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Lalu Yadav
v.
The State of Uttar Pradesh & Ors.

(Criminal Appeal No. 4222 of 2024)

16 October 2024

[C.T. Ravikumar* and Rajesh Bindal, JJ.]

Issue for Consideration

Whether the High Court ought to have exercised its inherent power under Section 482, Code of Criminal Procedure, 1973 for quashing the FIR against the appellant under Section 376, Penal Code, 1860.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – ss.376, 313 – Respondent No.4-complainant alleged rape by the appellant on false promise of marriage – Whether the complainant gave her consent for the sexual relationship with the appellant under misconception of fact, as alleged:

Held: No – As per the FIR, the offence was allegedly committed from 2013 to 2018 however, the FIR was registered only in 2018 – There was a delay of more than 5 years in filing the FIR – Complainant and the appellant were living for long as husband and wife – There is a huge irregularity between the statements "established physical relationship with me without my consent" and "started living with me as the husband" – Present is a case of long consensual physical relationship during which the complainant addressed the appellant as her husband – Allegations in the FIR do not constitute a prima facie case of false promise to marry from the inception with a view to establish sexual relationship – On facts, subsequent refusal to marry the complainant not sufficient to prima facie establish that the complainant gave consent for the sexual relationship with the appellant under misconception of fact, so as to accuse the appellant guilty of having committed rape within the meaning of s.375, IPC – Further, since now the allegation of offence u/s.313, IPC is omitted by the State, there is no prima facie case for proceeding further against the appellant on the allegation of commission of offence punishable u/s.376, IPC – High Court ought

* Author

to have exercised its inherent power u/s.482, CrPC – Impugned order set aside – FIR and all further proceedings based thereon, quashed. [Paras 9, 14-16]

Judicial Review – Criminal cases – Code of Criminal Procedure, 1973 – s.482 – Constitution of India – Article 226 – Appellant sought quashing of FIR u/Article 226 – Nomenclature of petition not relevant, petition may be treated as one u/s.482, CrPC:

Held: High Court can exercise its power either u/Article 226 of the Constitution of India or u/s.482, CrPC to prevent the abuse of process of the court or to secure the ends of justice – Nomenclature under which a petition is filed is irrelevant – If the court finds that the petitioner could not invoke the jurisdiction of the Court u/ Article 226, it may treat the petition u/s.482, CrPC. [Para 1]

Case Law Cited

Pepsi Foods Ltd. v. Special Judicial Magistrate [1997] Supp. 5 SCR 12 **: (1998) 5 SCC 749;** *Satya Pal v. State of U.P* [1996] Supp. 9 SCR 203 **: 2000 CrLJ 569 – referred to.**

Shivashankar alias Shiva v. State of Karnataka and Anr. **(2019) 18 SCC 204;** *"XXXX" v. State of Madhya Pradesh and Anr.* [2024] 3 SCR 309 **: (2024) 3 SCC 496;** *Naim Ahamed v. State (NCT of Delhi)* [2023] 1 SCR 1061 **: 2023 SCC OnLine SC 89;** *State of Haryana and Ors. v. Bhajan Lal and Ors.* [1990] Supp 3 SCR 259 **: AIR 1992 SC 604 – relied on.**

Ajit Singh @ Muraha v. State of U.P., **2006 (56) ACC 433 – referred to.**

List of Acts

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

List of Keywords

Section 482, Code of Criminal Procedure, 1973; Inherent power; Quashing; Rape on false promise of marriage; Parties living for long as husband and wife; Consent for sexual relationship under misconception of fact; Delay in registering the FIR; Long consensual physical relationship; Refusal to marry; Judicial Review in criminal matters; Nomenclature of petition.

Lalu Yadav v. The State of Uttar Pradesh & Ors.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4222 of 2024

From the Judgment and Order dated 26.07.2018 of the High Court of Judicature at Allahabad in CRMWP No. 16825 of 2018

Appearances for Parties

Devvrat, Ms. Swati Setia, Ms. Harshita Sharma, Devesh Kumar Agnihotri, Subas Ray, Dr. Pabitra Pal Choudhary, Nitin Jain, Advs. for the Appellant.

Ajay Kumar Misra, A.G./Sr. Adv., Garvesh Kabra, Ms. Harshita Raghuvanshi, Mrs. Pooja Kabra, Shantanu Kumar, Anurag Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

Leave granted.

1. The captioned Appeal is directed against the order dated 26.07.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 16825 of 2018. The said Writ Petition was filed under Article 226 of the Constitution of India seeking quashment of FIR dated 21.02.2018 bearing Case Crime No. 28 of 2018 registered under Sections 376 and 313 of the Indian Penal Code, 1860 (for short the 'IPC') at Police Station Nandganj in Ghazipur District of the State of Uttar Pradesh. In view of the fact that quashment of FIR was sought under Article 226 of the Constitution of India, it is relevant to refer to a decision of this Court in ***Pepsi Foods Ltd. v. Special Judicial Magistrate***.[1] It was held therein that the High Court could exercise its power of judicial review in Criminal matters and it could exercise the power either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C'), to prevent the abuse of process of the

1 [1997] Supp. 5 SCR 12 : (1998) 5 SCC 749

court or otherwise to secure the ends of justice. Nomenclature under which a petition is filed is not quite relevant. If the court finds that the petitioner could not invoke the jurisdiction of the Court under Article 226, it may treat the petition under Section 482, Cr. P.C.

2. Heard the learned counsel for the appellant and the learned counsel for the State of Uttar Pradesh for respondent Nos. 1 to 3 and also the learned counsel for respondent No. 4 (the complainant).

3. The gravamen of her complaint, based on which the above-mentioned crime was registered on 21.02.2018, is revealed from the following allegations made thereunder: -

> *"…My elder sister Meera Devi was married to Satendra Yadav Village Kukuda P.S. Nandganj, District – Ghazipur, Lalu Yadav S/o Seshnath Yadav R/o Atarsuya P.S. Nandganj District – Ghazipur used to come to my house along with the brother in law Ravindra Yadav of my elder sister, at that time about five years back I was a student of High School, then the said Lalu Yadav by way of deceiving myself promise that he will marry me and established physical relationship with me without my consent and started living with me as the husband. He used to say that he would marry me when he gets a job. My mother Rajvati Devi and my father Hari Singh Yadav was also of the knowledge of our relation. When my father and mother raised an objection about our relation then Lalu Yadav told her that he will marry Preeti. He told her that nobody should object and therefore my parents went silent and Lalu Yadav kept established with me the applicant without my consent due to which I became pregnant after the knowledge of which he give me a medicine of with which and abortion has occurred and when the said Lalu Yadav came to the house of the applicant on 28.09.2017 then he took the said applicant to Varanasi on 29.09.2017 and kept me in a hotel and again made physical relationship with me due to which I became pregnant in May 2017 and said Lalu Yadav did my abortion my pressuring me again, thereafter again 17.12.2017 the said Lalu Yadav took me to a hotel in Varanasi and made physical relationship with*

me their, thereafter Lalu Yadav got a job in army and after which he is refusing to marry the applicant…"

4. In the contextual situation, it is relevant to refer to the details given under item No. 3 in Annexure- P2/FIR, which read thus: -

"3 (a) occurrence of offence.

1. Day Date from – 05.01.2013

Date To – 05.01.2018

(b) Information received at P.S:

Date: 21.02.2018. Time: 21.34 hr."

5. Before delving into the rival contentions, it is relevant to note that though this Court stayed further proceedings in case Crime No. 28/2018 on 13.11.2018, this Court virtually modified the same on 18.08.2023 as under: -

"It is made clear that the interim order passed by this Court staying further proceedings in Crime No. 28/2018 registered at P.S. Nandganj, District Ghazipur, U.P. dated 13.11.2018 will not stand in the way of investigation for investigating into the offence under Section 313 of IPC.

List the matter after two months."

6. Earlier, on behalf of respondent Nos. 1 to 3 counter affidavit was filed fully justifying the impugned order. On behalf of the respondent No. 4 also, a counter affidavit was filed, evidently, on the same line. Pursuant to the order dated 18.08.2023, virtually, permitting continuance of investigation in Crime No. 28/2018 in respect of the allegation of commission of offence under Section 313 IPC, investigation in that regard was continued and completed. Thereupon, an additional affidavit was filed on behalf of the first respondent - State with respect to the status of investigation and the same, insofar as it is relevant, reads thus: -

"6. That pursuant to the direction, the investigating officer had conducted investigation with respect to offence u/s 313 IPC and after due investigation and material available on record, including her statement, medical reports etc. has concluded that there is no evidence/

material available with respect to offence u/s 313 IPC i.e. no material substantiating abortion of the victim in the present offence and hence as on 02.02.2024 omitted offence u/s 313, IPC.

7. That the investigation u/s 376 is still pending as the same is stayed by this Hon'ble Court."

7. In view of the statement in the afore-extracted paragraph 6 and 7, the undisputed position obtained that the allegation of commission of offence under Section 313, IPC stands omitted against the appellant. What survives for consideration is only the question whether the impugned order invites interference and the subject FIR be quashed invoking the inherent jurisdiction?

8. We have already taken note of the facts revealed from the subject FIR itself that the time of occurrence of offence is allegedly, from 05.01.2013 to 05.01.2018 and that it was registered only at 21.34 hrs. on 21.02.2018. That apart, it is evident that even going by respondent No. 4, the complainant herself and the appellant were living as husband and wife. The complaint of respondent no. 4, as is revealed therefrom, is that the appellant had deceived her by promising to marry and then by establishing physical relationship. At the risk of repetition, we will have to refer to the FIR, carrying the following recitals from her complaint:

"… Lalu Yadav S/o Seshnath Yadav R/o Atarsuya P.S. Nandganj District- Ghazipur, used to come to my house along with the brother-in-law Ravindra Yadav of my elder sister, at that time about five years back I was a student of High School, then the said Lalu Yadav by way of deceiving myself promise that he will marry me and established physical relationship with me without my consent and started living with me as the husband."

(underline supplied)

9. At the very outset, it is to be noted that there is a huge irregularity between the statements "established physical relationship with me without my consent" and "started living with me as the husband". Be that as it may, bearing in mind the allegations raised by respondent No. 4 reflected in the subject FIR, we will refer to the relevant decisions of this Court.

10. While dismissing the writ petition under the impugned order, presumably taking note of the contentions based on time lag of five years, the High Court relied on its Full Bench decisions in ***Ajit Singh @ Muraha v. State of U.P.,***[2] and in ***Satya Pal v. State of U.P.***[3]***.*** as well as the decision of this Court in ***State of Haryana and Ors. v. Bhajan Lal and Ors.***[4]***.*** It observed and held that there could be no interference with the investigation or order staying arrest unless cognizable offence is not ex-facie discernible from the allegations contained in the FIR or there exists any statutory restriction operating against the power of the Police to investigate a case. There can be no two views on the exposition of law thus made relying on the said decisions. In the same breath we will have to say that those decisions can be no bar for the exercise of power under Section 482, Cr.P.C., in various other situations dealt with, in detail, by this Court, including in the decision in ***Bhajan Lal's*** case (supra).

11. To determine whether the case in hand deserves to be quashed at the present stage we will refer to some of the decisions. We have already taken note of the fact that though there was an allegation in the FIR regarding commission of offence under Section 313, IPC, on completion of the investigation, the investigating agency itself omitted the offence under Section 313, IPC against the appellant-accused. In paragraph 102 of the decision in ***Bhajan Lal's*** case (supra) this Court held thus: -

> *"**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 give 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,*

2 2006 (56) ACC 433

3 [1996] Supp. 9 SCR 203 : 2000 CrLJ 569

4 [1990] Supp. 3 SCR 259 : AIR 1992 SC 604

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.

(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."*

12. In the decision in ***Shivashankar alias Shiva v. State of Karnataka and Anr.,***[5] this Court held thus: -

> "4. *In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."*

13. The decision in ***"XXXX" v. State of Madhya Pradesh and Anr.,***[6] also assumes relevance in the contextual situation. This court took into consideration an earlier decision of this Court in ***Naim Ahamed v. State (NCT of Delhi),***[7] where the allegation was one of alleged rape on false promise of marriage, made five years after the complainant and the accused started having relations and even got pregnant from the accused, of course when she was having a subsisting marriage, the Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. Having considered the said decision and finding identity in facts, this court in the decision reported in (2024) 3 SCC 496 reversed the order impugned therein dismissing the petition filed under Section 482, Cr.P.C. for quashment of FIR and allowed the appeal by setting aside the impugned order and quashing the subject FIR.

14. Now, having bestowed our anxious consideration to the decisions referred *supra* with reference to the factual situations obtained in the case at hand, we are of the considered view that the High Court

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5 (2019) 18 SCC 204

6 [2024] 3 SCR 309 : (2024) 3 SCC 496

7 [2023] 1 SCR 1061 : 2023 SCC OnLine SC 89

has palpably gone wrong in not considering the question whether the allegations in the complaint reveals *prima facie* case that the complainant had given her consent for the sexual relationship with the appellant under misconception of fact, as alleged, or whether it reveals a case of consensual sex. Firstly, it is to be noted that the subject FIR itself would reveal that there occurred a delay of more than 5 years for registering the FIR; secondly, the very case of the complainant, as revealed from the FIR, would go to show that they lived for a long period as man and wife and thirdly, the facts and circumstances obtained from the subject FIR and other materials on record would reveal absence of a *prima facie* case that the complainant viz., respondent No. 4 had given her consent for sexual relationship with the appellant under misconception of fact. At any rate, the allegations in the FIR would not constitute a *prima facie* case of false promise to marry from the inception with a view to establish sexual relationship and instead they would reveal a *prima facie* case of long consensual physical relationship, during which the complainant addressed the appellant as her husband. Moreover, it is also the case of the complainant, revealed from the subject FIR and the other materials on record that she went along with the appellant to Varanasi with the knowledge of her family and stayed with him in hotels during such visits. The subsequent refusal to marry the complainant would not be sufficient, in view of the facts and circumstances obtained in the case at hand, by any stretch of imagination to draw existence of a *prima facie* case that the complainant had given consent for the sexual relationship with the appellant under misconception of fact, so as to accuse the appellant guilty of having committed rape within the meaning of Section 375, IPC.

15. The long and short of the above discussion is that the case at hand is a befitting case where the High Court should have exercised the power available under Section 482, Cr.P.C. to prevent abuse of the process of the Court. Now that the allegation of offence under Section 313, IPC is omitted, there is absolutely no *prima facie* case for proceeding further against the appellant on the allegation of commission of offence punishable under Section 376, IPC. We are of the considered view that the High Court should have exercised its inherent power.

16. For the reasons aforesaid, the impugned order dated 26.07.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous

Writ Petition No. 16825 of 2018 is set aside. FIR No. 28/2018 dated 21.02.2018 registered at Police Station – Nandganj, Ghazipur District of Uttar Pradesh and all further proceedings on its basis are quashed. The appeal is accordingly allowed.

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 650 : 2024 INSC 750

K. Bharthi Devi and Anr.
v.
State of Telangana and Anr.

(Criminal Appeal No. 4113 of 2024)

03 October 2024

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Despite the dispute involved having predominantly overtures of a civil dispute and the matter having been compromised between the parties, whether the High Court was justified in dismissing the quashing petition filed by the accused persons including the appellants seeking quashing of the chargesheet.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – s.120-B r/w ss.420, 409, 467, 468, 471 – Prevention of Corruption Act, 1988 – s.13(1)(d), 13(2) – Quashing – Of criminal cases having predominantly civil character when parties have settled the dispute – Dispute regarding the loan transaction availed by accused persons-borrowers – Matter settled between the Bank and the accused persons in proceedings before DRT – Accused persons including the appellants sought quashing of the chargesheet filed by CBI before trial Court, rejected by High Court:

Held: Criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or matrimonial relationship/family disputes should be quashed when the parties have settled the dispute – In the present case, the dispute involved predominantly had overtures of a civil dispute – Further, it is undisputed that upon payment of the amount under the One Time Settlement (OTS), the loan account of the borrower was closed and the matter was compromised/ settled between the borrowers and the Bank rendering the possibility of conviction remote and bleak – Present is a fit case wherein the High Court ought to have exercised its jurisdiction u/s.482, CrPC and quash the criminal proceedings – Impugned

* Author

judgment and the criminal proceedings against the appellants are quashed and set aside. [Paras 11, 31, 34, 35]

Case Law Cited

Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta [1996] Supp. 3 SCR 360 **: (1996) 5 SCC 591;** *Nikhil Merchant v. Central Bureau of Investigation and Another* [2008] 12 SCR 236 **: (2008) 9 SCC 677;** *Gian Singh v. State of Punjab and Another* [2012] 8 SCR 753 **: (2012) 10 SCC 303;** *Central Bureau of Investigation, ACB, Mumbai v. Narendra Lal Jain and Others* [2014] 3 SCR 444 **: (2014) 5 SCC 364;** *Narinder Singh and Others v. State of Punjab and Another* [2014] 4 SCR 1012 **: (2014) 6 SCC 466;** *Gold Quest International Private Limited v. State of Tamil Nadu and Others* [2014] 7 SCR 677 **: (2014) 15 SCC 235;** *Central Bureau of Investigation v. Sadhu Ram Singla and Others* [2017] 1 SCR 907 **: (2017) 5 SCC 350;** *B.S. Joshi and Others v. State of Haryana and Another* [2003] 2 SCR 1104 **: (2003) 4 SCC 675;** *Manoj Sharma v. State and Others* [2008] 14 SCR 539 **: (2008) 16 SCC 1;** *Gian Singh v. State of Punjab and Another* [2012] 8 SCR 753 **: (2010) 15 SCC 118 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Section 482 of Code of Criminal Procedure, 1973; Quashing; Criminal Cases Having Predominantly Civil Character; Loan Transaction; Borrowers; Bank; Commercial Transactions; Matrimonial Relationship/Family Disputes; Compromise/Settlement Between The Parties; Criminal Proceedings Quashed; Debts Recovery Tribunal.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4113 of 2024

From the Judgment and Order dated 01.09.2017 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in CRLP No. 5778 of 2016

Appearances for Parties

Dama Seshadri Naidu, Gaurav Agarwal, Sr. Advs., Rajiv Yadav, Nishant Bhatia, Vivek Singh, Ms. Shivali Chaudhary, R Chandrachud, Ramesh Allanki, Ms. Aruna Gupta, Syed Ahmed Naqvi, Siddhant Buxy, Ms. Rupinder Kaur, Vansh Verma, Yash Gupt, Rabin Majumder, Advs. for the Appellants.

Vikramjeet Banerjee, A.S.G., Mukesh Kumar Maroria, Ms. Bani Dikshit, Mrs. Priyanka Das, B K Satija, Ayush Anand, Ms. Vimla Sinha, Ms. Devina Sehgal, Vineet George, Brijesh Kumar Tamber, Vinay Singh Bist, Prateek Kushwaha, Ms. Arani Mukherjee, Yashu Rustagi, Sahas Bhasin, Himanshu Munshi, Anitesh Choudhary, Siddhant Munshi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeal challenges the final judgment and order dated 1st September 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, whereby the High Court *dismissed* the Criminal Petition No. 5778 of 2016 filed by the accused persons, including the appellants herein, under Section 482 of the Code of Criminal Procedure, 1973 ("CrPC." for short) thereby seeking quashing of the charge-sheet in C.C. No. 16 of 2014 on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad ("trial Court" for short).

3. Shorn of details, the case of the prosecution is as given below.

3.1 K. Suresh Kumar (Accused No. 1), the Sole Proprietor of M/s Sirish Traders, a firm engaged in processing of Uradh Dhall, was granted various credit facilities in the group loan account by the Indian Bank, Osmanganj Branch, Hyderabad ("respondent No. 2 Bank" for short). The credit facilities were secured by collateral security executed by the accused persons including the present appellants who are Accused No. 3 & 4.

3.2 Since the borrowers/mortgagors (Accused Nos. 1-5) failed to service the interest and re-pay the dues, the group loan account was declared a Non-Performing Asset on 31st March 2010.

3.3 To realize the outstanding amount, the respondent No. 2 Bank filed an Original Application being OA No. 253 of 2010 before the Debts Recovery Tribunal, Hyderabad ("DRT" for short) for recovery of amounts due.

3.4 During the pendency of the proceedings before the DRT, the respondent No. 2 Bank came to know that some of the title documents executed by the accused persons by virtue of which equitable mortgage was created were not original documents, rather the same were fake, forged and fabricated.

3.5 The respondent No. 2 Bank, accordingly, lodged a written complaint dated 3rd September 2012. Based on the said complaint, the Central Bureau of Investigation – Economic Offence Wing (CBI-EOW) Chennai registered an FIR No. RC.14/E/2012 dated 15th September 2012.

3.6 The CBI-EOW Chennai after investigation *prima facie* found that offences punishable under Sections 120-B read with 420, 409, 467, 468 and 471 of Indian Penal Code 1860 ("IPC" for short) and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act 1988 ("PC Act" for short) have been committed. The CBI filed charge-sheet dated 27th December 2013 in the trial Court and prayed that the trial Court take cognizance of the said offences committed by the accused persons.

3.7 Since the proceedings before the DRT were still pending, the borrowers/mortgagors (Accused Nos. 1-5) approached the respondent No. 2 Bank for settlement of the amount due regarding the group loan accounts. To that effect, a One Time Settlement ("OTS" for short) dated 19th November 2015 of Rs. 3.8 crores was offered to the respondent No. 2 Bank for settling all the dues. The same was accepted by the respondent No. 2 Bank. The OTS amount was paid, and the respondent No. 2 Bank issued a No Dues Certificate dated 21st November 2015 to the borrowers/guarantors.

3.8 When the matter stood thus, the Accused Nos. 1 to 5, including the present appellants, filed a Criminal Petition bearing No. 5778 of 2016 on 18th April 2016 before the High Court under Section 482 CrPC seeking quashing of the charge-sheet filed before the trial Court by the CBI.

3.9 During the pendency of the Criminal Petition before the High Court, the DRT vide order dated 4th May 2016, recorded that the matter has been settled as per the OTS and *disposed of* the OA as settled, in full satisfaction of the dues of the respondent No. 2 Bank.

3.10 The High Court, however, vide the impugned final judgment and order dismissed the Criminal Petition filed by the Accused Nos. 1 to 5 holding that the settlement arrived at was only a private settlement and was not a part of any decree given by any court. The charges include the use of fraudulent, fake and forged documents that were used to embezzle public money and if these are proved, they would be grave crimes against the society as a whole and hence, merely due to a private settlement between the Bank and the accused, it cannot be said that the prosecution of the accused persons would amount to abuse of process of the court.

3.11 Aggrieved thereby, two of the accused persons (Accused Nos. 3 & 4) have filed the present appeal.

4. We have heard Shri Dama Seshadri Naidu, learned Senior Counsel for the appellants and Shri Vikramjeet Banerjee learned Additional Solicitor General ("ASG" for short) appearing for the CBI, Ms. Devina Sehgal, learned counsel for the respondent No.1-State and Mr. Himanshu Munshi, learned counsel for the respondent No.2-Bank.

5. Shri Naidu submits that the appellants before this Court had no active role to play. It is submitted that the Appellant No.1 (Accused No.3) is the wife of Accused No.2 and Appellant No.2 (Accused No.4) is the wife of Accused No.1. It is submitted that even from the perusal of the chargesheet it would reveal that no active role is attributed to the present appellants.

6. Shri Naidu further submits that in the proceedings before the DRT, the matter has been amicably settled between the respondent No.2 Bank and the accused persons. It is submitted that in addition to the total amount paid by the borrowers to the tune of Rs. 7,78,25,143/- , the Bank has also realized an amount of Rs. 1,07,54,000/- by auctioning the mortgaged properties.

7. It is further submitted that during the pendency of OA before the DRT, in view of OTS an amount of Rs. 3,80,00,000/- was also paid

to the respondent No.2 Bank and as such, the respondent No.2 Bank has closed the loan account. The learned Senior Counsel, therefore, submits that the continuance of the proceedings against the appellants would be an exercise in futility.

8. Shri Naidu in support of his submissions relied on the following judgments of this Court in the cases of:

(i) ***Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta***;[1]

(ii) ***Nikhil Merchant v. Central Bureau of Investigation and another***;[2]

(iii) ***Gian Singh v. State of Punjab and another***;[3]

(iv) ***Central Bureau of Investigation, ACB, Mumbai v. Narendra Lal Jain and others***;[4]

(v) ***Narinder Singh and others v. State of Punjab and another***;[5]

(vi) ***Gold Quest International Private Limited v. State of Tamil Nadu and others***;[6] and

(vii) ***Central Bureau of Investigation v. Sadhu Ram Singla and others***.[7]

9. Mr. Himanshu Munshi, learned counsel for the respondent No.2 Bank confirms the fact regarding the settlement entered into between the Bank and the borrowers.

10. Shri Vikramjeet Banerjee, learned ASG, appearing on behalf of the CBI, however, submits that merely because the matter is settled between the Bank and the borrowers, it does not absolve the accused persons of their criminal liability. It is submitted that the learned judge of the High Court has rightly, upon consideration

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1 [1996] Supp. 3 SCR 360 : (1996) 5 SCC 591

2 [2008] 12 SCR 236 : (2008) 9 SCC 677

3 [2012] 8 SCR 753 : (2012) 10 SCC 303

4 [2014] 3 SCR 444 : (2014) 5 SCC 364

5 [2014] 4 SCR 1012 : (2014) 6 SCC 466

6 [2014] 7 SCR 677 : (2014) 15 SCC 235

7 [2017] 1 SCR 907 : (2017) 5 SCC 350

of the legal position, dismissed the petition under Section 482 of the CrPC. The learned ASG, therefore, prays for dismissal of the present appeal.

11. The facts in the present case are not in dispute. It is not disputed that the matter has been compromised between the borrowers and the Bank. It is also not in dispute that, upon payment of the amount under the OTS, the loan account of the borrower has been closed.

12. Therefore, the only question would be, as to whether the continuation of the criminal proceedings against the present appellants would be justified or not.

13. At the outset, we may state that we are only considering the cases only of two women i.e. Accused Nos. 3 and 4, who are wives of original Accused Nos. 2 and 1 respectively.

14. A perusal of the chargesheet would reveal that the specific role is attributed to Accused No.1-K. Suresh Kumar. The allegations against the present appellants are that they were involved in criminal conspiracy with Accused No.1.

15. We may gainfully refer to the following observations of this Court in the case of ***Duncans Agro Industries Ltd., Calcutta*** (supra):

> "**26.** After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of *Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] and *Janata Dal* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36], since relied on by Mr

Tulsi, the guiding principles in quashing a criminal case have been indicated.

27. ……...

28. ……...

29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. ***The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating.*** It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further……..”

[Emphasis supplied]

16. It could thus be seen that this Court in the case of ***Duncans Agro Industries Ltd*** found that the Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits had been compromised on receiving the payments from the companies concerned. The Court found that even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by

the Banks, for all intents and purposes, amounted to compounding of the offence of cheating.

17. In the case of ***Nikhil Merchant*** (supra), this Court was considering a civil dispute with certain criminal facets. The matter also involved offences which were not compoundable in nature. This Court, therefore, considered the question as to whether the criminal proceedings could be quashed under Article 142 of the Constitution of India on the basis of compromise, even where non-compoundable offences are involved.

18. An argument was advanced on behalf of the Union that this Court should not exercise its powers under Article 142 of the Constitution of India in order to quash the proceedings for non-compoundable offences. This Court observed thus:

> "**25.** It was urged that even if no steps have been taken by CBI since the charge-sheet was filed in 1998, the same would not be a ground for quashing the criminal proceedings once the charge-sheet had been filed. He submitted that in view of the decision of this Court in *Supreme Court Bar Assn.* v. *Union of India* [(1998) 4 SCC 409] this Court would possibly not be justified in giving directions in the instant case even under Article 142 of the Constitution, since the Constitution Bench had held that in exercise of its plenary powers under Article 142, this Court could not ignore any substantive statutory provision dealing with the subject. It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties where it is just and equitable to do so. It was further observed that the power under Article 142 of the Constitution was vested in the Supreme Court to prevent any obstruction to the stream of justice.
>
> **26.** The learned Additional Solicitor General submitted that the power under Article 142 is to be exercised sparingly and only in rare and exceptional cases and in the absence of any exceptional circumstances the appeal was liable to be dismissed.
>
> **27.** Having carefully considered the facts of the case and the submissions of learned counsel in regard thereto, we

are of the view that, although, technically there is force in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in these proceedings.

28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 CrPC with the leave of the court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in *B.S. Joshi case* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in *B.S. Joshi case* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and the compromise arrived at between the Company and the Bank

> as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

19. This Court found that though the offence punishable under Section 420 of the IPC was compoundable under sub-section (2) of Section 320 CrPC with the leave of the Court, the offence of forgery was not included as one of the compoundable offences. However, the Court found that in such cases the principle enunciated in the case of ***B.S. Joshi and others v. State of Haryana and another***[8] should be applied.

20. This Court specifically noted that though it is alleged that certain documents had been created by the appellant therein to avail of credit facilities beyond the limit to which the Company was entitled, the power of quashing could be exercised. This Court found that in view of a compromise arrived at between the Company and the Bank, it was a fit case where a technicality should not be allowed to stand in the way of quashing of the criminal proceedings. This Court found that in view of the settlement arrived at between the parties, continuance of the same would be an exercise in futility.

21. A similar view was again taken by 2 Judge Bench of this Court in the case of ***Manoj Sharma v. State and others.***[9]

22. However, another 2 Judge Bench of this Court in the case of ***Gian Singh v. State of Punjab and another***[10] doubted the correctness of the view taken by this Court in the cases of ***B.S. Joshi*** (supra), ***Nikhil Merchant*** (supra), and **Manoj Sharma** (supra) and referred the matter to a larger Bench.

23. The reference was answered by the learned 3 Judge Bench of this Court in the case of ***Gian Singh*** (supra).[11] Speaking for the Bench, R.M. Lodha, J. (as His Lordship then was), observed thus:

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8 [2003] 2 SCR 1104 : (2003) 4 SCC 675

9 [2008] 14 SCR 539 : (2008) 16 SCC 1

10 [2012] 8 SCR 753 : (2010) 15 SCC 118

11 [2012] 8 SCR 753 : (2012) 10 SCC 303

"**57.** Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

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.

59. *B.S. Joshi* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848], *Nikhil Merchant* [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858], *Manoj Sharma* [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and *Shiji* [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section482. Can it be said that by quashing criminal proceedings in *B.S. Joshi* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848], *Nikhil Merchant* [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858], *Manoj Sharma* [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and *Shiji* [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.

60. We find no incongruity in the above principle of law and the decisions of this Court in *Simrikhia* [(1990) 2 SCC

437 : 1990 SCC (Cri) 327], *Dharampal* [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049], *Arun Shankar Shukla* [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554], *Ishwar Singh* [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153], *Rumi Dhar* [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] and *Ashok Sadarangani* [(2012) 11 SCC 321]. The principle propounded in *Simrikhia* [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In *Dharampal* [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049] the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in *Arun Shankar Shukla* [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554]. In *Ishwar Singh* [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] the accused was alleged to have committed an offence punishable under Section 307 IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Rumi Dhar* [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for the commission of the offences under Sections 120-B/420/467/468/471 IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(*d*) of the Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. *Ashok Sadarangani* [(2012) 11 SCC 321] was again a case where the accused persons were charged of having committed the offences under Sections 120-B, 465, 467, 468 and 471 IPC and the allegations were that

the accused secured the credit facilities by submitting forged property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in *B.S. Joshi* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848], *Nikhil Merchant* [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] and *Manoj Sharma* [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and it was held that *B.S. Joshi* [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and *Nikhil Merchant* [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in *Ashok Sadarangani* [(2012) 11 SCC 321] was more on the criminal intent than on a civil aspect. The decision in *Ashok Sadarangani* [(2012) 11 SCC 321] supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (*i*) to secure the ends of justice, or (*ii*) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of

mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

24. It could thus be seen that the learned 3 Judge Bench of this Court held that ***B.S. Joshi***, ***Nikhil Merchant***, and **Manoj Sharma** were correctly decided.

25. It has been held that there are 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 a family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, the High Court would be justified in quashing the criminal proceedings, even if the offences have not been made compoundable.

26. In paragraph 60, His Lordship considers the cases where the Court has refused to quash the proceedings irrespective of the settlement. The Court considers the different factual positions arising in the cases of ***B.S. Joshi***, ***Nikhil Merchant***, and **Manoj Sharma** on one hand and the other cases where the Court refused to quash the proceedings.

27. In the cases of the first type, this Court found that the dispute involved had overtures of a civil dispute but in the other line of cases, the disputes were more on the criminal aspect than on a civil aspect.

28. In paragraph 61, this Court observes that, in which cases power to quash the criminal proceeding or complaint or FIR may be exercised, where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case. However, the Court reiterates that the criminal cases having an overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing. The Court particularly refers to the offences arising out of commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. The Court finds that in such cases, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

29. Another 3 Judge Bench of this Court in the case of ***Narendra Lal Jain and others*** (supra), following ***Gian Singh***[12] (supra) observed thus:

12 Larger Bench decision

"**13.** In the present case, as already seen, the offence with which the respondent-accused had been charged are under Sections 120-B/420 of the Penal Code. The civil liability of the respondents to pay the amount to the Bank has already been settled amicably. The terms of such settlement have been extracted above (*see* para 3). No subsisting grievance of the Bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120-B IPC is not. To the latter offence the ratio laid down in *B.S. Joshi* [*B.S. Joshi* v. *State of Haryana* (2003) 4 SCC 675 : 2003 SCC (Cri) 848 : AIR 2003 SC 1386] and *Nikhil Merchant* [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] would apply if the facts of the given case would so justify. The observation in *Gian Singh* [*Gian Singh* v. *State of Punjab* (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120-B IPC.

14. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the Bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 CrPC. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 CrPC it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 CrPC."

30. Subsequently, a 2 Judge Bench of this Court in the case of ***Narinder Singh and others*** (supra), after considering the earlier pronouncements of this Court, culled out the position thus:

> "**29.** In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:
>
> **29.1.** Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.
>
> **29.2.** When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:
>
> (*i*) ends of justice, or
>
> (*ii*) to prevent abuse of the process of any court.
>
> While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.
>
> **29.3.** Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

> **29.7.** While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/ material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

31. It could thus be seen that this Court reiterates the position that the criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

32. Though in the said case, the High Court had refused to exercise its jurisdiction under Section 482 CrPC to quash the proceedings

wherein a serious offence under Section 307 IPC was involved, this Court after taking into consideration various factors including that the elders of the village, including the Sarpanch, had intervened in the matter and the parties had not only buried their hatchet but had decided to live peacefully in the future, quashed and set aside the criminal proceedings under Section 307 IPC.

33. The aforesaid view has consistently been followed by this Court in various cases including ***Gold Quest International Private Limited*** (supra) and ***Sadhu Ram Singla and others*** (supra).

34. The facts in the present case are similar to the facts in the case of ***Sadhu Ram Singla and others*** (supra) wherein a dispute between the borrower and the Bank was settled. In the present case also, undisputedly, the FIR and the chargesheet are pertaining to the dispute concerning the loan transaction availed by the accused persons on one hand and the Bank on the other hand. Admittedly, the Bank and the accused persons have settled the matter. Apart from the earlier payment received by the Bank either through Equated Monthly Instalments (EMIs) or sale of the mortgaged properties, the borrowers have paid an amount of Rs.3,80,00,000/- under OTS. After receipt of the amount under OTS, the Bank had also decided to close the loan account. The dispute involved predominantly had overtures of a civil dispute.

35. Apart from that, it is further to be noted that in view of the settlement between the parties in the proceedings before the DRT, the possibility of conviction is remote and bleak. In our view, continuation of the criminal proceedings would put the accused to great oppression and prejudice.

36. In any case, as discussed hereinabove, both the appellants have been arraigned as wives of the Accused Nos. 1 and 2. The specific role that was attributed in the chargesheet was pertaining to Accused No.1.

37. In the result, we find that this was a fit case wherein the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quash the criminal proceedings.

38. We are therefore inclined to allow the present appeal.

39. We accordingly pass the following order:

(i) The appeal is allowed.

(ii) The impugned judgment and order dated 1st September 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 5778 of 2016 is quashed and aside.

(iii) The criminal proceedings against the appellants in C.C. No. 16 of 2014 on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad is also quashed and set aside.

40. For the reasons stated in I.A. No. 68579 of 2021 for discharge of AOR, the same is allowed.

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 673 : 2024 INSC 775

Omkar Ramchandra Gond
v.
The Union of India & Ors.

(Civil Appeal No. 10611 of 2024)

15 October 2024

[B.R. Gavai, Aravind Kumar and K.V. Viswanathan,* JJ.]

Issue for Consideration

Whether the appellant should be disqualified from obtaining admission under the PwD category for the MBBS Course merely because his disability is quantified at 44%/45%.

Headnotes†

Rights of Persons with Disabilities Act, 2016 – MBBS course – Admission for academic year 2024-25 – PwD category – Appellant has speech and language disability and is diagnosed with Hypernasality with Misarticulation IN K/C/O Repaired Bilateral CLEFT of palate – Appellant appeared for the NEET (UG) 2024 and qualified the same – As required, appellant underwent medical examination – The Designated Disability Certification Centre certified that the appellant has physical disability of speech and language of 44% (in some reports, it was mentioned as 45%) and recorded that based on quantification of disability, the appellant was not eligible to pursue the medical course as per NMC norms – Propriety:

Held: The Appendix H-I in the notification of 13.05.2019, issued by the Medical Council of India provides a peculiar scenario – While people with less than 40% disability are not eligible for PwD quota, though they can pursue the Medical Course, persons with equal to or more than 40% disability are not eligible for the medical course – In any event, adopting a purposive interpretation of the RPwD Act, this Court is of the opinion that merely because of the quantification of the disability for speech and language at 40% or above, a candidate does not forfeit his right to stake a claim for admission to course of their choice – Appendix H-1 cannot be interpreted to mean that merely because on the quantification of the disability percentage exceeding the prescribed limits, a person

* Author

automatically becomes ineligible for the medical course – The concept of reasonable accommodation would encompass within itself the deployment of a purposive and meaningful construction of the NMC Regulations of 13.05.2019 read with the Appendix H-1 guidelines in a manner as to further the objectives of the RPwD Act – While interpreting the Regulations and Guidelines, as provided in Appendix H-1 to the notification dated 13.05.2019, as they stood for the academic year 2024-25, keeping in mind the salutary object of the RPwD Act and Article 41 of the Directive Principles of State Policy, it is directed that mere existence of benchmark disability of 40% or above (or such other prescribed percentages depending on the disability) will not disqualify a candidate from being eligible for the course applied for – The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question – The directions of this Court in Bambhaniya case was carried forward and the Government of India through the Ministry of Social Justice and Empowerment issued a communication dated 25.01.2024 to the National Medical Commission – The Disability Assessment Boards will, pending formulation of appropriate Regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion – In the instant case, pursuance to the order of this Court, a report dated 13.09.2024 was prepared and the Medical Board has opined that the Appellant's speech and language disability would not come in the way of the appellant pursuing the MBBS Course – Therefore, in view of the favorable report, admission is granted to the appellant – The admission of appellant is confirmed and the concerned authorities are directed to treat the admission as a valid admission in the eye of law. [Paras 12, 20, 21, 23, 48, 53(v)]

Rights of Persons with Disabilities Act, 2016 – MBBS course – Admission for academic year 2024-25 – PwD category – Whether quantified disability per se will disentitle a candidate with benchmark disability from being considered for admission to educational institutions:

Held: The quantified disability per se will not disentitle a candidate with benchmark disability from being considered for admission to educational institutions – The candidate will be eligible, if

the Disability Assessment Board opines that notwithstanding the quantified disability the candidate can pursue the course in question. [Para 53(i)]

Rights of Persons with Disabilities Act, 2016 – MBBS course – Admission for academic year 2024-25 – PwD category – Disability Assessment Boards:

Held: The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question – The Disability Assessment Boards should state reasons in the event of the Disability Assessment Boards concluding that the candidate is not eligible for pursuing the course – The Disability Assessment Boards will, pending formulation of appropriate regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion. [Paras 53(ii), 53(iii)]

Rights of Persons with Disabilities Act, 2016 – MBBS course – Admission for academic year 2024-25 – PwD category – Disability Assessment Boards – Negative opinion for the candidate – Judicial review:

Held: Pending creation of the appellate body, it is directed that decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings – The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility, for an independent opinion and relief to the candidate will be granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter. [Para 53(iv)]

Case Law Cited

Khandige Sham Bhat and Anr. v. Agricultural Income-tax Officer, Kasaragod, and Anr. [1963] 3 SCR 809 **: AIR 1963 SC 591;** *Lieutenant Colonel Nitisha & Ors. v. Union of India & Ors.* [2021] 4 SCR 633 **: (2021) 15 SCC 125;** *Ravinder Kumar Dhariwal & Anr. v. Union of India and Others* [2021] 13 SCR 823 **: (2023) 2 SCC 209;** *Bambhaniya Sagar Vasharambhai v. Union of India &*

Ors., **Writ Petition (C) No. 856 of 2023 in the Supreme Court;** *Vikash Kumar v. UPSC & Others* [2021] 12 SCR 311 **: (2021) 5 SCC 370;** *Jeeja Ghosh & Anr. v. Union of India & Ors.* [2016] 4 SCR 638 **: (2016) 7 SCC 761;** *U.P. Bhoodan Yagna Samiti, U.P. v. Braj Kishore and Others* [1988] Supp. 2 SCR 859 **: (1988) 4 SCC 274;** *Avni Prakash v. National Testing Agency, (NTA) and Others* [2021] 11 SCR 891 **: (2023) 2 SCC 286 – relied on.**

Vibhushita Sharma v. Union of India & Ors., **Writ Petition (C)No. 793 of 2022;** *State of Gujarat and Another v. Ambica Mills Ltd., Ahmedabad and Another* [1974] 3 SCR 760**: (1974) 4 SCC 656;** *Secretary, Ministry of Defence v. Babita Puniya and Others* [2020] 3 SCR 833 **: (2020) 7 SCC 469 – referred to.**

List of Acts

Rights of Persons with Disabilities Act, 2016; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act 1995; Constitution of India.

List of Keywords

MBBS course; Admission for academic year 2024-25; PwD category; Medical examination; Designated Disability Certification Centre; Physical disability of speech and language; Quantification of disability; Purposive interpretation; Concept of reasonable accommodation; Article 41 of the Directive Principles of State Policy; Disability Assessment Boards; Judicial review.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10611 of 2024

From the Judgment and Order dated 29.08.2024 of the High Court of Judicature at Bombay in WPST No. 24821 of 2024

Appearances for Parties

S B Talekar, Ms. Pradnya Talekar, Pulkit Agarwal, Sudhanshu Kaushesh, Vibhu Tandon, Ms. Madhavi Ayyappan, Ajinkya Sanjay Kale, Shreyans Raniwala, Avnish Chaturvedi, Anubhav Lamba, Mohd Anas Chaudhary, Advs. for the Appellant.

Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Omkar Ramchandra Gond (the appellant) grew up in a middle-class family in the city of Latur in Maharashtra State. His father is a government servant. The appellant had a creditable academic performance in his tenth standard scoring 97.2%. He cleared his school final in the first division. The appellant aspired to be a doctor. Nothing wrong with it, except that he had to surmount a few legal hurdles enroute.

2. Admittedly, the appellant has speech and language disability and is diagnosed with Hypernasality with Misarticulation IN K/C/O Repaired Bilateral CLEFT of palate. The appellant is certified to have 45% (in some reports, it was mentioned as 44%) permanent disability as per the Disability Certificate dated 18.05.2017.

3. The appellant applied for the National Eligibility Cum Entrance Test NEET (UG), 2024 for admission to MBBS Course from the category of Persons with Disability (for short "PwD") and Other Backward Classes (OBC) on 18.02.2024.

4. The application form had a disclaimer clause which stated that the eligibility under the PwD Category was purely provisional and was to be governed as per the National Medical Commission (NMC) guidelines regarding admission of students with "specified disabilities" under the Rights of Persons with Disabilities Act, 2016 (for short "RPwD Act").

5. The appellant appeared for the NEET (UG) held on 05.05.2024 and qualified the entrance examination. The Schedule for Centralized Admission Process (CAP) Round-I counseling for admission was notified on 20.08.2024. The appellant applied for the centralized admission process and claimed reservation under the OBC and the PwD category. In the provisional merit list published on 26.08.2024, the name of the appellant figured at 42091. Under the Information brochure, candidates with disability have to submit a disability certificate issued for the year 2024 and have to undergo medical examination at the Disability Assessment Board.

6. The appellant approached the Designated Disability Certification Centre at Sir JJ Group of Hospitals on 16.08.2024. The Certification Centre certified that the appellant has physical disability of speech and language of 44% (in some reports, it was mentioned as 45%) and recorded that based on quantification of disability, the appellant was not eligible to pursue the medical course as per NMC norms. In view of that, the appellant was rendered ineligible person to obtain PwD reservation or to pursue medical course as per the NMC Gazette notification.

7. The Board of Governors of the Medical Council of India, the previous avatar of the NMC, had amended the Graduate Medical Education Regulations, 1997, vide notification dated 13.05.2019. The existing Appendix "H" was substituted with Appendix "H-1" providing for guidelines regarding admission to students with "specified disabilities" under the RPwD Act with respect to admission in MBBS course. As per clause 1(D) thereof, persons who have equal to or more than 40% disability were not eligible for Medical Course. The relevant clause of the schedule is extracted hereinbelow:-

Type of Disabilities	Specified Disability	Disability Range		
		Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
D. Speech & language disability$	Organic/ neurological causes	Less than 40% Disability		Equal to or more than 40% Disability
$ Persons with Speech Intelligibility Affected (SIA) shall be eligible to pursue MBBS Courses, provided Speech Intelligibility Affected (SIA) score shall not exceed 3 (three), which is 40% or below. Persons with Aphasia shall be eligible to pursue MBBS Courses, provided Aphasia Quotient (AQ) is 40% or below.				

Proceedings before the High Court:

8. Disappointed but by no means dispirited, the appellant moved the High Court of Judicature at Bombay in writ petition being W.P. Stamp No. 24821 of 2024 contending that the Medical Council of India/NMC is not empowered to lay down eligibility criteria in such a manner as to altogether take away the benefits under the RPwD

Act. Challenging the notification dated 13.05.2019 as well as the certificate issued by the Disability Certification Centre rendering him ineligible for pursuing the MBBS Course only on the ground of disability exceeding 40% without anything more, the appellant also sought interim relief permitting him to participate in the centralized admission process in admission to MBBS Course without considering the certificate issued by the Disability Certification Centre - Sir J.J. Group of Hospitals, Mumbai pending final disposal of the writ petition.

9. The appellant contended that there is nothing which would show he is not competent to pursue the course. The appellant also alleged discrimination. By the order of 29.08.2024, the High Court simply stood over the matter to 19.09.2024 and did not pass any interim order.

10. Running against time as the last date for submitting the choice for admission was 29.08.2024 and since the results of the CAP Round-I were to be declared on 30.08.2024, the appellant with great alacrity moved this Court seeking urgent reliefs.

Interim order by this Court:

11. When the matter came up on 02.09.2024, this Court, after hearing the counsel for the NMC, passed an order directing that the seat which the appellant would have been entitled, if rendered eligible, be kept vacant. This Court also directed the Dean, Byramjee Jeejeebhoy Government Medical College and Sassoon General Hospital, Pune to constitute a Medical Board consisting of one or more specialists, having domain expertise pertaining to the appellant's disability. The Medical Board was to specifically examine whether the speech and language disability of the appellant would come in his way of pursuing the MBBS Degree Course. This course of action was previously adopted in another case with similar facts in Writ Petition (C) No. 793 of 2022 ***(Vibhushita Sharma vs. Union of India & Ors)***.

Opinion of the Medical Board:

12. Ultimately, since the B.J Government Medical College did not have the facility, the task was entrusted to Maulana Azad Medical College, Government of NCT of Delhi. The report has since been received and the Medical Board has opined that the Appellant's speech and language disability would not come in the way of the appellant pursuing the MBBS Course, which is extracted hereinbelow:-

> "As directed by the Hon'ble Supreme Court of India, the medical examination of the petitioner, namely, Sh. Gond Omkar Ramchandra was conducted in the department of ENT(Room No. 609) by the above mentioned members of the Medical Board. Findings of the examinations are attached (OPD-116574108). The Board is of the opinion that the Speech & Language disability of the Petitioner namely Sh. Gond Omkar Ramchandra would not come in the way of pursuing the MBBS Course."
>
> (Emphasis Supplied)

13. We have heard Mr. S. B. Talekar, learned counsel for the appellant and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India and Mr. Gaurav Sharma, learned senior counsel for the NMC.

14. This Court made the following order on 18.09.2024:-

> "1. Leave granted.
>
> 2. For the reasons to be recorded separately, the appeal is allowed.
>
> 3. The appellant is directed to be admitted against the seat, which was directed to be kept vacant as per the orders passed by this Court."

Question before the Court:

15. Merely because the disability is quantified at 44%/45%, should the appellant be disqualified to obtain admission under the PwD Category for the MBBS Course?

Analysis and Reasoning:

16. Article 41 in the Directive Principles of State Policy reads as under:

> **"41. Right to work, to education and to public assistance in certain cases.-**
>
> The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."
>
> (Emphasis Supplied)

As is clear, it is the Constitutional goal of our nation that within the limits of its economic capacity and development, the State was to make effective provisions for securing the right to education including for the persons with disabilities.

17. The Rights of Persons with Disabilities Act, 2016 replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act 1995. The 2016 Act was a sequel to the United Nations Convention on the Rights of Persons with Disabilities. The Convention laid down principles to be followed by the States Parties for empowerment of persons with disabilities. The Convention laid down the following principles for empowerment of persons with disabilities, which the Act seeks to implement:-

(i) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(ii) Non-discrimination;

(iii) full and effective participation and inclusion in society;

(iv) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(v) equality of opportunity;

(vi) accessibility;

(vii) equality between men and women;

(viii) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

(Emphasis supplied)

18. The RPwD Act has several salutary provisions. For the purpose of our case, special emphasis needs to be provided on Sections 2(m), 2(r), 2(y), 3, 15 and 32. They are extracted herein below.

> "**2(m) "inclusive education"** means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;

2(r) "person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

2(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

3. Equality and non-discrimination.-

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

15. Designation of authorities to support.- (1) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity.

(2) The authority designated under sub-section (1) shall take measures for setting up suitable support arrangements

> to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.
>
> **32. Reservation in higher educational institutions**.- (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.
>
> (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

19. It is in pursuance of the 5% reservation provided for the persons with disabilities that the appellant applied for the MBBS course under the said category. He cleared the exam, however, was denied admission on the ground that his quantified disability was 44%/45%.

20. The Appendix H-I extracted above provides a peculiar scenario. While people with less than 40% disability are not eligible for PwD quota, though they can pursue the Medical Course, persons with equal to or more than 40% disability are not eligible for the medical course. Read literally, while persons with speech and language disability with less than 40% are not entitled to the reserved quota, if they have 40% or more disability they are rendered ineligible for the medical course. The column under the guidelines "*Eligible for Medical Course, Eligible for PwD quota*" is left blank reinforcing the absurd position that under this category no one is rendered eligible for the 5% reserved quota. Certainly that cannot be the legal position.

21. In any event, adopting a purposive interpretation of the RPwD Act and, more particularly, of the provisions extracted hereinabove, we are of the opinion that merely because of the quantification of the disability for speech and language at 40% or above, a candidate does not forfeit his right to stake a claim for admission to course of their choice. We say so for the reason that any such interpretation would render the clause in Appendix H-1 under the Graduate Medical Education Regulations of the Medical Council of India (precursor of the National Medical Commission) dated 13.05.2019, over broad for treating unequals equally.

22. In ***State of Gujarat and Another*** vs. ***Ambica Mills Ltd., Ahmedabad and Another*** (1974) 4 SCC 656, it was held that an over-inclusive classification includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. Among those with disability percentage of 40% or above in the category of speech and language disabilities, there will be individuals like the appellant to whom the disability may not come in the way of pursuing the particular educational course in question. Lumping together persons with benchmark disabilities who can pursue the educational course with those with the same disabilities who, in the opinion of the Medical Board, cannot pursue the course would tantamount to over inclusion. This is precisely what Article 14 frowns upon.

23. We are constrained to hold that the Appendix H-1 in the notification of 13.05.2019, issued by the Medical Council of India cannot be interpreted to mean that merely because on the quantification of the disability percentage exceeding the prescribed limits, a person automatically becomes ineligible for the medical course.

24. Dealing with an absolute bar imposed on women in seeking criteria or command appointments, this Court, while finding that such prescription fell foul of Article 14 held that implicit in the guarantee of equality is the principle that where the action of the State does differentiate between two classes of person, it does not differentiate them in an unreasonable or irrational manner. This Court further held that the right to equality is a right to rationality and whether a particular candidate should or should not be granted, could be a matter for the competent authority to decide but a blanket non-consideration of women for criteria or command appointments absent an individuated justification was not sustainable in law (See ***Secretary, Ministry of Defence v. Babita Puniya and Others*** (2020) 7 SCC 469 (para 85)

25. A Constitutional Court examining the plea of discrimination is mandated to consider whether real equality exists. This Court is not to be carried away by a projection of facial equality. Viewed at first blush, the regulation providing that all persons with 40% or more disability are uniformly barred from pursuing the medical course in the category of speech and language disability, may appear non-discriminatory. But here too, appearances can be deceptive. The Court of law is obliged to probe as to whether beneath the veneer of equality there is any invidious breach of Article 14.

26. This Court in ***Khandige Sham Bhat and Anr vs. Agricultural Income-tax Officer, Kasaragod, and Anr*, *AIR 1963 SC 591*** observed as under:

> "7. Though a law ex facie appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situate differently; but on investigation they may be found not to be similarly situate. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment…."

27. Similarly, in ***Lieutenant Colonel Nitisha & Ors. vs. Union of India & Ors.* *(2021) 15 SCC 125,*** this Court observed as under:

> "52. We must clarify here that the use of the term "indirect discrimination" is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion"

28. In fact, the "One Size Fits All" theory in deciding eligibility of persons with disability to avail the benefit of reserved seats was questioned first in ***Ravinder Kumar Dhariwal & Anr***. vs. ***Union of India and Others*** (2023) 2 SCC 209 wherein this Court had the following to say: -

> "77. Since disability is a social construct dependent on the interplay between mental impairment with barriers such as social, economic and historical among other factors, the one-size-fits-all approach can never be used to identify the disability of a person. Disability is not universal but

> is an individualistic conception based on the impairment that a person has along with the barriers that they face. Since the barriers that every person faces are personal to their surroundings — interpersonal and structural, general observations on "how a person ought to have behaved" cannot be made."

29. Close on the heels of ***Ravinder Kumar Dhariwal*** ***(supra)*** came an order of this Court in Writ Petition (C) No. 856 of 2023 [***Bambhaniya Sagar Vasharambhai*** vs. ***Union of India & Ors.]***. In the said writ petition, by order dated 22.09.2023, in Para 13, this Court opined as under:

> "13. In the opinion of this Court in cases even of specified disabilities, in all cases the standard of 40% may result in "one size fit all" norm which will exclude eligible candidates. The Union, therefore, shall consider the steps to mitigate such anomalies, because a lower extent of disabilities bar benefits and at the same time render them functional, whereas higher extent of disability would entitle benefits, but also result in denying them the benefit of reservation. The National Commission and the Central Government are directed to consider the problem and work out suitable solutions to enable effective participation."

30. Though ultimately Writ Petition (C) No. 856 of 2023 was dismissed on 31.10.2023, the issue with regard to finding a suitable solution to facilitate the effective participation of persons with disabilities by the Central Government, as suggested in the order of 22.09.2023, was directed to be complied with.

31. It must be said to the credit of the Union of India that the directions of this Court in ***Bambhaniya (Supra)*** was carried forward and the Government of India through the Ministry of Social Justice and Empowerment issued a communication dated 25.01.2024 to the National Medical Commission.

