be addressed is whether endorsement of a noting made by a subordinate officer can be 'application of mind'. To show the same, it is generally prudent that reasons are recorded. In decades past, there was a belief that the Government would be brought to a standstill if it had to provide reasons for each administrative action, keeping in view the fact that it functions through a myriad of agencies and authorities[18]. Even here, it was stated that when such a decision affects the rights of parties, reasons should be accorded. It may be observed here that Section 25-O specifically provides *"by order and for reasons to be recorded in writing,"* and so, reasons are a statutory necessity. With time, it is now settled that administrative authorities are also required to give reasons for a decision made. In ***Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.***[19], a three-Judge Bench in the context of tenders invited by a corporation which is 'State' within the meaning of Article 12 of the Constitution of India, held as follows in regard to giving reasons for its decisions:

> "**10.** In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action;

18 Mahabir Jute Mills Ltd. v. Shibban Lal Saxena, (1975) 2 SCC 818

19 (1990) 3 SCC 280

> disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so."
>
> (Emphasis Supplied)

Reasons, therefore, are important and ought to be recorded. It could be said that the conclusion reached by the office of the Minister that HSML had not supplied sufficient reasons for closure would itself be sufficient to qualify as 'reasons'. However, can an endorsement of the view taken by an undisclosed officer of the Ministry be said to be an 'application of mind' by the competent authority when the Minister is the sole authority? We think not. The decision had to be Top Down and not otherwise. Had it been that this conclusion of insufficiency of reasons was the Minister's conclusion, and then they would have directed the Deputy Secretary to communicate the decision to HSML, then our conclusion may have been different.

17. Given the above discussion, the necessary conclusion is that the letter dated 25 September 2019 addressed by the Deputy Secretary to HSML cannot be constituted to be an order since such order to resubmit the application was without any authority since it was not the appropriate Government acting in that regard and not an order rejecting or accepting the application. The same conclusion can be reached on a second count - the 'order' suffered from the vice of non-application of mind by the competent authority.

18. Section 25-O provides that the appropriate Government may, after making an enquiry and hearing all the concerned parties, pass an order in writing accepting or rejecting the application for closure. It also provides that if the appropriate Government does not communicate and order within 60 days of the date of application, there shall be deemed closure. We have held that the appropriate Government had not acted in respect of the application made by HSML since the

Minister, who was the competent authority, had not applied his mind to the administrative 'order' nor, did the Deputy Secretary have the authority to do so. In other words, the appropriate Government failed to make and communicate any order on the application for closure. The deemed closure would, therefore, come into effect.

19. Separately, we may observe that the reasoning furnished by the Deputy Secretary to reject the application for closure made by HSML is insufficient, and it appears to have been given for the sole purpose of rejecting the application without due application of mind. As discussed supra, an employer seeking to close his business must show compelling and overriding circumstances. The application for closure clearly states, as already reproduced supra that *"Thus BIL has terminated the job work agreement with the Biscuit Division and the said provision has no other manufacturing avenue, since the said Division was manufacturing biscuits only for BIL. In view of the above, the biscuit division has no alternative but to close down, the manufacturing activities."*. We may add HSMC to have clarified that since inception no job work for anyone else was ever done and that now there is no further scope of executing work for anyone else. We are quite certain that this spells impossibility. It is not the case of the Respondent-State that the statement made by HSML is incorrect and that they had other opportunities ongoing and available, and despite the same, they had sought permission for closure. Then, we ask ourselves, when there is no opportunity or avenue for production, what shall the employees do?

20. *Arguendo,* if we keep aside the 60-day time period for the deemed closure to take effect, we find that in the subsequent letter dated 10 October 2019, the position stands further clarified that for the last 32 years, HSML undertook work only from BIL and in doing so, the raw material and necessary plant and machinery were provided by the latter itself. Upon receipt of the notice of closure, in an attempt to save the division, they tried to persuade BIL to reconsider its decision but were not met with success. They subsequently approached other companies seeking manufacturing work, but to no avail. In the attending facts and circumstances, we hold that there did indeed exist sufficient compelling circumstances for closure.

21. The High Court, in our considered view, erred in placing reliance on Form XXIV-B, instead of XXIV-C which, resulted into an erroneous appreciation of statutory provisions.

CONCLUSION

22. In that view of the matter, we hold that application dated 28th August 2019 was complete in all respects, and the 60-day period for the deemed closure to take effect would be calculable from said date. Second, the Deputy Secretary was not the appropriate Government who could have asked HSML to revise and resubmit the application for closure. That authority is only vested with the Minister concerned. The Minister did not, even in the slightest, consider the merits of the matter independently, much less with or without any application of mind. Sub-delegation to the officer was not permitted by law, and, therefore, any communication made by him would be without any legal sanction.

23. The appeals are allowed. It is, however, clarified that the money paid to the employees by orders of the High Court in the pendency of the writ petitions would not be recoverable from them. At this juncture, we may refer to the order made by this Court preserving the matter for judgment. It was recorded therein as follows :

> "O R D E R
>
> …
>
> 5. Shri Rohatgi, learned senior counsel, on instructions, states that a sum of Rs.4 Crores (approximately) already stands deposited. In addition, a further sum of Rs.10 crores can be paid by the petitioner to the respondent workmen. He clarifies that the said amount would be in addition to the amount of gratuity (approximately Rs.4 crores) which the workmen are otherwise entitled to.
>
> 6. The entire sum, i.e., the amount of gratuity plus the enhanced amount can be distributed as compensation amongst the workmen who may be eligible and entitled to, for being on the rolls of the company.
>
> 7. This, of course, is by way of an endeavour to put an end to the controversy and without prejudice to the respective rights and contentions of the parties."

24. Considering that some of the employees may be, with the closure of this concern, losing the only job they have known and still others would be, for no fault of their own, rendered unemployed, we appreciate

the gesture made by HSML. Such a statement is taken on record. At the close of the hearing, Mr. Mukul Rohtagi, learned Senior Counsel had left the issue of further enhancement of the amount to the Court. Having given thoughtful consideration, we deem it just and proper to further enhancing the appellants' offer by a sum of Rs.5 crores, thus, making it Rs.15 Crores instead of Rs.10 Crores, as mentioned in our order extracted supra. Let the amount be released forthwith, as per their entitlement, in favour of the employees and, in any case, not later than eight weeks from the date of the judgment.

Pending applications, if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 463 : 2025 INSC 818

Kathyayini
v.
Sidharth P.S. Reddy & Ors.

(Criminal Appeal No. 2956 of 2025)

14 July 2025

[Vikram Nath* and Prasanna B. Varale, JJ.]

Issue for Consideration

The High Court quashed the criminal proceedings against respondent nos.1 and 2 in two complaint cases whereby they were charged for offences punishable u/ss.120B, 415, 420 r/w. s.34 of Penal Code, 1860. Whether a *prima facie* case exists against the respondents.

Headnotes†

Penal Code, 1860 – ss.120B, 415, 420 r/w. s.34 – Allegation that respondent nos.1 and 2, along with their uncles, have attempted to defraud their aunts by creating a forged family tree and partition deed with a motive to gain all the monetary award for a land bypassing the appellant and her sisters – Two complaint cases – Respondent nos.1 and 2 filed writ petition, which was allowed by the High Court and the criminal proceedings against them in both the complaint cases, whereby they were charged for offences punishable u/ss.120B, 415, 420 r/w. s.34 of IPC, were quashed – Correctness:

Held: It is clear from the facts that a *prima facie* case for criminal conspiracy and cheating exists against respondent nos.1 and 2 – The High Court could not find any justification to deny that respondents misrepresented the family tree – The Court itself has acknowledged that respondents were bound to disclose the names of daughters of KGY in the family tree – Considering the fact that both the partition deed and the family tree were used in gaining the monetary compensation awarded for the land, it is necessary that genuineness of both the documents is put to trial – As far as, the issue of bar against prosecution during the pendency of a civil suit is concerned, no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit – The pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a *prima facie* case exists against the accused

* Author

persons – Considering the long chain of events from creation of family tree excluding the daughters of KGY, partition deed among only the sons and grandsons of KGY, distribution of compensation award among the respondents is sufficient to conclude that there was active effort by respondents to reap off the benefits from the land in question – Further, the alleged threat to appellant and her sisters on revelation of the above chain of events further affirms the motive of respondents – All the above factors suggest that a criminal trial is necessary to ensure justice to the appellant – Therefore, the impugned judgment of the High Court is set aside – The Trial Court directed to continue its proceedings against respondent Nos.1 and 2 in accordance to law. [Paras 17, 18, 19, 23, 24]

Case Law Cited

K. Jagadish v. Udaya Kumar G.S. and Another **(2020) 14 SCC 552;** *Pratibha Rani v. Suraj Kumar and Another* **[1985] SCR 3 191 : (1985) 2 SCC 370;** *Kamaladevi Agarwal v. State of W.B. and Others* **[2001] Supp. 4 SCR 284 : (2002) 1 SCC 555 – relied on.**

List of Acts

Penal Code, 1860.

List of Keywords

Criminal conspiracy; Cheating; Forged family tree; Partition deed; Monetary award; Non-disclosure of family; Genuineness of documents; Monetary compensation; Pendency of civil proceedings; Criminal proceedings; Distribution of compensation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2956 of 2025

From the Judgment and Order dated 23.11.2023 of the High Court of Karnataka at Bengaluru in WP No. 23106 of 2021

Appearances for Parties

Advs. for the Appellant:
Dr. Menaka Guruswamy, Sr. Adv., Vibhav Srivastava, Sharad Kumar Puri, Mrs. Pinki Aggarwal, Utkarsh Pratap, Ms. Arunima Das, Ms. Aditi Tripathi, Mrs. Priya Puri.

Advs. for the Respondents:
Nikhil Rohatgi, Ms. Ranjeeta Rohatgi, Shashank Khurana, Ms. Nishtha Tyagi, V. N. Raghupathy, Vishwanath P. Allannavar, Ms. Mythili S, Md. Apzal Ansari, Nikhil Majithia, Rishi Kumar Singh Gautam, Neeleshwar Pavani.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. The present appeal assails the order passed by High Court of Karnataka on 23.11.2023 in Writ Petition No.23106 of 2021, whereby it allowed the Writ Petition preferred by respondent Nos. 1 and 2, and quashed the criminal proceedings against them in two complaint cases, C.C. No. 892/2021 and C.C. No. 897/2021 whereby they were charged for offences punishable under Sections 120B, 415, 420 read with Section 34 of Indian Penal Code, 1860.[1]

3. Brief facts leading to present appeal are summarised below:

   3.1 The appellant is the daughter of Sri. K.G.Yellappa Reddy and Smt. Jayalakshmi. The couple had eight children- three sons and five daughters. The three sons are Sudhanva Reddy, Guruva Reddy (Dead) and Umedha Reddy. The five daughters are Smt. Lalitha, Smt. Jayashree, Smt. Rita (Dead), Smt. Bhavani and Smt. Kathyayini (present appellant). Respondent Nos. 1 and 2 namely Sidharth P.S.Reddy and Vikram P.S.Reddy are sons of Sudhanva Reddy.

   3.2 Appellant's parents had jointly purchased the land bearing Sy.No.35, Extent- 19 guntas situated at Dodda Thogur in Bengaluru by a registered sale deed dated 17.02.1986. Her father K.G.Yellappa Reddy was the only son of late Gurappa Reddy and he purchased the above property from the sale of certain ancestral properties. Appellant's parents are no more. The above land of an extent of 19 guntas was acquired

1 IPC.

by the Bengaluru Metro Rail Corporation Limited and a total compensation of Rs. 33,00,00,000/- (Rupees thirty-three crores only) was awarded and disbursed. The appellant was under a bonafide belief that compensation amount would be for the whole family and equitably disbursed among all the eight children of K.G.Yellappa Reddy and Smt. Jayalakshmi.

3.3 However, the appellant was shocked to know that her elder brother- Sudhanva Reddy and his two sons, who are respondent Nos. 1 and 2 herein, hatched a criminal conspiracy by preparing false and incorrect papers in order to deprive her of her legitimate share. They created a false and wrong family tree dated 18.01.2011 by bribing the village accountant, Narasimhaiah. The family tree reflected as if appellant's parents had only three sons i.e. Sudhanva Reddy, Guruva Reddy and Umedha Reddy. The five daughters of Yellappa Reddy, including the appellant, were not shown in the family tree. The village accountant allegedly did not conduct any inquiry before issuing the family tree.

3.4 Further, respondent Nos. 1 and 2 created an allegedly fraudulent partition deed dated 24.03.2005 with respect to the said land. In this wrongful act, they were abetted by appellant's brothers Guruva Reddy and Umedha Reddy. It appears from the partition deed that K.G.Yellappa Reddy divided the land in three equal parts and bequeathed it to Sidharth P.S.Reddy and Vikram P.S.Reddy, Guruva Reddy and Umedha Reddy.

3.5 Based on the partition deed, the brothers of appellant have claimed the compensation awarded by the Bengaluru Metro Rail Corporation Limited. The appellant states that in the partition deed there was a reference to the five daughters of K.G. Yellappa Reddy, but the officials of the Bengaluru Metro Rail Corporation Limited did not ask for a proper family tree and released a sum of Rs.1,80,00,000/- (Rupees One crore and eighty lakhs only) to appellant's brothers. The appellant further claims that the properties of the family were never partitioned, and since she was not a party to the partition, the partition deed is not binding on her. She claims that all the eight children of her parents were entitled to 1/8th share in the aforesaid compensation and all other properties of her parents.

3.6 Meanwhile, appellant's eldest brother Sudhanva Reddy had many wives and in order to avoid multiple claims, he had divided his claim over the property in favour of his first wife Latha's sons, who are respondent Nos. 1 and 2 herein. However, when demand drafts were received by these two sons, they refused to part with the money with their father. Prajwal Reddy, one of the sons of Sudhanva Reddy from his second wife-Pushpa filed a civil suit being O.S.No.714/2017 against Sudhanva Reddy, claiming his share. As Sudhanva Reddy has not received any share of money from his two sons from the other wife, he revealed the truth about the falsity of the partition deed dated 24.03.2005. He also said that he had given a letter to the Managing Director of Bengaluru Metro Rail Corporation Limited stating that the partition deed was fabricated by Guruva Reddy, Umedha Reddy, Sidharth P.S.Reddy and Vikram Reddy. Due to this letter given by Sudhanva Reddy, the Karnataka Industrial Area Development Board ("KIADB") stopped the payment of further amount and deposited Rs. 5,59,000,00/- (Rupees five crore fifty nine lakhs only) with the Trial Court. However, till now KIADB has released total Rs. 27 crores as compensation and it has been credited to the accounts of Sidharth P.S.Reddy, Vikram P.S.Reddy, Umedha Reddy and Ashok Reddy.

4. The appellant came to know of the disbursement on 06.10.2017 whereupon she questioned her brothers about their fraudulent acts. Upon being confronted, the brothers allegedly abused her and threatened to eliminate her if any further action was taken. The appellant registered a complaint before police on 14.11.2017. Based on her complaint the police registered FIR No. 270/2017 on 18.11.2017 under Sections 506, 34, 471, 420, 474, 120-B, 468, 464 read with Section 34 of IPC against Sudhanva Reddy, Narsimhaiah (the village accountant) and Sidharth Reddy, stating that Sudhanva Reddy and his two sons colluded with village accountant to create a fabricated family tree and a partition deed. On the strength of these documents, they were successful in appropriating substantial amount of compensation of Rs. 33 Crores depriving the sisters of their share.

5. Another complaint was lodged jointly by appellant and Smt. Jayshree, another daughter of K.G.Yellappa Reddy on 20.11.2017, alleging the same allegations, based upon which, a case being Cr.No.145/2017

was registered against Sudhanva Reddy, Narsimhaiah, Sidharth Reddy and Vikram Reddy.

6. During the course of investigation, the City Crime Branch of Bangalore police seized the bank accounts of Ashok Reddy, Sidharth P.S. Reddy, Vikram P.S.Reddy and Umedha Reddy by exercising the power conferred under Section 102 Code of Criminal Procedure, 1973[2]. This seizure of the accounts was challenged by all four accused persons by filing applications under Sections 451 and 457 of CrPC, requesting to de-freeze their respective bank accounts. On 24.03.2018, the Trial Court rejected their applications. It reasoned that the amount of compensation credited to the accounts of applicants is directly involved in the criminal case registered against them.

7. Aggrieved by this order, all four accused preferred Criminal Revision petitions before Sessions Court. Their petitions were dismissed by Sessions Court by order dated 03.12.2018.

8. Aggrieved by the order of Sessions Court all four accused persons preferred Criminal Petition Nos. 34/2019, 35/2019, 36/2019 and 37/2019 before the Hight Court. The High Court dismissed these petitions on 07.04.2021. It held that bank accounts fall within the meaning of 'property' under Section 102(1) of CrPC and the Investigating Officer is empowered to seize any such Bank account in which he notices suspicion about commission of an offence. The petitioners therein had pointed out non-compliance of a requirement of submission of report to Magistrate by the Investigating Officer immediately after freezing of the Bank accounts. However, the High Court held that de-freezing of Bank accounts merely on such technical ground may lead to the possibility of accused persons siphoning huge amount of funds available in their accounts. Thus, it concluded that mere non-compliance of submission of report as required under Section 102(3) of CrPC would not vitiate the seizure.

9. Aggrieved by this order of the High Court, Respondents preferred Special Leave Petitions No. 7532-7533 before this Court, which were dismissed on 08.10.2021.

10. Meanwhile, police filed a charge sheet in both the FIRs in Crime No. 270/2017 and Crime No. 145/2017 on 12.01.2021 for the offences

2 CrPC

under Sections 120B, 415, 420 read with Section 34 of IPC against Accused No.1-Sudhanva Reddy (deceased), Accused No. 2- Sidharth Reddy, Accused No. 3 Vikram Reddy, Accused No. 4- Umedha Reddy and Accused No. 5-Ashok Reddy. The Trial Court on 13.01.2021 took cognizance in both the criminal complaints and registered C.C.No.892/2021 and C.C.No.897/2021 for the aforesaid offences and issued summons to the accused persons, including respondent Nos. 1 and 2.

11. On 28.08.2021 a Memorandum of Understanding was executed between Umedha Reddy, Ashok Reddy and the appellant. On the basis of the compromise, the proceedings as against Umedha Reddy and Ashok Reddy were quashed.

12. During the course of the proceedings, it was brought to the notice of the Trial Court that the appellant and her sister Smt. Jayshree, have jointly filed a civil suit being O.S.No.274/2018 for partition by metes and bounds and separate possession of the properties belonging to the family. They are also seeking reliefs of partition of equal share of compensation, permanent injunction restraining the defendants from transferring or creating any charges on suit property and declaration that the Partition deed dated 24.03.2005 is void. Further, another civil suit being O.S.No. 124 of 2018 has been filed by Smt. Jayashree seeking permanent injunction restraining defendants, including the respondents herein, from operating and withdrawing the amount under compensation award deposited in their bank accounts.

13. In December 2021, respondent Nos. 1 and 2 filed a Writ Petition for quashing of the charge sheet and of the order taking cognizance dated 13.01.2021. The High Court, by the Impugned order, allowed the Writ Petition and thereby quashed the prosecution of Respondents Nos. 1 and 2 in both the complaint cases.

14. The High Court noted that the statement of the Sub-Registrar makes it certain that the thumb impression found on the partition deed dated 24.03.2005 was the thumb impression of Yellappa Reddy. Therefore, an offence as alleged either under Sections 468 or 471 IPC is not made out. Further, the partition deed referred above was drawn up on 24.03.2005 and the respondents, in an effort to get their names entered in the revenue records, have brought up a family tree dated 18.01.2011 in line with the partition deed dated 24.03.2005. The High

Court noted that, no doubt when respondents had obtained the family tree, they were bound to disclose the names of daughters of late Yellappa Reddy. But since the attempt by the respondents was to get their names entered in the revenue records based on the partition deed dated 24.03.2005, it cannot be held that the respondents had committed an offence under Section 420 IPC. It may be that they had misrepresented about the family of Yellappa Reddy but that in itself was not an offence punishable under Section 420 IPC. The High Court thus concluded that, considering the suit for partition is already pending where the compensation determined by the Bengaluru Metro Rail Corporation Limited, is secured, it is appropriate that criminal proceedings initiated against the respondents is put to an end.

15. Aggrieved by the impugned order passed by the High Court, the complainant-appellant preferred the present appeal before this Court.

16. We have heard the learned Senior Counsel/Counsels for both the sides and have perused the material on record.

17. It is clear from the facts that a prima facie case for criminal conspiracy and cheating exists against respondent Nos. 1 and 2. It appears that they, along with their uncles Guruva Reddy and Umedha Reddy, have attempted to defraud their aunts by creating a forged family tree and partition deed with a motive to gain all the monetary award for land in question bypassing the appellant and her sisters. They succeeded in their plan until Sudhanva Reddy revealed it to the authorities by a letter. The High Court has erroneously relied upon the statement of Sub-Registrar who stated that partition deed dated 24.03.2005 was presented for registration on 26.03.2005 and due to health reasons concerning K.G.Yellappa Reddy, his thumb impressions were secured at his house in presence of the Sub-Registrar. However, we must note this statement of the Sub-Registrar has not been put to cross examination. It would be unwise to rely on unverified testimony of a Sub-Registrar to ascertain the genuineness of Partition deed. The High Court erred in heavily relying on his statement to conclude that the Partition deed was genuine and thus no offence is made out against the respondents under Sections 463 and 464 IPC.

18. Further, the High Court could not find any justification to deny that respondents misrepresented the family tree. The Court itself has acknowledged that respondents were bound to disclose the names of daughters of K.G.Yellappa Reddy and Jayalakshmi in the family

tree. Considering the fact that both the partition deed and the family tree were used in gaining the monetary compensation awarded for the land, it is necessary that genuineness of both the documents is put to trial.

19. We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of **K. Jagadish v. Udaya Kumar G.S. and another**[3]**,** this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:

> "8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law."

20. In **Pratibha Rani v. Suraj Kumar and another**[4], this Court summed up the distinction between the two remedies as under :

> "21. … There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the

3 (2020) 14 SCC 552.

4 (1985) 2 SCC 370

> stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law."

21. The aforesaid view was reiterated in **Kamaladevi Agarwal v. State of W.B. and others**[5],

> "17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

22. After surveying the abovementioned cases, this Court in **K. Jagadish (supra)** set aside the holding of High Court to quash the criminal proceedings and held that criminal proceedings shall continue to its logical end.

23. The above precedents set by this Court make it crystal clear that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons. In present case certainly such prima facie case exists against the respondents. Considering the long chain of events from creation of family tree excluding the daughters of K.G.Yellappa Reddy, partition deed among only the sons and grandsons of K.G.Yellappa Reddy, distribution of

5 (2002)1 SCC 555

compensation award among the respondents is sufficient to conclude that there was active effort by respondents to reap off the benefits from the land in question. Further, the alleged threat to appellant and her sisters on revelation of the above chain of events further affirms the motive of respondents. All the above factors suggest that a criminal trial is necessary to ensure justice to the appellant.

24. Therefore, we set aside the Impugned order of High Court dated 23.11.2023 in Writ Petition No.23106 of 2021. Accordingly, we direct the Trial Court to continue its proceedings against respondent Nos. 1 and 2 in accordance to law.

25. Accordingly, the appeal is allowed as above.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 474 : 2025 INSC 822

The Oriental Insurance Co. Ltd.
v.
Niru @ Niharika & Ors.

(Special Leave Petition (C) No. 11340 of 2020)

14 July 2025

[Sudhanshu Dhulia and K. Vinod Chandran,* JJ.]

Issue for Consideration

Whether any interference is required in the multiplier adopted by the Tribunal and affirmed by the High Court; Whether the 9% interest rate granted by the Tribunal is perfectly in order.

Headnotes†

Motor Vehicle Accident claim – Victim-deceased collided with a truck in the year 1995 – Victim died – Deceased was working as an Engineer with the Brtish Telecom and was paid in pounds – The wife and two minor children of the deceased sought compensation – Tribunal found the driver of the truck negligent – The income stood proved and the Tribunal adopted a multiplier of 13 and reduced 1/3rd of the income for personal expenses – Loss of dependency was computed at Rs.78,33,540/- to which award, Rs.40,000/- as loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses were added – The total compensation awarded was Rs.79,04,540/- – The High Court affirmed the negligence of the truck driver and interfered with the quantum only to the extent of reducing the average exchange rate as existing in the years 1995 & 1996 – Whether the order of the High Court requires interference:

Held: Presumably the family pension was only payable to the wife and when she got remarried, the same was stopped – However, it cannot be said that the minor children were not entitled to the multiplier as adopted by the Tribunal – In such circumstances, there is no reason to interfere with the multiplier adopted by the Tribunal & affirmed by the High Court – The compensation for loss of dependency would thus be; Rs.56,165 x 130% x 12 x 13 x 2/3rd = Rs.75,93,508/- – To the said amount would be added Rs.70,000/-,

* Author

being the amounts granted by the Tribunal for loss of consortium, loss of estate and funeral expenses – The total award hence would be Rs.76,63,508/-, as determined by the High Court too – Further, 9% interest rate granted by the Tribunal is perfectly in order – No illegality in awarding interest for future prospects – In SLP(C) No.11340 of 2020, the multiplier applied looking at the life span of the deceased and the claimants is 13 – Before the Tribunal itself, the case was pending for 12 years and the only amount received by the claimants was Rs.50,000/- – Hence though amounts are awarded for future prospects taking the multiplier of 13; in effect, the money is received only after the period for which the multiplier is adopted – Similar is the case in SLP(C) No.22136 of 2024 where the accident occurred in 2018, the multiplier applied is 17 and seven years have passed from the date of accident – The order of the High Court in both the cases is upheld and there is no reason to interfere with the same. [Paras 6, 8, 9, 12]

List of Keywords

Motor Vehicle Accident claim; Compensation; Multiplier; Loss of dependency; Loss of consortium; Loss of estate; Funeral Expenses; Rate of interest; Awarding interest for future prospects.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 11340 of 2020

From the Judgment and Order dated 11.10.2019 of the High Court of Gujarat at Ahmedabad in FA No. 1789 of 2019

With

Special Leave Petition (C) No. 22136 of 2024

Appearances for Parties

Advs. for the Petitioner:
Aditya Kumar, Ms. Ila Nath, C. George Thomas, Abhishek Gola, Viresh B. Saharya, Anshul Mehral, Akshat Agarwal, Rishabh Sahai Mathur, Nishant.

Advs. for the Respondents:
Mohit D. Ram, Ms. Sthavi Asthana, Dr. Linto K.b., Sanjib Khandayatray, Duvvada Ramesh.

Judgment / Order of the Supreme Court

Judgment

K. Vinod Chandran, J.

1. The wife and two minor children of the deceased in a motor vehicle accident were before the Motor Accident Claims Tribunal for compensation on loss of dependency. The accident occurred on 18.11.1995 when the deceased was travelling in a car which collided with a truck. On the allegation of rash and negligent driving of the truck, the claimants were before the Tribunal seeking compensation of Rs.1,00,00,000/- which was later amended and enhanced to Rs.1,30,00,000/-. The deceased alongwith his family, the claimants were residing in the United Kingdom. The deceased was a person with several academic achievements working as an Engineer with the British Telecom and was paid salary in Pounds.

2. The Tribunal found negligence of the driver of the truck relying on the F.I.R. as also the award passed in a claim petition filed by the driver of the car, wherein negligence was clearly found on the truck driver. The income stood proved and the Tribunal adopted a multiplier of 13 and reduced 1/3rd of the income for personal expenses. Loss of dependency was computed at Rs.78,33,540/- to which award, Rs.40,000/- as loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses were added. The total compensation awarded was Rs.79,04,540/-.

3. The Insurance Company filed an appeal before the High Court against the award amounts raising multifarious contentions. It was first contended that the accident occurred only due to the rashness and negligence of the car driver. On the quantum, it was submitted that admittedly the wife married in the year 2002 and the multiplier should have been only 7, taken from the death of the first husband. The exchange rate as adopted by the Tribunal, was also assailed together with the interest granted at the rate of 9%, which it was contended was against the existing interest rates. Specific contention was taken against the long delay in disposing of the claim petition, which was filed in the year 1995 and disposed of in the year 2017. The allegation was that the claimants who were residing in the U.K.

were solely responsible for the delay occasioned. We see the said contention having been taken relying on Annexure A-4 produced in the memorandum of SLP filed.

4. The High Court affirmed the negligence of the truck driver and interfered with the quantum only to the extent of reducing the average exchange rate as existing in the years 1995 & 1996. The exchange rate of Indian Rupee per Pound was determined at Rs.52.3526 as against the determination of Rs.54.2601 by the Tribunal. The Insurance Company has filed the appeal to cause further interference to the quantum on the various other grounds taken before the Tribunal which according to the Insurance Company was not considered at all by the Tribunal.

5. The Insurance Company has specifically stated in the appeal memorandum that based on the exchange rate applicable at the time of the accident, the monthly income of the deceased should only have been Rs.56,168 (1072.94 x 52.35); which was accepted by the High Court. The Tribunal and the High Court were correct in having deducted 1/3rd for personal expenses and the addition made of 30% for future prospects.

6. One other compelling contention taken by the Insurance Company before the High Court and this Court is that the first respondent-wife of the deceased admitted that she got remarried in 2002 and after that she alongwith her children was living with her second husband. She also admitted that the pension she received from the deceased husband's employer was stopped after that. Obviously, the loss of dependency of the claimants could be assessed only for 7 years; i.e. from 1995-2002, argues the insurer. Presumably the family pension was only payable to the wife and when she got remarried, the same was stopped. However, it cannot be said that the minor children were not entitled to the multiplier as adopted by the Tribunal. In such circumstances, we find absolutely no reason to interfere with the multiplier adopted by the Tribunal & affirmed by the High Court. The compensation for loss of dependency would thus be; Rs.56,165 x 130% x 12 x 13 x 2/3rd = Rs.75,93,508/-. To the said amount would be added Rs.70,000/-, being the amounts granted by the Tribunal for loss of consortium, loss of estate and funeral expenses. The total award hence would be Rs.76,63,508/-, as determined by the High Court too.

7. Yet another contention taken up is the interest granted at the rate of 9%. The Insurance Company relies on Annexure P-1 history of the case to contend that there was undue delay caused by reason of the claimants having not entered their evidence. From Annexure P-1, we see that the claim petition was filed on 28.12.1995 and it first came up for hearing on 11.09.2012. It is seen from Annexure P-1 that the case was posted for applicants' evidence on various dates from 2012 to 2016. However, there is nothing to indicate that it was only by reason of the claimants' absence that the consideration was delayed. Merely because, on various dates, for 4 years, the case was posted for the claimants' evidence, it does not necessarily mean that the claimants were responsible for the delay. Laws delays cannot, without proper substantiation, be cast upon the shoulders of one or other party to the lis. We hence do not find any reason to find the delay to be the sole responsibility of the claimants and in that circumstance necessarily interest must run from the date of filing of the claim petition, to the date of payment; for which precedents are legion, and we need not refer to them.

8. Further contention taken is the higher rate of interest of 9%, in challenge of which several precedents were placed before us. From the decisions perused what emanates is that in the 1980's, Courts were awarding 12% interest which stood reduced to 9% in the 1990's. With the advent of the 21st century and the economic recession world over, the interest rates fell considerably. But even now the rates offered by National Banks for long term deposits are 7% or more. Considering the over-all circumstances especially the long delay caused, we are of the opinion that 9% interest rate granted by the Tribunal is perfectly in order especially noticing the accident having occurred in the year 1995.

9. A very relevant issue agitated by the Insurance Company is the illegality in awarding interest for future prospects, which in any event is an amount received in advance, normally inuring to the benefit of the claimants only in future. This is the only contention taken in the connected appeal bearing SLP(C) No.22136 of 2024. We find absolutely no reason to accept this argument. In SLP(C) No.11340 of 2020, the multiplier applied looking at the life span of the deceased and the claimants is 13. Before the Tribunal itself, the

case was pending for 12 years and the only amount received by the claimants was Rs.50,000/-. Hence though amounts are awarded for future prospects taking the multiplier of 13; in effect, the money is received only after the period for which the multiplier is adopted. Similar is the case in SLP(C) No.22136 of 2024 where the accident occurred in 2018, the multiplier applied is 17 and we are seven years from the date of accident.

10. We cannot but observe that there was nothing stopping the Insurance Company from settling the claim on a computation, on receipt of intimation of the accident, especially since the determination of compensation for loss of dependency, on death being occasioned in a motor vehicle accident, can be determined as evident from the judicial precedents; at least provisionally.

11. In fact, it is due to the repudiation of or refusal to consider the claim that the claimants are driven to the Tribunal. When the matter is pending before the Tribunal or in appeal before the higher forums, the claimants are deprived of the compensation for future prospects. If they are paid in time, it could be utilized by the claimants and on failure, the loss of dependency would force the claimants to source their livelihood from elsewhere. This is sought to be compensated at least minimally by award of interest, which oftener them ever is nominal also since only simple interest is awarded. If the amounts were disbursed to the claimants on a rough calculation, on intimation of the accident to the Insurance Company, subject to the award of the Tribunal, necessarily there would not have been any interest liability atleast to the extent of the disbursement made. Hence, we reject the contention and direct that the entire award amounts would be paid with interest at the rate of 9% from the date of filing of the claim till the date of disbursement, deducting only Rs.50,000/- granted as interim compensation, in SLP(C) No.11340 of 2020 and 6% in SLP(C) No.22136 of 2024 as awarded by the High Court; deduction to be made for the amounts already paid.

12. We uphold the order of the High Court in both cases and find no reason to interfere with the same. The amounts awarded, if not paid, shall be paid within a period of 3 months and if defaulted shall carry 12% interest on the total amount of award with interest from the date of default.

13. The Special Leave Petitions stand rejected.

14. Pending applications, if any, shall stand disposed of.

Result of the case: Special Leave Petitions Rejected.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 481 : 2025 INSC 824

Vikram Bhalchandra Ghongade
v.
The Headmistress Girls High School and Junior College, Anji (Mothi), Tah. and Distt. Wardha & Ors.

(Special Leave Petition (C) No. 19436 of 2024)

14 July 2025

[Sudhanshu Dhulia and K. Vinod Chandran,* JJ.]

Issue for Consideration

Issue arose as to whether the legal heirs of a deceased teacher in an aided school would be entitled to gratuity under the Payment of Gratuity Act, 1972 or under the Maharashtra Civil Services (Pension Rules), 1982.

Headnotes†

Maharashtra Civil Services (Pension Rules), 1982 – Payment of Gratuity Act, 1972 – Death-cum-Retirement Gratuity – Claim of – Death of the teacher working in an aided school – Claim of gratuity by the son-petitioner under the 1972 Act, being the nominee – Claim rejected by the authorities below as also by the High Court – Correctness:

Held: Though the teachers may not be holding a post under the State Government, it is akin to a post under the State Government, at least for the monetary benefits of pay and allowances, while in service, as also pension and other benefits on retirement, are covered under the 1982 Rules – On death prior to five years of service the benefits under the 1982 Rules would be more beneficial to the dependents of the employees – Government servants including the teachers in the Government schools would be entitled to gratuity under the 1982 Rules and there cannot be a situation where the teachers of aided schools are entitled to a different computation of gratuity under the 1972 Act – Rules of 1982 enables not only Death-cum-Retirement Gratuity-DCRG but also pension to the employees covered under the 1982 Rules, which a person entitled to the gratuity under the 1972 Act may not be entitled in all circumstances – Petitioner, has been paid the provident fund dues, for which he was notified as a nominee, by the mother when

* Author

she was alive – No reason to direct the petitioner to produce a legal heirship certificate since in any case the payment made to nominee or one of the legal heirs, when there are also other legal heirs left behind, is in trust for all the others – Petitioner to approach the first respondent with an application for payment of DCRG in accordance with the 1982 Rules along with an undertaking to indemnify the Government and the Society running the aided school from any claims made by any other legal heir. [Paras 7-12]

Case Law Cited

Birla Institute of Technology v. State of Jharkhand **[2019] 2 SCR 963 : (2019) 4 SCC 513;** *Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer* **[2004] 1 SCR 470 : (2004) 1 SCC 755** – **referred to.**

List of Acts

Payment of Gratuity Act, 1972; Constitution of India; Maharashtra Civil Services (Pension Rules), 1982.

List of Keywords

Death-cum-Retirement Gratuity; Death of the teacher working in an aided school; Claim of gratuity; Nominee; Entitlement of pension; Provident fund; Gratuity; Monetary benefits; Government servants; Computation of gratuity; Legal heirship certificate.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 19436 of 2024

From the Judgment and Order dated 11.07.2024 of the High Court of Judicature at Bombay at Nagpur in WP No. 5921 of 2023

Appearances for Parties

Advs. for the Respondents:
Satyajit A. Desai, Siddharth Gautam, Abhinav K. Mutyalwar, Sachin Singh, Ananya Thapliyal, Ms. Anagha S. Desai, Ms. Yugandhara Pawar Jha, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Ms. Lavanya Dhawan.

Petitioner-in-person.

Vikram Bhalchandra Ghongade v. The Headmistress Girls High School and Junior College, Anji (Mothi), Tah. and Distt. Wardha & Ors.

Judgment / Order of the Supreme Court

Judgment

K. Vinod Chandran, J.

1. The petitioner is the son of a teacher in an aided school, who died while in service. The petitioner as the legal heir claims gratuity under the Payment of Gratuity Act, 1972[1]. The petitioner's claim was rejected by the original authority and the appellate authority under the Act and also the High Court against which the petitioner is before this Court.

2. The petitioner appeared in person and argued that the school has settled the General Provident Fund dues in his name clearly mentioning him as nominee and the question of legal heirship certificate never arose. ***Birla Institute of Technology v. State of Jharkhand***[2] clearly held that teachers are eligible for gratuity under the Act overruling the judgment placed on record by the learned Government Advocate reported in ***Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer***[3], negativing the case of the Government that rules framed under Article 309 of the Constitution of India would apply. It is contended that without an exemption with respect to the schools in Maharashtra, the Gratuity Act cannot be made inapplicable. Further the exemption under sub-rule (5) of Rule 4 does not apply since the gratuity payable under the Act is far more beneficial than the scheme under the Rules of 1982.

3. The learned Government Advocate on the other hand submits that being an aided school, the employees are paid pay & allowances, while in service, by the Government so is the pensionary benefits including Death-cum-Retirement Gratuity (DCRG) paid under the Maharashtra Civil Services (Pension Rules), 1982[4] brought out under Article 309 of the Constitution of India. There is no question of the petitioner being paid amounts under the Act of 1972. The petitioner admits that his father is surviving, who would also be a legal heir

1 For brevity 'the Act of 1972'

2 (2019) 4 SCC 513

3 (2004) 1 SCC 755

4 For brevity 'the Rules of 1982'

of the deceased. The petitioner hence has to produce a legal heir certificate and the claim of the father will also have to be dealt with. The High Court has in fact directed such consideration by the Government, on the Government's own undertaking that it would be done expeditiously on an application being filed with required papers.

4. The petitioner approached the original authority under the Payment of Gratuity Act who found that there was a difference in DA, as asserted by the petitioner in his application and the last pay certificate of the deceased teacher which was produced before the authority, which makes the claim for DCRG anomalous. We cannot accept this contention since the DA will have to be ascertained from the last pay certificate issued by the employer. It was also held that the Act of 1972 though would be applicable to teachers, the definition of employee excludes a person holding a post under the Central Government and State Government; which the teacher was holding while she was in service. Finding that the petitioner's mother's service does not fall under the Act of 1972, the application was rejected.

5. The appellate authority found the order of the controlling authority to be perfectly in order. It was also noticed that the respondent had specifically contended that the petitioner had never approached the respondents with a proper documentation as to the death and legitimacy of the claim. Before the High Court, the respondent submitted that it requires certain documents from the petitioner for processing the claim, namely, photograph and the undertaking to indemnify the legitimate claim, if raised by any other person, on submission of which, the claim would be processed. A direction was issued to process the claim as undertaken by the respondent for which the petitioner was directed to be present before the respondent.

6. On the question of the teacher's entitlement to the provisions of the Gratuity Act, it has to be held that the decision in ***Birla Institute of Technology***[2] puts to rest any such controversy. The question here would be not so much the entitlement to gratuity but as to whether the legal heirs of a deceased teacher in an aided school would be entitled to gratuity under the Act of 1972 or under the Rules of 1982. The argument of the State is that an aided school employee, including a teacher would be exempted from the definition of an employee under the Act. *Per contra* it is argued that the exemption is only to

a person who holds a post under the Central Government or State Government. An aided school teacher does not hold a post under the State Government contends the appellant.

7. It must be observed that a teacher in an aided school for all practical purposes is akin to a post under the State Government. Pertinent is the fact that the posts in aided schools are either sanctioned by the Government or approved in accordance with the Rules and pay and allowances are also paid by the Government. The aided school teachers are also entitled to some of the conditions of service as are applicable to Government teachers, with entitlement of pension, provident fund and gratuity as applicable, in accordance with the Rules brought out under Article 309 of the Constitution of India. Though strictly speaking the teachers may not be holding a post under the State Government, it is akin to a post under the State Government, at least for the monetary benefits of pay and allowances, while in service, as also pension and other benefits on retirement.

8. We have to also notice that sub-section (5) makes Section 4 inapplicable, if the employees have a right to receive better terms of gratuity under any award or agreement or contract with an employer. When comparing the benefits, the question is not to be considered in isolation with respect to an employee and whether he or she would be entitled to higher amounts under the Act or under the Rules. The scheme has to be considered in toto for the purpose of determining as to which is more beneficial. The Act of 1972 prescribes under Section 4(2), gratuity at the rate of 15 days wages based on the last wages drawn for every completed year of service or part thereof in excess of six months. Insofar as the Rules of 1982 is concerned, gratuity is payable equal to ¼th of last pay drawn of each completed six monthly period of qualifying service, subject to a maximum of 16 and a half years. It has to be noticed that the payment of gratuity as per the Act of 1972 is payable to an employee on the termination of his employment after rendering continuous service for not less than five years; the minimum limit of five years being not applicable only when the termination is due to death or disablement. While DCRG under the Rules of 1982 is payable to the Government employee, at any time his services cease without the minimum limit of five years-service. Further, on death prior to the minimum period, the gratuity payable under the Rules of 1982 is far more than that applicable under the Act of 1972, which is as hereunder:

Completed year of qualifying service		death gratuity
1	…	2 ½ months' pay
2	…	5 months' pay
3	…	7 ½ months' pay
4	…	10 months' pay

9. A person entering service though has a normal expectation of retiring on attaining the age of superannuation but there are vagaries of fate which would make it otherwise. We have already seen that on death prior to five years of service the benefits under the Rules of 1982 would be more beneficial to the dependents of the employees. Further it must be noticed that the Government servants including the teachers in the Government schools would be entitled to gratuity under the Rules of 1982 and there cannot be a situation where the teachers of aided schools are entitled to a different computation of gratuity under the Act of 1972. It is also to be emphasised that the Rules of 1982 enables not only DCRG but also pension to the employees covered under the Rules of 1982, which a person entitled to the gratuity under the Act of 1972 may not be entitled in all circumstances.

10. We are of the opinion that the aided school teachers who are governed by the service conditions brought out by the State Government are also covered under the Rules of 1982. The extent of application as per the Rule 2(a) of the Rules of 1982 specifically makes it applicable to: "*Any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force" (sic)*. There can hence be no dispute raised on the applicability of the Rules of 1982, insofar as aided school teachers are concerned whose pay and allowances and service conditions are regulated by the Government.

11. Now we come to the actual claim raised by the petitioner, who is the son of the deceased teacher. The Government Advocate had raised a contention that the required documents have not been produced, especially the legal heirship certificate, especially in the context of the husband of the deceased teacher being still alive. Petitioner, however, contends that the husband was estranged and they have been separated for long. Be that as it may, a mere estrangement

would not disentitle the husband from the benefits due to the family of a deceased employee. The petitioner, undisputedly has been paid the provident fund dues, for which he was notified as a nominee, as seen from the records, by the mother when she was alive; presumably as indicated from her service records. We find absolutely no reason to direct the petitioner to produce a legal heirship certificate since in any case the payment made to a nominee or one of the legal heirs, when there are also other legal heirs left behind, is in trust and the person who receives the payment as a nominee holds the money in trust for all the others. The nomination made by the deceased employee while she was alive only absolves the employer from finding out the different legal heirs for the purpose of making payments apportioning their separate shares.

12. The death is undisputed and there is no requirement now to produce the death certificate also. In such circumstances, the petitioner shall approach the first respondent with an application for payment of DCRG in accordance with the Rules of 1982 along with an undertaking to indemnify the Government and the Society which runs the aided school from any claims made by any other legal heir, by a notarised affidavit. The same shall be forwarded to the Education Officer, who shall make the payment expeditiously. We make it clear that the petitioner shall also be paid simple interest @ 7% per year, starting from one month of the date of death of the employee, till the date of payment.

13. The Special Leave Petition is allowed with the above modification.

14. Pending applications, if any, shall stand disposed of.

Result of the case: Special Leave Petition allowed.

[†]*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 488 : 2025 INSC 825

Pandurangan
v.
T. Jayarama Chettiar & Anr.

(Civil Appeal No. 7743 of 2025)

14 July 2025

[Pamidighantam Sri Narasimha* and Joymalya Bagchi, JJ.]

Issue for Consideration

Whether objection of *res judicata* can be taken to bar the suit u/Or.VII, R.11, CPC.

Headnotes†

Code of Civil Procedure, 1908 – Or.VII, R.11 – Rejection of plaint – Appellant purchased a disputed property from one HB, who had in turn purchased it from JA – Later, appellant came to know that defendant no.1, claiming to be a co-owner filed a suit for partition against JA and others and also secured an *ex parte* decree in his favour – Compelled by these circumstances, the appellant instituted the present suit for declaration of title and permanent injunction – Defendant filed an I.A. u/Or.VII, R.11 of CPC contending that the suit is barred by *res judicata* as the earlier *ex parte* decree has attained finality – District Munsif cum Judicial Magistrate allowed defendant no.1's objection – A Civil Revision Petition filed against the said order was dismissed by the High Court – Correctness:

Held: The objection of *res judicata* cannot be taken to bar the suit u/Or.VII, R.11, CPC – Issue relating to whether the *ex parte* decree is obtained by collusion, or whether the defendant no. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the appellant is a bonafide purchaser or not need to be examined in detail – This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit – *Res judicata* cannot be decided merely on assertions made in the application seeking rejection of plaint – From the order passed by the Trial Court it is apparent that there is neither consideration nor analysis of the case set up by the appellant in plaint – This Court clarifies that no

* Author

opinion is expressed on the question as to whether the *ex parte* decree in O.S. No.298/96 dated 29.07.1997 would or would not operate as *res judicata* barring the present suit, this Court holds that enquiry into this question could not have been decided u/Or.VII, R.11 CPC, particularly in the context of the specific averments made by the appellant in the plaint about the *ex parte* decree, the circumstances surrounding the said transaction and the prayer in the suit for declaration and the consequential relief. [Paras 9, 10, 12]

Case Law Cited

Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors., **2021 INSC 387 : [2021] 8 SCR 387 : (2021) 9 SCC 99;** *Keshav Sood v. Kirti Pradeep Sood,* **Civil Appeal No. 5841 of 2023 decided by the Supreme Court – relied on.**

V. Rajeshwari v. T.C. Saravanabava **[2003] Supp. 6 SCR 927 : (2004) 1 SCC 551 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Order VII, Rule 11 CPC; Plea of *res judicata* is beyond the scope of Order VII, Rule 11 CPC; *Ex parte* decree; Fraudulent decree.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7743 of 2025

From the Judgment and Order dated 20.03.2019 of the High Court of Judicature at Madras in CRPMD No. 1454 of 2014

Appearances for Parties

Advs. for the Appellant:
G.Sivabalamurugan, Selvaraj Mahendran, Ms. Meenakshi Rawat, C.Adhikesavan, Ms. Ratna Priya Pradhan, Harikrishnan P.v, C.kavin Ananth.

Advs. for the Respondents:
V Prabhakar, Sr. Adv., S. Rajappa, R Gowrishankar, Ms. G Dhivyasri, Ms. Jyoti Parashar, Nanchil J Deekshith.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Delay Condoned.

2. Leave granted.

3. This appeal by the plaintiff arises out of the judgment of the High Court of Madras[1] dismissing the Civil Revision Petition against the order passed by the District Munsif cum Judicial Magistrate, Portonovo[2] allowing Defendant No. 1's objection to the plaint under Order VII Rule 11 of the Civil Procedure Code[3] on the ground of res judicata. For the reasons to follow, we have allowed the appeal and held that the objection of *res judicata* cannot be taken to bar the suit under Order VII, Rule 11, CPC.

4. The facts relevant for the adjudication of the present appeal are that the appellant had purchased the disputed property from one Mr. Hussain Babu in 1998, who had in turn purchased it from Ms. Jayam Ammal in 1991. Appellant contends that while being in peaceful possession of the property, when an advocate- commissioner sought to inspect his property he made necessary enquiries and came to know that defendant No. 1, claiming to be a co-owner filed a suit[4] for partition against Ms. Jayam Ammal and others and also secured an *ex parte* decree[5] in his favour. It is in execution of that *ex parte* decree that the advocate-commissioner was appointed by the Court. Compelled by these circumstances, the appellant instituted the present suit[6] for declaration of title and permanent injunction. It is the specific contention of the appellant that the *ex parte* decree had been fraudulently and collusively obtained, and it is also not binding on him.

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1 Judgment and order dated 20.03.2019 in CRP(PD) No. 1454/2014.

2 Dated 27.01.2014 in I.A. No. 12 of 2010 in O.S. No. 60 of 2009.

3 Hereinafter "CPC"

4 O.S. No. 298 of 1996

5 Dated 29.07.1997 in O.S. No. 298/1996 passed by the Sub-Court, Cuddalore.

6 O.S. No. 60 of 2009

5. The defendant opposed the suit by filing a written statement. Pending disposal of the suit, the defendant filed an Interlocutory Application[7] under Order VII, Rule 11 of CPC contending that the plaintiffs suit is barred by res judicata as the earlier *ex parte* decree has attained finality. The appellant countered it by contending that he was not a party to the earlier suit and therefore the principle of res judicata would not apply.

6. There is no doubt about the fact that the appellant is not a party to the suit decided on 29.07.1997. At the same time, there is also no doubt about the fact that the appellant claims title from Hussain Babu who was the third defendant in the earlier suit. However, the circumstances in which the *ex parte* decree came to be passed, the alleged collusion between the parties in that *ex parte* and also the reason for the *ex parte* suit attaining finality are all specifically raised and contested in the present suit by the appellant. It is for this reason that the appellant also sought a decree for declaration.

7. In order to appreciate the claim and contest of the appellant, the relevant portions of the plaint are reproduced herein for ready reference;

> *"7. When plaintiff has been in peaceful possession and enjoyment of the suit property his vendors brother Rasool informed him that an advocate-commissioner is going to inspect the property. Plaintiff was naturally shocked. When further probed he informed the plaintiff that one Jayarama Chettiar had filed a suit against one Jayam Ammal wife of Rangasami Chettiar and others for partition in O.S. No.298 of 1996 on the file of the subordinate judge, Cuddalore and Jayam Ammal died immediately after suit and her daughter Selvi did not contest the suit and allowed it to go ex parte. Hussain Babu who is a party defendant to the suit was away in Abu Dhabi and he honestly believed that Selvi will contest the suit and protest the interest of the purchaser. Plaintiff was kept in the dark about the pendency of the suit. At the time of purchase,he was not put on notice. If it has been done, he would not have ventured into the sale. Plaintiff's vendors father did not mention about the*

7 I.A. No. 12 of 2010 in O.S. No. 60 of 2009

pendency of the suit at the time of sale. Plaintiff honestly believed that the property is free of any encumbrance and believed so he purchased the property.

8. Now plaintiff finds that the suit ended in an ex parte decree. The property was sold by Jayam Ammal on 13.10.1991 to Hussain Babu. At that time no suit was pending. Suit was laid much later in 1993 and Jayam Ammal died immediately after suit. Second defendant her daughter allowed an ex parte decree to be passed. Hussain Babu the purchaser from Jayam Ammal believed when second defendant promised that she will take care of the defence. Plaintiff has not been in the picture. As stated above everything was suppressed, plaintiff submits that the ex parte decree is collusive and after the ex parte decree a show of resistance was made by second defendant. It is quite apparent that the decree passed ex parte is a collusive one and so provisions of section 52 of the Transfer of property Act cannot be attracted.

9. Plaintiff came to know of all this when his vendor's representative told him a week ago that an advocate-commissioner is going to inspect the property. So, plaintiffs are filing the suit for declaration that the preliminary decree passed in O.S.No.298 of 1996 on the file of the subordinate judge, Cuddalore is not binding on the plaintiff.

10. Plaintiff now finds that the 1st defendant has played a fraud on court in filing the suit in the sub court Cuddalore to suit his convenience when the Subordinate Judge's Court Cuddalore has no territorial jurisdiction to entertain the plaint. There are six items in the said suit. The plaint in O.S. No.298 of 1996 reasons that item 4 was allotted to his father in the partition, items 2,3, and 5 were purchased by his father in the name of Jayam Ammal item 6 is a saw will. Items 2 to 6 are situated in Parangipettai village. So, the suit should have been instituted in the sub court Chidambaram. But to suit his convenience a property desiring one cent item situate in Naduveerapattu is included to invoke the jurisdiction of the sub court Cuddalore. This property does not belong to Ist defendant's father. This

is a clear case of fraud. So the decree passed in O.S. No.298/96 by a court has no territorial jurisdiction is wholly invalid and 1st defendant has not derived any right to the property under a decree which is void.

11. The suit property as stated above belonged to Jayam Ammal by purchase and the 1st defendant has no claim over the same.

12. The preliminary decree in O.S. No. 298/96 on the file of the subordinate judge, cuddalore is not binding on the plaintiff as it is a collusive decree."

8. In *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors*[8], this court held that the adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC, the court held:

"25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and

8 (2021) 9 SCC 99

> *decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."*
>
> (emphasis supplied)

9. Issue relating to whether the *ex parte* decree is obtained by collusion, or whether the defendant No. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the appellant is a bonafide purchaser or not need to be examined in detail. This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit. *Res judicata* cannot be decided merely on assertions made in the application seeking rejection of plaint. As held by this Court in *V. Rajeshwari v. T.C. Saravanabava*,[9] identifying similarity in causes of action should be a matter for trial where documents from the first suit are studied and analysed. *Res judicata* cannot be a matter of speculation or inference. In *Keshav Sood v. Kirti Pradeep Sood*,[10] this Court took a strong view against the plea of *res judicata* being raised in applications seeking rejection of plaint and held as follows:

> *"5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.*
>
> *6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits."*

9 (2004) 1 SCC 551.

10 Civil Appeal No. 5841 of 2023.

10. From the order passed by the Trial Court it is apparent that there is neither consideration nor analysis of the case set up by the appellant in plaint. Further, the Trial Court questioned the legality of plaintiff's action on the ground that, *"he did not raise any objection regarding the decree passed in O.S. No. 298/96. Therefore, this Court comes to the conclusion that the plea of fraud raised by the 1st respondent is not acceptable one."* With this view of the matter, the Trial Court rejected the objection of the appellant to the applicability of Order VII, Rule 11 CPC by holding;

> *"12. The respondents counsel submitted that such a type of question cannot be decided as preliminary issue. In support of his contention. They have filed our Hon'ble court judgment 2009(4) LW 432, and 2007 A.L.W 580, 2000(3) MLJ 342,2002(1)LW 398. But those are dealing with regarding court fees. But as far as the case on hand is concerned. It is not regarding court fees. Therefore the above said citations is not apply to this suit.*
>
> *For the above said reasons and explanations. The petition is allowed. No cost."*

11. We are not in agreement with the approach and reasoning adopted by the Trial Court. The appellant's revision under Article 227 was similarly dismissed by the High Court holding that the decision of the Trial Court does not warrant interference.

12. While we clarify that we have not expressed any opinion on the question as to whether the *ex parte* decree in O.S. No. 298/96 dated 29.07.1997 would or would not operate as res judicata barring the present suit, we hold that enquiry into this question could not have been decided under Order VII, Rule 11 CPC, particularly in the context of the specific averments made by the appellant in the plaint about the *ex parte* decree, the circumstances surrounding the said transaction and the prayer in the suit for declaration and the consequential relief.

13. For the reasons as indicated hereinabove, we allow the appeal, set aside the order passed by the High Court in CRP (PD) No. 1454 of 2014 dated 20.03.2019 and restore the suit O.S. No. 60 of 2009 before the District Munsif cum Judicial Magistrate Portonovo to its original number. In view of the fact that the suit is of the year 2009, there shall be a direction for expeditious disposal of the suit.

14. While concluding, we clarify that we have not expressed any opinion on the merits of the case and all the grounds raised by the defendants, including those relating to res judicata are kept open for final determination.

15. With these observations, this appeal stands allowed. The parties shall bear their own costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 497 : 2025 INSC 835

Communidade of Tivim, Tivim, Bardez Goa
v.
State of Goa & Ors.