32. The communication was placed on record by Mr. S.D. Sanjay, learned ASG. The Government of India mentioned in the communication that the National Medical Commission was obliged to take into account the developments in aids and assistive devices and also in other technologies which are capable of reducing the effects of disability

and ensure that the statutory requirements of RPwD Act are followed in letter and spirit. It was further mentioned in the communication that, pursuant to deliberations, the National Medical Commission was required to take action of providing a drop-down menu or a mandatory category in the electronic application form. That drop down menu or the mandatory category was to mention which categories and percentage of disability are suitable for pursuing the MBBS Course, and, if necessary, the disability categories in the form should also show symptoms which would normally be excluded by the medical board. It was also stated therein that a Meeting should be held with the National Testing Agency and proper classification of disabilities should be made in the application form so as to ensure that once the candidate was allowed to take the examination, the candidate was not denied admission merely on the ground of disability. It was further mentioned that the regulations of NMC should immediately be reviewed.

33. Attention was also drawn of the National Medical Commission to the position obtaining in the Department of Personnel and Training (DoPT), wherein functional classification and physical requirements consistent with requirements of the identified service/posts are being worked out for Civil Services. It was directed that on the lines of the exercise by DoPT, NMC should also work out functional classifications and physical requirements consistent with the requirements of medical profession and review its regulations accordingly. It was ordered that NMC should sensitize all the colleges with respect to reservation criteria for persons with benchmark disabilities as per the RPwD Act and also towards the requirements of such candidates once admitted. Suggestion was made for formation of Appellate Body against the decisions of the Medical Boards.

(Emphasis supplied)

34. We commend the Union of India, for having issued the communication dated 25.01.2024 through the Ministry of Social Justice and Empowerment. We also deem it appropriate to extract the communication:-

> "Subject: Compliance of Hon'ble Supreme Court order dated 22.09.2023 in WP (C) 856 of 2023 in the matter of Bambhaniya Sagar Vashrambhai vs UOI and ors – reg

Sir,

I am directed to refer to the captioned Court case and to your letter dated 13.10.2023 and to say that the Central Government has enacted the Rights of Persons with Disabilities Act. 2016 which came into effect on 19.04.2017. Section 32 of the said Act provides that (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

Persons with Benchmark disability is defined under Section 2(r) as a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

2. It is also stated that at least 5% reservation to persons with benchmark disabilities in higher education is a statutory provision and denial of this benefit to eligible candidates is violation of a statutory provision. It is also a point to be noted that extending this facility to persons with disabilities having less than 40% disability would not qualify as fulfilment of statutory obligations. The Government is also cognizant of the challenges that exist in balancing the statutory rights of persons with benchmark disabilities viz a viz strenuous requirement of the medical profession. NMC is therefore requested to take into account the developments in aids and assistive devices and also in other technologies which are capable of reducing the effects of disability and ensure that the statutory requirements of RPwD Act, 2016 are followed in letter and spirit.

3. Further, it may be recalled that, in pursuance to your letter dated 13.10.2023 vide which certain suggestions have been made to address the issues faced by PwDs, a meeting was held on 21.12.2023 under the Chairpersonship of Joint Secretary, Policy. Draft Minutes of the meeting were issued on 26.12.2023 upon which comments were received from NMC and DGHS. In pursuance of these comments, the matter was further considered in the Department and the following emerged:

i.	While filling up the NEET electronic form by PwDs, there must be a drop down or a mandatory category which should mention which categories and percentage of disability are suitable for pursuing the MBBS course. If it is necessary, the disability categories may also show symptoms which would normally be excluded by the medical board. Such form should be accessible. NMC may also consider linking this form to DEPwD's UDID portal i.e. www.swavlambancard.gov.in	NMC to take action
ii.	A meeting should be done with National Testing Agency and proper classification of disabilities should be made in application forms so as to ensure that once the candidate is allowed to take the examination, she/he will not be denied admission merely on the ground of disability.	
iii.	The regulations issued by NMC regarding admission of students with specified disabilities must be immediately reviewed. In this context, reference may be taken from DoPT wherein functional classification and physical requirements (abilities/disabilities) consistent with requirements of the identified service/posts are being worked out for Civil Services. On the lines of this exercise by DoPT, NMC should also work out functional classifications and physical requirements (abilities/disabilities) consistent with the requirements of medical profession and review its regulations accordingly. While carrying out this exercise, NMC should also take into account assessment guidelines dated 04.01.2018 and amendments made thereto.	

iv.	The NMC should sensitize all the colleges with respect to reservation criteria for persons with benchmark disabilities (disability of 40% or more) as per the RPwD Act, 2016 and also towards the needs of such candidates once admitted.	
v.	The availability of medical boards in the country should be increased and there must be minimum 1 medical board in each State and UTs for proper medical examination of the students who have passed the examination. Further, larger States/ UTs should have sufficient number of such medical boards to streamline the process.	DGHS to take action
vi.	In case the PwD wants to challenge any decision of the medical board with regard to admission, an appellate body at the level of DGHS may be formed.	
vii.	All India Institute of Medical Sciences at all places should be designated for issuing certificates of eligibility for attaining medical education.	

In view of the above, NMC and DGHS is requested to take appropriate action and a report may be sent to this Department."

35. We have no reason to doubt that the National Medical Commission will expeditiously comply with the requirements in the communication of the Ministry of Social Justice and Empowerment dated 25.01.2024. In any event, we direct that the needful be done by the National Medical Commission before the publication of the admission brochure for the academic year 2025-26.

36. In fact, a perusal of the amendment notification dated 13.05.2019 and the Guidelines at Appendix H-1 would indicate that with regard to some categories of Disabilities particularly, Locomotor Disability, including specified disabilities like Leprosy cured person, Cerebral Palsy, Dwarfism, Muscular Dystrophy, Acid attack victims and other such as Amputation, Poliomyelitis etc. under the column "*Eligible for the Medical Course,Eligible for PwD Quota*" the following finds mention:-

"40%-80% disability

Persons with more than 80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is

> being used, to see if it is brought below 80% and whether they posses sufficient motor ability as required to pursue and complete the course satisfactorily."
>
> (Emphasis supplied)

37. Similarly, for specific learning disabilities, Perceptual disabilities, Dyslexia, Dyscalculia, Dyspraxia under the column "*Eligible for Medical Course, Eligible for PwD Quota*", it is mentioned as follows"

> "Equal to or more than 40% disability and equal to or less than 80%.
>
> But selection will be based on the learning competency evaluated with the help of the remediation/assisted technology/aids/infrastructural changes by the Expert Panel."

38. We are hopeful that in the revised regulations and guidelines which the National Medical Commission will issue, an inclusive attitude will be taken towards persons with disabilities from all categories furthering the concept of reasonable accommodation recognized in the RPwD Act. The approach of the Government, instrumentalities of States, regulatory bodies and for that matter even private sector should be, as to how best can one accommodate and grant the opportunity to the candidates with disability. The approach should not be as to how best to disqualify the candidates and make it difficult for them to pursue and realize their educational goals.

39. We have also examined the latest notified Guidelines for assessing the extent of Specified Disabilities dated 14.03.2024, which deals with the method for ascertaining the percentage of disabilities. In Clause 20.3.3, under the Computation of percentage Speech Disability, the following table is provided:-

> "**20.3.3. Computation of percentage Speech Disability**
>
> **(a) Speech Intelligibility Test:**
>
> The verbal output of person should be evaluated using Perceptual Speech Intelligibility Rating Scale [AYJNISHD (D), 2022] (Appendix IV) and percentage of Speech Intelligibility Affected (SIA) to be measured based on score as the table given below:

Point Scale	Description of Speech Sample	Percentage of Disability
1	Normal	0-15
2	Can understand without difficulty, however, feel speech is normal	16-30
3	Can understand with little effort occasionally need to ask for repetition	31-39
4	Can understand with concentration and effort especially by sympathetic listener, require a minimum of two or three repetition.	40-55
5	Can understand with difficulty and concentration by family but not others	56-75
6	Can understand with effort if content is known	76-89
7	Cannot understand at all even when content is known	90-100

(Emphasis supplied)

To illustrate, it will be seen that a person with 40 to 55% speech disability is one who "Can understand with concentration and effort" especially by a sympathetic listener; require a minimum of 2 or 3 repetitions. In fact, for the entire range, this is the criterion.

40. It is in matters like this that the principles of reasonable accommodation should come into full play. Section 2(y) of the RPwD Act, defines "reasonable accommodation" to mean necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others. The concept of reasonable accommodation would encompass within itself the deployment of a purposive and meaningful construction of the NMC Regulations of 13.05.2019 read with the Appendix H-1 guidelines in a manner as to further the objectives of the RPwD Act. The reasonable accommodation as defined in Section 2(y) of the RPwD Act should not be understood narrowly to mean only the provision of assisting devices and other tangible substances which will aid persons with disabilities. If the mandate of the law is to ensure a full and effective participation of persons with disabilities in the

society and if the whole idea was to exclude conditions that prevent their full and effective participation as equal members of society, a broad interpretation of the concept of reasonable accommodation which will further the objective of the RPwD Act and Article 41 of the Directive Principles of State Policy is mandated.

41. This concept of reasonable accommodation has come in for judicial interpretation in ***Vikash Kumar*** v. ***UPSC & Others*** (2021) 5 SCC 370 wherein this Court held that the principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. In Para 44, it was held as under.

> "44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in Sunanda Bhandare Foundation v. Union of India (2014) 14 SCC 383, where he stated : (SCC p. 387, para 9)
>
> "9. … In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic."

42. Thereafter, in the said judgment, this Court held in para 62, 63 and 65 as under.

> "62. The principle of reasonable accommodation acknowledges that if disability as a social construct has

to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends".

63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is "reasonable" because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

65. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also

account for the fact that disability based discrimination is intersectional in nature…."

43. It should be borne in mind that the RPwD Act which was enacted to give effect to the United Nations Convention on Rights of Persons with Disabilities - was with the objective of granting persons with disabilities full and effective participation and inclusion in society, grant them equal opportunity and to show respect for their inherent dignity, individual autonomy including the freedom to make their own choices.

44. This Court in ***Jeeja Ghosh & Anr. v. Union of India & Ors.*** ***(2016) 7 SCC 761*** observed as under :

> "40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation…"
>
> (Emphasis supplied)

45. In view of this mandate, while interpreting the RPwD Act and the agnate regulations, one must keep in mind the background and purpose for which the law was enacted. (See ***U.P. Bhoodan Yagna Samiti, U.P.*** v. ***Braj Kishore and others*** (1988) 4 SCC 274). In the said judgment, quoting from Lord Denning in "The Discipline of Law", this Court held as under:

> "15. When we are dealing with the phrase "landless persons" these words are from English language and

therefore I am reminded of what Lord Denning said about it. Lord Denning in "The Discipline of Law" at p. 12 observed as under: [Quoting from his decision in Seaford Court Estates Ltd. v. Asher (1949) 2 KB 481]

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this, or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ..."

16. And it is clear that when one has to look to the intention of the legislature, one has to look to the circumstances under which the law was enacted. The preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at p. 10, observed as under:

"At one time the Judges used to limit themselves to the bare reading of the statute itself — to go simply by the words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the statute as it appears to those who have to obey it — and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The statute comes to

> them as men of affairs — who have their own feeling for the meaning of the words and know the reason why the Act was passed — just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the statute — to see what was the evil which it was sought to remedy.
>
> It is now well settled that in order to interpret a law one must understand the background and the purpose for which the law was enacted…"
>
> (Emphasis supplied)

46. Disabilities Assessment Boards are not monotonous automations to just look at the quantified benchmark disability as set out in the certificate of disability and cast aside the candidate. Such an approach would be antithetical to Article 14 and Article 21 and all canons of justice, equity and good conscience. It will also defeat the salutary objectives of the RPwD Act. The Disabilities Assessment Boards are obliged to examine the further question as to whether the candidate in the opinion of the experts in the field is eligible to pursue the course or in other words, whether the disability will or will not come in the way of the candidate pursuing the course in question.

47. The concept of "inclusive education" has been elucidated in ***Avni Prakash*** v. ***National Testing Agency, (NTA) and others*** (2023) 2 SCC 286. This Court held as under.

> "40. Education plays a key role in social and economic inclusion and effective participation in society. Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act, 2016 provides statutory backing to the principle of inclusive education. Section 2(m) defines "inclusive education" as:
>
> "2. (m) "inclusive education" means a system of education wherein students with and without disability learn together

and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;"

48. While interpreting the Regulations and Guidelines, as provided in Appendix H-1 to the notification dated 13.05.2019, as they stood for the academic year 2024-25, we are constrained, keeping in mind the salutary object of the RPwD Act and Article 41 of the Directive Principles of State Policy, to direct that mere existence of benchmark disability of 40% or above (or such other prescribed percentages depending on the disability) will not disqualify a candidate from being eligible for the course applied for. The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Board concluding that candidate is not eligible for pursuing the course.

49. The Disability Assessment Boards will, pending formulation of appropriate Regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion.

50. Pending creation of the Appellate body, we further direct that such decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings. The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility for an independent opinion and relief to the candidate will be granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter.

51. Before we part, we will do well to recollect that acclaimed Bharatanatyam dancer Sudha Chandran, Arunima Sinha who conquered Mount Everest, prominent sports personality, H. Boniface Prabhu, entrepreneur Srikanth Bolla and Dr. Satendra Singh, the founder of 'Infinite Ability', are some of the shining daughters and sons from a long and illustrious list of individuals in India who scaled extraordinary heights braving all adversities.

52. The world would have been so much the poorer if Homer, Milton, Mozart, Beethoven, Byron and many more would not have been allowed to realize their full potential. Distinguished Indian Medical Practitioner Dr. Farokh Erach Udwadia in his classic work "The Forgotten Art of Healing and Others Essays' under the Chapter 'Art and Medicine' rightly extolls their extraordinary talent, and of the many more similarly circumstanced.

Conclusion and Directions:

53. For the reasons set out hereinabove,

(i) We hold that quantified disability *per se* will not dis-entitle a candidate with benchmark disability from being considered for admission to educational institutions. The candidate will be eligible, if the Disability Assessment Board opines that notwithstanding the quantified disability the candidate can pursue the course in question. The NMC regulations in the notification of 13.05.2019 read with the Appendix H-1 should, pending the re-formulation by NMC, be read in the light of the holdings in this judgment.

(ii) The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Boards concluding that the candidate is not eligible for pursuing the course.

(iii) The Disability Assessment Boards will, pending formulation of appropriate regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion.

(iv) Pending creation of the appellate body, we further direct that such decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings. The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility,

for an independent opinion and relief to the candidate will be granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter.

(v) We have already, pursuant to our order dated 18.09.2024, in view of the favorable report dated 13.09.2024 of the Maulana Azad Medical College, granted admission to the appellant. We confirm the admission and direct the concerned authorities to treat the admission as a valid admission in the eye of law.

54. The appeal is allowed and the impugned order dated 29.08.2024 is set aside. In view of our directions, Writ Petition (Stamp) No. 24821 of 2024 pending in the High Court of judicature at Bombay will stand disposed of in terms of the holding in the present judgment. No order as to costs.

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 10 S.C.R. 701 : 2024 INSC 776

Harshad Gupta
v.
The State of Chhattisgarh

(Criminal Appeal No. 4080 of 2024)

01 October 2024

[Surya Kant and Ujjal Bhuyan, JJ.]

Issue for Consideration

The Judge who had convicted the appellant was transferred post conviction, before the appellant could be heard on the quantum of sentence and a new Judge was posted in his place. Appellant relying on Sections 353 and 354, Cr.P.C sought direction from the High Court to the new Presiding Officer to re-hear the case, including on the question of conviction. High Court whether justified in dismissing the petition filed by the appellant and directing the new Presiding Officer to hear the appellant on the question of sentence and pass an appropriate order in terms of Section 235(2) of the Cr.P.C.

Headnotes†

Code of Criminal Procedure, 1973 – ss.235(1), (2) – Operation – Transfer of the Presiding Officer post conviction, the new Presiding Officer if obligated to hear the matter afresh including on the question of conviction:

Held: No – Post the judgment of conviction, the accused has a right to be heard on the quantum of the sentence – Complying with s.235(1), the appellant was duly heard and a judgment of conviction was recorded and pronounced on 30.04.2015 whereafter, the appellant was entitled to be heard on the question of sentence – However, since the appellant himself sought adjournments and exemption from personal appearance on the ground of his accident, meanwhile the Presiding Officer was transferred, and the new Presiding Officer was required to hear the appellant on the quantum of the sentence for compliance with s.235(2) and pass an appropriate order of sentence – The process and procedure contemplated u/s.235(2) cannot annul the judgment of conviction recorded u/sub-section (1) thereof – Both clauses operate in their respective fields, though sub-section (2) is contingent upon the outcome under sub-section (1) of s.235 – The occasion to comply

with sub-section (2) of s.235 arises only when there is a judgment of conviction passed u/s.235(1) – Thus, once the judgment dated 30.04.2015 was pronounced, the conviction of the appellant stood finalized within the meaning of s.235(1), whereupon the Trial Court became functus officio for the purpose of sub-section (1) of s.235 – The only issue that survived thereafter was of the quantum of sentence for which, the procedure contemplated under sub-section (2) was to be complied with – No infirmity in the impugned order passed by the High Court holding that the new Presiding Officer would hear the appellant on the question of sentence and pass an appropriate order. [Paras 14-16]

Code of Criminal Procedure, 1973 – ss.353, 354 – Compliance with – Plea of the appellant that the judgment of conviction against him did not satisfy the ingredients of s.353 r/w s.354, Cr.P.C. and hence, there was no 'judgment' within the meaning of sub-section (1) of s.235:

Held: Rejected – Judgment of conviction passed by the Trial Court satisfied s.354(1) – The said judgment was read out by the Presiding Officer in open court, in the presence of the appellant's counsel and it was well understood by his pleader – Thus, the Presiding Officer followed the procedure envisaged under sub-section (1) of s.353 – The Presiding Officer then listed the case to accord a hearing to the appellant on the quantum of sentence – There is no violation of ss.353 or 354. [Para 18]

List of Acts

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

List of Keywords

Judgment of conviction; Transfer of the Presiding Officer post conviction, New Presiding Officer; Quantum of the sentence; Right to be heard on the quantum of the sentence; Order of sentence; 'judgment'; Functus officio.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4080 of 2024

From the Judgment and Order dated 13.05.2019 of the High Court of Chhatisgarh at Bilaspur in CRLMP No. 444 of 2015

Appearances for Parties

Dr. Rajesh Pandey, Sr. Adv., Prashant Kumar Umrao, Ms. Nishi Prabha Singh, Advs. for the Appellant.

Arjun D Singh, Ms. Ankita Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

Leave granted.

2. The appellant's grievance is against the Judgment dated 13.05.2019 passed by the High Court of Chhattisgarh at Bilaspur, whereby his prayer to re-open the judgment of his conviction, hear the arguments afresh by the new Presiding Officer, and then deliver a judgment of conviction or acquittal, has been turned down. The facts may be noticed briefly:

3. FIR No. 03/13 was registered on 28.05.2013 at Police Station Jashpur under Sections 376 and 506 of the Indian Penal Code, 1860 (in short, the "IPC"). The appellant is the principal accused. His father was also named as accused of threatening the victim with dire consequences if she would not withdraw the complaint. The Trial Court framed charges under Sections 376(1) and 506 of the IPC against the appellant, in 2013. The Sessions trial was conducted and the final hearing was also concluded. The learned Additional Session's Judge, vide order dated 28.04.2015, adjourned the case for 30.04.2015 for pronouncement of judgment. The appellant was held guilty and convicted vide judgment pronounced on 30.04.2015.

4. Before he could be heard on the quantum of the sentence, the appellant moved an application on 30.04.2015 under Section 317 of the Code of Criminal Procedure, 1973 (in short, the "Cr.P.C.") to exempt him from personal appearance on the ground that he had met with an accident. In view of that application, the matter was adjourned on a few occasions to enable the appellant to recover from the accident.

5. In the meanwhile, the Presiding Officer of the Court, namely, Mr. J. R. Banjara, who had convicted the appellant, was transferred between 04.05.2015 and 15.05.2015. A new Presiding Officer, namely, Mr. Mohammad Rizwan Khan was posted in his place.

6. After that, the appellant approached the High Court seeking a direction to the new Presiding Officer to re-hear the case, including on the question of conviction. He relied upon Sections 353 and 354 of the Cr.P.C. It was contended that the new Presiding Officer was obligated not only to hear the appellant on the question of sentence but also on the point of conviction in terms of the above-mentioned provisions. The High Court, vide interim order dated 19.06.2015, stayed the proceedings before the Trial Court. Finally, vide the impugned order dated 13.05.2019, the petition filed by the appellant was dismissed, having found that:

   (i) the judgment of conviction was duly pronounced by learned Additional Sessions Judge, Mr. J.R. Banjara; and

   (ii) there was no illegality in the successor-in-office of the Court of Additional Sessions Judge to hear and determine the quantum of the sentence, even in a case where the judgment of conviction was pronounced by his predecessor-in-office.

7. The High Court, consequently, directed the new Presiding Officer to hear the appellant on the question of sentence and pass an appropriate order in terms of Section 235(2) of the Cr.P.C.

8. The aggrieved appellant is before us.

9. We have heard learned Senior Counsel/counsel for the parties and perused the record.

10. Section 235 of the Cr.P.C. reads as follows:

> "Judgment of acquittal or conviction
>
> 1. After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.
>
> 2. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law."

11. A plain reading of the provision leaves no room to doubt that a judgment of conviction shall have two components; namely,

   (i) Judgment on the point of conviction; and

(ii) Where the accused is convicted, a separate order of sentence to be passed according to law, after hearing the accused on the question of sentence.

12. The aforesaid provision mandates that once the judgment of conviction is delivered, the accused has a right to be heard on the quantum of the sentence. This is so, in view of the well-established principle of law that various relevant factors, including mitigating circumstances, if any, are to be kept in mind by the Court while awarding an adequate and proportionate sentence.

13. It is not in dispute that in deference to Section 235(1) of the Cr.P.C., the appellant was duly heard and a judgment of conviction was recorded and pronounced on 30.04.2015.

14. Consequential thereto, the appellant was entitled to be heard on the question of sentence. Since the appellant himself had been seeking adjournments and exemption from personal appearance due to the injuries suffered by him in a road accident and meanwhile the Presiding Officer had been transferred, it was but natural that the new Presiding Officer was required to hear the appellant on the quantum of the sentence, for faithful compliance with Section 235(2) of the Cr.P.C. and then, to pass an appropriate order of sentence.

15. The process and procedure contemplated under Section 235(2) of the Cr.P.C. cannot annul the judgment of conviction recorded under sub-section (1) thereof. Both clauses operate in their respective fields, though sub-section (2) is contingent upon the outcome under sub-section (1) of Section 235 of the Cr.P.C. The occasion to comply with sub-section (2) of Section 235, thus, arises only when there is a judgment of conviction passed under Section 235(1) of the Cr.P.C.

16. The contention of the appellant, that with the transfer of the Presiding Officer post his conviction, the new Presiding Officer was obligated to hear him afresh even on the question of conviction, is wholly misconceived and misdirected. Once the judgment dated 30.04.2015 was pronounced, the conviction of the appellant stood finalized within the meaning of Section 235(1) of the Cr.P.C., whereupon the Trial Court became *functus officio* for the purpose of sub-section (1) of Section 235 of the Cr.P.C. The only issue that survived thereafter was of the quantum of sentence for which, the

procedure contemplated under sub-section (2) was to be complied with. The High Court has, thus, rightly held that the successor officer would hear the appellant on the question of sentence and pass an appropriate order. We see no legal infirmity in the impugned order passed by the High Court.

17. Learned senior counsel for the appellant vehemently urges that the judgment of conviction, granted against the appellant, does not satisfy the ingredients of Section 353 read with Section 354 of the Cr.P.C. and hence, there is no `judgment' rendered in the eyes of law within the meaning of sub-section (1) of Section 235 of the Cr.P.C.

18. We are, however, not impressed by the submission. We say so for the reason that the Trial Court delivered a self-speaking judgment of conviction which satisfies all the constituents illustrated in Section 354(1) of the Cr.P.C. Further, the operative part of the Judgment as well as the order passed on that very date for granting exemption from personal appearance to the appellant, reveal that the said judgment of conviction was read out by the Presiding Officer in open court, in the presence of the appellant's counsel, and it was well understood by his pleader. The Presiding Officer thus, followed the procedure envisaged under sub-section (1) of Section 353 of the Cr.P.C. The next step to be taken by the Presiding Officer, was to list the case to accord a hearing to the appellant on the quantum of sentence. That is precisely what has been done in the instant case. We are, thus, of the view that there is not even a fragment of violation of Sections 353 or 354 of the Cr.P.C., as claimed on behalf of the appellant.

19. There is thus no merit in this appeal which is consequently dismissed.

20. The Presiding Officer, presently posted in the concerned trial Court, is directed to hear the appellant on the question of sentence as early as possible but not later than one month from the date of receipt of a copy of this Order. The necessary consequences will follow.

21. The appellant is directed to surrender before the Trial Court on 04.11.2024 at 10.00 a.m. for being taken into judicial custody. He shall be produced before the Trial Court on the date of hearing on the quantum of sentence as also the date of pronouncement of the order on sentence. In case he absents or absconds, the law must

take its own course. The Police Authorities are directed to ensure that the appellant remains present before the Court to meet the necessary consequences.

22. Ordered accordingly.

Result of the Case: Appeal dismissed.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 708 : 2024 INSC 769

Neelam Gupta & Ors.
v.
Rajendra Kumar Gupta & Anr.

(Civil Appeal No(s). 3159-3160 of 2019)

14 October 2024

[C.T. Ravikumar* and Sanjay Kumar, JJ.]

Issue for Consideration

Issue arose as to whether the impugned judgment is to be sustained in view of the indisputable or undisputed facts; whether the suit schedule property is the Joint Hindu Family property; whether the finding of the High Court that the plaintiff is the owner of the suit schedule property is the correct conclusion on assimilation of facts and appreciation of evidence; and whether the High Court was right in declining to accept the appellants' contention that they perfected the title over the suit land by adverse possession.

Headnotes†

Adverse possession – Title to the property – Suit for recovery of possession of the property by respondent no.1-plaintiff against the appellants-original defendants asserting that he purchased the suit property as per registered sale deed in 1968 from a common cousin of himself and the original defendants; and that since its registration he had been enjoying peaceful possession of the suit property under Bhumiswami Rights till he was dispossessed by the defendants in 1983 – Case of original defendants that their father and father of the plaintiff, purchased the suit property in the name of their nephew (common cousin) in 1963; that upon the death of plaintiff's father in 1967, the suit property was transferred in the name of the plaintiff, albeit claimed that its possession still remained with them; that in 1976 oral partition took place between their father-original defendant No.1 and plaintiff's family whereunder the suit property allotted to the share of defendant's family; that the property was part of Joint Hindu Family; and pleaded adverse possession and limitation, on the ground of being in possession of the suit schedule property for more than

* Author

12 years – Trial court dismissed the suit, and the first appellate court upheld the same – However, the High Court decreed in favour of the respondent no.1-plaintiff – Interference with:

Held: Not called for – Once the plaintiff proves his title over suit property it is for the defendant resisting the same claiming adverse possession that he perfected title through adverse possession and in terms of Art. 65 of the 1963 Act the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence only from the date the defendant's becomes adverse – Evidence on the part of the defendants reveal that instead of establishing '*animus possidendi*' under hostile colour of title they have tendered evidence indicating only permissive possession and at the same time failed to establish the time from which it was converted to adverse to the title of the plaintiff which is open and continuous for the prescriptive period – Requirements to co-exist to constitute adverse possession not established by the defendants – Reckoning of the period of limitation from the date of commencement of the right of ownership of the plaintiff over the suit land instead of looking into whether they had succeeded in pleading and establishing the date of commencement of adverse possession and satisfaction regarding the prescriptive period in that regard, rightly interfered with, by the High Court – High Court rightly held that the defendants had only permissive possession over the scheduled land and it was not adverse possession against the respondent – Suit property is not a Joint Hindu Family Property – High Court rightly held that the plaintiff is the owner of the suit property and that the plaintiff had acquired ownership over the property on the strength of sale deed – Plea as regards benami transaction also rejected – Furthermore, immovable property can be transferred in favour of a minor or a minor can be a transferee though not a transferor of immovable property – Thus, the cousin had no legal disability or disqualification at the time of purchase of suit land in 1963 in his name as also the plaintiff, as a transferee, at the time of execution of sale deed – No reason to ascribe voidness to the sale deeds or to hold that they did not have the effect of transfer of ownership – Alleged contempt that pending the instant appeal and after the passing of the order of status quo regarding possession, the defendants created third party rights in the property – Since the impugned judgment is upheld and the declaration that the first respondent is entitled to recovery

of possession of the suit property, has become final, in terms thereof, contempt petition closed – Limitation Act, 1963 – Art.65 – Transfer of Property Act, 1882 – Contract Act, 1872. [Paras 25, 29-31, 34, 35, 37, 40, 43, 45, 47, 49, 50]

Case Law Cited

Saroop Singh v. Banto and Ors. [2005] Supp. 4 SCR 253 **: (2005) 8 SCC 330;** *Mrs. Om Prabha Jain v. Abnash Chand & Anr.* [1968] 3 SCR 111 **: AIR 1968 SC 1083 – relied on.**

Arulvelu & Anr. v. State Rep. by Public Prosecutor & Anr. [2009] 14 SCR 1081 **: (2009) 10 SCC 206;** *General Manager (P), Punjab & Sind Bank and Others v. Daya Singh* [2010] 9 SCR 71 **: (2010) 11 SCC 233;** *Ram Sarup Gupta (dead) by Lrs. v. Bishun Narain Inter College and Others* [1987] 2 SCR 805 **: (1987) 2 SCC 555;** *Kashi Nath (Dead) through Lrs. v. Jaganath* [2003] Supp. 5 SCR 202 **: (2003) 8 SCC 740;** *Damodhar Narayan Sawale (D) through Lrs. v. Tejrao Bajirao Mhaske* [2023] 6 SCR 175 **: 2023 SCC OnLine SC 566;** *R. Rajagopal Reddy (D) by Lrs. v. Padmini Chandrasekharan (D) by Lrs.* [1995] 1 SCR 715 **: AIR 1996 SC 238;** *M. Durai v. Muthu and Others* [2007] 1 SCR 816 **: (2007) 3 SCC 114;** *Prasanna & Ors. v. Mudegowda (D) by Lrs.,* **2023 SCC OnLine SC 511;** *Vasantha v. Rajalakshmi* [2024] 2 SCR 326 **: 2024 SCC OnLine SC 132;** *Brij Narayan Shukla (D) through Lrs. v. Sudesh Kumar alias Suresh Kumar (D) through LRs. and Ors.* [2024] 1 SCR 60 **: (2024) 2 SCC 590;** *Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.* [2019] 11 SCR 74 **: (2019) 8 SCC 729;** *M. Siddiq (D) through Lrs (Ram Janmabhumi Temple case) v. Mahant Suresh Das and Ors.* [2019] 18 SCR 1 **: (2020) 1 SCC 1;** *D.R. Rathna Murthy v. Ramappa* [2010] 12 SCR 755 **: (2011) 1 SCC 158 –** referred to.

Books and Periodicals Cited

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List of Acts

Benami Transactions (Prohibitions) Act, 1988; Limitation Act, 1963; Transfer of Property Act, 1882; Contract Act, 1872; Majority Act, 1875; Limitation Act, 1908.

List of Keywords

Joint Hindu Family property; Perfected title over land; Adverse possession; Suit for recovery of possession; Sale deed; Bhumiswami Rights; Art.65 of the Limitation Act, 1963; Starting point of limitation; Right of ownership; *Animus possidendi*; Permissive possession; Prescriptive period; Period of limitation; Immovable property; Transfer in favour of minor; Legal disability; Disqualification; Contempt; Status quo regarding possession; Third party rights; Contempt petition closed; Concurrent findings; Ground for confirmation; Plea.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3159-3160 of 2019

From the Judgment and Order dated 25.07.2014 of the High Court of Chhatisgarh at Bilaspur in SA No. 401 of 2003

With

Contempt Petition (C) Nos. 517-518 of 2020 In Civil Appeal Nos. 3159-3160 of 2019

Appearances for Parties

N.K. Mody, Sr. Adv., Ms. Pratibha Jain, Divyakant Lahoti, Ms. Praveena Bisht, Ms. Vindhya Mehra, Kartik Lahoti, Ms. Garima Verma, Advs. for the Appellants.

Puneet Jain, Ms. Christi Jain, Umang Mehta, Abhinav Gupta, Yogit Kamat, Manav Arora, Ms. Shruti Singh, Ms. Akriti Sharma, Harsh Jain, Ms. Pratibha Jain, Divyakant Lahoti, Sumeer Sodhi, Soumit Ganguli, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

1. The legal representatives of original defendant No. 1 viz., appellant Nos. 1 to 3 herein and original defendant No. 2 in Civil Suit No.195A/95, are in appeal against the judgment dated 11.07.2014 passed by the High Court of Chhattisgarh at Bilaspur in Second

Appeal No. 401/2003, reversing the concurrent judgments of the Courts below and the consequently, drawn decree dated 25.07.2014.

2. The facts, in succinct, that led to the impugned judgment and decree are as follows:-

> "Respondent No.1 herein viz., Rajendra Kumar Gupta filed Civil Suit No.195A/95 (evidently, renumbered) admittedly on 24.12.1986, against the original defendants, namely, Ashok Kumar Gupta and Rakesh Kumar Gupta for recovery of possession of suit schedule property based on title besides claiming damages to the tune of Rs. 10,500/- and future damages at the rate of Rs. 1000/- per acre and for costs. It was averred that he purchased the suit schedule property admeasuring 7.60 acres comprised in Khasra No.867/1 of Mowa village in Tehsil and District Raipur, as per registered sale deed dated 04.06.1968 from one Late Sh. Sitaram Gupta, who was the common cousin of himself and the original defendants. Furthermore, he averred that since its registration he had been enjoying peaceful possession of the suit schedule property under *Bhumiswami Rights* till he was dispossessed by the original defendants in the month of July, 1983."

3. The original defendants jointly filed a written statement on 04.04.1990 contending that their father, Sh. Ramesh Chandra Gupta, and father of the plaintiff, Sh. Kailash Chandra Gupta, purchased the suit schedule property in the name of their nephew Late Sh. Sitaram Gupta, on 15.03.1963. They further contended that Ramesh Chandra Gupta and Kailash Chandra Gupta had also purchased another land admeasuring 5 acres comprised in Khasra No.924 of the same village. It was also contended by them that their father had installed electric pump and dug well besides constructing three rooms in the suit schedule property for dairy purpose. They averred, rather admitted, that upon the death of plaintiff's father on 25.12.1967, the suit schedule property was transferred in the name of the plaintiff in the year 1968 and his name was recorded in the revenue records, albeit claimed that its possession still remained with them. They went on to contend that Ramesh Chandra Gupta and Kailash Chandra Gupta were members of joint family and they had joint business of bangles in Firozabad in the State of Uttar Pradesh and that in the

year 1952 they started the business of bangles in Raipur by opening a shop in the name and style 'Laxmi Bangles Store'. According to them, in the year 1973 their father had opened another shop of bangles at Dhamtari and on 31.03.1976 an oral partition had taken place between their father viz., the original defendant No.1 and plaintiff's family whereunder land in Khasra No.924 admeasuring 5 acres and the bangle shop at Dhamtari were given to the plaintiff and his family and the suit schedule property and the bangle shop at Raipur were allotted to the share of defendant's family. They had also contended that till the aforementioned partition effected on 31.03.1976, the plaintiff was a member of the Joint Hindu Family. In their joint written statement, they had also taken up the pleas of adverse possession and limitation, as special objections on the ground of being in possession of the suit schedule property for more than 12 years.

4. Based on the rival pleadings, the Trial Court had framed 11 issues as hereunder:-

> *"1. Did the Plaintiff by purchasing the suit land through registered sale deed dated 04/06/1968 get the possession of the suit land?*
>
> *2. Whether the Plaintiff is Bhumiswami of the suit land?*
>
> *3. Did the father of the Defendants purchased the suit land in the name of his nephew in 1963 and 1967, since then the Defendants are in possession of the suit land?*
>
> *4. Whether the Defendants within the knowledge of the Plaintiff have completed 12 years of continuous and uninterrupted possession on the suit land?*
>
> *5. Did the father of the Defendants transfer the suit land in the name of the Plaintiff on papers on 04/06/1968 all the lands of Sitaram in which suit land is also included.*
>
> *6. Whether there is income of Rs. 1000 per year from the suit land?*
>
> *7. Is the claim of the Plaintiff is barred by Limitation?*
>
> *8. Did the Defendants in the year 1983 forcible take possession of the suit land.*

9. Is the Plaintiff entitled to get the possession of the suit land from the Defendants?

10. Is the Plaintiff entitled to get damages of Rs. 10500/- from the defendants/

11. Reliefs and costs?"

5. The Trial Court answered issue Nos.2 & 8 to 10 in the negative and issue Nos.6 & 7 in the affirmative. Furthermore, it was held that the evidence on record would reveal that prior to the year 1952, the father of the first respondent-plaintiff and father of original defendants were carrying on business in Bangles jointly and Bangle shops were opened in Raipur in the year 1952, and thereafter, in Dhamtari in the year 1973 as joint business. Joint business would create strong presumption of joint family. The Trial Court also held that the age of the aforesaid Sitaram, the vendor who was the common cousin of the plaintiff and the original defendants, was shown in Ext.P1/C – sale deed dated 04.06.1968, as 22 years and hence, at the time of purchase of the said suit schedule property, Sitaram must have been aged only 17 years. Consequently, it was held thus: -

"Till otherwise is not proved this evidence of age shows the incapacity of self earning and creates strong presumption that the suit land was purchased by the income of joint family. The defendants have also stated that on the suit land their father had in the year 1964 installed electric pump, dugged well and constructed gate, fencing and three rooms, which statement is unrebutted and that also clears that the suit land was joint family property.

By the aforesaid analysis, it is clear that the suit land was purchased by the joint family in the name of Sitaram and after purchase suit land was the Joint Hindu Family Property which was purchased by father of the Defendants in the year 1963 jointly with his brothers in the name of Sitaram."

(underline supplied)

6. After holding that the suit land was Joint Hindu Family property the Trial Court continued to consider the question whether by the purchase of the suit land under Ext.P1/C - sale deed dated 04.06.1968 the

plaintiff–first respondent herein accrued any right in the suit land based on Ex-P-1C. In that regard, the Trial Court held that since the suit schedule property was purchased in the year 1963, in the name of Sitaram out of the income of joint family, it became the joint family property and there was no evidence to show that Sitaram was then the head of the family. Consequently, the Trial Court held that Sitaram had no right to sell the suit land under Ext. P1/C – sale deed dated 04.06.1968 and, therefore, the execution of Ext.P1/C was without any authority or right and, therefore, it is void. That apart, the Trial Court upheld the contention of the original defendants that the suit was barred by limitation as the plaintiff–the first respondent was aware of the possession of defendant in the suit schedule property adverse to his interest since 1968. Based on such observations, conclusions and findings, the Trial Court dismissed the suit.

7. Aggrieved by the dismissal of the suit, the plaintiff- first respondent challenged the judgment and decree of the Trial Court in Civil Appeal No. 17 A of 2002 before the Third Additional District Judge, Raipur.

8. The First Appellate Court as per the judgment dated 09.04.2003 dismissed the appeal and confirmed the dismissal of the suit. Nonetheless, on an analysis of the evidence on record, the First Appellate Court interfered with the finding of the Trial Court that the suit schedule property was a Joint Hindu Family property and held thus: -

> *"The Trial Court had dismissed the suit by holding that the suit land was the Joint Hindu Family property and further that the suit was barred by time but I have after analysis of evidence held that the suit land was never the Joint Hindu Family property of the parties but have also held that the suit of the Plaintiff is barred by time. Under these circumstances, the finding recorded by the Trial Court against issue No. 7 for dismissing the suit is found to be in order. Hence, no case is made out to interfere with the judgment dated 13/10/1999 passed by the Trial Court."*
>
> *(underline supplied)*

9. It is feeling aggrieved by the judgment and decree of the First Appellate Court dated 09.04.2003 to the extent it is adverse to him

that the plaintiff-first respondent herein filed the S.A. No.401/2003 which culminated in the impugned judgment. As noted hereinbefore, as per the impugned judgment the High Court reversed the concurrent judgment and decree of dismissal of the suit and allowed the same after setting them aside. After allowing the appeal under the impugned judgment the suit of the plaintiff-first respondent herein was decreed on the following terms:-

> *"(A) Plaintiff is entitled for recovery of possession of the suit land bearing Khasra No. 867/ 1, area 7.60 acres situated at village Mowa, Tahsil and District Raipur from the defendants No. 1 and 2; and it is directed that defendants shall deliver the vacant and peaceful possession of the Schedule suit land to the plaintiff herein."*

10. A scanning of the impugned judgment of the High Court would reveal that the High Court virtually found that the appreciation of evidence by the courts below was perverse and on a proper appreciation of evidence on record felt that the plaintiff-first respondent herein had succeeded in establishing title over the suit land. Paragraphs 10 and 11 of the impugned judgment assume relevance in the context of the challenge made against the sale by the appellants herein and they read thus: -

> *"10. The Commissioner, by its order dated 29th March, 1988 again confirmed the order of Sub Divisional Officer, Raipur by dismissing the appeal filed by the defendants herein and declined to direct mutation in name of the defendants in the suit land. Thus, the document Ex.P-4 clearly recites the admission on the part of the defendants that the suit land is held by the plaintiff in his bhumiswami rights and to whom they cultivated the suit land for two consecutive years i.e. 1973 and 1974, not only this, defendants have clearly stated in document Ex.P-4 that they have cultivated the suit land only for more than two years. The date of the said document is 27.1.1981; and the instant civil suit has been filed on 24.12.1986.*
>
> *11. Coming back to the sale deed (Ex.P-1) dated 4.6.1986 by which the plaintiff has purchased the suit land on 4.6.1986, which clearly recites that the delivery of possession by erstwhile owner Sitaram Agrawal in*

favour of plaintiff coupled with the admission on the part of the defendants that the suit land was held by plaintiff only for the two consecutive years i.e. 1973 and 1974, they were in permissive possession of the suit land as Adhiyadar; therefore, it is held that the trial Court as well as first appellate Court have committed manifest illegality in holding that the plaintiff has failed to establish his title over the suit land. On the contrary it is held that the plaintiff has satisfactorily pleaded and established his title over the suit land and finding recorded by the two courts below with respect to the plaintiff's title is liable to be set aside."

11. The contentions of the appellants 1, 2 & 3 herein, who are legal representatives of original defendant No.1 as also appellant No.4 who was the original defendant No.2 is that the alleged sale effected as per Ext.P1/C – sale deed dated 04.06.1968 was merely on paper and was bogus and sham document. According to them, Sitaram, the common cousin of original defendants as also the plaintiff got no right to transfer the suit schedule property to the plaintiff as he himself had not accrued any right over the suit schedule property based on sale deed registered in the year 1963. It is their contention that the said property was purchased in the name of Sitaram by father of original defendants along with his brothers for the joint family (and thus in sum-and-substance) as their *benami* and hence, he was not the real owner of the suit schedule property. That apart, they would contend that they have perfected the title over the suit schedule property by way of adverse possession since they have been in continuous possession of the suit schedule property since the year 1968. That apart, it is contended that as rightly held by the Trial Court as also the First Appellate Court, the suit filed by the plaintiff-first respondent was barred by limitation as it was not filed within 12 years from the date of alleged sale.

12. Per contra, the learned counsel appearing for the first respondent would contend that the High Court was perfectly justified in interfering with the judgments and decree of the courts below as they were outcome of perverse appreciation of evidence. To buttress this contention, he relied on Section-4 of Benami Transactions (Prohibitions) Act, 1988 and Article 65 of the Limitation Act, 1963 and the decisions rendered thereunder and relied on by the High Court. It is the contention that in Ex- P-4, the respondent – defendants categorically admitted that

they were placed in possession of a suit land in 1973 and continued in possession up to 1974 as Adhiyadar (lessee) and hence, their possession could be termed only as permissive possession and it could never be said to be adverse possession except by proving that their possession is adverse to the title of the property to the knowledge of the true owner viz. the plaintiff for a period of 12 years or more. He would further contend that by no stretch of imagination possession of defendants as Adhiyadar (lessee) could be said to be adverse and it could only be permissive possession.

13. A careful analysis of the impugned judgment would reveal that while reversing the concurrent judgment of dismissal of the suit, the High Court found various perversities in the manner of appreciation of evidence. The High Court found that the defendants had never challenged the Ex- P- 1C sale deed dated 04.06.1968. Consequently, it was found that possession was transferred to the plaintiff in 1968 pursuant to the sale deed and Ex-P-2 and P-3, Khasra entries for the period of year 1971-1972 to 1977 and 1978 would further reveal the ownership and possession of the plaintiff over the suit schedule property. It was further found that though the defendants had contended that there occurred an oral partition of the properties in the year 1976 between the family of the plaintiff and the defendants whereunder, the defendants received the suit schedule property and shop at Raipur and the plaintiff received shop at Dhamtari and land in Khasra No. 924, the First Appellate Court held that the said oral partition was not proved by the defendants/the appellants herein and the said finding of the First Appellate Court had become final. The High Court had also taken note of the fact that earlier the defendants filed Ex- P-4 application dated 27.01.1981 (produced as Annexure P-13 in these proceedings) before Tahsildar, Raipur stating that they had been or they had cultivated the suit land for two years i.e. 1973 and 1974 as Adhiyadar (lessee) and thereby acquired the rights of occupancy tenants and their names be recorded in revenue records. It was found that in the said application they had again admitted the ownership of plaintiff over the suit schedule property. Ex- P-4 application was rejected by the Tahsildar as per order dated 22.06.1985 and the same was upheld by the Sub-Divisional Officer and later by the Commissioner as per orders dated 29.10.1986 and 29.03.1988 respectively. The High Court also found that the contents of Ex-P-4 application dated 27.01.1981 filed before Tahsildar, Raipur

was admitted by defendant No. 1 while being cross-examined ultimately to arrive at the conclusion that such permissive possession could not be converted as adverse possession except by proving their possession adverse to the title of the plaintiff for a continuous period of 12 years or more. Obviously, the High Court found that the contentions raised to claim the occupancy tenancy before the Tahsildar and the contentions *qua* adverse possession before the Civil Court are contradictory in nature. The High Court relied on the decision of this court in ***Indira v. Arumugam and Anr.***[1] to hold that when the suit is one for possession based on title and when once title is established on the basis of relevant documents and other evidence brought on record in such suit unless the defendant could prove adverse possession for the prescriptive period, the suit of the plaintiff could not be dismissed. Relying on the decision of this court in ***Saroop Singh v. Banto and Ors.,***[2] the High Court held that in the light of Article 65 of the Limitation Act, the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence from the date the defendant's possession became adverse. Furthermore, it was held that when plaintiff's title and possession over the suit schedule property within twelve years from the date of institution of the suit is proved, it is for the defendants to prove title by adverse possession and in that regard, the starting point of limitation in terms of Article 65 of the Limitation Act would commence from the date of defendant's possession becoming adverse and not from the date when the right of ownership is acquired by the plaintiff. Suffice it to say, that the concurrent judgment of dismissal of the suit by the Trial Court and the First Appellate Court on the ground that the suit was barred by limitation was set aside by the High Court under the impugned judgment assigning such reasons.

14. While considering the rival contentions raised before us to challenge/sustain the impugned judgment indisputable facts based on evidence on record and certain well settled position *qua* the laws involved on the factual matrix involved in the case on hand require to be borne in mind. The Trial Court dismissed the suit mainly on two counts, firstly, holding that the suit schedule property is a Joint Hindu Family

1 AIR 1999 SC 1549

2 [2005] Supp. 4 SCR 253 : (2005) 8 SCC 330

property and therefore, the common cousin Sitaram had no right to sell the property as per Ext.P1/C dated 04.06.1968 to the plaintiff (First respondent herein) and secondly, that the suit was barred by limitation. The judgment dated 09.04.2003 passed by the First Appellate Court in Civil Appeal No. 17 A / 2002 would reveal that after appreciating the evidence the First Appellate Court set aside the finding of the Trial Court that the suit schedule property is a Joint Hindu Family property. As a matter of fact, even after interfering with the said finding and holding it otherwise the First Appellate Court sustained the judgment of dismissal of the suit concurring with the finding of the Trial Court that the suit filed by the plaintiff was barred by limitation. Thus, it is evident that though, the Trial Court and the First Appellate Court are *ad idem* on the issue on limitation they were at issues upon the finding as to whether the suit schedule property is the Joint Hindu Family property. Despite the reversal of the finding of the Trial Court the defendants, who were respondents before the First Appellate Court, had not chosen to file appeal and had allowed the finding that the suit schedule property is not a Joint Hindu Family property to become final, for reasons best known to them. The First Appellate Court, *inter alia,* considered, rather, re-appreciated the oral testimony of the original defendant No.1-Shri Ashok Kumar Gupta who was examined as DW-1 and also documentary evidence. On such appreciation, it was held that the suit schedule property is not a Joint Hindu Family property of the four sons of late Mangal Sen Gupta, viz., plaintiff's father late Shri Ramesh Chand Gupta, defendant's father Late Shri Ramesh Chand Gupta, Late Ram Prasad and Beniram Gupta. It is despite all such conclusions and finding that the respondents before the first appellate court viz., the appellants herein did not file cross-appeal or cross-objection to challenge the adverse finding that the suit schedule property is not a Joint Hindu Family property before the High Court. Suffice it to say that in the said circumstances the appellants cannot be permitted to canvass that suit schedule property is a Joint Hindu Family Property.

15. That apart, a scanning of the impugned judgment would reveal that the High Court has picked up certain crucial perversities that infected the judgments of the courts below. In Stroud's Judicial Dictionary of Words & Phrases, 4th Edn., the expression 'perverse' has been defined thus: -

> *"Perverse. – A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.*
>
> *In the decision in Arulvelu & Anr. v. State Rep. by Public Prosecutor & Anr.[3] this Court held that 'perverse finding' would mean a finding which is not only against the weight of evidence but is altogether against the evidence itself.*
>
> *In the decision in General Manager (P), Punjab & Sind Bank and Others v. Daya Singh,[4] this Court held perverse finding as one which is based on no evidence or one that no reasonable person would arrive at. Furthermore, it was held that unless it is found that some relevant evidence had not been considered or that certain inadmissible material had been taken into consideration the finding could not be said to be perverse."*

16. Bearing the aforesaid position as to perverse finding we will proceed to consider whether the impugned judgment is to be sustained in view of the indisputable or undisputed facts and the decisions of precedential value applicable to such situations and circumstances revealed from the evidence on record. Before proceeding to undertake such a consideration it is not inappropriate to refer to the settled positions of law with respect to pleadings in civil proceedings before a civil court.

17. The ordinary rule of law is that evidence can be permitted to be given only on a plea properly raised and not in contradiction of the plea (see the decision in ***Mrs. Om Prabha Jain v. Abnash Chand & Anr.***[5]*).*

18. In the decision in ***Ram Sarup Gupta (dead) by LRs v. Bishun Narain Inter College and Others,***[6] this Court held: -

> *"....It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be*

3 [2009] 14 SCR 1081 : (2009) 10 SCC 206

4 [2010] 9 SCR 71 : (2010) 11 SCC 233

5 [1968] 3 SCR 111 : AIR 1968 SC 1083

6 [1987] 2 SCR 805 : (1987) 2 SCC 555

considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

19. In ***Kashi Nath (Dead) through LRs. v. Jaganath,***[7] this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence could not be looked into or relied on. In ***Damodhar Narayan Sawale (D) through LRs. v. Tejrao Bajirao Mhaske,***[8] this Court held:-

"……the well neigh settled position of law is that one could be permitted to let in evidence only in tune with his pleadings. We shall not also be oblivious of the basic rule of law of pleadings, founded on the principle of secundum allegata et probate, that a party is not allowed to succeed where he has not set up the case which he wants to substantiate."

20. Now, for undertaking a consideration as mentioned above, we will firstly refer to the pleadings of the defendants in their jointly filed written statement. In paragraph 1-a, thereof it was averred thus: -

"1-a… True and correct position is that plaintiff's father late Kailash Chand; defendants' father late Ramesh Chandra; late Ram Prasad Gupta; and Beni Ram Gupta, all sons of Mangal Sen Gupta, were members of Hindu Undivided Family and all of them were doing their business of manufacturing glass bangles in Firozabad (Uttar Pradesh) in the name and style of Ganesh Glass Bangles. In the year 1952, the father of the defendants and father of plaintiff opened a shop in Raipur City in the name of Lakshmi Bangle Stores. Thereafter Defendants' Father Late Ramesh Chandra and Plaintiff's father purchased suit lands on 15.03.1963 in the name of their nephew late Sitaram for a total price of Rs. 8,950/. Because late Sitaram was a member of the Joint Family…"

7 [2003] Supp. 5 SCR 202 : (2003) 8 SCC 740

8 [2023] 6 SCR 175 : 2023 SCC OnLine SC 566

"… In the year 1968, late Ram Prasad who was the brother of Defendant's father requested Defendants' father to transfer the suit lands and other lands which are in the name of his (Ram Prasad's) son Sitaram in favour of any other member. Because Sitaram's condition is not sound and he can ruin and fritter away suit lands under influence from anyone. Thereafter Defendants' father transferred suit lands and other lands which were in the name of Sita Ram, in favour of the plaintiff on 4.6.1968 at an estimated price, although those lands were purchased for Rs. 16,000/- and suitable amendments were made in the records also. But suit lands were always maintained and occupied by the defendants herein and their father. In the year 1973, brothers of Defendants' father opened a bangle shop in Dhamtari and plaintiff and his brother Surinder used to sit in this shop. Later on, an oral partition was arrived at in between the Defendants' father and Plaintiff's family according to which the shop in Dhamtari and agricultural lands of khasra no. 924 measuring 5.00 acres situated in Village Mowa were given to plaintiff and his family. Whereas suit lands herein and the shop in Raipur fell to the share of defendants."

21. In paragraph 1-b, thereof it was averred as under:-

"1-b. In fact suit lands were always and even today also are in possession of defendants and their father and after the aforesaid partition, defendants and their father and after the aforesaid partition, defendants and their father became absolute and exclusive owners of the suit lands and plaintiff has absolutely no right or interest in the suit lands."

22. It is true that in paragraphs 9 and 10 of the written statement special objections were taken as under: -

"9. Even if it is presumed that defendants are not the owners of the suit lands described in paragraph 1 above, then also defendants have become owner of the suit lands due to their constant and uninterrupted possession thereof since last more than 12 years and which was within the full knowledge of the plaintiff. Therefore suit of the plaintiff is liable to dismissed on this ground alone."

"10. THAT Suit is beyond the prescribed limitation and as such is liable to be dismissed with costs."

23. Now, having noted the aforementioned specific averments in the written statement and the positions of law regarding pleadings referred above, we will refer to the oral evidence of original defendant No.1, who was examined as DW-1. The chief examination of DW-1 would reveal that in contradiction to the averment that the defendants' father late Ramesh Chandra and plaintiffs' father purchased suit lands on 15.03.1963, Ashok Kumar Gupta deposed that the disputed land were purchased in jointness by his father and his three brothers, namely, Beni Ram Gupta, late Ram Prashad Gupta and late Kailash Gupta and hence, it was a joint family. He would also depose that it was so purchased in the name of Sita Ram Gupta in the year 1963. It is to be noted that while being cross examined, he would depose: -

"disputed lands were purchased by my father in the name of Sita Ram. But neither the original nor the copy of that sale deed has been filed. We did not give any application for mutation of our names on the disputed lands in the year 1976 after partition had been arrived at."