(Civil Appeal No. 9470 of 2025)

14 July 2025

[Sudhanshu Dhulia* and K. Vinod Chandran, JJ.]

Issue for Consideration

Whether the Administrative Tribunal was correct in its refusal to grant the appellant, permission to compromise proceedings with the private respondents in terms of Article 154 (3) of the Code of Comunidades.

Headnotes†

Goa, Daman and Diu Agricultural Tenancy Act, 1964 – Code of Comunidades – Art.154(3) – Goa Land Use (Regulation) Act, 1991 – By the order dated 13.04.2023, the Administrative Tribunal, Goa refused to grant permission to the appellant to compromise proceedings instituted by the private respondents herein (respondent nos. 3 to 11) – Writ Petition filed by the appellant, stood dismissed by the High Court *vide* order dated 06.08.2024 – Whether interference is required with the order dated 06.08.2024 passed by the High Court:

Held: There is no reason to interfere with the order dated 06.08.2024 passed by the High Court – This Court is in complete agreement with the Administrative Tribunal, Goa which has refused to accord its permission to the filing of the consent terms – What weighed in with the Tribunal is the fact that these terms effectively wipe out tenancy rights of the private respondents which was declared by the Trial Court *vide* judgment dated 01.09.2017 and by the proposed compromise, the parties have agreed that in lieu of the 60:40 bifurcation of land between them, the judgment dated 01.09.2017 stands set aside – This prompted the Tribunal to observe that instead of testing the correctness of judgment dated 01.09.2017 on merits before the appellate court, the parties intend to set aside the judgment by way of compromise – The proposed consent terms or the compromise sought to be entered by the appellant with the private respondents falls foul of both the statutes i.e., the Tenancy Act and the Land Use Act, insofar as it creates freehold ownership rights over tenanted land,

* Author

without resorting to the procedure contemplated for the purchase of such land by the tenant and secondly, for the reason that these terms effectively allow the appellant, as well as the private respondents, to use an agricultural land for non-agricultural purposes – The compromise sought by the parties is nothing but an abuse of the process of law – The so called compromise or agreement is a ploy to defeat the provisions of law and therefore it has been rightly denied the legal sanctity which was sought. [Paras 14, 19]

List of Acts

Goa, Daman and Diu Agricultural Tenancy Act, 1964; Code of Comunidades; Goa Land Use (Regulation) Act, 1991.

List of Keywords

Compromise proceedings; Tenancy rights; Consent terms; Bifurcation of land; Freehold ownership; Land use; Agricultural land; Non-agricultural; Abuse of the process of law.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9470 of 2025

From the Judgment and Order dated 06.08.2024 of the High Court of Judicature at Bombay at Goa in WP No. 194 of 2024

Appearances for Parties

Advs. for the Appellant:
Huzefa Ahmadi, Sr. Adv., Ninad Laud, Deepak Gaonkar, Rohan Sharma, Guruprasad Naik, Dcosta Ivo Manuel Simon.

Advs. for the Respondents:
Abhay Anil Anturkar, Dhruv Tank, Aniruddha Awalgaonkar, Sarthak Mehrotra, Ms. Surbhi Kapoor, Bhagwant Deshpande, Ms. Subhi Pastor.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

1. Delay of 146 days in filing the Special Leave Petition is condoned. Leave granted.

2. The appellant before this court is a 'Communidade'[1] or an agricultural association of villagers that has properties in common and the income derived from these properties accrues in favour of its members. The system is peculiar to Goa and is based on the concept of collective village ownership, which was originally called as the 'Gaunkari System' and the village communities owning the land collectively were known as 'gaunkaria' which ultimately came to be termed as 'communidades' during the Portuguese colonisation of Goa.

3. Under challenge before us in this Appeal is the judgment dated 06.08.2024 by which the Writ Petition filed by the appellant, stood dismissed by the High Court of Bombay at Goa.

4. The High Court while doing so has upheld the order dated 13.04.2023 by which the Administrative Tribunal, Goa has refused to grant permission to the Appellant to compromise proceedings instituted by the private respondents herein (respondent Nos. 3 to 11) under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter '**Tenancy Act, 1964**').

5. At the outset, it is necessary to mention here at this stage that the administration of Comunidades is governed by the Code of Comunidades (hereinafter '**the Code**'). Article 154 (3) of the Code empowers the Administrative Tribunal to grant permission to the Communidade to compromise terms in any suit to which the Communidade is a party.

6. The facts which have led to filing of the Writ Petition before the High Court can be summarised as under:

   a) Two properties (hereinafter '**Suit Properties**') belonging to the appellant, known as "Oiteil-De-Madel" bearing Survey No. 448/0 & "Levelechy Aradi" bearing Survey No. 440/0 are situated in the village of Tivim in the *taluka* of Bardez in Goa and were leased to the predecessors-in-interest of the private respondents by the appellant, in July, 1978.

   b) A civil suit was filed by the predecessor of the private respondents praying that his name be entered in the Tenants column in the Survey numbers which correspond to the two properties mentioned above. This suit was decreed on 08.01.1986 &

1 Portugese translation of the English word 'Community'.

consequently, the name of the predecessor of the private respondents was entered as tenant of the two properties. Since no appeal was preferred against the decree passed by the Trial Court, the same attained finality. Thereafter, predecessor of the private respondents herein passed away on 01.02.2015.

c) On 08.12.2016, the private respondents herein filed Tenancy Application No. 71/2016 before the Civil Judge, Junior Division (B-Court), Bicholim (hereinafter '**Trial Court**') for declaration of Tenancy under Section 7 of the Tenancy Act, 1964. Despite service of notice to the appellant by the Trial Court, no appearance was entered on its behalf, which led to the case being proceeded ex-parte against the appellant.

d) Vide Judgment & Order dated 01.09.2017, Trial Court allowed the Tenancy Application, consequently declaring the private respondents as agricultural tenants of the Suit Properties. Aggrieved by the declaration of tenancy, the appellant preferred Tenancy Appeal before the Ad-hoc District Judge-I at Mapusa, Goa (hereinafter '**Appellate Court**').

e) The above-mentioned appeal remains pending before the Appellate Court till date. All the same, during pendency of the Tenancy Appeal, an Extraordinary General Body Meeting of the appellant was held on 14.03.2021, in which members of the appellant deliberated upon the Tenancy Appeal and also considered the fact that if the appeal fails, they stand to lose a major chunk of land held by the Communidade. It is at this meeting that the Communidade resolved that as a compromise, the land in dispute could be bifurcated into a 60:40 sharing ratio, with 60% of the land being allotted to the private respondents and 40% of the land to be retained by the communidade.

f) Pursuant to the above, Managing Committee of the Communidade had further deliberations and finally, a General Body Meeting was convened on 31.10.2021 wherein consent terms were finalised and agreed upon. All the same, before filing these consent terms before the Appellate Court, permission was needed from the Administrative Tribunal in terms of Article 154 (3) of the Code. Accordingly, on 22.02.2023, respondent No. 2 herein i.e., Administrator of Communidades forwarded the consent terms to the Administrative Tribunal for approval.

g) As stated earlier, by an Order dated 13.04.2023, such permission was denied by the Administrative Tribunal and this Order of the Administrative Tribunal was assailed by the Communidade before the High Court by way of a Writ Petition.

7. The short question that arose for consideration before the High Court, which will also be before this Court is whether the Administrative Tribunal was correct in its refusal to grant the appellant, permission to compromise proceedings with the private respondents in terms of Article 154 (3) of the Code? The High Court as we know has already held that this permission could not have been granted under law.

8. We have heard Mr. Huzefa Ahmadi, learned counsel for the appellant who submits that the Administrative Tribunal has erred in refusing to grant permission to the Communidade, and as such, the High Court ought not to have upheld the Administrative Tribunal's decision. He contends that the best interests of the appellant and its members have to be considered and both the High Court as well as the Administrative Tribunal have failed to take into consideration the fact that the appellant had finalised consent terms, keeping in mind its best interest and in the absence of such terms, the suit properties would have to be regarded as 'tenanted land' which is allotted to the private respondents herein, which would in turn be contrary to the appellant's best interests.

9. It is Mr. Ahmadi's second argument that the Code itself by virtue of Article 30 (4) (g) empowers the Communidade to deliberate upon, the withdrawal and compromise of civil suits and this aspect of the matter was completely ignored by the High Court.

10. For the respondent no. 1-State of Goa and respondent no. 2, we have heard learned counsel Mr. Abhay Anil Anturkar, who supports the decision of the Administrative Tribunal and submits that the same warranted no interference by the High Court and hence, there is no infirmity with the order impugned. Learned counsel would argue that the consent terms sought to be entered into between the appellant and the private respondents is nothing but an attempt to bypass and negate the provisions contained in the Tenancy Act as well as the Goa Land Use (Regulation) Act, 1991 (hereinafter '**Land Use Act**').

11. In this regard, the learned Counsel has referred to Clauses i), iii), v), x) and xi) of the consent terms, which essentially confer to the private respondents '*all rights and interests, which rights shall be*

akin to full ownership rights' over 60% of the land and reciprocally, the appellant is to have '*exclusive rights free from any tenancy claim*' over 40% of land. Additionally, these clauses also stipulate that the private respondents can use and utilise 60% of the land '*for any purpose whatsoever*' in lieu of which the appellant is also entitled to use its share of 40% of land '*in the manner deemed fit and proper.*'

12. It is therefore the respondent-State's contention that the proposed consent terms effectively accord freehold ownership rights over the land in question to both the parties and also allows them to use the land for non-agricultural purposes, which is in blatant violation of statutory provisions contained in the Tenancy Act as well as the Land Use Act.

13. Having heard learned counsel for both the sides and having perused the material on record, we are of the considered opinion that the Administrative Tribunal has rightly refused to grant permission to the consent terms finalised by the appellant. A bare perusal of the same indicates that it is nothing but an attempt to circumvent the statutory framework laid down in Tenancy Act and also violates the Land Use Act.

14. We are in complete agreement with the Administrative Tribunal, Goa which has refused to accord its permission to the filing of the consent terms. What weighed in with the Tribunal is the fact that these terms effectively wipe out tenancy rights of the private respondents which was declared by the Trial Court vide judgment dated 01.09.2017 and by the proposed compromise, the parties have agreed that in lieu of the 60:40 bifurcation of land between them, the judgment dated 01.09.2017 stands set aside. This prompted the Tribunal to observe that instead of testing the correctness of judgment dated 01.09.2017 on merits before the appellate court, the parties intend to set aside the judgment by way of compromise.

15. Moreover, the Tribunal also expressed its dismay at the fact that these consent terms have the effect of bypassing the Tenancy Act, since it confers full ownership rights to the private respondents who have been declared as tenants and any compromise which is contrary to a statute cannot be entered into by the appellant.

16. Section 9 of the Tenancy Act lists down the modes of termination of tenancy and specifies that tenancy can only be terminated via three modes. The first is when the tenant himself surrenders his

right of tenancy to the landlord in the manner contained in Section 10. Similarly, in the second situation, the landlord may terminate the tenancy, but only on the basis of the specific grounds contained in Section 11. Lastly, Section 9 (c) provides for termination under any other specific provision of the Tenancy Act. It is abundantly clear that by means of the proposed compromise, the parties have essentially terminated the tenancy, without recourse to any of the modes referred to in Section 9 of the Act.

17. We shall now refer to Chapter IIA of the Tenancy Act which is titled "*Special rights and privileges of tenants.*" Section 18A in this chapter provides that every tenant shall be deemed to have purchased from his landlord, the land held by him as a tenant on the tillers' day, subject to other provisions of the Act. This chapter then lays out the procedure to be followed. Section 18C provides for the Mamlatdar to first issue public notice to the tenants who are deemed to have purchased the lands as well as the landlords of such lands and other interested persons. The purchase price payable by a tenant to the landlord is then indicated in the Table contained in Section 18D. We must also take note of the fact that Section 18K of the Tenancy Act prohibits a tenant who has purchased the land from transferring the land without the Mamlatdar's prior permission. If the proposed consent terms are to be allowed, not only would the tenant be conferred full ownership rights, in complete disregard of the procedure for purchase mentioned above, but it would also mean that the tenant would be conferred a right to alienate land, without seeking permission of any statutory authority.

18. It is also important to take note of the fact that even after a tenant has purchased the land in question after complying with the procedure contemplated under Chapter IIA, he is barred from using the land for any purpose other than agriculture, as per Section 2 of the Land Use Act, which reads as under:

> "***2. Regulation of use of land.***— *Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agriculture.*"

19. A bare reading of the aforementioned provisions is enough to come to the conclusion that the proposed consent terms or the compromise sought to be entered by the appellant with the private respondents falls foul of both the statutes i.e., the Tenancy Act and the Land Use Act, insofar as it creates freehold ownership rights over tenanted land, without resorting to the procedure contemplated for the purchase of such land by the tenant and secondly, for the reason that these terms effectively allow the appellant, as well as the private respondents, to use an agricultural land for non-agricultural purposes. In other words, the compromise not only circumvents procedural aspects contained in Chapter IIA of the Tenancy Act but also allows the parties to use the suit properties for a purpose which is expressly barred by the Land Use Act. The compromise sought by the parties is nothing but an abuse of the process of law. The so called compromise or agreement is a ploy to defeat the provisions of law and therefore it has been rightly denied the legal sanctity which was sought.

20. As regards the submission of the learned counsel relating to Art. 30 (4) (g) of the Code, it is to be noted that the said provision merely empowers a Communidade to deliberate upon terms of compromise, which upon finalisation, has to be forwarded to the Administrative Tribunal. By no stretch of imagination can this provision be construed to mean that it confers an unfettered power on the Communidade to enter into a compromise, without the Tribunal's sanction.

21. Hence, we see absolutely no reason to interfere with the order dated 06.08.2024 passed by the High Court of Bombay at Goa.

22. Consequently, this appeal stands dismissed. Pending application(s), if any, shall stand disposed of.

23. All the same, we deem it necessary to clarify that we have expressed no opinion whatsoever on the merits of the dispute between the appellant and private respondents as regard the claim of Tenancy. The Tenancy Appeal filed by the appellant before the Appellate Court shall be decided on its own merits, in accordance with law.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 505 : 2025 INSC 839

Orissa High Court and Others
v.
Banshidhar Baug and Others Etc.

(Special Leave Petition (C) No(s). 11605-11606 of 2021)

14 July 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Issue arose as regards the designation of Senior Advocates by the Full Court by exercising its suo motu power.

Headnotes†

Advocates Act, 1961 – ss.16(2), 34(1) – High Court of Orissa (Designation of Senior Advocate) Rules, 2019 – r.6(9) – Designation of Senior Advocates – *Suo motu* designation of Senior Advocates by the Full Court – High Court quashed r.6(9) of the Rules whereby notwithstanding the procedure, Full Court on its own can designate an Advocate as Senior Advocate even without any proposal from Hon'ble Judges or application from the Advocate if it forms an opinion that an advocate by virtue of his/her ability or standing at the Bar deserves such designation, as *ultra vires* and not being in consonance with the judgment in *****Indira Jaising-1* **– Justification:**

Held: Not justified – S*uo motu* designations by Full Court is valid, provided such designations adhere to the constitutional principles of fairness, transparency, and objectivity – Standards for the designation of Senior Advocates must be significantly higher than those applicable to other advocates – Judgment in ****Jitender @ Kalla's* case is concurred with and reconsideration of the issue of s*uo motu* designations not warranted – Order passed by the High Court set aside – Amended r.6(9) to remain in force until fresh rules are framed by the High Court – Designation of respondent Nos.5 to 9 as Senior Advocates held to be valid – Judicial discipline. [Paras 17, 18, 20]

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* Author

Advocates Act, 1961 – s.16(2) – Designation of a Senior Advocate – Observation by this Court:

Held: Designation of a Senior Advocate is a mark of distinction granted by the Court in recognition of exceptional legal acumen and advocacy – It is not conferred as a matter of right, nor can any advocate claim it merely on basis of seniority, experience, or popularity – Designation is conferred at the discretion of the Court, upon satisfaction that the advocate possesses outstanding ability, integrity, and professional standing – Courts are not expected to grant this status arbitrarily or as a matter of favour – Process for designation must be merit-based, transparent, fair, and free from personal preferences or informal influences – Thus, the conferment of Senior Advocate status is a privilege, not an entitlement, and must be governed strictly by the principles of fairness, accountability, and institutional integrity. [Para 19]

Case Law Cited

****Jitender @ Kalla v. State of NCT of Delhi,* **2025 INSC 667 : Criminal Appeal No. 865 of 2025 – concurred.**

***Indira Jaising v. Supreme Court of India* **[2017] 10 SCR 478 : (2017) 9 SCC 766;** *Indira Jaising v. Supreme Court of India* **[2023] 5 SCR 434 : (2023) 8 SCC 1;** *Jitender @ Kalla v. State of NCT of Delhi,* **2025 INSC 249 – referred to.**

List of Acts

Advocates Act, 1961; High Court of Orissa (Designation of Senior Advocate) Rules, 2019.

List of Keywords

Indira Jaising -1's case; *Indira Jaising -2*'s case; *Jitender @ Kalla's* case Designation as Senior Advocates; *Suo motu* designation by Full Court; Principles of fairness, transparency, and objectivity.

Case Arising From

EXTRAORDINARY CIVIL JURISDICTION: Special Leave Petition (C) No(s). 11605-11606 of 2021

From the Judgment and Order dated 10.05.2021 of the High Court of Orissa at Cuttack in WPC No. 17009 and 17110 of 2019

Appearances for Parties

Advs. for the Petitioners:
Atmaram N.s Nadkarni, Sr. Adv., Shovan Mishra, Ms. Bipasa Tripathy.

Advs. for the Respondents:
Ms. Uttara Babbar, Sr. Adv., Anirudh Sanganeria, Manan Bansal, Ms. Rayana Mukherjee, Sunil Kumar Jain, Ms. Rashika Swarup, Kedar Nath Tripathy, Aditya Narayan Tripathy.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

1. We have heard the learned counsel appearing for all the parties and perused the materials available on record.

2. These Special Leave Petitions are filed by the High Court of Orissa on its administrative side, challenging the common judgment and order dated 10.05.2021[1] passed by the High Court of Orissa at Cuttack on the judicial side[2], in W.P.(C) Nos.17009 and 17110 of 2019. By the impugned order, the High Court quashed Sub-rule (9) of Rule 6 of the High Court of Orissa (Designation of Senior Advocate) Rules, 2019[3], on the ground that it is *ultra vires* and not in consonance with the guidelines laid down in paragraphs 73 and 74 of the judgment of this Court in *Indira Jaising v. Supreme Court of India [(2017) 9 SCC 766]*[4]. Further, the High Court also quashed the notification dated 4th September 2019, issued by it on the administrative side, which called for applications from eligible advocates to be considered for designation as Senior Advocates under the Rules, 2019. Additionally, the High Court directed that Notification No.1378 dated 19.08.2019 shall remain in abeyance until a fresh decision is taken by the Full Court regarding designation of Senior Advocates.

1 For short, "the impugned order"

2 For short, "the High Court"

3 For short, "the Rules, 2019"

4 Hereinafter referred to as "*the Indira Jaising - 1*"

3. On 02.08.2021, when the special leave petitions were taken up for consideration, this Court stayed the operation of paragraph 24 of the impugned order, which had declared Rule 6(9) as *ultra vires* and not being in consonance with the judgment in *Indira Jaising -1*.

4. According to the learned counsel for the petitioners, the High Court is not justified in quashing Rule 6(9) of the Rules, 2019 which is in consonance with the statutory provisions contained in Section 16(2) of the Advocates Act, 1961 as well as the judgment of this Court in *Indira Jaising -1,* which was subsequently clarified in *Indira Jaising v. Supreme Court of India [(2023) 8 SCC 1]*[5].

   4.1. Continuing further, on the issue of whether the powers of the Full Court can be subject to guidelines or a framework laid down by this Court in matters concerning the designation of Senior Advocates, the learned counsel for the petitioners made the following submissions:

      (a) The Rules, 2019 as amended, contemplate the modes of designation i.e.

      (i) A written proposal proposing an Advocate by the Chief Justice/Judge or submission of written application by the Advocate concerned; and (ii) S*uo motu* designation by the Full Court, which amounts to a 'recognition' of eminence and excellence. It was also submitted that the guidelines/ framework laid down in *Indira Jaising -1* and clarified in *Indira Jaising -2*, apply only to the first mode – i.e., when designation is sought via application – not to the *suo motu* designations made by the Full Court.

      (b) The entire structure – such as the Secretariat, Permanent Committee, and the application-based process – was created by this Court in *Indira Jaising -1*. These mechanisms are in addition to, and not in derogation of the powers of the Full Court. It was emphasized that the plenary powers of the Full Court were not curtailed by this Court. Rather, a supplementary mechanism was created for candidates who voluntarily seek designation.

      (c) It was further reiterated that the source of power of the Full Court for designation of Senior Advocates flows

5 Hereinafter referred to as *"the Indira Jaising -2"*

directly from Section 16 of the Advocates Act, 1961. The mechanism created by *Indira Jaising -1* is procedural and applies only to applicants. It cannot be construed to have taken away or diluted the inherent *suo motu* power of the Full Court to designate advocates.

(d) Lastly, it was submitted that the High Court while passing the impugned order, did not have the benefit of the clarification issued by this Court in *Indira Jaising -2.* As such, the impugned order dated 10.05.2021 is *per incuriam*.

4.2. It was also submitted that without going into the legality of the second notification dated 04.09.2019, the High Court quashed the same as it would cause confusion vis-à-vis the applications received pursuant to the notification dated 22.04.2019.

4.3. With these submissions, the learned counsel for the petitioners prayed to set aside the impugned order passed by the High Court.

5. On the other hand, the learned counsel for Respondent No.1 / petitioner in W.P.(C) No.17009 of 2019, contended that Respondent Nos.5 to 9 in the writ petitions were *suo motu* designated as Senior Advocates before the process of senior designation as directed by this Court in *Indira Jaising -1* was completed. This pick and choose method adopted by the High Court was unfair to advocates, who were waiting for their applications to be considered under the first notification dated 22.04.2019 and therefore, their senior designation ought not to have been accepted. After considering this aspect by this Court, Respondent Nos.5 to 9 were asked to go through the entire process, and upon completion, they retained their designation as Senior Advocates.

5.1. It was further submitted that this Court in several pronouncements, has held that the designation of advocates as Senior Advocates is a privilege or honor based on the knowledge and expertise contributed by the individual to the legal profession. However, the guidelines brought in by the *Indira Jaising -1 and 2* judgments, on the ground of promoting transparency, have equated the process of designation to that of a promotion in a company.

5.2. The learned counsel further submitted that the process of applying pursuant to an advertisement, undergoing consideration before

the Permanent Committee, inviting views / suggestions from the Bar, and attending an interview dilutes the original process of senior designation, wherein, the High Courts had the *suo motu* power to designate an advocate based on their intellect, honor, courtroom presentation, and contribution to the legal fraternity. This new process, according to the learned counsel, undermines the very essence of the honorary position granted to a Senior Advocate under the Advocates Act, 1961. That apart, this process also creates an embarrassing and unwilling situation for advocates who have been in practice for over 40 years or have surpassed the age of 65. Such senior advocates may hesitate to go through the elaborate procedure, fearing low marks in parameters such as publications and interview performance, leading to embarrassment in front of their peers.

5.3. It was also submitted that *Indira Jaising 1 and 2* judgments do not deal with the question of whether rejected applicants are informed about their non-selection and the reasons for the same. Furthermore, the entire process of Senior Advocate designation has attained a saturation point in several High Courts. While the court's intention was to democratize the designation system, it has not addressed situations, where one candidate may perform well in an interview, whereas another equally meritorious candidate may not, thereby creating a disparity in marks and depriving an eminent counsel of designation. None of these concerns have been addressed by this Court in the *Indira Jaising -1 and 2* judgments. Therefore, the learned counsel prayed for reconsideration of these judgments and sought appropriate modifications.

5.4. Finally, the learned counsel submitted that after the passing of the order dated 28.06.2021 in SLP (C) No.8346 of 2021 arising out of SLP (D) No.14137 of 2021, the process was duly considered and candidates have been designated as Senior Advocates.

6. It is the contention of the learned counsel for Respondent Nos.3 and 6 that these respondents were initially designated as Senior Advocates by the High Court in exercise of its *suo motu* power under Rule 6(9). However, in view of the impugned order, Respondent Nos.3 and 6 were subjected to the full rigour of the Rules, like all other

applicants. They were thereafter designated by strictly following the procedure laid down under the Rules, 2019. It is therefore submitted that irrespective of whether the High Court possesses *suo motu* powers of designation, the designation of Respondent Nos.3 and 6 ought not to be disturbed, as it has attained finality.

6.1. Without prejudice to the above, it was further submitted that the judgments in *Indira Jaising -1 and 2* recognize the *suo motu* power of both the High Courts and the Supreme Court to designate advocates as Senior Advocates.

6.2. Thus, the learned counsel submitted that the *suo motu* designation of Respondent Nos. 3 and 6 on 19.08.2019 could not have been invalidated on the ground that High Court lacks *suo motu* power or that Rule 6(9) *ultra vires* the decision in *Indira Jaising -1*. Hence, the designation of Respondent Nos.3 and 6 deserves to be protected by this Court.

7. In addition, the learned counsel for Respondent No.4 submitted that Respondent No.4 along with four other advocates was designated as a Senior Advocate by the High Court under Section 16 of the Advocates Act, 1961 read with Rule 7(1) of the Rules, 2019. This designation was notified *vide* Notification No.1378 dated 19.08.2019. Aggrieved by the said notification, Respondent No.1 and others preferred two writ petitions. By the common order dated 10.05.2021, which is impugned herein, the High Court struck down Rule 6(9) of the Rules, 2019 as *ultra vires,* and issued a direction to consider the cases of Respondent Nos.5 to 9 along with other applicants under the first notification dated 22.04.2019. Challenging the said order, one Prasanna Kumar Parhi and others preferred SLP No. 8346 of 2021 (arising from SLP(D)No.14137 of 2021), in which, by order dated 28.06.2021, this Court granted an order of interim stay of the operation of paragraph 32(ii) of the order dated 10.05.2021, with a caveat that the applications in pursuance of the earlier notification would be considered first for designation, and once that process was concluded, the applications pursuant to the subsequent notification, dated 04.09.2019, could be taken up. In light of the said order, the case of Respondent No.4 along with other applicants was again considered. Respondent No.4 was thereafter designated as a Senior Advocate under section 16 of the Advocates Act, 1961 read with Rule 7(1) of the High Court of Orissa (Designation of Senior

Advocate) Rules, 2019, *vide* notification dated 27.04.2022. Therefore, the learned counsel submitted that the designation of Respondent No.4 warrants no interference.

8. Upon considering the pleadings and the submissions made by the learned counsel appearing for the parties, the primary issue involved herein pertains to the designation of Senior Advocates by the Full Court by exercising its *suo motu* power.

9. The source of the power to designate an advocate as Senior Advocate is contained in Section 16(2) of the Advocates Act, 1961, which reads as under:

> *"16. Senior and other advocates:*
>
> *…….*
>
> *(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction."*

Thus, the above provision implicitly recognizes the power of a High Court to confer the distinction of Senior Advocate, subject to its opinion that the concerned Advocate, by virtue of his ability, standing at the Bar, or special knowledge or experience in law, is deserving of such recognition.

10. Earlier, the non-transparent and arbitrary procedures adopted for designating Senior Advocates under Section 16 of the Advocates Act, 1961, were challenged in *Indira Jaising -1,* wherein, this Court upheld the validity of the power of High Court to confer Senior Advocate designation under Section 16. Nonetheless, the Court expressed regret on the subjective and opaque nature of the then-prevailing process, and emphasized the need for a transparent, fair and consistent system. Accordingly, the Court issued directions for the formation of a Permanent Committee for designation of Senior Advocates, and laid down specific guidelines and criteria. The relevant paragraphs of the said decision are extracted below for better appreciation:

> *"73. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/ guidelines which henceforth would govern the exercise of*

designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present.

73.1. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";

73.2. The Permanent Committee will be headed by the Hon'ble the Chief Justice of India and consist of two seniormost Judges of the Supreme Court of India [or High Court(s), as may be]; the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;

73.3. The said Committee shall have a permanent Secretariat, the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;

73.4. All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the advocate(s) concerned including his/her participation in pro bono work; reported judgments in which the advocate(s) concerned had appeared; the number of such judgments for the last five years. The source(s) from which information/ data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;

73.5. The Secretariat will publish the proposal of designation of a particular advocate in the official website of the Court concerned inviting the suggestions/ views of other stakeholders in the proposed designation;

73.6. After the database in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

73.7. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point-based format indicated below:

Sl. No.	*Matter*	*Points*
1.	*Number of years of practice of the applicant advocate from the date of enrolment.* *[10 points for 10-20 years of practise; 20 points for practise beyond 20 years]*	*20 points*
2.	*Judgments (reported and unreported) which indicate the legal formulations advanced by the advocate concerned in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise of the applicant advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.*	*40 points*
3.	*Publications by the applicant advocate*	*15 points*
4.	*Test of personality and suitability on the basis of interview / interaction*	*25 points*

73.8. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

73.9. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

73.10. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;

73.11. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation, the Full Court may review its decision to designate the person concerned and recall the same.

74. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/ deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary."

11. Pursuant to the aforesaid judgment, the High Court of Orissa framed the High Court of Orissa (Designation of Senior Advocate) Rules, 2019, in exercise of the powers conferred by Section 34 (1) read with Section 16(2) of the Advocates Act, 1961. Rule 12 repealed all earlier rules, guidelines, or instructions related to the designation of Senior Advocates. Under the Rules 2019, there are three recognized methods for initiating the designation process:

    (i) A written proposal by the Chief Justice or any sitting Judge of the High Court, under Rule 5 (1) (a), to be submitted in Form I of Appendix-A, along with the prior written consent of the concerned advocate.

    (ii) An application by the advocate concerned in Form II of Appendix-A, as per Rule 5 (2).

    (iii) **A *suo motu* designation by the Full Court, under Rule 6(9), if it forms the opinion that an advocate, by virtue of ability**

or standing at the Bar, deserves such designation – even in the absence of a proposal or application.

12. In accordance with the Rules, 2019, the High Court issued a notification dated 22.04.2019, inviting applications from eligible advocates for consideration. In the meantime, Respondent Nos.5 to 9 were designated as Senior Advocates by the High Court exercising its *suo motu* power under Rule 6(9), prior to the completion of the process initiated by the earlier notification. This designation was notified *vide* Notification No.1378 dated 19.08.2019. Subsequently, the Registrar (Judicial) issued a second notification dated 04.09.2019 inviting fresh applications. Aggrieved by this, Respondent No.1 and others filed W.P. Nos. 17009 and 17110 of 2019 before the High Court on its judicial side, challenging Rule 6(9), the notification dated 04.09.2019, and the *suo motu* designations.

13. The High Court by the impugned order, struck down Rule 6(9) of the Rules, 2019 as *ultra vires* and directed that the cases of Respondent Nos.5 to 9 be considered along with other applicants under the first notification dated 22.04.2019. Challenging the High Court's order, SLP (C) No. 8346 of 2021 came to be filed and this Court by order dated 28.06.2021, issued notice and stayed the operation of the impugned order, with a direction that applications under the first notification be considered first. Upon completion of that process, applications under the second notification could be considered.

14. Pursuant to this Court's order, the cases of Respondent Nos.5 to 9 were again considered and they were designated as Senior Advocates *vide* Notification dated 27.04.2022. Since their designation was made in compliance with this Court's directive, no further examination of the same arises herein.

15. In the meanwhile, further clarification was issued by this Court in *Indira Jaising -2*. The relevant paragraphs of the said judgment are extracted below:

> *"9. Vide an elaborate judgment dated 12.10.2017, a three-Judge Bench of this Court laid down a series of guidelines to bring in greater transparency and objectivity in the designation process. This was done while retaining the suo motu designation power of the Court. These guidelines have been set forth in para 73 of the judgment."*

> *48. Here, we would like to reiterate the observation made in the 2017 Judgment [Indira Jaising v. Supreme Court of India, (2017) 9 SCC 766 : (2017) 4 SCC (Civ) 575 : (2017) 2 SCC (L&S) 802, (hereinafter "the 2017 Judgment")] that the power of suo motu designation by the Full Court is not something that is being taken away. This power has been and can continue to be exercised in the case of exceptional and eminent advocates through a consensus by the Full Court."*

16. Subsequently, the High Court amended Rule 6(9) *vide* Notification dated 15.12.2023, to align it with the directives issued by this Court. The amended Rule reads as follows:

> *"6. Procedure for Designation:-*
>
> *…*
>
> *(9) Notwithstanding the above noted procedure for designation of an Advocate as Senior Advocate, the Full Court suo motu may designate an exceptional and eminent Advocate as Senior Advocate through consensus, if it is of the opinion that by virtue of his/her ability or standing at the Bar, the said Advocate deserves such designation".*

17. At this juncture, we point out that although the three-Judge Bench of this Court in *Indira Jaising v. Supreme Court of India*, laid down the guidelines for the designation of Senior Advocates by the High Courts and the Supreme Court, the Court explicitly stated that those guidelines are not exhaustive and may require reconsideration. The need for such reconsideration arose recently before a concurrent Bench of this Court.

18. In *Jitender @ Kalla v. State of NCT of Delhi*[6], a Division Bench of this Court expressed the view that the interview-based process for the designation of Senior Advocates should be reconsidered by a larger Bench. The court also elaborated on the qualifications necessary for designation under Section 16 of the Advocates Act, 1961. Subsequently, a three-Judge Bench was constituted, and the matter was heard in detail and was disposed of, *vide* judgment dated

6 2025 INSC 249

13.05.2025 in Criminal Appeal No.865 of 2025[7]. Upon thorough reconsideration of the above judgments, including *Jitender @ Kalla*, the Court observed that Section 16(2) of the Advocates Act, 1961 was amended in 1973 (effective from 31.01.1974), replacing the phrase "experience and standing at the Bar" with "ability, standing at the Bar, or special knowledge or experience in law". The Court emphasized that the standards for the designation of Senior Advocates must be significantly higher than those applicable to other advocates. Ultimately, the Court reaffirmed the validity of *suo motu* designations by Full Court, provided such designations adhere to the constitutional principles of fairness, transparency, and objectivity. For better understanding, the relevant paragraphs of the said three-Judge Bench judgment are reproduced below:

> *"D. Reconsideration in terms of Paragraph 74 of Indira Jaising -1 and Paragraph 51 of Indira Jaising -2*
>
> *75. We have already held in paragraph 60 that considering the object of the exercise undertaken by this Court, the directions issued in Indira Jaising-1 and 2 were never intended to be final. Indira Jaising-1 specifically records need for reconsiderations by suitable additions/deletions in the light of the experience to be gained over a period of time. Even Indira Jaising-2 reiterates this position and holds that the process of improvement is continuous, based on our experience. What we have held in earlier paragraphs shows that the system of 100 point-based assessment has not achieved the desired objectives. Moreover, the experience shows that the points-based assessment is not flawless. We have realized that with experience. Therefore, paragraph 73.7 deserves deletion in exercise of powers reserved in paragraph 74 of Indira Jaising-1 read with paragraph 51 in Indira Jaising-2. When we do this, it will not amount to review or recall of the decisions. After finding that the point-based assessment is not workable, we will be failing in our duty if we fail to do what we are expected to do in the light of paragraph 74 of Indira Jaising-1.*

7 Jitender v. State of NCT of Delhi, 2025 INSC 667

E. Judges Recommending Candidates

76. On plain reading of Sub-section (2) of Section 16, the Legislature never contemplated an Advocate making an application seeking designation. The scheme of Sub-section (2) of Section 16 indicates that designation has to be conferred by the Supreme Court or the High Courts. The scheme of Sub-section (2) of Section 16 indicates that an individual Judge of the Supreme Court or the High Court, as the case may be, cannot recommend any Advocate for designation as the decision is a collective decision of the Full Court. Even if an Advocate deserving of a designation does not apply for designation, on the basis of the discussion in the house, the Full Court can always recommend his/her designation, subject to his/her consent. For that purpose, the recommendation in writing of an individual Judge is not warranted.

…..

K. Need to frame proper Rules

83. Even in the absence of a specific provision under the Advocates Act, this Court and High Courts, being the Constitutional Courts, have a power to frame rules. The power of this Court can be traced to Article 145(1)(a). The High Courts can exercise power under Article 227(2)(b). It is necessary that proper Rules must be framed dealing with the entire process of designating Advocates as Senior Advocates. The object of the rules must be to bring objectivity, transparency and fair play in the entire process. The rule making power in this behalf can also be traced to Sub-section (1) of Section 34 of the Advocates Act which reads thus:

> *"Section 34: Power of High Courts to make rules.*
>
> *(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto."*

84. The grassroots level situation in each High Court differs. High Courts have their own traditions. Therefore, it should

be best left to the High Courts to frame rules in the light of the principles laid down in this decision. While framing rules, this Court and the High Courts must undertake a detailed process of consultation with the Advocate General, senior members of the Bar, office bearers of the Bar Associations and the members of the State Bar Council. Even the members of the Bar owe a duty to ensure that only deserving Advocates get designation, and therefore, their suggestions must be given importance in the process of framing rules. The Rules must take into consideration several contingencies. There are cases where after the request for designation is rejected by one High Court, the candidate approaches this Court or another High Court. The Rules can provide for prohibition on applying for a certain period after rejection of earlier application. The Rules can provide for the form of application, required documents etc.

…

M. Need to Periodically Review the Procedure

86. The view which we have taken will be again subject to what is observed in paragraph 74 of the decision in the case of Indira Jaising-1 and paragraph 51 of the decision in the case of Indira Jaising-2. Looking to the very nature of the process of designation, it is very difficult to arrive at a perfect system. We learn from our experience and the mistakes committed in the past. Therefore, the endeavour of all stakeholders should be to keep on improving the system, so that we may ensure that not a single deserving Advocate is left out of the process of designation and not a single undeserving person is designated.

CONCLUSIONS

87. We, therefore, pass following orders:

(i) We direct that the directions contained in paragraph 73.7 of Indira Jaising-1 as amended by Indira Jaising-2 shall not be implemented;

(ii) It will be appropriate if all the High Courts frame Rules in terms of what is held in this decision within a period of 4 months from today by amending or substituting the existing Rules. The Rules shall be made keeping in view the following guidelines:

a. The decision to confer designation shall be of the Full Court of the High Courts or this Court;

b. The applications of all candidates found to be eligible by the Permanent Secretariat along with relevant documents submitted by the applicants shall be placed before the Full House. An endeavour can always be made to arrive at consensus. However, if a consensus on designation of Advocates is not arrived at, the decision-making must be by a democratic method of voting. Whether in a given case there should be a secret ballot, is a decision which can be best left to the High Courts to take a call considering facts and circumstances of the given case;

c. Minimum qualification of 10 years of practice fixed by Indira Jaising-1 needs no reconsideration;

d. The practice of Advocates making applications for grant of designation can continue as the act of making application can be treated as consent of the Advocates concerned for designation. Additionally, the Full Court may consider and confer designation dehors an application in a deserving case;

e. In the scheme of Section 16(2), there is no scope for individual Judges of this Court or High Courts to recommend candidate for designation; and

f. At least one exercise of designation should be undertaken every calendar year.

(iii) The processes already initiated on the basis of decisions of this Court in the case of Indira Jaising-1 and Indira Jaising-2 shall continue to be governed by the said decisions. However, new process shall not be initiated and new applications shall not be considered unless there is a proper regime of Rules framed by the High Courts;

(iv) It is obvious that even this Court will have to undertake the exercise of amending the Rules/ Guidelines in the light of this decision; and

(v) Every endeavour shall be made to improve the regime/ system of designation by periodically reviewing the same by this Court and the respective High Courts."

In light of the foregoing, and as a matter of judicial discipline, we respectfully follow and concur with the judgment in *Jitender @ Kalla* (supra), as it squarely applies to the present case. Accordingly, no reconsideration of the issue involved herein is warranted.

19. Before parting, we wish to observe that the designation of a Senior Advocate is a mark of distinction granted by the Court in recognition of exceptional legal acumen and advocacy. It is not conferred as a matter of right, nor can any advocate claim it merely on the basis of seniority, experience, or popularity. The designation is conferred at the discretion of the Court, upon satisfaction that the advocate possesses outstanding ability, integrity, and professional standing. Courts are not expected to grant this status arbitrarily or as a matter of favour. At the same time, the process for designation must be merit-based, transparent, fair, and free from personal preferences or informal influences. It must, therefore, be reiterated that the conferment of Senior Advocate status is a privilege, not an entitlement, and must be governed strictly by the principles of fairness, accountability, and institutional integrity.

20. In fine, the order passed by the High Court on its judicial side is set aside. The designation of Respondent Nos.5 to 9 as Senior Advocates is held to be valid. The amended Rule 6(9) shall remain in force until fresh rules are framed by the High Court.

21. These Special Leave Petitions are disposed of accordingly. No costs. Consequently, miscellaneous application(s), if any, shall stand closed.

Result of the case: Special Leave Petitions disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 523 : 2025 INSC 848

Vijay Kumar
v.
Central Bank of India & Ors.

(Civil Appeal No. 9496 of 2025)

15 July 2025

[Pamidighantam Sri Narasimha and Joymalya Bagchi,* JJ.]

Issue for Consideration

The High Court upheld reduction of one-third of the pension payable to the appellant under the Central Bank of India (Employees') Pension Regulations, 1995.

Headnotes†

Central Bank of India (Employees') Pension Regulations, 1995 – Central Bank of India (Officers') Service Regulations, 1979 – Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 – Allegation against the appellant that he sanctioned loans without proper appraisal – Inquiry was initiated – Inquiry report held the appellant guilty – Consequent to which, appellant was compulsory retired by Deputy General Manager – Appellant submitted an appeal before Appellate Authority i.e., Field General Manager – During pendency of appeal, Field General Manager recommended award of two-third compulsory retirement pension – Later, appeal before the Appellate Authority was also dismissed – Appellant sought full retiral benefits before the High Court – The High Court upheld the decision of the Bank to reduce one-third of the pension payable to the appellant – Correctness:

Held: A plain reading of regulation 33 of the Pension Regulations would show award of pension less than full pension is to be done with prior consultation of the Board of Directors – Such prior consultation with the highest authority of the Bank i.e., Board of Directors must be understood as a valuable mandatory safeguard before an employee's constitutional right to pension is curtailed – In these circumstances, a *post facto* approval cannot be a substitute of prior consultation with the Board before the decision is made –

* Author

The order of the Field General Manager reducing pension without prior consultation of Board of Directors and the order of the High Court is set aside – Thus, the Bank directed to take appropriate decision regarding reduction of pension after giving an opportunity of hearing to the appellant and with prior consultation of the Board. [Paras 21, 24]

Central Bank of India (Employees') Pension Regulations, 1995 – Regn.33 (1) and (2) must be read conjointly:

Held: Clause (1) and clause (2) of regulation 33 must be read conjointly and in all cases when the full pension admissible to a compulsorily retired employee under the regulations is reduced, a prior consultation with the Board is necessary. [Para 19]

Central Bank of India (Employees') Pension Regulations, 1995 – Regn. 33 – Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 – Competent Authority:

Held: 'Competent Authority' is defined in both Discipline and Appeal Regulations and Pension Regulations as an authority appointed by the Board for the purpose of such regulations – In the Discipline and Appeal Regulations, it is further clarified Competent Authority must be superior to the delinquent and not an officer holding rank lower than scale IV officer – Clause 3(b) of Discipline and Appeal Regulations read with Schedule shows that an officer not below rank of Assistant General Manager and holding a rank higher than the disciplinary authority is the appellate authority under such regulation – A combined reading of the provisions in both the regulations would indicate a Field General Manager (holding a rank superior to disciplinary authority and higher than Assistant General Manager) is not only an authority superior to the disciplinary authority empowered to reduce pension under clause (1) but also the appellate authority under Discipline and Appeal Regulations who could exercise appellate powers to reduce pension under clause (2) of Pension Regulations. [Para 13]

Case Law Cited

Rao Shiv Bahadur Singh v. State of Uttar Pradesh **[1953] 1 SCR 1188 : (1953) 2 SCC 111 – referred to.**

Indian Administrative Service (S.C.S.) Association, U.P. & Ors. v. Union of India & Ors. **[1992] Supp. 2 SCR 389 : (1993) Supp. 1 SCC 730 – relied on.**

Vijay Kumar v. Central Bank of India & Ors.

List of Acts

Central Bank of India (Employees') Pension Regulations, 1995; Central Bank of India (Officers') Service Regulations, 1979; Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976.

List of Keywords

Service Law; Pension; Reduction of pension; Competent Authority; Regulation 33 of the Central Bank of India (Employees') Pension Regulations, 1995; Prior consultation of the Board of Directors; Employee's constitutional right to pension.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9496 of 2025

From the Judgment and Order dated 22.04.2024 of the High Court of Judicature at Patna in CWJC No. 7831 of 2017

Appearances for Parties

Advs. for the Appellant:
Neeraj Shekhar, Mrs. Kshama Sharma, Rajesh Kumar Maurya, Ujjwal Ashutosh, Ramendra Vikram Singh, Ram Bachan Choudhary, Amrendra Singh.

Advs. for the Respondents:
Dhruv Mehta, Sr. Adv., Ashish Wad, Manoj Wad, Ms. Swati Arya, Ms. Akriti Arya, Ms. Nishi Sangtani, Mohd. Hadi, M/s. J S Wad And Co.

Judgment / Order of the Supreme Court

Judgment

Joymalya Bagchi, J.

1. Delay condoned. Leave granted.

2. Appeal is directed against judgment dated 22.04.2024 passed by the Patna High Court to the extent the Court upheld reduction of one-third of the pension payable to the appellant under the Central Bank of India (Employees') Pension Regulations, 1995[1].

1 Hereinafter, Pension Regulations.

3. Appellant while working as Chief Manager, a scale IV officer in the respondent No.1-bank was served with a Memorandum of Charge alleging that, during his tenure as Branch Manager, Dhanbad Branch he sanctioned loans in respect of 12 accounts, *inter alia*, without proper appraisal of income, non-verification of KYC compliance, without post-sanction inspection etc. exposing the bank to potential financial loss of huge amount.

4. A.K. Roy, Assistant General Manager (a scale V officer) was appointed as the Inquiry Authority (IA). During the inquiry, appellant attained superannuation on 30.11.2014 but the enquiry was continued under Regulation 20(3)(iii) of Central Bank of India (Officers') Service Regulations, 1979[2]. He submitted inquiry report holding the appellant failed to discharge his duties with utmost integrity and honesty which was unbecoming of a Bank officer and exposed the Bank to huge financial loss for his pecuniary gain. Inquiry report was served on the appellant, and he replied to it. After considering his reply disciplinary authority i.e., Deputy General Manager (a scale VI officer) upheld the findings of the inquiry officer and imposed major penalty of compulsory retirement under Rule 4 (h) of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976[3] with effect from date of superannuation. Appellant submitted an appeal before appellate authority i.e., Field General Manager (a scale VII officer).

5. During pendency of the appeal, Regional Manager, Purnea, a scale IV officer, i.e., equivalent to scale of the appellant, on 05.08.2015 recommended minimum payable pension under compulsory retirement i.e., two-third pension to the appellant. Field General Manager by order dated 07.08.2015 concurred with the Regional Manager and recommended award of two-third compulsory retirement pension. Thereafter, on 30.12.2015 the said Field General Manager as the appellate authority dismissed the appellant's appeal and upheld the penalty imposed on the latter.

6. The appellant initially approached the High Court challenging validity of Regulation 20(3)(iii) of Service Regulations which enabled the Bank to continue disciplinary proceedings even after superannuation and for setting aside the order of compulsory retirement including

2 Hereinafter, Service Regulations.

3 Hereinafter, Discipline and Appeal Regulations.

disbursal of full retiral benefits but subsequently he restricted his challenge only to disbursal of full retiral benefits.

7. During hearing High Court was informed while the Bank had not passed any order forfeiting gratuity, it had taken decision to award two-third of the pension payable to the appellant. In these circumstances, High Court while directing release of gratuity upheld the decision of the Bank to reduce one-third of the pension payable to the appellant.

8. Being aggrieved by the reduction of one-third pension, appellant has approached this Court. Bank has contested the appellant's plea and produced additional documents, namely, recommendation letter of Regional Manager, Purnea for grant of minimum pension and the sanction letter of such pension by Field General Manager awarding two-third pension to the appellant.

9. Mr. Neeraj Shekhar contended pension is not a bounty and appellant's right to pension is constitutionally protected under Article 300A. Such right could not be taken away save and except by a clear prescription of law. High Court erred in holding that a compulsorily retired employee is not entitled to pension at all unless an order under regulation 33(1) of the Pension Regulations is passed. Regulation 33 (1) and (2) must be harmoniously construed to mean in cases where penalty of compulsory retirement is imposed, such employee has a right to receive pension not less than two-third of the full pension and such deduction can be made only after prior consultation with the Board of Directors.

10. Per contra, Mr. Dhruv Mehta, learned Senior Counsel submitted a plain reading of regulation 33 (1) and (2) would show the clauses are mutually exclusive and operate in different circumstances which do not overlap each other. As per clause (1), an authority higher than the authority competent to impose compulsory retirement penalty may grant pension at a rate not less than two-third whereas clause (2) permits the competent authority awarding compulsory retirement to award less than full pension in exercise of its original, appellate or reviewing powers. Only in the latter case consultation with Board of Directors is necessary. As the pension was reduced by the Field General Manager, a scale VII officer who is an authority higher in rank than the disciplinary authority, a scale VI officer no prior consultation was necessary, and the impugned decision did not call for interference.

11. The controversy centres around interpretation of regulation 33 of the Pension Regulations which provides for compulsory retirement pension as follows: -

> *"33. Compulsory Retirement Pension - 1. An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.*
>
> *2. Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.*
>
> *3. A pension granted or awarded under clause (1) or, as the case may be, under clause (2), shall not be less than the amount of rupees three hundred and seventy-five per mensem."*

12. Clause (1) provides for granting pension at a rate not less than two-third and not more than full pension by an authority higher than the authority competent to impose penalty of compulsory retirement. Clause (2) enjoins whenever a competent authority passes an order awarding pension less than full compensation pension in exercise of original, appellate or review powers, Board of Directors must be consulted before such order is passed. In no case the pension awarded shall be less than Rs.375/- per mensem.

13. 'Competent Authority' is defined in both Discipline and Appeal Regulations and Pension Regulations as an authority appointed by the Board for the purpose of such regulations. In the Discipline and Appeal Regulations, it is further clarified Competent Authority must be superior to the delinquent and not an officer holding rank lower than scale IV officer. Clause 3(b) of Discipline and Appeal Regulations

read with Schedule[4] shows that an officer not below rank of Assistant General Manager and holding a rank higher than the disciplinary authority is the appellate authority under such regulation. A combined reading of the provisions in both the regulations would indicate a Field General Manager (holding a rank superior to disciplinary authority and higher than Assistant General Manager) is not only an authority superior to the disciplinary authority empowered to reduce pension under clause (1) but also the appellate authority under Discipline and Appeal Regulations who could exercise appellate powers to reduce pension under clause (2) of Pension Regulations.

14. The bank would argue as pension was reduced under regulation 33(1) by Field General Manager as an authority superior to disciplinary authority competent to impose penalty, no prior consultation with Board was necessary, unlike cases where Competent Authority i.e., disciplinary authority while awarding compulsory retirement directs pension less than full compensation pension.

15. Such argument is fallacious for following reasons. Clause (2) permits the Competent Authority to award pension in exercise of not only original but also appellate or reviewing powers. If the expression 'Competent Authority' in clause (2) is restricted to disciplinary authority alone, reduction of pension in exercise of appellate or review power would become nugatory. Any interpretation which renders words or expressions in a statute otiose ought to be eschewed.[5]

16. Given this situation to accept the bank's interpretation that the two clauses ought to be read independent of one another would give rise to a piquant situation where the self-same authority, i.e., Field General Manager reducing pension under clause (1) would not require prior consultation with the Board which is mandatory while exercising similar power under clause (2). To avoid this anomaly whenever a superior authority reducing pension under regulation 33(1) is also appellate authority or reviewing authority who is empowered to exercise power under clause (2), the requirement of prior consultation with the Board must be held to be mandatory, failing which requirement

4 Schedule to Discipline and Appeal Regulations *"2. Any Officer employee of the Bank higher in rank and status than the Disciplinary Authority but no lower in rank and status than an Assistant General Manager shall be competent to act as the Appellate Authority within the meaning of Regulation 17."*

5 Rao Shiv Bahadur Singh v. State of Uttar Pradesh, (1953) 2 SCC 111.

of such prior consultation may be circumvented by the bank to the prejudice of the employee.

17. There is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law. When an authority is vested with the discretion to grant pension less than full pension admissible under the Pension Regulations, all procedural safeguards in favour of the employee including prior consultation must be strictly followed.

18. High Court failed to read the regulation in its proper perspective and went a step ahead to hold that a compulsorily retired employee would not be entitled to any pension unless an order is passed under regulation 33 (1). A combined reading of the clauses in regulation 33 clearly indicates that the pension payable to an employee who has been compulsorily retired as a penalty shall not be less than two-third of his full pension or Rs. 375 per mensem, whichever is higher. The word '*may'* occurring in clause (1) does not give discretion to superior authority to award pension less than two-third of the full pension. High Court misinterpreted the word 'may' in the clause to hold that grant of pension is discretionary. The word 'may' must be read in its proper context, that is to say, it was used in the regulation not to vest discretion in the superior authority to grant pension less than two-third of full pension payable but to clarify that the aforesaid clause will not entitle a compulsorily retired employee to pension if he is not otherwise entitled to such pension on superannuation on that day. For example, if an employee is compulsorily retired without completing 'qualifying service' making him eligible to pension under the regulations.

19. *In fine*, we hold clause (1) and clause (2) of regulation 33 must be read conjointly and in all cases when the full pension admissible to a compulsorily retired employee under the regulations is reduced, a prior consultation with the Board is necessary.

20. It would be argued the Field General Manager's order to reduce pension may be placed before the Board for *ex-post facto* approval. Whether 'prior consultation' is mandatory or a *post facto* approval would suffice would depend on various factors including nature of consultation, status of the authority consulted, and the rights affected by the decision.

21. A plain reading of regulation 33 would show award of pension less than full pension is to be done with prior consultation of the Board

of Directors. Such prior consultation with the highest authority of the Bank i.e., Board of Directors must be understood as a valuable mandatory safeguard before an employee's constitutional right to pension is curtailed. In these circumstances, a *post facto* approval cannot be a substitute of prior consultation with the Board before the decision is made. Reference may be made to *Indian Administrative Service (S.C.S.) Association, U.P. & Ors. vs. Union of India & Ors.*[6] wherein the parameters to decide whether prior consultation is mandatory or directory have been succinctly elucidated:-

> *"**26.** The result of the above discussion leads to the following conclusions:*
>
> *(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.*
>
> *(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.*
>
> *(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.*
>
> *(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.*
>
> *(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound*

6 (1993) Supp. 1 SCC 730.

to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation."

22. Mr. Mehta finally in a last bid endeavour requested us to invoke powers under Article 142 to do complete justice and endorse the decision of the reduction of pension in the present case.

23. Though it is claimed that the delinquent acts of the appellant had caused an approximate loss to the tune of Rs. 3.26 crores to the

bank, no evidence relating to the computation of such loss was either considered by the disciplinary authority or by the appellate authority. Further, no opportunity of hearing was given by the authorities prior to reducing his pension. No exceptional case to exercise our extraordinary powers under Article 142 is made out.

24. Accordingly, we allow the appeal and set aside the order of the High Court and order of the Field General Manager dated 07.08.2015 reducing pension without prior consultation of the Board of Directors. It shall be open to the Bank to take appropriate decision regarding reduction of pension after giving an opportunity of hearing to the appellant and with prior consultation of the Board within two months from the date of this judgment failing which the appellant shall be entitled to full pension from the date of superannuation.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 7 S.C.R. 534 : 2025 INSC 852

Pradeep Bhardwaj
v.
Priya

(Civil Appeal No. 9502 of 2025)

15 July 2025

[Vikram Nath* and Sandeep Mehta, JJ.]

Issue for Consideration

Issue arose as regards the correctness of the judgment passed by the High Court dismissing the matrimonial appeal filed by the appellant-husband refusing to grant divorce to the parties.

Headnotes†

Hindu Marriage Act, 1955 – s.13(1)(a) – Divorce – Irretrievable breakdown of marriage – Petition for dissolution of marriage on the ground of cruelty by the appellant-husband – Dismissed by the family court – Thereagainst, an appeal by the appellant on the ground of irretrievable breakdown of marriage and animosity between the parties – Dismissed by the High Court – Challenge to:

Held: Fit case to exercise power u/Art.142 and grant the relief of divorce to the parties on the ground of irretrievable breakdown of marriage – It is apparent that due to complete detachment and the prolonged estrangement, there has been an irretrievable breakdown of the marital bond, which cannot be mended by any means – Moreover, both the parties have spent the prime years of their youth entangled in this marital discord, which has persisted for more than the last fifteen years – Continuance of marriage would only fuel animosity and litigation between the parties, which runs contrary to the ethos of matrimonial harmony envisioned by the law – Also, the appellant and his family members' have been acquitted in the cruelty case filed by the respondent-wife – It cannot be expected by appellant to now continue in a marital bond with the respondent – Thus, in the interest of both the parties and the minor child that they be allowed to lead their lives independently and peacefully, free from legal battles – Decree of divorce granted and monthly maintenance enhanced to Rs.15,000/- pm in favour of respondent and the minor son – Constitution of India – Art.142. [Paras 23-27]

* Author

Case Law Cited

Shilpa Sailesh v. Varun Sreenivasan **[2023] 5 SCR 165 : (2023) 4 SCC 692;** *Amutha v. A.R. Subramaniam* **[2024] 12 SCR 755 : 2023 SCC OnLine SC 611 – referred to.**

List of Acts

Hindu Marriage Act, 1955; Constitution of India.

List of Keywords

Dissolution of marriage; Cruelty; Irretrievable breakdown of marriage; Long period of separation; Feelings of animosity; Mental agony; False case against husband and in-laws; Prolonged and futile legal battles; Monthly maintenance; Continuance of marriage; Matrimonial harmony.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9502 of 2025

From the Judgment and Order dated 26.02.2019 of the High Court of Delhi at New Delhi in MATAP No. 54 of 2018

Appearances for Parties

Advs. for the Appellant:
Aditya Aggarwal, Ms. Pooja, Shri Bhagwan, Ms. Kumari Rashmi Rani, Ms. Rashi Jaiswal, Vipin Kumar Jai.

Adv. for the Respondent:
Ms. Nidhi.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. The instant appeal has been preferred by the appellant-husband against the final judgment and order dated 26.02.2019 in MAT. APP.(F.C.) No. 54/2018 passed by the High Court of Delhi, wherein

the High Court dismissed the matrimonial appeal preferred by the appellant herein and refused to grant divorce to the parties.

3. The brief facts leading to the instant appeal are that the marriage between the appellant-husband and respondent-wife was solemnised on 07.05.2008 according to the Hindu rites and ceremonies at Delhi. A male child was born out of the wedlock on 25.03.2009, who has remained in the care and custody of the respondent. The conflict ensued between the parties shortly after the wedding took place and the parties have been living separately since October 2009 itself.

4. The appellant preferred a divorce petition under Section 13(1)(a) of the Hindu Marriage Act, 1955[1] *vide* HMA No. 377 of 2010 before the Family Court, Tis Hazari, Delhi seeking dissolution of marriage on the ground of cruelty. The grounds seeking divorce were that the respondent used to assault and torture the appellant's ailing mother with an intention to grab her property. There were further allegations laid by the appellant upon the respondent regarding physically abusing the appellant, having an extra-marital relationship and conducting assault upon the appellant with the help of her brother.

5. The divorce petition was contested by the respondent who denied all the allegations and claimed that the appellant fails to financially provide for her and the minor child. It was also claimed by the respondent that the appellant has abandoned her and the minor child since October 2009, and that even in the period that they spent together, she faced constant neglect and abuse at the hands of the appellant and his family members.

6. The Family Court, *vide* order dated 23.11.2017, dismissed the appellant's divorce petition while holding that the case set up by him was uninspiring and unworthy of acceptance. It was held that the allegation of cruelty against the respondent as well as her wanting transfer of the ownership of the property remain unsubstantiated. Therefore, the appellant's petition seeking divorce on the ground of cruelty was rejected by the Family Court.

7. During the pendency of the divorce petition, the appellant had preferred an application under Section 24 of HMA, 1955 seeking maintenance from the respondent and the same was dismissed *vide* order dated

1 HMA, 1955

12.03.2012. However, on an application preferred by the respondent under Section 24 and 26 of HMA, 1955, the appellant had been directed to pay an amount of Rs. 4,500/- per month to the respondent and their child towards their maintenance, apart from Rs. 5,000/- towards litigation expenses. The Family Court, *vide* final judgment, had held the appellant liable to pay the said maintenance to the respondent till the date of judgment in the above-mentioned terms.

8. Aggrieved by the dismissal of his divorce petition, the appellant preferred an appeal against the order dated 23.11.2017 before the High Court of Delhi.

9. The appellant strongly urged before the High Court that the limited ground on which he was seeking divorce was the irretrievable breakdown of marriage given the long period of separation between the parties and the constant feelings of animosity that the two parties harbour for each other. The respondent had resisted the grant of divorce.

10. The High Court, *vide* the impugned order dated 26.02.2019, affirmed the decision of the Family Court and held that the appellant has failed to prove cruelty and that granting a decree of divorce on the ground that cruelty stands blended with the irretrievable breakdown of marriage would be equivalent to rewarding the husband for leaving his wife and minor son. Accordingly, the High Court dismissed the appeal and imposed the cost of Rs. 10,000/- upon the respondent.

11. Aggrieved by the impugned order, the appellant is before us.

12. We have heard the learned counsel for the parties and perused the material on record.

13. It has been submitted by the appellant that the parties separated just one year after their marriage and have remained apart ever since. The parties have been living separately for more than 16 years. There has been a complete cessation of cohabitation and consortium, rendering the marriage defunct for all practical and legal purposes.

14. It has also been argued that continuing this relationship serves no purpose and would amount to a travesty of justice. That both the appellant and the respondent have already exhausted their youth, either in attempts to reconcile or in enduring the breakdown of their marital relationship.

15. Further, it has been contended that there exists no possibility of reconciliation and the mediation also did not yield any positive result. Additionally, in the criminal proceedings initiated by the respondent under Sections 498A/406/34 of the Indian Penal Code, 1860[2] in FIR No. 83 of 2011, the appellant and his family members have been acquitted by the Trial Court *vide* judgment dated 05.07.2019, which demonstrates that the allegations of cruelty and dowry harassment against the appellant were false.

16. It has been submitted that in view of the above, the present case squarely falls within the scope of the principle of "irretrievable breakdown of marriage" as a valid ground for granting divorce, as has been laid down by this Court in multiple judgments including **Shilpa Sailesh v. Varun Sreenivasan**,[3] where this Court has recognized its power under Article 142 of the Constitution to dissolve marriages where the matrimonial relationship has irretrievably broken down.

17. On the contrary, the respondent, while resisting the grant of divorce, has submitted that there are concurrent findings in favour of the respondent by both the Courts below and they should not be interfered with. It has been submitted that the appellant has not been able to prove the allegations of cruelty against the respondent.

18. Additionally, it has been submitted that the appellant, in a most inconsiderate and inhumane manner, has denied the paternity of the child born out of the wedlock, and this makes it apparent that the appellant is not concerned about the well-being and social status of the child and the wife. It was contended that the appellant cannot be permitted to take the benefit of his own wrong in ignoring his responsibilities as a husband and a father.

19. Lastly, it was submitted that the maintenance amount of Rs. 7,500/- which was awarded under the provision of Section 125 of the Code of Criminal Procedure, 1973[4] must be enhanced.

20. Firstly, it must be noted that this Court had referred the parties to the Supreme Court Mediation Centre to explore the possibility of an

2 IPC

3 (2023) 4 SCC 692

4 Cr.P.C.

amicable settlement. However, the attempts at mediation failed and the parties are back to the courtroom.

21. There are two main considerations which have weighed heavily with this Court while considering the rival contentions. Firstly, that the appellant-husband has been acquitted in the case of cruelty preferred by the respondent against him and his family members. Secondly, it is an admitted fact that the parties have been living separately since October 2009, i.e. almost for the past sixteen years.

22. It has been consistently held by this Court that the institution of marriage is rooted in dignity, mutual respect and shared companionship, and when these foundational aspects are irreparably lost, forcing a couple to remain legally bound serves no beneficial purpose. It has been emphasized by this Court in **Amutha v. A.R. Subramaniam**[5] that the welfare and dignity of both the spouses must be prioritized, and that compelling a dead marriage to continue only perpetuates mental agony and societal burden.

23. In the present case, it is apparent that due to complete detachment and the prolonged estrangement, there has been an irretrievable breakdown of the marital bond, which cannot be mended by any means. Moreover, both the parties have spent the prime years of their youth entangled in this marital discord, which has persisted for more than the last fifteen years.

24. It is as clear as a day that in the case at hand, the continuance of marriage shall only fuel animosity and litigation between the parties, which runs contrary to the ethos of matrimonial harmony envisioned by the law. This would ring true even more in the light of appellant's and his family members' acquittal in the cruelty case preferred by the respondent. It cannot be expected by the appellant to now continue in a marital bond with the respondent, a partner who had filed and fought a false case against her husband and in-laws.

25. Therefore, we are of the belief that it is in the best interest of both the parties and their minor child that they be allowed to lead their lives independently and peacefully, free from the shadow of prolonged and futile legal battles. This Court finds it a fit case to exercise its power

5 2023 SCC OnLine SC 611

under Article 142 of the Constitution and grant the relief of divorce to the parties on the ground of irretrievable breakdown of marriage.

26. Considering that the appellant is working as a clerk in a private firm and the respondent is a homemaker who is independently taking care of their minor son aged 16 years, we find it just and equitable to enhance the monthly maintenance to Rs. 15,000/- per month in favour of the respondent and their minor son.

27. Accordingly, the appeal is allowed and the impugned order dated 26.02.2019 is set aside. The marriage between the parties stands dissolved and a decree of divorce is granted in their favour by this Court in exercise of its power under Article 142 of the Constitution of India. The appellant shall pay composite monthly maintenance of Rs. 15,000/- to the respondent and their child.

28. No order as to costs.

29. Interlocutory Application(s), if any, shall stand disposed of.

30. Registry to draw the decree accordingly.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 541 : 2025 INSC 854

G. Mohandas
v.
State of Kerala & Ors.

(Criminal Appeal No. 2992 of 2025)

15 July 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court refusing to quash FIR against the appellants-officials of the Municipal Corporation and the builder u/s.13(1)(d) r/w s.13(2) of the Prevention of Corruption Act, 1988 and s.120-B IPC, wherein the builder in conspiracy with the officials constructed a commercial structure in a prohibited zone under the garb of the renovation permission.

Headnotes†

Prevention of Corruption Act, 1988 – s.13(1)(d) r/w s.13(2) – Penal Code, 1860 – s.120-B – Criminal misconduct – Criminal conspiracy – Appellant-builder and the officials of the Municipal Corporation conspired to facilitate the appellant in constructing the building in violation of the Rules – Officials granted the permit to the appellant for internal alterations/ renovation in the building even though not required – On the strength of the said permit, allegedly issued as a part of the conspiracy, the appellant demolished the existing building and constructed a four-storeyed commercial building in gross violation of the Rules – FIR against the officials of the Municipal Corporation, the appellant and the architect u/s.13(1)(d) r/w s.13(2) of the PC Act and s.120-B IPC – Filing of charge-sheet and framing of charges – Petition u/s.482 CrPC seeking quashing of the proceedings – Dismissed by the High Court – Interference:

Held: Not called for – From the very beginning, the appellant acted in conspiracy with the Municipal Corporation officials by giving a facade of legitimacy to his fraudulent actions and to establish

* Author

a pre-emptive defence in case the illegal acts were exposed – Officials of the Municipal Corporation deliberately turned a blind eye to the fact that the appellant had commenced construction of a commercial structure by misusing the permit granted for making renovations and/or internal changes – Moreover, they even entertained the fraudulent application filed by the appellant seeking the regularisation of the patently illegal structure, which could not have been entertained since the construction of a commercial structure was not permissible as it fell within a prohibited zone – Thus, the necessary ingredients of the offences alleged clearly established from the allegations set out – Furthermore, these officials did not challenge the criminal proceedings, which is a tacit acknowledgment of the seriousness and *prima facie* validity of the allegations – Case of the architect, whose prosecution was quashed by the High Court, stands on an entirely different footing – He was merely discharging his professional obligations and had no prior knowledge of the criminal intent shared by the parties – Concerned authorities under obligation to take suitable action against the illegal construction raised by the appellant, uninfluenced by any extraneous circumstances – Kerala Municipality Building Rules, 1999. [Paras 13-18]

List of Acts

Constitution of India; Code of Criminal Procedure, 1973; Kerala Municipality Building Rules, 1999; Prevention of Corruption Act, 1988; Penal Code, 1860.

List of Keywords

Quashing of FIR; Permit for internal alterations/renovation; Conspiracy; Demolition of the building; Construction of commercial building in prohibited zone; Officials of the Municipal Corporation; Fraudulent actions; Establish pre-emptive defence; Regularisation of illegal structure.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2992 of 2025

From the Judgment and Order dated 16.01.2024 of the High Court of Kerala at Ernakulam in CRMC No. 330 of 2021

Appearances for Parties

Advs. for the Appellant:
R. Basant, Sr. Adv., Ms. Anzu. K. Varkey, Ms. Mahesh Sharma.

Advs. for the Respondents:
P.V. Dinesh, Sr. Adv., Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad, Ms. Anna Oommen, Anshul Saharan.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. Leave granted.

3. The appellant herein has approached this Court seeking exercise of jurisdiction under Article 136 of the Constitution of India for assailing the final judgment and order dated 16th January, 2024, passed by the learned Single Judge of the High Court of Kerala at Ernakulam[1] in Criminal Miscellaneous Case No. 330 of 2021, whereby the petition filed by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973[2], seeking quashing of the FIR[3], was dismissed.

4. Facts, in a nutshell, relevant and essential for the disposal of the appeal are noted hereinbelow.

   4.1 The appellant herein is the owner of the building[4] bearing No. T.C No. 28/1830 in Survey No. 709 of the Vanchiyoor Village, District Thiruvananthapuram. He is accused of hatching criminal conspiracy along with officials of the Thiruvananthapuram Municipal Corporation[5] and the architect (accused No.7) in raising construction of a new four-storeyed commercial building by demolishing the existing building without obtaining the necessary permission from the Municipal Corporation.

1 Hereinafter, referred to as the "High Court".

2 Hereinafter, referred to as the "CrPC".

3 FIR No. 03/2009/SIU-1.

4 Hereinafter, referred to as "disputed building".

5 Hereinafter, referred to as the "Municipal Corporation".

4.2 The case of the prosecution is that the appellant, acting in furtherance of a prior conspiracy with the officials of the Municipal Corporation, submitted an application in Appendix-A under Rule 5(1) and Rule 144(1) of the Kerala Municipality Building Rules, 1999,[6] to the Municipal Corporation, seeking permission to make alterations and internal changes to the pre-existing building. The concerned official of the Municipal Corporation granted a permit to the appellant in Appendix-C under Rule 11(3) of the Rules, limited to renovation of the existing/old building.

4.3 The prosecution alleges that, as a matter of fact, under the provisions of the Rules, no such permit was required for alterations and internal changes to the building. The officials of the Municipal Corporation granted the permit despite the knowledge that the internal renovation of the building could be carried out by the building owner *suo moto*, and no formal permission was required for the same under the Rules. On the strength of the said permit, which was allegedly issued as a part of the conspiracy, the appellant demolished the existing building located in Vanchiyoor Village, Thiruvananthapuram District, and constructed a four-storeyed commercial building in gross violation of the Rules. The prosecution was initiated on the basis of a complaint filed by a businessman, namely, Dr. Biju Ramesh, to the Secretary of the Municipal Corporation, alleging that the appellant, in conspiracy with the Municipal Corporation officials, had constructed the four-storeyed building for commercial usage in violation of the Rules.

4.4 Acting on the above complaint, the Vigilance and Anti-Corruption Bureau[7], conducted a surprise inspection of the disputed building on 5th January, 2007. On receiving the report of the surprise inspection, the Government *vide* letter No. 6918/D1/2007/Vig. dated 31st July, 2007, accorded sanction to conduct a vigilance enquiry into the matter. The enquiry concluded that the appellant herein and various officials of the Municipal Corporation had conspired to facilitate the appellant in constructing the building in violation of the Rules and thereby the necessary ingredients of the offences punishable under Section 13(1)(d) read with

6 Hereinafter, referred to as the 'Rules'.

7 For short, "Vigilance Department".

Section 13(2) of the Prevention of Corruption Act, 1988,[8] and Section 120B of the Indian Penal Code, 1860[9], were *prima facie* made out against the appellant and the erring officials.

4.5 After the enquiry report was submitted and a prosecution sanction was received from the Director of Vigilance Department, an FIR, bearing VC No. 3 of 2009 was registered on 19th March, 2009, against the officials of the Thiruvananthapuram Municipal Corporation, the appellant and the architect of the disputed building, under Section 13(1)(d) r/w Section 13(2) of the PC Act and Section 120-B of the IPC. The appellant was arrayed as accused No. 6, whereas accused Nos. 1 to 5 were officials of the Thiruvananthapuram Municipal Corporation. The architect of the disputed building was arrayed as accused No. 7.

4.6 The Investigating Officer concluded in the report under Section 173(2) CrPC that the indicted officials of the Municipal Corporation, as well as the appellant, were aware of the fact that no permit was required for the internal alterations/renovation in the existing building. They were also aware that the location of the disputed building fell within a zone where the construction of commercial buildings was strictly prohibited. In spite thereof, the appellant submitted the questioned application for permit posing it to be necessary under the Rules, and the officials of the Municipal Corporation granted the permit even though not required. Upon conclusion of the investigation, a chargesheet[10] came to be filed against the appellant, the officials of the Municipal Corporation, and the architect (accused No. 7), in the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram.

4.7 Aggrieved, the appellant approached the High Court by way of Criminal Miscellaneous Petition No. 330 of 2021 under Section 482 of the CrPC, seeking quashing of the proceedings. It was the case of the appellant before the High Court that as a matter of fact, the permission was sought for and taken for renovation, alterations, and internal changes to the existing

8 Hereinafter, referred to as "PC Act."

9 Hereinafter, referred to as "IPC."

10 Final Report No.02 of 2020.

building in a *bona fide* manner. However, before the renovation work could be undertaken, there was a heavy deluge of torrential rainfall which caused the building to collapse, and, therefore, the appellant was compelled to construct the new building. He urged that the appellant moved for regularisation of the disputed building and accepting the said prayer, the Municipal Corporation has raised a demand of Rs. 18,58,653/- for regularisation of the unauthorised construction, and once the regularisation is permitted on payment of the compounding charges, the criminality of the alleged act is erased.

4.8 The appellant further contended that the architect for the building in question, namely A. Dharamakeerthi, who was arrayed as accused No. 7, also approached the High Court by filing a petition under Section 482 of the CrPC, bearing Criminal Miscellaneous No. 2161 of 2020, and *vide* order dated 7th January 2021, the learned Single Judge of the High Court has quashed the proceedings against accused No. 7, namely A. Dharamakeerthi. Thus, the appellant is also entitled to the same treatment on parity.

4.9 However, the High Court did not find favour with the submissions of the appellant and dismissed the Miscellaneous Petition filed by him *vide* order dated 16th January, 2024, which is assailed in this appeal by special leave.

Submissions on behalf of the appellant:-

5. Shri R. Basant, learned senior counsel appearing for the appellant, vehemently and fervently submitted that the prosecution case, as set out in the chargesheet, does not disclose the necessary ingredients of the offences alleged against the appellant. He fervently contended that since the Municipal Corporation has already decided to compound the disputed construction, no element of criminality remains in the alleged infraction/deviation. He further submitted that the original building collapsed due to heavy rainfall, and that the appellant merely rebuilt the old structure. As per Mr. Basant, there was no violation of the Rules in raising the new construction, more so, when the application for regularisation has been accepted.

6. Shri Basant, therefore, urged that the appeal is fit to be accepted and the impugned order passed by the High Court, along with all

the proceedings sought to be taken against the appellant, deserve to be quashed.

Submissions on behalf of the respondents:-

7. *Per contra*, Shri P.V. Dinesh, learned senior counsel appearing for the respondent-State, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the entire thrust of the appellant's case, that the building collapsed due to torrential rainfall after due permission for renovation, alterations, and internal changes was granted by the Municipal Corporation, is nothing but a figment of imagination.

8. No sooner after the complaint had been received regarding the illegal construction, the Vigilance Department issued a stop memo to the appellant on 27th November, 2006. In sheer defiance of the stop memo, the appellant continued the construction and raised a four-storey commercial building in a zone where the construction of commercial buildings was prohibited. Not only this, in order to cover up his fraudulent acts, the appellant even tried to get the unauthorised construction regularised by filing an *ex post facto* application even though no such regularisation was permissible as the zone where the disputed building was constructed was a non-commercial zone.

9. Learned senior counsel submitted that it is a different matter that the regularisation never took place, as the criminal acts of the appellant and the officials had already been exposed during the vigilance enquiry. He further contended that, following the dismissal of the petition filed by the appellant under Section 482 CrPC by the High Court, the Special Judge has already directed the framing of charges against the appellant and hence, the appellant has no valid existing grounds to assail the impugned order and the chargesheet.

10. He, therefore, urged that the appeal is devoid of merit and deserves to be dismissed, and that the order under challenge, as well as all the proceedings initiated against the appellant, ought to be allowed to continue in accordance with law.

Discussion and Conclusion: -

11. We have given thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

12. It was not disputed and is also evident from the Kerala Municipality Building Rules, 1999, that there is no requirement whatsoever for seeking permission to make alterations, renovations, or internal changes in an existing building. Despite that, the appellant acted in conspiracy with officials of the Municipal Corporation and procured such permission, which was nothing but a precursor to the fraudulent design of raising construction of a commercial structure in a prohibited zone under the garb of the renovation permission.

13. Clearly thus, from the very beginning, the appellant acted in conspiracy with the Municipal Corporation officials by giving a facade of legitimacy to his fraudulent actions and to establish a pre-emptive defence in case the illegal acts were exposed.

14. After the complaint was registered against the appellant and other officials, the Vigilance Department was informed, and a stop memo dated 27th November, 2006 was issued to the appellant, prohibiting any further construction activity. In sheer defiance of the stop memo, a four-storeyed commercial building was constructed. Furthermore, the appellant attempted to legitimise his fraudulent criminal actions by seeking an order for the regularisation of the patently illegal construction.

15. From the above-stated sequence of events, it is evident that the appellant and the officials of the Municipal Corporation were acting hands in glove right from the time of granting permission to renovate the pre-existing building. The officials of the Municipal Corporation deliberately turned a blind eye to the fact that the appellant had commenced construction of a commercial structure by misusing the permit granted for making renovations and/or internal changes. Moreover, they even entertained the fraudulent application filed by the appellant seeking the regularisation of the patently illegal structure. Indisputably, the construction of a commercial structure was not permissible as it fell within a prohibited zone. Hence, the application for regularisation could not have been entertained. Inspite thereof, the conniving officials raised a demand for regularisation presumably to give legitimacy to the conspiratorial design. Thus, the necessary ingredients of the offences alleged are clearly established from the allegations set out in the prosecution's case.

16. The trial Court has already rejected the application filed by the appellant under Section 239 of the CrPC and has directed framing

of charges against him and the officials of the Corporation who were charge-sheeted along with the appellant with the aid of Section 120B of the IPC. These officials have not challenged the criminal proceedings, which is a tacit acknowledgment of the seriousness and *prima facie* validity of the allegations. Needless to say, that the case of the architect, whose prosecution was quashed by the High Court, stands on an entirely different footing. He was merely discharging his professional obligations while preparing the architectural design for the building, without any active involvement in the alleged conspiracy or the execution of the illegal construction. There is no material on record to suggest his prior knowledge or participation in the criminal intent shared by the appellant and the Corporation officials. Hence, the appellant cannot claim parity with the architect, i.e., accused No. 7 in the chargesheet, and any reliance placed on the High Court's order quashing proceedings against the architect is wholly misplaced.

17. We direct that the concerned authorities shall be under an obligation to take suitable action against the illegal construction raised by the appellant, uninfluenced by any extraneous circumstances.

18. It is our firm opinion that the impugned order dated 16th January, 2024, passed by the High Court of Kerala in Criminal Miscellaneous Case No. 330 of 2021, does not suffer from any infirmity whatsoever so as to warrant interference by this Court. Hence, the present appeal fails and is being dismissed as being devoid of merit.

19. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 550 : 2025 INSC 862

Byluru Thippaiah @ Byaluru Thippaiah @ Nayakara Thippaiah
v.
State of Karnataka

(Criminal Appeal No(s). 2490-2491 of 2023)

16 July 2025

[Vikram Nath, Sanjay Karol* and Sandeep Mehta, JJ.]

Issue for Consideration

Issue arose as regards commutation of the death sentence awarded to the appellant for committing brutal murder of his wife, sister-in-law and his three children.

Headnotes†

Sentence/Sentencing – Death sentence – Commutation of – Brutal murder by the appellant of his wife, sister-in-law and his three children – Motive was that the appellant accused his wife and sister-in-law of being promiscuous and that he had not fathered the three children – Trial court convicted the appellant for the offence punishable u/s.302 and awarded death sentence – Upheld by the High Court – Correctness:

Held: Findings of the courts below regarding the appellant's conviction for the barbaric and ruthless murders of his family members, affirmed – Nothing on record to discredit the prosecution case or expose any gaps, errors, conjectures or surmises in the chain of circumstantial evidence established by the prosecution, beyond reasonable doubt – Act of the appellant came from a place of grave hatred for the deceased persons, however there was no sudden provocation which led to him having taken such a drastic step – His planning and forethought is sufficiently exhibited – Not a shred of evidence either oral or documentary produced to posit appellant's innocence and bringing the possibility of involvement of third party – No reason to take a different view on the appellant's guilt, than the one that has been taken by the courts below, keeping with the principle of adopting a cautionary approach in

* Author

interfering with concurrent findings of guilt – However, as regards sentencing, despite having considerable information before it, the High Court did not consider it appropriately and sufficiently, in view of the findings recorded in the said reports – Probation Report reveals that the appellant has no antecedents, there is mixed opinion on whether he is suitable for reformation or not – Mitigation report reveals difficulties throughout – Considering the sum total of circumstances that drove the appellant to point of committing this crime of a most reprehensible nature, the death penalty not appropriate – He should spend his days in jail attempting to repent for the crimes committed by him – He is released from death row, instead, to await his last breath in prison, without remission – Penal Code, 1860. [Paras 9-17]

Case Law Cited

Khushwinder Singh v. State of Punjab **[2019] 3 SCR 446 : (2019) 4 SCC 415;** *Ishwari Lal Yadav v. State of Chattisgarh* **[2019] 13 SCR 893 : (2019) 10 SCC 423;** *Atley v. State of U.P.,* **AIR 1955 SC 807;** *Ajit Savant Majagvai v. State of Karnataka* **[1997] Supp. 3 SCR 444 : (1997) 7 SCC 110;** *Ramji Singh v. State of Bihar* **(2001) 9 SCC 528;** *Saravanabhavan & Govindaswamy v. State of Madras,* **1965 SCC OnLine SC 176;** *Mekala Sivaiah v. State of Andhra Pradesh* **[2022] 6 SCR 989 : (2022) 8 SCC 253;** *Bachan Singh v. State of Punjab* **[1979] 3 SCR 1193 : (1980) 2 SCC 684;** *Swami Shradhanand v. State of Karnataka* **[2008] 11 SCR 93 : (2008) 13 SCC 767;** *Manoj v. State of M.P.* **[2022] 9 SCR 452 : (2023) 2 SCC 353;** *Ramesh A. Naika v. Registrar General,* **2025 SCC OnLine SC 575 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Commutation of the death sentence; Brutal murder; Death sentence; Motive; Wife and sister-in-law being promiscuous; Not fathered the children; Barbaric and ruthless murders of family members; Chain of circumstantial evidence; Involvement of third party; Remission; Murder weapon; Grave hatred; Sudden provocation; Paternity of children; Probation Report; Mitigation report; Reformation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 2490-2491 of 2023

From the Judgment and Order dated 30.05.2023 of the High Court of Karnataka Circuit Bench at Dharwad in CRLA No. 100170 and CRLRC No. 100002 of 2020

Appearances for Parties

Advs. for the Appellant:
Gopal Sankarnarayanan, Sr. Adv., Ms. Aathma Sudhir Kumar, Ms. Shreya Rastogi, Vishal Sinha, Ms. Trisha Chandran, Aakarsh Kamra.

Advs. for the Respondent:
Avishkar Singhvi, A.A.G., V. N. Raghupathy, Vivek Kumar Singh, Naved Ahmed, Ms. Sakshi Raman, Ms. Divya Prabha Singh.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

1. This is the third in an unfortunate line of cases that have travelled up to this Court in a recent past and have become ripe for adjudication where we find all sense of responsibility and propriety to have been given a go by, by the Appellant-convict. In this case, the seed of violence was the suspected infidelity of his wife Pakkeeramma[1]. He suspected that his three-children namely Pavithra[2], Nagraj @Rajappa[3] and Basamma[4] born to D-1 were perhaps not his own.