24. We have referred to the pleadings and the evidence adduced by the defendants not for the purpose of re-visiting the findings of the First Appellate Court that the suit schedule property is not a joint family property. We will reveal the *raison d'etre* therefor, a little later.

25. In view of the non-availability of the contention for the appellants that the suit schedule property is a Joint Hindu Family property. The next question is whether the finding of the High Court that the plaintiff is the owner of the suit schedule property is the correct conclusion on assimilation of facts and appreciation of evidence. We have no hesitation to answer it in the affirmative. The sale deed dated 04.06.1968 (Ext.P1/C) is a registered sale deed whereunder the plaintiff had purchased the suit land from late Shri Sita Ram Aggarwal.

26. It is a fact that the Trial Court held Ext.P1/C-sale deed dated 04.06.1968 as void on twin grounds. As a matter of fact, the Trial Court held that in Ext.P1/C the age of Sh. Sitaram was shown as 22 years and hence, when the suit land was purchased in the name of Sitaram on 15.03.1963, Sh. Sitaram must have been aged 17 years. Further, it was held:-

"Till otherwise is not proved this evidence of age shows the incapacity of self-earning and creates strong presumption that suit land was purchased by the income of joint family."

27. The Trial Court further held in paragraphs 16 and 17 of its judgment thus:-

"16. Now the analysis of the point that did the Plaintiff purchases the suit land through Exhibit P-1 sale deed or whether any right on the suit land accrues to the Plaintiff on the basis of document Exhibit P-1 C. According to previous paragraph the burden to prove the illegality of Exhibit P-1C is on the Defendants and to prove Exhibit P-1 illegal Defendants have failed and in the previous concluded issue it is held that the suit land after being purchased in the name of Sitaram was the property of joint family. There is no evidence that shows that Sitaram was the head of the family therefore, it is held that Sitaram had no right to sell the suit land by the sale deed Exhibit P-1 C executed without any authority or right is void.

17. Another ground for concluding that Exhibit P-1 C is void is that when it is proved that the Plaintiff on the date of sale i.e. 04/06/1968 was one of the member of joint family and was minor at that time then what was the need for which one member of the joint family to sell the Suit land to another member of the same joint family. On the date of sale the Plaintiff being the purchaser was minor and had no capacity of earning money on his own. The business of Plaintiff's father was joint business. It appears that the intention of the joint family behind that action was to keep the suit land and other properties of sitaram in the name of the Plaintiff. But it is pertinent to mention that even after such intention Exhibit P-1 C is not transfer on papers only and therefore Exhibit P-1 does not bear any legal weightage."

28. It is to be noted that though the First Appellate Court reversed the finding of the Trial Court that suit land is a Joint Hindu Family property, it did not consider in detail and arrive at any positive finding as to the correctness or otherwise of the declaration of the Trial

Court of Ext.P1/C as void. At any rate, the First Appellate Court did not set it aside. At the same time, it may be possible to infer from the following recital from paragraph 17 of the judgment of the First Appellate Court that it held the finding of the Trial Court that sale of suit land by Sitaram in favour of the plaintiff did not confer any title to the plaintiff as not one in accordance with law: -

> *"……But the Trial Court had treated the suit property as Joint Hindu Family property and has further held that sale of the suit land by the Sitaram in favour of the plaintiff does not confer any title on the plaintiff which finding is not in accordance with law."*

29. In the contextual situation, especially with reference to the observation and finding of the Trial Court on the ground of minority at the time of purchase of suit land, be it that of Sitaram or plaintiff, we think it only appropriate to observe and hold thus, in the fitness of things: -

Section 6(h) of the Transfer of Property Act provides *inter alia,* that no transfer can be made "to a person legally disqualified to be a transferee." Section 7 of the Transfer of Property Act deals with persons competent to transfer. It provides that every person competent to contract is competent to transfer property to the extent and in the manner allowed and prescribed by any law for the time being in force. Section 11 of the Indian Contract Act, 1872, provides as to who are competent to contract and it provides that every person is competent to contract who is of the age of majority according to the law to which he is subject (of course the reference is to the Indian Majority Act, 1875) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

30. Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property.

In such circumstances, it can only be said that Sh. Sitaram had no legal disability or disqualification at the time of purchase of suit land on 15.03.1963 in his name as also the plaintiff, as a transferee, at the time of execution of Ext.P1/C - sale deed on 04.06.1968. It is nobody's case that at the time of execution of Ext.P1/C Sitaram had not attained majority.

31. Owing to the oscillative stand of the defendants/the appellants over the sale deed dated 15.03.1963 and 04.06.1968, and on account of the disentitlement of the defendants to resurrect the contention that the suit land is a Joint Hindu family property coupled with the indisputable position obtained from the materials on record that admittedly suit land was purchased in the name of Sh. Sita Ram, we find absolutely no reason to ascribe voidness to the said sale deed dated 15.03.1963 as also Ext.P1/C sale deed dated 04.06.1968 or to hold that they did not have the effect of transfer of ownership. Though, the defendants did not raise a contention specifically on the ground that Sh. Sita Ram was a benami, the said question whether such a contention is available and can be sustained by the defendants to invalidate the said sale deeds have been gone into by the High Court taking note of the contention that though it was purchased in his name in the year 1963 he did not have right to transfer the suit land to the plaintiff as per Ext.P1/C-sale deed. In that regard, Section 4 of the Benami Transaction Act, 1988 was referred to by the High Court. After referring to Sub-sections 4 (1) and (2) thereof, the High Court held that no suit, claim or action to enforce a right in respect of any property held benami shall lie 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 because of the prohibitory nature therefor. Relying on the decision of this Court in ***R. Rajagopal Reddy (D) by LRs. v. Padmini Chandrasekharan (D) by LRs.***[9] and in view of the prohibition contained in the aforesaid provisions, the High Court virtually held such a contention that Sh. Sita Ram was not the owner of the property with right to alienate, (of course, on attaining majority) as also the challenge against the right acquired by the plaintiffs pursuant to the purchase of the suit land under Ext.P1/C

9 [1995] 1 SCR 715 : AIR 1996 SC 238

as meritless. Suffice it to say that in view of the reasons assigned by the High Court and given by us *supra*, there can be no doubt with respect to the transfer of the ownership of the suit land from Sh. Sita Ram to the plaintiff on the strength of Ext.P1/C sale deed.

32. The question that survives further consideration is whether the High Court was right in declining to accept the appellants' contention that they perfected the title over the suit land by adverse possession. While being cross examined as DW-1, the original defendant No.1 would depose thus: -

> *"An application was given by me and my brother in the Court of Tehsildar for mutation of our names on the disputed lands on the ground of lease and our possession of the lands. Ext. P4 is that application and it bears my signature and portion A-A and signature of my brother at B-B."*

33. During further cross examination, he would depose: -

> *"Our name was not legally mutated on the disputed lands in the revenue court under Application Ext. P4."*

34. We have already found that the High Court was perfectly correct in holding that the plaintiff had acquired ownership over the property on the strength of Ext.P1/C sale deed. In such circumstances, the claim put forth as relates perfecting the title by adverse possession as also the suit being barred by limitation have to be considered with reference to the oral testimony of DW-1 as extracted above and the other allied evidences and also the various decisions referred to and relied on by the High Court to negate the said claim based on adverse possession. The deposition of DW-1 himself would go to show that the original defendants applied for getting occupancy right over the said property and in that regard filed Ext.P4 and at the same time sought for entering their names in place of the plaintiff in respect of the suit land in revenue records. However, such a mutation had never happened. In fact, the evidence would reveal that the defendants made an application on 27.01.1981 (Ext.P4) before the Tehsildar, Raipur, stating that they have taken the suit land on lease as a Adhiyadar from plaintiff in 1973-1974 and cultivated the same for more than two years and thereby they became the absolute owners of the property in question. In the said application in paragraph (1) they stated specifically that they

took agricultural lands on lease (*patta*) from the plaintiff Rajendra Kumar under his ownership. It is a fact borne out from the records that the said application was rejected by the Tehsildar vide order dated 22.06.1985 and the appeal against the same was dismissed by Sub-Divisional Officer, Raipur on 29.10.1986. Though, the matter was further taken up before the Commissioner, he confirmed the order of the SDO as per order dated 29.03.1988. These evidence available on record were duly taken note of and dealt with by the High Court. The factum of submission of Ext.P4 application and the passing of orders thereon, as above, are indisputable and undisputed and hence, in the teeth of evidence, as above, the defendants/the appellants cannot claim adverse possession against the respondent/ the plaintiff. In view of the above indisputable and undisputed facts as also the rejection of the contention of voidness of the sale deeds referred above, the defendants would not be justified in claiming that they had perfected the title by adverse possession and at the same time the aforesaid position would reveal that their possession was permissive in nature. The conclusion so arrived by the High Court based on proper appreciation of the evidence, in detail, as is discernible from the impugned judgment is nothing but the outcome of correct appreciation of the materials on record.

35. It is also a fact that the defendants earlier took up a contention that there occurred an oral partition of the properties between the family of plaintiff and defendants in the year 1976 whereunder they received the suit land and the bangle shop at Raipur. The First Appellate Court after considering the said case declined to accept the claim regarding oral partition and held the oral partition as not proved and that finding of the First Appellate Court was also permitted to become final by the appellants herein.

36. Now, we will revert back to the claim of adverse possession raised by the appellants. In this context, it is also relevant to refer to the decisions of this Court relied on by the High Court to reject their claim of the adverse possession. In ***Indira's*** case (supra), whereunder this Court held that once the plaintiff proved his title, the defendant in order to claim ownership had to establish on the basis of relevant documents and other evidence to prove the plea of adverse possession for the prescriptive period and unless it is so proved, the plaintiff could not be non-suited.

37. We have already taken note of the fact that the High Court had duly taken note of Ext.P4 application submitted by the defendants, and also the evidence of DW-1, while being cross examined which were not given due weight by the Courts below. We have also found that the High Court has rightly reached the conclusion that the appellants herein had only permissive possession over the scheduled land and it was not adverse possession. In the contextual situation the following decisions including the one in ***Saroop Singh v. Banto,***[10] relied on by the High Court, assume much relevance. Paragraphs 28, 29 and 30 of ***Saroop Singh's*** decision read thus: -

> *"**28**. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.*
>
> ***29.** In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak [(2004) 3 SCC 376].)*
>
> ***30.** "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did*

10 [2005] Supp. 4 SCR 253 : (2005) 8 SCC 330

not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita [(2004) 1 SCC 271])"

38. The decision of this Court in ***M. Durai v. Muthu and Others,***[11] reiterated the law laid down, as above in ***Saroop Singh's*** case, and further held thus: -

> *"7. The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-à-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."*

39. The law laid down in ***Saroop Singh's*** case was again reiterated by this Court in the decision in ***Prasanna & Ors. v. Mudegowda (D) by LRs***[12] and ***Vasantha v. Rajalakshmi.***[13]

40. In the light of ***Saroop Singh's*** case there can be no doubt that once the plaintiff proves his title over suit property it is for the defendant resisting the same claiming adverse possession that he perfected title through adverse possession and in that regard, in terms of Article 65 of the Limitation Act, 1963 the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence only from the date the defendant's becomes adverse.

41. In the decision in ***Brij Narayan Shukla (D) through LRs. v. Sudesh Kumar alias Suresh Kumar (D) through LRs. and Ors.,***[14] this Court while considering the question whether tenants of original owner could claim adverse possession against transferee of land lord held that tenants or lessees could not claim adverse possession

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11 [2007] 1 SCR 816 : (2007) 3 SCC 114

12 2023 SCC OnLine SC 511

13 [2024] 2 SCR 326 : 2024 SCC OnLine SC 132

14 (2024) 2 SCC 590

against their landlord/lessor, as the nature of their possession is permissive in nature.

42. In the contextual situation, especially in view of the nature of the evidence adduced by the defendants in setting up and supporting the claim of adverse possession, the decisions of this Court in ***Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.***[15] and the decision of a Constitution Bench in ***M. Siddiq (D) through LRs (Ram Janmabhumi Temple case) v. Mahant Suresh Das and Ors.***[16] require reference. Paragraph 60 of the decision in ***Ravinder Kaur Grewal's*** case, in so far as it is relevant, reads thus: -

> *"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required….."*

43. In the case on hand, the evidence on the part of the defendants/appellants herein would reveal that instead of establishing '*animus possidendi'* under hostile colour of title they have tendered evidence indicating only permissive possession and at the same time failed to establish the time from which it was converted to adverse to the title of the plaintiff which is open and continuous for the prescriptive period.

44. In ***M. Siddiq's*** case (supra) paragraphs 1142 and 1143 assume relevance and they, in so far as relevant to this case, run as under: -

> *"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore,*

15 [2019] 11 SCR 74 : (2019) 8 SCC 729

16 [2019] 18 SCR 1 : (2020) 1 SCC 1

the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case."

45. Upon considering the evidence on the part of the appellants herein (the defendants), we have no hesitation to hold that the requirements to co-exist to constitute adverse possession are not established by them. So also, it can only be held that the reckoning of the period of limitation from the date of commencement of the right of ownership of the plaintiff over the suit land instead of looking into whether they had succeeded in pleading and establishing the date of commencement of adverse possession and satisfaction regarding the prescriptive period in that regard, was rightly interfered with, by the High Court.

46. There can be no doubt that being concurrent cannot be a ground for confirmation and as held by this Court in ***D.R. Rathna Murthy v. Ramappa,***[17] concurrent findings could be set aside if perversity is found with the impugned decision.

17 [2010] 12 SCR 755 : (2011) 1 SCC 158

47. The upshot of the discussion as above is that the well-merited decision of the High Court in the impugned judgment invite no interference in exercise of appellate jurisdiction and the appeals are liable to be dismissed. Hence, the captioned appeals are dismissed. No order as to costs.

Contempt Petition (C) Nos. 517-518 of 2020

IN

Civil Appeal Nos. 3159-3160 of 2019

48. The Contempt Petition arises out of an order passed on 27.03.2015 in Civil Appeal Nos. 3159-3160 of 2019 when it was remaining only as SLP Nos. 6995-6996 of 2015. This court, while issuing notice ordered thus: -

> *"Status quo regarding possession, as it exists today, shall be maintained by the parties, till further orders."*

On 27.10.2020 this court passed another order, wherein, inter-alia, it was ordered:

> *"It is made clear that on the next occasion, the contempt petition as well as CA Nos. 3159-3160/2019 shall be disposed of finally."*

49. The alleged contempt is that pending the Civil Appeal and after the passing of the order of status quo regarding possession, the respondents in the contempt petition viz., the appellants created third party rights in the property. Obviously, with the dismissal of the civil appeals the impugned judgment and decree of the High Court got confirmed and the declaration that the first respondent in the appeal – plaintiff is entitled to recovery of possession of the suit property mentioned specifically therein has become final. Therefore, indisputably, in terms of the judgment and decree the appellants herein are bound to deliver vacant and possession of the scheduled suit land to the plaintiff viz., the first respondent.

50. Since the same is executable we do not propose to go into the contentions in the contempt petition and are inclined only to close the contempt petition in view of the judgment in Civil Appeal Nos. 3159-3160 of 2019 and to discharge the notice issued to alleged

contemnors and to leave the first respondent in the Civil Appeals viz., the plaintiff to execute the decree, in accordance with law.

51. Accordingly, the contempt petition is closed as above.

Result of the Case: Appeals dismissed.
Contempt petition closed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 10 S.C.R. 736 : 2024 INSC 792

Union of India
v.
Pranav Srinivasan

(Civil Appeal No. 5932 of 2023)

18 October 2024

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

Issue for Consideration

The issue involved in the instant cases concerns the grant of Indian citizenship to the respondent.

Headnotes

Constitution of India – Arts.5, 6, 7, 8 – Citizenship Act, 1955 – ss.5, 8 – Citizenship Rules, 2009 – Respondent's grandparents were born in India before independence – His parents were born in India, father in 1963 and mother in 1972 – On 19.12.1998, his parents adopted citizenship of Singapore – Respondent was born on 01.03.1999 in Singapore – On 05.05.2017, respondent sought for resumption of his Indian citizenship, however, he was found ineligible u/s. 5 of the 1955 Act – Writ petition was filed by the respondent before the High Court – High Court held that he was entitled to resume his citizenship in accordance with s.8(2) of the 1955 Act – Correctness:

Held: On the face of it, Article 5 of the Constitution will apply to a person who is domiciled in the territory of India on 26.01.1950 – Therefore, this provision will not apply in the present case – Article 6 will have no application as it applies to persons who have migrated to India from Pakistan – If Article 8 was intended to apply to a foreign national born after the commencement of the Constitution, the provision would not be referring to "who is ordinarily residing in any country outside India so defined" – So defined means India as defined in the 1935 Act, as originally enacted – Moreover, Article 8 uses the expression "who is ordinarily residing" – Therefore, the provision will only apply to someone ordinarily residing on the date of commencement of the Constitution in any country outside India as defined in the 1935 Act, as originally enacted – Article 8 will not have application on respondent's case – As far as citizenship

* Author

Act is concerned, for applicability of clause (b) of sub-section (1) of Section 5 of the 1955 Act, respondent will have to establish that he is a person of Indian origin who is an ordinary resident in any country or place outside undivided India – In view of explanation 2 to Section 5, a person shall be deemed to be of Indian origin if (i) he or either of his parents were born in undivided India or (ii) in any such other territory which was not part of undivided India, but became part of India after 15.08.1947 – Respondent and both his parents were not born in the undivided India – His parents were born after independence in independent India – They were not born in any part of undivided India or any territory that became part of India after 15.08.1947 – Therefore, Section 5(1)(b) of the 1955 Act has no application – In the instant case, it is not in dispute that respondent's parents acquired Singapore citizenship on 19.12.1998, before his birth when he was in the womb – Therefore, immediately after the voluntary acquisition of Singapore citizenship, respondent's parents ceased to be citizens of India by the operation of Section 9(1) – Section 8(1) will apply if any citizen of India of full age and capacity makes, in the prescribed manner, a declaration renouncing his Indian Citizenship – There was no occasion for respondent's parents to renounce their citizenship on 20.04.2012 by the mode provided under Section 8(1) as they had already ceased to be citizens of India on 19.12.1998 when they voluntarily acquired the citizenship of Singapore – As respondent's parents ceased to be citizens of India, not voluntarily but by the operation of Section 9(1), Section 8(2) does not apply to respondent – Therefore, Section 8(2) will not assist respondent – Therefore, the view taken by the High Court was completely erroneous as the High Court held that respondent had resumed Indian citizenship under sub-section (2) of Section 8 of the 1955 Act – However, respondent not precluded from applying for citizenship by invoking clause (f) of sub-section (1) of s.5 of the 1955 Act. [Paras 16, 18, 19, 20, 23]

Case Law Cited

State of U.P. v. Dr. Vijay Anand Maharaj [1963] 1 SCR 1 **: (1962) 45 ITR 414 : 1962 SCC OnLine SC 12 – relied on.**

Anoop Baranwal v. Union of India [Election Commission Appointments] [2023] 9 SCR 1 **: (2023) 6 SCC 161;** *Central Board of Dawoodi Bohra Community & Another. v. State of Maharashtra & Anr.* [2023] 1 SCR 293 **: (2023) 4 SCC 541 – referred to.**

List of Acts

Constitution of India; Citizenship Act, 1955; Government of India Act, 1935; Citizenship Rules, 2009.

List of Keywords

Citizenship; Indian citizenship; Application for citizenship; Undivided India; Article 5 of the Constitution; Article 6 of the Constitution; Article 8 of the Constitution; Section 8 of Citizenship Act, 1955; Section 5 of Citizenship Act, 1955; Commencement of the Constitution; Indian origin; Voluntarily acquired the citizenship; Renouncing citizenship.

Case Arising From

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeal No. 5932 of 2023

From the Judgment and Order dated 12.10.2022 of the High Court of Judicature at Madras in WA No. 2265 of 2022

With

Writ Petition(C) No. 123 of 2024

Appearances for Parties

K M Nataraj, A.S.G., Shailesh Madiyal, Vinayak Sharma, Sharath Nambiar, Chitransh Sharma, Arvind Kumar Sharma, B K Satija, Ms. Shraddha Deshmukh, Sarthak Karol, Kritagya Kait, Rajan Kumar Chourasia, Madhav Singhal, Mrs. Sansrithi Pathak, Akshay Nagarajan, Ms. Sanya Sud, Advs. for the Appellant.

C S Vaidyanathan, Sr. Adv., Akshay N, Vinayak Goel, Dr. Vinod Kumar Tewari, Pramod Tiwari, Vivek Tiwari, Bhoopesh Pandey, Ms. Priyanka Dubey, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. The issue involved in these cases concerns the grant of Indian citizenship to Pranav Srinivasan, the respondent in the civil appeal and petitioner in the writ petition.

FACTUAL ASPECTS

2. A few factual aspects must be set out to appreciate the factual and legal controversy. The paternal grandparents of Pranav were born in India before independence. Pranav's father and mother were born in India in 1963 and 1972, respectively. On 19th December 1998, Pranav's parents adopted citizenship of Singapore. On 1st March 1999, Pranav was born in Singapore as a citizen of Singapore. According to the case of Pranav, on 20th April 2012, his parents renounced their Indian citizenship. On 5th May 2017, when Pranav was eighteen years, two months and four days old, he submitted an application in Form XXV specified under Rule 24 of the Citizenship Rules, 2009, read with sub-section (2) of Section 8 of the Citizenship Act, 1955 (for short, 'the 1955 Act') for resumption of his Indian citizenship.

3. Earlier, Pranav filed a writ petition before the High Court of Judicature at Madras as his application in Form XXV was not considered. Ultimately, it was revealed that Pranav had not paid the necessary fees. Therefore, the High Court permitted Pranav to pay the required fees by the order dated 30th November 2017. The said order was modified by a further order dated 29th November 2018 in the writ petition filed by Pranav, and the High Court directed the concerned authorities to decide the application made by Pranav. By the order dated 30th April 2019, the Ministry of Home Affairs held that Pranav was not eligible for resumption of citizenship under Section 8(2) of the 1955 Act. Pranav was advised to reapply either under clause (f) or clause (g) of sub-section (1) of Section 5 of the 1955 Act. Pranav challenged the said order by filing a writ petition before the learned Single Judge of the High Court. Pranav succeeded before the learned Single Judge as it was held that he was entitled to resume his citizenship in accordance with Section 8(2) of the 1955 Act. Being aggrieved, the Union of India preferred an appeal before the Division Bench of the High Court. The appeal was dismissed. Therefore, Civil Appeal No.5932 of 2023 was preferred by the Union of India before this Court.

4. In the civil appeal, an order was passed by this Court on 7th December 2023, directing that the form filled up by Pranav on 5th May 2017 shall be treated as an application filed in Form L of the Citizens (Registration at Indian Consulates) Rules, 1956. A direction was issued to decide the application accordingly. An order was passed

on 30th January 2024 by the Ministry of Home Affairs, holding that Pranav was not a person of Indian origin in terms of Section 5 of the 1955 Act. Therefore, he was not eligible for a grant of Indian citizenship under clause (b) of sub-section (1) of Section 5 of the 1955 Act. Being aggrieved, Pranav has filed Writ Petition (C) No. 123 of 2024 under Article 32 of the Constitution of India.

SUBMISSIONS

5. Mr C S Vaidyanathan, the learned senior counsel appearing for Pranav, submitted that within three months of attaining majority, on 5th May 2017, Pranav declared his intention to resume Indian citizenship by filing the application in Form XXV with the Consulate Office (Consulate General of India, New York, USA). He was administered the oath of allegiance to the Constitution of India on the date of filing the application. The submission of the learned senior counsel, in short, is that apart from the fact that Pranav was entitled to resume his Indian citizenship by invoking Section 8(2) of the 1955 Act, he is deemed to be an Indian citizen under Article 8 of the Constitution of India by virtue of his grandparents' birth in undivided India. Moreover, he was entitled to seek Indian citizenship under Section 5(1)(b) of the 1955 Act.

6. The learned senior counsel invited our attention to Articles 5 and 6 of the Constitution, which specifically use the expression "at the commencement of this Constitution." In contrast, Article 8 uses the expression "whether before or after commencement of the Constitution of India". Therefore, Article 8, as opposed to Articles 5 and 6, applies even after the commencement of the Constitution. He submitted that by the language used in Section 5 of the 1955 Act, it is crystal clear that a person can acquire Indian citizenship either by virtue of constitutional provisions or by taking recourse to the 1955 Act. Article 8 is an independent and distinct source of citizenship.

7. It was submitted that Pranav's grandparents were born in the State of Tamil Nadu, which was part of undivided India before 15th August 1947. His maternal grandparents were also born in the undivided India before independence. Therefore, under Article 8, Pranav qualified to become an Indian citizen. It is submitted that the failure of the Union of India to recognise and enforce a constitutional provision is an arbitrary exercise of power. The learned senior counsel relied upon a decision of this Court in the case of ***Anoop Baranwal v. Union***

of India [Election Commission Appointments][1] in the context of the right to vote. He also relied upon another decision in the case of ***Central Board of Dawoodi Bohra Community & Another. v. State of Maharashtra & Anr.,***[2] wherein this Court held that the role of the constitutional Courts is to interpret the Constitution, considering the changing needs of the society.

8. The learned senior counsel submitted that, independently of the constitutional provisions, Pranav is entitled to be registered as an Indian citizen under clause (b) of sub-section (1) of Section 5 of the 1955 Act. He submitted that Pranav is a person of Indian origin as his parents were born within the territory of India after independence. He submitted that a common sense of interpretation would have to be given to the phrase "in such other territory which became part of India after the 15th day of August 1947," occurring in Explanation-2 to Section 5 of the 1955 Act. Therefore, it includes all those territories which were part of the undivided India and continued to be a part of the independent India. He submitted that if the interpretation put to the said provision by the Union of India is accepted, persons whose parents were born in the States like Goa and Sikkim would be the persons of Indian origin but who are born in the territories which continued to be a part of India after independence, would be denied the same benefit. Therefore, a person of Indian origin can acquire Indian citizenship if it is shown that the grandparents were born in the undivided India and the parents were born in India after its independence.

9. He submitted that the words "minor child", occurring in Section 8(2) of the 1955 Act, will include an unborn child or a child in the womb. He submitted that Section 3 of the 1955 Act talks about the acquisition of citizenship by birth, whereas Section 8(2) of the 1955 Act talks about a minor child. Therefore, a child need not have been born in India to be entitled to the benefit of seeking resumption of Indian citizenship under Section 8(2) of the 1955 Act.

10. Mr K M Nataraj, the learned Additional Solicitor General (ASG) appearing for the Union of India, submitted that Articles 5 to 9 of the Constitution of India determine who the Indian citizens were

1 [2023] 9 SCR 1 : (2023) 6 SCC 161

2 [2023] 1 SCR 293 : (2023) 4 SCC 541

at the commencement of the Constitution. These Articles provide for the acquisition of citizenship by the persons eligible therein at the commencement of the Constitution. Article 9 disqualifies a person from acquiring citizenship under Articles 5, 6 or 8 if such person has voluntarily acquired citizenship of any foreign State. He also invited our attention to Articles 10 and 11. He submitted that Article 10 provides that every person who is or is deemed to be a citizen of India under the provisions of Part II of the Constitution of India shall, subject to the provisions of any law that the Parliament may make, continue to be such citizen. Article 11 protects the Parliament's power to make provisions concerning the acquisition and termination of citizenship.

11. The learned ASG relied upon the speech of the late Dr Babasaheb Ambedkar in the Constituent Assembly, which indicated that the provisions in the Constitution deal with citizenship on the date of commencement of the Constitution. Therefore, his submission is that Articles 5 to 9 determine who are Indian citizens at the commencement of the Constitution of India. After the enactment of the 1955 Act, India's citizenship can be acquired, terminated, or otherwise regulated under the provisions thereof. He submitted that Pranav is not a person of Indian origin. Therefore, Section 5(1)(b) of the 1955 Act will not apply.

12. He submitted that Section 8(2) of the 1955 Act will have no application. He submitted that Pranav's parents lost their citizenship the moment they acquired the citizenship of Singapore. When Pranav was born, his parents were no longer Indian citizens. They lost Indian citizenship upon the acquisition of Singapore citizenship. He would, therefore, submit that Pranav is not entitled to Indian citizenship.

13. The learned senior counsel appearing for Pranav submitted that Article 8 will apply in the present case. He submitted that it was never the stand of the Union of India before the High Court that the Indian citizenship of Pranav's parents came to an end by termination. This stand is taken for the first time before this Court by the Union of India.

CONSIDERATION OF SUBMISSIONS

CITIZENSHIP UNDER THE CONSTITUTION

14. Part II of the Constitution deals with 'Citizenship'. It consists of Articles 5 to 11, which read thus:

"5. Citizenship at the commencement of the Constitution.— At the commencement of this Constitution every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.— Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.— Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.— Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.— No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Continuance of the rights of citizenship.— Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

> **11. Parliament to regulate the right of citizenship by law.—**Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.**"**

On the face of it, Article 5 will apply to a person who is domiciled in the territory of India on 26th January 1950. Therefore, this provision will not apply in the present case. Article 6 will have no application as it applies to persons who have migrated to India from Pakistan. Article 7 deals with the rights of the citizenship of certain migrants to Pakistan.

15. Now, let us analyse Article 8. It applies to a person:-

(i) who was born in India as defined in the Government of India Act, 1935 (for short, 'the 1935 Act') as originally enacted; or

(ii) either of whose parents were born in India as defined in the 1935 Act as originally enacted; or

(iii) any of whose grandparents were born in India as defined in the 1935 Act as originally enacted.

and

who is ordinarily residing in any country outside India so defined.

Such a person shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing, on an application made by him in prescribed form before such diplomatic or consular representative, before or after the commencement of the Constitution. The words "before or after the commencement of this Constitution" qualify the words "the diplomatic or consular representative of India in the country where he is for the time being residing". Therefore, a person who is qualified in terms of the first part of Article 8 can apply to the diplomatic or consular representative of India in any country where he is residing before or after the commencement of the Constitution. He need not apply to the diplomatic or consular representative of India in the country where he was residing at the commencement of the Constitution.

16. If Article 8 was intended to apply to a foreign national born after the commencement of the Constitution, the provision would not be

referring to "who is ordinarily residing in any country outside India so defined". So defined means India as defined in the 1935 Act, as originally enacted. Moreover, Article 8 uses the expression "who is ordinarily residing". Therefore, the provision will only apply to someone ordinarily residing on the date of commencement of the Constitution in any country outside India as defined in the 1935 Act, as originally enacted. If the interpretation sought to be given on behalf of Pranav to article 8 is accepted, someone born, say in the year 2000, who is ordinarily residing in any country outside India as defined in the 1935 Act, as originally enacted, would be entitled to claim citizenship of India on the ground that any of his parents or grandparents were born in that part of Pakistan or Bangladesh which was part of India as defined in the 1935 Act, as originally enacted. We are giving this illustration to show that the interpretation of Article 8 sought to be made on behalf of Pranav would produce absurd results which the framers of the Constitution never intended. Therefore, Article 8 will have no application to Pranav's case.

17. Article 10 provides that every citizen deemed to be a citizen of India by virtue of the provisions of Articles 5 to 8 shall continue to be such citizen subject to the provisions of any law made by Parliament. Article 11 protects the power of the Parliament to make any provision with respect to the acquisition and termination of citizenship or all the matters relating to citizenship.

CITIZENSHIP UNDER THE 1955 ACT

18. Now, we turn to the provisions of the 1955 Act. Pranav has not claimed citizenship by birth (Section 3) or citizenship by descent (Section 4). He has claimed citizenship under clause (b) of sub-section (1) of Section 5 of the 1955 Act. Section 5 of the 1955 Act reads thus:

> **"5. Citizenship by registration.—** (1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) **a person of Indian origin who is ordinarily resident in any country or place outside undivided India;**

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he,

or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.

(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption."

(emphasis added)

For applicability of clause (b) of sub-section (1) of Section 5 of the 1955 Act, Pranav will have to establish that he is a person of Indian origin who is an ordinary resident in any country or place outside

undivided India. In view of explanation 2 to Section 5, a person shall be deemed to be of Indian origin if (i) he or either of his parents were born in undivided India or (ii) in any such other territory which was not part of undivided India, but became part of India after 15th August 1947. There is no third category mentioned in the explanation. If undivided India were to include India after independence, the legislature would not have included the category of the person or either of his parents being born in such other territory which became part of India after the 15th August 1947. Section 2(h) of the 1955 Act provides that "undivided India" means India as defined in the 1935 Act. If we read "undivided India" as India as on or after 15th August 1947, we would be doing violence to the plain language of the Explanation. We cannot read something that is not in the provision, especially when there is no ambiguity in the provision. Therefore, we cannot read Explanation 2 the way the learned senior counsel of Pranav wants us to read. Pranav and both his parents were not born in the undivided India. His parents were born after independence in independent India. They were not born in any part of undivided India or any territory that became part of India after 15th August 1947. Therefore, Section 5(1)(b) of the 1955 Act has no application.

19. At this stage, it is necessary to refer to Sections 8 and 9 of the 1955 Act, which read thus:

> **"8. Renunciation of citizenship.—** (1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:
>
> Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.
>
> (2) Where a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:
>
> Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form

and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

9. Termination of citizenship.—(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

(emphasis added)

In view of Section 9(1), those citizens of India who voluntarily acquire citizenship of another Country after the commencement of the 1955 Act, or between 26th January 1950 and the date of the commencement of the 1955 Act, upon acquisition of such citizenship, automatically cease to be citizens of India. It is not in dispute that Pranav's parents acquired Singapore citizenship on 19th December 1998, before his birth when he was in the womb. Therefore, immediately after the voluntary acquisition of Singapore citizenship, Pranav's parents ceased to be citizens of India by the operation of Section 9(1).

20. Section 8(1) will apply if any citizen of India of full age and capacity makes, in the prescribed manner, a declaration renouncing his Indian Citizenship. Section 8(1) will not apply to the involuntary cessation of citizenship by the operation of law as provided in Section 9(1). Section 8(2) will apply only if the minor child's parents had voluntarily renounced citizenship by making a declaration. In the facts of the case, on 19th December 1998, when Pranav's parents voluntarily acquired citizens of Singapore, they immediately ceased to be

citizens of India by operation of Section 9(1). Therefore, there was no occasion for Pranav's parents to renounce their citizenship on 20th April 2012 by the mode provided under Section 8(1) as they had already ceased to be citizens of India on 19th December 1998 when they voluntarily acquired the citizenship of Singapore. As Pranav's parents ceased to be citizens of India, not voluntarily but by the operation of Section 9(1), Section 8(2) does not apply to Pranav. Therefore, Section 8(2) will not assist Pranav.

21. In the case of ***State of U.P. v. Dr. Vijay Anand Maharaj***,[3] this Court held thus:

> "8. .. .. … .. .. . …..
>
> **The fundamental and elementary rule of construction is that the words and phrases used by the legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself.** It is a well-recognized rule of construction that the meaning must be collected from the expressed intention of the legislature."
>
> (emphasis added)

The language used in the provisions of the 1955 Act is plain and simple. Hence, the same should be given ordinary and natural meaning. Moreover, we are dealing with a law which provides for the grant of citizenship of India to foreign nationals. There is no scope to bring equitable considerations while interpreting such a statute. As the language of Sections 5, 8 and 9 is plain and simple, there is no scope for its liberal interpretation. Citizenship of India cannot be conferred on foreign citizens by doing violence to the plain language of the 1955 Act.

22. Now, only clause (f) of sub-section (1) of Section 5 of the 1955 Act survives for consideration. However, under the said provision, Pranav can apply for Indian citizenship provided he is an ordinary resident of India for twelve months immediately preceding the date of application.

3 [1963] 1 SCR 1 : (1962) 45 ITR 414 : 1962 SCC OnLine SC 12

There is a power to relax the period of twelve months vested in the Central Government if it is satisfied that special circumstances exist. That is the provision in sub-section (1A) of Section 5 of the 1955 Act. We may note here that it is not the case made out that Pranav fulfils the criteria in clause (g) of Section 5(1) of the 1955 Act.

23. Therefore, the view taken by the High Court was completely erroneous as the High Court held that Pranav had resumed Indian citizenship under sub-section (2) of Section 8 of the 1955 Act.

24. Some arguments were made that this Court should exercise its extraordinary jurisdiction under Article 142 of the Constitution of India. The power under Article 142 is an extraordinary power which should be exercised to deal with exceptional circumstances. We do not think that this case warrants the exercise of power under Article 142 of the Constitution of India. This Court will have to be very circumspect when it comes to the exercise of power under Article 142 for the grant of citizenship of India to a foreign national.

25. Therefore, the impugned orders in Civil Appeal No.5932 of 2023 are set aside. Appeal is allowed. Writ Petition (C) No.123 of 2024 is dismissed. However, this judgment will not preclude Pranav from applying for citizenship by invoking clause (f) of sub-section (1) of Section 5 of the 1955 Act. It will also be open for him to apply to the Central Government for the exercise of power under sub-section (1A) of Section 5 of the 1955 Act of relaxation of the period of twelve months provided in clause (f) of sub-section (1) Section 5 of the 1955 Act.

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 10 S.C.R. 753 : 2024 INSC 788

Vishwajeet Kerba Masalkar
v.
State of Maharashtra

(Criminal Appeal No. 213 of 2020)

17 October 2024

[B.R. Gavai,* Prashant Kumar Mishra and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether the conviction of the appellant and the death sentence awarded for the alleged murders of his wife, daughter and mother were justified.

Headnotes†

Penal Code, 1860 – ss.302, 307 and 201 – Case based on circumstantial evidence – Case of the prosecution that the appellant informed about a robbery at his house and the murder of his wife, daughter and mother and the injuries caused to his neighbour-PW-12 – Later, he was arrested on the basis of suspicion of committing the said murders as it was revealed during investigation that he had an extra-marital affair – Appellant was convicted and sentenced to death – Justification:

Held: Prosecution case mainly rested on the ocular testimony of PW-12 however, the same is discarded being full of contradictions – Thus, the case becomes one of circumstantial evidence wherein the circumstances from which the conclusion of guilt is to be drawn should be fully established – There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused – Trial court relied on circumstances such as recovery of hammer allegedly used in the crime; recovery of appellant's blood-stained clothes; and CCTV Footage – Recovery of the hammer having bloodstains was from a canal which was open and accessible to one and all and the place where the accused took the police to show where

* Author

he had concealed the incriminating article was already within the knowledge of the police – It is improbable that a hammer soaked in water for 3 days would still retain the blood-stains – Recovery of the appellant's clothes and jewellery was also from a place which was open and accessible to one and all – Further, CCTV footage showed that the deceased-appellant's mother came in the building at 03:22 pm and the appellant was seen going out of his motorcycle at 04:28 pm however, the High Court itself disbelieved the said circumstance – Furthermore, a conviction cannot be based solely on the basis of circumstance of motive – Suspicion, however strong cannot take the place of proof beyond reasonable doubt – An accused is presumed to be innocent unless proved guilty beyond reasonable doubt and cannot be convicted solely on suspicion – There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" – It is a primary principle that the accused "must be" and not merely "may be" guilty before a court can convict and every possible hypothesis except the guilt of the accused has to be ruled out – However, the prosecution failed to do so – Judgments of the High Court and the trial court, quashed and set aside. [Paras 21, 22, 24-28]

Witness – Solitary witness – Conviction based on the evidence of – Permissibility:

Held: A conviction could be based solely on the basis of the evidence of a solitary witness, however, the testimony of such a witness should be examined critically and found to be credible and trustworthy. [Para 17]

Case Law Cited

Chuhar Singh v. State of Haryana **(1976) 1 SCC 879;** *Sharad Birdhichand Sharda v. State of Maharashtra* [1985] 1 SCR 88 **: (1984) 4 SCC 116 : 1984 INSC 121 – relied on.**

Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka [2008] 11 SCR 93 **: (2008) 13 SCC 767 : 2008 INSC 853 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Evidence Act, 1872.

List of Keywords

Robbery; Murder of wife, daughter and mother; Circumstantial evidence; Chain of evidence; Suspicion; Love affair; Ocular testimony; Contradictions; Accused presumed innocent unless proved guilty beyond reasonable doubt; Incriminating article; Recovery of hammer; Recovery of blood-stained clothes; CCTV Footage; Canal; Open and accessible to one and all; Place already within the knowledge of police; Motive; Solitary witness; "may be proved"; "must be or should be proved"; "must be"; not merely "may be" guilty; Death sentence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 213 of 2020

From the Judgment and Order dated 23.07.2019 of the High Court of Judicature at Bombay in CONFC No. 2 of 2016

Appearances for Parties

Ms. Payoshi Roy, K. Paari Vendhan, Siddhartha, S. Prabu Ramasubramanian, Bharathimohan M., Santhosh K, P Ashok, Manoj Kumar A, Advs. for the Appellant.

Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Ms. Yamini Singh, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. The present appeal challenges the final judgment and order dated 23rd July 2019, passed by the Division Bench of the High Court of Judicature at Bombay in Confirmation Case No. 2 of 2016 filed by the State of Maharashtra, by which it upheld the separate orders of conviction and sentence dated 26th August 2016 and 31st August 2016 passed by the Additional Sessions Judge, Pune[1] in Sessions

1 Hereinafter referred to as "the trial court".

Case No.64 of 2013, thereby convicting the appellant for the offences punishable under Sections 302, 307 and 201 of the Indian Penal Code, 1860[2] and sentencing him to death along with a fine of Rs. 5,000/- for the offence punishable under Section 302 of IPC, rigorous imprisonment for ten years along with fine of Rs. 10,000/- for the offence punishable under Section 307 of IPC and rigorous imprisonment of three years along with a fine of Rs. 5,000/- for the offence punishable under Section 201 of IPC.

2. Shorn of details, the facts leading to the present appeal are as under:

2.1 On 4th October 2012, the official at the police control room was informed by the appellant about a robbery at his house situated at Champaratna Society, Uday Baug, Wanwadi, Pune and that his mother-Shobha Masalkar, wife-Archana Masalkar and two-year old daughter-Kimaya Masalkar had been killed. The appellant further informed that his neighbourer-Madhusudhan Kulkarni (PW-12) had also been injured. This information was transmitted to Bajirao Dadoba Mohite ACP CID (PW-14), who was on duty at Wanawadi Police Station, Pune, who lodged a complaint.

2.2 Based on the complaint of the appellant, a First Information Report No.196 of 2012 was registered for commission of an offence punishable under Sections 302 and 397 of the IPC against unknown persons. It was stated by the appellant in the complaint that one gold chain of 8 Tolas, one gold Mangalsutra, cash amount of Rs.7,000/-, 3 small rings and 2 almond shaped pendants having total value of Rs.3,07,000/- were stolen. The three dead bodies were sent to the hospital for post-mortem and the neighbourer Madhusudan Kulkarni (PW-12) was also sent to the hospital for medical treatment. The panchnama of the place of the incident was recorded after Bajirao Dadoba Mohite ACP CID (PW-14) had visited the place of occurrence.

2.3 While recording the spot panchnama, it was observed by Bajirao Dadoba Mohite (PW-14) that there were no signs of forced entry on both the doors as well as the safety doors of the flat of the appellant. A gold Mangalsutra, 3 small gold

2 Hereinafter referred to as "IPC".

rings, 2 gold almond shaped pendants and cash amount of Rs. 7,000/- in one red coloured money purse hidden behind a photo frame hanging on the wall of the flat were also found by Bajirao Dadoba Mohite (PW-14). Another ash-coloured money purse was found in the flat as well. At the place of the incident, near the main door of the flat of the appellant, few pieces of bangles that were stained with blood and one blood stained odhani were also found.

2.4 During investigation, it was revealed that appellant had a love affair with one Gauri Londhe (PW-2). It was stated by the appellant's paramour Gauri Londhe (PW-2) that, when she came to know about the appellant's marriage, she refused to marry him but the appellant was ready to leave his wife and daughter in order to marry her. It was also seen through the CCTV footage of the Saipras Society, which was adjoining the flat of the appellant, that at 03:22 PM, appellant's mother (Shobha Masalkar) was seen going towards the flat and at 04:28 PM, the appellant was seen going out on his motorcycle. Based on these facts, the appellant was suspected to have committed the murders by the police and so he was arrested on 5th October 2012.

2.5 Post-Mortem of the three deceased persons was conducted. In the post-mortem, it was opined that the cause of death of the appellant's daughter (Kimaya Masalkar) was asphyxia due to smothering, the cause of death of the appellant's wife (Archana Masalkar) was traumatic and hemorrhagic shock due to head injury and the cause of death of the appellant's mother (Shobha Masalkar) was hemorrhagic shock due to head injury.

2.6 The appellant made a disclosure about keeping his blood-stained clothes and Mangalsutra of his wife at a place in M.I.D.C., Hadapsar Area, Pune and he further disclosed about throwing the hammer, used for committing the crime, in a canal after keeping it in a blue bag. Another disclosure was made by the appellant about a consent letter for divorce by his wife which was found in a drawer inside his house.

2.7 After completion of the investigation, charge-sheet was filed against the appellant for the offences punishable under Sections 302, 307 and 201 of the IPC in the Court of Judicial

Magistrate, First Class, Cantonment Court, Pune. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court for trial. Charges were framed against the appellant by the trial court for the commission of the offences punishable under Sections 302, 307 and 201 of IPC.

2.8 To bring home the guilt of the accused, the prosecution examined 16 witnesses. At the conclusion of the trial, the trial court found that the prosecution had proved the guilt of the accused beyond reasonable doubt.

2.9 Vide judgment and order dated 26th August 2016, the appellant was convicted for the offences punishable under Sections 302, 307 and 201 of IPC and vide order dated 31st August 2016 he was sentenced to death along with a fine of Rs. 5,000/-, in default whereof to suffer rigorous imprisonment of one year for the offence punishable under Section 302 of IPC; rigorous imprisonment for ten years along with fine of Rs. 10,000/-, in default whereof rigorous imprisonment of one year for the offence punishable under Section 307 of IPC and rigorous imprisonment of three years along with a fine of Rs. 5,000/-, in default whereof rigorous imprisonment of six months for the offences punishable under Section 201 of IPC.

2.10 For confirmation of the execution of the death sentence, a reference was made by the trial court to the High Court which was numbered as Confirmation Case No. 2 of 2016.

2.11 Vide impugned judgment and order, the High Court upheld the order of the trial court convicting the appellant and also confirmed the death sentence imposed on him. However, in view of Section 415(1) of Code of Criminal Procedure, 1973[3] the operation and effect of the impugned judgment was stayed till the expiry of period allowed for preferring an appeal before this Court.

2.12 Aggrieved thereby, the present appeal.

3. We have heard Ms. Payoshi Roy, learned counsel appearing on behalf of the appellant and Mr. Siddharth Dharmadhikari, learned counsel appearing on behalf of the respondent-State of Maharashtra.

3 Hereinafter referred to as "Cr.P.C.".

4. Ms. Payoshi Roy, learned counsel appearing on behalf of the appellant submits that the High Court and the trial court have grossly erred in holding the present appellant guilty for the offence punishable under Section 302 of IPC. She submits that the prosecution case mainly rests on the evidence of Madhusudhan Kulkarni (PW-12). It is submitted that, from the testimony of Madhusudhan Kulkarni (PW-12) itself, it would be clear that his testimony is not sufficient to base the order of conviction. She submits that, firstly, the statement of Madhusudhan Kulkarni (PW-12) recorded under Section 161 of Cr.P.C. is recorded belatedly i.e. after 6 days. She further submits that there is no explanation at all as to why his statement was not recorded for 6 days. She submits that even the testimony of the IO would show that the IO did not find it necessary to go to the hospital for 6 days to record the statement of Madhusudhan Kulkarni (PW-12). She further submits that, from the evidence of Madhusudhan Kulkarni (PW-12), it would also be clear that he has not witnessed the incident. She submits that the statement of Madhusudhan Kulkarni (PW-12) has been recorded by the police after he was informed that an FIR has been registered against the present appellant for committing the murder of his wife, daughter and mother. As such, no credence could be given to the testimony of Madhusudhan Kulkarni (PW-12).

5. Ms. Roy submitted that if the testimony of Madhusudhan Kulkarni (PW-12) is discarded, then the only circumstances upon which the prosecution relies are recovery of hammer and clothes at the instance of the present appellant on a memorandum under Section 27 of the Evidence Act, 1872. It is however submitted that the said recoveries are all farcical and cannot be relied on. She therefore submitted that the present appeal deserves to be allowed.

6. Ms. Roy submits that, in the event this Court finds that the prosecution has proved that the present appellant has committed the offence, then the death penalty would not be warranted in the facts and circumstances of the case. She submits that there are various mitigating circumstances as to be found from the various reports placed on record that the appellant was not a hardened criminal. She submits that there is nothing on record to establish that there is no possibility of the present appellant being reformed. She therefore submits that the present case would fall under the middle path as laid down by this Court in a catena of judgments

including ***Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka.***[4]

7. Per contra, Shri Siddharth Dharmadhikari, learned counsel appearing on behalf of the respondent-State submits that the learned trial court and the High Court have concurrently on the basis of the evidence placed before them come to a considered conclusion that the prosecution has proved the case beyond reasonable doubt. He submits that the ocular testimony of Madhusudhan Kulkarni (PW-12) is corroborated by the other circumstantial evidence. He submits that the hammer used in the crime has been recovered on the statement of the present appellant recorded under Section 27 of the Evidence Act. He further submits that one *chhanni* is also recovered on the basis of the memorandum of the appellant under Section 27 of the Evidence Act. The recovery of blood-stained clothes, according to the learned counsel, is another circumstance which establishes the complicity of the present appellant with the crime in question. He further submits that Madhusudhan Kulkarni (PW-12) is an injured witness and therefore a greater credence would be attached to his testimony.

8. With the assistance of the learned counsel for the parties, we have perused the evidence on record.

9. The prosecution case mainly rests on the ocular testimony of Madhusudhan Kulkarni (PW-12). Madhusudhan Kulkarni (PW-12) is the neighbour of the appellant and the deceased. In his testimony, Madhusudhan Kulkarni (PW-12) stated that he knew all the three deceased persons as well as the appellant. He states that the deceased persons as well as the appellant used to reside in his neighbourhood. He stated that deceased Shobha Masalkar i.e. the mother of the appellant used to do the work of cleaning utensils and she was also working in his house. He further stated that deceased Shobha had one daughter namely Aboli and that he had helped Shobha in the marriage of her daughter Aboli. He further stated that there used to be quarrels between the appellant on one hand and his mother and wife on the other. He stated that the appellant was intending to marry another lady and that he was intending to give

4 [2008] 11 SCR 93 : (2008) 13 SCC 767 : 2008 INSC 853

divorce to his wife Archana. He stated that, he as well as deceased Shobha were against this as the appellant was already married.

10. Madhusudhan Kulkarni (PW-12) further stated in his examination-in-chief that on the date of the incident, he was in his house and at around 12:00 Noon, he heard the noises of shouts and cries. When he came out, he saw deceased Archana along with her daughter Kimaya crying outside their house. He further stated that he asked them as to why they were crying outside their house. Thereafter, he came into his house. At that time, someone hit on his backside with some weapon. Due to which, he fell down and saw that the appellant was holding a hammer and was going away. Thereafter, he became unconscious. He further stated that he was admitted in the hospital for 6 days. He stated that he could not identify the hammer as to whether it was the same hammer used by the appellant for the commission of the crime.

11. The testimony of Madhusudhan Kulkarni (PW-12) is full of contradictions. Though, he stated in his examination-in-chief that the appellant was holding hammer in his hand and he was going away, the same did not find place in the statement recorded under Section 164 Cr.P.C. by Judicial Magistrate, First Class. He stated that he did not remember as to whether he was conscious or not when he was admitted in the hospital. In the next breath, he admitted that after the incident, some people came to his flat and he asked them to call the doctor there only.

12. It will be relevant to refer to the testimony of Dr. Abhijit Sudhakr Bele (PW-13) who was attached as Junior Resident Doctor in Sassoon Hospital. He stated that on 4th October 2012, when he was on duty, Madhusudhan Kulkarni (PW-12) was admitted in the hospital. He stated that he gave the history of assault. He stated that on 10th October 2012, the statement of Madhusudhan Kulkarni (PW-12) was recorded in his presence and at that time, he was conscious and oriented.

13. PW-16 is Dr. Tushar Madhavrao Kalekar. He stated that, on 4th October 2012, when he was on duty, Madhusudhan Kulkarni (PW-12) was referred to his department from the surgery department for the purpose of CT Scan of the brain. He admitted that, initially the patient was treated in casualty section and then referred to the surgery department. He further admitted that, as per the first noting dated

4th October 2012 at 09:55 PM, the case paper Exhibit 93-A indicated that the appellant was conscious and oriented. He further admitted that the doctor who at the first instance examined the patient is an important person who can opine about the nature of injuries.

14. Therefore, a million-dollar question that would arise is if Madhusudhan Kulkarni (PW-12) was conscious and oriented at the time of admission in the hospital, then why was his statement not immediately recorded. Another question that would arise is if Madhusudhan Kulkarni (PW-12) had asked the neighbourers, who had come to his flat, to call for the doctor, then he naturally would have informed about the incident to the neighbourers. However, not a single neighbourer is examined to corroborate the version of Madhusudhan Kulkarni (PW-12). On the contrary, his evidence would show that he had admitted that he came to know from the police on 4th October 2012 that in the afternoon of 4th October 2012, the appellant, on account of his desire to marry Gouri Londhe (PW-2), he had fought with his wife Archana and mother Shobha and killed them with a hammer and had smothered by a pillow to death his daughter Kimaya. He also stated that the appellant came and assaulted him with the hammer so as to prevent him from telling it to the neighbourers. If that be so, if the neighbourers arrived immediately on the scene of occurrence, then the question would be, what prevented Madhusudhan Kulkarni (PW-12) from informing about the incident to the neighbourers. Even if his testimony is taken at its face value, it only suggests that he heard the noises of shouts and cries, then he immediately came out and saw Shobha and Kimaya crying. He only stated that he asked them as to why they were crying outside the house. He did not state that the wife of the appellant told him that there was a fight between the appellant and his wife. From the evidence, it is also not clear as to whether the appellant was present in the house or not.

15. In this respect, it will be relevant to refer to the testimony of Bajirao Dadoba Mohite (PW-14), Investigating Officer (IO). His testimony would reveal that, on the basis of suspicion, the appellant was arrested on 5th October 2012 at 09:05 PM. It will also be relevant to refer to his cross-examination which reads thus:

> "It is true to say that on 4th itself I realized that the alive injured is the important witness in this case. I went on 10th in the hospital to meet that injured. Before that I did not

> go to the hospital. That injured was not in a position to speak and therefore, I have not visited the hospital before 10th. Prior thereto I have not written letter to the doctor It is true to say that till 10th. I have not received information from the hospital about the state of that injured."

16. It can be seen that PW-14 has admitted that on 4th October 2012 itself, he realised that Madhusudhan Kulkarni (PW-12) was an important witness in this case, but he did not go to the hospital before 10th October 2012 and for the first time, he went to the hospital on 10th October 2012. He further admitted that prior to 10th October 2012, he did not write a letter to the doctor as well.

17. Thus, the delay of 6 days in recording the statement of Madhusudhan Kulkarni (PW-12) particularly when the evidence of Dr. Abhijit Sudhakar Bele (PW-13) shows that Madhusudhan Kulkarni (PW-12) had given the history of the incident and Dr. Tushar Madhavrao Kalekar (PW-16) admitted that Exhibit 93-A showed that Madhusudhan Kulkarni (PW-12) was conscious and oriented casts a serious doubt on the testimony of Madhusudhan Kulkarni (PW-12). No doubt that a conviction could be based solely on the basis of the evidence of a solitary witness, however, the testimony of such a witness is required to be found to be credible and trustworthy. It is also necessary to examine the testimony of such a witness critically. A reliance in this respect could be placed on the three-Judges Bench judgment of this Court in the case of ***Chuhar Singh v. State of Haryana***[5] which has been followed in a catena of cases.

18. As discussed hereinabove, on a deeper scrutiny of the testimony of Madhusudhan Kulkarni (PW-12), we do not find that the testimony of Madhusudhan Kulkarni (PW-12) is one which would inspire confidence in the mind of the Court to base the conviction for the offence punishable under Section 302 of IPC. Firstly, the statement of Madhusudhan Kulkarni (PW-12) is recorded after 6 days. Secondly, when the evidence shows that he was conscious and oriented on the date of the incident, no neighbourer has been examined to corroborate the testimony of Madhusudhan Kulkarni (PW-12) though even according to Madhusudhan Kulkarni (PW-12), after the incident, the neighbourers had come and he himself had asked them to get

5 (1976) 1 SCC 879

the doctor there only. Thirdly, his testimony does not show that he has witnessed the incident and he himself admitted that he had given the statement after he was informed by the police that the present appellant had committed the crime.

19. If the testimony of Madhusudhan Kulkarni (PW-12) is discarded, then the case would become the one of circumstantial evidence.

20. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalised in the judgment of this Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra***,[6] wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
>
> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one

6 [1985] 1 SCR 88 : (1984) 4 SCC 116 : 1984 INSC 121

> proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (*3*) the circumstances should be of a conclusive nature and tendency,
>
> (*4*) they should exclude every possible hypothesis except the one to be proved, and

> (*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

21. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except the one where the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused.

22. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted solely on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

23. In the light of these guiding principles, we will have to examine the present case.

24. The circumstances which have been relied on by the learned trial court are – (i) recovery of hammer; (ii) recovery of blood-stained clothes; and (iii) CCTV Footage which shows that deceased Shobha had come in the building at 03:22 PM and where the appellant was seen going out of his motor-cycle at 04:28 PM. However, the High

Court itself has disbelieved the said circumstance in paras 58-59 of its judgment.

25. Insofar as the first circumstance i.e. recovery of the hammer alleged to have been used in the crime is concerned, according to the prosecution, the said hammer was recovered at the instance of the appellant on a statement recorded under Section 27 of the Evidence Act. Firstly, it is to be noted that the said recovery is from a canal. The recovery panchnama shows that the said hammer was having blood-stains. It is the prosecution case that the hammer was packed in a bag which was put in water. It is to be noted that the hammer was recovered from a place which is open and accessible to one and all. It is improbable that a hammer which was soaked in water for 3 days would still retain the blood-stains. It is to be noted that the investigating agency had to take the service of two swimmers to take the bag out from the canal. The evidence of Santosh Bhau Awaghade (PW-11) who is a panch witness would show that when the police along with the appellant reached the spot, two persons were already there and they were searching as per the say of the police party. It is thus clear that the place where the accused had taken the police party to show where he had concealed the incriminating article was already within the knowledge of the police. It is also difficult to believe that, in flowing water where two swimmers were required to find out the incriminating material, the said article would remain at the same place after 3 days. We therefore find that it cannot be said that the prosecution has proved the said circumstance beyond reasonable doubt.

26. Insofar as the circumstance regarding the recovery of the appellant's clothes is concerned, even according to the prosecution, it is the appellant who had informed the police about the crime and he was present there. As such, the presence of blood-stains on his clothes cannot be said to be unnatural. Again, the recovery is from a place which is open and accessible to one and all. Same is the case with regard to the recovery of jewellery. In any case, the recovery panchnama does not show that the clothes were sealed. As such, the possibility of tampering cannot be ruled out. Insofar as the recovery of jewellery (mangalsutra) is concerned, the said mangalsutra was not shown either to Vijaykumar Kisanrao Sonpetkar (PW-5), father of deceased Archana or to the appellant's sister so as to identify that the same belong to deceased Archana.

27. That leaves us with the circumstance of motive. We find that solely on the basis of circumstance of motive, a conviction cannot be based. As held by this Court in the case of ***Sharad Birdhichand Sharda*** (supra), a suspicion, however strong it may be, cannot take the place of a proof beyond reasonable doubt. As has been held by this Court in the case of ***Sharad Birdhichand Sharda*** (supra), there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It is a primary principle that the accused "must be" and not merely "may be" guilty before a court can convict and every possible hypothesis except the guilt of the accused has to be ruled out. In our considered opinion, in the present case, the prosecution has failed to do so. We are therefore of the considered view that the impugned judgment and order of the High Court as well as the trial court are not sustainable in law.

28. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The judgment and order of the High Court dated 23rd July 2019 in Confirmation Case No. 2 of 2016 and the judgment and order of conviction and sentence dated 26th August 2016 and 31st August 2016 passed by the trial court in Sessions Case No.64 of 2013 are quashed and set aside; and

(iii) The appellant is directed to be set at liberty if not required in any other case.

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

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 769 : 2024 INSC 771

Sandeep
v.
State of Uttarakhand

(Criminal Appeal No. 2224 of 2014)

14 October 2024

[Pankaj Mithal and R. Mahadevan,* JJ.]

Issue for Consideration

The Sessions Court found the appellant guilty of the offence u/s.302 r/w. s.34 IPC, convicted and sentenced him to undergo rigorous imprisonment for life. The judgment of conviction and sentence passed by the Sessions Court was also affirmed by the High Court.

Headnotes†

Penal Code,1860 – s.302 r/w. s.34 – Arms Act, 1959 – s.25/27 – Prosecution case that four persons including appellant shot victim-deceased dead, when he was sitting in his courtyard – Trial Court found the appellant guilty of the offence u/s.302 r/w. s.34 IPC, convicted and sentenced him to undergo rigorous imprisonment for life – Appellant was acquitted for the offence u/ss.25/27 of the Arms Act – Trial Court acquitted the other two co-accused and file of one the accused was sent to Juvenile Court – Aggrieved, the appellant herein filed an appeal against his conviction before the High Court, which was dismissed – Correctness:

Held: Upon scrutiny of the depositions of the material witnesses as well as the exhibits produced by the prosecution, predominantly, it is evident that on 30.10.1997 at 9.45 p.m., the deceased died due to the injuries sustained by firing of bullet – P.W.1 and P.W.2 clearly demonstrated in their deposition that the accused were having weapons and on exhortation by other accused, the appellant shot the deceased – The source of light in the scene of crime was explained by P.W.2 in his evidence – The evidence of P.W.3 proved that the material objects were recovered from the scene of crime – The fact that there was a torch and a lantern is recorded in Exts.A2 and A11 – The statement of P.W.1 and P.W.2 corroborates with the materials recovered from the scene of occurrence – It is

* Author

clearly stated by P.W.4 in his evidence that a country made pistol 12 bore and one empty cartridge were recovered on identification by the appellant – It is to be seen that even in the FIR, it was mentioned that the deceased victim was shot – There is no delay in lodging the complaint, registering the FIR and filing the charge sheet – In the instant case, the charge of murder framed against the appellant stood proved – It is proved beyond doubt that the victim died due to gunshot – The presence of the other accused with the alleged weapons was not proved and the victim was not inflicted with any other form of injury – Therefore, the benefit of doubt granted to the other accused, who were acquitted, cannot be extended to the appellant – Accordingly, the conviction under section 302 IPC is confirmed – However, since the appellant remains the sole accused, there could be no charge u/s.34 IPC against him – Therefore, conviction of appellant u/s.34 IPC unsustainable. [Paras 14, 16, 17]

Sentence/Sentencing – Appellant convicted u/s.302 r/w. s.34 of IPC and sentenced to undergo rigorous imprisonment for life – Sentence modified to the period already undergone:

Held: The facts and circumstances clearly disclose that due to sudden provocation, for not giving jaggery, the accused came to the house of the deceased and on exhortation by other accused, the appellant shot the deceased and that, there was no premeditation in the commission of crime – The appellant has undergone the sentence for a period of 13 years 6 months and 20 days without remission and the total sentence of 17 years 1 month and 9 days and that, he has good conduct during this period; and thus, it is evident that the appellant served incarceration for more than 14 years and that, he had no bad antecedent except this – On a perusal of the records also shows that the appellant belonged to poor economic background and had been taking care of his entire family; and that there exists a possibility of reformation – Pertinently, it is to be noted that the object of punishment is not only to deter the accused from committing any further crime, but also to reform and retribute; and the extent of reformation can be derived only by the conduct of the accused exhibited during his days of retribution – Taking note of the aggravating and mitigating factors, the sentence of imprisonment for life awarded by the Sessions Court as affirmed by the High Court, is modified to the period already undergone by the appellant. [Para 19.2]

Case Law Cited

Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka [2023] 4 SCR 669 **: (2023) 9 SCC 817 – followed.**

C. Muniappan v. State of Tamil Nadu [2010] 10 SCR 262 **: (2010) 9 SCC 567;** *Navas @ Mulanavas v. State of Kerala* [2024] 3 SCR 913 **: 2024 SCC OnLine SC 315 – relied on.**

Union of India v. V. Sriharan [2015] 14 SCR 613 **: (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695;** *Swamy Shraddananda v. State of Karnataka* [2008] 11 SCR 93 **: (2008) 13 SCC 767 – referred to.**

List of Acts

Arms Act, 1959; Penal Code,1860.

List of Keywords

Section 302 of Penal Code, 1860; Section 25/27 of the Arms Act; Acquittal; Conviction; Rigorous imprisonment for life; Sentence/Sentencing; Modification of sentence; Modification of punishment; Exhortation by other accused; Possibility of reformation; Reform; Retribute.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2224 of 2014

From the Judgment and Order dated 16.12.2011 of the High Court of Uttarakhand at Nainital in CRLA No. 65 of 2006

Appearances for Parties

Amicus Curiae

Mrs. Sudha Gupta, R.S. Rathi, Ms. Kusum, Advs. for the Appellant.

Akshat Kumar, Ms. Anubha Dhulia, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

This appeal challenges the judgment and order dated 16.12.2011 passed by the High Court of Uttarakhand at Nainital,[1] in Criminal

1 hereinafter shortly referred to as "the High Court"

Appeal No.65 of 2006,[2] whereby, the High Court dismissed the said appeal and confirmed the judgment and order dated 16.05.2006 passed by the Additional Sessions Judge / First Fast Track Court, Roorkee, District Haridwar[3] in Sessions Trial No. 208 of 1998.[4]

2. The appellant Sandeep along with two others *viz.*, Veer Singh and Dharamveer, was tried for having caused the murder of one Abdul Hameed on 30.10.1997 at 9.45 p.m., and thereby committed the offence under section 302 r/w 34 of the Indian Penal Code, 1860 (for short, "the IPC") and section 25/27 of the Arms Act, 1959 (for short, "the Arms Act"). The Sessions Court, in the aforesaid Sessions Trial No.208 of 1998, found the appellant guilty of the offence under section 302 r/w Section 34 IPC, convicted and sentenced him to undergo rigorous imprisonment for life with fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a further period of three months, while acquitting the other two co-accused. The Sessions Court in the connected Sessions Trial No.209 of 1998,[5] acquitted the appellant of the offence under section 25/27 of the Arms Act. Feeling aggrieved and being dissatisfied with the judgment of conviction and sentence passed by the Sessions Court in Sessions Trial No.208 of 1998, the appellant went on Criminal Appeal No.65 of 2006, which ended in dismissal by the impugned judgment and order dated 16.12.2011 passed by the High Court.

3. Shorn off unnecessary details, the case of the prosecution is that on 31.10.1997, one Kale Hasan (P.W.1 / complainant) S/o Abdul Hameed, resident of village Dosni, lodged a written report (Ext.A-1) to Police Station Laksar, District Haridwar, alleging that on the midnight of 30.10.1997, while his father Abdul Hameed (deceased) and his mother Mangti were sitting in their courtyard and were talking to each other, at about 09:45 p.m., four persons *viz.,* Veer Singh S/o Jaswant Singh, Mintu S/o Molhar, Dharamveer S/o.Brhampal and Sandeep (appellant herein), all residents of Dosni village, came there and told to his father that they would teach him a lesson for refusing to give them jaggery (GUR) and shot at his father. On hearing

2 Sandeep v. State of Uttarakhand

3 hereinafter shortly referred to as "the Sessions Court"

4 State v. Veer Singh and two others

5 State v. Sandeep

the sound of the gun-shot, the complainant, along with Gufran Ali (P.W.2) and Naseem, reached the courtyard and saw that all the four accused persons, after shooting, were fleeing away from the scene of crime. Thereafter, the injured Abdul Hammed was taken to the Government Hospital, Laksar for treatment, where the doctor declared him dead.

4. On the basis of the written report, Chik report (Ext.A-13) was prepared and a case in Laskar Police Station Crime No.185 of 1997 was registered against all the four accused for the offence under section 302 IPC. The Sub Inspector of Police Satish Verma, during the course of investigation, inspected the scene of crime and prepared inquest report (Ext.A4) on the body of the deceased and site plan (Ext.A9). On 31.10.1997, the Investigating Officer recorded the statements of the witnesses; recovered one country-made pistol 12 bore and one empty cartridge concealed in the field of Dharmdas under a transformer, on pointing out by the appellant; and prepared recovery memo (Ext.A3) and plan for the place of recovery (Ext A10). That apart, the Investigating Officer collected bloodstained soil and plain soil (Ext.A5) and took possession of the articles *viz.*, a torch with three batteries (Ext.A2), a bloodstain cot (Ext.A6), a quilt-cover, a cotton blanket and a quilt (Ext.A7) and a lantern (Ext.A11). Thereafter, the body of the deceased Abdul Hameed along with inquest report (Ext.A4) was sent for post-mortem. Dr.R.K.Verma, Physician (P.W.7) conducted post-mortem on 31.10.1997 and gave autopsy report; and according to his opinion, the cause of death was due to shock and hemorrhage as a result of fire arm ante mortem injuries; and that the wound of entry could be caused by one bullet. In the meanwhile, the Investigating Officer sent the samples for chemical analysis and obtained a report from Forensic Science Lab, Agra (Ext.A18).

5. After completion of investigation, the Investigating Officer filed charge sheet (Ext.A8) on 27.12.1997 against all the four accused for the offence under section 302 IPC. Upon getting sanction (Ext.A17) from the District Magistrate, Haridwar, charge sheet (Ext.A15) was filed against the appellant herein, for the offence under section 25/27 of the Arms Act. After committal, the learned Additional District Judge, Roorkee, framed charge against all the accused for the offence under section 302 r/w 34 IPC. The file relating to accused Mintu was sent to Juvenile Court, *vide* order dated 01.01.2003.

6. Before the Sessions Court, in order to prove the guilt of the accused *viz.*, Veer Singh, Dharamveer and the appellant herein, the prosecution examined P.W.1 to P.W.9 witnesses and marked Ext. A1 to A17 documents, besides material objects. However, no oral and documentary evidence were let in, on the side of the accused. During section 313 Cr.P.C questioning, the accused pleaded not guilty and claimed trial.

7. After considering the evidence on record, the Sessions Court as already noticed in paragraph 2 *supra*, found the appellant guilty of the offence under section 302 r/w 34 IPC, convicted him and sentenced him for the same, while acquitting the other two co-accused, by the judgment dated 16.05.2006 in Sessions Trial No.208 of 1998. However, the appellant was found not guilty of the offence under section 25/27 of the Arms Act and was acquitted of the same by the same judgment dated 16.05.2006, but in Sessions Trial No.209 of 1998. The judgment of conviction and sentence passed by the Sessions Court in Sessions Trial No.208 of 1998 was also affirmed by the High Court. Therefore, the appellant is before us with the present Criminal Appeal.

8. This Court, by order dated 27.01.2020[6] disposed of Interlocutory Application No.60285/2019 in Criminal Appeal No.2224/2014 filed by the appellant by releasing him on bail, on certain terms.

9. We have heard Mrs. Sudha Gupta, learned counsel appointed to espouse the cause of the appellant and Mr. Akshat Kumar, learned counsel for the respondent – State and also perused the materials on record.

10. The learned counsel appearing on behalf of the appellant strenuously argued that as per the prosecution story, four persons were involved in the crime and they were charge sheeted for the same offence; in the FIR, there was no specific role assigned to the appellant and all the accused played identical role; and after joint trial, two co-accused were acquitted of the offence under section 302 r/w 34 IPC. While so, the Sessions Court ought to have extended the benefit

6 Having heard learned counsel and perusing the records, we order that the appellant be released on bail in Sessions Trial No. 208 of 1998 on the usual conditions to the satisfaction of the concerned trial court. The interlocutory application for bail stands disposed of.
Hearing of the appeal expedited.

of doubt and acquitted the appellant as well. The learned counsel further submitted that the appellant was acquitted of the charge under section 25/27 of the Arms Act arising out of the same crime, and hence, the offence under section 302 r/w 34 IPC is improbable.

10.1. Taking us through the evidence led by the prosecution, the learned counsel argued that the prosecution projected P.W.1 and P.W.2 as eye-witnesses to the occurrence; it is their deposition that they saw that the deceased was shot and got injuries, by which he was bleeding; and they took the deceased to hospital; but they did not get bloodstains on their clothes. That apart, the occurrence happened on 30.10.1997 at 9.45 p.m., however, source of light at the scene of crime was not mentioned in the FIR. Though P.W.1 and P.W.2 stated in their evidence that all the accused were armed with weapons in their hands, the FIR did not disclose as to which accused was in possession of which weapon and as to who shot the bullet. The fact of provoking and the fact of possession of the weapons by the accused persons were not mentioned in the statement recorded under section 161 Cr.P.C., which were also accepted by the Investigating officer in his deposition. Thus, it was submitted that these discrepancies / inconsistencies / contradictions in the case of the prosecution falsify the testimonies of P.W.1 and P.W.2 *qua* involvement of the appellant in the crime.

10.2. It was further argued by the learned counsel that the only eye-witness to the occurrence *viz.,* Mangti - wife of the deceased and the Sub Inspector of Police, who conducted investigation, were not examined, which are fatal to the prosecution case. She further submitted that the motive for murder i.e., the accused demanding jaggery, the deceased denying the same and the accused committing the crime, appears to be very vague. Therefore, the learned counsel submitted that the prosecution has not established the charge framed against the appellant beyond reasonable doubt. Without analysing the evidence in proper perspective, the Sessions Court erroneously convicted the appellant alone and sentenced him for the offence under section 302 r/w 34 IPC, and the same was also affirmed by the High Court. Therefore, the learned counsel prayed that the judgments of conviction and sentence imposed on the appellant should be set aside.

10.3. In the alternative, it was submitted by the learned counsel for the appellant that the appellant has already suffered incarceration for more than 14 years and therefore, a lenient view may be taken, *qua* sentence awarded by the Courts below.

11. *Per contra*, the learned counsel appearing on behalf of the respondent – State contended that it is proved from the evidence of P.W.1 and P.W.2 that the appellant shot the deceased and escaped from the scene of occurrence. PW1 specifically stated that he had seen the appellant, while firing bullet shot on his father; and after causing bullet shot, all the accused persons ran away. P.W.2 - Gufran Ali also clearly stated that it was only the appellant who shot the deceased and not the other co-accused. Adding further, the learned counsel submitted that P.W.2 deposed that the accused Veer Singh having a spear, appellant having a country-made pistol and Dharamveer and Mintu having lathis, came to the house of the deceased and on exhortation given by the co-accused, the appellant fired bullet shot by country-made pistol on the deceased which hit on his right chest and arm. PW4 Akbar stated in his evidence that the country-made pistol was recovered by the police on pointing out by the appellant. It is also proved from the evidence of P.W.2 that at the time of occurrence, there was sufficient source of light for identification of the accused. Hence, the charge framed against the appellant was duly proved by the prosecution.

11.1. With respect to non-examination of some witnesses, it was submitted by the learned counsel that such lapse is insufficient to discard the ocular evidence led by the prosecution.

11.2. Thus, according to the learned counsel, upon proper appreciation of the material evidence, the Sessions Court rightly convicted the appellant of the offence under section 302 r/w 34 IPC as also affirmed by the High Court and hence, there is no requirement to interfere with such concurrent findings rendered by the Courts below.

12. As pointed out earlier, in connection with murder of the father of the complainant on 30.10.1997 at 9.45 p.m., the appellant was subjected to criminal prosecution, along with three accused *viz.,* Veer Singh, Mintu and Dharamveer for the offence under section 302 r/w 34 IPC. By order dated 01.01.2003, the case pertaining to the accused Mintu was remitted to the Juvenile Court. The Sessions Court convicted

the appellant for the said offence, while acquitting the other two accused. Be it noted, for the same crime, the appellant was also charge sheeted for the offence under section 25/27 of the Arms Act, but he was acquitted of the same.

13. In order to appreciate the contentions raised on behalf of the respective parties, let us examine the evidence let in before the Sessions Court.

13.1. The prosecution heavily relied on the evidence of P.W.1 and P.W.2, who are said to be eye-witnesses to the occurrence. PW1 Kale Hasan – complainant / son of the deceased, deposed that on 30.10.1997 at about 9.45 p.m., his parents *viz*., Abdul Hameed and Mangti Devi, were sitting in their Baithak Chappar (courtyard) and talking with each other; the four accused persons came there; the appellant had a katta in his hand, Veer Singh had a ballam, and Dharamveer and Mintu had sticks in their hands; they came to the door of Baithak; Dharamveer, Mintu and Veer Singh asked the appellant to shoot his father and teach him a lesson for not giving jaggery; the appellant fired bullet on his father which hit on his chest and left arm; on hearing the sound of bullet shot, P.W.2, Gufran Ali and Nasim immediately reached the spot; they saw the accused persons fleeing away, after firing; they chased them, but did not catch them; and all the four accused ran away. He further stated in his deposition that he, Gufran Ali and Nasim took the deceased to Laksar Hospital where the doctor declared him dead and asked to take him to Police Station; then, they came to Police Station and narrated the incident to Daroga, who advised them to lodge a report against the accused persons; and he (P.W.1) had written report (Ext.A1) and given it to Police Station.

13.2. P.W.2 Gufran Ali / grandson of the deceased corroborated the evidence of P.W.1. He categorically stated that all the accused were armed with weapons; the appellant shot the deceased by a katta which hit on his chest; and he had a torch in his hand; and he tried to hold the accused, but they fled away.

13.3. P.W.3 Furkan stated about the material objects, such as, lantern, battery having 3 cells, one sole quilt, Dutai and Khes, etc., recovered in the scene of occurrence.

13.4. P.W.4 Akbar deposed that he was one of the members of the police party and in his presence, on pointing out by the appellant, one country made pistol, concealed in the sugarcane field of Dharamdas under a transformer, was recovered.

13.5. P.W.5 Niyamul, a witness of inquest report (Ext.A4) *inter alia* stated in his evidence that body of the deceased was kept in a white cloth, sealed and sent for post-mortem.

13.6. P.W.6 Jagat Kumar Singh – Investigating Officer explained about the conduct of investigation. According to him, on receipt of the report, a case was registered against the accused for the offence under section 302 IPC; inquest report (Ext.A4) was prepared; after inspection, site plan (Ext.A9) was marked; statements of the witnesses were recorded; recovery of the material objects was made; samples of bloodstained soil and plain soil were collected; body of the deceased was sent for post-mortem; after investigation, charge sheet (Ext.A8) was filed against four accused under section 302 IPC; and upon getting necessary sanction, charge sheet (Ext.A15) was filed against the appellant for the offence under section 25/27 of the Arms Act.

13.7. P.W.7- Dr. R.K. Verma, Physician deposed that he conducted post mortem on the body of the deceased Abdul Hameed, aged 70 years, on 31.10.1997 at 2:30 p.m. and prepared autopsy report, with the following ante mortem injuries:-

> (i) Firearm wound of entry 4cm x 2cm muscle deep on medial side of right upper arm 9 cm below the axilla. Blackening and tattooing present around the wound. Margins lacerated and inverted. Two pellets were recovered from the wound.
>
> (ii) Firearm wound of entry 3 cm x 2 cm chest cavity deep on lateral side of right chest 11cm below the axilla in mid axillary line. Tattooing and blackening present around the wound in an area of l cm. Margins lacerated and inverted. 5th and 5th ribs are fractured.

He further stated in his evidence that the cause of death was due to shock and hemorrhage as a result of firearm ante mortem injuries and the death of the deceased could have been caused within 24 hours

prior to the time of conducting postmortem; and that both wounds of entry could be caused by one bullet.

13.8. P.W.8 Constable Ramdhan Singh deposed that based on the report of the complainant, he prepared Chik report and entered the case in the G.D.

13.9. P.W.9 Constable Balraj Singh was examined to prove the investigation conducted by the Sub Inspector of Police Satish Verma, who did not come forward to let in evidence. In view of non-examination of the said Officer, the Sessions Court doubted about the sanction accorded by the District Magistrate and accordingly, acquitted the appellant of the charge under section 25/27 of the Arms Act.

14. Upon scrutiny of the depositions of the material witnesses as well as the exhibits produced by the prosecution, predominantly, it is evident that on 30.10.1997 at 9.45 p.m., the deceased died due to the injuries sustained by firing of bullet. P.W.1 and P.W.2 clearly demonstrated in their deposition that the accused were having weapons and on exhortation by other accused, the appellant shot the deceased. The source of light in the scene of crime was explained by P.W.2 in his evidence. The evidence of P.W.3 proved that the material objects were recovered from the scene of crime. The fact that there was a torch and a lantern is recorded in Exts.A2 and A11. The statement of P.W.1 and P.W.2 corroborates with the materials recovered from the scene of occurrence. It is clearly stated by P.W.4 in his evidence that a country made pistol 12 bore and one empty cartridge were recovered on identification by the appellant. It is to be seen that even in the FIR, it was mentioned that the deceased victim was shot. There is no delay in lodging the complaint, registering the FIR and filing the charge sheet.

15. Though the learned counsel for the appellant pointed out certain deficiencies / inconsistencies / contradictions in the evidence let in by the prosecution, they being minor in nature, cannot be considered as remissness in the investigation enabling the appellant's acquittal, particularly, when the appellant was present with a gun in the scene of occurrence, when the gun and empty cartridge were recovered based on the information given by the appellant, when the firing was witnessed by P.W.1 and P.W.2, and when the fact that the victim died due to wounds inflicted by gunshot, stood proved by

the evidence of P.W.7, Doctor, who performed the autopsy. The law on minor discrepancies which does not affect the basic case of the prosecution, is well settled. This Court in *C. Muniappan v. State of Tamil Nadu*[7] has stated as under:

> *"**85.** It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution›s witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819 : AIR 1972 SC 2020], State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105], Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], State of Rajasthan v. Om Prakash [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], Prithu v. State of H.P. [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502], State of U.P. v. Santosh Kumar [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580].)"*

16. That apart, the acquittal of the appellant under section 25/27 of the Arms Act on a technical ground that the order of sanction by the District Magistrate was rejected as there was no date in the order, cannot come to the aid of the appellant as the extent of proof and procedures for prosecution are different. In the instant case, the charge of murder framed against the appellant stood proved, as narrated above. Insofar as the claim that when the other accused have been

7 [2010] 10 SCR 262 : (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 596

acquitted for the same offence, the appellant cannot be convicted, we do not agree with the same. It is proved beyond doubt that the victim died due to gunshot. The presence of the other accused with the alleged weapons was not proved and the victim was not inflicted with any other form of injury. Therefore, the benefit of doubt granted to the other accused, who were acquitted, cannot be extended to the appellant. Accordingly, the conviction under section 302 IPC is confirmed.

17. Insofar as the conviction under section 34 IPC, there is a contradiction in the evidence of the Investigating Officer and the other witnesses on instigation. P.W.1 and P.W.2 had deposed in the court that the other accused instigated the appellant to fire the shot, but on the contrary, the Investigating Officer had deposed that during investigation, it was revealed by the complainant and the other witness that the appellant fired on his own. The Sessions Court did not accept the evidence of P.W.1 and P.W.2 with regard to the charge framed against other accused and acquitted them. Considering the fact that for a person to be convicted under section 34, there must be an involvement of two or more persons with common intention to commit the crime. Mere presence of the accused at the scene of occurrence is not sufficient. In the present case, after the acquittal of the other accused with a finding that there was nothing in the FIR or statement under section 161 to sustain the charge under section 34 IPC, the appellant remains the sole accused and there could be no charge under section 34 against him. Therefore, we are of the opinion that the conviction of the appellant under section 34 IPC by the Sessions Court as confirmed by the High Court is unsustainable.

18. For the reasons stated above, the concurrent finding recorded by the Sessions Court as affirmed by the High Court that the appellant was found guilty of the offence under section 302 IPC is confirmed. However, the appellant is acquitted of the charge under section 34 IPC and the judgments of the Courts below, insofar as convicting him for the same, are set aside.

19. As far as the sentence is concerned, considering the gravity and nature of the offence and all other relevant factors, the Courts can modify the punishment or reduce / enhance the period of sentence imposed on the accused. At this juncture, it will be apposite to refer to some judgments of this Court. The Constitutional Bench of this

Court (majority view) in *Union of India v. V.Sriharan*,[8] has held that "*there is a power which can be derived from IPC to impose a fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other court*". Placing reliance on the said decision of the Constitutional Bench, this Court in *Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka*,[9] has observed as follows:

> *"14…We have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.PC."*

19.1. In a recent decision in *Navas @ Mulanavas v. State of Kerala*,[10] a Full Bench of this Court, after referring to the judgments in *Swamy Shraddananda v. State of Karnataka*[11] *and in V.Sriharan (supra)*, has emphasised that "*while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, what should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae*". Upon conducting a detailed survey of 27 cases, it was ultimately stated in Paragraph 59 as follows:

8 [2015] 14 SCR 613 : (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695

9 [2023] 4 SCR 669 : (2023) 9 SCC 817

10 [2024] 3 SCR 913 : 2024 SCC OnLine SC 315

11 [2008] 11 SCR 93 : (2008) 13 SCC 767

"59.A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty, they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the Swamy Shraddananda (supra) principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in V. Sriharan (supra). Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are : - (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse. These were some of the relevant factors that were kept in mind in the

cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein."

19.2. We shall thus, consider the sentence imposed on the appellant, in the light of the aforesaid guiding principles. The facts and circumstances highlighted above would clearly disclose that due to sudden provocation, for not giving jaggery, the accused came to the house of the deceased and on exhortation by other accused, the appellant shot the deceased and that, there was no premeditation in the commission of crime. As already stated above, the appellant was acquitted of the charge under section 25/27 of the Arms Act, arising out of the same crime; and that, he was convicted only for the offence under section 302 r/w 34 IPC, whereas the co-accused were acquitted of the said charge. Further, the certificate dated 08.12.2019 received from the Jailor, District Jail, Haridwar, reveals that the appellant has undergone the sentence for a period of 13 years 6 months and 20 days without remission and the total sentence of 17 years 1 month and 9 days and that, he has good conduct during this period; and thus, it is evident that the appellant served incarceration for more than 14 years and that, he had no bad antecedent except this. On a perusal of the records also shows that the appellant belonged to poor economic background and had been taking care of his entire family; and that there exists a possibility of reformation. Pertinently, it is to be noted that the object of punishment is not only to deter the accused from committing any further crime, but also to reform and retribute; and the extent of reformation can be derived only by the conduct of the accused exhibited during his days of retribution. Taking note of the above aggravating and mitigating factors, we are of the view that it would meet the ends of justice, if the sentence

of imprisonment for life awarded by the Sessions Court as affirmed by the High Court, is modified to the period already undergone by the appellant.

20. Accordingly, we modify the sentence awarded by the Courts below to the period already undergone by the appellant. However, we clarify that the appellant shall pay the fine amount imposed by the Sessions Court, if not paid already. He shall be set at liberty if not required in any other case. The bail bond executed by the appellant stands discharged.

21. Resultantly, this Criminal Appeal stands partly allowed to the extent as indicated above.

Result of the Case: Appeal Partly Allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 10 S.C.R. 786 : 2024 INSC 787

Sajeena Ikhbal & Ors.
v.
Mini Babu George & Ors.

(Civil Appeal No. 7881 of 2024)

17 October 2024

[C.T. Ravikumar and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

Whether Motor Accident Claims Tribunal was justified in dismissing the claim petition of appellants on the ground that the appellants have failed to prove that the accident occurred due to negligent driving of respondent no. 2/driver, nor it is proved that the car was involved in the accident.

Headnotes†

Motor Vehicle Accident claim – Victim died in an accident after being knocked down by a car as he was proceeding in his motorcycle – Claim petition by appellants – The MACT assessed the compensation to hold that the appellants were entitled to a total compensation of Rs. 46,31,496/- – However, the claim petition was dismissed on the ground that the appellants have failed to prove that the accident occurred due to negligent driving of respondent no. 2/driver, nor it is proved that the car was involved in the accident – The findings of MACT were affirmed by the High Court – Correctness:

Held: The courts below have recorded the finding of non-involvement of the car in the accident by disbelieving the eyewitness, PW-6 only on the ground that in the police investigation, he was not examined as an eyewitness – In considered view of this Court, a witness who is otherwise found trustworthy cannot be disbelieved, in a motor accident case, only on the ground that the police have not recorded his statement during investigation – There is abundance of evidence pointing to the fact that the car was involved in the accident and the courts below have not considered the evidence in true perspective and have misguided themselves to record perverse finding regarding non-involvement of the car in the accident – In claim cases, arising out of motor accident, the court has to apply the principles of preponderance of probability

* Author

and cannot apply the test of proof beyond reasonable doubt – The evidence available in the present case tested on the principles of preponderance of probability can record only one finding that the car was involved in the accident, otherwise, the damage found to the car in the Mahazar (Annexure P-2) was not possible – The Mahazar clearly records that the front bumper right side of the car is broken, front right parking light is broken, the grill fitted above the front bumper is curved – With such damages to the front side of the body of the car, it is impossible to record a finding that the car was not involved in the accident – In the light of the evidence on record, the finding of the courts below are set aside that the car was not involved in the accident, resultantly, holding that the deceased died as a result of accident involving the car insured with respondent no. 3 – Therefore, the claim petition to award compensation to the appellants at Rs. 46,31,496/- along with interest is allowed. [Paras 16, 17]

Case Law Cited

Mangla Ram v. Oriental Insurance Co. Ltd. & Ors. [2018] 5 SCR 287 **: (2018) 5 SCC 656 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Motor accident; Negligent driving; Compensation; Evidence; Article 136 of Constitution; Re-appreciation of Evidence; Preponderance of Probability; Beyond reasonable doubt.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7881 of 2024

From the Judgment and Order dated 23.07.2019 of the High Court of Kerala at Ernakulam in MACA No. 3331 of 2016

Appearances for Parties

Thomas P Joseph, Sr. Adv., Bijo Mathew Joy, Dinny Thomas, Ms. Gifty Marium Joseph, Advs. for the Appellants.

Atul Nanda, Sr. Adv., Ms. Rameeza Hakeem, Rajeev Maheshwaranand Roy, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

1. Challenge in this appeal is to the judgment and order dated 23.07.2019 passed by the High Court of Kerala in MACA No. 3331 of 2016 dismissing the appellants' appeal while affirming the Award passed by the Motor Accident Claims Tribunal[1] by which the appellants' claim was dismissed. The parties are referred to in this judgment as they appear in the claim petition.

2. The widow, minor child and parents of the deceased Ikhbal are the appellants in the present proceedings. Ikhbal died in an accident on 10.06.2013 being knocked down by a car as he was proceeding in his motorcycle from Thodupuzha to Muttom. He died of the injuries sustained in the said accident which allegedly occurred on account of the negligence of the driver of the car. Respondent nos. 1 to 3 are the owner, driver and insurer of the car respectively. Respondent nos. 2 and 3 contested the claim petition while respondent no. 1 remained ex-parte.

3. According to the appellants, while the deceased was travelling on a motorcycle and reached near 'Mrala' junction, a K.S.R.T.C. bus, which was going in front, stopped at the bus stop. The deceased attempted to overtake the bus and at that time the subject car driven by respondent no. 2 came from the opposite direction and hit at the motorcycle of the deceased on which he fell down and sustained fatal injuries. He was taken to the hospital, but he succumbed to the injuries. The deceased was an employee as U.D. Clerk in Registration Department and had monthly income of Rs. 21,456/-.

4. Respondent nos. 2 and 3 denied the involvement of the car in the accident. According to them, respondent no. 2 was driving the car carefully and the accident occurred due to the negligence of the deceased because he attempted to overtake the parked K.S.R.T.C. bus. In the process, the motorcycle hit on the bus and the deceased fell down and sustained fatal injuries. The deceased was taken to the hospital by respondent no. 2 who reached the spot soon after

1 'MACT'

the accident. The car of respondent no. 2 did not hit the deceased's motorcycle. The respondent no. 3 admitted the policy.

5. The appellants examined six witnesses before the MACT while the respondents examined two witnesses. Both the parties exhibited number of documents in their evidence. The MACT assessed the compensation to hold that the appellants are entitled to a total compensation of Rs. 46,31,496/-. However, the claim petition was dismissed on the ground that the appellants have failed to prove that the accident occurred due to negligent driving of respondent no. 2/driver, nor it is proved that the car was involved in the accident. The said findings have been affirmed by the High Court.

6. Mr. Thomas P. Joseph, learned senior counsel for the appellants submits that there is ample evidence demonstrating involvement of the car in the subject accident and the findings to the contrary is utterly perverse. It is argued that the MACT and the High Court as well have recorded the findings adverse to the appellants basing on conjectures and surmises and by complete misreading the evidence. It is vehemently argued that the statement of witnesses have to be read in conjunction with principle of *res ipsa loquitur*, which the courts below have failed. Learned counsel prayed for allowing the appeal to award the sum assessed by the MACT.

7. *Per contra*, Mr. Atul Nanda, learned senior counsel for respondent no. 3 would submit that the courts below have correctly held that the subject car owned by respondent no. 1 was not involved in the accident. Referring to the statement of witnesses, learned senior counsel has argued that none of the witnesses have seen the car hitting the motorcycle driven by the deceased. It is lastly argued that both the courts below have recorded the findings after careful examination of the evidence which warrants no interference by this Court in exercise of power under Article 136 of the Constitution of India.

8. Before proceeding to dwell on the merits of the matter we remind ourselves that the present is an appeal under Article 136 of the Constitution of India wherein, ordinarily, this Court would not reappreciate the evidence. However, this Court in **Mangla Ram v. Oriental Insurance Co. Ltd. & Ors.**[2] has held that in an appeal

2 [2018] 5 SCR 287 : (2018) 5 SCC 656

under Article 136 of the Constitution of India, ordinarily this Court will not engage itself in reappreciation of the evidence as such but can certainly examine the evidence on record to consider the challenge to the findings recorded by Tribunal or the High Court, being perverse or replete with error apparent on the face of the record and being manifestly wrong. This being the legal position, we proceed to examine the evidence on record to examine the correctness of the finding recorded by the courts below as to whether the subject car was involved in the accident or not.

9. It was the case of the appellants from the inception that the deceased was hit by the subject car which came driven from the opposite direction as a result of which he was thrown on the road and sustained fatal injuries. The final report (closure report) of FIR No. 342 of 2013 records that the damage occurred to the subject car is due to the skied motorcycle glide to the road and hit to the front bumper and grill of the car, which was coming at that time and the accident occurred for which the drivers of the bus or the car were not responsible. However, it clearly records that there was damage to the car on account of the accident.

10. PW-2 in his deposition stated that the accident was a result of collision between the car and the bike. This witness is the driver of the bus. He was sitting on the driver seat and after hearing the sound of the accident, he looked back and saw the deceased was lying on the road. Nearby people told him that the deceased was hit by the car due to over speeding. In cross-examination he denied that the car driver was not involved in the accident.

11. PW-3 is the Teashop owner at the place of occurrence. He says that he heard the sound of accident, and the mudguard of the car was detached. In cross-examination, he states that as the car hit, the wheel of the bike rotated. He denied the suggestion that the bike touched the bus and fell down or that he has not seen the offence.

12. PW-5 was the SHO of Karimkunnam Police Station who has prepared the Mahazar of the car, bus and the bike. In the Mahazar of the car, it was noted that the paint on the right side of the head light is lost, and scratches are seen here and there on the right side of the body. According to him, the grill of the car is dented, and parking light is broken.

13. PW-6 is an important witness who was presented as an eyewitness to the accident. He had seen the motorcycle overtaking the bus and at that time the car hit the motorcycle. The car forwarded a little and stopped and the injured was taken to the hospital in the same car which hit him. This witness has remained firm in the cross-examination.

14. RW-2 is respondent no. 2 as also the driver of the subject car. He says that the bike skied and fell in front of the car. He admits in cross-examination that when the motorcycle skied and reached in front of the car, the bus was 100 feet away and he stopped the car on the spot where the bike hit the car.

15. From the above evidence of the witnesses, it is apparent that (I) the car had suffered damages; (II) the car driver admits that the bus was 100 feet away when the motorcycle hit the car; (III) PW-6, an eyewitness, has narrated the accident and (IV) PW-2, the driver of the bus also speaks about hearing the sound of the accident and nearby people telling him that the car had hit the bike.

16. The courts below have recorded the finding of non-involvement of the car in the accident by disbelieving the eyewitness, PW-6 only on the ground that in the police investigation, he was not examined as an eyewitness. In our considered view, a witness who is otherwise found trustworthy cannot be disbelieved, in a motor accident case, only on the ground that the police have not recorded his statement during investigation. There is abundance of evidence pointing to the fact that the car was involved in the accident and the courts below have not considered the evidence in true perspective and have misguided themselves to record perverse finding regarding non-involvement of the car in the accident. In claim cases, arising out of motor accident, the court has to apply the principles of preponderance of probability and cannot apply the test of proof beyond reasonable doubt. The evidence available in the present case tested on the principles of preponderance of probability can record only one finding that the car was involved in the accident, otherwise, the damage found to the car in the Mahazar (Annexure P-2) was not possible. The Mahazar clearly records that the front bumper right side of the car is broken, front right parking light is broken, the grill fitted above the front bumper is curved. With such damages to the front side of the body of the car, it is impossible to record a finding that the car was not involved in the accident.

17. In the light of the evidence on record, we set aside the finding of the courts below that the car was not involved in the accident, resultantly, holding that the deceased died as a result of accident involving the car insured with respondent no. 3. We, therefore, set aside the judgment and order of the courts below and allow the claim petition to award compensation to the appellants at Rs. 46,31,496/- with interest @ 9% per annum from the date of filing of the claim petition till the realisation of the payment, which shall be made within three months from today, failing which, the award amount shall carry interest @ 12% per annum.

18. The appeal is allowed accordingly in the above stated terms. The parties shall bear their own costs.

Result of the Case: Appeal Allowed

†*Headnotes prepared by:* Ankit Gyan

[2024] 10 S.C.R. 793 : 2024 INSC 756

Chief Commissioner of Central Goods and Service Tax & Ors.
v.
M/s Safari Retreats Private Ltd. & Ors.

(Civil Appeal No. 2948 of 2023)

03 October 2024

[Abhay S. Oka* and Sanjay Karol, JJ.]

Issue for Consideration

Whether the definition of "plant and machinery" in the explanation appended to Section 17 of the Central Goods and Services Tax Act, 2017 applies to the expression "plant or machinery" used in clause (d) of sub-section (5) of Section 17; if it is held that the explanation does not apply to "plant or machinery", what is the meaning of the word "plant"; and whether clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act are unconstitutional.

Headnotes†

Central Goods and Services Tax Act, 2017 – s.17(5)(c), (d), s.16(4) – Constitutional validity – Challenge to – Eligibility and conditions for taking Input Tax Credit (ITC) – Apportionment of blocked credits – Whether the construction of an immovable property is a ''plant'' for the purposes of s.17(5)(d) – Shopping mall in question, if was a ''plant'' – Plea of the assessees *inter alia* that they were not able to avail the credit on GST paid on goods and services used in the construction of buildings etc. against the GST received for the renting/letting out etc. of the premises – High Court held that if the assessees were required to pay GST on the rental income from the mall, they were entitled to ITC on the GST paid on the construction of the mall – Correctness:

Held: Constitutional validity of clauses (c) and (d) of s.17(5)and s.16(4) is upheld – Since their plain interpretation does not lead to any ambiguity, they cannot be read down – The expression "plant or machinery" used in s.17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to s.17 – Whether a mall, warehouse or any building

* Author

other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" used in s.17(5)(d) is a factual question to be determined keeping in mind the business of the registered person and the role that building plays in the said business – If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant – Then, it is taken out of the exception carved out by clause (d) of s.17(5) to sub-section (1) of s.16 – Functionality test to be applied to decide whether the construction of an immovable property is a "plant" for the purposes of clause (d) of s.17(5) – Impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023 set aside, writ petitions remanded to High Court for limited purposes of deciding whether, on facts, the shopping mall satisfies the functionality test and is a "plant" in terms of clause (d) of s.17(5) – Further, whether the construction of immovable property carried out by the petitioners in Writ Petitions amounted to "plant" to be decided on merit by applying the functionality test. [Paras 65-67]

Central Goods and Services Tax Act, 2017 – ss.17(5), 16(1), 18(1) – Eligibility and conditions for taking Input Tax Credit(ITC) – Availability of ITC in special circumstances – Non-obstante clause – s.17(5) overrides sub-section (1) of s.16 and s.18:

Held: s.17(5) beginning with a non-obstante clause overrides both sub-section (1) of s.16 and sub-section (1) of s.18 – A non-obstante clause gives an overriding effect to certain provisions over contrary provisions found in the same or some other enactments – Said provision should prevail despite anything to the contrary in the provisions mentioned in the non-obstante clause – In the cases covered by s.17(5), ITC is not available – Thus, sub-section (5) of s.17 carves out an exception to sub-section (1) of ss.16 and 18, which confer the benefit of ITC. [Para 31]

Central Goods and Services Tax Act, 2017 – s.17(5) (c), (d) – Constitution of India – Article 14 – Challenge to constitutional validity on the ground that the test of reasonable classification under Article 14 is not met:

Held: Immovable property and immovable goods for the purpose of GST constitute a class by themselves – Clauses (c) and (d)

of s.17(5) apply only to this class of cases – Cases covered by s.17(5)(c), (d) are entirely distinct from the other cases so as not to encroach upon the State's legislative powers under Entry 49 of List II – ITC cannot be enforced unless there is a statutory provision as the right of ITC is a creation of a statute and is conferred only by the Statute – ITC cannot be claimed as a matter of right unless expressly provided in the statute – Plea of the assessees that the difference is not intelligible and has no nexus to the object sought to be achieved, rejected – The test of vice of discrimination in taxing law is less rigorous – The legislature was dealing with a complex economic problem – Clauses (c) and (d) of s.17(5) cannot be said to be discriminatory. [Paras 58-60]

Central Goods and Services Tax Act, 2017 – s.17(5), Clause (d), (c) – Distinction between – Discussed.

Interpretation of Statutes – Taxation Statutes – Interpretation – Principles governing – Discussed.

Words and Phrases – Central Goods and Services Tax Act, 2017 – s.17(5), Clause (d), (c), Explanation; s.7, Schedule II, III; s.102(2) – "plant and machinery"; "plant or machinery"; "plant"; "construction"; "service"; "supply" – Discussed.

Case Law Cited

CIT, Trivandrum v. Anand Theatres [2000] 1 Supp. SCR 338 : **(2000) 5 SCC 393 – held inapplicable.**

Eicher Motors Limited & Anr. v. Union of India & Ors [1999] 1 SCR 295 **: (1999) 2 SCC 361;** *Bharat Sanchar Nigam Limited & Anr. v. Union of India & Ors.* [2006] 2 SCR 823 **: (2006) 3 SCC 1;** *Shreya Singhal v. Union of India* [2015] 5 SCR 963 **: (2015) 5 SCC 1;** *Union of India v. Bharti Airtel Limited & Ors.* **(2021) SCC OnLine SC 1006;** *Federation of Hotel & Restaurant Association of India, etc. v. Union of India and Ors.* [1989] 2 SCR 918 **: (1989) 3 SCC 634;** *Twyford Tea Co. Ltd. and Anr. v. State of Kerala and Anr.* **(1981) 4 SCC 675;** *Union of India and Ors. v. Nitdip Textile Processors Pvt. Ltd. and Anr.* [2011] 13 SCR 26 **: (2012) 1 SCC 226;** *Government of Andhra Pradesh and Ors. v. P. Laxmi Devi* [2008] 3 SCR 330 **: (2008) 4 SCC 720;** *Assistant Commissioner of Urban Land Tax and Ors. v. Buckingham and Carnatic Co. Ltd., Etc.* [1970] 1 SCR 268 **: (1969) 2 SCC 55;** *Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.* [2016] 10 SCR 1 **: (2017) 12 SCC 1;** *State of*

Tamil Nadu and Anr. v. National South Indian River Interlinking Agriculturist Association [2021] 7 SCR 479 **: (2021) 15 SCC 534;** *Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Ltd. & Anr.* [1983] 1 SCR 1000 **: (1983) 1 SCC 147;** *Union of India & Anr v. Mohit Minerals Pvt. Ltd.* [2022] 9 SCR 300 **: (2022) 10 SCC 700;** *Indian Social Action Forum (INSAF) v. Union of India* [2020] 4 SCR 903 **: (2021) 15 SCC 60;** *Delhi Transport Corporation v. DTC Mazdoor Congress & Ors.* [1990] Supp. 1 SCR 142 **: (1991) Supp (1) SCC 600;** *Indcon Structurals (P) Ltd. v. Commissioner of Central Excise, Chennai* [2006] Supp. 1 SCR 11 **: (2006) 4 SCC 786;** *CIT, Andhra Pradesh v. Taj Mahal Hotel, Secunderabad* [1972] 1 SCR 168 **: (1971) 3 SCC 550;** *Commissioner of Income Tax, Karnataka v. Karnataka Power Corporation* **(2002) 9 SCC 571;** *Commissioner of Income Tax v. Victory Aqua Farm Ltd.* **(2016) 16 SCC 553;** *Commissioner of Customs (Import), Mumbai v. Dileep Kumar & Company & Ors.* **(2018) 9 SCC 1;** *Sneh Enterprises v. Commissioner of Customs, New Delhi* [2006] Supp. 5 SCR 817 **: (2006) 7 SCC 714;** *Commissioner of Income Tax, West Bengal 1, Calcutta v. M/s Vegetables Products Ltd.* [1973] 3 SCR 448 **: (1973) 1 SCC 442;** *R.S. Raghunath v. State of Karnataka & Anr.* [1991] Suppl. 1 SCR 387 **: (1992) 1 SCC 335;** *Union of India & Ors v. VKC Footsteps India Pvt. Ltd.* [2021] 15 SCR 169 **: (2022) 2 SCC 603;** *ALD Automotive Pvt. Ltd. v. Commercial Tax Officer, now upgraded as Assistant Commissioner (CT) & Ors.* [2018] 13 SCR 217 **: (2019) 13 SCC 225;** *Hari Krishna Bhargav v. Union of India & Anr* [1966] 2 SCR 22 **: (1966) 2 SCR 22;** *Joseph Shine v. Union of India* [2018] 11 SCR 765 **: (2019) 3 SCC 39;** *Indore Development Authority v. Manoharlal & Ors.* [2020] 3 SCR 1 **: (2020) 8 SCC 129;** *State of Bombay v. R.M.D. Chamarbaugwala & Anr.* [1957] 1 SCR 874 **: (1957) SCC OnLine SC 12;** *Union of India v. Shri Harbhajan Singh Dhillon* [1972] 2 SCR 33 **: (1971) 2 SCC 779;** *India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.* [1989] Supp. 1 SCR 692 **: (1990) 1 SCC 12;** *State of W.B. v. Kesoram Industries Ltd. & Ors.* [2004] 1 SCR 564 **: (2004) 10 SCC 201;** *Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works & Ors.* [2010] 4 SCR 476 **: (2010) 5 SCC 122 – referred to.**

List of Acts

Central Goods and Services Tax Act, 2017; Tamil Nadu Value Added Tax Act, 2006; Finance Act, 2022; Constitution of India.

Chief Commissioner of Central Goods and Service Tax & Ors. v. M/s Safari Retreats Private Ltd. & Ors.

List of Keywords

Goods and Services Tax; Clauses (c) and (d) of Section 17(5) and Section 16 of the Central Goods and Services Tax Act, 2017; Input Tax Credit (ITC); Exception; Non-obstante clause; Shopping mall; Hotels; Warehouses; Building; Cinema; Construction of immovable property; "plant and machinery"; "plant or machinery"; "plant"; "construction"; Supply of service; Land and buildings; Works contracts; Immovable property; Immovable goods; Capital goods; Constitutional validity challenged; Reading down; Intelligible differentia; Test of reasonable classification; Vice of discrimination; Discriminatory; Unconstitutional; Functionality test; Taxation Statutes; Renting; Leasing; Letting out; Rental income; Articles 14, 19(1)(g), 300A; List II of Schedule VII of the Constitution of India.

Case Arising From

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeal No. 2948 of 2023

From the Judgment and Order dated 17.04.2019 of the High Court of Orissa at Cuttack in WPC No. 20463 of 2018

With

Writ Petition (Civil) Nos. 804 and 1030 of 2022, Civil Appeal No. 2949 of 2023, Writ Petition (Civil) Nos. 1036 of 2022, Writ Petition (Civil) Nos. 90, 846 and 847 of 2023

Appearances for Parties

N. Venkataraman, A.S.G., Arijit Prasad, Arvind P. Datar, Mukul Rohatgi, Abhratosh Majumdar, V. Raghuraman, Vikram Nankani, Tarun Gulati, Sr. Advs., Inderjit Prasad, Mukesh Kumar Maroria, Rupesh Kumar, S.A. Haseeb, Mohd. Akhil, Ms. Swarupama Chaturvedi, T.S. Sabarish, Lalit Mohan, Ms. Sonu Bhatnagar, V.Chandrashekara Bharati, Ms. Amritha Chandramouli, Rahul Vijay Kumar, Shivshankar G., Ms. Shruti Shivkumar, Ms. Monica Benjamin, Ms. Nishtha Mittal, Saurabh Chaudhary, Vijaya Nand Tripathi, Ms. Ankita Anilkumar Singh, Vipin Jain, Vinay Saraf, Vishal Agrawal, Sasi Prabhu, Ravi Bharuka, Ankit Agarwal, Abhishek Deodhar, Rahul Unnikrishnan, Ms. Ritu Jain, Ms. Aditi Jain, Sujit Ghosh, Ms. Mannat Waraich, Ms. Anshika Agarwal, Ms. Priyanka Rathi, Ms. Ashwini Chandrasekaran, Ms. Shubhangi Gupta, Abhishek A. Rastogi, Nikhil Jain, Pratyushprava Saha,

Ms. Divya Jain, Ms. Meenal Songiri, Ms. Ranjeeta Rohatgi, Vinod Kumar Jain, Ms. Pooja M Rastogi, Ms. Monica Dhingra, Ms. Meenal Songire, Ashwini Kumar, Pallav Mongia, Vijay Deora, Jayesh Gupta, Ajay Singh, Shubham Singh, Renita Alex, Avra Majumdar, Ramesh Patodia, S Sukumaran, Anand Sukumar, Mrs. Megha Agarwal, Bhupesh Kumar Pathak, Mrs. Ruche Anand, Mrs. Meera Mathur, Suvendu Suvasis Dash, Ms. Swati Vaibhav, Ms. Shruti Vaibhav, Priyonkoo Anjan Gogoi, Ms. Nitya Thakur, Rajasmit Mondal, Shivam Saini, Prasenjeet Mohapatra, Avra Mazumder, Bhupesh Pathak, Vinay Shraff, Vishal Aggrawal, Ms. Tuhina Sinha, Bhanumurthy J, C R Raghavendra, Mrs. Sandhya Raghuraman, Shivam Batra, Sparsh Bhargava, Ms. Ishita Farsaiya, Rahul Jain, Kishore Kunal, Ms. Ankita Prakash, Naresh Jain, Ms. Arti Singh, Alok Kumar, Vikas Mehta, J.K. Mittal, Ms. Vandana Mittal, Ms. Aashna Suri, Nagarkatti Kartik Uday, Mahaveer Jain, Rameshwar Prasad Goyal, Vishal Aggarwal, Ankit Kanodia, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The issues which broadly arise in this group of matters concern clauses (c) and (d) of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). There is a challenge to the constitutional validity of the said provision. There is a prayer for reading down the said provision.