2. Concurrently, the Appellant-convict has been held guilty of charges framed against him in FIR Cr. No. 23 of 2017 dated 26th February 2017 registered at PS Kampli, Ballari District, Karnataka – by the

1 Hereinafter referred to as D1

2 Hereinafter referred to as D3

3 Hereinafter referred to as D4

4 Hereinafter referred to as D5

III[rd] Additional District and Sessions Judge[5], Ballari *vide* judgment dated 3[rd] December 2019 in Sessions Case No. 5031 of 2017 and by the High Court *vide* impugned judgment dated 30[th] May 2023 in Criminal Appeal No. 100170 of 2020 and Criminal Referred Case No. 100002 of 2020.

3. The facts of the appeals as have been culled out by the Courts below are that on 25[th] February 2017 the Appellant-convict assaulted D1, her sister Gangamma[6] and his children D3-D5 brutally, resulting in the death of D1 to D4 on the spot and D5 on the way to the hospital. Having done so, he stepped out of the house and apparently, proclaimed his satisfaction of having put an end to the life of his wife and sister-in-law who, according to him, was engaged in '*immoral activities*' and also the children born to his wife which, as per him, were a direct consequence of such immoral activities. This statement was witnessed by as many as eight prosecution witnesses, namely, Shankaramma (CW-4); Bandi Basavaraja alias S. Basavaraj (CW-11); Thippeswamy (CW-30); V. Sathyappa (CW-32); K. Abdul Wahid (CW-35); Mehaboob (CW-36); Ragavendra (CW-37); Syed Mehaboob (CW-38); Nagappa (CW-39) and Athaulla (CW-40). Upon hearing such a statement, they rushed to the house of the Appellant-convict and found the abovenamed deceased persons lying there in pool of blood. D-5, at this time, was still alive and was accordingly taken to the Government Hospital, by CWs 35 and 36, where she died. CW-2 Marenna lodged a complaint with the police that his nieces, D-1 and D-2 as also D-1's children had been killed by the Appellant-convict. The latter also went to the Kampili PS and admitted to having killed D-1 to D-5.[7] A First Information Report[8] was registered and forwarded to the Judicial Magistrate, First Class (Sr. Dn.) on the same day at 11:45 pm. The Appellant-convict was formally arrested at 5 a.m., the next morning.

4. After completion of the investigation, challan was presented for trial under Section 302, Indian Penal Code, 1860[9]. To establish its

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5 Hereafter 'Trial Court'

6 Hereinafter referred to as D2

7 Ex. 9(a) at Pg 170 of CC

8 FIR No. 23/2017

9 Abbreviated as 'IPC'

case, the prosecution examined 36 witnesses (*although 66 were cited in the charge-sheet*), marked 51 documents and 22 material objects, as exhibits. The Trial Court, having given its consideration to the evidence produced, concluded that the Appellant-convict had barbarically murdered his family members, D-1 to D-5 and had a '*beast mind*'. The order of sentencing dated 4th December 2019 reveals the consideration of two judgments of this Court, ***Khushwinder Singh v. State of Punjab***[10] and ***Ishwari Lal Yadav v. State of Chattisgarh***[11]***.*** In ***Khushwinder*** (supra) the appellant was convicted by all courts for having killed with premeditation, six people including two children. This he did on the pretext of ridding a close family member of an excessive drinking problem by getting the said family member in touch with an alleged godman, as also sending the father of the deceased children to Canada, for a hefty sum of money. The second case, ***Ishwari Lal Yadav*** (supra) was concerned with the sentence of death imposed upon the appellants therein for the murder of a two-year-old boy in *sacrificium.* Since the child was brought to the house of Ishwari and his wife Kiran Bai by the other co-accused, to further their attempts to gain enlightenment by pleasing God, and, when questioned by the villagers regarding the reason as to why there were freshly dug mounds of earth and blood in their house, they confessed. They were convicted under Section 302 read with Section 34 IPC across fora. Having considered the above two cases, the Trial Court found it fit to impose capital punishment. The conclusions are extracted hereunder:

> "Materials on record indicates that, the accused has chopped off his wife, sister-in-law and 03 helpless children in a barbaric way, that too in a diabolical and dastardly manner one after the other. There is a serial killing within a span of few minutes. The learned Public Prosecutor pointed out that accused has hatched a full proof plan before chopping off 05 person. He has made arrangements that none of them can escape from death. The photographs of scene of crime itself is the mirror of cruelty. The photographs are resembling a rustic butcher shop, where

10 (2019) 4 SCC 415

11 (2019) 10 SCC 423

> the animals were killed inhumanly. The accused has not allowed the other person to see him chopping the rest. The organ on which the cruel assault is made is clear indication that accused has made up his mind not to spare any of them. The Post Mortem report indicates that, the children to whom the accused has chopped off were hardly 06, 07 and 08 years helpless kids. The accused mercilessly chopped off his own small children without a second thought. That itself clearly indicates that accused is not worth to live in the civilized society. It is also to be noted that, even accused has threatened the witnesses to kill them also if they give evidence against him after he released from jail. This fact also clearly indicates that, even now accused has no guilt feeling for committing murder of his own 05 family members. Hence, as rightly pointed out by the learned P.P. If the accused gets an opportunity to come out of jail, he may finish off another dozen or so. Considering the facts and circumstances of this case and keeping in view of the nature of crime committed by the accused, I am of the opinion that, this case squarely fall within the rarest of the rare category. However, as the accused is guilt for the offence punishable under Section 302 of I.P.C., and as the prosecution has established that accused has killed 05 innocent person in a pre-planned murder. In the facts and circumstances of the case, I am of the opinion that there is no alternative punishment suitable, except the death sentence. The crime is committed with extremist brutality and the collective conscious of the society would be shocked. Therefore, I am of the opinion that the capital punishment/death is the only solution to this kind of crime. Hence, I hold that, this is a fit case to impose capital punishment of death penalty…"

5. Given that the sentence awarded by the Trial Court was that of death, the matter made its way to the High Court by way of confirmation proceedings under Section 366 of the Code of Criminal Procedure, 1973[12]. The Appellant-convict also challenged the conviction and sentence.

12 For Short, 'CrPC'.

6. By the common impugned judgment, reference was answered in as much as the sentence and conviction awarded by the Trial Court were confirmed. The criminal appeal at the instance of the Appellant-convict was, accordingly, dismissed. In coming to the conclusions as it did, the High Court is required to have, as the first court of appeal, re-examined the evidence before it, and come to an independent conclusion regarding the correctness or otherwise, of the Trial Court findings. [See: ***Atley v. State of U.P***[13]; ***Ajit Savant Majagvai v. State of Karnataka***[14] and ***Ramji Singh v. State of Bihar***[15]] The High Court has in this case, followed this well-established principle. The findings can be summarized thus:

   6.1 Motive on the part of the Appellant-convict can be established by way of multiple witnesses, PW-2 (Halladamane Marenna), PW-4 (Gangadhar), PW-5 (Thippaiah), PW-8 (Shankramma), PW-9 (Raghavendra), PW-11 (Adbul Wahed), PW-14 (Somakka), PW-16 (Raghavendra), PW-17 (Syed Mehaboob), PW-20 (Ramu), PW-21 (Parashuram), PW-32 (Anjinamma), who have consistently deposed as to the frequent squabbles between the Appellant-convict and D-1. Regarding his suspicion of having not fathered the three children, PW-2, PW-9, PW-14, PW-15 (Nagaraja) have stated that he made categorical statements to that extent.

   6.2 PWs 7, 11, 16 & 17 have deposed that the Appellant-convict told them that he had '*chopped off*' the deceased persons and that he was happy about that.

   6.3 The Appellant-convict's statement to PW-15 that his daughter Rajeshwari would be coming to the village of Yarakullu and that he should pick her up, shows pre-planning. He has also stated that he has only one child of his own.

   6.4 The manner in which the five deceased persons met their death shows barbarity, maliciousness on his part.

   6.5 On the aspect of sentencing, the High Court asked the probation officer concerned to collect certain information which would be

13 AIR 1955 SC 807

14 (1997) 7 SCC 110

15 (2001) 9 SCC 528

relevant to the adjudication of the propriety of the highest form of punishment.

6.6 The conclusions as can be drawn from the reading of paragraph 49 of the impugned judgment are that:

6.6.1 Regarding the early life and background of the Appellant-convict, it was observed that he had lost his parents at an early age and was brought up by his elder sister. Prior to his marriage to D-1, he was married to someone else and had begotten a son as well. There had been accusations of him being responsible for his former father-in-law's death, but no action in law was taken.

6.6.2 He is illiterate. Troubled relations with his former wife, including attempts to take her and her mother's life, resulted in separation. When it comes to D-1, here too, he is without any assets or savings and resided with D-1 in her maternal home.

6.6.3 The Amin, 3rd Additional District and Sessions Court, Hospete, indicated in his report that the people around him do not believe he can be reformed. The probation officer who spoke to the people in his native village, however, said that he could be reformed.

6.6.4 Dharwad Institute of Mental Health and Neurosciences in their report submitted that he had an IQ of 93, a psychiatric score of 29, which is below the cut of score. He does not have any personality disorders but is mildly depressed.

6.6.5 The Court recorded that in their interaction with the Appellant-convict, he only denied the happenings and stated not to know anything about it. He appeared to be divorced from reality, but since the psychiatric analysis report ruled out the said possibility, he appears to have no regard for law.

6.6.6 The gruesome manner of the commission of the murder was taken as an aggravating circumstance. For the opposite, it was held that none of the substance can be found. He has only one daughter; no extreme mental or physical disturbance or provocation.

6.7 The final order is as below:-

"ORDER

i. Criminal Appeal No.100170/2020 stands dismissed.

ii. Criminal R.C.No.100002/2020 stands allowed.

iii. The death sentence awarded by the trial Court is confirmed. The Appellant shall be hung by his neck till death.

iv. The Additional Registrar (Judicial) is directed to forward the above file to the concerned District Legal Service Authority (DLSA) to determine and make necessary arrangements for payment of compensation in terms of Sections 357 and 357A of the Code of Criminal Procedure, to the daughter of the deceased namely Rajeshwari.

v. Registry is directed to furnish a copy of this judgment to the Appellant through Jail Authorities free of cost and inform him of his right to appeal to the Hon'ble Supreme Court and transmit the trial Court records to the trial Court along with a copy of this judgment.

vi. Though the above matter is disposed, re-list on 10.07.2023 at 2.30 p.m. for reporting compliance with the directions issued above.

vii. We place our appreciation for the services rendered by Sri.S.L.Matti, Panel Advocate of Karnataka State Legal Services Authority."

7. The extant appeals are by the Appellant-convict challenging the findings of the High Court. We have heard Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Appellant and Mr. Avishkar Singhvi, learned Additional Advocate General for the State of Karnataka.

8. As we have already noticed, the prosecution examined a total of thirty-six witnesses. A brief overview of the relevant PWs is as under:

8.1 PW-1 is the Medical Officer, Kampili Government Hospital. He conducted the post-mortem of the deceased persons. Having seen the weapon allegedly used by the Appellant-convict, it

was said that the weapon (Ex.7) could have been used to cause the injuries.

8.2 PW-2 stated that the Appellant-convict would repeatedly accuse D-1 and D-2 of being promiscuous. He further stated that the Appellant-convict had called and told him that he had killed the deceased persons. He went to D-1's house to check on them and found all of them dead. He also stated that Appellant-convict threatened to kill him after he leaves the Court.

8.3 PW-4 stated that PW-2 informed him crying over the phone that Appellant-convict had killed D-1 to D-5. He went to the spot of the crime and saw the bodies of the deceased persons there.

8.4 PW-5 stated that PW-2 informed him crying over the phone that Appellant-convict had killed D-1 to D-5. At the time that he reached the spot, D-5 was still alive and was accordingly taken to receive medical attention. PW-7 told him that D-1 had an affair with another person, and that is the reason why the Appellant-convict took such a step. When the latter came out of the house, the chopper which was the alleged murder weapon was in his hand, and he stated that he had killed them.

8.5 PW-7 who had been declared a hostile witness, deposed that upon receipt of information regarding the commission of murders, he went to the spot. He was the one who informed the complainant. He had however, not seen the Appellant-convict coming out of the house. In the cross-examination he stated that he had gone to the spot having heard sounds of quarrelling.

8.6 PW-8 in her examination in chief, made a positive identification of the weapon allegedly used by the Appellant-convict. She also deposed that he came out of the house and declared that he had killed D-1 to D-5. In her cross-examination, she denied the suggestion that she had not seen the incident.

8.7 PW-11 in his testimony deposed regarding a particular quarrel which happened a few months prior to the incident and that PW-2 had told him that it was a fairly regular occurrence. Part of his testimony reads as under:

> "On the date of incident i.e. 25.02.2017 I saw the accused holding M.O-1 chopper in his hand. He was coming out of his house holding M.O-1. It was fully

> blood stained. Accused was abusing his wife and declaring that "-sic-". When I rush to the house of accused it was fully blooded there were five human bodies found laying in the pool of blood. Out of which four person were already dead, One girl found to be alive I immediately shifted her to the Hospital there she was declared dead. Thippeswamy, Basavaraja and Satyappa also accompanied me."

8.8 PW-14 stated that the Appellant-convict was quarrelsome and often he had asked the latter to mend his ways to no avail. He got information of the occurrence the next day morning. He also deposed that the Appellant-convict often cast aspersions on the fidelity of D-1 and the children, D-3 to D-5, that's why he killed them.

8.9 PW-15 is the person who had housed the Appellant-convict's daughter Rajeshwari, upon the latter's request, when he had planned to kill D-1 to D-5. He states that the only reason she was spared was that he believed her to be his child.

8.10 PW-16 deposed as follows:-

> "…At about 8.00 p.m. the accused came out of his house holding a chopper, which was blood stained, his clothes were also stained with blood. I have enquired him about the blood stains, he reported that he chopped off five person and abused them as prostitutes. The accused moved to Police Station alongwith chopper. Immediately we rush to the house of accused. Where we noticed that five persons were lying in the pool of blood, sustaining chopper injuries out of which three women died and a boy also no more. A girl aged five years was alive sustaining grievous head injury. Immediately we shifted the injured girl to the hospital, where she also passed away…"
>
> **Cross-examination by Sri C.M.S.P. advocate for accused**
>
> ...It is false to suggest that on the date of incident also it was informed by others, witness voluntaries

> that myself saw the accused. M.O-1 is the same chopper which was held by accused on that day. It is false to suggest that I have not seen M.O-1. It is true that I didn't enquire the accused about the cause of this incident. Accused moved away with courage..."

We have extracted the aforesaid, for as we notice the testimony of this important witness remains unimpeachable, clearly establishing the guilt of the Appellant-convict.

8.11 PW-22 is Rajeshwari, the daughter of Appellant-convict. She was not present at the time of the incident and did not know how the deceased persons died. She stated that D-1 and the Appellant-convict would never fight and were cordial with one-another.

Well, she is the only one who had supported the Appellant-convict. In view of overwhelming evidence to the contrary, her testimony cannot be said to have rendered the prosecution case to be doubtful of the Appellant-convict's involvement in the crime.

8.12 PWs 23 and 24 both stated that they reached the spot upon hearing a commotion. There they found out that the Appellant-convict had put an end to five of his family members.

8.13 PW-29 deposed that he is the Appellant-convict's immediate neighbour and upon hearing a commotion, he stepped out of his house to see a throng of people gathering there. He also saw the Appellant-convict stepping away from his house with the blood-stained weapon in his hand. It was then he found out what had transpired.

8.14 PW-33 was the CPI at Kampili Circle. He stated that the Appellant-convict having committed the crime, surrendered. He recorded the voluntary confession statement given by the Appellant-convict. He also recovered the murder weapon and shirt worn by the Appellant-convict at the time of the crime. He identified the various objects recovered by him in the course of investigation and also stated the names of various persons whose statements were recorded by him. Nothing could be elicited in the cross-examination to discredit his testimony or the investigation process.

9. We have given our anxious consideration to the testimonies, referred *supra* and also all other evidence brought on record by the prosecution. We find that numerous witnesses have testified to Appellant-convict's quarrelsome nature and repeated clashes with D-1. Further, quite a few witnesses have deposed that they saw the Appellant-convict with the murder weapon as also he himself was drenched in blood. Still further, other witnesses such as PW-10 testified that he came out of the house and in front of all the people that had gathered there due to *gatala* stated openly that due to the promiscuous nature of D-1 and D-2 and the fact that D-3 to D-5 were not his children, he murdered them. It cannot be questioned that the act of the Appellant-convict came from a place of grave hatred for the deceased persons. It has, however been recorded that there was no sudden provocation which led to him having taken such a drastic step. His planning and forethought is sufficiently exhibited by the fact that he sent away the only child he considered to be his own that is Rajeshwari. He also phoned up PW-15 and asked him to collect her from the bus station displaying that he had love and care for her in his heart. To doubt upon the paternity of D-3 to D-5 is not substantiated by any evidence nor have any of the witnesses lent credence to this hypothesis. Therefore, only on a hunch and as a matter of belief, he chose to end the lives of three young children. Regarding D-2, his sister-in-law, the only statement that can be found is that she aided and abetted the alleged misdeed and wrongdoings of D-1. We ask ourselves a question – is belief simpliciter sufficient enough to drive a person to a point of no return where ending the life of the deceased is the only rational outcome that can be perceived. We think, not. It is true that Appellant-convict is illiterate, but he is most certainly not irrational. He had a plan in mind which he executed, achieving his desired goal. There is nothing on record which would discredit the case of the prosecution or expose any gaps, errors, conjectures or surmises in the chain of circumstantial evidence established by the prosecution, beyond reasonable doubt. Not a shred of evidence either oral or documentary has been produced to posit Appellant-convict's innocence and bringing the possibility of involvement of third party.

10. In that view of the matter, we find no reason to take a different view on the Appellant-convict's guilt, than the one that has been taken by the Courts below. This is keeping with the well-established principle of this Court adopting a cautionary approach in interfering with

concurrent findings of guilt. Hidayatullah J. (as his Lordship then was) writing for the majority in ***Saravanabhavan & Govindaswamy v. State of Madras***[16], captured this principle in the following terms:

> "It has been ruled in many cases before, that this Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as: that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed."

[See also**: *Mekala Sivaiah v. State of Andhra Pradesh*[17]]**.

11. On the aspect of sentencing, the test to be applied is as to whether the conduct of the Appellant-convict meets the standard of '*rarest of rare cases*'. This has been the consistent position in confirmation of sentences of death imposed by the trial courts, ever since ***Bachan Singh v. State of Punjab***[18]. ***Swami Shradhanand v. State of Karnataka***[19], introduced a new position wherein the Courts were able to impose sentences that fall short of death but at the same time, keeping in mind the heinousness of the crime by the accused persons, ensure that the society is not put in danger with the possibility of such an accused walking free. In para 10 thereof, it was observed: *"The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court."*

16 1965 SCC OnLine SC 176

17 (2022) 8 SCC 253

18 (1980) 2 SCC 684

19 (2008) 13 SCC 767

With the judgment in ***Manoj v. State of M.P.***[20] came a watershed moment in the criteria of sentencing. This judgment ensured that if and when a person is finally sent to the gallows he is only so sent after due consideration of the entire background of facts and circumstances that have landed the accused person at the precipice of death. Under the direction issued therein, the Court is required to call for reports that detail the social and psychological backdrop of the Appellant-convict. It was held by the three-Judge Bench as follows :

> "**249.** To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]. Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.
>
> **250.** Next, the State, must in a *time-bound manner*, collect *additional* information pertaining to the accused. An illustrative, but not exhaustive list is as follows:
>
> (*a*) Age
>
> (*b*) Early family background (siblings, protection of parents, any history of violence or neglect)
>
> (*c*) Present family background (surviving family members, whether married, has children, etc.)

20 (2023) 2 SCC 353

(*d*) Type and level of education

(*e*) Socio-economic background (including conditions of poverty or deprivation, if any)

(*f*) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(*g*) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(*h*) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — *a fresh report* (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will *further* evidence the reformative progress, and reveal post-conviction mental illness, if any."

12. The High Court did, in accordance with ***Manoj*** (supra), call for the reports. However, we are of the considered view, that the said reports have not been considered to their full extent. The Probation Report reveals that the Appellant-convict has no antecedents; there is mixed opinion on whether he is suitable for reformation or not. The "*Conduct and Behavioural Report*" submitted by the Government of Karnataka, Prisons and Correctional Services records that he has "*good moral character*" and "*good conduct*" with co-prisoners and

prison officials. He has also attempted to mend one of the gaps in the fabric of his life i.e., literacy by participating in the Basic Literacy Program organized by the Zilla Lok Shiksha Samiti and passing the same with good rank.

13. The mitigation report reveals difficulties throughout- lack of paternal/ maternal love and care which later became extreme protectiveness after the death of his brother, difficulties in learning in school leading to him dropping out, making impulsive decisions in business often leading to losses, breakdown of the marriage with his first wife for the reason that neither quite comprehended issues with substance dependence.

14. Once incarcerated, it appears that mental health struggles have been a constant and unwelcome companion. He considered making an attempt to take his own life on two occasions, one when he found out about the deaths of his entire family and two, when he himself was sentenced to death.

15. The report further concludes that:

    (a) the Appellant-convict has the ability to adapt, engage in constructive activities, pursue an education despite past difficulty, continued worry about his daughter (Rajeshwari's) future, shows a notable capacity for reform and personal growth;

    (b) the Appellant-convict's continued incarceration has had a negative impact on Rajeshwari, who is really struggling to cope with life. Interactions with her, threw light on a gentle, loving side of the Appellant-convict. She has also reported experiencing auditory hallucinations which is a direct impact of loneliness she has been enduring.

16. Recently, this Court undertook a detailed examination of the past cases wherein the sentence of death has been modified to that of imprisonment for the remainder of natural life. [***See: Ramesh A. Naika v. Registrar General***[21]***]*** A perusal of the factors elucidated therein show that ***(a)*** lack of criminal antecedents; ***(b)*** satisfactory conduct in prison; ***(c)*** possibility of reformation; as a criteria, apply to the instant case. Regarding the last one, it can be said that given

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there is mixed opinion on whether he shall or shall not be able to reform his way, the Court will err on the side of caution just as when there are two possible interpretations of a given set of facts or circumstances, the one that favours the accused is to be adopted.

17. While we affirm the findings of the Courts below regarding the Appellant-convict's conviction for the barbaric and ruthless murders of his family members, D-1 to D-5. However, on the aspect of sentencing, we hold that despite having considerable information before it, the High Court did not consider it appropriately and sufficiently, in view of the findings recorded in the said reports. Considering the sum-total of circumstances that drove the Appellant-convict to this point of committing this crime of a most reprehensible nature, the death penalty may not be appropriate. We are of the view that he should spend his days in jail attempting to repent for the crimes committed by him. As such, these appeals are partly allowed to the extent that he is released from death row. Instead, he shall await his last breath in prison, without remission.

Result of the case: Appeals partly allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 7 S.C.R. 568 : 2025 INSC 819

Madhukar & Ors.
v.
The State of Maharashtra

(Criminal Appeal No. 2957 of 2025)

14 July 2025

[Vikram Nath* and Sanjay Kumar, JJ.]

Issue for Consideration

Whether in the facts and circumstances of the case, the High Court erred in dismissing the petitions filed by the appellants u/s.482, CrPC seeking quashing of criminal proceedings initiated against them, and holding that the proceedings involving serious offence u/s.376, IPC could not be quashed merely on the basis of a settlement or monetary compensation.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Quashing of proceedings involving serious offences including s.376, IPC on the ground of settlement between the parties – Permissibility:

Held: Ordinarily, quashing of proceedings involving grave and heinous offences like s.376, IPC on the ground of settlement between the parties is discouraged and should not be permitted lightly – However, the power of the Court u/s.482 CrPC is not constrained by a rigid formula and must be exercised with reference to the facts of each case – In the present matter, the FIR invoking serious charges, including s.376, IPC, was filed immediately following an earlier FIR lodged by the opposing side – Thus, the second FIR may have been reactionary – More importantly, the complainant in the second FIR has unequivocally expressed her desire not to pursue the case stating that she is now married, settled in her personal life, and continuing with the criminal proceedings would only disturb her peace and stability – Parties have amicably resolved their differences and arrived at a mutual understanding – In the peculiar facts and circumstances of the case, the continuation of the criminal proceedings would amount to abuse of process – Impugned order of High Court set aside – FIRs along with all proceedings, quashed – Penal Code, 1860 – ss.324, 141, 143, 147, 149, 452, 323, 504, 506; ss.376, 354-A, 354-D, 509, 506. [Paras 6-9]

* Author

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Quashing; Quashing of proceedings involving serious offences including Section 376, IPC; Settlement between the parties; Amicable resolution; Settlement or monetary compensation; Nature of the settlement; Compromise; Section 376, IPC grave and heinous; 1st FIR; 2nd FIR; Second FIR reactionary; Mutual understanding; Differences amicably resolved; Unlawful assembly; Sexual assault; Criminal intimidation; Sexual exploitation; FIRs quashed; Abuse of process; Continuation of the criminal proceedings would serve no useful purpose; Trial would not serve any meaningful/useful purpose.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2957 of 2025

From the Judgment and Order dated 07.03.2025 of the High Court of Judicature at Bombay at Aurangabad in CRLA No. 2561 of 2024

With

Criminal Appeal No. 2958 of 2025

Appearances for Parties

Advs. for the Appellants:
Ms. Bina Madhavan, S.. Udaya Kumar Sagar, S. Tridev Sagar, M/S. Lawyer S Knit & Co., Ms. Praseena Elizabeth Joseph, Ms. Shreyasi Kunwar.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. The present appeals arise from a common order dated 07.03.2025 passed by the High Court of Judicature at Bombay, Aurangabad Bench in Criminal Application Nos. 2561 and 2185 of 2024, whereby

the High Court dismissed the petitions filed under Section 482 of the Code of Criminal Procedure, 1973[1] seeking quashing of criminal proceedings initiated against the appellants herein.

3. The facts giving rise to the present appeals are as follows:

3.1. FIR bearing Crime No. 302 of 2023 dated 20.11.2023 ("1st FIR") was registered at Mehunbare Police Station, District Jalgaon under Sections 324, 141, 143, 147, 149, 452, 323, 504, and 506 of the Indian Penal Code, 1860[2] against the appellants in SLP(Crl) No.7212 of 2025.

3.2. A second FIR bearing Crime No. 304 of 2023 dated 21.11.2023 ("2nd FIR") was registered at the same police station under Sections 376, 354-A, 354-D, 509, and 506 IPC against the appellant in SLP(Crl) No.7495 of 2025, giving rise to Sessions Case No. 29 of 2024.

3.3. The 1st FIR alleged that on 19.11.2023, the appellants formed an unlawful assembly and assaulted the complainant and her family members, including her father Prabhakar (appellant in SLP(Crl) No.7495 of 2025), allegedly due to his role in causing the divorce of one of the appellants.

3.4. The 2nd FIR, filed the following day, contained grave allegations against Prabhakar, including sexual assault and criminal intimidation. It was alleged that he had sexually exploited the complainant over the time, recorded videos of the act, and interfered with her subsequent matrimonial alliances.

3.5. However, in March 2024, the complainant in the 2nd FIR filed an affidavit before the High Court expressing her desire not to pursue the prosecution and stating that she had no objection to grant of bail to the accused. She further affirmed that the matter had been amicably resolved, and she had received Rs. 5,00,000/- towards marriage-related expenses.

3.6. Based on the above, the appellants moved Criminal Applications Nos. 2561 and 2185 of 2024 before the High Court under Section 482 CrPC seeking quashing of both FIRs. By a common order

1 CrPC

2 IPC

dated 07.03.2025, the High Court rejected both applications, holding that an offence under Section 376 IPC being of a serious and non-compoundable nature, could not be quashed merely on the basis of a settlement or monetary compensation. The Court concluded that the compromise could not form the basis for quashing proceedings in such cases.

3.7. Aggrieved thereby, the appellants have approached this Court.

4. We have heard learned counsel for the parties.

5. It is brought to our attention that both parties have categorically taken the stand before this Court that they have resolved their disputes amicably and are desirous of moving on with their lives. The complainant in the 2nd FIR, now married and residing with her husband, has expressed that continuation of the prosecution would cause further disruption in her personal life and that she has no wish to support the charges or pursue the matter any further.

6. At the outset, we recognise that the offence under Section 376 IPC is undoubtedly of a grave and heinous nature. Ordinarily, quashing of proceedings involving such offences on the ground of settlement between the parties is discouraged and should not be permitted lightly. However, the power of the Court under Section 482 CrPC to secure the ends of justice is not constrained by a rigid formula and must be exercised with reference to the facts of each case.