2. In Civil Appeal Nos. 2948 and 2949 of 2023, the first respondent is engaged in the construction of a shopping mall for the purpose of letting out premises in the malls to different tenants. Vast quantities of material, inputs and services are required for the construction of the malls in the form of cement, sand, steel, aluminium, wires, plywood, paint, lifts, escalators, air-conditioning plants, electrical equipment, transformers, building automation systems etc., and also consultancy services, architectural services, legal and other professional services, engineering services and other services including the services of a special team of international designers specialised in the construction of Malls. These goods and services used in the construction of the mall are taxable under the CGST Act. It is the case of the first

respondent that it has accumulated input credit of GST amounting to more than Rs. 34 crores by the purchase/supply of goods and services consumed and used in the construction of the shopping mall. At the same time, the first respondent's letting out of units in the shopping mall attracts CGST based on the rent received by the first respondent since it amounts to the supply of service under the CGST Act. Therefore, the first respondent was desirous of availing the Input Tax Credit (ITC) accumulated against the rental income received by it upon letting out the mall premises. According to the first respondent, when it approached the concerned authorities, it was advised to deposit GST on rent without deducting ITC because of the exception carved out by Section 17(5)(d).

3. The first respondent filed a writ petition before the High Court of Orissa seeking a declaration that Section 17(5)(d) of the CGST Act and the corresponding provisions of the Orissa Goods and Services Act, 2017 do not apply to the construction of immovable property intended for letting out on rent. A prayer in the alternative was made that in the event it is held that the bar under Section 17(5)(d) is applicable even to the construction of immovable property intended for letting out, a declaration be issued that Section 17(5)(d) is violative of Articles 14 and 19 (1)(g) of the Constitution of India. A consequential prayer was made to issue a writ of mandamus to enjoin the present appellants, who were respondents in the writ petition, to grant the benefit of ITC to the first and second respondents.

4. By the impugned judgment dated 17th April 2019, the High Court held that in view of the decision of this Court in the case of ***Eicher Motors Limited & Anr. v. Union of India & Ors.***,[1] Section 17(5)(d) was required to be read down as the very purpose of ITC is to benefit the assessee. The High Court held that if the assessee is required to pay GST on the rental income from the mall, it is entitled to ITC on the GST paid on the construction of the mall. It was held that the narrow interpretation given by the Department to Section 17(5)(d) would frustrate the very object of the Act. Civil Appeal No. 2949 of 2023 takes exception to the same judgment.

5. In the Writ Petitions, the petitioners contend that due to the restrictions imposed by Section 17(5)(c) and Section 17(5)(d) of the CGST

1 [1999] 1 SCR 295 : (1999) 2 SCC 361

Act, they are unable to avail the credit on GST paid on goods and services used in the construction of factory premises, buildings etc against the GST received by them for the renting/leasing/letting out etc. of the premises. GST is being recovered on the supply of goods and services used in the construction of commercial office buildings, and GST is also being recovered on rentals collected. Accordingly, several writ petitions have been preferred seeking the following reliefs:

a. Writ Petition (C) No. 90 of 2023 challenging clauses (c) and (d) of Section 17(5) of the CGST Act to the extent to which it excludes works contract services and goods from ITC. It is also prayed that the bar imposed by Section 16(4) should not apply to the petitioner;

b. Writ Petition (C) No. 804 of 2022 challenging the validity of Section 17(5)(d) of the CGST Act;

c. Writ Petition (C) No. 846 of 2023 challenging the validity of clauses (c) and (d) of Section 17(5) of the CGST Act. There is another prayer to read down the provisions;

d. Writ Petition (C) No. 847 of 2023 challenging the constitutional validity of clauses (c) and (d) of Section 17(5). There is a prayer to read down the clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act;

e. Writ Petition (C) No. 1036 of 2023 challenging the constitutional validity of clauses (c) and (d) of Section 17(5). There is a prayer to read down the clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act; and

f. Writ Petition (C) No. 1030 of 2022 containing similar prayers

SUBMISSIONS ON BEHALF OF ASSESSEES

6. Very detailed submissions have been made by the parties to the civil appeals, intervenors and parties to the writ petitions. We find that the submissions made by the learned counsel for the assessees and the intervenors are repetitive. There are a large number of decisions relied upon, whether relevant or irrelevant. Brevity is the hallmark of good advocacy. It would be ideal if parties on one side file joint written submissions. The Judges and lawyers are humans. Sometimes, bulky compilations and submissions can be counterproductive.

7. Assessees have submitted that clauses (c) and (d) and sub-section (5) of Section 17 are violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The submissions concerning the challenge to constitutional validity can be summarised as follows:

a. Section 17(5)(d) is violative of Article 14 since it classifies assessees engaged in the business of constructing immovable properties and then renting/leasing/letting out etc. premises within the said immovable properties on the same footing as assessees engaged in the business of constructing immovable properties and then selling the immovable properties or premises within the said immovable properties, by denying them ITC for their business expenditure, i.e., the expenditure incurred in constructing the immovable properties. Therefore, it is submitted that the provision treats unequals as equals and contravenes the principle of GST Law, i.e., to allow ITC for business expenditure. Therefore, the provisions are arbitrary, irrational and unreasonable.

b. There is no intelligible differentia on the basis of which such classification is done. Creation of an immovable property is not a differentia. The contention is that works contracts, namely the contracts for the construction of immovable property wherein transfer of property is involved, are treated as a supply of services. Therefore, *de jure*, they are treated as a supply of services notwithstanding the immovable character of the deliverable. It is submitted that there are cases where a transaction may seemingly appear to involve a supply of goods, but in essence, it is a transaction involving something else. An illustration is given of a lawyer drafting a legal contract. In such a case, the deliverable may be in the form of documents handed over to the client and, therefore, apparently may appear to be a supply of goods. However, it is a legal service rendered, which is what the bargain was for. In short, the dominant intention test, as laid down in the case of ***Bharat Sanchar Nigam Limited & Anr. v. Union of India & Ors.***,[2] must be applied. It is submitted that under the CGST Act, a works contract involving the creation of immovable property is treated as a supply of

2 [2006] 2 SCR 823 : (2006) 3 SCC 1

services. Thus, the nature of the deliverable, namely, building, etc., has no relevance to the levy of GST. Under the CGST Act, the immovable character of the deliverables, such as buildings, etc., under a works contract is entirely disregarded. Therefore, such immovable property cannot be said to exist under the architecture of GST. In short, the submission is that the differentia canvassed by the State, which is an immovable characteristic of the deliverable under the works contract, is artificial and non-existent in the eyes of the law. As intelligible differentia does not exist, the first condition of the twin test can be said to be satisfied;

c. Break in the credit chain is also not a differentia, since, in the assessees' case, unlike in the case of assessees selling immovable properties, there is no break in the credit chain. The break arises when the recipient uses the supplier's output to make non-taxable transactions for which GST is not payable by the recipient. In such a case, credit cannot be utilised in the subsequent leg of the transaction from where the break in the chain took place. Several illustrations have been given in support of this submission. It was submitted that there is no break in the chain at any of the levels, starting from the sub-contractor to the main contractor and the petitioner, since all three entities are liable to output GST, and therefore, in such a case, denial of credit cannot be justified;

d. It is submitted that even assuming that coming into existence of an immovable property is an intelligible differentia, it has no nexus with the objects of the CGST Act. The reason is that denying credit in such cases essentially perpetuates and continues the cascading effect of tax, contrary to the very object of the CGST Act of eliminating the cascading effect of tax and achieving tax neutrality. For example, if a manufacturer hires a contractor to build a factory building through a works contract, the manufacturer would have to pay GST for the services rendered by the contractor. If the manufacturer is not permitted to avail ITC for the GST so paid, the GST would be included in the cost of the output product price, upon which further GST would be levied, leading to tax on tax. If what is being supplied by the seller is a service, it has to be necessarily received as a service by the buyer;

e. Section 17(5)(c) and (d) remain vague due to the absence of definitions of the expressions "on its own account" and "plant or machinery". The distinction between the expression "plant and machinery" used in Section 17(5)(c) and the expression "plant or machinery" used in Section 17(5)(d) has not been clarified by the Government. Therefore, the provisions suffer from vagueness. It is submitted that if a provision is very vague, it can be struck down, as held in the case of ***Shreya Singhal v. Union of India***.[3]

f. It is submitted that ITC is the bedrock of the GST framework. The right to avail of ITC is a statutory right in terms of Section 16 of the GST Act. The receipt of rental income and tax payable are direct consequences of the construction undertaken. By blocking the ITC on the rentals collected by the assessee who has constructed the building, the State is unjustly enriching itself and violating the right to avail ITC flowing from Section 300A of the Constitution of India. Reliance is also placed on a decision of this Court in the case of ***Union of India v. Bharti Airtel Limited & Ors.***;[4] and

g. Reliance has been placed on numerous decisions concerning the principles for examining the constitutional validity of taxation statutes. It is submitted that though, in the matters of taxing Statutes, the legislature enjoys a very wide latitude, and the Courts are expected to show deference to legislative choices, a decision of this Court in the case of ***Federation of Hotel & Restaurant Association of India, etc. v. Union of India and Ors.***[5] holds that wide latitude is also subject to exceptions, it is argued that "wide latitude" does not mean "wild latitude". On the twin test of reasonable classification, reliance was placed on various decisions, including those in the case of ***R.K Garg v. Union of India and Ors.***,[6] ***Twyford Tea Co. Ltd. and Anr. v. State of Kerala and Anr.***,[7] ***Union of India and Ors. v. Nitdip***

3 [2015] 5 SCR 963 : (2015) 5 SCC 1

4 (2021) SCC OnLine SC 1006

5 [1989] 2 SCR 918 : (1989) 3 SCC 634

6 [1982] 1 SCR 947 : (1981) 4 SCC 675

7 [1970] 3 SCR 383 : (1970) 1 SCC 189

Textile Processors Pvt. Ltd. and Anr..[8] Varying standards of review under the doctrine of classification are typically applied to economic and non-economic legislation, with the rational basis test being applied to economic legislation. Various decisions were relied upon dealing with the wide latitude doctrine in relation to economic legislations. Reliance was placed on the ***Government of Andhra Pradesh and Ors. v. P. Laxmi Devi***,[9] ***Assistant Commissioner of Urban Land Tax and Ors. v. Buckingham and Carnatic Co. Ltd., Etc.***,[10] ***Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.***[11] **and** ***State of Tamil Nadu and Anr. v. National South Indian River Interlinking Agriculturist Association***.[12] The true import of the legislative provision is to be understood from the plain reading of the provision and not on the basis of affidavits or submissions of the State. A decision in the case of ***Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Ltd. & Anr.***[13] is relied upon.

8. Assessees have submitted that clauses (c) and (d) and sub-section (5) of Section 17 must be read down to the extent that ITC is blocked for suppliers who procure taxable works contract services, goods or services on the input side and then provide taxable supplies on the output side. The submissions about reading down clauses (c) and (d) of Section 17(5) of the CGST Act can be summarised as follows:

a. The statement of objects and reasons of the Constitution (122nd Amendment) Bill, 2014 shows that Articles 246A and 279A were introduced to simplify the indirect tax regime to prevent the cascading effect of multiplicity of taxes. The cascading effect of taxes can be removed only by introducing a system for allowance of ITC so that there would not be any missing link in the chain or series of transactions culminating into deliverable goods and services or both to the ultimate end-user, who is the customer. Reliance has been placed on the observations made by this

8 [2011] 13 SCR 26 : (2012) 1 SCC 226

9 [2008] 3 SCR 330 : (2008) 4 SCC 720

10 [1970] 1 SCR 268 : (1969) 2 SCC 55

11 [2016] 10 SCR 1 : (2017) 12 SCC 1

12 [2021] 7 SCR 479 : (2021) 15 SCC 534

13 [1983] 1 SCR 1000 : (1983) 1 SCC 147

Court in the case of ***Union of India & Anr v. Mohit Minerals Pvt. Ltd.***.[14] The entire GST regime has been so designed that the credit of tax paid at every stage of value addition from the point of manufacture to the point of consumption could be availed at the next stage. It provides for seamless transfer of ITC from one stage to another. Moreover, GST is a destination-based tax on consumption, and accordingly, the final burden of the tax must be borne by the customers and not the businesses. If the entire scheme of the CGST Act is perused, except for clauses (c) and (d) of Section 17(5), the ITC is not denied when the transaction is from business to business.

b. The assessees pay substantial amounts for the construction of immovable properties and are levied CGST on the same. However, since they are not permitted to avail of the CGST paid as ITC, it gets added to the price of services they supply, i.e., renting/leasing/letting out, etc. Further, CGST is leviable on the supply of these services, resulting in tax on tax or the cascading effect of tax. Moreover, due to the denial of ITC, the assessees have to bear the tax burden. Thus, the interpretation put by revenue to clauses (c) and (d) of Section 17(5), as per which ITC is denied to assessees on construction expenditure, results in the cascading effect of taxes and denial of credit for business expenditure, which is in direct contradiction of the objects of GST Law as elaborated previously. It is submitted that ITC cannot be denied solely because immovable properties are created in the assessee's business. The primary condition for availing of ITC is the nexus between the assessee's input and output business activities, which exists in the assessee's case. Direct corelation with input services or output services is not necessary to avail of the benefit of ITC.

c. It is submitted that the phrase "on its own account" should be read down and given a purposive construction instead of a myopic one. The phrase should be deemed to mean when construction is done for personal use and not for services, i.e., credit should be denied only when goods and services are utilised for the construction of immovable property for his own

14 [2022] 9 SCR 300 : (2022) 10 SCC 700

purposes, like an office building or factory building. In such a case, no further GST on the sale of such a building occurs and, therefore, a chain of taxability breaks. However, when such immovable property is not being used by the assessee itself but is used for other supplies, such as renting property or supply of hotel accommodation services, etc., the same should not be covered by the expression 'on his own account'. Therefore, when an immovable property itself is a means by which business is being carried out, like letting out for short-term purposes by a hotel, the embargo under Section 17(5)(d) on ITC will not apply as it cannot be construed on his own account. It is submitted that this manner of reading down will ensure that in cases where there is no breakage in the chain of taxable supply, ITC is available to a taxable person who pays output tax. Moreover, this interpretation will avoid the cascading effects of tax.

d. In the submissions made by assessees, principles of reading down were sought to be invoked based on the decision of this Court in the case of ***Indian Social Action Forum (INSAF) v. Union of India***.[15] Reliance was also placed on a decision of this Court in the case of ***Delhi Transport Corporation v. DTC Mazdoor Congress & Ors.***[16]

9. Assessees have submitted that Section 17(5)(d) of the CGST Act can be interpreted in a manner that ITC is available to them for the construction of immovable property used for the purpose of further output supply. Shri Arvind P Datar, the learned senior counsel appearing in Writ Petition (C) No. 804 of 2022 contended that the conclusion rendered by the Orissa High Court in the impugned judgment could have been reached without reading down Section 17(5)(d). The contention is founded on a three-pronged argument:

a. *Firstly*, it is submitted that Clause (d) exempts "plant or machinery" from blocked credit, which is distinct from the expression "plant and machinery" used in Clause (c). Therefore, the explanation to sub-section (6) of Section 17, which defines "plant and machinery" is not applicable to the Clause (d).

15 [2020] 4 SCR 903 : (2021) 15 SCC 60

16 [1990] Supp. 1 SCR 142 : (1991) Supp (1) SCC 600

Revenue has opposed this contention by submitting that 'or' must be read as 'and' stating it to be the mistake of the legislature and contending that assigning distinct meaning to the two clauses would result in unequal treatment of works contract services for the construction of immovable properties under clause (c) and goods and services for the construction of immovable properties under clause (d). The submissions in relation to this can be summarised as follows:

- Section 17, being an exception to the general rule under Section 16, must be construed strictly. The expression "plant and machinery" has been used at least ten times in Chapters V and VI of the CGST Act, and the expression "plant or machinery" occurs only once in Section 17(5)(d). Therefore, the intention of the legislature to treat the expression "plant or machinery" differently from the expression "plant and machinery" is apparent.
- In the model GST law, which the GST Council Secretariat circulated in November 2016 for inviting suggestions and comments, the expression "plant and machinery" was used both in clauses (c) and (d) of Section 17(5). However, while enacting the law, the legislature has advisedly used the expression "plant and machinery" in clause (c) and "plant or machinery" in clause (d) of Section 17(5). Therefore, the intention of the legislature cannot be brushed aside by contending that the use of the word "or" in Section 17(5)(d) is a mistake of the legislature.
- The expression "plant or machinery" has not been defined under the CGST Act. The definition of "plant and machinery" provided in the explanation to Section 17 will not apply to the expression "plant or machinery". Since the legislature has intentionally used two different expressions in clauses (c) and (d) of Section 17(5), different meanings will have to be assigned to these expressions.
- Clauses (c) and (d) of Section 17(5) give unequal treatment to unequals. Though they may appear to be similar, they are quite different from each other. Besides using different expressions, clauses (c) and (d) use a completely different

language. Clause (c) applies to the works contract, which will not *per se* apply to clause (d). The classes of cases covered by clauses (c) and (d) of Section 17(5) are two separate classes and the same cannot be treated equally.

b. *Secondly*, it is submitted that malls, hotels, warehouses, etc., are 'plants' and, therefore, are exempted from the provision. The submissions in relation to this can be summarised as follows:

- The word "plant" is not defined under the CGST Act or the General Clauses Act, 1897. It is also not defined in any of the State GST enactments. Reliance was placed on a decision of this Court in the case of ***Indcon Structurals (P) Ltd. v. Commissioner of Central Excise, Chennai***[17] in support of the proposition that the words and expressions in taxing statute unless defined in the statute itself, have to be understood in the sense that the person dealing with them understands them as per the trade understanding, commercial and technical practice and usage. Reliance was also placed on a decision of this Court in the case of ***CIT, Andhra Pradesh v. Taj Mahal Hotel, Secunderabad***[18] wherein this court held that the word "plant" means land, building, machinery, apparatus and fixtures employed in carrying on trade and other industrial business.

- Functionality or essentiality tests must be applied to decide what a plant is. Ultimately, a plant is an apparatus used by a businessman for carrying on his business. It does not include his stock in trade, but it does include all goods and property, whether movable or immovable. Apart from holding that a generating station building, hospital, and pond are plants, this Court has also held that even a dry dock is a plant. A building or a warehouse must be considered a 'plant' within the meaning of Section 17(5)(d) if it serves as an essential tool of trade with which business is carried on. However, if it merely serves as a setting in which business is carried on, it will not qualify as a 'plant'.

17 [2006] Supp. 1 SCR 11 : (2006) 4 SCC 786

18 [1972] 1 SCR 168 : (1971) 3 SCC 550

- Since buildings have been specifically excluded from the definition of "plant and machinery" in the explanation to sub-section (5) of Section 17, the word 'plant' in the expression 'plant or machinery' must be taken in its natural sense, which will include buildings.

- In support of the submission that a shopping mall could be treated as a plant, which will fall in the exception carved out to Section 17(5)(d), reliance was placed on the decision of this Court in the case of ***CIT, Trivandrum v. Anand Theatres***[19] wherein it was held that when a building is specially designed and constructed with some special features to attract the customers, the building could be treated as a plant. In the case of ***Commissioner of Income Tax, Karnataka v. Karnataka Power Corporation***,[20] this Court held that an electricity power generating station building would have to be treated as a plant as it would satisfy the functional test or test of essentiality. This Court further held that the judgment in the case of ***Anand Theatres***[19] would be limited to buildings used for hotels or cinemas/theatres. Reliance was also placed on the decision in the case of ***Commissioner of Income Tax v. Victory Aqua Farm Ltd.,***[21] which holds that ponds specially designed for doing business of aquaculture of prawns should be treated as plants for the purposes of the Income Tax Act.

- Reliance has been placed on numerous decisions concerning the principles for interpreting taxation statutes. Usually, a taxation Statute calls for strict interpretation, as held in the decision of this Court in the case of ***Commissioner of Customs (Import), Mumbai v. Dileep Kumar & Company & Ors.***[22] It is equally well settled that when two interpretations of a provision in a taxing Statute are possible, the Court would ordinarily interpret

19 [2000] Supp. 1 SCR 338 : (2000) 5 SCC 393

20 (2002) 9 SCC 571

21 (2016) 16 SCC 553

22 (2018) 9 SCC 1

the provisions in favour of the assessee and against the revenue. Reliance was placed on this behalf in the case of ***Sneh Enterprises v. Commissioner of Customs, New Delhi***[23] and ***Commissioner of Income Tax, West Bengal 1, Calcutta v. M/s Vegetables Products Ltd.***[24] It is submitted that if one reads Section 17 objectively, it would be noticed that the restrictions on availing ITC are imposed on a reasonable basis. The benefit of ITC is excluded when the services are used for personal purposes or for providing exempted services, or if the supply is outside the ambit of levying GST. However, where the taxing chain continues, ITC is not restricted. It is submitted that the Court shall not interpret a statutory provision in such a manner that it would create an additional fiscal burden on a person.

c. *Thirdly*, it is submitted that services of renting/leasing/letting out, etc., in relation to immovable property constitute supply. Clause 2 of Schedule II provides that any lease or letting out of the building, including a commercial, industrial or residential complex for business or commerce, is a supply of service. Clause 5(a) of Schedule II provides that renting an immovable property is a supply of service. Clause 5(b) of Schedule II provides that the construction of a complex, building, civil structure or a part thereof intended for sale to a buyer, wholly or partly, is also a supply of service, except where the entire consideration has been received after issuance of the completion certificate or after its first occupation, whichever is earlier. Therefore, ITC accrued on construction of immovable property can be availed against these services.

Miscellaneous Submissions

10. It is submitted that even though sub-Section (5) of Section 17 starts with the non-obstante clause, it cannot be said that the legislature intended to override Section 16(1) in its entirety. It is submitted that the non-obstante clause in Section 17(5) cannot cut down the

23 [2006] Supp. 5 SCR 817 : (2006) 7 SCC 714

24 [1973] 3 SCR 448 : (1973) 1 SCC 442

construction or restrict the scope of operation of Section 16(1). Reliance was placed on a decision of this Court in the case of ***R.S. Raghunath v. State of Karnataka & Anr.***;[25]

11. It is pointed out that Section 17(5)(c) carves out an exception only for works contracts, assuming that this is the only category of service where there is no breakage in the chain of taxable supplies. It is submitted that while Section 17(5)(c) allows ITC on works contracts for contractors, ITC has been blocked for other developers;

12. The classification sought to be invoked by the Revenue leads to invidious discrimination within the provision in as much as credit has been allowed for the construction of immovable plant and machinery during the execution of a works contract and for the construction of a building during the execution of work by the sub-contractor under its work contract with the main contractor;

13. It is submitted that Section 16(1) of the CGST Act is not *pari materia* with the provisions of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the decisions relied upon by learned ASG will have no application. It is submitted that the decision of this Court in the case of ***Union of India & Ors v. VKC Footsteps India Pvt. Ltd.***[26] is not relevant as this Court did not have an occasion to consider the implications of statutory entitlement to ITC.

SUBMISSIONS OF THE REVENUE

14. Shri N. Venkataraman, learned Additional Solicitor General, has made detailed submissions. He brought our attention to provisions regarding taxation on goods and services in the pre-GST and post-GST eras. He submitted that in the GST regime, the taxable event is one common event, namely, the supply of goods and services. He invited the attention of the Court to the definition of goods and services in Article 366 of the Constitution. He submits that the distinction between goods and services has not been obliterated. He also pointed out the historical evolution of ITC, starting from MODVAT credit, which was made available to inputs and raw materials and later extended to capital goods.

25 [1991] Suppl. 1 SCR 387 : (1992) 1 SCC 335

26 [2021] 15 SCR 169 : (2022) 2 SCC 603

15. His submissions about the challenge to constitutional validity can be summarised as follows:

a. Classification of the assessees on the same footing as assessees engaged in the business of constructing immovable properties and then selling the immovable properties is justified on the ground that the classification has been done on the basis of intelligible differentia which has rational nexus with the object of GST. The transactions lead to the creation of immovable property, which itself is the intelligible differentia based on which classification has been done. Such classification has a rational nexus since there is a break in the tax chain and therefore, the ITC is being denied;

b. Denial of ITC was justified on the ground that it is not a fundamental or constitutional right. He submitted that ITC is a statutory right, and in the absence of the right under the statute, the Court cannot issue a mandamus to grant ITC. Reliance has been placed upon the decision of this Court in the case of ***ALD Automotive Pvt. Ltd. v. Commercial Tax Officer, now upgraded as Assistant Commissioner (CT) & Ors.***[27] and in particular, what is held in paragraphs 34, 37, 38 and 40.

c. In response to the principles for examining the constitutional validity of taxation statutes, he submitted that the test of vice of discrimination in a taxing statute is less rigorous. He submitted that the Parliament is entitled to make policy choices and adopt appropriate classifications given the latitude that our Constitutional jurisprudence allows in the matters involving tax legislation. The principle of equality does not preclude the classification of property, credit, profession and events for taxation. He submitted that it is settled law, as held in the case of ***Hari Krishna Bhargav v. Union of India & Anr***[28] that a taxing statute is not open to challenge on the ground that the tax is harsh or excessive. He refuted a submission that clauses (c) and (d) of Section 17(5) are fraud on the Constitution or that they are manifestly arbitrary. He invited our attention to a decision of the Constitution Bench in the case of ***Joseph Shine***

27 [2018] 13 SCR 217 : (2019) 13 SCC 225

28 [1966] 2 SCR 22 : (1966) 2 SCR 22

v. Union of India[29] and, in particular, what is held in paragraphs 163 to 165. He submitted that considering the test laid down in the said decision, even assuming that clauses (c) and (d) are discriminatory, they are not manifestly discriminatory. He submitted that English decisions will not apply, as in India, there is a constitutional and statutory distinction between goods that are movables and immovables. This distinction is not available in England.

16. His submissions about the interpretation of Section 17(5)(d) can be summarised as follows:

a. The expression "plant or machinery" must be read as "plant and machinery". It is not uncommon to read "and" as "or" or "or" as "and". He relied upon a decision of this Court in the case of ***Indore Development Authority v. Manoharlal & Ors.***[30] and, in particular, what is held in paragraph 105. He also relied upon another decision of this Court in the case of ***State of Bombay v. R.M.D. Chamarbaugwala & Anr.***.[31] Further, he submitted that if "or" is not read as "and", it would be discriminatory since ITC would be available on a mall or warehouse, but under clause (c), it would not be available on works contracts relating to the construction of a mall or warehouse. In this regard, he stated that Clauses (c) and (d) of Section 17(5) deal with the same subject matter, i.e., immovable property and therefore they cannot be treated unequally. Furthermore, he submitted that the explanation to Section 17(5) applies to Chapters V and VI and thus has to apply to clause (d). However, he accepted that the expression "plant and machinery" occurs ten times in Chapter V and Chapter VI and the expression "plant or machinery" occurs only once in Section 17(5)(d). He invited our attention to Section 16(3) of the CGST Act, which bars the claim of depreciation on 'plant and machinery' if the assessees choose to avail of ITC. Thus, ITC is allowable only when depreciation is not claimed. He submitted that if the argument of the assessees is accepted, they would be entitled to take benefit of both ITC and depreciation simultaneously. In a similar

29 [2018] 11 SCR 765 : (2019) 3 SCC 39

30 [2020] 3 SCR 1 : (2020) 8 SCC 129

31 [1957] 1 SCR 874 : (1957) SCC OnLine SC 12

vein, he submitted that if the submission is accepted, even Sections 18(6) and 29(5) will not apply to plant or machinery falling under Section 17(5)(d).

b. For identifying what would constitute plant and machinery/plant or machinery, it is not necessary to refer to decisions under the Income Tax Act as the same have no relevance. There is no concept of ITC in the Income Tax Act. The scheme of the Act is completely different. He further submitted that if the assessee's submission that a shopping mall or warehouse is treated as a plant is accepted, it would amount to hostile discrimination.

c. Tax on goods cannot be extended to immovable property. However, taxation on services can be raised even on using immovable properties for rendition of services. He submitted that when it comes to sales tax or VAT on goods, a consistent view taken by this Court is that the sale would include the sale of goods and not the sale of immovables. He submitted that malls, hotels, office buildings, etc., are immovable properties; therefore, GST cannot be levied. He relied upon the earlier decisions of this Court arising out of the Central Excise Act, 1944. According to him, those plants and machinery which are deeply rooted in the earth and cannot be relocated without sufficient damage are immovable goods. However, he accepted that renting an immovable property amounts to a supply of service, which is taxable under the CGST Act.

d. While dealing with the case of a shopping mall, he submitted that since a shopping mall is an immovable property, it is excluded from the GST. Therefore, it does not fall in Clause (5)(b) of Schedule II. He submitted that the entire purpose of ITC is to extend the ITC paid at the anterior stage to remove the cascading burden of taxation at a subsequent stage. As there is no GST payable on shopping malls, there is no need to grant ITC. He pointed out that if a shopping mall is sold as an immovable property immediately after the completion certificate is issued, no GST is payable at the time of sale of the immovable property. Therefore, ITC credit cannot be used. If the mall is used to render renting service for five years and then is sold after five years, no GST will be payable on the sale. However, if ITC is allowed as contended during these five years, ITC will

be exhausted against GST payable on rental income. Thereafter, the mall would be sold without paying any tax, which would cause a substantial monetary loss. Learned ASG relied upon a decision of this Court in ***Union of India v. Shri Harbhajan Singh Dhillon***,[32] and in particular, what is held in paragraphs 74 to 76 and 82. He also relied upon a decision in the case of ***India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.***[33] and ***State of W.B. v. Kesoram Industries Ltd. & Ors.***.[34] He pointed out that the construction of a complex building intended for sale to a buyer will be treated as a supply of service except where the entire consideration has been received after the issuance of the commencement certificate. He pointed out that the supply of a constructed building complex or a civil structure before the issuance of the completion certificate can be construed as a supply of services and will be liable to GST. The dividing line is the issuance of a completion certificate. A supply prior to the issuance of the commencement certificate is treated as a supply of service, whereas a sale made after the issuance of the completion certificate is not treated as a supply of service.

Miscellaneous Submissions

e. He submitted that tax on works contracts is also a tax on movable goods, either as goods, or during the transfer of goods, or before accretion takes place, leading to their becoming immovable property.

f. The learned ASG also dealt with the services on tax and work contracts in the pre-GST regime. Relying upon the definition of "works contract" in Article 366 (29A)(b) of the Constitution, he submitted that what is taxed cannot be a taxation on the immovable property.

GIST OF REJOINDER

17. By way of rejoinder, the learned counsel representing assessees submitted that the legislature intentionally used the expression "plant

32 [1972] 2 SCR 33 : (1971) 2 SCC 779

33 [1989] Supp. 1 SCR 692 : (1990) 1 SCC 12

34 (2004) 10 SCC 201

or machinery" in only one place, and the legislative intention has to be adhered to.

18. It was submitted that in certain cases, CENVAT credit was allowed for the construction of buildings. That is the view taken by the Tribunals/High Courts.

19. Concerning the apprehension of misusing GST expressed by the learned ASG, it was submitted that even if the argument of the assessees is accepted, the ITC on goods or services used to construct a warehouse or mall is only to a limited extent of GST payable on rental activity. It was, therefore, submitted that the definition of "plant or machinery" will not apply to "plant and machinery".

20. The learned counsel submitted that there is no conflict between Section 17(5)(d) and Section 16(3). He submitted that Section 16(3) applies to "plant and machinery" and not to "plant or machinery". He submitted that even assuming that Section 16(3) applies to plant or machinery, the effect of the provision is that if the registered person claims depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, he cannot avail of the ITC on the said tax component. He submitted that there is no conflict between the provisions of Section 17(5)(d) and Section 29(5) of the CGST Act. Inviting our attention to Section 18(6), he submitted that the provision can be pressed into service only in case of supply of capital goods or plant and machinery on which ITC has been taken. He submitted that in the facts of the case, it is nobody's case that the registered persons are supplying capital goods, plant or machinery.

21. It was argued that the constitutional bar in Entry 49 of List II exists only against the levy of GST on land and buildings and not against the grant of ITC on movable goods and services used for the construction of buildings. In its wisdom, the legislature has allowed ITC on immovable property provided it meets the criteria of functionality or essentiality of a plant. It is submitted that GST is leviable on the activity of renting and the activity of selling buildings before the grant of completion certificate. The disallowance of ITC on goods and services used in the construction of buildings could be a logical corollary only if the buildings were intended to be sold as stock by the developer instead of being further used for providing taxable goods or services. There

is no contradiction in promoting ITC on goods and services used for the construction of buildings when such buildings are deployed to provide taxable supplies on which GST is being discharged. Not permitting ITC in such a situation would lead to absurdness and the unintended consequence of breaking the ITC chain, which will amount to thwarting the seamless flow of tax credits.

22. There is a deliberate intention to permit ITC on plant or machinery under Section 17(5)(d) even if the plant or machinery is immovable, and Section 17(5)(d) cannot be detracted by Section 16(3). He submitted that Sections 16(3) and 17(5) must be read harmoniously.

REPLY TO REJOINDER

23. We may note here that submissions in brief were made by learned ASG dealing with the arguments of Shri Arvind Datar, Senior Advocate. His submission is that the expression "capital goods" is intended to include "plant and machinery". He submitted that what emerges from steel, cement, etc., are immovable goods, which would be excluded from GST. Since no GST is payable on immovable property, ITC is not available.

BROAD ISSUES FOR CONSIDERATION

24. Considering the submissions made by the parties, the following main questions arise for consideration:

(i) Whether the definition of "plant and machinery" in the explanation appended to Section 17 of the CGST Act applies to the expression "plant or machinery" used in clause (d) of sub-section (5) of Section 17?

(ii) If it is held that the explanation does not apply to "plant or machinery", what is the meaning of the word "plant"? and

(iii) Whether clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act are unconstitutional?

RULES REGARDING THE INTERPRETATION OF TAXING STATUTES

25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:

a. A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;

b. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;

c. While dealing with a taxing provision, the principle of strict interpretation should be applied;

d. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue;

e. In interpreting a taxing statute, equitable considerations are entirely out of place;

f. A taxing provision cannot be interpreted on any presumption or assumption;

g. A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency;

h. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly;

i. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;

j. Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;

k. It is not a function of the Court in the fiscal arena to compel the Parliament to go further and do more;

l. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does

not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage.

RELEVANT PROVISIONS OF THE CGST ACT AND INTERPRETATION THEREOF

26. Firstly, we will deal with the issue of interpretation of the relevant statutory provisions. To deal with the first question, we must analyse the provisions of the CGST Act. The charging Section is Section 9, which reads as follows:

> **"9. Levy and collection.— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.**
>
> (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
>
> (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
>
> (4) The Government may, on the recommendations of the Council, by notification, specify a class of registered

persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax."

(emphasis added)

Thus, the GST is to be levied on supplies of goods or services or both, as provided in sub-section (1) of Section 9. Sub-sections (3) and (4) provide for certain categories of cases where the tax on the supply of goods or services or both shall be paid on a reverse charge basis by the recipient of such goods or services. As per Section 2(98) of the CGST Act, 'reverse charge' means the liability to pay tax by the recipient of the supply of goods or services, or both, instead of the supplier. Therefore, when sub-sections (3) or (4) of Section 9

are applicable, the recipients of goods, services, or both are liable to pay tax as if they were the suppliers.

27. Section 16 deals with ITC, which reads thus:

> **"16. Eligibility and conditions for taking input tax credit—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.**
>
> (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
>
> (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
>
> (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;
>
> (b) he has received the goods or services or both;
>
> Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—
>
> (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;

(c) subject to the provisions of Section 41 [* * *], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under Section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under Section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day

of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under Section 29 and subsequently the cancellation of registration is revoked by any order, either under Section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under Section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of

> registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later."
>
> (emphasis added)

From sub-section (1) of Section 16, it is apparent that only a registered person, as defined by Section 2(94) of the CGST Act, can avail of ITC. A person who is registered under Section 25 of the CGST Act becomes a registered person. The availability of ITC is subject to such conditions and restrictions as may be prescribed. The word "prescribed" is defined to mean prescribed by the rules made under the CGST Act. Therefore, the entitlement to ITC is subject to conditions and restrictions as may be provided in the Rules framed under the CGST Act. ITC has to be availed in the manner laid down by Section 49. Sub-section (2) of Section 49 and other sub-sections deal with how ITC can be availed. Under sub-section (1) of Section 16, a registered person is entitled to take credit of the input tax charged on any supply of goods or services or both to him, which are used or intended to be used in the course of or in furtherance of his business. Input tax is defined by Section 2(62). In relation to a registered person, it means Central, State, Integrated or Union Territory tax charged on the supply of goods or services or both made to him. It includes the tax payable by him on a reverse charge basis under sub-sections (3) and (4) of Section 9. Further conditions for the use of ITC are prescribed by sub-section (2) of Section 16.

28. Sub-section (3) of Section 16 is of some relevance as it provides that if a registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, he is disentitled to ITC on the said tax component. In short, a registered person will not be entitled to ITC on the tax component of the cost of capital goods and plant and machinery if he claims depreciation on the said tax component under the Income Tax Act. The object is that a registered person does not take advantage of both depreciation and ITC.

29. Now we come to sub-Section (4) of Section 16. Before the amendment made by the Finance Act, 2022, the sub-section read thus:

"16. .. ..

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019."

The Finance Act, 2022, substituted the words "due date of furnishing return under Section 39 for the month of September" with "thirtieth day of November" with effect from 1st October 2022. Under Section 39(1), every registered person other than an Input Service Distributor is required to furnish for every calendar month or part thereof a return of inward and outward supplies of goods or services or both, ITC availed, tax payable, tax paid, etc. The meaning of sub-section (4) of Section 16 as amended is that a registered person can avail of ITC in respect of any invoice or debit note for the supply of goods or services before 30th day of November following the end of the financial year to which such invoice or debit note pertains, or furnishing of annual return, whichever is earlier.

30. Section 17 deals with apportionment of credit and blocked credits. The provision regarding blocked credits is in sub-section (5) of Section 17. Sub-sections (5) and (6) of Section 17 read thus:

"17. .. ..

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18,

input tax credit shall not be available in respect of the following, namely :—

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes

re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under Section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013);

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of Section 74 in respect of any period up to Financial Year 2023-24.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises."

(emphasis added)

Section 17(5) begins with a non-obstante clause. A non-obstante clause is a device used by the legislature that is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found in the same or some other enactments. Such a clause is used to indicate that the said provision should prevail despite anything to the contrary in the provisions mentioned in the non-obstante clause. It is pertinent to note that in view of the non-obstante clause used at the beginning of sub-section (5), it seeks to override both sub-section (1) of Section 16 and sub-section (1) of Section 18. As noted earlier, sub-section (1) of Section 16 lays down the eligibility and conditions for taking ITC. Sub-section (1) of Section 18 deals with the availability of ITC in special circumstances. Therefore, in the cases covered by sub-section (5), ITC is not available. In a sense, sub-section (5) of Section 17 carves out an exception to the provisions of sub-section (1) of Sections 16 and 18, which confer the benefit of ITC.

ANALYSIS OF CLAUSES (c) AND (d)

31. Now, we analyse clauses (c) and (d) of Section 17(5). Clause (c) applies when works contract services are supplied for constructing immovable property. The definition of "works contract" under Section 2(119) is extensive. It reads thus:

> "**2.Definitions:-**
>
> .. ..
>
> (119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

Thus, in the case of works contract services supplied for the construction of immovable property, the benefit of ITC is not available. However, there are exceptions to clause (c). First is when goods or services, or both, are received by a taxable person for the construction of "plant and machinery", as defined in the explanation to Section 17. The second exception is where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

32. Clause (d) of Section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude from the purview of sub-section (1) of Sections 16 and 18, goods or services or both received by a taxable person to construct an immovable property on his own account. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license.

33. Section 17(5) incorporates an explanation which provides that the word "construction" used in clauses (c) and (d) includes reconstruction, renovation, additions, alterations or repairs, to the extent of capitalisation, to the immovable property. Thus, a very wide meaning has been assigned to the expression "construction" by the said explanation.

34. There is hardly a similarity between clauses (c) and (d) of Section 17(5) except for the fact that both clauses apply as an exception to sub-section (1) of Section 16. Perhaps the only other similarity is that both apply to the construction of an immovable property. Clause (c) uses the expression "plant and machinery", which is specifically defined in the explanation. Clause (d) uses an expression of "plant or machinery", which is not specifically defined.

35. Now, what is material is the explanation to Section 17, which reads thus:

> "Explanation.––For the purposes of this Chapter and Chapter VI, the expression —plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises."

The explanation defines the meaning of the expression "plant and machinery". However, as stated earlier, the expression "plant or machinery" has not been defined under the CGST Act. It is pertinent to note that clauses (c) and (d) do not altogether exclude every class of immovable property from the applicability of ITC. In the case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available.

36. The Union legislature cannot levy taxes on lands and buildings as it is exclusively a State subject at item no.49 in List II of Schedule VII of the Constitution of India. It is, therefore, necessary to consider the categories of services concerning land and buildings, which are within the purview of the CGST Act. Section 2(102) defines service as meaning anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Under the CGST Act, the supply of service is taxable. The scope of supply of services or goods is laid down in Section 7 of the CGST Act, which reads thus:

> **"7. Scope of supply**.—(1) For the purposes of this Act, the expression "supply" includes—
>
> **(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;**
>
> (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
>
> Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything

contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1-A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1-A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods."

(emphasis added)

37. In view of clause (a) of sub-section (1) of Section 7, a supply of services such as sale, transfer, licence, rental or lease made for consideration is a supply. Whether the activities or transactions covered by sub-section (1) of Section 7 constitute a supply has to be considered in light of Schedule II. Schedule II has a title: "Activities or transactions to be treated as supply of goods or supply of services". The activities/transactions incorporated in Schedule II are treated as a supply of service. As far as lands and buildings are concerned, clauses (2) and (5) of Schedule II are relevant, which read thus:

> **"2. Land and Building**
>
> (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
>
> (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
>
> .. ..
>
> **5. Supply of services**
>
> The following shall be treated as supply of services, namely:—
>
> (a) renting of immovable property;
>
> (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
>
> Explanation.—For the purposes of this clause—
>
> (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
>
> (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

38. Clause 5(b) of Schedule II has to be read with the provisions of Schedule III, which has a title: "Activities or transactions which shall be treated neither as a supply of goods nor a supply of services". Clause (5) of Schedule III reads thus:

> "5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

39. Analysis of the provisions of Section 7 read with Schedule II and III shows that:

a. Any lease, tenancy, easement or licence to occupy land is a supply of services. Clause 2(a) is not qualified by the purpose of the use. But the sale of a land is not a supply of service;

b. Any lease or letting out of buildings for business or commerce, wholly or partly, is a supply of services. Clause 2(b) will not apply if the lease or letting out of a building is for a residential purpose;

c. Renting of an immovable property is a supply of service;

d. Construction of a complex, building, civil structure or a part thereof, including a complex, building or civil structure intended for sale to a buyer, wholly or partly, is a supply of service. However, the construction of a complex, building or civil structure, referred to above, is excluded from the category of supply of service if the entire consideration for sale is received after issuance of the completion certificate, wherever required or its first occupation, whichever is earlier. Broadly speaking, if a building or a part thereof to which clause 5(b) is applicable is sold before it is ready for occupation, the construction thereof becomes a supply of service. Therefore, if a building is sold by accepting consideration before issuance of a completion certificate or before its first occupation, whichever is earlier, the construction thereof becomes a supply of service;

40. If there is a complex, building or civil structure constructed which is intended for sale to a buyer, wholly or partly, construction becomes a supply of service only if consideration for sale is received before the issuance of a completion certificate or after its first occupation, whichever is earlier. Thus, if the consideration for sale is paid after the competition certificate is issued or its first occupation, whichever is earlier, the sale transaction will not amount to the supply of service. However, no such distinction has been made in the case of lease, tenancy, or licence concerning land or letting of buildings. Even if the entire consideration for lease, tenancy or a licence to occupy land or a lease of a building is paid after the issuance of the completion certificate or its first occupation, whichever is earlier, it continues to be a supply of service.

41. It is also necessary to bear in mind the philosophy of the GST regime, which is discussed in the case of ***Mohit Minerals***.[14] This Court held that the philosophy of the GST is to incorporate a consumption and destination-based test. The emphasis is on taxing supplies of goods and services. If we apply the well-settled principles on the interpretation of taxing statutes, as discussed in the earlier part of this judgment, there is no scope to give any meaning to clause (c) of Section 17(5) other than its plain and natural meaning. The expression “plant and machinery” has been specifically defined in the explanation of Section 17. Works contract service has been defined under the CGST Act. We cannot add anything to clause (c) or subtract anything from clause (c). ITC is a creation of legislature.

Therefore, it can exclude specific categories of goods or services from ITC. Exclusion of the category of works contracts by clause (c) will not, *per se,* defeat the object of the CGST Act.

MEANING OF THE EXPRESSION "PLANT OR MACHINERY" IN CLAUSE (d) OF SECTION 17(5)

42. The question is whether the explanation that lays down the meaning of the expression "plant and machinery" in Section 17 will apply to the expression "plant or machinery" used in Section 17 (5)(d).

43. Learned ASG himself accepted that the expression "plant and machinery" appears at ten different places in Chapters V (Input Tax Credit) and VI (Tax Invoice, Credit and Debit Notes) of the CGST Act. According to him, the expression "plant or machinery" appears only in clause (d) of Section 17(5). His submission is that the use of the word "or" in clause (d) is a mistake of the legislature. To counter this, it was submitted that in the Model GST Law, which the GST Council Secretariat circulated in November 2016 to invite suggestions and comments from the public, the expression 'plant and machinery' was used in clauses (c) and (d). However, while enacting the CGST Act, the legislature has consciously chosen to use the expression "plant or machinery" only in clause (d). The impugned judgment in the main Civil Appeal is more than five years old. The writ petition in which the impugned decision was rendered is a six-year-old writ petition. If it was a drafting mistake, as suggested by learned ASG, the legislature could have stepped in to correct it. However, that was not done. In such circumstances, it must be inferred that the legislature has intentionally used the expression "plant or machinery" in clause (d) as distinguished from the expression "plant and machinery", which has been used in several places. As the expression "plant or machinery" appears to be intentionally incorporated, it is not possible to accept the contention of the learned ASG that the word "or" in clause (d) should be read as "and". If the said contention is accepted, there will not be any difference between the expressions "plant and machinery" and "plant or machinery". This will defeat the legislative intent.

44. The explanation to Section 17 defines "plant and machinery". The explanation seeks to define the expression "plant and machinery" used in Chapter V and Chapter VI. In Chapter VI, the expression "plant and machinery" appears in several places, but the expression "plant or machinery" is found only in Section 17(5)(d). If the legislature intended

to give the expression "plant or machinery" the same meaning as "plant and machinery" as defined in the explanation, the legislature would not have specifically used the expression "plant or machinery" in Section 17(5)(d). The legislature has made this distinction consciously. Therefore, the expression "plant and machinery" and "plant or machinery" cannot be given the same meaning. It may also be noted here that the expression 'plant or machinery' is used in dealing with a peculiar case of goods or services being received by a taxable person for the construction of an immovable property on his own account, even when such goods or services or both are used in the course of furtherance of business. Therefore, if the expression "plant or machinery" is given the same meaning as the expression "plant and machinery" as per the definition contained in the explanation to Section 17, we will be doing violence to the words used in the statute. While interpreting taxing statutes, it is not a function of the Court to supply the deficiencies.

45. Now, the question which arises is what meaning should be given to the expression "plant or machinery". When the legislature uses the expression "plant and machinery," only a plant will not be covered by the definition unless there is an element of machinery or *vice versa*. This expression cannot be read as "plant or machinery". That is so clear from the explanation in Section 17, which says that plant and machinery means apparatus, equipment and machinery fixed to the earth by foundation or structural support that are used for making outward supply of goods or services or both. The expression includes such foundation and structural support fixed to the earth. However, the definition excludes land, buildings or any other civil structure.

46. The expression "plant or machinery" has a different connotation. It can be either a plant or machinery. Section 17(5)(d) deals with the construction of an immovable property. The very fact that the expression "immovable property other than "plants or machinery" is used shows that there could be a plant that is an immovable property. As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it.

47. There are few decisions relied upon on this aspect. The first is ***Commissioner of Central Excise, Ahmedabad v. Solid and Correct***

Engineering Works & Ors..[35] The case arose from the demand for duty and penalty under the Central Excise Act, 1944 (Excise Act). The assessee was manufacturing parts and components for road and civil construction machinery and equipment like Asphalt Drum/ Hot Mix Plants, etc. One of the questions examined by the Tribunal was whether the plants so manufactured could be termed as goods. The issue before this Court was whether setting up an Asphalt Drum/Hot Mix Plant by using duty-paid components amounts to the manufacture of excisable goods within the meaning of the Excise Act. It was argued before this Court that the plants in question did not satisfy the test of marketability and movability. This Court referred to the definition of movable property in Section 3(36) of the General Clauses Act, 1897, which defines movable property as property of every description except immovable property. The same enactment defines immovable property in Section 3(26), which is an inclusive definition which includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. This Court considered the definition of the expression "attached to the earth" in Section 3 of the Transfer of Property Act, 1882. In the facts of the case, it was held that the plants subject matter of the case, were not *per se* immovable property as the same cannot be said to get attached to the earth. This Court applied the movability test by holding that the setting up of the plant itself is not intended to be permanent at a given place. The plant can be removed or is indeed removed after the road construction or repair project is completed. The issue that we were called upon to decide about the meaning of the plant did not arise in this case.

48. Another decision of this Court in the case of ***Taj Mahal Hotel***[18] was pressed into service. The assessee was running a hotel. The issue arose in a cognate enactment in the sense in the enactment providing for levy of income-tax. The issue referred to the opinion of the High Court was whether sanitary fittings and pipelines installed in the hotel constituted a 'plant' within the meaning of Section 10(5) of the Income Tax Act, 1922. The definition of plant in Section 10(5) of the Income Tax Act, 1922 provided that 'plant' includes vehicles, scientific apparatus, surgical equipment, and books purchased for the purposes

35 [2010] 4 SCR 476 : (2010) 5 SCC 122

of business, profession or vocation. The Court considered whether the word plant should be given a broader meaning. In paragraph 6 of the said decision, this Court held thus:

> **"6. Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of everyday use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it"**. In the present case, Section 10(5) enlarges the definition of the word "plant" by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to "plant" is wide. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into.**"**
>
> (emphasis added)

Thereafter, in paragraphs 8 and 9, this Court held thus:

> **"8. It cannot be denied that the business of a hotelier is carried on by adapting a building or premises in a suitable way to be used as a residential hotel where visitors come and stay and where there is arrangement for meals and other amenities are provided for their comfort and convenience.** To have sanitary fittings etc. in a bathroom is one of the essential amenities or conveniences which are normally provided in any good hotel, in the present times. If the partitions in *Jarrold case* [(1887) 19 QB 647] could be treated as having been used for the purpose of the business of the trader, it is incomprehensible how sanitary fittings can be said to have no connection with the business of the hotelier. He can reasonably expect to get more custom and earn larger

> profit by charging higher rates for the use of rooms if the bathrooms have sanitary fittings and similar amenities. We are unable to see how the sanitary fittings in the bathrooms in a hotel will not be "plant" within Section 10(*vi*)(*b*) read with Section 10(5) when it is quite clear that the intention of the legislature was to give it a wide meaning and that is why, articles like books and surgical instruments were expressly included in the definition of "plant". In decided cases, the High Courts have rightly understood the meaning of the term "plant" in a wide sense. (See *CIT* v. *Indian Turpentine and Rosin Co. Ltd.* [(1970) 75 ITR 533].
>
> **9.** If the dictionary meaning of the word plant were to be taken into consideration on the principle that the literal construction of a statute must be adhered to unless the context renders it plain that such a construction cannot be put on the words in question — this is what is stated in *Webster's Third New International Dictionary*:
>
> "Land, buildings, machinery, apparatus and fixtures employed in carrying on trade or other industrial business...."
>
> (emphasis added)

49. The next decision in the line is in the case of ***Anand Theatres***.[19] This was a case where the issue was whether a building which is used as a hotel or a cinema theatre can be considered as apparatus or a tool for running a business so that it can be termed as a plant and depreciation can be allowed on the same under the Income Tax Act, 1961. This Court dealt with Section 32, which provided for granting depreciation to buildings, machinery, and plants. This Court extensively referred to its earlier decision in the case of ***Taj Mahal Hotel***[18] and other decisions of this Court and High Courts. This Court decided the question of whether a building used for running a hotel or cinema business could be held to be a plant. This Court considered British decisions on the point. Paragraphs 61 to 63 of the decision are material, which read thus:

> **"61.** Further, there are hotels of all kinds and hotel business can be carried on in all kinds of buildings, may be pucca or kuccha constructions. A building intended to be used or in fact used earlier either as a residential accommodation

or business purpose can be converted for running hotel business. Section 32 itself contemplates a hotel business being carried on in a residential accommodation including an accommodation which is in the nature of guest house. On occasions hotel buildings may be constructed with a special design and features so as to attract and accommodate a certain class of tourist. Similarly with regard to cinema business, it can be carried on in a specially-designed and constructed building and also in other buildings. Still, however, it would be difficult to draw a distinction and differentiate by holding that a building which is specially designed and constructed for running a hotel or cinema would be covered by a "plant" and other buildings used for the same purpose would not get depreciation as "plant", even though such business is carried on in such premises. In our view, the Delhi High Court has in the case of *R.C. Chemical Industry* [(1982) 134 ITR 330 (Del)] rightly observed that mere fact that manufacture of saccharine would be better carried on in a building having atmospheric controls would not convert the building from "the setting" to "the means" for carrying the business. Similarly, the Rajasthan High Court also in *Lake Palace Hotels and Motels* [(1997) 226 ITR 561 (Raj)] rightly observed that simply because some special fittings or controlling equipments are attached for the purpose of carrying on hotel business, it will not take it out of the category of building and make it a plant. In our view special fittings or equipments to control atmospheric effects would be plant, but not the building which houses such equipments.

62. Further for running almost all industries or for carrying on any trade or business building is required. On occasions building may be designed and constructed to suit the requirement of a particular industry, trade or business. But that would not make such building a plant. It only shelters running of such business. For each and every business, trade or industry, building is required to carry on such activity. That means building plays some role and in other words, its function is to shelter the business, but it has no

other function except in some rare cases such as dry dock where it plays an essential part in the operations which take place in getting a ship into the dock, holding it squarely and then returning it to the river. Building is more durable. If the contention of the assessee is accepted, virtually all such buildings would be considered to be a plant and the distinction which the legislature has made between "building" and "machinery" or "plant" would be obliterated.

63. Learned counsel for the assessee submitted that the words "plant" and "building" are not mutually exclusive. "Plant" may include building in a certain set of circumstances and, therefore, applying the functional tests the assessee would be entitled to depreciation under the head "it is more beneficial to it". He submitted that in the modern era, theatre building and hotel building are integral part of operation for carrying out such business and, therefore, such building should be considered as a "plant".

Ultimately, in paragraph 67, this Court held thus:

"67. In the result, it is held that the building used for running of a hotel or carrying on cinema business cannot be held to be a plant because:

(*1*) The scheme of Section 32, as discussed above, clearly envisages separate depreciation for a building, machinery and plant, furniture and fittings etc. **The word "plant" is given inclusive meaning under Section 43(3) which nowhere includes buildings.** The Rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings, machinery and plant and ships. Machinery and plant include cinematograph films and other items and the building is further given meaning to include roads, bridges, culverts, wells and tubewells.

(*2*) In the case of *Taj Mahal Hotel* [(1971) 3 SCC 550 : (1971) 82 ITR 44] this Court has observed that business of a hotelier is carried on by adopting building or premises in suitable way. Meaning thereby building for a hotel is not an apparatus or adjunct for

running of a hotel. The Court did not proceed to hold that a building in which the hotel was run was itself a plant, otherwise the Court would not have gone into the question whether the sanitary fittings used in bathroom was plant.

(*3*) For a building used for a hotel, specific provision is made granting additional depreciation under Section 32(1)(*v*) of the Act.

(*4*) *Barclay, Curle & Co. case* [(1969) 1 WLR 675 : (1969) 1 All ER 732 : (1970) 76 ITR 62 : 1969 SC 30 : 45 TC 221 (HL)] decided by the House of Lords pertains to a dry dockyard which itself was functioning as a plant, that is to say, structure for the plant was constructed so that dry dock can operate. It operated as an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. The dock as a complete unit contained a large amount of equipment without which the dry dock could not perform its function.

(*5*) Even in England, courts have repeatedly held that the meaning to the word "plant" given in various decisions is artificial and imprecise in application, that is to use the words of Lord Buckley, "it is now beyond doubt that the word 'plant' is used in the relevant section in an artificial and largely judge-made sense". Lord Wilberforce commented by stating that "no ordinary man, literate or semi-literate, would think that a horse, a swimming pool, moveable partitions, or even a dry dock was plant".

(*6*) For the hotel building and hospital in the case of *Carr* v. *Sayer* [65 TC 15 : 1992 CLY 2470 : 1992 STC 396 (Ch D)] it has been observed that a hotel building remains a building even when constructed to a luxury specification and similarly a hospital building for infectious diseases which might require a special layout and other features also remains a premises and is not a plant.

It is to be added that all these decisions are based upon the interpretation of the phrase "machinery or

> plant" under Section 41 of the Finance Act, 1971 which was applicable and there appears no such distinction for grant of allowance on different heads as provided under Section 32 of the Income Tax Act.
>
> (*7*) To differentiate a building for grant of additional depreciation by holding it to be a "plant" in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable."

50. Another decision on the point is in the case of ***Victory Aqua Farm Ltd.***,[21] wherein the issue before this Court was whether a natural pond used by the assessee, which was specially designed for rearing prawns, could be a plant within the meaning of Section 32 of the Income Tax Act, 1961. This Court heavily relied upon the decision of a three-judge Bench of this Court in the case of ***Karnataka Power Corporation***.[20] In this case, the question was whether a power-generating station building is a plant. In the decision rendered by a Bench of three Hon'ble Judges, it was held that the decision in the case of ***Anand Theatres***[19] cannot be read broadly. In paragraphs 5 to 8 of the decision, it was held thus:

> "**5.** It was the case of the assessee that it was entitled to investment allowance as applicable to a plant in respect of its power-generating station building. In a note filed before the Commissioner (Appeals) it stated that it had included for the purpose the value of its potential transformer foundation, cable duct system, outdoor yard structures and tail race channel. It explained that the process of generation started from letting in water from the reservoir into the penstocks and ducts which were the water conductor system into the turbines. Once electricity had been produced by generation, it had to be conducted, as it was not possible to store the same, and the process of generation continued until the electricity was led to the transmission towers. The water that was used for rotation of the turbines had to be removed and this was done through the tail race channel. For stepping up the electricity, transformers were used in the outdoor yard.

The conduction of the electricity was through conductors held in ducts, called the cable duct system, which were specifically designed for the purpose. The case of the assessee, therefore, was that all these were part of the special engineering works that were an essential part of a generating plant and, therefore, it was entitled to have the same treated as a plant for the purposes of investment allowance. The Commissioner accepted the correctness of the assessee's case. He held that it was clear that the generating station buildings had to be treated as a plant for the purposes of investment allowance. These buildings could not be separated from the machinery and the machinery could not be worked without such special construction. He, therefore, allowed investment allowance on the generating station building, as claimed. The Tribunal affirmed this finding, as, indeed, did the High Court.

6. We, therefore, have before us a finding of fact recorded by the fact-finding authority that the generating station building is an integral part of the assessee's generating system.

7. Our attention has been drawn by learned counsel for the Revenue to the judgment of this Court in CIT v. Anand Theatres [(2000) 5 SCC 393 : (2000) 244 ITR 192] . He submits that, in that judgment, this Court has held that, except in exceptional cases, the building in which the plant is situated must be distinguished from the plant and that, therefore, the assessee's generating station building was not to be treated as a plant for the purposes of investment allowance.

8. It is difficult to read the judgment in the case of *Anand Theatres* [(2000) 5 SCC 393 : (2000) 244 ITR 192] so broadly. The question before the Court was whether a building that was used as a hotel or a cinema theatre could be given depreciation on the basis that it was a "plant" and it was in relation to that question that the Court considered a host of authorities of this country and England and came to the conclusion that a building which was used as a hotel or a cinema theatre could not be given depreciation on the basis

that it was a plant. We must add that the Court said: (SCC p. 430, para 67)

> **"*67*. (*7*) To differentiate a building for grant of additional depreciation by holding it to be a 'plant' in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable."**

This observation is, in our view, limited to buildings that are used for the purposes of hotels or cinema theatres and will not always apply otherwise. The question, basically, is a question of fact, and where it is found as a fact that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance."

(emphasis added)

51. We may note here that the decision in the case of ***Anand Theatres***[19] is by a Bench of two Hon'ble Judges. Thus, the decision of a larger Bench in the case of ***Karnataka Power Corporation***[20] limits the applicability of the decision in the case of ***Anand Theatres***[19] to hotels or cinema theatres. Therefore, the decision in the case of ***Anand Theatres***[19] cannot be applied while considering the question of whether a mall or warehouse or a building other than a hotel or a cinema theatre can be said to be a "plant".

52. This Court has laid down the functionality test. This Court held that whether a building is a plant is a question of fact. This Court held that if it is found on facts that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance. The word 'plant' used in a bracketed portion of Section 17(5)(d) cannot be given the restricted meaning provided in the definition of "plant and machinery", which excludes land, buildings or any other civil structures. Therefore, in a given case, a building can also be treated as a plant, which is excluded from the purview of the exception carved out by Section 17(5)(d) as

it will be covered by the expression "plant or machinery". We have discussed the provisions of the CGST Act earlier. To give a plain interpretation to clause (d) of Section 17(5), the word "plant" will have to be interpreted by taking recourse to the functionality test.

53. One of the submissions of the learned ASG is that as the Union legislature cannot levy tax on land and buildings, the chain is broken once a building comes into existence by using goods and services. As discussed earlier, Schedule II of the CGST Act recognises the activity of renting or leasing buildings as a supply of service. Even the activity of the construction of a building intended for sale is a supply of service if the total consideration is accepted before the completion certificate is granted. Therefore, if a building qualifies to be a plant, ITC can be availed against the supply of services in the form of renting or leasing the building or premises, provided the other terms and conditions of the CGST Act and Rules framed thereunder are fulfilled. Therefore, the argument regarding breaking the chain cannot be accepted in its entirety. However, if the construction of a building by the recipient of service is for his own use, the chain will break, and therefore, ITC would not be available.

54. One of the arguments of learned ASG was that if different meanings were given to the words "plant and machinery" and "plant or machinery", it could result in discriminatory treatment. Clause (c) of Section 17(5) operates in a completely different field, as it applies only to works contract services supplied for the construction of immovable property. Clause (d) deals with services received by a taxable person for the construction of an immovable property on his own account. As clauses (c) and (d) operate in substantially different areas, the argument of ASG relying on discrimination cannot be accepted.

55. Under the CGST Act, as observed earlier, renting or leasing immovable property is deemed to be a supply of service, and it can be taxed as output supply. Therefore, if the building in which the premises are situated qualifies for the definition of plant, ITC can be allowed on goods and services used in setting up the immovable property, which is a plant.

56. In the main appeal, which is the subject matter of this group, the High Court has not decided whether the mall in question will satisfy the functionality test of being a plant. The reason is that the High Court has done the exercise of reading down the provision. Each

mall is different. Therefore, in each case, fact-finding enquiry is contemplated. Thus, in the facts of the case, we will have to send the case back to the High Court to decide whether, on facts, the mall in question satisfies the functionality test so that it can be termed as a plant within the meaning of bracketed portion in Section 17(5)(d). The same applies to warehouses or other buildings except hotels and cinema theatres. A developer may construct a mall predominantly to sell the premises therein after obtaining an occupation certificate. Therefore, it will be out of the purview of clause 5(b) of Schedule II. Each case will have to be tested on merits as the question whether an immovable property or a building is a plant is a factual question to be decided.

CONSTITUTIONAL VALIDITY CHALLENGE

57. Now, we turn to the issue of constitutional validity challenge. While dealing with the issue of the constitutional validity of clauses (c) and (d) of Section 17(5) of the CGST Act, it is necessary to consider the law laid down by this Court in paragraphs 104 to 110 of the decision in the case of ***VKC Footsteps***[26] which read thus:

> **"104.** As a matter of first principle, it is not possible to accept the premise that the guiding principles which impart a measure of flexibility to the legislature in designing appropriate classifications for the purpose of a fiscal regime should be confined only to the revenue harvesting measures of a statute. **The precedents of this Court provide abundant justification for the fundamental principle that a discriminatory provision under tax legislation is not per se invalid. A cause of invalidity arises where equals are treated as unequally and unequals are treated as equals. Both under the Constitution and the CGST Act, goods and services and input goods and input services are not treated as one and the same and they are distinct species.**
>
> **105.** Parliament engrafted a provision for refund Section 54(3). **In enacting such a provision, Parliament is entitled to make policy choices and adopt appropriate classifications, given the latitude which our constitutional jurisprudence allows it in matters involving tax legislation and to provide for exemptions,**

concessions and benefits on terms, as it considers appropriate. The consistent line of precedent of this Court emphasises certain basic precepts which govern both judicial review and judicial interpretation of tax legislation. These precepts are:

105.1. Selecting the objects to be taxed, determining the quantum of tax, legislating for the conditions for the levy and the socio-economic goals which a tax must achieve are matters of legislative policy. M. Hidayatullah, C.J., speaking for the Constitution Bench in Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd. [Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd. (1969) 2 SCC 55] held : (SCC p. 67, para 10)

> "10. … **The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the legislature and not to the courts.** In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit."

105.2. The same principle has been reiterated in Federation of Hotel & Restaurant Assn. of India v. Union of India [Federation of Hotel & Restaurant Assn. of India v. Union of India (1989) 3 SCC 634], where M.N. Venkatachaliah, J. (as the learned Chief Justice then was), speaking for the Constitution Bench held : (SCC pp. 658-59, paras 46-47)

> "46**. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc.**

for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or classes of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience."

105.3. In matters of classification, involving fiscal legislation, the legislature is permitted a larger discretion so long as there is no transgression of the fundamental principle underlying the doctrine of classification. In Hiralal Rattanlal [Hiralal Rattanlal v. State of U.P. (1973) 1 SCC 216 : 1973 SCC (Tax) 307],

K.S. Hegde, J., speaking for a four-Judge Bench observed : (SCC p. 223, para 20)

> "20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14."

105.4. More recently in Union of India v. Nitdip Textile Processors (P) Ltd. [Union of India v. Nitdip Textile Processors (P) Ltd. (2012) 1 SCC 226], a two-Judge Bench observed : (SCC p. 255, para 67)

> "**67. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the taxpayers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assessees are**

> **accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line**."

106. The principles governing a benefit, by way of a refund of tax paid, may well be construed on an analogous frame with an exemption from the payment of tax or a reduction in liability (CCT v. Dharmendra Trading Co. [CCT v. Dharmendra Trading Co. (1988) 3 SCC 570 : 1988 SCC (Tax) 432]).

107. In Elel Hotels & Investments Ltd. v. Union of India [Elel Hotels & Investments Ltd. v. Union of India (1989) 3 SCC 698], M.N. Venkatachaliah, J. (as the learned Chief Justice then was) held that : (SCC p. 708, para 20)

> "20. … **It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives.** The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant."

108. In Spences Hotel (P) Ltd. v. State of W.B. [Spences Hotel (P) Ltd. v. State of W.B. (1991) 2 SCC 154], a two-Judge Bench, speaking through K.N. Saikia, J. revisited the precedents of this Court governing the principles of

classification in tax legislation and held : (SCC pp. 168-69, para 24)

> "24. … The history of taxation is one of evolution as is the case in all human affairs. Its progress is one of constant growth and development in keeping with the advancing economic and social conditions; and the fiscal intelligence of the State has been advancing concomitantly, subjecting by new means and methods hitherto untaxed property, income, service and provisions to taxation. With the change of scientific, commercial and economic conditions and ways of life new species of property, both tangible and intangible gaining enormous values have come into existence and new means of reaching and subjecting the same to contribute towards public finance are being developed, perfected and put into practical operation by the legislatures and courts of this country, of course within constitutional limitations."

109. The Court held that the principle of equality does not preclude the classification of property, trade, profession and events for taxation — subjecting one kind to one rate of taxation and another to a different rate. The State may exempt certain classes of property from any taxation at all and impose different specific taxes upon different species which it seeks to regulate. The Court held : (Spences Hotel case [Spences Hotel (P) Ltd. v. State of W.B. (1991) 2 SCC 154], SCC p. 171, para 27)

> "27. 'Perfect equality in taxation has been said time and again, to be impossible and unattainable. Approximation to it is all that can be had. Under any system of taxation, however, wisely and carefully framed, a disproportionate share of the public burdens would be thrown on certain kinds of property, because they are visible and tangible, while others are of a nature to elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principle, or operate to produce gross inequality, so that they cannot be deemed in any just sense

> proportional in their effect on those who are to bear the public charges that courts can interpose and arrest the course of legislation by declaring such enactments void.' 'Perfectly equal taxation', it has been said, 'will remain an unattainable good as long as laws and government and man are imperfect.' 'Perfect uniformity and perfect equality of taxation', in all the aspects in which the human mind can view it, is a baseless dream.'

110. Parliament while enacting the provisions of Section 54(3), legislated within the fold of the GST regime to prescribe a refund. While doing so, it has confined the grant of refund in terms of the first proviso to Section 54(3) to the two categories which are governed by clauses (i) and (ii). A claim to refund is governed by statute. There is no constitutional entitlement to seek a refund. Parliament has in clause (i) of the first proviso allowed a refund of the unutilised ITC in the case of zero-rated supplies made without payment of tax. Under clause (ii) of the first proviso, Parliament has envisaged a refund of unutilised ITC, where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated on a par on a matter of a refund of unutilised ITC cannot be accepted. Such an interpretation, if carried to its logical conclusion would involve unforeseen consequences, circumscribing the legislative discretion of Parliament to fashion the rate of tax, concessions and exemptions. If the judiciary were to do so, it would run the risk of encroaching upon legislative choices, and on policy decisions which are the prerogative of the executive. Many of the considerations which underlie these choices are based on complex balances drawn between political, economic and social needs and aspirations and are a result of careful analysis of the data and information regarding the levy of taxes and their collection. That is precisely the reason why courts are averse to entering the area of

policy matters on fiscal issues. We are therefore unable to accept the challenge to the constitutional validity of Section 54(3).**"**

(emphasis added)

Paragraph 142 of the decision reads thus:

"142. The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarjan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same.**"**

At this stage, it will be also necessary to consider the decision of this Court in the case of ***Nitdip Textiles***.[8] In paragraph 66, this Court held thus:

"66. To sum up, Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The taxation laws are no exception to the application of this principle of equality enshrined in Article 14 of the Constitution of India. However, it is well

> settled that the legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation in view of inherent complexity of fiscal adjustment of diverse elements. **The power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the court will be reluctant and perhaps ill-equipped to investigate."**
>
> (emphasis added)

Apart from these decisions, there are other binding decisions which hold that the laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. In the present case, the legislature was dealing with a complex issue. Therefore, greater freedom and greater play in the joints has to be allowed to the legislature.

58. Essentially, the challenge to constitutional validity is that, in the present case, the provisions do not meet the test of reasonable classification, which is a part of Article 14 of the Constitution of India. To satisfy the test, there must be an *intelligible differentia* forming the basis of the classification, and the differentia should have a rational nexus with the object of legislation. The Union of India rightly contends that immovable property and immovable goods for the purpose of GST constitute a class by themselves. Clauses (c) and (d) of Section 17(5) apply only to this class of cases. The right of ITC is conferred only by the Statute; therefore, unless there is a statutory provision, ITC cannot be enforced. It is a creation of a statute, and thus, no one can claim ITC as a matter of right unless it is expressly provided in the statute. It cannot be disputed that the legislature can always carve out exceptions to the entitlement of ITC under Section 16 of the CGST Act.

59. Therefore, the cases covered by clauses (c) and (d) of Section 17(5) are entirely distinct from the other cases. This appears to be done to ensure the object of not encroaching upon the State's legislative powers under Entry 49 of List II. Therefore, it is not possible to

accept the submission that the *difference is not intelligible and* has no nexus to the object sought to be achieved. Moreover, to decide why transactions covered by clauses (c) and (d) are separately classified, the Court will have to go into complex questions involving fiscal adjustments of diverse elements. The Court has no experience or expertise to embark upon the said exercise.

60. We fail to understand the argument that the classification is underinclusive and creates discrimination. In this case, equals are not being treated as unequals. The test of vice of discrimination in taxing law is less rigorous. Ultimately, the legislature was dealing with a complex economic problem. By no stretch of the imagination, clauses (c) and (d) of Section 17(5) can be said to be discriminatory. No amount of verbose and lengthy arguments will help the assessees prove the discrimination. In the circumstances, it is not possible for us to accept the plea of clauses (c) and (d) of Section 17(5) being unconstitutional.

61. Though, violation of Articles 19(1)(g) and 300A has been alleged, it is not elaborated by the assessees how such a violation is made out.

62. While dealing with a taxing statute, it can always be said that, ideally, a particular provision ought not to have been incorporated or ought to have been incorporated with a modification. Even if this can be said, *per se,* the particular provision does not become unconstitutional. The Court cannot impose its views on the legislature.

63. Now, we come to the challenge to sub-section (4) of Section 16 of the CGST Act, which reads thus:

> **"16. Eligibility and conditions for taking input tax credit.—**
>
> .. ..
>
> (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:
>
> Provided that the registered person shall be entitled to

> take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019."

The words "thirtieth day of November" were substituted with effect from 1st October 2022 for the words "due date of furnishing of the return under Section 39 for the month of September". We fail to understand how sub-section (4) of Section 16 becomes discriminatory when the legislature says that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for the supply of goods or services or both after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. It is not shown how the provision is arbitrary and discriminatory. The fact that the provisions could have been drafted in a better manner or more articulately is not sufficient to attract arbitrariness.

64. As we are upholding the constitutional validity of clauses (c) and (d) of Section 17(5), and as held earlier, its plain interpretation does not lead to any ambiguity, the question of reading down the provisions does not arise.

65. Some of our conclusions can be summarised as under:

a. The challenge to the constitutional validity of clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act is not established;

b. The expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17;

c. The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery"

used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a "plant" for the purposes of clause (d) of Section 17(5).

66. In the light of what we have held above, by setting aside the impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023, the writ petitions are remanded to the High Court of Orissa for limited purposes of deciding whether, in the facts of the case, the shopping mall is a "plant" in terms of clause (d) of Section 17(5). Appeals are partly allowed in above terms.

67. While deciding these cases, we cannot make any final adjudication on the question of whether the construction of immovable property carried out by the petitioners in Writ Petitions amounts to plant, and each case will have to be decided on its merit by applying the functionality test in terms of this judgment. The issue must be decided in appropriate proceedings in which adjudication can be made on facts. The petitioners are free to adopt appropriate proceedings or raise the issue in appropriate proceedings.

68. The writ petitions are rejected subject to the interpretation of clause (d) of sub-section (5) of Section 17 of the CGST Act made by us.

Result of the Case: Appeals partly allowed and writ petitions rejected.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 860 : 2024 INSC 781

Bank of Rajasthan Ltd.
v.
Commissioner of Income Tax

(Civil Appeal Nos. 3291-3294 of 2009)

16 October 2024

[Abhay S. Oka* and Pankaj Mithal, JJ.]

Issue for Consideration

Issue arose as regards the treatment to be given to broken period interest, whether a deduction of the broken period interest can be claimed by the Bank, purchaser of the government Securities.

Headnotes†

Income Tax Act, 1961 – s.28 – Interest on securities – Interest on Held to Maturity (HTM) government securities – Interest for the broken period, if allowed as a deduction:

Held: As the securities were treated as stock-in-trade, the interest on the broken period cannot be considered as capital expenditure and will have to be treated as revenue expenditure, which can be allowed as a deduction – Whether the Bank holds the HTM security as investment or stock-in-trade will depend on the facts of each case – If it is found that HTM Security is held as an investment, the benefit of broken period interest will not be available and if it is held as a trading asset, deduction for broken period interest can be claimed – If deduction on account of broken period interest is not allowed, the broken period interest as capital expense will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years – Profit earned from the sale would be reduced by the amount of broken period interest. [Paras 20, 21, 24-30]

Case Law Cited

Vijaya Bank Ltd. v. Additional Commissioner of Income Tax, Bangalore **(1991) Supp 2 SCC 147;** *American Express International Banking Corporation v. Commissioner of Income Tax & Anr* **(2002) 258 ITR 601 (Bombay) : 2002 SCC OnLine Bom 944;** *Commissioner of Income Tax, Bombay v. Citi Bank NA* **Civil Appeal**

* Author

No. 1549 of 2006; *Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. The Cocanada Radhaswami Bank Ltd., Kakinada* **(1965) 57 ITR 306 : 1965 SCC OnLine SC 186;** *United Commercial Bank Ltd., Calcutta v. Commissioner of Income Tax, West Bengal* **(1957) 32 ITR 688 : 1957 SCC OnLine SC 74;** *Commissioner of Income Tax, Jalandhar v. Nawanshahar Central Cooperative Bank Ltd* **(2007) 289 ITR 6 : (2007) 15 SCC 611;** *Bihar State Cooperative Bank Ltd. v. Commissioner of Income Tax* **(1960) 39 ITR 114 : 1960 SCC OnLine SC 193;** *M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax* **[1991] Supp. 2 SCR 312 : (1992) 193 ITR 321: (1992) 1 SCC 659;** *Commissioner of Income Tax (Central), Calcutta v. Associated Industrial Development Company (P) Ltd., Calcutta* **(1972) 4 SCC 447;** *HDFC Bank Ltd. v. CIT* **(2014) 366 ITR 505 – referred to.**

List of Acts

Banking Regulation Act, 1949; Income Tax Act, 1961; Finance Act, 1988.

List of Keywords

Broken period interest; Deduction of broken period interest; Purchaser of the government securities; Interest on securities; Interest on Held to Maturity (HTM) government securities; Stock-in-trade; Capital expenditure; Revenue expenditure; HTM Security; Investment.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3291-3294 of 2009

From the Judgment and Order dated 24.03.2008 of the High Court of Rajasthan at Jodhpur in ITA Nos. 12, 117, 119 and 120 of 2005

With

Civil Appeal Nos. 11200-11201, 11202, 11203, 11204, 11205, 11196, 11197, 11198 and 11199 of 2024 And Civil Appeal No. 4755 of 2023

Appearances for Parties

Balbir Singh, A.S.G., Sanjay Jhanwar, Jehangir Mistri, Sr. Advs., Ms. Kavita Jha, Anant Mann, Aditya Rathore, Naman Tandon, Samarvir Singh, Shyam Gopal, Raj Bahadur Yadav, H R Rao,

Prahlad Singh, Manoj Mishra, Ms. Kritgya Kait, Rupesh Kumar, Zoheb Hussain, Satya Prakash Gautam, Sridhar Potaraju, Aayush, Rajat Srivastava, Ms. Zeba Zoariah, Sanjay Kapur, Surya Prakash, Ms. Divya Singh Pundir, Tarun Gupta, Rajat Sharma, Aryan Singh Chaudhary, Gaurav Asati, Sanjiv M. Shah, Pranab Kumar Mullick, Mrs. Soma Mullick, Ms. Banani Sikdar, Sebat Kumar Deuria, Anil Rana, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted in the Special Leave Petitions.

FACTUAL ASPECTS

2. The main issue in this group of appeals is about the treatment to be given to broken period interest. The question is whether a deduction of the broken period interest can be claimed. We must provide a brief background of how the issue arises.

3. A Scheduled Bank is governed by the provisions of the Banking Regulation Act, 1949 (for short, "the 1949 Act"). The 1949 Act, read with the guidelines of the Reserve Bank of India (for short, 'RBI'), requires Banks to purchase government securities to maintain the Statutory Liquidity Ratio (for short, 'SLR'). The guidelines dated 16th October 2000 issued by the RBI categorise the government securities into the following three categories: (a) Held to Maturity (HTM); (b) Available for Sale (AFS); and (c) Held for Trading (HFT).

4. The interest on the securities is paid by the Government or the authorities issuing securities on specific fixed dates called coupon dates, say after an interval of six months. When a Bank purchases a security on a date which falls between the dates on which the interest is payable on the security, the purchaser Bank, in addition to the price of the security, has to pay an amount equivalent to the interest accrued for the period from the last interest payment till the date of purchase. This interest is termed as the interest for the broken period. When the interest becomes due after the purchase of the security by the Bank, interest for the entire period is paid to the purchaser Bank, including the broken period interest. Therefore, in effect, the purchaser of securities gets interest from a date anterior

to the date of acquisition till the date on which interest is first due after the date of purchase.

5. Under the Income Tax Act, 1961 (for short, 'the IT Act'), Section 18, which was repealed by the Finance Act, 1988, dealt with tax leviable on the interest on securities. Section 19 provided for the deduction of (i) expenses in realising the interest and (ii) the interest payable on the money borrowed for investment. Section 20 dealt with the deduction of (i) expenses in realising the interest and (ii) the interest payable on money borrowed for investment in the case of a Banking company. Section 21 provided that the interest payable outside India was not admissible for deduction. Sections 18 to 21 were repealed by the Finance Act, 1988, effective from 1st April 1989. We are dealing with cases involving the period post the deletion of the four Sections.

6. In Civil Appeal Nos.3291-3294 of 2009, which is the lead case, the appellant-assessee is a Scheduled Bank. The appellant was engaged in the purchase and sale of government securities. The securities were treated as stock-in-trade in the hands of the appellant. The amount received by the appellant on the sale of the securities was considered for computing its business income. The appellant consistently followed the method of setting off and netting the amount of interest paid by it on the purchase of securities (i.e., interest for the broken period) against the interest recovered by it on the sale of securities and offering the net interest income to tax. The result is that if the entire purchase price of the security, including the interest for the broken period is allowed as a deduction, then the entire sale price of the security is taken into consideration for computing the appellant's income. According to the appellant's case, the assessing officer allowed this settled practice while passing regular assessment orders for the assessment years 1990-91 to 1992-93. However, the Commissioner of Income Tax (for short, 'CIT') exercised jurisdiction under Section 263 of the IT Act and interfered with the assessment orders. The CIT held that the appellant was not entitled to the deduction of the interest paid by it for the broken period. The Commissioner relied upon a decision of this Court in the case of ***Vijaya Bank Ltd. v. Additional Commissioner of Income Tax, Bangalore***.[1] This Court held that under the head "interest on securities", the interest for a broken period was not an allowable

1 (1991) Supp (2) SCC 147

deduction. Being aggrieved by the orders of the CIT, the appellant preferred an appeal before the Income Tax Appellate Tribunal (for short, 'Appellate Tribunal'). The Tribunal allowed the appeal by holding that the decision of this Court in the case of ***Vijaya Bank Ltd.***[1] was rendered after considering Sections 18 to 21 of the IT Act, which have been repealed. Therefore, the Tribunal held that as the appellant was holding the securities as stock-in-trade, the entire amount paid by the appellant for the purchase of such securities, which included interest for the broken period, was deductible. The respondent Department preferred an appeal before the High Court against the decision of the Appellate Tribunal. By the impugned judgment, the High Court interfered and, relying upon the decision of this Court in the case of ***Vijaya Bank Ltd.***,[1] allowed the appeal. This order was impugned in Civil Appeal Nos. 3291-3294 of 2009.

7. All other appeals that are the subject matter of this group are preferred by the Revenue. These are the cases where the deduction of interest for the broken period was allowed.

8. The learned counsel appearing for the appellant in Civil Appeal Nos. 3291-3294 of 2009 and learned counsel representing the respondents/ Banks in other appeals have made extensive submissions. The submissions made by the learned counsel appearing for the assessees can be summarised as follows:

a. Reliance was placed on a decision of the Bombay High Court in the case of ***American Express International Banking Corporation v. Commissioner of Income Tax & Anr.***[2] Learned counsel pointed out that in the said decision, the Bombay High Court distinguished the decision in the case of ***Vijaya Bank Ltd.***[1] by holding that in the case of ***Vijaya Bank Ltd.***,[1] the claim for deduction of interest on broken period was made under Sections 19 and 20 of the IT Act. This was done on the footing that the Department had brought to tax the interest accrued on the securities up to the date of purchase as "interest on securities" under Section 18. It was held that the decision in the case of ***Vijaya Bank Ltd.***[1] will not apply to the cases post-repeal of Sections 18 to 21 of the IT Act. In the said case, the amount of interest was brought into tax under Section 28.

2 (2002) 258 ITR 601 (Bombay) : 2002 SCC OnLine Bom 944

b. The learned counsel appearing for the assessees pointed out that the view taken by the Bombay High Court in the case of ***American Express International Banking Corporation***[2] has been approved by the order dated 12th August 2008 of this Court in the case of ***Commissioner of Income Tax, Bombay v. Citi Bank NA***.[3] The learned counsel pointed out that this Court affirmed the decision of the Bombay High Court in the case of ***Citi Bank NA,***[3] which in turn relied upon its earlier decision in the case of ***American Express International Banking Corporation***.[2]

c. Our attention was also invited to a decision by this Court in the case of ***Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. The Cocanada Radhaswami Bank Ltd., Kakinada***.[4] Inviting our attention to the said decision, it is pointed out that this Court accepted that the securities held by Banking companies are held as stock-in-trade. He pointed out that this Court, in the case of ***United Commercial Bank Ltd.; Calcutta v. Commissioner of Income Tax, West Bengal***,[5] held that government securities are held as stock-in-trade by Banking companies. He submitted that the assessee pays interest for the broken period to which he is not entitled as after the purchase, when the interest becomes due, the assessee gets income for the entire period even covering the interest payable before the date on which the assessee makes the acquisition. It is submitted that there cannot be any dispute that such securities held by Banking companies constitute stock-in-trade. He submitted that in the case of ***Commissioner of Income Tax, Jalandhar v. Nawanshahar Central Cooperative Bank Ltd.,***[6] it was held that investments are a part of the Banking business, particularly when statutorily mandated. It was submitted that Banking companies buy government securities to comply with SLR requirements.

d. It is well-settled that in the Banking business, securities purchased by Banks, *per se,* constitute stock-in-trade of the Bank

3 Civil Appeal No. 1549 of 2006

4 (1965) 57 ITR 306 : 1965 SCC OnLine SC 186

5 (1957) 32 ITR 688 : 1957 SCC OnLine SC 74

6 (2007) 289 ITR 6 : (2007) 15 SCC 611

as normal and ordinary Banking business is to deal in money credit. The money is parked in readily marketable securities so that it is available to meet the demand of depositors. This argument is supported by a decision of this Court in the case of ***Bihar State Co-operative Bank Ltd. v. Commissioner of Income Tax***.[7]

e. It was contended that when the interest income of securities is uniformly assessed under the head "profits and gains from business or profession", the decision of this Court in the case of ***Citi Bank NA***[3] will squarely apply. It was submitted that in the case of many Banks, for several assessment years, the assessment officer allowed the deduction of interest for the broken period. Reliance was placed on a decision of this Court in the case of ***M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax***.[8]

f. It was submitted that IndusInd Bank Ltd. is following a practice that interest accrued on a security but not due on the date of purchase of security is debited to the profit and loss account as expenditure and is claimed as such in return of income. The balance amount remaining after reducing the broken period interest is capitalised to the balance sheet covering the acquisition cost of such securities. It is submitted that the department has accepted the said methodology for several years. It was submitted that the exercise undertaken by Revenue in disallowing broken period interest on the footing that it is a capital expenditure is revenue neutral. It was pointed out that if the deduction of broken period interest as a capital expense is disallowed, it will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years. It was submitted that, consequently, the related interest received would have to be excluded from the income and truncated from the purchase cost, or alternatively, both the broken interest period and interest received thereof will be netted and added/subtracted from the cost of acquisition. Therefore, the exercise done by

7 (1960) 39 ITR 114 : 1960 SCC OnLine SC 193

8 [1991] Supp. 2 SCR 312 : (1992) 193 ITR 321 : (1992) 1 SCC 659

the Department is academic. It was submitted that the decision of this Court in the case of ***Vijaya Bank Ltd.***[1] is *per incuriam* as it was rendered in ignorance of the decisions of this Court in the case of ***Cocanada Radhaswami Bank Ltd.***[4] Reliance was also placed on the Central Board of Direct Taxes (for short, "the CBDT") Circular No. 665 of 1993.

g. It was also pointed out that though Banks are required to maintain SLR by investing amounts in specified securities, as long as Banks maintain a specified percentage of reserve, they are permitted to buy and sell such securities, irrespective of their categorisation. There is no embargo on the Bank to hold security in SLR up to the maturity date of the security. It was submitted that Banks always treat interest income from all securities as profit or loss, irrespective of the categorisation of investments. The interest on securities held by Banks is always taxed under the head "income from business or profession". This contention is raised by HDFC Bank. It was submitted that in accordance with the well-settled and accepted method of accounting, the amount of broken period of interest which is debited in the profit and loss account of the Bank is claimed as a deduction while computing the income from business under the head "income from business and profession" as the entire interest income is offered to tax under the said head.

h. Reliance was placed on the RBI Circular dated 1st July 2009, which permits the debit of broken period interest to the profit and loss account. Reliance was also placed on a Circular dated 2nd November 2015 issued by the CBDT. The Circular provides that the investments made by a Banking company are a part of the business of the Bank. Therefore, income from such investments is attributable to the business of Banking falling under the head "profit and gain of business and profession".

i. It was submitted that assuming that as per the mandate of the 1949 Act, the securities are treated as investments in the books of accounts, it cannot be held that even for the purposes of the IT Act, securities would continue to be investments and not stock-in-trade. It was submitted that this Court has repeatedly held that the entries in the books of accounts are not relevant for determining the taxability under the provisions

of the IT Act. Reliance is placed on the RBI Circular dated 1st July 2009, which provides that broken period interest is not to be capitalised as part of the cost and is required to be debited to the profit and loss account.

j. It is submitted that as required by the Banking Regulation Act, all three categories of securities are treated in the same manner, and there is no distinction between the securities which are HTM and the other two categories of securities. It was submitted that Banks can always shift the securities falling in the category of HTM to the other two categories.

k. It was further urged on behalf of the assessee that the plea based on distinguishing the nature of the treatment of SLR securities viz-a-viz non-SLR securities has been raised for the first time by the Revenue before this Court.

l. Considering the fact that securities are held as stock-in-trade, interest paid on them constitutes an expense which is liable to be claimed as a deduction.

9. The submission of learned ASG is that the broken period interest on security held to maturity constitutes an investment and, therefore, should be treated as capital expenditure. It was submitted that since HTM securities are held up to maturity for maintaining the SLR ratio and as the same are treated as investment in the books of accounts of Banks, the same should be treated as investment and not stock-in-trade. Another submission of ASG is that Circular No. 18 of 2015 applies only to non-SLR securities. Another submission of learned ASG is that the decision of ***Vijaya Bank Ltd.***[1] would squarely apply as while omitting Sections 18 to 21, corresponding amendments have been made in Sections 28, 56(2)(d) and 57(3) of the IT Act, and the securities are now taxable under the head of "Income from other Sources". Therefore, the principles laid down in the case of ***Vijaya Bank Ltd.***[1] will squarely apply. He argued that the increase in capital by the acquisition of securities results in the expansion of the Bank's capital base, which helps in profit making. Therefore, the expenditure in the nature of broken period interest was capital expenditure. Learned ASG, thus, submitted that the assessees in these cases will not be entitled to a deduction of broken period interest.

CONSIDERATION OF LEGAL POSITION

10. We deal with the legal position at the outset. As noted, Sections 18 to 21 were deleted from 1st April 1989. In this group of appeals, we are not concerned with cases before the financial year 1988-89. Section 14 of the IT Act reads thus:

> **"14. Heads of income**.— Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—
>
> A. —Salaries.
>
> B.* * * * *
>
> C. —Income from house property.
>
> D. —Profits and gains of business or profession.
>
> E. —Capital gains.
>
> F. —Income from other sources."

Clause B was of "interest on securities". It was deleted with effect from 1st April 1989 along with Sections 18 to 21, which dealt with interest on securities. Head 'D' is of income from "profits and gains of business or profession" covered by Section 28 of the IT Act. Profits and gains from any business or profession that the assessee carried out at any time during the previous year are chargeable to income tax. Under Section 36(1)(iii), the assessee is entitled to a deduction of the amount of interest paid in respect of capital borrowed for the purposes of the business or profession. Section 37 provides that any expenditure which is not covered by Sections 30 to 36 and not being in the nature of capital expenditure, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed for computing the income chargeable under the head "profits and gains of business or profession". Section 56 of the IT Act provides that income of every kind which is not to be excluded from the total income under the IT Act shall be chargeable to income tax under the head "income from other sources" if it is not chargeable to income tax under any of the five heads provided in Section 14. Therefore, interest on investments may be covered by Section 56. Section 57 provides for the deduction of expenditure not being in the nature of capital expenditure expended wholly and exclusively for the

purposes of making or earning such income. In the case of interest on securities, any reasonable sum paid for the purposes of realising interest is also entitled to deduction under Section 57 of the IT Act.

DECISIONS STARTING FROM THE CASE OF VIJAYA BANK LTD.[1]

11. The first decision which needs consideration is in the case of ***Vijaya Bank Ltd.***[1] Regarding the facts of the said case, it must be noted that the income of the Bank was not assessed under Section 28 of the IT Act but under Section 18 under the Head "interest on securities". In the context of the applicability of Section 18 of the IT Act, the Bank claimed that the broken period's interest was deductible under Sections 19 and 20. In light of these facts, this Court held that the outlay on the purchase of income-bearing assets was a capital outlay. Therefore, no part of the capital outlay can be set off as expenditure against income from the asset in question.

12. A Division Bench of the Bombay High Court, in the case of ***American Express International Banking Corporation,***[2] dealt with the decision in the case of ***Vijaya Bank Ltd.***[1] We are extensively referring to the decision of the Bombay High Court in the case of ***American Express International Banking Corporation***[2] for the reason that this Court in ***Citi Bank NA***[3] has expressly approved the view of the Bombay High Court in the said decision. We may note that the Bombay High Court dealt with assessment years 1974-75 to 1977-78. This was a case where the assessee made adjustments for broken period interest. The assessing officer had disallowed the deduction for the payment made by the assessee for broken period interest. The assessing officer followed the decision in the case of ***Vijaya Bank Ltd.***[1] The Bombay High Court distinguished the decision in the case of ***Vijaya Bank Ltd.***[1] and held thus:

> **"18. The assessee-Bank, like several other Banks, were consistently following the practice of valuing the securities/interest held by it at the end of each year and offer for taxation, the appreciation in their value by way of profit/interest earned due to efflux of time. The Bank also claimed deduction for broken period interest payments.** However, the department did not accept the assessee's method in the assessment year in question in view of the judgment of the Karnataka High Court in the case of (*Commissioner of Income-tax,*

Mysore v. *Vijaya Bank*),[5] reported in 1976 Tax Law Reporter page 524. This judgment has been subsequently upheld by the Supreme Court in 187 I.T.R. page 541. In view of the judgment of the Karnataka High Court, the department took the view that broken period interest payment cannot be allowed as a deduction because it came within the ambit of interest on securities under section 18 of the Income-tax Act. **It is the contention of the department that the assessee-Bank received interest on Dated Government Securities from R.B.I. on half-yearly basis. That, the assessee Bank also traded in such securities. That the assessee Bank bought Dated Government Securities during the intervening period between two due dates. That, on purchase of the dated Government Security, the assessee became the holder of the security and accordingly, the assessee received half-yearly interest on the due dates from R.B.I. on purchase. Therefore, according to the department, the income which the assessee-Bank received came under section 18 of the Income-tax Act interest on securities.** Under the circumstances, it was not open to the assessee Bank to claim deduction for broken period interest payment made to the selling/transferor Bank. That, it was not open to the assessee to claim deduction as revenue expenditure for broken period interest payment as no such deduction was permissible under sections 19 and 20 of the Income-tax Act. That, it was not a sum expended by the assessee for realizing interest under section 19 and, therefore, the assessee was not entitled to claim deduction for broken period interest payment as a revenue expenditure under section 28 of the Income-tax Act. In this connection, the department followed the judgment of the Karnataka High Court in *Vijaya Bank's case*. Therefore, the point which we are required to consider in this case is: Whether the judgment of the Karnataka High Court in *Vijaya Bank's case* was applicable to the facts of the present case.

19. Before going further we may mention at the very outset that the security in this case was of the face value of Rs. 5,

lakhs. It was bought for a lesser amount of Rs. 4,92,000.00. The difference was of Rs. 8,000.00. The assessee has revalued the security. The assessee offered the notional profit for taxation, as explained herein above, on accrual basis in the appropriate assessment year during which the assessee held the security. This difference could have been treated by the department as interest on securities under section 18. However, in the instant case, the department has assessed the said difference under, section 28 under the head "Business" and not under the head "interest on securities". Having treated the difference under the head "Business", the A.O. disallowed the broken period interest payment, which gave rise to the dispute. It was open to the department to assess the above difference under the head "interest on securities" under section 18. However, they chose to assess the interest under the head "business" and, while doing so, the department taxed broken period interest received, but disallowed broken period interest payment. It is in this light that one has to read the judgment of the Karnataka High Court and the Supreme Court in *Vijaya Bank's case*. In that case, the facts were as follows. During the Assessment Year under consideration, Vijaya Bank entered into an agreement with Jayalakshmi Bank Limited, whereby Vijaya Bank took over the liabilities of Jayalakshmi Bank. They also took over assets belonging to Jayalakshmi Bank. These assets consisted of two items *viz.* Rs. 58,568.00 and Rs. 11,630.00. The said amount of Rs. 58,568.00 represented interest, which accrued on securities taken over by Vijaya Bank from Jayalakshmi Bank and Rs. 11,630.00 was the interest which accrued upto the date of purchase of securities by the assessee-Bank from the open market. These too amounts were brought to tax by the A.O. under section 18 of the Income-tax Act. The assessee Bank claimed that these amounts were deductible under sections 19 and 20. This was on the footing that the department had brought to tax, the aforestated two amounts as interest on securities under section 18. It is in the light of these facts that one has; to read the judgment in *Vijaya Bank's case*. In the light of the above facts, it was held that outlay on purchase of income

bearing asset was in the nature of capital outlay and no part of the capital outlay can be set off as expenditure against income accruing from the asset in question. **In our case, the amount which the assessee received has been brought to tax under the head "business" under section 28. The amount is not brought to tax under section 18 of the Income-tax Act. After bringing the amount to tax under the head "business", the department taxed the broken period interest received on sale, but at the same time, disallowed broken period interest payment at the time of purchase and this led to the dispute. Having assessed the amount received by the assessee under section 28, the only limited dispute was whether the impugned adjustments in the method of accounting adopted by the assessee Bank should be discarded. Therefore, the judgment in *Vijaya Bank's case* has no application to the facts of the present case. If the department had brought to tax, the amounts received by the assessee Bank under section 18, then *Vijaya Bank's case* was applicable. But,in the present case, the department brought to tax such amounts under section 28 right from the inception. Therefore, the Tribunal was right in coming to the conclusion that the judgment in *Vijaya Bank's case* did not apply to the facts of the present case.** However, before us, it was argued on behalf of the revenue that in view of the judgment in *Vijaya Bank's case*, even if the securities were treated as part of the trading assets, the income therefrom had to be assessed under section 18 of the Act and not under section 28 of the Act as income from securities can only come within section 18 and not under section 28. We do not find any merit in this argument. Firstly, as stated above, *Vijaya Bank's case* has no application to the facts of this case. Secondly, in the present case, the Tribunal has found that the securities were held as trading assets. **Thirdly, it has been held by the Supreme Court in the subsequent decision reported in 57 I.T.R. Page 306, in the case of *C.I.T. Andhra Pradesh* v. *Cocanada Radhaswami Bank Limited*, that income from securities can also**

come under section 28 as income from business. This judgment is very important. It analyzes the judgment of the Supreme Court in *UCO Bank's case* reported in 53 I.T.R. page 250, which has been followed by the Supreme Court in *Vijaya Bank's case*. It is true that once an income falls under section 18, it cannot come under section 28. However, as laid down by the Supreme Court in *Cocanada Radhaswami Bank's case* (supra), income from securities treated as trading assets can come under section 28. In the present case, the department has treated income from securities under section 28. Lastly, the facts in the case of *UCO Bank* reported in 53 I.T.R. page 250, also support our view in the present case. In *UCO Bank's case*, the assessee Bank claimed a set off under section 24(2) of the Income-tax Act, 1922 (section 71(1) of the present Act) against its income from interest on securities under section 8 of the 1922 Act (similar to section 28 of the present Act). It was held that *UCO Bank* was not entitled to such a set off as the income from interest on securities came under section 8 of the 1922 Act. Therefore, even in *UCO Bank's case*, the department had assessed income from interest on securities right from the inception under section 8 of the 1922 Act and, therefore, the set-off was not allowed under, section 24(2) of the Act. Therefore, *UCO Bank's case* has also no application to the facts of the present case in which the assessee's income from interest on securities is assessed under section 28 right from inception, in fact, in *UCO Bank's case*, the matter was remitted back as it was contended on behalf of *UCO Bank* that the securities in question were a part of trading assets held by the assessee in the course of its business and the income by way of interest on such securities was assessable under section 10 of the Income-tax Act, 1922 (similar to section 28 of the present Act). It is for this reason that in the subsequent judgment of the Supreme Court in the case of *Radhaswami Bank Limited* (supra), that the Supreme Court has observed, after reading *UCO Bank's case*, that where securities

were part of trading assets, income by way of interest on such securities could come under section 10 of the Income tax Act 1922.

20. In the light of what we have discussed hereinabove, we find that the assessee's method of accounting does not result in loss of tax/revenue for the department. That, there was no need to interfere with the method of accounting adopted by the assessee-Bank. That, the judgment in the case of *Vijaya Bank* had no application to the facts of the case. That, having assessed the income under section 28, the department ought to have taxed interest for broken period interest received and the department ought to have allowed deduction for broken period interest paid."

(emphasis added)

13. In the case of ***Citi Bank NA***,[3] the question before this Court was whether interest paid for the broken period should not be considered part of the purchase price and whether it should be allowed as revenue expenditure in the year of purchase of securities. In this decision, this Court quoted the above paragraphs from the decision of the Bombay High Court in the case of ***American Express International Banking Corporation***.[2] This Court expressly approved the conclusions recorded by the Bombay High Court. This Court held thus:

> **"**The facts in the present case are similar to the facts in American Express (supra).Agreeing with this view and accepting the distinction pointed out by the Bombay High Court, this Court dismissed the two special leave petitions filed by the revenue, one of which was dismissed by a three Judge Bench.
>
> After going through the facts which are similar to the facts in American Express (supra), since the tax effect is neutral, the method of computation adopted by the assessee and accepted by the revenue cannot be interfered with. We agree with the view expressed by the Bombay High Court in American Express (supra) that on the facts of the present case, the judgment in Vijaya Bank Ltd. (supra) would have no application.**"**

Thus, this Court approved the view taken by the Bombay High Court that the interest paid for the broken period should not be considered as part of the purchase price, but it should be allowed as revenue expenditure in the year of purchase of securities. This Court has reiterated the view taken by the Bombay High Court in the case of ***American Express International Banking Corporation.***[2]

WHETHER SECURITIES ARE HELD AS STOCK-IN-TRADE

14. In the case of ***Cocanada Radhaswami Bank Ltd.,***[4] the Bank had shown interest on securities held by it as a source of income. The Bank claimed loss against other banking activities and set off the interest on securities against the higher amount shown as loss in other banking activities. The department allowed the loss to be set off against the income under the head "business" and disallowed it under the income under the head "interest on securities". The Appellate Tribunal confirmed the view. This Court, in paragraphs nos. 3 to 7, held thus:

> **"3.** Learned counsel for the Revenue argued that the income from business and securities fell under different heads, namely, Section 10 and Section 8 of the Act respectively, that they were mutually exclusive and, therefore, the losses under the head "business" could not be carried forward from the preceding year to the succeeding year and set off under Section 22(4) of the Act against the income from securities held by the assessee.
>
> **4. Learned counsel for the assessee, on the other hand, contended that though for the purpose of computation of income, the income from securities and the income from business were calculated separately, in a case where the securities were part of the trading assets of the business, the income therefrom was part of the income of the business and, therefore, the losses incurred under the head "business" could be set off during the succeeding years against the total income of the business i.e. income from the business including the income from the securities.**
>
> **5.** The relevant section of the Act which deals with the matter of set off of losses in computing the aggregate

income is Section 24. The relevant part of it, before the Finance Act, 1955, read:

> "(1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year:
>
> ***
>
> (2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation, for that year; and if it cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following year…."

While sub-section (1) of Section 24 provides for setting off of the loss in a particular year under one of the heads mentioned in Section 6 against the profit under a different head in the same year, sub-section (2) provides for the carrying forward of the loss of one year and setting off of the same against the profit or gains of the assessee from the same business in the subsequent year or years The crucial words, therefore, are "profits and gains of the assessee from the same business" i.e. the business in regard to which he sustained loss in the previous year. **The question, therefore, is whether the securities formed part of the trading assets of the business and the income therefrom was income from the business. The answer to this question depends upon the scope of Section 6 of the Act. Section 6 of the Act classified taxable income under the following several heads : (i) salaries; (ii) interest on securities; (iii) income from**

property; (iv) profits and gains of business, profession or vocation; (v) income from other sources; and (vi) capital gains. The scheme of the Act is that income tax is one tax. Section 6 only classifies the taxable income under different heads for the purpose of computation of the net income of the assessee. Though for the purpose of computation of the income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from business if the securities are part of the trading assets. Whether a particular income is part of the income from a business falls to be decided not on the basis of the provisions of Section 6 but on commercial principles. To put it in other words, did the securities in the present case which yielded the income form part of the trading assets of the assessee? The Tribunal and the High Court found that they were the assessee's trading assets and the income therefrom was, therefore, the income of the business. If it was the income of the business, Section 24(2) of the Act was immediately attracted. If the income from the securities was the income from its business, the loss could, in terms of that section, be set off against that income.

6. A comparative study of sub-sections (1) and (2) of Section 24 yields the same result. While in sub-section (1) the expression "head" is used, in sub-section (2) the said expression is conspicuously omitted. This designed distinction brings out the intention of the legislature. The Act provides for the setting off of loss against profits in four ways. To illustrate, take the head "profits and gains of business, profession or vocation". An assessee may have two businesses. In ascertaining the income in each of the two businesses, he is entitled to deduct the losses incurred in respect of each of the said businesses. So calculated, if he has loss in one business and profit in the other both falling under the same head, he can set off the loss in one against the profit in the other in arriving at the income under that head. Even so, he may still sustain loss under the same head. He can then set off the loss under the

head "business" against profits under another head, say "income from investments", even if investments are not part of the trading assets of the business. Notwithstanding this process he may still incur loss in his business. Section 24(2) says that in that event he can carry forward the loss to the subsequent year or years and set off the said loss against the profit in the business. Be it noted that clause (2) of Section 24, in contradistinction to clause (1) thereof, is concerned only with the business and not with its heads under Section 6 of the Act. Section 24, therefore, is enacted to give further relief to an assessee carrying on a business and incurring loss in the business though the income therefrom falls under different heads under Section 6 of the Act.

7. Some of the decisions cited at the Bar may conveniently be referred to at this stage. The Judicial Committee in Punjab Cooperative Bank Ltd. v. CIT [(1940) 8 ITR 635, 645] has clearly brought out the business connection between the securities of a Bank and its business, thus:

> "In the ordinary case of a Bank, the business consists in its essence of dealing with money and credit. Numerous depositors place their money with the Bank often receiving a small rate of interest on it. A number of borrowers receive loans of a large part of these deposited funds at somewhat higher rates of interest. But the Banker has always to keep enough cash or easily realisable securities to meet any probable demand by the depositors…."

In the present case the Tribunal held, on the evidence, and that was accepted by the High Court, that the assessee was investing its amounts in easily realisable securities and, therefore, the said securities were part of the trading assets of the assessee's Banking business. **The decision of this Court in United Commercial Bank Ltd. v. CIT [(1958) SCR 79] does not lay down any different proposition. It held, after an exhaustive review of the authorities, that under the scheme of the Income Tax Act, 1922, the head of income, profits and gains**

enumerated in the different clauses of Section 6 were mutually exclusive, each specific head covering items of income arising from a particular source. On that reasoning this Court held that even though the securities were part of the trading assets of the company doing business, the income therefrom had to be assessed under Section 8 of the Act. This decision does not say that the income from securities is not income from the business. Nor does the decision of this Court in East India Housing and Land Development Trust Ltd. v. CIT [(1961) 42 ITR 49] support the contention of the Revenue. There, a company, which was incorporated with the objects of buying and developing landed properties and promoting and developing markets, purchased 10 bighas of land in the town of Calcutta and set up a market therein. The question was whether the income realised from the tenants of the shops and stalls was liable to be taxed as "business income" under Section 10 of the Income Tax Act or as income from property under Section 9 thereof. This Court held that the said income fell under the specific head mentioned in Section 9 of the Act. This case also does not lay down that the income from the shops is not the income in the business. In CIT v. Express Newspapers Ltd [(1964) 53 ITR 250, 260] this Court held that both Section 26(2) and the proviso thereto dealt only with profits and gains of a business, profession, or vocation and they did not provide for the assessment of income under any other head e.g. capital gains. The reason for that conclusion is stated thus:

> "It (the deeming clause in Section 12-B) only introduces a limited fiction, namely, that capital gains accrued will be deemed to be income of the previous year in which the sale was effected. The fiction does not make them the profits or gains of the business. It is well settled that a legal fiction is limited to the purpose for which it is created and should not be extended beyond its legitimate field … The profits and gains of business and capital gains are two distinct concepts in the Income Tax Act : the former arises from the activity which is

> called business and the latter accrues because capital assets are disposed of at a value higher than what they cost the assessee. They are placed under different heads; they are derived from different sources; and the income is computed under different methods. The fact that the capital gains are connected with the capital assets of the business cannot make them the profit of the business. They are only deemed to be income of the previous year and not the profits or gains arising from the business during that year."

It will be seen that the reason for the conclusion was that capital gains were not income from the business. Though some observations divorced from content may appear to be wide, the said decision was mainly based upon the character of the capital gains and not upon their non-inclusion under the heading "business". The limited scope of the earlier decision was explained by this Court in CIT v. Chugandas & Co. [(1965) 55 ITR 17, 24]. Therein this Court held that interest from securities formed part of the assessee's business income for the purpose of exemption under Section 25(3). Shah, J., speaking for the Court, observed:

> "The heads described in Section 6 and further elaborated for the purpose of computation of income in Sections 7 to 10 and 12, 12-A, 12-AA and 12-B are intended merely to indicate the classes of income : the heads do not exhaustively delimit sources from which income arises. This is made clear in the judgment of this Court in the United Commercial Bank Ltd. case [(1958) SCR 79], that business income is broken up under different heads only for the purposes of computation of the total income : by that break up the income does not cease to be income of the business, the different heads of income being only the classification prescribed by the Indian Income Tax Act for computation of income.""

(emphasis added)

The same principles apply to the cases in hand.