7. In the present matter, we are confronted with an unusual situation where the FIR invoking serious charges, including Section 376 IPC, was filed immediately following an earlier FIR lodged by the opposing side. This sequence of events lends a certain context to the allegations and suggests that the second FIR may have been a reactionary step. More importantly, the complainant in the second FIR has unequivocally expressed her desire not to pursue the case. She has submitted that she is now married, settled in her personal life, and continuing with the criminal proceedings would only disturb her peace and stability. Her stand is neither tentative nor ambiguous, she has consistently maintained, including through an affidavit on record, that she does not support the prosecution and wants the matter to end. The parties have also amicably resolved their differences and arrived at a mutual understanding. In these circumstances, the continuation of the trial would not serve any meaningful purpose. It would only

prolong distress for all concerned, especially the complainant, and burden the Courts without the likelihood of a productive outcome.

8. Therefore, having considered the peculiar facts and circumstances of this case, and taking into account the categorical stand taken by the complainant and the nature of the settlement, we are of the opinion that the continuation of the criminal proceedings would serve no useful purpose and would only amount to abuse of process.

9. Accordingly, the appeals are allowed. The impugned order of the High Court dated 07.03.2025 is set aside. FIR No. 302 of 2023 and FIR No. 304 of 2023, along with all proceedings arising therefrom, including Sessions Case No. 29 of 2024, stand quashed.

10. Pending applications, if any, are disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 573 : 2025 INSC 828

Asian Paints Limited
v.
Ram Babu & Another
R1: Ram Babu
R2: Sate of Rajasthan Through P.P., Jaipur

(Criminal Appeal No. 2952 of 2025)

14 July 2025

[Ahsanuddin Amanullah* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the appellant-company falls under the definition of 'victim' in terms of s.2(wa) r/w the proviso to s.372, CrPC or whether s.378, CrPC would prevail in the facts and circumstances; whether an appeal under the proviso to s.372, CrPC would be restricted only to mean an appeal to the First Appellate Court or include even an appeal to the Second Appellate Court/High Court.

Headnotes†

Code of Criminal Procedure, 1973 – s.2(wa) r/w proviso to s.372; s.378 – Counterfeit products were sold in the appellant-company's name by Respondent No.1, complaint filed through its authorized representative – FIR filed u/ss.420/120B, IPC and s.63/65, Copyright Act – Respondent No.1 was convicted by Trial Court however, was acquitted by First Appellate Court – Appellant filed appeal u/proviso to s.372 – Dismissed by High Court holding that the appellant's appeal as a victim under the proviso to s.372 was not maintainable as the appellant was neither considered as complainant nor as victim before the Trial Court – Sustainability:

Held: Not sustainable – Appellant is the 'victim' – Ultimately, it is the appellant who suffered due to the counterfeit/fake products being sold/attempted to be sold – It would suffer financial loss and reputational injury if such products would be bought by the public under the mistaken belief that they belonged to the Appellant's brand – High Court took an extreme direction while interpreting the term 'complainant' to be only the person who actually filed the written complaint – It is not necessary for the 'victim' to also

* Author

be the 'complainant' or the 'informant' in a given case – Thus, High Court erred in holding that the Appellant cannot be a 'victim' as it is only the complainant who can maintain such appeal and further, that even the complainant could maintain the appeal only after seeking the leave of the High Court in view of the provisions of s.378(3), CrPC – Right of a victim to prefer an appeal under the proviso to s.372 is not restricted by any other provision of the CrPC – s.372 is a self-contained, stand-alone and independent Section – It is not regulated by other provisions of Chapter XXIX of the CrPC – The proviso to s.372 shall not be read conjointly with any other provision in the CrPC, much less s.378 – Finding of the High Court that the Appellant could not have maintained the appeal before it negates the proviso to s.372 – Impugned judgment set aside. [Paras 37, 42-44, 50, 51]

Code of Criminal Procedure, 1973 – Proviso to s.372 – Appeal under, if restricted only to mean an appeal to the First Appellate Court or includes even an appeal to the Second Appellate Court/High Court:

Held: The language of the proviso to s.372 is unambiguous – Right to appeal accrues on the 'victim' from the instance of a Court acquitting the accused – Proviso to s.372 is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court – Also, in the present case, acquittal was by the First Appellate Court and not by the Trial Court – Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court – However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused – Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal, it would amount to an appeal as envisaged u/s.378, CrPC, is factually and legally erroneous. [Paras 46, 47]

Case Law Cited

Jagjeet Singh v. Ashish Mishra alias Monu **[2022] 4 SCR 536 : (2022) 9 SCC 321 – held applicable.**

Mallikarjun Kodagali v. State of Karnataka **[2018] 13 SCR 1 : (2019) 2 SCC 752;** *Mahabir v. State of Haryana,* **2025 INSC 120 : 2025 SCC OnLine SC 184 – relied on.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Trade Marks Act, 1999; Copyright Act, 1957.

List of Keywords

Section 2(wa) read with the proviso to Section 372 of the CrPC; Victim; Complainant; Authorized representative; 'Victim' not necessarily has to be the 'complainant' or the 'informant' also; Right to appeal of the victim; Asian Paints; Counterfeit Paint; Power of Attorney; Appeal to the First Appellate Court; Appeal to the Second Appellate Court; Appeal; Counterfeit/fake products; Intellectual property rights; Financial loss; Reputational injury; Business of manufacturing paint and paint products; Unauthorised and illegal practices; Trademark; Copyright; Trademark infringement; Sections 120B and 420 of the IPC; Sections 63 and 65 of the Copyright Act, 1957.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2952 of 2025

From the Judgment and Order dated 09.10.2023 of the High Court of Judicature for Rajasthan at Jaipur in SBCRA(SB) No. 2354 of 2022.

Appearances for Parties

Advs. for the Appellant:
Tapesh Kumar Singh, Sr. Adv., Ajay Singh, Ms. Alka Sinha, Amit Kumar, Vivek Kumar Singh, Anuvrat Sharma.

Advs. for the Respondents:
Thakur Sumit, Arvind Gupta, S. Udaya Kumar Sagar, Tushar Singh.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Leave granted.

2. I.A. No.151948/2024 seeking exemption from filing O.T. is allowed.

3. The present Criminal Appeal traces its genesis to the impugned Final Judgment and Order dated 09.10.2023 in S.B. Criminal Appeal (SB) No.2354/2022 [**2023:RJ-JP:36178**] (hereinafter referred to as the 'Impugned Judgment') rendered by a learned Single Judge of the High Court of Judicature for Rajasthan Bench at Jaipur (hereinafter referred to as the 'High Court'), whereby the High Court dismissed the Appellant's appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') as not maintainable. A neat question of law of significance is raised herein, namely, as to whether the Appellant would fall under the definition of '*victim*' in terms of Section 2(wa) read with the proviso to Section 372 of the CrPC or whether Section 378 of the CrPC would prevail in the facts and circumstances of the present case.

FACTUAL SETTING:

4. The Appellant, Asian Paints Limited, a public limited company, has been engaged in the business of manufacturing paint and paint products for approximately the last 73 years. Its Head Office is located in Mumbai, Maharashtra. In the face of counterfeit products being made and sold in the market in its name and style, the Appellant had given a Power of Attorney (hereinafter referred to as the 'PoA') to one Mr. Ajay Singh, Proprietor, M/s Solution (an IPR consultancy firm) through its authorized representatives, who were tasked with monitoring, tracking down and investigating unauthorised and illegal practices employed in respect of the Appellant's Intellectual Property Rights (hereinafter referred to as 'IPR') comprising, *inter alia,* trademarks and copyrights owned/used by the Appellant. Cases of trademark infringement, passing off *etcetera* were to be detected, and Mr. Ajay Singh was also asked to undertake survey, investigate and act against any person found to be engaged in violating or infringing the Appellant's IPR, including but not limited to the Trade Marks Act, 1999 and the Copyright Act, 1957 (hereinafter referred to as the 'Copyright Act').

5. Subsequently, Mr. Ajay Singh authorized Mr. Pankaj Kumar Singh to undertake surveys, inquire, detect and investigate against any and all organisations/individuals for any violation/infringement/passing off or unauthorized/unlawful use of the Appellant's brand names, trademarks, copyrights, special packing and designs (whether registered in the name of the Appellant and/or being used under

license) apropos sub-standard and even counterfeit products, as also to file the necessary complaints against organizations/individuals responsible for the same, with the appropriate enforcement agency, Department, Police, Courts or any special agency for this purpose and to take all necessary action for and on behalf of M/s Solution. Mr. Pankaj Kumar Singh was also to ensure immediate stoppage of such violation and inform and report to M/s Solution instantly and periodically, the status of such complaints.

6. The complainant-Pankaj Kumar Singh presented written information at the Tunga Police Station to the effect that on 06.02.2016, when he visited Tunga, he saw that counterfeit products, claiming to be of the Appellant, were kept at the shop of Ganpati Traders, which was owned by Respondent No.1. He disclosed his identity to the police and showed other relevant documents. After seeing all the documents, a police team accompanied him to the Ganpati Traders' shop from the Police Station.

7. The shop was thoroughly checked, wherein 12 buckets purportedly filled with paint bearing a mark similar to that of the Appellant were found. When the police asked the person sitting at the shop for his name and address, he said his name was Rambabu, Respondent No.1 [Rambabu or Ram Babu, as spelt in some records, is the same person]. In all, 4 buckets of Ace Emulsion Paint, each containing 20 litres, and 4 Ace Emulsion 10-litre buckets were allegedly filled with counterfeit paints, and further, 4 Tractor Emulsion 10-litre buckets also filled with counterfeit paints were discovered. When they checked the buckets, they found no company mark at the bottom, though the Appellant's paint buckets always carry such mark. The counterfeit buckets were handed over to the police, who seized them and arrested Rambabu.

8. The complainant gave the Police two buckets filled with genuine Asian paint, one bucket of 10 litres of Tractor Emulsion Paint and one bucket of Ace Exterior emulsion Paint for the purpose of matching the counterfeit paint with the genuine.

9. On 06.02.2016, the police filed First Information Report No.30/2016 (hereinafter referred to as the 'FIR') under Sections 420/120B of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and under Sections 63/65 of the Copyright Act against Respondent No.1.

10. The investigation commenced, and the Investigating Officer submitted the Final Report under Section 173 of the CrPC on 23.04.2016 for offences under Sections 120B and 420 of the IPC and Sections 63 and 65 of the Copyright Act against Respondent No.1.

11. The State Forensic Science Laboratory submitted its Report No.fsl/jpr/qd/109/16 on 28.07.2016, stating that the seized counterfeit material(s) did not tally with the original in size, spacing and design of characters.

12. The learned Additional Senior Civil Judge and Additional Chief Metropolitan Magistrate No.13, Bassi, Jaipur, Metropolitan City (hereinafter referred to as the 'Trial Court') *vide* order dated 03.10.2019 convicted the Respondent No.1 under Section 420 of the IPC and under Sections 63 & 65 of the Copyright Act and sentenced him to undergo 3 years' Simple Imprisonment with fine of Rs.10,000/- (Rupees Ten Thousand fine) under Section 420 of the IPC, 2 years' Simple Imprisonment with fine of Rs.50,000/- (Rupees Fifty Thousand) under Section 63 of the Copyright Act and 1 year Simple Imprisonment with fine of Rs.10,000/- (Rupees Ten Thousand) under Section 65 of the Copyright Act.

13. Pursuant to his conviction, Respondent No.1 preferred Criminal Appeal No.1657/2019 under Section 374 of the CrPC against the order of conviction *supra* before the learned Additional Sessions Judge, Bassi, Jaipur Metropolitan (hereinafter referred to as the 'First Appellate Court').

14. Subsequently, *vide* Judgment dated 16.02.2022, the First Appellate Court set aside the order of the Trial Court and acquitted the Respondent No.1 of the offences charged.

15. Aggrieved by Respondent No.1's acquittal, the Appellant preferred S.B. Criminal Appeal (SB) No.2354/2022 under the proviso to Section 372 of the CrPC before the High Court, challenging the judgment of acquittal dated 16.02.2022. The very maintainability of such appeal was heavily contested by the Respondent No.1 before the High Court.

16. The High Court, after perusing the relevant materials and hearing the parties, vide impugned order dismissed S.B. Criminal Appeal (SB) No.2354/2022 filed by the Appellant on the ground that the Appeal under the proviso to Section 372 of the CrPC to challenge an order passed in an appeal under Section 374 of the CrPC was

not maintainable. The High Court opined that since the Appellant was neither considered as complainant nor as victim before the Trial Court, therefore, the Appellant's Appeal as a victim under the proviso to Section 372 of the CrPC was unsustainable.

APPELLANT'S SUBMISSIONS:

17. The primary contention of the learned counsel for the Appellant relates to the interpretation of the definition of '*victim*' contained in Section 2(wa) of the CrPC. It was pressed that a literal interpretation is sufficient to establish that the Appellant squarely fell within the ambit of the said provision.

18. Learned counsel submitted that the term '*person*' in Section 2(wa) of the CrPC also includes a '*Company* or *Association or body of persons*' by virtue of Section 11 of the IPC. As such, the Appellant would fall within the contours of the term '*victim*'.

19. To further substantiate the Appellant's claim, the learned counsel pointed out that the underlying FIR which was lodged, giving rise to the instant Appeal, was primarily registered under Sections 63/65 of the Copyright Act, on account of infringement of the Appellant's copyright by the Respondent No.1. It was urged that this was sufficient to prove that it was the Appellant who suffered '*loss or injury*' as mentioned in Section 2(wa) of the CrPC. The loss/injury was in the nature of reputational and financial losses on account of the commission of the afore-mentioned offence(s) by Respondent No.1.

20. Learned counsel vehemently argued that impleadment of the complainant/victim in an appeal filed by the accused under Section 374 of the CrPC is not a *sine qua non* for the complainant/victim to file an Appeal under the proviso to Section 372 of the CrPC in the High Court.

21. Learned counsel placed reliance on the ratio laid down in ***Jagjeet Singh v Ashish Mishra alias Monu,*** **(2022) 9 SCC 321**, wherein this Court held:

> '***23.*** *A "victim" within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to he heard at every step post the occurrence of an offence. Such a "victim" has unbridled participatory*

> *rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that "victim" and "complainant/informant" are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a "victim", for even a stranger to the act of crime can be an "informant", and similarly, a "victim" need not be the complainant or informant of a felony*.'

22. Learned counsel submitted that the proviso to Section 372 of the CrPC is an enabling and a standalone provision meant to provide special rights to the victim of an offence to prefer an appeal against '*any order*' passed by the Court acquitting the accused and the said proviso does not impose any restriction upon the victim to prefer the appeal only against the order of acquittal passed by the Court of First Instance/Trial Court and not against an order of acquittal passed by the First Appellate Court.

23. Learned counsel emphasised the point that the Appellant could not have approached the High Court to invoke its revisional jurisdiction under Sections 397 and 401 of the CrPC, since sub-section (3) of Section 401 of the CrPC categorically states that '*Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.*'

24. Learned counsel also invited our attention to this Court's decision in ***Mallikarjun Kodagali v State of Karnataka,*** **(2019) 2 SCC 752**, which held that a victim, as defined in Section 2(wa) of the CrPC, would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction and it is not necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the CrPC is concerned. It was prayed that the appeal be allowed.

RESPONDENT NO.1'S SUBMISSIONS:

25. *Per contra*, learned counsel for Respondent No.1 persuasively contended that an appeal under Section 372 of the CrPC is guided and controlled by Section 374 of the CrPC, which is evident from the words '*such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court*' used in the proviso to Section 372 of the CrPC. It was submitted that Section 374 of the

CrPC does not provide for filing an appeal against an order passed in appeal by the First Appellate Court.

26. The learned counsel also submitted that Respondent No.2/State of Rajasthan has neither preferred an appeal nor a revision against the judgment of acquittal dated 16.02.2022 passed by the First Appellate Court.

27. Learned counsel further argued that the complaint dated 06.02.2016 was made by Mr. Pankaj Kumar Singh, an investigator employed by M/s Solution, who was neither an employee nor an authorised agent of the Appellant and therefore, he cannot be said to have acted as an agent of the Appellant apropos the Appellant being covered under Section 2(wa) of the CrPC. As such, the Appellant has/had no *locus* or authority to initiate any proceedings challenging the correctness of Judgment dated 16.02.2022 passed by the First Appellate Court.

28. Learned counsel advanced that the Appellant's application seeking impleadment in Criminal Appeal No.1657/2019 was practically rejected by the First Appellate Court *vide* order dated 10.02.2022, but allowed the Appellant to assist the prosecution. Pointing out that such order was not challenged before the High Court by the Appellant, it was prayed that the instant appeal deserved to be dismissed.

RESPONDENT NO.2-STATE'S SUBMISSIONS:

29. The sole contention taken by the learned counsel for the State of Rajasthan is that the Appellant should have sought Special Leave to Appeal under Section 378(4) of the CrPC before the High Court, if maintainable, otherwise it ought to have filed a Revision Petition under Sections 397 or 401 of the CrPC. Thus, the State has maintained the position adopted by it before the High Court.

ANALYSIS, REASONING AND CONCLUSION:

30. The matter before us lies in a very limited compass. As noted in the introductory portion of this Judgment, the only issue is whether the Appellant comes under the definition of '*victim*' in terms of Section 2(wa) read with the proviso to Section 372 of the CrPC or whether the provisions of Section 378 of the CrPC would prevail in the facts and circumstances. For convenience, Sections 2(wa), 372, 374 and 378 of the CrPC are reproduced herein below:

'***2. Definitions.***— *In this Code, unless the context otherwise requires*,—

…

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;

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372. No appeal to lie unless otherwise provided.—

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

xxx

374. Appeals from convictions.—

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

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378. Appeal in case of acquittal.—

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).'

31. The undisputed factual matrix would reveal that it was the Appellant which had given Power-of-Attorney to M/s Solution through its Proprietor Ajay Singh for protecting its IPR by undertaking survey(s), investigating and acting against any person found to be engaged in violating/infringing the Appellant's IPR, including but not limited to, under the Trade Marks Act, 1999 and the Copyright Act.

32. In turn, M/s Solution appointed Mr. Pankaj Kumar Singh to carry out the task assigned by the Appellant. Thus, whatever action was taken either by Mr. Pankaj Kumar Singh or by M/s Solution related to the infringement of IPR with regard to the Appellant's products, was clearly for and on behalf of the Appellant. It was ultimately the interest of the Appellant which was sought to be served through the engagement

of M/s Solution, which in turn, engaged Mr. Pankaj Kumar Singh as its Field Operative. In the present case, it is clear that the allegation directly relates to wrongdoings on the part of Respondent No.1 in displaying, keeping in his shop and being in possession of materials/ products which are similar to those manufactured/sold/distributed by the Appellant which also bore its mark on the outside packaging i.e., the bucket in which it was contained, to be specific 'paints' which indicated/mis-indicated that such products were of the Appellant.

33. Further, before the First Appellate Court, the Appellant had filed an application/petition for impleadment, whereupon order dated 10.02.2022 was passed to the following effect:

> '*Ld. Advocates for the parties are present. The arguments have already been made by the respondent Shri Suresh Sharma on the file. Similarly, in the criminal appeal, an application has been submitted on behalf of the complainant to the effect that he should also be given an opportunity of hearing.*
>
> *Heard on the application.*
>
> *The Appellant has no objection to the application and requested that the Complainant's Ld. Advocate can assist the Additional Public Prosecutor and his arguments should also be heard. In view of this consent, the complainant was heard on appeal.*
>
> *In the file related to the present case, the Inspector stated that in the original case, the trial court had after concluding the trial, sentenced and convicted the accused. The appeal related to the conviction is also pending before this court. Therefore, the appeal against conviction and complainant's submissions should be heard together and decided. The arguments on side of Complaint has been heard before. The files related to the appeal were taken up for hearing today, and the advocate for the complainant, Mr. Naresh Sain, was given an opportunity to hear. The arguments between the appellant and the complainant were heard. Written arguments were also presented by the appellant. If the complainant wishes, he can obtain a copy of the written argument from the court, and the advocate for the appellant also assured that he will provide the copy of*

> *the written argument to the advocate. If the complainant wants to present written argument, he can present written argument till 11 am on 15.02.2022.*' (sic)
>
> (emphasis supplied)

34. Thus, though no formal order on the impleadment application/petition may have been passed but the Appellant's arguments were heard by the First Appellate Court, as the complainant. Neither the State nor Respondent No.1 objected to the application filed by the Appellant. In fact, the order *supra* also records that Respondent No.1 had agreed that the Appellant be also heard.

35. Pausing here, the observation in the Impugned Judgment that the impleadment application/petition was '*not allowed*' by the First Appellate Court is erroneous and in effect, the learned Single Judge, without saying so, has impliedly conveyed that a negative order was passed on the plea for impleadment. This would be an incorrect appreciation of the true import of the order passed by the First Appellate Court dated 10.02.2022, which clearly states that the '*complainant*' was heard on the appeal, though it has also been mentioned that it was in the background of the consent given. Indubitably, as noted in the Impugned Judgment itself in the very same sentence, '*but with the consent of respondent no.1 accused, present appellant was permitted to assist public prosecutor to advance arguments.*' Albeit, nothing much turns on this.

36. Section 2(wa) of the CrPC defines '*victim*' in plain and simple language as a '*person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged…*'. It is clear that Section 2(wa) of the CrPC has thoughtfully accorded an expansive understanding to the term '*victim*' and not a narrow or restricted meaning.

37. In the present case, there cannot be any two opinions, that ultimately, it is the Appellant who has suffered due to the counterfeit/fake products being sold/attempted to be sold as having been manufactured by the Appellant. The Appellant would suffer financial loss and reputational injury if such products would be bought by the public under the mistaken belief that the same belonged to the Appellant's brand.

38. Similarly, Section 372 of the CrPC stipulates that no appeal shall lie from any judgment or order of a Criminal Court except as provided

for by the CrPC by any other law for the time being in force. Section 372 of the CrPC falls under Chapter XXIX which relates to Appeals. Chapter XXIX also includes Section 378, beginning from Section 372, concluding with Section 394, and deals with all contingencies relating to Appeals under the CrPC.

39. It would be worthwhile to first consider the scope of Section 378 of the CrPC before reverting to Section 372 of the CrPC.

40. Section 378 of the CrPC relates to appeal in case of acquittal and sub-section (3) thereof stipulates that there shall be no appeal to the High Court under sub-section (1) or sub-section (2), which otherwise stipulates the condition necessary for maintaining an appeal under sub-section (1) or sub-section (2), except with the leave of the High Court.

41. Thus, on an isolated reading of Section 378(3) of the CrPC, the first impression is that leave of the High Court for maintaining an appeal to that Court is a mandatory condition. However, examining the issue in the facts of the present case, it has to be first considered as to whether Section 372 of the CrPC would directly cover the situation, or be circumscribed by the provisions of Section 378 of the CrPC.

42. We find that the High Court has taken an extreme direction while considering this issue by interpreting the term '*complainant*' to be only the person who actually filed the written complaint, namely Mr. Pankaj Kumar Singh. On this premise, it has gone on to hold that the Appellant cannot be a '*victim*' as it is only the complainant who can maintain such appeal and further, that even the complainant-Pankaj Kumar Singh could maintain the appeal only after seeking the leave of the High Court in view of the provisions of Section 378(3) of the CrPC. The High Court also held that '*This is a case instituted upon a police report and only in cases instituted upon private complaint, leave to appeal under Section 378(4) of Cr.P.C. is maintainable. Therefore, leave to appeal against order of acquittal in appeal is also not maintainable in the instant case.*'

43. We are constrained to observe that the finding of the High Court that the Appellant could not have maintained the appeal before it would amount to completely negating the proviso to Section 372 of the CrPC. In our considered opinion, Section 372 of the CrPC is a self-contained and independent Section; in other words, it is a stand-alone

Section. Section 372 of the CrPC is not regulated by other provisions of Chapter XXIX of the CrPC. The proviso to Section 372 of the CrPC operates independently of and shall not be read conjointly with any other provision in the CrPC, much less Section 378 of the CrPC.

44. At the cost of repetition, we have indicated above as to who would be covered as a '*victim*' under Section 2(wa) of the CrPC. There is no doubt that the Appellant is the '*victim*' herein. As explained in ***Jagjeet Singh*** (*supra*), it is not necessary for the '*victim*' to also be the '*complainant*' or the '*informant*' in a given case.

45. Furthermore, another aspect that needs to be considered is as to whether an appeal under the proviso to Section 372 of the CrPC would be restricted only to mean an appeal to the First Appellate Court or include even an appeal to the Second Appellate Court/High Court, which happens to be the case herein.

46. We find that this is not a very complicated issue of law. We do not propose to complicate it! The language employed by the proviso to Section 372 of the CrPC is unambiguous to the effect that '*the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.*'

(emphasis supplied)

47. From the aforesaid elucidation, it is clear that the right to appeal accrues on the '*victim*' from the instance of a Court acquitting the accused. The proviso to Section 372 of the CrPC is agnostic to the factum of such acquittal being by the Trial Court or the First Appellate Court. We can see the situation through another lens also. In the facts at hand, acquittal was by the First Appellate Court and not by the Trial Court. Therefore, since, in the present case, for the first time, the acquittal comes in at the stage of the First Appellate Court (being a Sessions Court), in law, the right of appeal by the victim would be to the next higher level in the judicial hierarchy, which would be the High Court. However, for that purpose, the High Court could also have been the First Appellate Court, if the Trial Court, being a Court of Sessions, had acquitted the accused. Thus, the reasoning of the High Court that if the Appellant was allowed to maintain the appeal,

it would amount to an appeal as envisaged under Section 378 of the CrPC, is factually and legally erroneous, which proposition we negate.

48. Reliance was placed by the learned counsel for the Appellant on ***Mallikarjun Kodagali*** (*supra*), wherein this Court discussed the substantive right of the victim as envisaged in the proviso to Section 372 of the CrPC, the conclusive paragraphs wherefrom are reproduced below:

> '***73.*** *In our opinion, the proviso to Section 372 CrPC must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29-11-1985. The Declaration is sometimes referred to as the Magna Carta of the rights of victims. One of the significant declarations made was in relation to access to justice for the victim of an offence through the justice delivery mechanisms, both formal and informal. In the Declaration it was stated as follows:*
>
> > *"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*
> >
> > *5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.*
> >
> > *6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:*
> >
> > *Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where*

serious crimes are involved and where they have requested such information;

Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

Providing proper assistance to victims throughout the legal process;

Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilised, where appropriate, to facilitate conciliation and redress for victims."

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75. *Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) CrPC would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.*

76. *As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso*

to Section 372 CrPC is quite clear, particularly when it is contrasted with the language of Section 378(4) CrPC. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word "complaint" has been defined in Section 2(d) CrPC and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 CrPC is concerned.'

(emphasis supplied)

49. The law on the issue has been enunciated by the 3-Judge Bench, by a majority of 2:1, in ***Mallikarjun Kodagali*** (*supra*), which squarely applies to the instant matter. The exposition on the term '*victim*' by 3 learned Judges in Paragraph 23 of ***Jagjeet Singh*** (*supra*) has already been taken note of by us hereinabove, with which we respectfully concur.

50. We may also indicate that the view taken by us that the right of a victim to prefer an appeal as granted under the proviso to Section 372 of the CrPC, which was inserted *vide* Section 29 of Act V of 2009, with effect from 31.12.2009, is not restricted by any other provision of the CrPC. It serves the salutary purpose of safeguarding the rights of the victim. Upon detailed discussion, a Co-ordinate Bench of this Court in ***Mahabir v State of Haryana,*** **2025 SCC OnLine SC 184** observed:

'***53.*** *Therefore, by the aforesaid provision a right has been created in favour of the victim, which was not existing earlier in the Code, i.e., that a victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The plain reading of the statement of objects and reasons for introducing the proviso to Section 372 CrPC makes it clear that it wanted to confer certain rights on the victims. It has been noted therein that the victims are the worst sufferers in a crime, and they don't have much role in the court proceedings. They need to be given certain "rights" and compensation,*

so that there is no distortion of the criminal justice system. This, by itself, is clear that the object of adding this proviso is to create a right in favour of the victim to prefer an appeal as a matter of right. It not only extends to challenge the order of acquittal, but such appeal can also be filed by the victim if the accused is convicted for a lessor offence or if the inadequate compensation has been imposed.

54. *Thus, it is clear as per the golden rule of interpretation, that the 'proviso' is a substantive enactment, and is not merely excepting something out of or qualifying what was excepting or goes before. Therefore, by adding the 'proviso' in Section 372 of CrPC by this amendment, a right has been created in favour of the victim.*'

(emphasis supplied)

51. Accordingly, for the reasons aforesaid, we find the Impugned Judgment to be unsustainable. The same is set aside.

52. The Appellant's Appeal [S.B. Criminal Appeal (SB) No.2354/2022] is held maintainable and is restored to its original file and number before the High Court. Since the incident in question is of the year 2016, the Registrar (Judicial), Jaipur Bench of the High Court is directed to place the matter before the learned Chief Justice, who in turn, is requested to allocate the same to a learned Single Bench to hear the matter on merits expeditiously, as per the Board position.

53. Registry of this Court is directed to send a copy of this Judgment forthwith to the Registrar (Judicial), Jaipur Bench of the High Court.

54. Needless to state, in this appeal, we have dealt with and decided only the question of law raised. Respondent No.1 will be at complete liberty to raise all defences of fact and law, as may be available, on merits.

55. The Appeal stands allowed in the above terms. No order as to costs.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Divya Pandey

[2025] 7 S.C.R. 593 : 2025 INSC 826

Arun Kumar Sharma & Ors.
v.
State of Madhya Pradesh & Ors.

(Civil Appeal No(s). 3263-3264 of 2025)

14 July 2025

[Pamidighantam Sri Narasimha* and Joymalya Bagchi, JJ.]

Issue for Consideration

Issue arose as regards the objections raised by the respondents about the bonafides of the appellants as also the allegations that the appellants suppressed the initiation of parallel proceedings before the High Court.

Headnotes†

Practice and Procedure – Parallel proceedings – Non-disclosure – Application by the appellant for restraining respondents from setting up a petrol pump, as also challenged the NOC issued by the Collector – Application as also review petition dismissed by the tribunal – Appeal before this Court – Objections by the respondents that the appellants have suppressed the initiation of parallel proceedings before the High Court – Scope of proceedings before the tribunal and the High Court – Determination:

Held: Having considered the grounds and relief sought in the original application filed before the tribunal and having contrasted it with the grounds and prayers in the writ petition filed subsequently, when the present civil appeals were pending, it is clearly discernible from the pleadings that there is an overlap and parallel challenges to the same NOC – Appellants suppressed the necessary facts and there is reason to believe that the proceedings before tribunal were initiated to subserve business interest of the appellants – Even assuming that the scope and ambit of challenge is distinct, which they are not, the appellants could have done and infact should have informed this Court about initiation of the fresh proceeding challenging the NOC before the High Court, particularly when the civil appeals are pending consideration – Appeals dismissed with costs of Rs.50,000/- imposed on the appellants. [Paras 19, 21]

* Author

List of Acts

National Green Tribunal Act, 2010; Petroleum Rules, 2002; M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973; Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981.

List of Keywords

Non-disclosure of parallel proceedings; Bonafides of appellants; Scope of proceedings; Overlap and parallel challenges; Petrol pump; Subserve business interest; Municipal laws; Cost.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 3263-3264 of 2025

From the Judgment and Order dated 09.08.2024 and 17.10.2024 of the National Green Tribunal, Central Zonal Bench, Bhopal in OA No. 73 of 2024 and RA No. 8 of 2024, respectively

Appearances for Parties

Advs. for the Appellant:
Mrs. V. Mohana, Sr. Adv., Abhijit Banerjee, Ms. Sreepriya K.

Advs. for the Respondents:
V.v.m.b.n.s. Pattabhiram, D.A.G., Pinaki Mishra, Anoop George Chaudhari, June Chaudhari, Sr. Advs., Sarad Kumar Singhania, Ms. Alpana Sharma, Raghav Sharma, Salvador Santosh Rebello, Jaskirat Pal Singh, Pranjal Pandey, Ms. Kritika, Parimal Bhatia, K. R. Sasiprabhu, Vishnu Sharma A S, Ms. Namrata Saraogi, Vikas Sharma, Vipin Nair, Mohd Aman Alam, Aditya Narendranath, Ms. M.b.ramya, Ms. Deeksha Gupta.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Access to justice is inextricably connected to maintaining integrity in the process of invocation and conduct of remedial proceedings before Courts and Tribunals. We have entertained these civil appeals

after sufficient warning that, in the event we accept the objections of the respondent about the deliberate non-disclosure of parallel proceedings initiated before the High Court, and that the original application before the Tribunal is not bonafide as it is intended to subserve personal interest of appellant no. 3, conducting rival business, these civil appeals will be dismissed with exemplary costs. This approach is necessary to ensure earnest and bonafide actions before the tribunals for protecting environment and ecology.

2. *Short Facts and Prayer before the Tribunal:* The short facts leading to filing of the present appeals are that the three appellants approached the National Green Tribunal[1] invoking Section 14 of the NGT Act for restraining respondents 4, 5 and 6 from setting up a Petrol Pump at Khasra No. 109/1/2 (S) situated on SH 10 Bhopal to Berasia road, Village- Intkhedi Road, Tehsil-Huzur, District-Bhopal. The prayers made in the original application are as follows:

> "*7. PRAYER*
>
> *In view of the aforesaid facts and circumstances as explained herein above, it is most respectfully prayed that Hon'ble Tribunal may graciously be pleased to allow the present Application and*
>
> *7.1 Quash the Consent letter dated 19.07.2023; and*
>
> *7.2 Quash the No-Objection Letter dated 07.02.2024 issued by Respondent No. 3; and*
>
> *7.3 Direct the Respondents not to establish petrol pump within the proximity of designated residential area.*
>
> *7.4 Allow the Applicant to add, delete, modify, substitute, amend the present Application and submit additional documents, if occasion so arises; and*
>
> *7.5 Cost of the matter may also be awarded;*
>
> *7.6 Till the pendency of the present matter ad interim relief by way of restraining the Respondent No. 4 & 5 to stop construction of petrol pump activities may also be granted in the interest of justice.*

1 Hereinafter referred to as 'NGT'.

7.7 Any other relief, which Hon'ble Tribunal may deem just and proper may also be awarded in favour of the Applicant as against the Respondents."

3. It is clear from the above referred prayers that the appellants have specifically challenged, (i) the consent to operate dated 19.07.2023 issued by the Madhya Pradesh Pollution Control Board Bhopal under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and (ii) the NOC dated 07.02.2024 issued by the Collector enabling installation of the petrol pump retail outlet as per the application made by the contesting respondents.

4. Apart from other grounds, the decision of District Collector dated 07.02.2024 is challenged on the ground that he has not applied his mind while issuing the said NOC and that it is contrary to the Petroleum Rules, 2002. The relevant grounds of challenge are as follows:

"4.17 However, the Respondent No. 3, without looking into various aspects, issued No-Objection Certificate to the Respondent no. 4 & 5 vide NOC dated 07.02.2024.

4.18. It is submitted that the Applicant vide Notice dated 24.12.2023 & 13.02.2024 to the Respondents requested to stay the illegal construction by the Respondent No. 4 & 5 for establishment of petrol pump at the Said Land, citing the various environmental issues.

4.19. In the letter dated 24.12.2023 & 13.02.2024, the Applicant raised the issues that the Respondent No. 3 is required to issue No-Objection Certificate in accordance with the Rule 144 of the Petroleum Rules, 2002, in the prescribed proforma. The Rule 144 prescribes the District Authority, i.e. the Respondent No. 3 to issue license if there is no objections to the Applicant receiving a license for the site proposed. Further, the District Authority is also required to protect the interest of public, especially facility like schools, hospitals or proximity to places.

4.20. Now, the Respondent No. 4 & 5 are establishing petrol pump at the Said Land in sheer violation of Hon'ble NGT Orders, CPCB Guidelines and PESO Guidelines.

4.21. That establishment of petrol pump in a residential area poses multifaceted risks and hazards, both to the environment and to the health and safety of the residents. The CPCB Guidelines clearly stipulate the minimum distance requirements for setting up petrol pumps from residential areas, school, hospitals, and other sensitive establishments. It is evident that the Said Land fails to comply with these crucial safety regulations, thereby jeopardizing the lives and well-being of the residents.

4.22. Furthermore, the establishment of a petrol pump in close proximity to designated residential area raises serious concerns regarding air, water and noise pollution. The operation of fuel dispensing units, vehicular traffic, and other associated activities are known to emit harmful pollutants, including volatile organic compounds (VOCs), particulate matter, and noise, which can have detrimental effects on both the environment and public health.

4.23. Additionally, CPCB guidelines and NGT Orders, which aim to mitigate the adverse environmental impacts associated with fuel retailing activities. Failure to adhere to these guidelines not only undermines the regulatory framework put in place to safeguard the environment but also sets a dangerous precedent for füture development projects.

4.24. Considering the gravity of the situation and the potential ramifications for the environment and public health, by way of the present Application, the Applicant urge the Hon'ble National Green Tribunal to intervene expeditiously and cancel the NOC Issued by the Respondent No. 3 and Consent letter issued by Respondent No. 1 to prevent the establishment of the Respondent no. 4 & 5 petrol pump in the designated residential area and school. In the present Application, the Applicant is only bringing the environmental issues for adjudication before the Hon'ble NGT. For other procedural and substantial illegalities being committed by the Respondents, the Applicant reserves its right to approach appropriate forum, at appropriate stage."

5. While issuing notice on 21.03.2024, the NGT constituted a Joint Committee and directed it to submit a factual report within six weeks.

6. *Various permissions already obtained by the respondents:* Pending enquiry and report from the Joint Committee, the contesting respondents 4, 5 and 6 filed a detailed counter affidavit as per which the following permissions have already been obtained.

   (i) Firstly, on 30.04.2024, the Ministry of Petroleum and Explosives Safety Organization (PESO) granted NOC in favour of Reliance BP Mobility Ltd.

   (ii) Secondly, on 26.04.2023, the CEO of Janpad Panchayat Phanda, Bhopal, M.P. issued NOC

   (iii) Thirdly, Madhya Pradesh Road Development Corporation also issued NOC on 26.05.2023

   (iv) Fourthly, on 26.04.2023, Madhya Pradesh Electricity Board also issued NOC

   (v) Fifthly, on 10.04.2023, the Industrial Department also issued its NOC

   (vi) Sixthly, on 19.07.2023, the Madhya Pradesh Pollution Control Board issued its consent to operate under the Water and Air Act, and

   (vii) Finally, on 07.02.2024, the Collector also issued the NOC in favour of the contested respondent.

7. It is an admitted fact that all the above referred NOCs as well as the consent to operate were issued prior to the filing of the original application before the NGT on 15.03.2024.

8. *Findings of the Joint Committee constituted by NGT:* The Joint Committee submitted its report on 09.07.2024. The procedure adopted for conducting the enquiry, the field observations, information provided by the Revenue Department and the Pollution Control Board, along with the findings, are extracted herein below for ready reference.

   *"**4. Field Observations: -***

   4.1. Joint committee on dated 07/06/2024 conducted a site visit of Khasra No. 109/1/20 (S) stiuated on SH 10 Bhopal to Berasia road, Village- Intkhedi Road, Tehsil-Huzur,

District-Bhopal. Apart from the Joint Committee members following officers namely Ms. Prakamya Tiwari, AE, RO, MPPCB, Bhopal, Shri Kanak Meena, Deputy Controller, PESO, Bhopal and Shri Kailash Sharwa, Patwari, Halka-Intkhedi Sadak, Gram Panchayat-Intkhedi Sadak were also present during the site visit. The Advocate of petitioner Shri Prateek Jain was informed by the nodal department about the visit of committee and he was present during the visit. Also, the representative of petrol pump Shri Aman Ahmed Khan was present. The Geographical locations, photographs and visual observations were recorded during inspection. The Photographs and Google Maps are enclosed as Annexure I.

4.2. During inspection, Joint Committee visited the site of Petrol Pump mentioned in the petition. The details observed during the inspection are mentioned as under: -

4.2.1. The site is located on SH 10, Intkhedi Road, Village-Intkhedi Road, Tehsil-Huzur, District-Bhopal. The geographical location of the site is latitude 23°22'20.95" N and longitude 77º23'58.41 E".

4.2.2. The SH 10 road is situated on the East of the petrol pump. The New Government Higher Secondary School is located at a distance of approximately 120 meters away to the South-West of the petrol pump.

4.2.3. On north side of the petrol pump there are some commercial establishments located at a distance of approximately 30 meters away, the north of the petrol pump.

4.2.4. On south side of the petrol pump there are some commercial buildings, incomplete building structures named as Maruti Udyog, one cement shop, steel TMT bar Shop as per the sign boards placed on the shops, which are located at a distance of approximately 30 meters away.

4.2.5. The primary development work for the establishment of Petrol Pump was found in progress.

4.2.6. The residential colonies as mentioned in the petition are located on the west side of the petrol pump.

4.2.7. The distance from the dispensing unit to the boundary of the Petrol pump towards residential colonies on west side is approx. 38 meters.

4.2.8. During visit of the Joint Committee, no residential houses were found constructed in the above residential colonies and no habitation were observed.

4.2.9. No high tension line was found passing through the petrol pump site.

5. Information provided by the Revenue Department, Tehsil-Huzur, Bhopal

5.1. Letter vide dated 19/06/2024 was issued by MPPCB (Nodal Department) to SDM, Tehsil-Huzur to provide the information of permissions / locations of Petrol Pump, School, Hospital and Residential colony within 50 meter distance from the Petrol Pump as per revenue records. The copy is enclosed as Annexure II.

5.2. SDM, Tehsil-Huzur, Bhopal vide letter dated 03/07/2024 provided the information. The copy of the letter is enclosed as Annexure III. The main points of the letter are mentioned as under:-

No	*Main Points*	*As per Revenue Record*
1	*Petrol Pump is proposed on Khasra No. 109/1/2 located at Village-Intekhedi Road, Tehsil-Huzur, District-Bhopal.*	*The Petrol Pump is located on part of Khasra no. 109/1/2 and on Khasra no. 109/1/2 Village-Intekhedi Road Tehsil-Huzur, District-Bhopal of area 0.19 hectares, which is registered for commercial purpose in the name of Aman Ahmed Khan S/o Jameel Ahmed Khan.*
2	*The residential colonies respectively Anjani Nandan Dham and Ramnagar are established for residential purpose at Khasra No. 108, 109/2 and 109/1/1 near the site (Petrol Pump),*	*The residential colonies respectively Anjani Nandan Dham and Ramnagar established at Khasra No. 108, 109/2 and 109/1/1 are Unauthorised residential colonies.*

3	*Government Higher Secondary School is located 50 meters from the petrol pump and a hospital is also located nearby.*	*No Hospital or Government/ private school located within a periphery of 50 meters from the petrol pump and there is no residential activity within a periphery of 50 meters from the fuel section of the petrol pump is operated.*
4	*Information of the designated residential area, school and hospital located around the said petrol pump.*	*The designated residential area, school and hospital are not within the periphery of 50 meters from Petrol Pump. The traditional settlement/ population of Village-Intkhedi Road is 600 meters away from the under construction Petrol Pump.*

6. Information of MPPCB:-

6.1 As per the application submitted by Project proponent of Petrol Pump for establishing a Petrol Pump, MPPCB vide outward No:24612 dated 19/07/2023 issued Consent to Establish under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. The copy is enclosed as Annexure IV

6.2 The Consent to Establish was issued with the conditions that new petrol pump should be at least 50 meters away from school, hospital and residential areas. If Petrol pump located within 50 meters radius of any school, hospital and residential complex it must obey provisions of Petroleum Rules, 2002, administered by Petroleum and Explosive safety organization. No high-tension wire should be passed through outlet.

7. Findings of the Joint Committee:-

7.1 The committee finds that the residential colonies near the petrol pump as mentioned in the petition are unauthorized residential colonies and as per the record of Revenue department there is no designated residential colony within 50 meters distance from dispensing unit of petrol pump.

7.2 It is also found that there are no schools or hospitals exist within 50 meters distance from the petrol pump.

7.3 The nearest habitation of people around the Village is 600 meters away from the Petrol Pump that is under construction at Village- Intkhedi road.

7.4 Committee has referred the Section - H of Central Pollution Control Board Guidelines (CPCB) for setting of new Petrol Pump dated 07/01/2020. The copy is enclosed as Annexure V. The section - H is reproduced as under:

"Section - H : In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet.

7.5 It is humbly submitted that Prior Approval granted to M/s Reliance B.P. Mobility, by the O/o JCCE, PESO, Bhopal, in Form-XIV of Petroleum Rules, 2002, Consent to Establish granted by MP Pollution Control Board, Bhopal and No Objection Certificate granted by the District Collector, Bhopal are issued as per the prevailing Rules and Regulations. It is also submitted that above said Approval/Consent/No-objection Certificates are issued in conformity to the Siting Criteria prescribed in the guidelines of CPCB and no valid establishment such as Residential colony, School, Hospital was found constructed within the periphery of 50 meters from the new Petroleum Retail Outlet, of M/s Reliance B. P. Mobility, proposed on part of Khasra No. 109 and Khasra No.109/1/2, Village-Intekhedi Road Tehsil-Huzur, District- Bhopal."

9. *Judgment of the NGT:* By the order impugned before us the NGT dismissed the original application. Before the NGT, apart from

questioning the findings of the Joint Committee, the appellants challenged the grant of NOC by the District Collector dated 07.02.2024 on multiple grounds. The appellants have also raised additional grounds which were considered and dismissed by the NGT order impugned before us. The relevant portion of the findings of the NGT are as follows:

> *"14. The main ground for challenge to the NOC dated 07.02.2024 is that it is in violation of Rule 144 of Petroleum Rules 2002, which issue cannot be raised before this Hon'ble Tribunal as per Section 14 read with Schedule 1 of the NGT Act The environmental and safety concerns raised are safeguarded by the conditions imposed in the PESO approval dated 22.05.2023 and Consent to Operate dated 19.07.2023 and therefore the application made is clearly frivolous and in fact premature. The said approval is testimony to the fact that the same has been granted pursuant to the Safety and Test Certificate as required under Rules 130 and 126 of the Petroleum Rules, 2002 issued by the competent person approved by CCE, Nagpur. Thus, all the safety measures as prescribed by PESO have been adhered to.*
>
> *15. Notices were also sent to respondent no. 6, who in compliance of the order filed a reply, which is on record. Learned Counsel for the respondent no. 6, Mr. Rohit Sharma has argued that the Petroleum Rules are not covered under the scheduled Act of National Green Tribunal and the allegations regarding blatant violation of CPCB Guidelines remained unsubstantiated even as per the observations furnished by the Joint Committee Members comprising of Members from District Administration, Bhopal, PESO & Madhya Pradesh Pollution Control Board. The Answering Respondent No.6 is the rightful owner of a land forming part of Khasa No. 109/1/2 where a Petrol Pump belonging to Reliance BP Mobility is being established after procuring all the valid permissions from the competent departments.*
>
> *16. It is further argued that the google map, which has been placed on record by the petitioner shows incorrect*

measurement and the joint committee has submitted the exact map, which clarifies that the distance between the retail outlet of the answering respondent no. 6 and the nearest government school is approximately 135 meters. Further contention of the respondents are that the Petroleum Rules, 2002 are not falling within the schedule of National Green Tribunal Act, 2010 and any objection with respect to The Petroleum Rules, 2002 cannot be entertained under the NGT Act, 2010.

17. Learned counsel for the applicant has filed the objection against the findings of the joint inspection report and submitted that Collector has wrongly issued NOC or the diagram prepared by the joint committee is not as per guidelines for setting up new petrol pumps or that the committee is not as per guidelines for setting up new petrol pumps or that the committee has misinterpreted the guidelines.

18. It is further argued that the entries in plot no. 109/2 and 108 are transferred of land to private owners which discloses that it is for the residential purposes. The applicant has further challenged the authority of the revenue officials to convert the residential land into the commercial plots and that the provisions contained in Section 172 of the Madhya Pradesh Land Revenue Code, 1959 and Madhya Pradesh Gram Panchayat (Development of Colonies) Rule, 2014 has not been properly followed. Rejoinder to reply filed by the respondent no. 6 and rejoinder reply filed by the respondent nos. 4 and 5 have also been filed.

19. During the course of hearing learned counsel for the State Mr. Prashant M. Harne and Mr. Rohit Sharma learned counsel for the respondent have submitted that the crux of the matter is distance from the hospital, private school etc. and it is clearly mentioned that no hospital or school is located within 50 meters from the periphery of the petrol pump and there is no residential activity within the periphery of 50 meters from the section/ petrol pump. The findings of the committee 7.3 says that the nearest

habitation, pupil around the village is 600 meters away from the petrol pump.

20. Learned counsel for the applicant has submitted that the perusal of the land records reveals that several persons have purchased the land and their names are mutated. The revenue entries shows the mutation of the year 2023-24. The contention of the respondents / project proponent and the State counsel are that the application was entertained in the year 2022 dated 14.04.2022 and after comprehensive scrutiny and documentation the M/s Reliance B. P. Mobility granted the dealership vide intend letter dated 30.11.2022 and consent to establish and NOC was issued accordingly.

21. We are of the view that the matter with regard to change of user of land or validity of the colony or construction of the houses are within the domain of revenue authorities. Only thing which is required to be considered is compliance of the guidelines issued by the CPCB for establishment of petrol pump and this application has been filed on the ground of distance which was found to be not in violation of any guidelines and thus this application is not maintainable and not tenable.

22. In view of the above facts, argument and records submitted by the parties, this application is devoid of any merit and deserves to be dismissed and dismissed accordingly."

10. *Order in the review petition:* The review petition filed by the appellants on the ground that the Joint Committee has not given sufficient notice and opportunity was considered and dismissed by the NGT on 17.10.2024.

11. *Civil Appeals before this Court and Preliminary objections of the respondents:* The appellants filed the present civil appeals challenging the judgment of NGT dated 09.08.2024 and also the order in review dated 17.10.2024. Pursuant to issuance of notice, when the respondents appeared and raised objections about the bonafides of the appellants and also alleged that the appellants have suppressed the initiation of parallel proceedings before the High Court, this Court

directed the appellants to respond to the said allegations and also cautioned that in the event respondent's contentions were accepted by this Court then the civil appeals will be dismissed with costs.

12. The appellants responded to the preliminary objections by filing their reply. In the said reply, the appellants have, for the first time, brought to the notice of this Court the filing of writ petition no. 41030 of 2024 by appellant no. 3. The appellants sought to justify their action of not informing this Court about filing of the subsequent writ petition by contending that the scope of proceedings arising out of original application before NGT on the one hand and proceedings arising out of writ petition before High Court are distinct and also that the said fact could not be mentioned in the civil appeals as the writ petition was filed after the institution of the civil appeals.

13. *Analysis:* The appellants want this Court to believe that the scope of the original application before the NGT is confined only to violation of *"Siting Criteria of Retail Outlets"* as mentioned in the office memorandum dated 07.01.2020 issued by the Central Pollution Control Board. It is then submitted that the subsequently filed writ petition is confined to challenging the NOC dated 07.02.2024 on the ground that it is violative of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 as the contesting respondents did not take the necessary permission from the Director, Town and Country Planning for constructing the Petrol Pump. This justification, as formulated in the affidavit in reply is as follows:

> *"11. That on 18.12.2024 that is during the pendency of the present Civil Appeal a Writ Petition No. 41030 of 2024 (Ram Kumar Singh Vs Collector Bhopal & Ors) was preferred by the Appellant No.3 on a completely different ground and Question of Law as, Petrol Pump was being illegally constructed without 'Development Permissions' as per the due process as envisaged under Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973 and as the Respondent No. 4 & 5 required to take 'Development Permission' from the Director Town and Country Planning for starting construction of the Petrol Pump."*

14. We have examined the matter in detail. Having considered grounds of challenge, the prayers in the original application and submissions as recorded by the NGT and having contrasted them with the grounds

and prayers in the writ petition before the High Court, we are of the opinion that this contention is an afterthought and also lacks candour. The following references clearly demonstrate the fact.

15. At the outset, it is not correct to say that the original application was confined only to *"Siting Criteria of Retail Outlets".* We have already reproduced the grounds taken in the original application and it is apparent that while challenging the NOC dated 07.02.2024, the appellants have specifically pleaded that the NOC is contrary to Rule 144 of the Petroleum Rules, 2002. In the original application, the appellants have alleged that the district collector has not applied his mind while granting the NOC. Further, in the civil appeals filed before this Court, they specifically raised questions of law and impugned the NOC dated 07.02.2024 on various other grounds, which are as follows:

> *"(X). That however, without inquiring into the issues raised by the Appellants and in ignorance of the orders / directions given by the Hon'ble Tribunal is various cases prohibiting setting up of petrol pump outlets near the residential areas, Respondent no. 3 issued a No Objection Certificate dated 07.02.2024 to Respondent no. 4 and 5."*
>
> *…….*
>
> *K. BECAUSE impugned orders and judgments are liable to be set aside for the reason that the proposed retail outlet is being constructed without complying with the terms and conditions laid down in the NOC dated 07.02.2024 granted by Respondent no. 3.*
>
> *L. BECAUSE the Respondent No. 2 failed to ensure the implementation of additional safety measures as prescribed by the Petroleum and Explosives Safety Organization (PESO) in cases where the stipulated distance requirement is not met."*

16. The appellants have specifically challenged the grant of NOC dated 07.02.2024 on the ground that the respondents have not obtained development permission from the town and country planning authority. The relevant portion of the ground is as follows:

> *"N. BECAUSE the Joint Committee report is silent about the illegal construction being carried out by the Respondent*

on the proposed site of Petrol Pump, without obtaining Development Permission from the Town and Country Planning, which is mandated in the Collector's NOC dated 07.02.2024."

17. Having extracted hereinabove the specific ground in the civil appeals challenging the NOC on the ground that it is granted without obtaining the development permission from the town and country planning authority, which requirement arises under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, the submission that the proceedings before NGT were confined only to *"Siting Criteria of Retail Outlets"* is false and is hereby rejected.

18. We will now refer to the grounds taken in the writ petition to examine whether the said writ petition is really confined to challenging the NOC dated 07.02.2024 on the grounds that the said respondents have not obtained the development permission under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. The following grounds in the writ petition evidence that the writ petition is not confined to that ground:

"5.7 It is submitted that before setting up the petrol pump, the Respondent No. 4 & 5 had also granted Prior Approval from the Respondent No. 3 i.e. PESO vide Prior Approval dated 22.05.2023, which prescribes for safety as well as other norms. Clause 5 of the prior approval clearly prescribes that necessary approval including NOC from Respondent No. 1 under Rule 144 of the Petroleum Rules, 2002 is required to be obtain."

5.10 On receipt of the letter dated 30.01.2024, the Respondent No. 1 without considering the actual and factual aspect of the Said Land issued the NOC dated 07.02.2024 ('Impugned NOC) to the Respondent No. 4 & 5 for establishment of petrol pump on the Side Land with various conditions attached.

5.12 It is submitted that the Impugned NOC was also not issued in accordance with the Petroleum Rules, 2002, which is blatant ignorance and violation of the Petroleum Rules, 2002."

19. In view of the specific challenge to the NOC dated 07.02.2024 on grounds that it is violative of M.P. Nagar Tatha Gram Nivesh

Adhiniyam, 1973 in the civil appeal, which arises out of proceedings before the NGT, and also challenge to the NOC on grounds that it is violative of Petroleum Rules, which challenge is also taken in the writ petition filed before the High Court, we are of the opinion that the appellants have initiated identical and parallel proceedings. Having extracted the grounds raised in the original application before the NGT, as well as in the writ petition filed subsequently, when the present civil appeals were pending it is clearly discernible from the pleadings that there is an overlap and parallel challenges to the same NOC dated 07.02.2024. In the original application, though the primary challenge is based on the 2020 Guidelines issued by CPCB, the appellants have raised additional grounds with respect to Petroleum Rules and of violation of municipal norms in the civil appeals. In the writ petition before the High Court, though the appellants have taken the stand that their grievance is limited only to violation of provisions of the municipal laws, the Adhiniyam, 1973, grounds relating to Petroleum Rules, 2002, which have anyway been raised before the NGT are also taken. Even assuming that the scope and ambit of challenge is distinct, which we have demonstrated that they are not, the appellants should have taken the permission of this Court for initiating the writ petition. The minimum that the appellants could have done and infact should have done is to inform this Court about initiation of the fresh proceeding challenging the NOC dated 07.02.2024 before the High Court, particularly when the civil appeals are pending consideration.

20. In the context of the above-referred facts, the submission of the contesting respondents that this litigation is not bonafide and that it is to subserve the personal interest of appellant no. 3, running a parallel business, cannot be brushed aside easily.

21. *Conclusion and directions*: In view of the above, having considered the grounds and relief sought in the original application filed before the NGT and having contrasted it with the grounds and prayers in the writ petition, we are of the opinion that the:

    (a) appellants have suppressed the necessary facts and there is reason to believe that the proceedings before NGT were initiated to subserve business interest of appellant no. 3. In this view of the matter, the civil appeals are dismissed with costs quantified at Rs.50,000/- payable to the Supreme Court Advocates on Record Association within four weeks from today.

(b) We also clarify that we have not examined the issue relating to violation of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 raised in the writ petition pending before the High Court. Said writ petition will be heard and disposed of on its own merits and without being influenced by observations made by this Court in the present case.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Nidhi Jain