15. In the case of **Bihar State *Co-operative Bank Ltd.***,[7] in paragraph 2 (SCC report), this Court set out the questions involved which read thus:

> **"2.** In its return the appellant showed these various sums as "other sources", but nothing turns on the manner in which the appellant chose to show this income in its return. The Income Tax Officer, however, assessed the interest for these three years under Section 12 of the Income Tax Act, as income from "other sources". The appellant took an appeal to the Appellate Assistant Commissioner where it was contended that as the business of the appellant Bank consisted of lending money and the deposits had been made not for the purpose of investment but for that business and thereby fulfilling the purpose for which the cooperative Bank was constituted, these various sums of interest were not subject to income tax because of the notification issued by the Central Government under Section 60 of the Income Tax Act. The relevant portion of that notification, CBR Notification 35 dated 20-10-1934, and No. 33 dated 18-8-1945, was:
>
> > "The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purpose of the said Act:
> >
> > ***
> >
> > (2) The profits of any cooperative society other than the Sanikatta Salt Owners' Society in the Bombay Presidency for the time being registered under the Cooperative Societies Act, 1912 (Act 2 of 1912), the Bombay Cooperative Societies Act, 1925 (Bombay Act 7 of 1925), or the Madras Cooperative Societies Act, 1932 (Madras Act 6 of 1932), or the dividends or other payments received by the members of any such society out of such profits.
> >
> > *Explanation* : For this purpose the profits of a cooperative society shall not be deemed to include any income, profits or gains from:

(*1*) Investments in (*a*) securities of the nature referred to in Section 8 of the Indian Income Tax Act; or (*b*) property of the nature referred to in Section 9 of that Act;

(*2*) dividends, or

(*3*) the 'other sources' referred to in Section 12 of the Indian Income Tax Act."

The Appellate Assistant Commissioner, however, repelled the contention of the appellant. He held that the business of the appellant consisted of 'lending money, and selling agricultural and other products to its constituents' which could be planned ahead and required no provision for extraordinary claims He remarked that it appeared from the balance sheets that in the Accounting Year 1945 the Bank invested Rs 13,50,000 as fixed deposits, which, in the following year was raised to Rs 15,00,000 and it was only in the Accounting Year 1947 that the fixed deposits, "were realised on maturity with interest". He was also of the opinion that the length of the period during which this money "was kept locked in this way" showed clearly that "not the exigencies of pressing necessities, but the motives of investment of surplus fund had actuated the deposits". He therefore held that the fixed deposits with Imperial Bank were held as an investment quite apart from the business of the appellant and the interest from these deposits was not exempt from income tax. He further held that the exemption as to the profit of a cooperative society extended to its sphere of cooperative activities and therefore interest from investments was no part of the appellant's business profits exempt from taxation. Against this order an appeal was taken to the Income Tax Appellate Tribunal and it was there contended that the Bank did not make the deposits as investments, but in order that cash might be available to the appellant "continuously" for the carrying on of the purposes of its business, and that the deposits were intimately connected with the business of the appellant and therefore the interest should have been held to be profits arising from the business activities of the

Bank, and that the finding that the short-term deposits in Imperial Bank were separate from the appellant's Banking business was erroneous. The Income Tax Appellate Tribunal, by its order dated 11-4-1955, held:

> "(1) That the interest was an income rightly to be included under the head of 'other sources'.
>
> ***
>
> (2) The profits of a cooperative society indicates the profit derived from the business which can be truly called the business of the cooperative society. Investments by the society either in securities or in shares or in Bank fixed deposits are made out of surplus funds. The interest or dividend derived from such investment cannot be regarded as part of the profits of the business (*sic*) qua such Bank and therefore, it is not exempt from income tax (vide *Hoshiarpur Central Cooperative Bank* v. *CIT* [24 ITR 346, 3501], 24 I.T.R. 346, 350)."

Against this order a case was stated at the instance of the appellant under Section 66(1) of the Act, and the following two questions of law were referred for the opinion of the High Court:

(1) Whether, in the facts and circumstances of this case, the receipt of interest on fixed deposits was an income under the head of "other sources": and

(2) Whether in the facts and circumstances of this case, the receipt of interest from the fixed deposits was an income not exempt from taxation under the CBR Notification No. 35 dated 20-10-1934 and No. 33 dated 18-8-1945."

In paragraphs 9 and 10, this Court proceeded to hold thus:

> **"9. In the instant case the cooperative society (the appellant) is a Bank. One of its objects is to carry on the general business of Banking. Like other Banks money is its stock-in-trade or circulating capital and its normal business is to deal in money and credit. It cannot be said that the business of such a Bank**

consists only in receiving deposits and lending money to its members or such other societies as are mentioned in the objects and that when it lays out its moneys so that they may be readily available to meet the demand of its depositors if and when they arise, it is not a legitimate mode of carrying on of its Banking business. The Privy Council in *Punjab Cooperative Bank Ltd.* v. *CIT Lahore* [24 ITR 346, 350] where the profits arose from the sale of government securities pointed out at p. 645 that in the ordinary cases the business of a Bank essentially consists of dealing with money and credit. Depositors put their money in the Bank at a small rate of interest and in order to meet their demands if and when they arise the Bank has always to keep sufficient cash or easily realisable securities. That is a normal step in the carrying on of the Banking business. In other words that is an act done in what is truly the carrying on or carrying out of a business. It may be added that another mode of conducting business of a Bank is to place its funds in deposit with other Banks and that also is to meet demands which may be made on it. It was however argued that in the instant case the moneys had been deposited with Imperial Bank on long term deposits inasmuch as they were deposited for one year and were renewed from time to time also for a year; but as is shown by the accounts these deposits fell due at short intervals and would have been available to the appellant had any need arisen.

10. Stress was laid on the use of the word "surplus" both by the Tribunal as well as by the High Court and it was also contended before us that in the bye-laws under the heading "business of the Bank" it was provided that the Bank could "invest surplus funds when not required for the business of the Bank in one or more ways specified in Section 19 of the Bihar Act (Clause 4 III(*i*) of the bye-Laws). Whether funds invested as provided in Section 19 of the Bihar Act would be surplus or not does not arise for decision in this case, but it has not been shown that the moneys which were in deposit with other Banks were "surplus" within

that bye-law so as to take it out of Banking business. **As we have pointed out above, it is a normal mode of carrying on Banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a Bank's business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a Bank. The moneys laid out in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its Banking business. The returns flowing from them would form part of its profits from its business. In a commercial sense the directors of the Company owe it to the Bank to make investments which earn them interest instead of letting moneys lie idle. It cannot be said that the funds of the Bank which were not lent to borrowers but were laid out in the form of deposits in another Bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the Bank, or that the interest arising therefrom did not form part of its business profits.** Under the bye-laws one of the objects of the appellant Bank is to carry on the general business of Banking and therefore subject to the Cooperative Societies Act, it has to carry on its business in the manner that ordinary Banks do. It may be added that the various heads under Section 6 of the Income Tax Act and the provisions of that Act applicable to these various heads are mutually exclusive. Section 12 is a residuary section and does not come into operation until the preceding heads are excluded. *CIT* v. *Basant Rai Takht Singh* [(1933) ITR 197, 201]."

(emphasis added)

16. The decision of the Privy Council in the case of ***Punjab Co-operative Bank v. Commissioner of Income Tax***[9] is also very relevant. It was held thus:

9 (1940) SCC Online PC 46

"The principle to be applied in such a case is now well settled. It was admirably stated in a Scottish case, *Californian Copper Syndicate* v. *Harris* [(1904) 6 F. 894 : 5 Tax Cas. 159.] and the statement has been more than once approved both in the House of Lords and in the Judicial Committee: See for example *Commissioner of Taxes* v. *Melbourne Trust Ltd.* [1914 A.C. 1001 at p. 1010.]. Some dicta which appear to support the view that it is necessary to prove that the taxpayer has carried on a separate or severable business of buying and selling investments with a view to profit in order to establish that profits made on the sale of investments are taxable, for example, the dicta in the case of *Commissioners of Inland Revenue* v. *Scottish Automobile and General Insurance Co.* [(1913-16) 6 Tax Cas. 381, at pp. 388, 389.], cannot now be relied on. It is well established, to cite the exact words used in *Californian Copper Syndicate* v. *Harris* [(1904) 6 F. 894 : 5 Tax Cas. 159.].

> "that enhanced values obtained from realization or conversion of securities may be so assessable where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business".

In the ordinary case of a Bank, the business consists in its essence of dealing with money and credit. Numerous depositors place their money with the Bank often receiving a small rate of interest on it. A number of borrowers receive loans of a large part of these deposited funds at somewhat higher rates of interest. But the Banker has always to keep enough cash or easily realisable securities to meet any probable demand by the depositors. No doubt there will generally be loans to persons of undoubted solvency which can quickly be called in, but it may be very undesirable to use this second line of defence. If as in the present case some of the securities of the Bank are realised in order to meet withdrawals by depositors, it seems to their Lordships to be quite clear that this is a normal step in carrying on the Banking business,

> **or, in other words, that it is an act done in "what is truly the carrying on" of the Banking business. This, it appears to their Lordships, is the more appropriate and satisfactory ground for dealing with the question arising in the present case."**
>
> (emphasis added)

17. Therefore, the Privy Council and this Court have consistently held that the securities that Banks acquire as a part of the banking business are held as stock-in-trade and not as an investment.

OUR CONCLUSIONS

18. Initially, CBDT issued Circular No. 599 of 1991 and observed that the securities held by Banks must be recorded as their stock-in-trade. The circular was withdrawn in view of the decision of this Court in the case of ***Vijaya Bank Ltd.***[1] In the year 1998, RBI issued a circular dated 21st April 1998, stating that the Bank should not capitalise broken period interest paid to the seller as a part of cost but treat it as an item of expenditure under the profit and loss account. A similar circular was issued on 21st April 2001, stating that the Bank should not capitalise the broken period interest paid to the seller as a cost but treated it as an item of expenditure under the profit and loss account. In 2007, the CBDT issued Circular No. 4 of 2007, observing that a taxpayer can have two portfolios. The first can be an investment portfolio comprising securities, which are to be treated as capital assets, and the other can be a trading portfolio comprising stock-in-trade, which are to be treated as trading assets.

19. As stated earlier, Banks are required to purchase Government securities to maintain the SLR. As per RBI's guideline dated 16th October 2000, there are three categories of securities: HTM, AFS and HFT. As far as AFS and HFT are concerned, there is no difficulty. When these two categories of securities are purchased, obviously, the same are not investments but are always held by Banks as stock-in-trade. Therefore, the interest accrued on the said two categories of securities will have to be treated as income from the business of the Bank. Thus, after the deduction of broken period interest is allowed, the entire interest earned or accrued during the particular year is put to tax. Thus, what is taxed is the real income earned on the securities. By selling the securities, Banks will earn

profits. Even that will be the income considered under Section 28 after deducting the purchase price. Therefore, in these two categories of securities, the benefit of deduction of interest for the broken period will be available to Banks.

20. If deduction on account of broken period interest is not allowed, the broken period interest as capital expense will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years. Therefore, the profit earned from the sale would be reduced by the amount of broken period interest. Therefore, the exercise sought to be done by the Department is academic.

21. The securities of the HTM category are usually held for a long term till their maturity. Therefore, such securities usually are valued at cost price or face value. In many cases, Banks hold the same as investments. Whether the Bank has held HTM security as investment or stock-in-trade will depend on the facts of each case. HTM Securities can be said to be held as an investment (i) if the securities are actually held till maturity and are not transferred before and (ii) if they are purchased at their cost price or face value.

22. At this stage, we may refer to a decision of this Court in the case of ***Commissioner of Income Tax (Central), Calcutta v. Associated Industrial Development Company (P) Ltd., Calcutta.***[10] In the said decision, this Court held that whether a particular holding of shares is by way of investments or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee. Therefore, on facts, if it is found that HTM Security is held as an investment, the benefit of broken period interest will not be available. The position will be otherwise if it is held as a trading asset.

23. Now, we turn to the factual aspects. As far as Civil Appeal No. 3291-94 of 2009 is concerned, the Tribunal, in a detailed judgment, recorded the following conclusions:

a. Interest income on securities right from assessment year 1989-90 is being treated as interest on securities and is taxed under Section 28 of the IT Act;

10 (1972) 4 SCC 447

b. Since the beginning, securities are treated as stock-in-trade which has been upheld by the Department right from the assessment year 1982-83 onwards;

c. Securities were held by the respondent Bank as stock-in-trade.

The findings of the Tribunal have been upset by the High Court. The impugned judgment proceeds on the footing that the decision in the case of ***Vijaya Bank Ltd.***[1] case would still apply. Thus, as far as Civil Appeal Nos. 3291-3294 of 2009 are concerned, as a finding of fact, it was found that the appellant Bank was treating the securities as stock-in-trade. The said view was upset by the High Court only on the ground of the decision of this Court in the case of ***Vijaya Bank Ltd.***[1] As the securities were held as stock-in-trade, the income thereof was chargeable under Section 28 of the IT Act. Even the assessing officer observed that considering the repeal of Sections 18 to 21, the interest on securities would be charged as per Section 28 as the securities were held in the normal course of his business. The assessing officer observed that the appellant-Bank, in its books of accounts and annual report, offered taxation on the basis of actual interest received and not on a due basis.

24. Therefore, in the facts of the case, as the securities were treated as stock-in-trade, the interest on the broken period cannot be considered as capital expenditure and will have to be treated as revenue expenditure, which can be allowed as a deduction. The impugned judgment is based on the decision in the case of ***Vijaya Bank Ltd.***[1] It also refers to the decision of the Bombay High Court in the case of ***American Express International Banking Corporation***[2] and holds that the same was not correct. As noted earlier, the view taken in the ***American Express International Banking Corporation***[2] case has been expressly upheld by this Court in the case of ***Citi Bank NA.***[3] Therefore, the impugned judgment cannot be sustained, and the view taken by the Tribunal will have to be restored.

25. Now, we come to other appeals which are part of this group. In Civil Appeal @Special Leave Petition (C) Nos.1445-1446 of 2021, the assessing officer held that the respondent Bank was liable to pay the broken period of interest as part of the price paid for the securities. Hence, a deduction on the said amount was disallowed. The assessee could not succeed before the CIT (Appeals). Before the Appellate Tribunal, reliance was placed on the decision of this

Court in the case of ***Vijaya Bank Ltd.***[1] The Tribunal observed that the assessing officer had treated the interest income earned by the respondent Bank on securities as income from other sources. The Tribunal observed that the investments in securities are in stock-in-trade, and this fact has been accepted in the past by the Income Tax department. It was held that the securities in the category of HTM were also held as stock-in-trade, and income/loss arising out of such securities, including HTM securities, has been treated as business income/loss. The Appellate Tribunal held that the interest for the broken period would be admissible as a deduction, and the High Court confirmed the same. We may note here that the Tribunal followed the decision of the Bombay High Court in the case of ***HDFC Bank Ltd. v. CIT.***[11] We find no error in the view taken in this case.

26. In Civil Appeal @ Special Leave Petition (C) No.4843 of 2020, the High Court held in favour of the respondent-Bank by allowing a deduction for broken period interest relying upon the decision in the case of ***HDFC Bank Ltd.***[11] In this case, the assessing officer did not accept the claim of the Bank that the securities held were in the nature of stock-in-trade. However, the CIT (Appeals) and the Appellate Tribunal accepted the respondent Bank's case. In this case, before the Appellate Tribunal, the department conceded in favour of the assessee.

27. In Civil Appeal @ Special Leave Petition (C) No. 7055 of 2021, neither the assessment officer nor the CIT allowed a deduction on account of the broken period interest. However, the Tribunal allowed the same. Before the High Court, Revenue argued that the increase in capital results in the expansion of the Bank's capital base, which helps in profit making. Therefore, the expenditure in the nature of broken period interest was capital expenditure. However, The High Court rightly rejected the contention of the department that the outlay on the purchase of securities was capital outlay.

28. In Civil Appeal @ Special Leave Petition (C) No.7404 of 2021, the CIT, the High Court took a similar view. The same is the case with Civil Appeals @ Special Leave Petition (C) Nos.15281 and 1686 of 2021.

11 (2014) 366 ITR 505

29. In Civil Appeal @ Special Leave Petition (C) No.1687 of 2021 and Civil Appeal @ Special Leave Petition (C) No.8968 of 2018, the High Court allowed interest deduction on broken period. In Civil Appeal @ Special Leave Petition (C) No.24841 of 2019, though the assessment officer held that the broken period interest has to be capitalised, the Appellate Tribunal upset the said view. In Civil Appeal No.4755 of 2023, deduction for broken period interest has been allowed.

30. Hence, in Civil Appeal No.3291-3294 of 2009, the judgment of the High Court cannot be sustained, and the decisions of the Tribunal dated 29th May 2003 and 15th July 2004 will have to be restored. All other appeals preferred by the Revenue will have to be dismissed subject to clarification regarding securities of the HTM category.

31. Accordingly, we pass the following order:

a. Civil Appeal Nos.3291 to 3294 of 2009 are hereby allowed by setting aside the impugned judgment and the judgments dated 29th May 2003 and 15th July 2004 of the Appellate Tribunal are restored.

b. All other Civil Appeals are dismissed.

c. There will be no order as to costs.

Result of the Case: Appeals filed by the Bank allowed and Appeals filed by the Revenue dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 10 S.C.R. 893 : 2024 INSC 772

Somjeet Mallick
v.
State of Jharkhand & Others

(Criminal Appeal No. 4190 of 2024)

14 October 2024

[J.B. Pardiwala and Manoj Misra,* JJ.]

Issue for Consideration

Whether the High Court was justified in quashing the FIR, the cognizance order and the proceedings in pursuance thereof without considering the materials collected during investigation.

Headnotes†

Code of Criminal Procedure, 1973 – s.482 – Penal Code, 1860 – ss.406, 420 – Appellant alleged that as per agreement between the parties, the Truck/Trailor was rented to the accused-respondents for plying for 21 months at monthly rent but after payment of first month's rent, the rent was not paid despite assurances – Chargesheet filed and cognizance was taken by CJM while the application u/s.482, CrPC filed by respondents was pending before the High Court – High Court quashed the FIR, the cognizance order and the proceedings without considering the materials collected during investigation:

Held: At the stage of deciding whether a criminal proceeding or FIR is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused is made out – Correctness of the allegations is not to be tested at this stage – Mens rea, an essential ingredient to commit an offence is a question of fact to be inferred from the act in question as well as the surrounding circumstances and conduct of the accused – Thus, when the appellant alleged that the accused despite taking possession of the Truck on hire failed to pay hire charges for months together making false promises for its payment, a prima facie case, reflective of dishonest

* Author

intention on the part of the accused is made out also as regards whether the Truck had been dishonestly disposed of, making out a case of criminal breach of trust which requires investigation – A petition to quash the FIR does not become infructuous on submission of a chargesheet u/s.173 (2), CrPC, but when a chargesheet has been submitted, and if there is no stay on the investigation, the Court must apply its mind to the materials in the police report before quashing the FIR and consequential proceedings – More so, when the FIR alleges an act reflective of a dishonest conduct of the accused – Quashing of FIR at the very inception would thwart a legitimate investigation – Impugned order set aside – Quashing petition remitted to High Court to decide the same considering the materials collected during investigation. [Paras 16, 17, 19, 20, 22, 23]

Criminal Law – FIR – Quashing – FIR not to be quashed, if discloses cognizable offence:

Held: FIR not an encyclopedia of all imputations – To test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations – At this stage, Court is not required to ascertain as to which specific offence has been committed – It is only at the time of framing charge, when materials collected during investigation are before the Court, that it has to draw an opinion as to for which offence the accused should be tried – Prior to that, if satisfied, the Court may discharge the accused – Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR. [Para 17]

List of Acts

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

List of Keywords

Quashing; Quashing petition; Cognizance order; Materials collected during investigation; Truck on hire; Hire charges; Truck rented; Dishonest intention; Mens rea question of fact; Cognizance; Chargesheet; Police report; FIR not encyclopedia; Criminal breach of trust.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4190 of 2024

From the Judgment and Order dated 01.02.2024 of the High court of Jharkhand at Ranchi in CRMP No. 3796 of 2018

Appearances for Parties

Konark Tyagi, Sagar Sarda, Advs. for the Appellant.

Rahul Shyam Bhandari, Ms. G. Priyadarshini, Satyam Pathak, Prabhakar Pahepuri, Dr. Ratneshwar Chakma, Vishnu Sharma, Ms. Madhusmita Bora, Shiv Ram Sharma, Pawan Kishore Singh, Dipankar Singh, Mrs. Anupama Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Manoj Misra, J.

1. Leave Granted.

2. This appeal impugns judgment and order of the High Court[1] dated 01.02.2024 passed in Cr. M.P. No.3796 of 2018 whereby, exercising powers under Section 482 of the Code of Criminal Procedure, 1973,[2] the High Court quashed the order dated 20.02.2020, by which cognizance was taken, and all further proceedings in connection with Case No.78 of 2016, registered at P.S. Sakchi, corresponding to G.R. No.1627 of 2016, pending in the court of Chief Judicial Magistrate,[3] Jamshedpur.

Factual Matrix

3. The appellant (original complainant) filed an application, under Section 156(3) CrPC, alleging that the second and third respondents (original accused) offered to take appellant's Truck (Trailor No. NL 01K 1250) on a monthly rent of Rs.33,000, exclusive of driver's/ helper's salary, for plying it between Tata Steel Jamshedpur and

1 High Court of Jharkhand at Ranch

2 CrPC

3 CJM

Kalinganagar; pursuant to that offer, an agreement was entered into between the appellant and the accused on 10.07.2014 thereby letting the vehicle to the accused for a period up to 31.03.2016 with effect from 14.07.2014; and, in furtherance thereof, possession of the Truck was given to the accused. In return, they paid one month rent, after deducting TDS. But thereafter, though the Truck had been in possession of the accused since July 2014, rent including arrears amounting to Rs.12,49,780 was not paid despite repeated false assurances.

4. On the aforesaid application under Section 156(3) CrPC, the learned CJM *vide* order dated 12.11.2016 directed the police to institute a case and investigate.

5. During investigation when despite notice under Section 41A CrPC the accused did not appear, the police applied to the CJM for issuance of NBW[4] against the accused. The said application was allowed *vide* order dated 30.06.2017.

6. Aggrieved with the order dated 30.06.2017, the second and third respondents filed application under Section 482 CrPC for quashing the aforesaid order as well as proceedings pursuant to the FIR[5] registered as Case No.78 of 2016 at P.S. Sakchi.

7. In the application under Section 482 CrPC it was, *inter alia*, alleged that no agreement was executed; that appellant intended to let out his Truck parked inside Tata Steel Factory, but, despite payment of advance rent of one month, necessary papers concerning the Truck were not provided, therefore, no agreement was executed; and even if it is taken that agreement was executed, no offence punishable under Sections 406 and 420 IPC is made out.

8. While the application under Section 482 CrPC was pending before the High Court, on a police report, cognizance was taken by CJM on 20.02.2020 and processes were issued under Section 204 CrPC. Consequently, respondent nos. 2 and 3 (original accused) sought amendment in their prayer before the High Court so as to include the prayer to quash the cognizance order.

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4 Non-bailable Warrant

5 First Information Report

9. The High Court *vide* impugned order quashed the order of cognizance and all further proceedings in the case concerned while leaving it open to the original complainant to take recourse to civil remedies.

Reasoning of the High Court

10. The High Court reasoned thus:

a. There is no allegation of entrustment in the FIR, therefore, offence of criminal breach of trust, punishable under Section 406 IPC,[6] is not made out.

b. Admittedly, one month rent was paid, therefore, dishonest intention from the very beginning was not there. The application is only for recovery of rent, which can be realised by taking recourse to appropriate civil proceeding. Hence, no offence punishable under Section 420 IPC is made out.

11. Aggrieved by the order of the High Court, original complainant is before us.

12. We have heard learned counsel for the parties and have perused the materials on record.

Submissions on behalf of Appellant

13. On behalf of the appellant, it was submitted:

a. The FIR did disclose that after making payment of one month rent, no rent was paid despite false assurances. In such circumstances, a case for investigation was made out.

b. The High Court did not consider the materials collected during investigation which resulted in filing of charge sheet. As charge sheet was submitted, the High Court ought to have considered the materials collected during investigation before concluding whether offence has been committed or not.

c. The High Court failed to consider that whereabouts of the Truck was not known. Otherwise also, since the Truck was not returned, it could be taken that it has been misappropriated or disposed of by the accused in violation of the agreement, thereby disclosing commission of an offence of criminal breach of trust.

6 The Indian Penal Code, 1860

Submissions on behalf of Accused-respondents

14. On behalf of accused respondent(s), it was submitted:

a. The FIR did not disclose commission of any offence, therefore the High Court was justified in quashing the entire proceeding.

b. There was no specific allegation in the FIR regarding disposal or misappropriation of the Truck, hence no case of criminal breach of trust was made out.

c. The offence of cheating is not made out inasmuch as dishonest intention from the very beginning is not disclosed by the averments in the FIR.

d. The High Court was justified in quashing the cognizance order and further proceedings.

Submissions on behalf of State

15. On behalf of State, it is submitted through an affidavit that the original complainant had informed that as per agreement between the parties, the Truck/Trailor was rented to the accused for plying. However, Truck's present location was neither known to the original complainant nor could be ascertained despite hectic efforts.

Analysis

16. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a *prima facie* case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.

17. To commit an offence, unless the penal statute provides otherwise, *mens rea* is one of the essential ingredients. Existence of *mens rea* is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the Truck on hire, has failed to pay hire charges for

months together, while making false promises for its payment, a *prima facie* case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.

18. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, *prima facie*, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.

19. No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173 (2) of the CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the Court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.

20. In the instant case, the FIR alleges that the accused took original complainant's Truck/Trailor on hire for a period starting from 14.07.2014 up to 31.03.2016 at a monthly rent of Rs.33,000/- but, after payment of 1st month rent, the rent was not paid despite false assurances. The allegation that rent was not paid by itself, in ordinary course, would presuppose retention of possession of the vehicle by the accused. In such circumstances as to what happened to that Truck becomes a matter of investigation. If it had been dishonestly disposed of by the accused, it may make out a case of criminal

breach of trust. Therefore, there was no justification to quash the FIR at the threshold without looking into the materials collected during the course of the investigation.

21. In our view, the High Court ought to have considered the materials collected during investigation before taking a call on the prayer for quashing the FIR, the cognizance order and the proceedings in pursuance thereof.

22. To peruse the police report and to understand as to what type of investigation was carried out by the police, on 19.07.2024 we required the State to place the charge-sheet on record. However, unfortunately, though the State filed its affidavit, the charge-sheet was not produced. The affidavit filed by the State only indicates that they were not able to trace out the Truck/Trailor. In these circumstances, we have no option but to remit the matter to the High Court to decide the quashing petition afresh in accordance with law after considering the materials collected by the investigating agency during the course of the investigation.

23. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside. The quashing petition shall be restored to its original number and shall be decided afresh by the High Court in accordance with law and in the light of the observations above. All contentions and pleas are kept open for the parties to urge before the High Court.

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

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 901 : 2024 INSC 770

Shingara Singh
v.
Daljit Singh & Anr

(Civil Appeal No. 5919 of 2023)

14 October 2024

[Hrishikesh Roy and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

Whether the High Court, under the impugned judgment, was justified in holding that the sale deed executed by defendant no. 1 in favour of defendant no.2/appellant was hit by doctrine of *lis pendens* and that defendant no.2/appellant is not a *bona fide* purchaser.

Headnotes†

Transfer of Property Act, 1882 – s.52 – Applicability of doctrine of *lis pendens* – Plaintiff filed a suit on 24.12.1992 seeking specific performance of agreement to sell dated 17.08.1990 in respect of the suit land – During the pendency of the suit, the present appellant/defendant no. 2 was impleaded on 25.01.1993 on the basis that defendant no. 1 executed a sale deed in his favour on 08.01.1993 in respect of the suit land on the basis of alleged agreement to sell dated 19.11.1990 – Trial Court dismissed the suit in respect of the specific performance but allowed the alternative prayer for recovery of Rs. 40,000/- with interest – First Appellate Court maintained the Trial Court's judgment – However, the High Court opined that the sale deed executed by defendant no. 1 in favour of defendant no. 2/ appellant was hit by doctrine of *lis pendens* and that defendant no. 2/appellant is not a *bona fide* purchaser – High Court passed a decree of specific performance – Justified or not:

Held: In the instant case, it is an admitted position that the suit was filed on 24.12.1992 and the sale deed was executed on 08.01.1993 by defendant no. 1 in favour of defendant no. 2/appellant during pendency of the suit – The doctrine of *lis pendens* as contained in Section 52 of the Transfer of Property Act, 1882 applies to a transaction during pendency of the suit – The Trial Court found execution of agreement to be proved and directed

* Author

for refund of the amount of Rs. 40,000/- by defendant no. 1 to the plaintiff with further finding that the agreement dated 17.08.1990 was not a result of fraud and collusion – The defendant did not prefer any cross-appeal or cross-objections against the said partial decree and allowed the finding to become final – The plaintiff was non-suited only on the ground that defendant no. 2 had no notice of the agreement and is a *bona fide* purchaser – However, once sale agreement is proved and the subsequent sale was during pendency of the suit hit by the doctrine of *lis pendens*, the High Court was fully justified in setting aside the judgment and decree of the Trial Court and the First Appellate Court and passing a decree for specific performance – Thus, no error was committed by the High Court in rendering the judgment impugned. [Paras 15, 16]

Case Law Cited

Banarsi v. Ram Phal [2003] 2 SCR 22 **: (2003) 9 SCC 606;** *Usha Sinha v. Dina Ram* [2008] 4 SCR 1192 **: (2008) 7 SCC 144;** *Sanjay Verma v. Manik Roy* [2006] Supp. 10 SCR 469 **: (2006) 13 SCC 608;** *Guruswamy Nadar v. P. Lakshmi Ammal* [2008] 7 SCR 435 **: (2008) 5 SCC 796;** *Chander Bhan (D) Through LR Sher Singh v. Mukhtiar Singh & Ors.* [2024] 5 SCR 1148 **: 2024 INSC 377 – relied on.**

List of Acts

Transfer of Property Act, 1882.

List of Keywords

Section 52 of Transfer of Property Act, 1882; Doctrine of *lis pendens*; Specific Performance; Agreement to sell; Sale deed; Fraud and collusion; Cross-Appeal; Cross Objection; *bona fide* Purchaser; Pendency of Suit; Subsequent sale agreement.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5919 of 2023

From the Judgment and Order dated 06.04.2018 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 4466 of 2010

Appearances for Parties

Harin P. Rawal, Sr. Adv., Abhishek Atrey, Sudhir Walia, Ms. Niharika Ahluwalia, Arpit Sharma, Dr. Abhishek Atrey, Ms. Shreya Bansal,

Kartikeya Kanojiya, Ms. Shrestha Narayan, Ms. Urmi H. Raval, Advs. for the Appellant.

Manoj Swarup, Sr. Adv., P. N. Puri, Mrs. Reeta Dewan Puri, Ms. Smiriti Puri, Neelmani Pant, Ms. Apoorva Singh, Manish Dhingra, Ravinder Pratap Singh, J. S. Marahatta, Aakash Bhan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

1. The defendant No. 2 in the suit has preferred this appeal challenging the judgment and decree passed by the High Court allowing the appeal preferred by the plaintiff/Daljit Singh to set aside the judgment and decree of the Trial Court and the First Appellate Court which concurrently decreed the suit partially only for the alternative relief of recovery of Rs. 40,000/- along with interest while dismissing the suit in respect of specific performance of the agreement dated 17.08.1990.

2. The facts of the case emerging from the pleadings of the parties are that plaintiff/Daljit Singh instituted the suit on 24.12.1992 claiming specific performance of the agreement to sell dated 17.08.1990 in respect of the land measuring 79 Kanals 09 marlas @ of Rs. 80,000/- per acre against the payment of earnest money of Rs. 40,000/- and the balance amount of Rs. 7,54,000/- at the time of execution and registration of the sale deed on or before 30.11.1992.

3. According to the plaintiff, he remained present in the office of the Sub-Registrar on 30.11.1992 with the balance sale consideration and all the expenses for stamp papers but defendant no. 1 did not turn up to perform his part of the agreement. The plaintiff marked his presence by submitting an affidavit before the Executive Magistrate. The suit was preferred within 23 days as stipulated in the agreement. Defendant no. 1 initially denied the execution of the agreement to sell, much less, receipt of the earnest money with further averment that the subject land was a Joint Hindu Family property. During the pendency of the suit, the present appellant/defendant no. 2/Shingrara Singh was impleaded on 25.01.1993 on the basis that defendant no. 1/ Janraj Singh executed a sale deed in his favour on 08.01.1993 in respect of the suit land on the basis of alleged agreement to sell

dated 19.11.1990 for a sum of Rs. 6,45,937.50. It is to be noted that the Trial Court passed an order of *status quo* on 24.12.1992 qua alienation with regard to the share of defendant no. 1.

4. Defendant No. 2/appellant filed his separate written statement stating that defendant no. 1 has sold the property to him by executing a registered sale deed on 08.01.1993 and delivered possession after which mutation has also been carried out. According to the appellant/ defendant no. 2, the agreement, basing which the suit is filed, is a fabricated ante-dated document because defendant no. 1 did not disclose the factum of this agreement while executing the sale deed in his favour and thus, the appellant/defendant no. 2 is a *bona fide* purchaser.

5. In the Trial Court plaintiff examined himself as PW-2, Deed Writer/ Kulwant Singh as PW-1, Jasjit Singh as PW-3 whereas defendants examined Kirpan Singh as DW 1, Shangara Singh as DW 2, B.M. Sehgal as DW 3 and Subhash Chander as DW 4. The Trial Court vide its judgment dated 27.04.2007 held that the plaintiff has proved the agreement to sell wherein defendant no. 2 has failed to prove that the agreement is a result of fraud and fabricated document. However, the Trial Court denied the decree for specific performance on the ground that since defendant no. 2 is the owner in possession of the suit land upon execution of the sale deed dated 08.01.1993, defendant no. 1 has left with no right or title of the suit land. Thus, he is unable to execute the sale deed in favour of the plaintiff and moreover the plaintiff and defendant no. 1 are close relative. The Trial Court also held that the plaintiff was ready and willing to perform his part of the contract. It was also held that defendant no. 2 is a *bona fide* purchaser as he was not having any knowledge about the agreement to sell between the plaintiff and defendant no. 1. The Trial Court eventually dismissed the suit in respect of the specific performance but allowed the alternative prayer for recovery of Rs. 40,000/- with interest @ 12% per annum.

6. The First Appellate Court maintained the Trial Court's judgment and decree by holding that the subject sale agreement is a result of fraud and collusion between the plaintiff and defendant no. 1. The First Appellate Court observed that in his first written statement he denied the execution of the agreement but subsequently after amendment in the plaint and impleadment of the appellant, he admitted the claim

of the plaintiff. The First Appellate Court further observed that the doctrine of *lis pendens* is not applicable in the facts of the present case.

7. The High Court, under the impugned judgment in this appeal, opined that the sale deed executed by defendant no. 1 in favour of defendant no. 2/appellant is hit by doctrine of *lis pendens* and that defendant no. 2/appellant is not a *bona fide* purchaser. The High Court noted that the suit was filed on 24.12.1992 and the next date before the Trial Court was fixed on 12.01.1993. However, the sale deed was executed by defendant no. 1 in favour of defendant no. 2 on 08.01.1993. Both defendant no. 1 and defendant no. 2 being the residents of same village, it is unbelievable that he was not having the knowledge of the agreement, for, the sale deed in favour of defendant no. 2 was for a lesser amount than the subject agreement. The agreement was for a sale consideration of Rs. 7,94,000/- whereas the sale deed was for Rs. 6,45,937.50. It is also held that mere relationship between the plaintiff and defendant no. 1 would not be a ground to deny the discretionary relief and moreover, when both the courts below have found that the plaintiff was always ready and willing to perform his part of the contract.

8. Mr. Hrin P. Raval, learned senior counsel appearing for the appellant argued that the High Court ought not to have disturbed the concurrent judgment and order passed by the Trial Court and the Appellate Court.

On the other hand, Mr. Manoj Swarup, learned senior counsel appearing on behalf of the respondents argued that the judgment and order passed by the Trial Court and the Appellate Court being based on perverse findings and reasoning, the High Court has rightly set aside the same for decreeing the plaintiff's suit in respect of specific performance. According to him, the High Court has rightly applied the doctrine of *lis pendens.*

9. Before proceeding to deal with the applicability of doctrine of *lis pendens,* it is significant to note that Issue no. 5 framed by the Trial Court was to the effect as to whether the agreement dated 17.08.1990 is a result of fraud and collusion, therefore, not binding on defendant no. 1. This issue was decided against the defendant. When the plaintiff preferred first appeal, the defendant did not move any cross-appeal or cross-objections, yet the first Appellate Court entered into this aspect of the matter to hold that the subject agreement was collusive

between the plaintiff and defendant no. 1. This is not permissible in view of the law laid down by this Court in **Banarsi vs. Ram Phal**[1] wherein this Court held thus in paras 10 & 11:

> **"10.** The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a *finding*. The difference which has resulted we will shortly state. A respondent may *defend* himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to *attack* any part of the decree, he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:
>
> (*i*) The impugned decree is *partly* in favour of the appellant and *partly* in favour of the respondent.
>
> (*ii*) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.
>
> (*iii*) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.
>
> **11.** In the type of case (*i*) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (*ii*) and (*iii*) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by

1 [2003] 2 SCR 22 : (2003) 9 SCC 606

> the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any *finding* adverse to him as the decree is *entirely* in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a *finding* recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent."

10. In the case at hand, the Trial Court had partly decreed the suit to the extent of recovery of Rs. 40,000/-. This part of the decree was not challenged by the defendants either by filing a separate appeal or by way of cross objections. They did not prefer any cross objection challenging the finding on issue no. 5. In this situation the defendants have conceded to the decree for refund and finding on issue no. 5. Therefore, in absence of cross-appeal or cross-objections by the defendants, the First Appellate Court could not have recorded a finding that the subject agreement was a result of collusion between the plaintiff and defendant no. 1.

11. In **Usha Sinha vs. Dina Ram**[2] this Court held that the doctrine of *lis pendens* applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:

> "**18**. Before one-and-half century, in *Bellamy* v. *Sabine* [(1857) 1 De G & J 566 : 44 ER 842], Lord Cranworth, L.C. proclaimed that where a litigation is pending between

2 [2008] 4 SCR 1192 : (2008) 7 SCC 144

> a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.
>
> **23**. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "lis pendens" prohibits a party from dealing with the property which is the subject-matter of suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21."

12. This Court in **Sanjay Verma vs. Manik Roy**[3] was dealing with a suit for specific performance. During pendency of the suit, a temporary injunction was granted in favour of the plaintiff and different portions of the suit land were sold whereafter the purchasers applied for impleadment, which was rejected by the Trial Court but allowed by the High Court against which special leave to appeal was filed. In the above background, this Court observed the following in para 12:

> **"12.** The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a

3 [2006] Supp. 10 SCR 469 : (2006) 13 SCC 608

principle of public policy, no question of good faith or *bona fide* arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."

13. Guruswamy Nadar vs. P. Lakshmi Ammal[4] also arose out of a suit for specific performance of agreement wherein this Court considered the effect of subsequent sale of properties by owner (proposed vendor) in favour of a third party. In the above facts, this Court held thus in paras 9 & 15:

> **"9.** Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3-5-1975 for specific performance of the agreement and the second sale took place on 5-5-1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis pendens will govern the present case and the second sale cannot have the overriding effect on the first sale.
>
> **15.** So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, has purchased in good faith but the principle of lis pendens will certainly be applicable to the present case notwithstanding the fact that under Section 19(*b*) of the Specific Relief Act his rights could be protected."

4 [2008] 7 SCR 435 : (2008) 5 SCC 796

14. In a recent judgment of this Court in **Chander Bhan (D) through Lr. Sher Singh vs. Mukhtiar Singh & Ors.**[5] it is observed, "once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens* the defence of the respondents 1 – 2 that they are *bona fide* purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Transfer of Property Act, 1882 is liable to be rejected."

15. In the case in hand also, it is an admitted position that the suit was filed on 24.12.1992 and the sale deed was executed on 08.01.1993 by defendant no. 1 in favour of defendant no. 2/appellant during pendency of the suit. The doctrine of *lis pendens* as contained in Section 52 of the Transfer of Property Act, 1882 applies to a transaction during pendency of the suit. The Trial Court found execution of agreement to be proved and directed for refund of the amount of Rs. 40,000/- by defendant no. 1 to the plaintiff/appellant with further finding on issue no. 5 that the agreement was not a result of fraud and collusion. The defendant did not prefer any cross-appeal or cross-objections against the said partial decree and allowed the finding to become final. The plaintiff was non-suited only on the ground that defendant no. 2 had no notice of the agreement and is a *bona fide* purchaser. However, once sale agreement is proved and the subsequent sale was during pendency of the suit hit by the doctrine of *lis pendens*, the High Court was fully justified in setting aside the judgment and decree of the Trial Court and the First Appellate Court and passing a decree for specific performance.

16. In our considered view, the High Court has not committed any error of law in rendering the judgment impugned which is hereby affirmed and the instant appeal deserves to be and is hereby dismissed. No order as to costs.

Result of the case: Appeal dismissed

†*Headnotes prepared by:* Ankit Gyan

5 [2024] 5 SCR 1148 : 2024 INSC 377

[2024] 10 S.C.R. 911 : 2024 INSC 794

Asim Akhtar
v.
The State of West Bengal & Anr.

(Criminal Appeal No. 4247 of 2024)

18 October 2024

[Vikram Nath* and Prasanna B. Varale, JJ.]

Issue for Consideration

Whether there is a mandate to decide the application u/s. 319 CrPC before cross-examination of other witnesses.

Headnotes†

Code of Criminal Procedure, 1973 – s.319 – During the trial, the examination-in-chief of the victim (respondent no.2)-PW-1, her mother (PW-2) and her father (PW-3) was recorded – Respondent no.2 filed an application u/s.319 CrPC for summoning the father and mother of the accused-appellant – Thereafter, the above three prosecuting witnesses did not appear before the trial Court for cross-examination and insisted for deciding application u/s.319 CrPC first – Trial Court acquitted accused u/s.232 CrPC and rejected application u/s.319 CrPC for the want of admissible evidence – However, the High Court in the impugned judgment relied upon the case of Hardeep Singh vs. State of Punjab & Ors and directed that the trial Court to first decide the application u/s.319 CrPC – Propriety:

Held: The judgment in the case of Hardeep Singh does not provide that it is mandatory to decide the application u/s.319 Cr.P.C. before conducting cross-examination and only on the basis of examination-in-chief – It merely clarifies that even examination-in-chief is part of evidence and record and thus can be relied upon to decide an application u/s.319 CrPC – The judgment does not take away the discretion of the Trial Court to wait for the cross-examination to take place before deciding the application u/s.319 CrPC – It merely provides that consideration of such an application should not be a mini trial – It is for the Trial Court to decide whether the application should be decided without waiting for the

* Author

cross-examination to take place or to wait for it – The same would depend upon the satisfaction of the Trial Court on the basis of the material placed on record – The complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application u/s.319 CrPC before cross-examination of other witnesses – In the instant case, the Trial Court having tried its best to ensure that the prosecution witnesses nos.1, 2 and 3 present themselves for cross-examination and thereafter it would decide the application u/s.319 CrPC, the prosecution witnesses repeatedly continued to either absent themselves or file adjournment applications and only insisted for deciding the application u/s.319 CrPC first and only thereafter the trial could proceed – The complainant has no such mandatory right to insist that an application be decided in such a manner – Therefore, the Trial Court was correct in proceeding u/s.232 CrPC and accordingly acquitting the appellant-accused, treating it to be a case of no evidence – The Trial court was also correct in rejecting the application u/s. 319 CrPC for want of admissible evidence on part of the prosecution – Therefore, the impugned order of the High Court is set aside and that of Trial Court restored. [Paras 14, 15, 17, 18, 19]

Case Law Cited

Hardeep Singh vs. State of Punjab & Ors. [2014] 2 SCR 1 **: (2014) 3 SCC 92 – followed.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Arms Act, 1950.

List of Keywords

Section 319 of Code of Criminal Procedure, 1973; Examination-in-chief; Cross-Examination.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4247 of 2024

From the Judgment and Order dated 11.08.2022 of the High Court at Calcutta in CRA No. 222 of 2020

Appearances for Parties

Sarad Kumar Singhania, Mrs. Rashmi Singhania, Advs. for the Appellant.

Ms. Madhumita Bhattacharjee, Adv. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. By means of this appeal, the accused has assailed the correctness of the judgment and order dated 11.08.2022 passed by the Calcutta High Court in CRA No.222/2020 whereby the High Court allowed the appeal filed by the complainant (respondent no.2) and after setting aside the acquittal recorded by the Trial Court on 31.09.2020, remanded the case to proceed in a manner whereby the Trial Court would first decide the application under Section 319 of the Code of Criminal Procedure, 1973[1] and thereafter proceed to decide the trial.

   Brief facts relating to the present case are:

3. That the First Information Report[2] was lodged by respondent no.2 alleging that the appellant had tried to kidnap him which was registered under sections 366/323/506(II) of the Indian Penal Code, 1860[3] with section 25(1)(B)(a) of the Arms Act, 1950 as FIR No. 125 on 11.10.2017. After investigation, a charge-sheet was submitted on 08.02.2019 under the aforesaid sections.

4. During the trial the Examination-in-Chief of the victim (respondent no.2) PW1, her mother Sabiya Rahaman (PW 2) and her father Aslam Shaikh (PW 3) were recorded. However, their cross-examination was deferred on an application made by the accused-appellant. The Examination-in-Chief was conducted on 29.02.2020. On 07.03.2020 an application under section 319 CrPC was filed by respondent no.2 for further summoning the father and mother of the accused-appellant. Thereafter it appears that the above three prosecution witnesses did

1 CrPC

2 FIR

3 IPC

not appear before the Trial Court for their cross-examination despite having received the summons. On 14.09.2020 again an adjournment was sought on behalf of PWs 1, 2 and 3 whereupon the Trial Court recorded that despite the specific repeated orders, the prosecution witnesses are not coming forward for cross-examination and that the witnesses as such are wilfully disobeying the orders of the Court. The Trial Court directed that the cross-examination of the witnesses is fixed for the next date and orders would be passed on the application under section 319 CrPC after the examination of all the witnesses are over. The order dated 14.09.2020 is reproduced hereunder:

> "Today is fixed for cross-examination of PW 1, PW2 and PW 3. Sole accused Asim Akhtar is present by filing hazira. SR of summons are received after service. On behalf of the defacto complainant a petition has been filed praying for disposal of the application under section 319 CrPC with affidavit. Copy is seen by the PP in charge.
>
> On behalf of the PW 1 PW 2 and PW 3 a petition has been filed for an adjournment with xerox copy of prescription Copy is also seen by the PP in charge.
>
> Perused the petition. Heard both sides.
>
> Admittedly, the petition has been filed by the *de facto* complainant with an affidavit. The affidavit is sworn at Sealdah Court on 14.09.2020 before the Notary Public Sarbani Mitra but the said witness failed to appear before the court. That factum goes to show that the said witness wilfully disobeyed the order of court. The application under section 319 CrPC is heard in presence of both sides. The order will be passed after the examination of all the witnesses are over.
>
> Tomorrow for examination and cross examination of all the witnesses and order to respect the application under section 319 CrPC."

5. On 15.09.2020 again the witnesses remained absent and filed an application for adjournment. They also moved an application seeking four weeks' time to bring appropriate orders from the High Court regarding no adverse orders being passed in case of non-appearance of parties owing to the Covid-19 pandemic. Yet another application

was filed for giving a direction to the concerned authority to issue urgent certified copy of the order passed by the High Court.

6. The Trial Court recorded in detail the past conduct of the PWs 1, 2 and 3 that despite the service of summons, they had not been appearing for cross-examination. It was also recorded that PW 1 – the complainant had come to the Court with a sworn affidavit in her application under section 319 CrPC but did not care to attend the trial proceedings and present herself for cross-examination.

7. The Trial Court further proceeded to record that although the complainant wants the trial to proceed but is not coming forward for being cross-examined and has only filed an application to the effect that the application under section 319 CrPC may be heard and decided before the cross-examination. Even the Public Prosecutor had opposed the application filed by the *de facto* complainant for hearing of the 319 CrPC application. He also stated that other witnesses are coming and returning because of the repeated absence of PWs 1,2 and 3. The Trial Court thus fixed 29.09.2020 for cross-examination and also recorded its displeasure and inclination to execute the bailable warrants of arrest against the witnesses. It directed the Public Prosecutor to ensure presence of the witnesses and also directed the Investigating Officer to remain present with the witnesses.

8. Again on 21.09.2020 the sole accused – appellant was present. An application was filed by the complainant-respondent no.2 stating that aggrieved by the orders dated 14.09.2020 and 15.09.2020 she had preferred CRR No.1357/2020 and CRAN No.1/2020 which is likely to be taken up on 23.09.2020, as such the matter be adjourned for two more weeks. Respondent no.2 further filed an application for offences under Section 354 and 354B of the IPC which required to be added along with existing sections. Once again PWs 1 and 3 were present but the counsel for the complainant again insisted that they are ready to face the cross-examination, however, the application under section 319 CrPC may be disposed of first.

9. The Trial Court recorded their stand that they would not face cross-examination until the application under Section 319 CrPC is decided. The counsel for the accused-appellant was ready to cross-examine but could not proceed as the prosecution witnesses did not agree and continued to insist that the application under section 319 CrPC be decided first.

10. The Trial Court recorded all the facts, the contentions and also the conduct of the parties during the trial and ultimately proceeded to close the evidence of the prosecution. The Trial Court further went on to decide the application under section 319 CrPC and held that the evidence recorded so far was not admissible as the witnesses had failed to present themselves for cross-examination as such there was no justification for summoning the parents of the accused-appellant on the basis of inadmissible evidence. Accordingly, the same was rejected. The Trial Court further proceeded to hold that it was a case of no evidence under Section 232 CrPC and thereby acquitted the accused-appellant.

11. Aggrieved by the same, respondent no.2 preferred an appeal before the High Court which has since been allowed by the impugned judgment and order, giving rise to the present appeal.

12. We have heard learned counsel for the appellant and for the respondent no.1 -State of West Bengal. Despite service of notice, no one has put in appearance on behalf of respondent no.2-Complainant.

13. The High Court in paragraph 15 of the impugned judgment relied upon a paragraph of the Constitution Bench judgment in the case of **Hardeep Singh** vs. **State of Punjab & Ors.**[4] wherein it was held that "….power under section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested in cross-examination, for it is the satisfaction of the court, which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s) not facing the trial in the offence."

    The said view of the Constitution Bench has been taken as a mandate by the High Court that application under section 319 CrPC must be necessarily decided even if the cross-examination has not been conducted, only on the basis of Examination-in-Chief. Relying upon the same, the High Court has set aside the order of the acquittal passed by the Trial Court and has remanded the matter to the Trial Court with the direction to first decide the application under section 319 CrPC and thereafter proceed with the sessions trial expeditiously.

4 [2014] 2 SCR 1 : (2014) 3 SCC 92

14. The judgment in the case of **Hardeep Singh** (supra) does not provide that it is mandatory to decide the application under section 319 CrPC before conducting cross-examination and only on the basis of examination-in-chief. It merely clarifies that even examination-in-chief is part of evidence and record and thus can be relied upon to decide an application under section 319 CrPC.

15. The judgment does not take away the discretion of the Trial Court to wait for the cross-examination to take place before deciding the application under section 319 CrPC. It merely provides that consideration of such an application should not be a mini trial. It is for the Trial Court to decide whether the application should be decided without waiting for the cross-examination to take place or to wait for it. The same would depend upon the satisfaction of the Trial Court on the basis of the material placed on record.

16. The five-Judges Bench in **Hardeep Singh** (supra) concluded the following:

> "89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of 5 Page 56 judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.
>
> 90. As held in Mohd. Shafi (Supra) and Harbhajan Singh (Supra), all that is required for the exercise of the power under Section 319 Cr.P.C. is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/Court is convinced even on

> the basis of evidence appearing in Examination-in-Chief, it can exercise the power under Section 319 Cr.P.C. and can proceed against such other person(s). It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section 4 of Section 319 Cr.P.C., the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of Examination-in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence."

17. Therefore, the complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under section 319 CrPC before cross-examination of other witnesses.

18. In the present case, we find that the Trial Court having tried its best to ensure that the prosecution witnesses nos.1, 2 and 3 present themselves for cross-examination and thereafter it would decide the application under section 319 CrPC, the prosecution witnesses repeatedly continued to either absent themselves or file adjournment applications and only insisted for deciding the application under section 319 CrPC first and only thereafter the trial could proceed. The complainant has no such mandatory right to insist that an application be decided in such a manner. Even the Public Prosecutor had not supported the complainant's counsel in filing of the application under section 319 CrPC. The role of the complainant in a trial does not permit it to act as a Public Prosecutor on behalf of the State. The

complainant and its counsel have a limited role in a sessions trial in a State case. The High Court failed to take into consideration all these aspects. Why the prosecution witnesses were shying from facing the cross-examination is not understood. Their only insistence was that the parents of the accused should be summoned and dragged into the trial and to somehow or the other keep the trial pending.

19. In view of the facts and circumstances of the case, we are of the view that the Trial Court was correct in proceeding under section 232 CrPC and accordingly acquitting the appellant-accused, treating it to be a case of no evidence. The Trial court was also correct in rejecting the application under section 319 CrPC for want of admissible evidence on part of the prosecution.

20. For all the reasons recorded above, the appeal is allowed, the impugned order of the High Court is set aside and that of the Trial Court is restored.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 10 S.C.R. 920 : 2024 INSC 777

Chandramani Nanda
v.
Sarat Chandra Swain and Another

(Civil Appeal No. 11100 of 2024)

15 October 2024

[J.K. Maheshwari and Rajesh Bindal,* JJ.]

Issue for Consideration

Appellant-claimant, if entitled to enhancement of compensation.

Headnotes†

Motor Accident Claim – Compensation – Assessment – Enhancement of compensation – Appellant-claimant having suffered injuries in an accident became mentally unstable with 100% functional disability – Compensation of ₹20,60,385/- awarded by the Tribunal was modified and enhanced to ₹30,99,873/- by the High Court – Challenge to:

Held: An enhanced income should be considered for calculation of compensation – However, the courts below assessed the appellant's annual income at ₹1,62,420/- by wrongly relying on his Income Tax return from 02 years before the accident – Income of the appellant based on the income tax returns produced on record is progressive, annual income taken at ₹2,00,000/- – Appellant also entitled for enhancement on account of future prospects, given he was 32 years at the time of accident, he is entitled to 40% future prospects – Further, ₹1,00,000/- also awarded each on account of future attendant charges, loss of marriage prospects and pain and suffering as the appellant became mentally unstable having disability of 60% which resulted in 100% functional disability – Order of the High Court modified, appellant entitled to enhanced compensation of ₹52,31,000/- at 6% interest. [Paras 14, 14.1, 14.3, 18, 19, 22]

Motor Accident Claim – Compensation – Awarding more compensation than the amount claimed – Permissibility – Plea of the insurance company that the appellant filed petition

* Author

claiming compensation of ₹30,00,000/- and since the same was awarded by the High Court, no further enhancement is possible:

Held: Rejected – Amount of compensation claimed is not a bar to award more than what is claimed, provided it is found to be just and reasonable – It is the duty of the Court to assess fair compensation – Rough calculation made by the claimant is not a bar or the upper limit. [Para 20]

Case Law Cited

Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another [2009] 5 SCR 1098 **: (2009) 6 SCC 121 : 2009 INSC 506;** *National Insurance Company Limited v. Pranay Sethi and Others* [2017] 13 SCR 100 **: (2017) 16 SCC 680 : 2017 INSC 1068;** *Meena Devi vs. Nunu Chand Mahto* [2022] 18 SCR 449 **: (2023) 1 SCC 204 : 2022 INSC 1080 – referred to.**

List of Acts

Motor Vehicles Act, 1988; Penal Code, 1860.

List of Keywords

Motor Accident; Insurance company; Compensation; Enhancement of compensation; Compensation enhanced; Brain surgery; Brain injury; Mentally unstable; 100% functional disability; Income Tax returns; Future prospects; Future attendant charges; Loss of marriage prospects; Pain and suffering; Rough calculation; Fair compensation; Annual income; Enhanced income.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11100 of 2024

From the Judgment and Order dated 24.08.2022 of the High Court of Orissa at Cuttack in MACA No. 256 of 2019

Appearances for Parties

Chitta Ranjan Mishra, Avinash Kumar Jain, Shakti Kanta Pattanaik, Advs. for the Appellant.

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

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. Leave granted.

2. The claimant, in a motor vehicle accident having suffered injuries, has filed the present appeal seeking enhancement of compensation. He is aggrieved by the order[1] passed by the High Court.[2]

3. The facts as available on record are that on 16.01.2014 four persons occupying Verito Vibe Car bearing Registration No.OD-05-D-9596 were travelling from Sambalpur, Odisha to Cuttack. At about 01:30 pm, the offending Bus bearing Registration No.OD-14-A-1774 being driven at high speed struck against the said car on NH-55 near CPP Chawk, NALCO, Anugul, Odisha, as a result of which the occupants of the car suffered serious injuries. One of the occupants, Ranjan Rout, succumbed to the injuries on 31.05.2017. A police case bearing P.S. Case No.7/2014 was registered against the driver of the offending bus under Sections 279, 337 and 338 of IPC.[3] Three injured occupants of the car and the legal heirs of the deceased, Ranjan Rout filed different claim petitions, which were assigned to the Court of 2nd Additional District Judge-cum-3rd Motor Accident Claims Tribunal, Cuttack. The present appellant had filed petition[4] claiming compensation of ₹30,00,000/-. As all the claims had arisen from the same accident the Tribunal clubbed all the claim petitions and decided the same by a common Award.[5]

4. A perusal of the said Award passed by the Tribunal shows that registered owner of the offending bus did not appear despite service, hence, was proceeded against *ex parte*. The Insurance Company[6] contested the claim petitions. The Tribunal framed the following issues:

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1 Dated 24.08.2022 in MACA No.256 of 2019

2 High Court of Orissa at Cuttack

3 Indian Penal Code

4 MAC Case No.176 of 2014

5 Dated 15.01.2019

6 National Insurance Company Limited

"(i) Whether the claim applications are maintainable?

(ii) Whether due to rash and/or negligent driving of the driver of the offending vehicle bearing registration No.OD-14-A-1774 the accident took place and in that accident deceased namely Ranjan Rout succumbed to injuries and other petitioners namely Dipti Ranjan Pattanayak, Santosh Baral, and Chandramani Nanda sustained injuries on their persons?

(iii) Whether the petitioners are entitled to get the compensation and if so, what would be the extent?

(iv) Whether both the Opposite Parties or either of them are/is liable to pay the compensation? and

(v) To what other relief/s, if any, the respective petitioners are entitled?"

5. The Issue No.(ii) was decided in favour of the claimants. As far as entitlement of compensation is concerned, the claim of the present appellant was discussed under para '13' of the Award of the Tribunal. The evidence led to the effect that he sustained head injury, which was grievous in nature. The claimant was initially admitted in Angul Government Hospital and due to his serious condition, he was shifted to Ashwini Hospital, Cuttack for better treatment and remained admitted there from 16.01.2014 to 11.02.2014. During that period, he had undergone a major brain surgery. The mother of the appellant in her statement stated that due to the accident, her son (appellant) had become mentally unsound. He is not able to understand anything and is bedridden since then.

5.1 The appellant visited Ashwini Hospital for his follow up after surgery on 17.06.2014, 15.09.2014 and 25.07.2015. It was claimed that the mother of the appellant spent about ₹15,00,000/- on his treatment, which is still going on. However, total bills produced towards medical expenses were to the tune of ₹3,31,153/-. The aforesaid amount was awarded by the Tribunal. The Record Keeper of the Ashwini Hospital was also summoned in evidence who proved the medical record of the appellant, which mentioned that he had sustained grievous head injury fracture of C6 and T4 vertebra. He also produced the medical bills.

6. As far as the employment of the appellant is concerned, it was claimed that at the relevant point of time he was working as Branch Manager in Padma Infrastructure Private Limited and was earning salary of ₹22,000/- per month. However, the Tribunal referring to Income Tax return of the appellant (Ext.15)[7] assessed the income at ₹1,62,420/- per annum for the assessment year 2011-12 and that was made the basis for awarding compensation. His disability was assessed by the District Medical Board, Jagatsinghpur (Ext.13), according to which he was declared to be disabled to the extent of 60%. It is pertinent to note that the aforesaid assessment of disability of the appellant was conducted 02 years after the accident, meaning thereby, the disability was subsisting. It was claimed that on account of 60% disability suffered by the appellant, he had suffered 100% functional disability because of brain injury suffered by him. However, the Tribunal assessed the disability and loss in earning capacity only to the extent of 60%.

7. The age of the appellant was about 32 years at the time of the accident. Since the appellant fell in the age group between 31 to 35, multiplier 16 was applied for assessment of compensation, referring to the judgment of this Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**.[8]

8. While assessing the compensation, the Tribunal, in addition to the loss of future income calculated at 60% disability, awarded ₹50,000/- on account of mental agony, pain and suffering, and loss of amenities, and further awarded ₹1,00,000/- for future medical expenses. The total compensation assessed was as under:

Head	Amount (in ₹)
Loss of future income (₹1,62,420 x 16 x 60/100)	15,59,232/-
Past medical expenditure including cost of medicine, special diet & the attendant	3,51,153/-
Mental agony, pain, suffering and loss of amenities	50,000/-
Future medical expenses	1,00,000/-
Total	**20,60,385/-**

along with interest @ 6% per annum

7 Inadvertently, recorded as Ext. 16 in the High Court and Tribunal's order.

8 [2009] 5 SCR 1098 : (2009) 6 SCC 121 : 2009 INSC 506

9. Aggrieved against the said award of the Tribunal, the present appellant as well as the Insurance Company preferred appeals[9] before the High Court. The High Court opined that the appellant had suffered 100% functional disability as against 60% assessed by the Tribunal because even if the disability from persistent neurocognitive is 60%, such disability entails 100% loss of earning capacity. The High Court modified the Award of the Tribunal and enhanced the amount of compensation from ₹20,60,385/- to ₹30,99,873/-.

Head	Compensation (in ₹)
Loss of future income (₹1,62,420 x 16 x 100% disability)	25,98,720/-
Medical Expenditure	3,51,153/-
Mental agony and suffering	50,000/-
Future medical expenses	1,00,000/-
Total	**30,99,873/-**

along with interest @ 6% per annum

10. In the present SLP, the learned counsel for the appellant submitted that while assessing the compensation, the Tribunal as well as the High Court have failed to appreciate that the income claimed by appellant was ₹22,000/- per month i.e. ₹2,64,000/- per annum. However, the assessment of compensation was made by taking the income at ₹1,62,420/- per annum, which pertained to assessment year 2011-12 i.e. financial year 2010-11. It is to be noted that the accident had taken place on 16.01.2014, i.e. after 02 years from the said financial year.

    10.1 It was further submitted that the amount of compensation should be enhanced by including factor of future prospect as it has not been considered by the Tribunal and High Court. Further, he should be awarded enhanced compensation under the head of future medical expenses as he would be required to incur medical expenses on a regular basis, and should also be granted compensation for an attendant.

9 MACA No.256 of 2019 by the appellant and MACA No.350 of 2021 by the Insurance Company

10.2 Learned counsel for appellant also submitted that compensation on account of mental agony, pain and suffering and loss of amenities as assessed by the Tribunal is also on lower side as the appellant will undergo pain and suffering due to injuries and will go through mental agony throughout his life on account of brain injury.

11. On the other hand, learned counsel for the Insurance Company submitted that the assessment of compensation by the High Court is on the higher side. There is no scope of further enhancement specially keeping in view the fact that the appellant had claimed a sum of ₹30,00,000/- as compensation, and the High Court has already awarded more than that. However, still being reasonable, the Insurance Company did not prefer any appeal.

12. Heard learned counsel for the parties and perused the relevant materials on record.

13. For the purpose of clarification, the High Court enhanced the compensation to Rs. 30,99,873 from Rs. 20,60,385 as awarded by Tribunal. This was done by considering the functional disability at 100% as opposed to 60%, as assessed by the Tribunal.

14. On the issue of assessment of income, we are of the view that that an enhanced income should be considered for calculation of compensation. In this regard, the appellant has produced on record his income tax returns for the assessment years 2010-11 and 2011-12 as Exhibits 14 and 15, respectively. As per the records, for the assessment year 2010-11 (the financial year will be 2009-10), the income shown by the appellant was to the tune of ₹1,65,100/-. For the assessment year 2011-12 (the financial year will be 2010-11), the income was shown as ₹1,77,400/-. Further, as per the Salary Certificate Exhibit-22 placed on record by the appellant, he was working as Branch Manager for Padma Infrastructure and he was getting a consolidated salary of ₹22,000 one year prior to the date of accident. Now, it is to be noted that the accident took place on 16.01.2014, in the financial year 2013-14. If we calculate the annual income considering ₹22,000, it would come out to ₹2,64,000/- per annum. However, as per the High Court and the Tribunal, the annual income is assessed at ₹1,62,420/-. However, both the courts below failed to consider the fact that there is a gap of approximately 02 years

and 09 months between the said income tax returns and the date of accident. It can be seen that the income of the appellant, based on the income tax returns so produced on record is progressive, there is a possibility that he may have left his business and join service to improve his income. Thus, in our view, it would be reasonable to take the income of the appellant at ₹2,00,000/- per annum, i.e., ₹16,666.67 per month.

14.1 With respect to the multiplier, we do not find any error in the order passed by the High Court applying the multiplier of 16 considering the age of the appellant as 32 years on the date of the accident.

14.2 On the point of assessment of functional disability as 100% by the High Court as against 60% by the Tribunal, there is no challenge by the insurance company.

14.3 However, the Tribunal and the High Court both have failed to consider the fact that the appellant is also entitled for enhancement on account of future prospects. Hence, in line with the law laid down in **National Insurance Company Limited v. Pranay Sethi and Others**,[10] given the age of appellant was 32 years at the time of accident, he is entitled to 40% future prospects.

15. As far as award of amount on account of medical expenditure is concerned, we do not find any case to be made out for further enhancement, as the amount awarded is in tune with the bills placed by the appellant on record.

16. Coming to the compensation under the head of attendant, Tribunal awarded a meagre sum of ₹10,000/-. While this amount may have been awarded considering the cost of attendant charges incurred during the period of appellant's treatment, as he remained admitted in hospital for 25 days and had to undergo surgery post initial operation as well. However, now, considering the fact of mental disability to be suffered by appellant, who is now around 40 years old and the age of the mother who is above 60 years old, and will be appellant's primary caretaker, we are of the opinion that a reasonable amount for future attendant charges should also be awarded to the appellant.

10 [2017] SCR 100 : (2017) 16 SCC 680 : 2017 INSC 1068

17. In this regard, we have perused the statement of the appellant's mother (PW-3). As per her statement, initially they had engaged an attendant at ₹6,000 per month. However, he had left his services about a month before the mother was cross-examined on 23rd September, 2016. Further, the appellant's father works as a priest and have a meagre monthly income. Thus, it is the appellant's mother and other family members who are taking care of him. Considering the aforesaid facts, in our opinion, a lump sum amount of ₹1,00,000/- is reasonable and deserves to be awarded to the appellant on account of future attendant charges.

18. In addition to the above, appellant is also entitled to compensation on account of loss of marriage prospects. A perusal of the impugned award of the Tribunal and the High Court shows that nothing has been awarded to the appellant under this head. In our opinion, considering the law laid down by this Court on this issue, the appellant deserves to be awarded a sum of ₹1,00,000/- on this account.

19. Further, in our view, a compensation of ₹50,000/- on account of pain and suffering is also on lower side and the same deserves to be enhanced to ₹1,00,000/-. It is for the reason that on account of the injury suffered, the appellant has become mentally unstable, having disability of 60%, which indeed has resulted in 100% functional disability.

20. An argument is raised by learned counsel for the insurance company that the appellant has initially claimed a sum of ₹30,00,000/- and since the same having been awarded to him by the High Court, no further enhancement is possible. We cannot accept this argument and it is duly rejected. It is a settled proportion of law, that the amount of compensation claimed is not a bar for the Tribunal and the High Court to award more than what is claimed, provided it is found to be just and reasonable. It is the duty of the Court to assess fair compensation. Rough calculation made by the claimant is not a bar or the upper limit. Reference in this regard can be made to the judgment of this Court in the case of **Meena Devi vs. Nunu Chand Mahto.**[11]

11 [2022] 18 SCR 449 : (2023) 1 SCC 204 : 2022 INSC 1080

21. For the reasons mentioned above, this appeal is allowed and the compensation awarded to the appellant is assessed in the following terms:

Head	Compensation (in ₹)
Annual Income	2,00,000
Annual Income after Future Prospects @ 40%	2,80,000
Loss of future income (₹2,80,000 x 16 x 100% disability)	44,80,000
Medical Expenditure	3,51,153
Future Attendant Cost	1,00,000
Loss of marriage prospects	1,00,000
Pain and suffering	1,00,000
Future medical expenses	1,00,000
Total	**52,31,153**

22. The total amount of compensation is rounded off to ₹52,31,000/-. The appellant will be entitled to get interest on the enhanced compensation at the rate of 6% as awarded by the High Court.

23. Accordingly, the appeal is allowed in the aforesaid terms while modifying the order of the High Court. Pending interlocutory applications (if any) shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 10 S.C.R. 930 : 2024 INSC 819

Central Bureau of Investigation
v.
Ashok Sirpal

(Criminal Appeal No. 4277 of 2024)

24 October 2024

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

Issue for Consideration

Matter pertains to the challenge to the order passed by the High Court suspending the sentence of imprisonment and the fine imposed on the accused who was convicted for embezzlement of Rs. 46 lakhs.

Headnotes†

Code of Criminal Procedure, 1973 – s.389 – Bharatiya Nagarik Suraksha Sanhita, 2023 – ss.430 – Penal Code, 1860 – s.64 – Bharatiya Nyaya Sanhita, 2023 – ss.4 and 8(2) – Suspension of sentence pending appeal; release of appellant on bail – Respondent-accused convicted for the offences punishable under the Penal Code and Prevention of Corruption Act, 1988 for embezzlement of Rs. 46 lakhs and sentenced to rigorous imprisonment for seven years and fine of Rs. 95,00,000/- and in default to pay fine, was to undergo simple imprisonment for 21 months – However, the High Court suspended the sentence, on the respondent furnishing personal bond in the sum of Rs. 50,000/- with one surety – Correctness:

Held: While convicting an accused, if a direction is issued against him to pay a fine, such a direction can be suspended in the exercise of power under sub-section (1) of s.389 – Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions – However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it – Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Art.21 – In the impugned order, it was clearly mentioned

* Author

therein that the respondent's sentence stands suspended pending the hearing of the appeal subject to compliance of furnishing personal bond in the sum of Rs. 50,000/- – High Court was conscious of the fact that as the embezzlement alleged against the respondent and other accused persons was to the tune of Rs. 46 lakhs, the Special Court had sentenced the respondent to pay a fine of Rs. 95 lakhs – Sentence imposed on the respondent was of both imprisonment and payment of fine – Thus, it cannot be said that the sentence of the fine was not suspended – Total sentence, including substantive sentence and sentence in default of fine, will be imprisonment for eight years and nine months – Considering the huge pendency of criminal appeals triable by a Single Judge and considering the limited period sentence, not possible to find fault with the impugned order – Thus, interference with the impugned order not called for, especially when the respondent deposited a sum of Rs.15 lakhs in this Court, which is to be treated as a condition for suspending the sentence of fine. [Paras 6-10]

Case Law Cited

Satyendra Kumar Mehra v. State of Jharkhand [2018] 4 SCR 1033 : **(2018) 15 SCC 139 – referred to.**

List of Acts

Penal Code, 1860; Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Negotiable Instrument Act, 1881.

List of Keywords

Suspending sentence of imprisonment and fine imposed; Embezzlement; Rigorous imprisonment for seven years; Sentenced to pay fine of Rs.95,00,000/-; Furnishing personal bond; Suspension of sentence; Deposit of amount; Substantive sentence; Fixed deposit.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4277 of 2024

From the Judgment and Order dated 29.09.2016 of the High Court of Delhi at New Delhi in CRLMB No. 948 of 2016

Appearances for Parties

K M Nataraj, A.S.G., Mukesh Kumar Maroria, Sanjay Kumar Tyagi, Veer Vikrant Singh, Sharath Nambiar, Nalin Kohli, Anuj Srinivas Udupa, Parantap Singh, Advs. for the Appellant.

Dama Seshadri Naidu, Sr. Adv., Rahul Gupta, Deepak Sharma, Ms. Sivani Reddy, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECT

1. The factual controversy which arises in this appeal is very limited. The respondent - accused no.2, by judgment and order dated 27th January 2016 passed by the Special Judge, CBI (PC Act), Karkardooma Courts, East District, Delhi, was convicted for the offences punishable under Section 120B read with Sections 420/419 of the Indian Penal Code (for short, 'the IPC') and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). He was sentenced to undergo rigorous imprisonment for seven years for each offence. He was sentenced to pay a fine of Rs.95,00,000/-. In default of the payment of the fine, he was ordered to undergo simple imprisonment for a period of 21 months. The substantive sentences were ordered to run concurrently. The respondent preferred an appeal against conviction before the Delhi High Court. The appeal was admitted. By the impugned order dated 29th September 2016, the sentence was suspended by the learned Single Judge of Delhi High Court on the respondent furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount subject to the satisfaction of the learned Trial Judge. A further condition was imposed on the respondent of not leaving the country without prior permission of the Trial Court.

2. On 19th March 2018, while issuing notice, this Court passed the following order:

> " Delay condoned.
>
> The learned Additional Solicitor General appearing for the petitioner – CBI submits that the respondent has not deposited the fine. The submission is recorded.
>
> Issue notice."

On 8th August 2023, the following order was passed:

> " The learned Senior Counsel appearing for the respondent, on instructions, states that the respondent will deposit in this Court a sum of Rs.15 lakhs within three months from today.
>
> Only in view of this statement, we adjourn this petition till 21.11.2023 to be listed on the top of the Board.
>
> We make it clear that on the failure of the respondent to deposit the said amount, the order granting bail to the respondent is liable to be set aside.
>
> As and when the said amount is deposited, the Registry will invest it in the interest bearing deposit with auto renewal facility."

In terms of the said order, the respondent has deposited a sum of Rs.15,00,000/-, which has been invested in a fixed deposit under the orders of this Court.

SUBMISSIONS

3. Shri K M Nataraj, learned Additional Solicitor General of India, pointed out that the finding against the respondent and co-accused by the Special Court is that there was an embezzlement of approximately a sum of Rs.46,00,000/-. He pointed out that what is suspended under the impugned order is the substantive sentence of 7 years. As the respondent has paid only a sum of Rs.15,00,000/- out of the total fine amount of Rs.95,00,000/- and as the direction to pay a fine has not been suspended under the impugned order, the respondent will have to be taken into custody for undergoing sentence imposed in default of payment of a fine. Learned ASG relied upon the decision of this Court in the case of ***Satyendra Kumar Mehra v. State of Jharkhand***.[1] He pointed out the interpretation put by this Court to

1 [2018] 4 SCR 1033 : (2018) 15 SCC 139

Section 357 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). He relied upon what is held in paragraph 36 of the said decision. He urged that there is a power to suspend the fine conferred by Section 389 of the CrPC with or without condition. He submitted that the impugned order does not record that the order of fine has been suspended. He, therefore, submitted that the impugned order would not help the respondent to avoid enforcement of the sentence in default of payment of the fine. He submitted that, in any case, the High Court could not have granted an unconditional stay of the order directing payment of a fine of Rs.95,00,000/-. He submitted that until the impugned order was passed, the respondent had only been incarcerated for about 8 months.

4. Shri Naidu, learner senior counsel representing the respondent, submitted that the entire sentence, including the sentence of fine, has been suspended by the impugned order. He submitted that the substantive sentence and the sentence in default of fine are limited period sentences. As the appeal against conviction is not likely to be heard in the near future, the High Court has rightly suspended the sentence.

CONSIDERATION OF SUBMISSIONS

5. Section 389 of the CrPC reads thus:

> "389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:
>
> Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:
>
> Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

> (2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.
>
> (3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall, —
>
> (*i*) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
>
> (*ii*) where the offence of which such person has been convicted is a bailable one, and he is on bail,
>
> order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.
>
> (4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

The power of suspension of sentence under Section 389 of the CrPC (Corresponding to Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is vested in the Appellate Court dealing with an appeal against the order of conviction. On a plain reading of sub-section (1), the Appellate Court has the power to suspend the execution of a sentence or order appealed against. If the appellant/accused is in confinement, there is a power vesting in the Appellate Court to release him on bail pending the final disposal of the appeal. In case of offences covered by the first proviso to sub-section (1) of Section 389, there is a mandate to give an opportunity to the Public Prosecutor to show cause in writing against such release before releasing a convicted person on bail. As stated earlier, the substantive sentence imposed on the respondent is rigorous imprisonment for seven years. In addition, there is a direction to pay a fine of Rs.95,00,000/-. There are five kinds of punishment provided in Section 53 in Chapter III of the IPC, which reads thus:

"53. "Punishments".—The punishments to which offenders are liable under the provisions of this Code are—

First—Death;

Secondly—Imprisonment for life;

Thirdly— [* * *];

Fourthly—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly—Forfeiture of property;

Sixthly—Fine."

Section 64, which is a part of the same chapter III, reads thus:

"64. Sentence of imprisonment for non-payment of fine- In every case, of an offence punishable with imprisonment as well as fine, in which **the offender is sentenced to a fine**, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

(emphasis added)

Sections 4 and 8(2) of the Bharatiya Nyaya Sanhita, 2023, are the corresponding Sections. Section 64 of IPC uses the expression 'offender is sentenced to a fine'. Moreover, the fine is one of the five punishments provided in Section 53. Thus, it is evident that the direction to pay a fine issued against the convicted accused is also a sentence. Under Section 64, the Court is empowered to direct that in

default of payment of the fine, the offender shall suffer imprisonment for a specific term as directed therein. Therefore, there can be a sentence of fine and a further sentence in default of compliance with the sentence of fine.

6. In paragraph no.36 of the decision of this Court in the case of ***Satyendra Kumar Mehra***,[1] this Court held thus:

> **"36.** We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine."

Thus, while convicting an accused, if a direction is issued against him to pay a fine, such a direction can be suspended in the exercise of power under sub-section (1) of Section 389 of the CrPC.

7. Coming back to the impugned order, it is clearly mentioned therein that the respondent's sentence stands suspended pending the hearing of the appeal subject to compliance of furnishing personal bond in the sum of Rs.50,000/-. Perusal of the impugned order shows that the High Court was conscious of the fact that as the embezzlement alleged against the respondent and other accused persons was to the tune of Rs.46,00,000/-, the Special Court had sentenced the respondent to pay a fine of Rs.95,00,000/-. The order notes that the sentence imposed on the respondent was of both imprisonment and payment of fine. Therefore, on a plain reading of the impugned order, the argument of learned ASG that the sentence of the fine was not suspended cannot be accepted.

8. While suspending the sentence, especially the sentence of fine, the Appellate Court can impose conditions. Whether the order of suspension of the sentence of fine should be conditional or unconditional depends on the facts of each case and especially the nature of the offence. For example, when there is a sentence of fine imposed while convicting an accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, depending upon the facts of the case, the Appellate Court may impose a condition

of depositing the fine amount or part thereof while suspending the sentence. However, the approach of the Court may be different in case of offences punishable under the IPC and cognate legislations. Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions. However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it. Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Article 21 of the Constitution.

9. In the facts of the case, the total sentence, including substantive sentence and sentence in default of fine, will be imprisonment for eight years and nine months. Considering the huge pendency of criminal appeals triable by a Single Judge and considering the limited period sentence, it is not possible to find fault with the impugned order passed way back on 29th September 2016.

10. Hence, there is no reason to interfere with the impugned order, especially when the respondent has deposited a sum of Rs.15,00,000/- in this Court. The deposit of Rs.15,00,000/- shall be treated as a condition for suspending the sentence of fine. Accordingly, the appeal is disposed of with the above modification. The amount of Rs.15,00,000/- deposited by the respondent has been invested by the Registry in fixed deposit. Immediately after maturity of the existing fixed deposit, the Registry shall transfer the amount of Rs.15,00,000/- with interest accrued thereon to the Delhi High Court. The High Court shall invest the said amount in an appropriate fixed deposit with any nationalised bank till the disposal of the criminal appeal. Order regarding disbursal/withdrawal of the amount and interest accrued thereon shall be passed at the time of final disposal of the appeal.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 10 S.C.R. 939 : 2024 INSC 816

Saroj & Ors.
v.
IFFCO-TOKIO General Insurance Co. & Ors.

(Civil Appeal Nos. 12077-12078 of 2024)

24 October 2024

[Sanjay Karol* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Issue arose that in case of conflict of the dates of birth between the two documents, School Leaving Certificate and the Aadhar Card, which of the two is to be taken as authoritative; and whether the High Court's reduction of the compensation awarded by the MACT was justified and in accordance with law.

Headnotes†

Deeds and document – Aadhar Card – Suitability of, to determine proof of age, vis-à-vis the school leaving certificate:

Held: Aadhar card may not be used as proof of date of birth – Circular No.08 of 2023 by Unique Identification Authority of India, to the effect that an Aadhar Card, while can be used to establish identity, it is not per se proof of date of birth – Judicial notice has been taken of the circular. [Paras 9.6-9.8]

Motor accident – Compensation – Claim of – Determination of age of the victim – Death of victim in a motorcycle accident – Tribunal awarded compensation of Rs.19,35,400/- with an interest @7.5% from the date of filing of the claim petition – However, the High Court reduced the compensation to Rs.9,22,336, on basis of the minimum wage rate and multiplier of 13 on basis of the victim's age as 47 years at the time of his death as per his aadhar card – Challenge to, contending that the multiplier applicable would be 14 as his age was 45 years as per his school leaving certificate:

Held: High Court erred in reducing the compensation – Court sitting in appeal is not to substitute its view for that of the court below – It is only to see that the decision arrived at is not afflicted by perversity, illegality or any other such vice which may compromise

* Author

it beyond redemption – Question before the High Court was not as to which yardstick to use to determine the notional income of the deceased was 'better' – Since nothing on record to establish that the rates notified by the District Commissioner, would not apply to the deceased, no reason to interfere with the finding of the tribunal – Furthermore, School Leaving Certificate has been accorded statutory recognition under sub-section (2) of s.94 of the 2015 Act – Unique Identification Authority of India, by way of its Circular No.08 of 2023, has stated that an Aadhar Card, while can be used to establish identity, it is not per se proof of date of birth – No error in the MACT's determination of age based on the School Leaving Certificate – As regards, the interest awarded, no reason recorded by the High Court in the reduction of the rate of interest from 7.5% to 6% – Compensation received by way of claims filed before MACT is either born out of injury or death of the claimant or family member of the claimants and so, the amount awarded must do justice to them – It necessarily has to be just and reasonable – Thus, fit to enhance the rate of interest to 8% – Notional income to be taken as Rs.9000/- as found by the tribunal; and the multiplier to be applied is 14 – Just compensation rounded off to Rs.15 lakhs with 8% interest from the date of filing of the claim petition – Juvenile Justice (Care and Protection of Children) Act, 2015. [Paras 9, 9.1-9.3, 9.6-9.8, 10-12, 14]

Case Law Cited

K.S. Puttaswamy v. Union of India [2015] 9 SCR 99 **: (2019) 1 SCC 1;** *Manoj Kumar Yadav v. State of M.P.,* **2023 SCC OnLine MP 1919;** *Shahrukh Khan v. State of M.P.,* **2023 SCC OnLine MP 2740;** *Navdeep Singh & Anr. v. State of Punjab & Ors.,* **2021 SCC OnLine P&H 4553;** *Noor Nadia & Anr. v. State of Punjab & Ors.,* **2021 SCC OnLine P&H 1514;** *Muskan v. State of Punjab,* **2021 SCC OnLine P&H 3649;** *Parvati Kumari v. State of U.P.,* **2019 SCC OnLine All 7085;** *Kumit Kumar v. State of H.P.,* **2024 SCC OnLine HP 2965;** *Sofikul Islam v. State of Kerala,* **2022 SCC OnLine Ker 5814;** *State of Maharashtra v. Unique Identification Authority of India and Ors.,* **Criminal Writ Petition No. 3002 of 2022;** *Gopalbhai Naranbhai Vaghela v. Union of India & Anr.,* **Order dated 26th February, 2024 passed in R/Civil Special Application No. 16484 of 2022;** *Shabana v. NCT of Delhi,* **2024 SCC OnLine Del 5058;** *National Insurance Co. Ltd. v. Pranay Sethi* [2017] 13 SCR 100 **: (2017) 16 SCC 680 – referred to.**

List of Acts

Juvenile Justice (Care and Protection of Children) Act, 2015.

List of Keywords

Aadhar Card; Suitability of Aadhar Card as proof of age; School leaving certificate; Proof of date of birth; Date of birth; Unique Identification Authority of India; Circular No.08 of 2023; Establish identity; Judicial notice; Motor accident; Compensation; Interest; Minimum wage rate; Multiplier of 13; Multiplier of 14; Appellate proceedings; Notional income; Just and reasonable; Enhance rate of interest.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 12077-12078 of 2024

From the Judgment and Order dated 09.03.2023 of the High Court of Punjab & Haryana at Chandigarh in FAO Nos. 8504 and 6836 of 2017

Appearances for Parties

Ms. Srishti Choudhary, Ms. Shefali Choudhary, Ms. Namita Choudhary, Advs. for the Appellants.

Suyash Vyas, Gopal Singh, Anil Hooda, Shafik Ahmed, Ajay Sharma, Sunny, Satendra Singh Baghel, S. Srinivasa Chary, Manoj Kumar, Ms. Parul Priya, Ms. Anupama Singh, Varun Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Sanjay Karol J.

Leave Granted.

2. These appeals are at the instance of the wife and sons[1] of the deceased Silak Ram, who was on 4th August, 2015, travelling on a motorcycle bearing registration No.HR-12X-2820, along with one Rohit. Both were found lying injured on the side of the road. The

1 Hereinafter "claimant-appellants"

former had succumbed to his injuries and the latter was taken for treatment to Medical College, Rohtak.

3. One Krishan who had discovered the deceased and the injured person on the road, reported the matter to the police and, during the investigation of such incident, the statement of the injured Rohit revealed the particulars of the offending vehicles. In connection thereto, F.I.R.No.481/2015 dated 4th August, 2015 under Sections 279/337, 304A was registered at Police Station, Sampla.

4. The claim petition, bearing No.25 of 2015 was instituted by the family members of the deceased on 16th December, 2015 before the Motor Accident Claims Tribunal, Rohtak.[2] Vide Award dated 26th April, 2017 an amount of Rs.19,35,400/- was passed with an interest @7.5% from the date of filing of the claim petition. The respondent-insurance company was directed to deposit the money into the bank accounts of the claimant-appellants. However, for claimant Nos.2 and 3, who were minors at the relevant time, their share of Rs.6 lakhs each was directed to be placed in fixed deposit till the age of majority or for a period of five years, whichever is later.

5. On appeal to the High Court, *vide* judgment and order dated 9th March, 2023 passed in FAO Nos.8504 of 2017 (O&M) and 6836 of 2017 (O&M) the amount awarded by the MACT was reduced to Rs.9,22,336/- noting that minimum wage rates issued by the Government are uniformly applicable throughout the State and, therefore, constitute a better measure for calculating the notional income of a deceased person, as opposed to special DC rates notified by the Deputy Commissioner of a District, and, therefore, would only be applicable to that particular district. Further, it was observed that with respect to the age at the time of death, the Aadhar Card of the deceased records his date of birth to be 1st January 1969; thus, the age comes to 47 years. Hence, the multiplier applicable would be 13.

6. The claimant-appellants, aggrieved by the reduction, have approached this Court. Before us, it was contended that the multiplier applicable would be 14 since, in the School Leave Certificate the date of birth of the deceased is shown as 7th October, 1970. His age, then at the time of the accident was 45 years. They were further aggrieved by the calculation of monthly income to be Rs.5,886/-.

2 Hereinafter "MACT"

7. Notice was issued on 17th October, 2023. The matter was then sent to Lok Adalat by way of an order dated 23rd July 2024. A subsequent order dated 2nd August 2024 records that the matter could not be settled.

8. We have heard the learned counsel for the parties and also perused the record. The questions arising for consideration are - (a) in case of conflict of the dates of birth between the two documents, as in this case between the School Leaving Certificate and the Aadhar Card, which of the two is to be taken as authoritative; and (b) whether in the facts of the case, the High Court's reduction of the compensation awarded by the learned MACT, was justified and in accordance with law?

9. This Court is of the view that the High Court erred in undertaking the reduction as it has. The reasons therefor are recorded in the following paragraphs.

   9.1 The general rule insofar as appellate proceedings are concerned is that a Court sitting in appeal is not to substitute its view for that of the Court below. It is only to see that the decision arrived at is not afflicted by perversity, illegality or any other such vice which may compromise it beyond redemption.

   9.2 It is also well settled that an order is not to be interfered with simply because another view is possible, which, in the impugned order the High Court seems to have done.

   9.3 The question before the High Court was not as to which yardstick to use to determine the notional income of the deceased was 'better'. Since there is nothing on record to establish that the rates notified by the District Commissioner, Rohtak, would not apply to the deceased, we find no reason to interfere with the finding of the Tribunal. Further, the testimonies of PWs 2, 5 and 6 show that he is an agriculturist who owned his own tractor and a JCB machine.

   9.4 The second aspect is the age of the deceased. The High Court, relied on the age as mentioned in the Aadhar Card of the deceased, i.e., 1st January, 1969. However, as submitted by the claimant-appellants, the School Leaving Certificate records the date of birth of the deceased to be 7th October, 1970. This will affect the multiplier to be applied. Let us now consider this question.

It has to be noted at the outset that a School Leaving Certificate has been accorded statutory recognition. Sub-section (2) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015[3] reads thus:

> "(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board…"
>
> (Emphasis Supplied)

Whether the Aadhar Card is sufficient proof of a person's age, has come up for consideration before some High Courts, *albeit* in the context of different statutes. We shall refer to a few instances but, prior to doing so, it is also important to take note of the purpose behind introduction of the Aadhar Scheme. In the Constitution Bench judgment in ***K.S. Puttaswamy v. Union of India*** (5-J.)[4] Dr. A.K. Sikri, J. wrote as hereinbelow extracted, encapsulating the object and purpose of Aadhar:-

> "24. Before adverting to the discussion on various issues that have been raised in these petitions, it would be apposite to first understand the structure of

3 Hereafter "JJ Act"

4 [2015] 9 SCR 99 : (2019) 1 SCC 1

the Aadhaar Act and how it operates, having regard to various provisions contained therein. UIDAI was established in the year 2009 by an administrative order i.e. by resolution of the Govt. of India, Planning Commission, vide notification dated January 28, 2009. The object of the establishment of the said Authority was primarily to lay down policies to implement the Unique Identification Scheme (for short the 'UIS') of the Government, by which residents of India were to be provided unique identity number. The aim was to serve this as proof of identity, which is unique in nature, as each individual will have only one identity with no chance of duplication. Another objective was that this number could be used for identification of beneficiaries for transfer of benefits, subsidies, services and other purposes. This was the primary reason, viz. to ensure correct identification of targeted beneficiaries for delivery of various subsidies, benefits, services, grants, wages and other social benefits schemes which are funded from the Consolidated Fund of India ...

Summing up the Scheme:

62. The whole architecture of Aadhaar is devised to give unique identity to the citizens of this country. No doubt, a person can have various documents on the basis of which that individual can establish her identity. It may be in the form of a passport, Permanent Account Number (PAN) card, ration card and so on. For the purpose of enrolment itself number of documents are prescribed which an individual can produce on the basis of which Aadhaar card can be issued. Thus, such documents, in a way, are also proof of identity. However, there is a fundamental difference between the Aadhaar card as a means of identity and other documents through which identity can be established. Enrolment for Aadhaar card also requires giving of demographic information as well as biometric information which is in the form of iris and fingerprints. This process eliminates any chance of duplication. ….. It is for this reason the Aadhaar

card is known as Unique Identification (UID). Such an identity is unparalleled."

(Emphasis supplied)

9.5 Turning back to the question of whether Aadhar Card can serve as a proof of age, a perusal of some High Court judgments reveals that this question has been considered on quite a few occasions in the context of the JJ Act. Illustratively, in ***Manoj Kumar Yadav v. State of M.P.***[5] a learned Single Judge of the Madhya Pradesh High Court held that when it comes to establishing the age, on a plea of juvenility the age mentioned in the Aadhar Card could not be taken as a conclusive proof in view of Section 94 of the JJ Act. Similar observations have been made in ***Shahrukh Khan v. State of M.P.***[6] holding that if the genuineness of the School Leaving Certificate is not under challenge, the said document has to be given due primacy.

The Punjab & Haryana High Court in the context of the Prohibition of Child Marriage Act, 2006, in ***Navdeep Singh & Anr. v. State of Punjab & Ors.***[7] held that Aadhar Cards were not "firm proof of age". Observations similar in nature were also made in ***Noor Nadia & Anr. v. State of Punjab & Ors.***,[8] ***Muskan v. State of Punjab***[9] as well as several other orders/judgments, in various contexts.

Views aligning with the one referred to above have been taken by the High Court of Judicature of Allahabad in ***Parvati Kumari* v. *State of U.P.***;[10] the Himachal Pradesh High Court in ***Kumit Kumar v. State of H.P.***[11] and the High Court of Kerala in ***Sofikul Islam v. State of Kerala***.[12]

5 2023 SCC OnLine MP 1919

6 2023 SCC OnLine MP 2740

7 2021 SCC OnLine P&H 4553

8 2021 SCC OnLine P&H 1514

9 2021 SCC OnLine P&H 3649

10 2019 SCC OnLine All 7085

11 2024 SCC OnLine HP 2965

12 2022 SCC OnLine Ker 5814

9.6 We find that the Unique Identification Authority of India,[13] by way of its Circular No.08 of 2023, has stated, in reference to an Office Memorandum issued by the Ministry of Electronics and Information Technology dated 20th December 2018, that an Aadhar Card, while can be used to establish identity, it is not *per se* proof of date of birth. This office memorandum dated 20th December, 2018 was taken note of by a learned Division Bench of the Bombay High Court in ***State of Maharashtra v. Unique Identification Authority of India And Ors.***[14] in its order dated 28th July, 2023. The Circular is extracted hereinbelow for ready reference:-

F.No.HQ-13065/1/2022-AUTH-II HQ/8075
Unique Identification Authority of India
(Authentication and Verification Division)

UIDAI Headquarter
Bangla Sahib Road, Behind Kali Mandir
Gole Market, New Delhi-110 001
Dated 22.12.2023

Circular No.08 of 2023

Subject: Accepting Aadhar as a proof of Date of Birth (DoB) – regarding.

It has been observed that AUAs/KUAs are considering and accepting Aadhar card / e-Aadhaar as one of the acceptable documents for proof of Date of Birth (DoB).

2. In this regard, it is pertinent to mention that, Aadhaar is a unique 12 digit ID issued to a resident after he/she undergoes the enrolment process by submitting his/her demographic and biometric information. Once a resident is assigned an Aadhaar number, it can be used to authenticate the resident through various modes as prescribed under Aadhaar Act, 2016 and Regulations framed there under.

13 Abbreviated as 'UIDAI'

14 Criminal Writ Petition No. 3002 of 2022

3. At the time of enrolment/updation, UIDAI records DoB as claimed by the resident, on the basis of the documents submitted by them, as specified under the list of supporting documents for Aadhaar enrolment, provided on the UIDAI website (https://uidai.gov.in/images/commdoc/26_JAN_2023_Aadhar_List_of_documents_English.pdf). Further, it is to be noted that Regulations 10(4) and 19A of the Aadhaar (Enrolment and UPDATE) Regulations, 2016, mention that verification of the enrolment and update data shall be performed as provided in Schedule III.

4. In this regard, attention is drawn towards Office Memorandum dated 2-0.12.2018 issued by MeitY through UIDAI, where it has been stated that "*An Aadhaar number can be used for establishing identity of an individual subject to authentication and thereby, per se its not a proof of date of birth" (copy enclosed).*

5. This aspect of the Aadhar Act, 2016 has been reiterated/highlighted/stressed upon by different High Courts in recent judgments. The most recent one is given by the Hon'ble High Court of Bombay, in the case of *State of Maharashtra V/S Unique Identification Authority of India And Ors.* dated 28.07.2023 *(copy enclosed).*

6. In view of the above, it is required that use of Aadhaar, as a proof of DoB needs to be deleted from the list of acceptable documents.

7. This issues with the approval of the Competent Authority.

Encl : As above.

(Sanjeev Yadav)
Director
Tel: 011-23478609
Email: dirl.auth-hq@uidai.net.in

…"

(Emphasis supplied)

9.7 Judicial notice has also been taken of the circular above. Recently, a learned Single Judge of the Gujarat High Court in ***Gopalbhai Naranbhai Vaghela v. Union Of India & Anr.***[15] in view thereof directed the release of the petitioner's pension in accordance with the date as mentioned in the School Leaving Certificate, keeping aside the difference in the date of birth as mentioned in the Aadhar Card, which was not relevant for the purpose of such consideration.

9.8 In ***Shabana v. NCT of Delhi***[16] a learned Division Bench of the Delhi High Court in a case where the petitioner-mother sought a writ of habeas corpus for her daughter, recorded a statement made for and on behalf of UIDAI that "Aadhar Card may not be used as proof of date of birth."

9.9 Here, we may clarify that we have not expressed any view on the merits of these cases before their respective High Courts, and reference has only been made to them for the limited purpose of examining the suitability of the Aadhar Card as proof of age.

10. That being the position, as it stands with respect to the determination of age, we have no hesitation in accepting the contention of the claimant-appellants, based on the School Leaving Certificate. Thus, we find no error in the learned MACT's determination of age based on the School Leaving Certificate.

11. On another aspect, i.e., the interest awarded, we find there to be no reason recorded by the High Court in the reduction of the rate of interest from 7.5% to 6%. The High Courts cannot lose sight of the fact that compensation received by way of claims filed before MACT is either born out of injury or death of the claimant or family member of the claimants and so, the amount awarded must do justice to them. It necessarily has to be just and reasonable. In that view of the matter, we find it fit to enhance the rate of interest to 8% to be paid from the date of filing of the claim petition.

12. In view of the above discussion, we direct that the notional income to be taken shall be Rs.9000/- as found by the Tribunal; given that

15 Order dated 26th February, 2024 passed in R/ Civil Special Application No. 16484 of 2022

16 2024 SCC OnLine Del 5058. Judgment dated 24th July, 2024.

the date of birth is, *apropos* the above discussion, to be taken as 7th October 1970 and consequently, the multiplier to be applied is 14.

13. Hence, the compensation payable to the claimant-appellants in terms of the principles laid down in ***National Insurance Co. Ltd. v. Pranay Sethi***[17] is recalculated in tabulated form as under :-

Heads	MACT	HC	Final Compensation Payable
Monthly Income	Rs.9,000/- (pg.38)	Rs.5,886/-	Rs.9,000/-
Annual income	Rs.1,08,000/-	Rs.70,632/-	Rs.1,08,000/-
Future prospects	@ 30% (2,700/-) + Rs.9,000/- = Rs.11,700/- p.m.	@ 25% (1,471/-) + Rs.5,886/- Rs.7,357/- p.m.	@ 25% (2,250/-) + Rs.9,000/- = Rs.11,250/- p.m.
Personal Expenses (Deduction of 1/3)	11,700-3900 = Rs.7,800/-p.m. Rs.93,600/- p.a.	7,357 – 2,452 = Rs.4,906/-	11250-3,750 Rs.7,500/-p.m. = Rs.90,000/- p.a
Multiplier	14	13	14
Loss of dependency	Rs.93,600 x 14 = Rs.13,10,400/-	Rs.58,872 x 13 = Rs.7,65,336/-	Rs.90,000 x 14 = Rs.12,60,000/-
Loss of Estate	Rs.1,00,000/-	Rs.15,000/-	Rs.18,150/- (10% increase after 3 yrs + 3 yrs)
Funeral expenses	Rs.25,000/-	Rs.15,000/-	Rs.18,150/- (10% increase after 3 yrs + 3 yrs)
Loss of Consortium	Rs.6,00,000/-	Rs.40,000 x 3 = Rs.1,20,000/-	Rs.48,400 /- (10% increase after 3 yrs + 3 yrs) x 3 = Rs. 1,45,200/-
Total compensation	Rs.20,35,400/- + 7.5% interest	Rs.9,22,336/- + 6% interest	Rs.14,41,500/- + 8% interest from date of filing of claim petition

17 [2017] 13 SCR 100 : (2017) 16 SCC 680

14. The appeals are allowed, the total amount, i.e., Rs.14,41,500, in the interest of just compensation is rounded off to Rs.15,00,000/- with 8% interest from the date of filing of the claim petition to be released to the rightful claimants in the manner directed by the Tribunal.

Pending application(s) if any stands disposed of. No order as to cost.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 10 S.C.R. 952 : 2024 INSC 817

N. Thajudeen
v.
Tamil Nadu Khadi and Village Industries Board

(Civil Appeal No. 6333 of 2013)

24 October 2024

[Pankaj Mithal* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Issue arose whether the registered gift deed was duly acted upon and accepted and is a valid document which continue to exist despite its revocation as the donor had not reserved the right to revoke the same.

Headnotes†

Gift – Gift deed – Revocation – When attracted – Execution of gift deed by the appellant in favour of the respondent, gifting the property for the purpose of manufacturing and the same was accepted by the respondent – However, revoked after five years – Four years later, the respondent filed suit for declaration of title over the property and recovery of possession on basis of the gift deed – Suit dismissed by the trial court holding that the gift deed was not valid as it was never accepted and acted upon – However, the first appellate court and the High Court held in favour of the respondent holding that the gift deed was acted upon and in absence of any clause authorizing revocation, it could not have been revoked as alleged vide the revocation deed – Correctness:

Held: Gift deed was duly acted upon and accepted by the respondent, as such the said gift deed cannot be held to be invalid for want of acceptance – On the basis of the gift deed, the respondent acquired absolute right and title over the suit property – None of the exceptions permitting revocation of the gift deed as stated in s.126 of the 1882 Act attracted, thus, the gift deed, which was validly made, could not have been revoked in any manner – Revocation deed is void ab initio and of no consequence – Non-utilisation of the suit property for manufacturing for the purpose set out in the gift deed, and keeping the same

* Author

as vacant may be a disobedience of the object of the gift but that by itself would not attract the power to revoke the gift deed – No stipulation in the gift deed that if the suit property is not so utilised, the gift would stand revoked or would be revoked at the discretion of the donor – As regards, the suit filed by the respondent being hit by limitation, once it is held that the gift deed was validly executed resulting in the absolute transfer of title in favour of the respondent, the same is not liable to be revoked, and as such the revocation deed is meaningless especially for the purposes of calculating the period of limitation for instituting the suit – Suit is not simply for the declaration of title rather it is for a further relief for recovery of possession – When in a suit for declaration of title, a further relief is claimed, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed – Though the limitation for filing a suit for declaration of title is three years as per Art.58 but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Art.65 – Thus, the suit for the relief of possession was not actually barred and the court of first instance could not have dismissed the entire suit as barred by time – No error or illegality on part of the first appellate court and the High Court in decreeing the suit of the respondent – Transfer of Property Act, 1882 – Limitation Act, 1963 – Arts.58, 65. [Paras 10, 12, 15, 16, 19, 20, 22, 24, 26]

Case Law Cited

C. Mohammad Yunus v. Syed Unnissa and Ors. [1962] 1 SCR 67 : **AIR 1961 SC 808 – referred to.**

List of Acts

Transfer of Property Act, 1882; Limitation Act, 1963.

List of Keywords

Gift deed; Revocation; Revocation of gift deed; Revocation deed; Power to revoke gift deed; Execution of gift deed; Suit for declaration of title; Suit for recovery of possession; Acceptance; Disobedience of the object of the gift; Limitation; Transfer of title; Calculation of period of limitation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6333 of 2013

From the Judgment and Order dated 11.01.2011 of the High Court of Madras in SA No. 1905 of 1997

Appearances for Parties

Ms. T.Archana, K. K. Mani, Rajeev Gupta, Advs. for the Appellant.

Vipin Kumar Jai, Mrs. Gurinder Jai, Ms. Sanjna Dua, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pankaj Mithal, J.

1. Ms. T. Archana, learned counsel for the appellant and Mr. Vipin Kumar Jai, learned counsel for the respondent were heard at length.

2. The plaintiff-respondent, Tamil Nadu Khadi and Village Industries Board, instituted a suit for declaration of its title over the suit property measuring about 3750 square feet comprising in Survey No. 16/1 situated in Kotlambakkam Panchayat, District Cuddalore and for recovery of its possession. The said suit was filed on the basis of a registered gift deed dated 05.03.1983 allegedly executed by the defendant-appellant which was said to have been accepted by the plaintiff-respondent.

3. The suit was dismissed by the Trial Court vide Judgment and order dated 23.08.1994 primarily on the ground that the alleged gift deed was not valid as it was never accepted and acted upon. Aggrieved by the aforesaid decision, the plaintiff-respondent preferred an appeal before the District Judge which was allowed vide Judgment and order dated 05.08.1997. The appellate Court reversed the judgment and order of the court of first instance and decreed the suit. The second appeal filed by the defendant-appellant was dismissed on 11.01.2011 by the High Court. In decreeing the suit, the gift was held to be valid with a finding that it was acted upon and accepted and as such in the absence of any clause in the gift deed authorizing revocation, it could not have been revoked as alleged vide revocation deed dated 17.08.1987.

4. The delay of 207 days in filing the Special Leave Petition was condoned and the leave to appeal was granted vide order dated 05.08.2013. Thus, the civil appeal has come up for consideration before us.

5. The moot question which arises for our consideration in this appeal is whether the registered gift deed dated 05.03.1983 was duly acted upon and accepted and is a valid document which continue to exist despite its revocation on 17.08.1987 as the donor had not reserved the right to revoke the same.

6. The registered gift deed dated 05.03.1983 is Exhibit A-1. It has been executed by the defendant-appellant. A perusal of the gift deed reveals that the donor has gifted the suit property in favour of the plaintiff-respondent for the purposes of manufacturing of Khadi Lungi and Khadi Yarn etc., with the condition that the plaintiff-respondent shall not transfer the suit property for its own self-interest. The gift deed stipulates that neither the donor nor his legal heirs have any right or interest or will continue to have any right or interest in the suit property from the time and date of the gift deed. The gift deed further states that the gift is with full consent of the donor and that from the date of the gift itself, the plaintiff-respondent accepts the suit property for the use as aforesaid.

7. A simple and complete reading of the aforesaid gift deed would reveal that the gift is absolute with no right reserved for its revocation in any contingency. The only purpose stipulated therein is that the property gifted shall be used for manufacturing Khadi Lungi and Khadi Yarn etc.

8. It is worth noting that the gift deed itself states that from the date of the gift deed the suit property is accepted by the plaintiff-respondent for the purpose of manufacturing Khadi Lungi and Khadi Yarn etc., which duly proves that the gift was accepted. It was also acted upon as pursuant thereof the plaintiff-respondent had applied for mutation to the revenue authorities. In addition to the above, the plaintiff-respondent issued a memo on 16.09.1983, Exhibit A-4 which also proves that the possession of the suit property was taken over and that it proceeded to raise construction thereon.

9. Exhibits A-2 to A-4 prove that the possession of the suit property was taken over by the plaintiff-respondent on the date of the gift itself

which is sufficient evidence that the gift was acted upon and accepted by the plaintiff-respondent. The plaintiff-respondent, pursuant to the aforesaid gift deed and its acceptance has even applied to the revenue authorities for the mutation of its name which further fortifies the fact that the gift was duly accepted.

10. Considering the above, in view of the findings recorded by the first appellate Court and the High Court that the gift deed was duly acted upon and accepted by the plaintiff-respondent, the conclusion is that the said gift deed cannot be held to be invalid for want of acceptance. Thus, on the basis of the aforesaid gift deed, the plaintiff-respondent acquired absolute right and title over the suit property.

11. Now the question arises as to whether the aforesaid gift deed has been validly revoked vide revocation deed dated 17.08.1987, and if so, what would be its impact upon the rights of the plaintiff-respondent in respect of the suit property.

12. No doubt, the gift validly made can be suspended or revoked under certain contingencies but ordinarily it cannot be revoked, more particularly when no such right is reserved under the gift deed. In this connection, a reference may be made to the provisions of Section 126 of the Transfer of Property Act, 1882[1] which provides that a gift cannot be revoked except for certain contingencies enumerated therein.

13. It is important to reproduce Section 126 of the Act, which reads as follows:

> "**126. When gift may be suspended or revoked.**-
>
> The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

1 Hereinafter referred to as 'the Act'

> A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.
>
> Save as aforesaid, a gift cannot be revoked.
>
> Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

14. Section 126 of the Act is drafted in a peculiar way in the sense that it contains the exceptions to the substantive law first and then the substantive law. The substantive law as is carved out from the simple reading of the aforesaid provision is that a gift cannot be revoked except in the cases mentioned earlier. The said exceptions are three in number; the first part provides that the donor and donee may agree for the suspension or revocation of the gift deed on the happening of any specified event which does not depend on the will of the donor. Secondly, a gift which is revocable wholly or in part with the agreement of the parties, at the mere will of the donor is void wholly or in part as the case may be. Thirdly, a gift may be revoked if it were in the nature of a contract which could be rescinded.

15. In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded. Thus, none of the exceptions permitting revocation

of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is *void ab initio* and is of no consequence which has to be ignored.

16. The non-utilisation of the suit property for manufacturing Khadi Lungi and Khadi Yarns etc., the purpose set out in the gift deed, and keeping the same as vacant may be a disobedience of the object of the gift but that by itself would not attract the power to revoke the gift deed. There is no stipulation in the gift deed that if the suit property is not so utilised, the gift would stand revoked or would be revoked at the discretion of the donor.

17. In the end, we come to another limb of the argument that the suit as filed by the plaintiff-respondent is hit by limitation and as such the first appellate court and the High Court manifestly erred in decreeing the same.

18. In context with the point of limitation, the court of first instance has formulated issue no. 4 which reads as under: "Whether the suit is barred by limitation?"

19. Admittedly, the present suit for declaration and recovery of possession of the suit property was filed by the plaintiff-respondent on 25.09.1991. The court of first instance held that as the same was not filed within three years from the date of revocation of the gift deed, i.e., 17.08.1987 (Exhibit B-2), the suit is barred by limitation.

20. Once it is held that the gift deed was validly executed resulting in the absolute transfer of title in favour of the plaintiff-respondent, the same is not liable to be revoked, and as such the revocation deed is meaningless especially for the purposes of calculating the period of limitation for instituting the suit.

21. The limitation for a suit for declaration is provided under Part III of the Schedule to the Limitation Act, 1963. It is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. The limitation provided under Articles 56 and 57 of the Schedule to the Limitation Act is in respect to declaration regarding forgery

of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation Act prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

22. In the case at hand, the suit is not simply for the declaration of title rather it is for a further relief for recovery of possession. It is to be noted that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act.

23. In ***C. Mohammad Yunus vs. Syed Unnissa And Ors***[2] it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.

24. Even otherwise, though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such the court of first instance could not have dismissed the entire suit as barred by time.

25. No other point was raised and argued before us.

2 [1962] 1 SCR 67 : AIR 1961 SC 808

26. Thus, in the totality of the facts and circumstances of the case, we do not find any error or illegality on part of the first appellate court and the High Court in decreeing the suit of the plaintiff-respondent.

27. Accordingly, the appeal is dismissed as devoid of merit.

28. Pending application(s), if any, stands disposed of.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain