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Dr. Mrs. Suman V. Jain
v.
Marwadi Sammelan through its Secretary and Others

(Civil Appeal No. 1480 of 2012)

20 February 2024

[J.K. Maheshwari* and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether in the facts of the case, withdrawal of resignation dated 25.03.2003 submitted by the appellant prior to the effective date, i.e., 24.09.2003 ought to have been permitted; whether the letter of the Management dated 08.04.2003 accepting the resignation was final, binding and irrevocable and the rejection of the request for withdrawal of such resignation was in accordance with law and; in the facts of the case, what relief could be granted to the Appellant.

Headnotes

Service Law – Withdrawal of prospective resignation prior to the effective date – Permissibility:

Held: In the absence of anything contrary in the provisions governing the terms and conditions of the office or post and in the absence of any legal contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective – Prospective or intending resignation would be complete and operative on arrival of the indicated future date in the absence of anything contrary in the terms and conditions of the employment/contract – The intimation sent in writing to the Competent Authority by the incumbent employee of his intention or proposal to resign from his office/post from a future specified date can be withdrawn at any time before it becomes effective – Letter dtd. 25.03.2003 was an intimation of resignation from a prospective date 24.09.2003, which could have been withdrawn by the appellant prior to the effective date – There was no Rule/Regulation which restrained such withdrawal – There was no prior consent to the letter dtd. 08.04.2003 for accepting resignation w.e.f. 24.09.2003

* Author

as 'final, binding and irrevocable' and therefore, by using such words, the acceptance of resignation was unilateral – Withdrawal of such resignation by appellant prior to the effective date was permissible – Thus, the judgment of the House of Lords in "The Rev. Oswald Joseph Reichel Vs. The Right Rev. John Fielder" does not apply to the facts of the present case and the dismissal of the petition of appellant on similarity of facts with the said case was not correct and such findings by three fora are unsustainable – On facts, the ratio of the judgment of the Constitution Bench in Union of India and Others v. Gopal Chand Misra and Others [1978] 3 SCR applies in full force – Orders passed by the College Tribunal and the High Court set aside – Further, on peculiar facts of this case, respondent no.1 to regularize the service period of the appellant from 24.09.2003 (when they wrongly treated the appellant as having resigned) till the date of joining the duty at the new Institution as Principal on 01.10.2007 – Directions issued. [Paras 28, 12, 27, 21, 31 and 29]

Doctrines/Principles – Principle of "vinculum juris" – Discussed. [Para 24]

Case Law Cited

Union of India and Others Vs. Gopal Chand Misra and Others, [1978] 3 SCR 12 **: (1978) 2 SCC 301 – followed.**

BSES Yamuna Power Limited Vs. Ghanshyam Chand Sharma and Others, [2019] 14 SCR 546 **: (2020) 3 SCC 346 – distinguished.**

Air India Express Limited and Others Vs. Captain Gurdarshan Kaur Sandhu, [2019] 12 SCR 980 **: (2019) 17 SCC 129 – held inapplicable.**

Srikantha S.M. Vs. Bharath Earth Movers Limited, [2005] Supp. 4 SCR 156 **: (2005) 8 SCC 314;** *Balram Gupta Vs. Union of India and Another,* [1987] 3 SCR 1173 **: 1987 (Supp) SCC 228;** *Raj Kumar Vs. Union of India,* [1968] 3 SCR 857 **: AIR 1969 SC 180 – relied on.**

Century Spinning and Manufacturing Company Limited and Another Vs. The Ulhasnagar Municipal Council and Another, [1970] 3 SCR 854 **: AIR 1971 SC 1021;** *Union of India and Others Vs. M/s. Anglo Afghan Agencies*

Limited, [1968] 2 SCR 366 **: AIR 1968 SC 718;** *New Victoria Mills and Others Vs. Shrikant Arya,* **[2021] 11 SCR 750 : (2021) 13 SCC 771;** *B.L. Shreedhar and Others Vs. K.N. Munireddy and Others,* **[2002] Supp. 4 SCR 601 : (2003) 2 SCC 355 – referred to.**

The Rev. Oswald Joseph Reichel Vs. The Right Rev. John Fielder (1889), House of Lords, XIV, 249 – **held inapplicable.**

List of Acts

Maharashtra Universities Act, 1994.

List of Keywords

Prospective resignation; Withdrawal of prospective resignation; Effective date; Intending resignation; Prior to the effective date; Intention or proposal to resign; Intimation of resignation; Acceptance of resignation; Principle of "vinculum juris".

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1480 of 2012

From the Judgment and Order dated 04.07.2008 of the High Court of Bombay in AN No. 63 of 2008 & WP No. 1611 of 2004

Appearances for Parties

Varinder Kumar Sharma, Shantanu Sharma, Deeksha Gaur, Advs. for the Appellant.

Ms. Nina Gupta, Dr. Lalit Bhasin, Ms. Vaishnavi Gupta, Ms. Radhika Gupta, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Sourav Singh, Aditya Krishna, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari J.

1. The instant appeal arises out of the judgment dated 04.07.2008, passed by the Division Bench of the 'High Court of Judicature at Bombay' in Appeal No. 63 of 2008, whereby the Division Bench dismissed the appeal preferred by the appellant and confirmed the

order dated 08.08.2006 passed by learned Single Judge in Writ Petition No. 1611 of 2004. The said writ petition was filed by the appellant being aggrieved by an order dated 30.04.2004 passed by the 'Mumbai University and College Tribunal, Mumbai' (hereinafter referred to as **"College Tribunal"**) in 'Civil Appeal No. 51 of 2003'. Before the College Tribunal, the appellant filed an appeal to quash the order dated 10.09.2003 passed by respondent No. 1 "Marwadi Sammelan Trust" (hereinafter referred to as **"Trust"**) rejecting her request for withdrawal of resignation vide letter dated 09.09.2003. As such, this appeal is arising out of the orders passed by the three fora before whom the challenge was made by the appellant to the rejection of withdrawal of her prospective resignation, prior to the effective date, and the rejection of her prayer for rejoining the duties.

FINDINGS OF THE COLLEGE TRIBUNAL

2. Assailing the rejection of request for withdrawal of the prospective resignation prior to the effective date, appellant preferred an Appeal No. 51 of 2003 before the College Tribunal. The College Tribunal vide judgment dated 30.04.2004 was of the opinion that since it was not an order of dismissal, removal or termination of service, therefore, the appeal was not maintainable under Section 59(1) of the Maharashtra Universities Act, 1994 (hereinafter referred to as **"1994 Act"**) and on such, the question of limitation under Section 59(2) does not arise. The College Tribunal having found that the appeal is not maintainable, even delved into the question of withdrawal of the prospective resignation before the effective date on merits. After appreciating the facts, it was held in law that the prospective resignation can be withdrawn before the expiry of the intended date. However, on facts, it was held that there was an implied understanding between the parties' prohibiting withdrawal of resignation. Hence, according to the College Tribunal, the present case fell within the exception in the judgment of the House of Lords in the case of ***"The Rev. Oswald Joseph Reichel Vs. The Right Rev. John Fielder (1889), House of Lords, XIV, 249"***, and hence, the College Tribunal dismissed the appeal.

FINDINGS RECORDED BY THE LEARNED SINGLE JUDGE

3. The said judgment was challenged by filing a Writ Petition No. 1611 of 2004 before the Bombay High Court. Learned Single Judge considered the question as to whether a right to withdraw

the prospective resignation can be given up or abandoned? While considering the same, learned Single Judge relied upon the judgment of ***Rev. Oswald (supra)*** and after quoting the same, observed that the right to withdraw the prospective resignation is capable of being given up or waived off by the person who holds that right. Later, the Court referred to the judgment on the principle of 'estoppel' and 'waiver' and in view of the letters dated 28.03.2003, 08.04.2003 and looking to the conduct of the appellant held that the findings recorded by the tribunal on merits did not warrant any interference. Learned Single Judge failed to appreciate the aspect about the Tribunal having once found the appeal as not maintainable, as to how far it was justified in confirming the findings and examining the issue on merits.

FINDINGS OF THE DIVISION BENCH OF HIGH COURT

4. On challenge, the Division Bench confirmed those findings. In para 12 of the judgment, it was held that in normal circumstances, it was open for the appellant to withdraw her resignation before it came into effect, subject to a contract to the contrary. The Division Bench then proceeded to consider the issue as to whether the Tribunal committed any error in considering the factual aspect of the matter. The Division Bench considered the correspondence made from the very inception, i.e., letters dated 18.02.2003, 25.03.2003, 31.03.2003 and 11.8.2003 written by the appellant and letters dated 25.03.2003, 28.03.2003 and 08.04.2003 written by the management and observed that the acceptance of withdrawal of resignation was not objected for quite some time and that it reflected an understanding that the resignation was irrevocable, final and binding between the parties. Relying upon the judgment rendered in the case of ***Rev. Oswald (supra)*** and also in the case of ***"Century Spinning and Manufacturing Company Limited and Another Vs. The Ulhasnagar Municipal Council and Another, AIR 1971 SC 1021"*** and ***"Union of India and Others Vs. M/s. Anglo Afghan Agencies Limited, AIR 1968 SC 718"*** on the issue of estoppel, the findings recorded by the College Tribunal and the learned Single Judge of the High Court were affirmed.

ARGUMENTS RAISED

5. Learned counsel for the appellant placed reliance upon the judgment of ***"Union of India and Others Vs. Gopal Chand Misra and Others, (1978) 2 SCC 301"*** to contend that the decision of ***Rev. Oswald***

(supra) has been considered and distinguished in the said case. It is submitted that in the absence of any contrary provision governing the employment, prospective resignation given by an employee can be withdrawn at any time before it becomes effective. Reliance has further been placed on the judgments of ***"Srikantha S.M. Vs. Bharath Earth Movers Limited, (2005) 8 SCC 314"***; ***Balram Gupta Vs. Union of India and Another, 1987 (Supp) SCC 228***; ***"Air India Express Limited and Others Vs. Captain Gurdarshan Kaur Sandhu, (2019) 17 SCC 129"*** and ***"New Victoria Mills and Others Vs. Shrikant Arya, (2021) 13 SCC 771"***. It is pointed out that on filing of an appeal before the Tribunal, there was a stay in favour of the appellant till the disposal of the said appeal, i.e., 30.04.2004. On disposal of the appeal by the College Tribunal and during the pendency of the proceedings before the High Court, she secured another job as Principal at M.M.P. Shah College and after joining on 01.10.2007, she worked till the age of superannuation, i.e., till 31.10.2015. It is urged that the period from the date of acceptance of the resignation till the joining in the new college may be directed to be regularized on reinstatement, as otherwise, it may cause serious prejudice to the appellant in the matter of payment of pension. It is stated that, in the instant case, there was no written contract or any contrary Rule governing the service of appellant, hence, it is contended that she was entitled to withdraw the prospective resignation. Learned Counsel contested the finding of implied contract after referring to the correspondence between the appellant and the management. According to the learned counsel, the said finding was recorded without appreciating the contents of the letter in their correct perspective. The College Tribunal, learned Single Judge and the Division Bench, according to learned counsel have relied upon the case of ***Rev. Oswald (supra)*** which was a judgment based on the deed of resignation executed before the witnesses. Therefore, the ratio of the said judgment is not applicable in the facts of this case and the findings as recorded are not in conformity with the law.

6. Per contra, learned counsel for the Trust vehemently opposed the stand taken by the appellant and argued in support of the reasonings and findings of the impugned judgment. It is contended that the present case is not a case of withdrawal of resignation from a future effective date, rather it is a case where, by mutual understanding resignation was accepted by the management and the controversy

was put to rest. Learned counsel contends that in fact both parties have mutually agreed and the controversy was put at rest by accepting the resignation. Further, the doctrine of *"locus poenitentiae"* or the opportunity for withdrawal of resignation by change of mind is of no help to the appellant because the letter dated 08.04.2003 was not objected for quite some time. According to the learned counsel, from the correspondence between the appellant and the respondent it is clear that the management intended to initiate departmental inquiry and to avoid that inquiry, appellant submitted her resignation from the prospective date, which was accepted as irrevocable, final and binding. Thus, the findings recorded by the College Tribunal, learned Single Judge and the Division Bench against the appellant according to learned counsel warrants no interference. In support of the contentions, reliance has been placed on ***"BSES Yamuna Power Limited Vs. Ghanshyam Chand Sharma and Others, (2020) 3 SCC 346"***, ***"B.L. Shreedhar and Others Vs. K.N. Munireddy and Others, (2003) 2 SCC 355"***, ***Air India Express Limited* (supra)**, ***Gopal Chand Misra* (supra)**, ***Balram Gupta* (supra)** and ***The Rev. Oswald* (supra)** and it has been submitted that this appeal deserves to be dismissed.

7. Learned counsel for the Respondent Nos. 3 and 4 submits that the College was run by the Trust affiliated by "*Shreemati Nathibhai Damodar Thackersey Women's University"* (hereinafter referred to as **"SNDT University"**). As per Clause 8(3)(d) of SNDT Women's University Statute, the Governing Body of the management is empowered to accept the resignation on giving six months' notice or payment of salary and the government has no role to play in refusal or acceptance of the resignation. However, in the facts of the case, once the resignation has been accepted by the Governing Body, the findings as recorded by the Tribunal and High Court did not warrant any interference.

8. In view of the findings recorded by the three fora, and the arguments advanced by learned counsels for the parties in the facts of this case, the following questions arise for determination before this Court –

A. *Whether in the facts of the case, withdrawal of resignation dated 25.03.2003 submitted by the appellant prior to the effective date, i.e., 24.09.2003 ought to have been permitted?*

B. *Whether in the facts of the case, letter of the Management dated 08.04.2003 accepting the resignation was final, binding and irrevocable; and the rejection of the request for withdrawal of such resignation was in accordance with law?*

C. *Whether in the facts of the case, what relief could be granted to the Appellant?*

DISCUSSION ON QUESTIONS (A) AND (B)

9. For the sake of convenience and since the discussion on the facts and legal issues are common, questions (A) and (B) are taken up together and dealt with simultaneously. On perusal of the findings as recorded by the three fora, it is spelt out that relying upon the judgment of the House of Lords in the case of ***Rev. Oswald (supra)***, appeal, writ petition and the further appeal to Division Bench have been dismissed. Therefore, we first need to analyze in detail the said judgment. In the said case, the controversy arose from the conduct of the 'Vicar' who was informed by the Bishop that he must either submit to an inquiry or cease to hold his benefice. On such proposal being made by the Bishop, the Vicar executed an unconditional deed of resignation before the witnesses and sent it to the Bishop's Secretary on which the Bishop postponed the formal acceptance of Vicar's resignation until first of October. However, on tenth of June, the Vicar by another document revoked the earlier deed of resignation and communicated the same to the Bishop's Secretary on sixteenth of July. The Bishop in spite of the revocation by Vicar, signed the document and accepted the resignation from the first of October and declared the vicarage void. Aggrieved by the same, the Vicar brought an action against the Bishop and others seeking a declaration that he was a Vicar and the acceptance of the resignation by the Bishop was void. He also sought an injunction to restrain the defendants from treating the benefice as vacant. The matter reached the House of Lords in appeal, which affirmed the decision of the Court of Appeal and held that the resignation was voluntary, absolute, validly executed and irrevocable. Hence, the action brought by the Vicar was not successful.

10. The judgment of ***Rev. Oswald*** (supra) was placed before the Constitution Bench of this Court for consideration in the case of

***Gopal Chandra Misra* (supra)** and in para 69, it was distinguished on facts and observed as thus –

> *"69. Reichal is no authority for the proposition that an unconditional prospective resignation, without more, normally becomes absolute and operative the moment it is conveyed to the appropriate authority. The special feature of the case was that Reichal had, of his own free will, entered into a "perfectly binding agreement" with the Bishop, according to which, the Bishop had agreed to abstain from commencing an inquiry into the serious charges against Reichal if the latter tendered his resignation. In pursuance of that lawful agreement, Reichal tendered his resignation and did all to complete it, and the Bishop also at the other end, abstained from instituting proceedings against him in the Ecclesiastical Court. The agreement was thus not a nudum pactum but one for good consideration and had been acted upon and "consummated before the supposed withdrawal of the resignation of Mr. Reichal", who could not, therefore, be permitted "to upset the agreement" at his unilateral option and withdraw the resignation "without the consent of the Bishop". It was in view of these exceptional circumstances, Their Lordships held Reichal's resignation had become absolute and irrevocable. No extraordinary circumstances of this nature exist in the instant case."*

11. The Constitution Bench in the said case laid down the principles with regard to prospective or potential resignation and held that such resignation can be withdrawn at any time before it becomes effective. The relevant paras 28, 29, and 41 are reproduced, for ready reference, as thus –

> *"28. The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated: "I beg to resign my office as Judge, High Court of Judicature at Allahabad." Had this sentence stood alone, or been the only content of this letter, it would operate as a complete resignation*

in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read: "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977." The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date viz. August 1, 1977. For the sake of convenience, we might call this communication as a prospective or potential resignation, but before the arrival of the indicated future date it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the writer from the office of the Judge, or terminate his tenure as such.

29. *Thus tested, sending of the letter dated May 7, 1977 by Appellant 2 to the President, did not constitute a complete and operative resignation within the contemplation of the expression "resigns his office" used in proviso (a) to Article 217(1). Before the arrival of the indicated future date (August 1, 1977), it was wholly inert, inoperative and ineffective, and could not, and in fact did not, cause any jural effect.*

xxx xxx xxx xxx

41. *The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.* "

12. As per the law laid down above by the Constitution Bench, the prospective or intending resignation would be complete and operative on arrival of the indicated future date in the absence of anything contrary in the terms and conditions of the employment or contract. The intimation sent in writing to the Competent Authority by the incumbent employee of his intention or proposal to resign from his office/post from a future specified date can be withdrawn at any time before it becomes effective.

13. Now to appreciate the findings recorded by three fora, the facts of the present case are required to be discussed with precision. In the case at hand, the appellant was appointed as Principal on 01.07.1992 in "B.M. Ruia Girls and G.D. Birla Girls College" (hereinafter referred to as **"College"**), affiliated to SNDT University and run by respondent No. 1 – Trust. Her appointment was permanent, and she was discharging the duties for a decade long period. In the month of December 1998, the management of the Trust was changed, and the functioning of the school was taken over by the new management. In 2001, one Mr. Biani was appointed as Convenor and it is alleged that there was interference in the day-to-day functions and passing of lewd and inappropriate comments. Distressed by it, the appellant along with her colleagues wrote a letter dated 18.02.2003 containing some allegations and raised a protest. It should also be noticed that one of the Trustees sent a letter to appellant on 05.03.2003, stating that there are certain allegations of financial irregularities and indiscipline against her, and she was called upon to submit her justification. Appellant did not submit any response to the said letter, and vide letter dated 04.03.2003, withdrew her protest letter. On 25.03.2003, due to serious health issues, the appellant submitted an intimation of resignation to the President of Trust and informed that she wishes to resign from future date, i.e., 24.09.2003. The President on the same date informed the appellant that the Management Committee has decided to conduct a detailed enquiry by a "Fact Finding Committee". Appellant was directed to proceed on leave for two months and hand over the charge to one Mrs. Purvi Shah who shall work as "officiating Principal" with immediate effect. Shortly within three days, i.e., on 28.03.2003, the President informed the appellant to submit a fresh unconditional resignation. For ready reference, the relevant portion of the said letter is reproduced as under –

" xxx xxx xxx xxx

If you want to resign unconditionally of your own volition with immediate effect and settle the controversy on this footing, the management can perhaps consider your request to drop the enquiry subject to affirmation of managing committee. Your resignation with effect from 24.09.2003 is not acceptable to the management. Six months' notice can be waived on both sides in view of the present situation is not mandatory. If you are not willing to resign unconditionally with immediate effect, it is your choice. If you want to resign with immediate effect, the management may perhaps be persuaded to drop the proposed enquiry in larger interest of the institute.

If no reply is received from you within 48 hours from receipt of this letter, the management shall take appropriate action in the matter as deemed fit.

xxx xxx xxx xxx "

14. The appellant did not submit a fresh resignation and submitted her response to the said letter on 31.03.2003 and requested the management to consider her prayer to accept resignation from prospective date, i.e., 24.09.2003. The relevant portion of the letter specifying the reasons are reproduced as under –

" xxx xxx xxx xxx

(1) As per Government statute, I am supposed to give a 6 months' notice before resigning from the post of Principal. I would like to adhere to this government rule.

(Ref. Dated)

(2) I have a total of approximately 7 months' leave to my credit which I would like to avail of before resigning. Since I shall be receiving my remuneration from the government, there will be no financial burden on the management.

(3) Since I am already on long leave on medical advice, I shall not be in a position to attend college till I am

medically fit to do so in view of the very serious nature of my brain and spine problems.

In view of the above, I request you to accept my resignation valid from 24.09.2003. I am hopeful that the management will take a sympathetic view of my request.

xxx xxx xxx xxx ”

15. Thereafter, the management vide letter dated 08.04.2003 accepted the resignation in the following terms and replied to the appellant. The necessary relevant portion is reproduced as thus –

“ *xxx xxx xxx xxx*

I acknowledge receipt of your letter dated 31.03.2003.

The management hereby accepts your unconditional resignation with 6 months' notice, i.e., with effect from 24th September 2003 as final, binding and irrevocable. You shall be on leave till 23.09.2003. As suggested by you, the entire leave period shall be debited to your leave account.

In view of the above, the allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and the controversy is thus closed on the above footing.

We have already appointed officiating Principal. We shall proceed with the appointment of a regular Principal with effect from 24.09.2003. The process shall be started soon. During this period, you shall not represent the college before any authority or elsewhere.

xxx xxx xxx xxx ”

16. From the above correspondence, it appears that the management wanted unconditional resignation from appellant and to waive the notice period mutually, they further proposed to consider dropping the enquiry which was not accepted by the appellant. The appellant did not submit any unconditional resignation and reiterated to consider her resignation dated 25.03.2003 with effect from the future date i.e., 24.09.2003 as prayed vide response dated 31.03.2003. The management on its own accepted the said resignation from future date but unilaterally mentioned as follows: – *“hereby accept your*

unconditional resignation with six months' notice w.e.f. 24.09.2003 as final, binding and irrevocable."

17. The stand taken by the respondent that the contents of letter dated 11.08.2003 written by appellant is a sort of an implied understanding. Hence, the contents of the letter is required to be reproduced to appreciate the findings as recorded in this regard by the three fora which reads as thus –

> *" xxx xxx xxx xxx*
>
> *This is to point out to you that some office bearers of the managing committee have on certain occasions (meetings, functions etc.) including a program held in the college on 09.09.2003 made unsubstantiated, unproved, incorrect and unauthentic allegations against me publicly.*
>
> *This is contrary to your own letter dated 08.04.2003 in which it has been mentioned that "The allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and controversy is thus closed on the above footing.*
>
> *Making false allegations publicly amounts to character assassination and defamation.*
>
> *I therefore request you to ensure that henceforth members of the managing committee do not publicly or otherwise make false defamatory statements against me.*
>
> *xxx xxx xxx xxx "*

On perusal of the same, the reference to the letter dated 08.04.2003 made in the said letter of 11.08.2003, referring to the contents, particularly the lines *"The allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and controversy thus end on above footing"*, cannot be said to be an acknowledgment of unconditional resignation. The consent must be prior to the date of accepting the resignation. The contents of letter dated 11.08.2003 do not indicate that it was an acceptance of the resignation w.e.f. 24.09.2003 as final, binding and irrevocable. On the basis of the contents of the letter dated 11.08.2003, we cannot countenance the findings as recorded in impugned order,

maintaining the order of rejection of her request to withdraw the potential resignation with future date.

18. We have perused the above correspondence in detail. It does not appear to us that the resignation was submitted by the appellant to foreclose the commencement of any enquiry against her. Nothing has been placed on record to demonstrate that the resignation was submitted in lieu of the waiving of any departmental enquiry. Any correspondence of the appellant showing prior consent has also not been placed before us. The College Tribunal and the High Court recorded the finding relying on the letter dated 08.04.2003 attributing an acknowledgment by the appellant vide letter dated 11.08.2003. The Courts below have treated it to be an implied understanding or contract because the letter of 08.04.2003 was not replied to for quite some time.

19. On perusal of the contents of the resignation letter dated 25.03.2003, it is clear that the appellant requested to accept her resignation from future date w.e.f. 24.09.2003 due to medical reasons. Vide letter dated 28.03.2003, the management demanded unconditional resignation of appellant waiving the 6 months' notice period by mutual consent, which was not agreed and a reply was submitted on 31.03.2003 justifying the resignation from a prospective date. Thereafter, vide letter dated 08.04.2003 the resignation dated 25.03.2003 was accepted from a prospective date 'unilaterally' using the words "final, binding and irrevocable."

20. The judgment in ***Rev. Oswald (supra)*** was relied upon in the impugned judgment to say that facts of the instant case are similar. In our view, the case of ***Rev. Oswald (supra)*** was a case in which unconditional deed of resignation was executed before the witnesses and sent to the Bishop's Secretary with an understanding of postponing the formal acceptance until the future date. The resignation deed so executed before witnesses was unilaterally withdrawn by the Vicar, therefore, the House of Lords held that the resignation was voluntary, absolute, validly executed and irrevocable.

21. In the case at hand, the unconditional resignation waiving the requirement of six months' notice as demanded by the Trust was not submitted by the appellant. Without prior consent, the acceptance of resignation vide letter dated 08.04.2003 using the words final, binding and irrevocable was unilateral. In the subsequent letter dated

11.08.2003, acceptance of the words "final, binding and irrevocable" was not expressly made. In fact, it was in the context of the wordings of the letter dated 08.04.2003 extracted hereinabove. The averments in the letter dated 11.08.2003, which is after date of acceptance of resignation also does not disclose any implied agreement to the contents of the letter dated 08.04.2003. From above discussion, in our view, we cannot accept the said line of reasonings recorded by three fora. Therefore, in our view, the judgment of ***Rev. Oswald (supra)*** does not apply to the facts of the present case. Thus, dismissal of the petition of appellant on similarity of facts with the case of ***Rev. Oswald (supra)*** is not correct and such findings by three for are unsustainable. In our view, on the facts of this case, the ratio of the judgment of the Constitutional Bench in the case of ***Gopal Chandra Misra*** ***(supra)*** applies in full force.

22. Our said view is further fortified by the judgment of this Court in ***Balram Gupta*** ***(supra)***, wherein reiterating the view taken in ***"Raj Kumar Vs. Union of India, AIR 1969 SC 180"***, this Court held that till the resignation is accepted by the Competent Authority in consonance with the rules governing the acceptance, the employee has the *'locus poenitentiae',* but not thereafter. On the facts referred hereinabove of the present case, the withdrawal of the resignation was made two weeks prior to the effective date, i.e., on 09.09.2003, however, the appellant was having locus to withdraw the resignation prior to the effective date of resignation.

23. In a later judgment of this Court in ***Srikantha S.M.*** ***(supra)***, the principle of *"vinculum juris"* has been propounded, paras 26 and 27 whereof, are relevant therefore, reproduced as thus –

> *"26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The vinculum juris [[Ed.: vinculum (per OED): A bond of union, a tie. Usually figurative, and juris (per Black's): Of Law; Of Right]], therefore, in our*

considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993.

27. In the affidavit-in-reply filed by the Company, it was stated that resignation of the appellant was accepted immediately, and he was to be relieved on 4-1-1993. It was because of the request of the appellant that he was continued up to 15-1-1993. In the affidavit-in-rejoinder, the appellant had stated that he reported for duty on 15-1-1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs 13,511 was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court, in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside. ”

24. In the above case, on submitting the resignation, appellant was relieved on 04.01.1993 granting leave from 05.01.1993 till 13.01.1993. The effective date of resignation was prospective, i.e., 15.01.1993. The appellant therein withdrew the resignation before the effective date on 08.01.1993. The Company refused to accept such withdrawal of resignation. In the said factual context, this Court set-aside such an action of refusal to accept the withdrawal of resignation and

explained the principle of *"vinculum juris"* holding that the relationship of employer and employee did not come to an end on the date of sending an intimation of withdrawal of resignation and it would continue till the actual date of acceptance. In the said case, after quashing the action of the company, this Court held that it would be unjust to deny assignment of further work to the employee by the employer and the employee was held entitled for salary and other consequential benefits. In our view, the facts of the present case are broadly similar to the said case.

25. Learned counsel for Trust has placed reliance on the judgment of this Court in ***BSES Yamuna Power Limited*** ***(supra)***, however, the facts of the said case are different. In the said case, the resignation was treated as request for voluntary retirement however, the High Court counting the past service of petitioner held him entitled for pensionary benefits. The petitioner in the said case was regularized on 22.12.1971. He submitted resignation on 07.07.1990, which was accepted. The acceptance of the said resignation would have resulted in forfeiture of past service. The High Court has treated it as request for voluntary retirement and granted pensionary benefits. Dealing with the said issue, this Court after referring the provision of Rule 26 of Central Civil Services Pension Rules, 1972, clarified that the resignation would have entailed forfeiture of service, and such request cannot be treated as request for voluntary retirement. With the said discussion, the judgment of the High Court was set-aside. In our view, looking to the facts of this case, the said judgment is of no help to the respondent.

26. The judgment of ***Captain Gurdarshan Kaur Sandhu*** ***(supra)*** has been relied upon by the counsels for both sides, wherein this Court in paragraph 12 reaffirmed the law laid down in ***Gopal Chandra Misra*** ***(supra)*** and ***Balram Gupta*** ***(supra)***. The relevant para of the said judgment is reproduced as thus –

> *"12. It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paras 41 and 50 in Gopal Chandra Misra [Union of India v. Gopal Chandra*

> *Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303], "in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post" or "in the absence of a legal contractual or constitutional bar, a 'prospective resignation' can be withdrawn at any time before it becomes effective". Further, as laid down in Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126], "If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter. "*

In the said case, this Court carved out an exception on the basis of a legal, contractual or a constitutional bar for withdrawal of prospective resignation as referred in paragraph 50 of ***Gopal Chandra Misra (supra)***. This Court referring to the "Civil Aviation Requirements, 2009" (hereinafter referred to as **"CAR"**) made a distinction that the public interest would prevail over the interest of an employee's own interest. Interpreting Clause 3.7 of the CAR, the Court observed that without appointment of pilots for operating the flights, the public interest would be adversely affected. Thus, it was said that the guiding idea of the eventuality specified therein were the parameters required to be taken by employer in public interest and, the interest of an employee cannot be given prominence over the public interest. In our view, the said judgment has no application in the facts of instant case wherein the charge of Principal was given on the date of intimation of resignation itself, to one Mrs. Purvi Shah who was appointed as "officiating Principal" with immediate effect, directing the appellant to proceed on leave.

27. In view of the foregoing discussion, we answer question (A) and (B) in favour of appellant and hold that letter dated 25.03.2003 is an intimation of resignation from a prospective date i.e., 24.09.2003, which could have been withdrawn by the appellant prior to the effective date. There is no Rule or Regulation brought to our notice which restrains such withdrawal. There was no prior consent to the letter dated 08.04.2003 for accepting resignation w.e.f. 24.09.2003 as 'final, binding and irrevocable' which is on record and therefore, by using such words, the acceptance of resignation was unilateral. As discussed, there was no implied contract and understanding

with prior consent. Therefore, the withdrawal of such resignation by appellant prior to the effective date is permissible as per the law laid down in the case of ***Gopal Chandra Misra*** ***(supra)*** and ***Srikantha S.M.*** ***(supra)***. Learned counsel for the parties have also relied on some more case law, but there is no need to burden our judgment as the question of law as decided in those cases is one and the same. It is further required to be observed that in view of the findings recorded hereinabove, we are not examining the question about how far the Tribunal was justified in dealing with the issue on merits. In view of the above discussion, both the questions are answered in favour of appellant.

ANALYSIS OF QUESTION (C)

28. In the absence of anything contrary in the provisions governing the terms and conditions of the office or post and in the absence of any legal contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective as discussed above. The Trust had made arrangements giving officiating charge to the Principal in the place of appellant and as such there was no prejudice to public interest.

29. In the peculiar facts of this case, it is clear that the effective date of resignation was 24.09.2003. The College Tribunal granted stay on 20.09.2003 which remained operative till the final judgment was delivered by the College Tribunal on 30.04.2004. On filing of the writ petition and appeal against the order of Writ Court, it was decided against the appellant by the impugned judgment. During pendency of litigation before the High Court, the appellant got selected on the post of Principal in M.P.P. Shah College and on joining duty on 01.10.2007 worked till attaining the age of superannuation i.e., 31.10.2015. Thus, because of the setting-aside of the orders impugned and due to the superannuation, she cannot now be allowed to join the duty in the respondent No. 1 institution. Simultaneously, it would not be appropriate to give liberty to the Trust to initiate departmental action for the allegations as raised in the letter of Trustee dated 05.03.2003, especially after a lapse of more than 20 years, in particular when the appellant had already attained the age of superannuation in 2015. Therefore, while deciding the questions (A) and (B) in favour of appellant, we deem it appropriate to direct the Trust to regularize the service period of the appellant from 24.09.2003 (when they wrongly

treated the appellant as having resigned) till the date of joining the duty at the new Institution as Principal on 01.10.2007. In the facts of the case, the principle of 'no work no pay' would apply and the appellant would not be entitled to back-wages and salary for such regularized period, as she has not worked with the Trust. Thus, it would suffice to observe that in view of her deemed continuance and in view of our findings hereinabove, the period from 24.09.2003 to 01.10.2007 would be regularized by the respondent and be counted as period spent on duty for all purposes including pension.

30. In view of the above discussion, we direct that on the regularization of the period and treating the same as period spent on duty, the service tenure of the appellant, both in the institution run by Trust and in M.M.P. Shah College would be counted without any break in service. Since she would have then completed minimum 20 years' service required for pension under the Rules, she would be entitled to her pension and other retiral benefits. The retiral and pensionary benefits should be calculated and paid accordingly including the arrears of pension. The said exercise be completed within a period of four months from the date of this judgment. On failure to pay retiral benefits/pension and arrears thereof within the time as specified, the appellant shall be entitled to interest @ 7% per annum.

31. Accordingly, this appeal stands allowed in the above terms, and the orders passed by the College Tribunal and the High Court stand set-aside. Pending application(s), if any, shall also stand disposed of. No order as to costs.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.

[2024] 2 S.C.R. 638 : 2024 INSC 125

Mohd Abaad Ali & Anr.
v.
Directorate of Revenue Prosecution Intelligence

(Criminal Appeal No. 1056 of 2024)

20 February 2024

[Sudhanshu Dhulia* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

Whether benefit of s.5 r/w. ss. 2 and 3 of the Limitation Act, 1963 can be availed in an appeal against acquittal.

Headnotes

Code of Criminal Procedure, 1973 – s. 378 – Limitation Act, 1963 – s. 5 r/w. ss.2 and 3 – Appellant herein faced trial u/s. 135(1)(b) of the Customs Act – Acquitted – Appeal against the acquittal u/s. 378 of Cr.P.C. was filed before the High Court along with an application for condonation of delay – The said application was allowed – Against the said order, the appellant moved u/s. 482 of Cr.P.C. on the grounds that s.5 of the Limitation Act would not apply in case of an appeal against acquittal since the period of filing an appeal against acquittal, has been prescribed u/s. 378(5) of CrPC itself, where there is no provision for condonation of delay – Propriety:

Held: There is no doubt that where a special law prescribes a period of limitation, s.5 of the Limitation Act would have no application, subject only to the language used in the special statute – The language prescribing a period of limitation is an important factor as well – In the instant case, there is no such exclusionary provision u/s. 378 of CrPC, or at any other place in the Code – The benefit of s.5 r/w. ss.2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal – There is no force in the contentions raised by the appellants as regards the non-application of s.5 of the Limitation Act in the present case. [Para 11]

Case Law Cited

Kaushalya Rani v. Gopal Singh **[1964] 4 SCR 982**;
Mangu Ram v. Municipal Corporation of Delhi, **[1976] 2 SCR 260** **: (1976) 1 SCC 392 – referred to.**

* Author

Mohd Abaad Ali & Anr. v. Directorate of Revenue Prosecution Intelligence

Hukumdev Narain Yadav v. Lalit Narain Mishra, [1974] 3 SCR 31 **: AIR 1974 SC 480;** *Gopal Sardar v. Karuna Sardar,* [2004] 2 SCR 826 **: 2004 (4) SCC 252 – held inapplicable.**

Anjanabai v. Yeshwantrao Daulatrao Dudhe ILR **(1961) Bom 135 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Limitation Act, 1963.

List of Keywords

Exclusionary provision; Benefit of s. 5 of Limitation Act in appeal against acquittal.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1056 of 2024

From the Judgment and Order dated 20.01.2017 of the High Court of Delhi at New Delhi in CRLMA No. 13802 of 2016 and CRLLP No. 330 of 2013

Appearances for Parties

Md. Shahid Anwar, Vijay Agarwal, Chetan, Mukul, Advs. for the Appellants.

Vikramjit Banerjee, A.S.G., Mukesh Kumar Maroria, Mrs. Priyanka Das, Nachiketa Joshi, Mrs. Merusagar Samantaray, Ishaan Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

Leave granted.

1. The present appellant was one of the four accused in a case instituted, *inter-alia* under Section 135(1)(b) of Customs Act, 1962. He faced trial (S.C. No. 33 of 2009) where he was ultimately acquitted by the Additional Sessions Judge, North, Delhi vide order dated 06.10.2012.

2. Against the order of acquittal, the Directorate of Revenue Intelligence filed an appeal before the High Court on 27.06.2013. That appeal against acquittal filed under Section 378 of CrPC was accompanied by a delay condonation application, since the appeal was belated by 72 days. The delay condonation application was allowed by the Delhi High Court on 18.05.2016.

3. An application was then moved by the present appellant before the High Court under Section 482 of CrPC for recalling of the said order on grounds that Section 5 of the Limitation Act would not apply in case of an appeal against acquittal since the period of filing an appeal against acquittal, has been prescribed under Section 378(5) of CrPC itself, where there is no provision for condonation of delay. By order dated 20.01.2017 the Delhi High Court nonetheless dismissed the application for recall filed by the appellant, although no reasons were assigned while dismissing the application under Section 482.

4. This order has been challenged before us on the grounds that the High Court has committed a patent error in allowing the belated appeal against acquittal filed by public servant as the High Court has no powers to condone the delay since the provisions of the Limitation Act would not be applicable as Section 378 is a self-contained Code as far as limitation is concerned since there is no period prescribed in the Limitation Act for filing a appeal against acquittal.

5. In support of his argument, the learned counsel for the appellant Mr. Vijay Kumar Aggarwal, has relied upon the judgment of this Court in ***Kaushalya Rani v. Gopal Singh [1964] 4 SCR 982***. The facts of Kaushalya Rani are as follows: Kaushalya Rani had filed a case against one Gopal Singh under Section 493 IPC and alternatively under Section 496 IPC, alleging that Gopal Singh had deceitfully made her believe that he is her lawfully married husband and thus had sexual intercourse with her. Gopal Singh faced a trial in which he was acquitted by the Trial Court and an appeal against acquittal was filed by Kaushalya Rani under the Code of Criminal Procedure, 1898 (hereafter referred to as the "old CrPC"), under Section 417. The appeal was filed beyond the period of 60 days as provided under sub-section (4) of Section 417, i.e., the then prevailing Criminal Procedure Code. The appeal was dismissed on grounds of limitation by the Punjab & Haryana High Court. This matter was thus taken by Kaushalya Rani before this Court. The case was filed

before this Court on a certificate of fitness granted by the Punjab & Haryana High Court and the question for determination before this Court was whether the provisions of Section 5 of the Limitation Act, 1908 (i.e. Act 9 of 1908 i.e. the old Limitation Act) would apply to an application for special leave to appeal from an order of acquittal under sub-section 3 of Section 417 of the old CrPC.

6. This Court on its interpretation of sub-section 4 of Section 417[1] of old CrPC and Section 29(2) of the old Limitation Act i.e. Indian Limitation Act, 1908 held that Section 5 of the Limitation Act would not apply in an application for leave to appeal under sub-section 3 of Section 417 of the old CrPC before High Court, in as much as Section 417 is a special code in itself and the limitation prescribed therein is 60 days and the court has no power to relax such a limitation to condone the delay. Relying upon a full Bench judgment of the Bombay High Court [***Anjanabai** v. **Yeshwantrao Daulatrao Dudhe ILR (1961) Bom 135***] which held that Section 417(4) was special law within the meaning of Section 29(2) of the Limitation Act. Thus, the appeal was dismissed while relying on Section 29(2) of the old Limitation Act.

For ready convenience of this Court, Section 29(2) of the old Limitation Act is reproduced below:

> *"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any*

1 Section 417 of the old CrPC is as follows:
417 (1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of a acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(3) If such an order of acquittal is passed in any case instituted upon the complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(4) No application under sub-section (3) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(5) If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

suit, appeal or application by any special or local law—

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

A perusal of the aforesaid provision clearly shows that where there is a special or local law prescribing the period of limitation in any suit, appeal or application which is different from the period of limitation prescribed in the first schedule of the Limitation Act, the applicability of the Limitation Act will be only as regarding Section 4 and Sections 9 to 18 & 22 of the Limitation Act. The meaning thereby afforded is that Section 5 of the old Act was expressly excluded in cases where special law or local law provides for a period of limitation. The learned counsel for the appellant would argue that although in the present case, we are dealing with present Criminal Procedure Code, 1973 and the new Limitation Act, 1963 however, the provisions in the present Code for appeal against acquittal i.e., under Section 378 of CrPC are of similar nature regarding the prescription of a period of limitation for filing an appeal and therefore the law as laid down by ***Kaushalya Rani*** (supra), would apply in the present case as well.

7. This submission of the learned counsel is not correct. Subsequent to the decision of this Court in ***Kaushalya Rani*** *(supra),* this Court in ***Mangu Ram v. Municipal Corporation of Delhi (1976) 1 SCC 392***, while dealing with a similar problem of limitation (in an appeal against acquittal), distinguished Kaushalya Rani as ***Kaushalya Rani*** was dealing with the old Criminal Procedure Code,1898 and the old Limitation Act, 1908, where provisions were differently worded. Under Section 378 of the new CrPC read with Section 29(2) of the Limitation Act, 1963 though a limitation is prescribed, yet Section 29(2) of 1963 Act, does not exclude the application of Section 5. Section 29(2) of Limitation Act, 1963 reads as under:-

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period

> prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."
>
> *(emphasis supplied)*

The crucial difference here is of applicability of Section 5 of Limitation Act. In both the Limitation Acts, i.e. Limitation Act of 1908 and the present Limitation Act of 1963, the provision of extension of time of limitation is given in Section 5 of the two Acts. Whereas 1908 Act specifically states that Section 5 will not apply when the period of limitation is given in special Acts, the 1963 Act makes Section 5 applicable even in the special laws when a period of limitation is prescribed, unless it is expressly excluded by such special law. A comparative provision of Section 29(2) in the two Acts is given below:-

Section 29(2) of the Old Limitation Act of 1908	**Section 29(2) of the new Limitation Act of 1963**
(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law: (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and (b) the remaining provisions of this Act shall not apply.	(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

As ***Kaushalya Rani*** (supra) was decided under provisions of old Limitation Act of 1908, this Court in ***Mangu Ram*** (supra) distinguished ***Kaushalya Rani*** and held as under:

> "There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani case the time limit of

> sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.
>
> *(emphasis supplied)*

8. Mr. Vijay Kumar Aggarwal, learned counsel would then rely upon two cases, namely, ***Hukumdev Narain Yadav v. Lalit Narain Mishra [AIR 1974 SC 480]*** and subsequently ***Gopal Sardar v. Karuna Sardar [2004 (4) SCC 252]***.

9. Both the above mentioned cases were dealing with special laws where a period of limitation was prescribed. Whereas ***Hukumdev Narain Yadav*** *(supra)* relates to Election matter where Section 81 of the Representation of People's Act, 1951, prescribes a limitation of 45 days for filing an Election Petition, ***Gopal Sardar*** *(supra)* dealt with the right of pre-emption under Section 8 of the West Bengal Land

Reforms Act, 1955 which again prescribed three months limitation for a *bargadar* and four months for a '*raiyat'* to make an application for pre-emption to the concerned authorities.

10. There can be no quarrel with the argument that where a special law prescribes a period of limitation, Section 5 of the Limitation Act would have no application, subject only to the language used in the special statute. The language prescribing a period of limitation is an important factor as well. For example, in the Representation of Peoples Act, 1951 Section 81 prescribes limitation for presenting an election petition as under :-

> "81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 207 [sub-section (1)] of Section 100 and Section 101 to the 208 [High Court] by any candidate at such election or any elector 209 [within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].
>
> Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.
>
> (2) [Omitted]
>
> (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [* * *] and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 86(1) further says that in case an election petition is filed beyond a period of 45 days it shall be dismissed. Section 86(1) reads as under:-

> "86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.
>
> Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98."

The election statute thus expressly bars filing of an election petition beyond 45 days. The language of the statute, leaves no ambiguity in this regard. "The High Court shall dismiss an election petition", is the language given in the statute. Simply put the Court has no choice but to dismiss an election petition, which is filed beyond a period of 45 days.

There is no scope for condoning the delay in an election matter. Therefore in ***Hukumdev Narain Yadav*** *(supra)* it was stated as under:-

> "17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition….. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117.
>
> *(emphasis supplied)*

11. Later, while dealing another special statute *viz* West Bengal Land Reforms Act, 1955 this Court in ***Gopal Sardar*** (supra) had an occasion to comment on ***Mangu Ram*** (supra) where it says that the

decision of ***Hukumdev Narain Yadav*** (supra) was not brought to the notice of this Court when ***Mangu Ram*** (supra) was decided (we have discussed Mangu Ram in the preceding paragraphs). Much reliance has been placed by the learned counsel for the appellant Shri Agarwal on this observation of the Court.

Hukumdev Narain Yadav as we have already discussed above relates to election laws which falls in an entirely different category, as far as period of limitation is concerned. A bare comment of this Court that a case was not considered would not mean that the entire findings of the court arrived in ***Mangu Ram*** (supra) are wrong. We must appreciate Gopal Sardar for what it decides and the facts and the context on which this decision is based. What were the facts of ***Gopal Sardar*** and what were the findings of this Court? In ***Gopal Sardar***, this Court was again dealing with the period of limitation relating to West Bengal Land Reforms Act, 1955 and the application of Section 5 of the Limitation Act. Section 8 of the West Bengal Land Reforms Act, 1955 gave certain right to a "raiyat" for transfer of land of co-sharer, exercising his right of pre-emption but this right had to be exercised "within a period of 4 months of the date of cause of action". The same Act in its Section 14-'O' and Section 19 while discussing the period of appeal provides that Section 5 of the Limitation Act would apply. This Court thus came to a finding that though Section 5 of the Limitation Act would apply in the case of appeal but it will not apply in a case when the proceedings itself had to be initiated in form of suit under Section 8 of the Act which had to be done within a period of 4 months.

Section 8 of the West Bengal Land Reforms Act, 1955 reads as under:

> *"**8. Right of purchase by co-sharer or contiguous tenant.—(1)** If a portion or share of a plot of land of a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice given under sub-section (5) of Section 5, or any raiyat possessing land adjoining such plot of land, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the*

plot of land to him, subject to the limit mentioned in Section 14-M on deposit of the consideration money together with a further sum of ten per cent of that amount.

This is what this Court said on these two provisions:

> ***"19.** We conclude that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of pre-emption conferred under Section 8 is a statutory right besides being weak; it has to be exercised strictly in terms of the said section and consideration of equity has no place. On the facts found in these appeals, applications under Section 8 were not made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal."*

Neither ***Hukumdev Narain Yadav*** nor ***Gopal Sardar*** would help the case of the appellant as both these cases deal with special laws which prescribed a period of limitation and the expression of the language contained in the law is very clear that under no circumstances can such a limitation be condoned. The relevant provisions have already been discussed earlier.

In the present case, there is no such exclusionary provision under Section 378 of CrPC, or at any other place in the Code. The benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal. There is no force in the contentions raised by the appellants as regards the non-application of Section 5 of the Limitation Act in the present case and the appeal is therefore dismissed.

12. The interim order dated 20.03.2017 passed by this Court is hereby vacated. The Registry is hereby directed to apprise these proceedings to the Delhi High Court so that the matter may continue.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal dismissed.

[2024] 2 S.C.R. 650 : 2024 INSC 121

The Tehsildar, Urban Improvement Trust and Anr.
v.
Ganga Bai Menariya (Dead) Through Lrs. and Others

(Civil Appeal No. 722 of 2012)

20 February 2024

[Vikram Nath and Rajesh Bindal,* JJ.]

Issue for Consideration

Civil Appeal No. 722 of 2012

The respondents-plaintiffs claimed that they had been granted patta (lease) of the land by Gram Panchayat in the year 1959 and on the basis thereof, they were continuing in possession. However, the land was still being shown in the ownership of the Government. A civil suit was filed by the respondents for permanent injunction and for ownership and possession of the suit land. The suit was filed as a notice was issued by the appellants u/s. 92A of the Rajasthan Urban Improvement Act, 1959. Whether a suit simpliciter for injunction was maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

In the aforesaid bunch of appeals and the Special Leave Petition, the High Court had disposed of all the appeals, relying upon its earlier judgment dated 14.07.2009 in S.B. Civil Second Appeal No.6/2008 titled as The Tehsildar, Urban Improvement Trust and another v. Late Smt. Ganga Bai Menariya through legal representatives. The aforesaid appeal decided by the High Court is subject matter of consideration before this Court in C.A. No.722 of 2012.

Headnotes

Rajasthan Urban Improvement Act, 1959 – In C.A. No.722 of 2012, the trial Court found that the respondents-plaintiffs were found to be in illegal possession of the land and were not entitled to the injunction prayed for – It was specifically noticed that the suit had not been filed for declaration as it was merely for injunction and the encroachers on the land were not found entitled to the relief of injunction – First Appellate Court reversed the findings of the trial Court and the suit was

* Author

decreed – The High Court upheld the judgment and decree of the First Appellate Court – Propriety:

Held: The fact remains that no revenue record was produced by the respondents-plaintiffs to show that the land in question was ever mutated in their favour – In the evidence led, they were found to be in possession as even the case set up by the appellants is that they issued notice to the respondents-plaintiffs u/s. 92A of the 1959 Act – The respondents-plaintiffs while filing the civil suit did not implead the Gram Panchayat as party – In such circumstances, the respondents-plaintiffs were required to prove the document as the competence of the Gram Panchayat to lease out the land itself was in question – In the revenue record produced on record by the appellants, it is shown that the land in question was shown in ownership of Government – In the light of the aforesaid stand and the evidence led on record by the appellants-defendants, it was incumbent on the respondents to have proved their title on the land, which they failed to establish – Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants – In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction – In opinion of this Court, the judgment of the High Court suffers from patent illegality – Consequently, the judgment and decree of the First Appellate Court as well as the High Court are set aside and that of the Trial Court is restored. [Paras 20,21,21.1,21.2]

Rajasthan Panchayat (General) Rules, 1961 – r. 266 – In C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C) No.25200/2013, civil suits were filed claiming that the land in question was leased out to the plaintiffs by the Gram Panchayat – In support of the plea, the plaintiff/ respondent placed on record the document dated 27.08.1985, the lease deed – However, the same was not proved – The trial Court came to the conclusion that no case was made out by the plaintiff/respondent – Hence, the suit for permanent injunction was dismissed – First Appellate Court passed the decree of permanent injunction – Same was upheld by the High Court – Propriety:

Held: As recorded by the Trial Court, the respondents/plaintiffs had not been able to prove the document on the basis of which they were claiming a right of possession of the property in question – Even if the aforesaid document is considered, the sale was clearly violative of Rule 266 of the 1961 Rules, under which aforesaid alleged lease

deed/sale deed has been issued in favour of the respondents/plaintiffs – In terms of Rule 266 of the 1961 Rules, only in certain specified situation, the land could be transferred by way of sale on private negotiation, namely, where any person has a plausible claim of title to the land and auction may not fetch reasonable price or it may not be the convenient mode for disposal of land or where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes – Another situation envisaged is where the person is in possession of land for more than 20 years but less than 42 years – Nothing was produced on record to show that the due process required for leasing out/sale of the land in favour of the respondents/plaintiffs by private negotiation was followed – Gram Panchayat from whom the land was taken was not impleaded as party to admit or deny the allegations made by the respondents/plaintiffs in the plaint – The impugned judgments of the High Court as well as the First Appellate Court are set aside and that of the trial Court is restored – Resultantly, the suits are dismissed. [Paras 29, 30]

Case Law Cited

Union of India v. Brahim Uddin and another, [2012] 8 SCR 35 **: (2012) 8 SCC 148;** *Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and ors.,* [2008] 5 SCR 331 **: (2008) 4 SCC 594 – referred to.**

List of Acts

Rajasthan Urban Improvement Act, 1959; Indian Evidence Act, 1872; Rajasthan Panchayat (General) Rules, 1961.

List of Keywords

Lease of land by Gram Panchayat; Suit for permanent injunction; Title of the property; Proving the title of the property while praying for injunction.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 722 of 2012

From the Judgment and Order dated 14.07.2009 of the High Court of Judicature for Rajasthan at Jodhpur in SBCSA No.6 of 2009

With

Civil Appeal Nos. 8977 of 2012, 468, 524, 467 of 2013 And 2687 of 2024

The Tehsildar, Urban Improvement Trust And Anr. v. Ganga Bai Menariya (Dead) Through Lrs. And Others

Appearances for Parties

S. Niranjan Reddy, C. S. Mohan Rao, Sr. Advs., Ms. Aruna Gupta, Ramesh Allanki, Lokesh Kumar Sharma, Syed Ahmad Naqvi, Ms. Palak, Advs. for the Appellants.

V.K.Shukla, Sr. Adv., Rishabh Sancheti, Ms. Padma Priya, Anchit Bhandari, Suyash Jain, Chirag Kalani, Karan Bhootra, Garvit Sharma, K. Paari Vendhan, T. Mahipal, Vivek Gupta, Mrinmay Bhattmewara, Manish Mogra, Ankit Verma, Dashrath Singh, Gp. Capt. Karan Singh Bhati, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. Leave granted in S.L.P.(C)No.25200 of 2013.

2. This order will dispose of a bunch of appeals as common issues are involved.

Civil Appeal No. 722 of 2012

3. In the case in hand, a Civil Suit[1] was filed by the respondents for permanent injunction and for ownership and possession of the suit land. The Trial Court[2] dismissed the suit, however, First Appellate Court[3] accepted the appeal and decreed the suit restraining the defendants therein from interfering in the possession of the plaintiffs in the suit land. The appeal preferred before the High Court[4] by the present appellants was dismissed. It is the aforesaid judgment[5], which is impugned before this Court.

4. The respondents filed the suit on 10.05.1999 for permanent injunction against the appellants and also claimed ownership and possession of the suit land, situated at Mauja Madri, Savina Road, measuring 35x38 i.e., 1,330 square yards on which a room measuring 20x30 feet had been constructed. It was claimed that the suit land was

1 Civil Sut Case No. 153/99ED

2 Civil Judge (K-Kha) City (South) Udaipur

3 Additional District Judge, Udaipur

4 Rajasthan High Court at Jodhpur

5 Judgement dated 14.07.2009 in Civil Second Appeal No. 06 of 2009

purchased by the respondents-plaintiffs from Panchayat Titardi on 13.12.1959 and a boundary wall was constructed in the year 1960. The suit was filed as a notice was issued by the appellants under Section 92A of the 1959 Act[6].

5. The stand taken by the appellants in the written statement was that the land in question is a Government land (Bilanam Sarkar) earmarked for grazing cattles (gochar land), which was forming part of Khasra No. 1163 (old Khasra No. 838) in village Mauza Madri Menaria, Tehsil Girva. The Gram Panchayat, Titardi was not competent to grant lease in respect to the aforesaid land, especially when it was ear-marked for grazing cattles. Notice was issued on receiving information that the respondents-plaintiffs had encroached upon the land. It was also pleaded that Gram Panchayat, Titardi was a necessary party but had not been impleaded. In the revenue record, the land was still shown to be owned by the Government. In case the claim of respondents-plaintiffs was that it was given on lease to them, there was no mutation entered on the basis thereof.

6. The Trial Court framed six issues as extracted below:

> "1. Whether the land mentioned in para 1 of the suit is the land and house in the ownership and possession of the plaintiff? Plaintiff
>
> 2. Whether the defendants forcibly wanted to demolish the plaintiff's house? Plaintiff
>
> 3. Whether the plaintiff has tried to unauthorisedly acquire the land which is in the ownership of Nagar Vikas Pranyas? Defendant
>
> 4. Whether in absence of pleading the Gram Panchayat Titardi as necessary party, the suit of the plaintiff is not maintainable? Defendant
>
> 5. Whether the Gram Panchayat Titardi was not authorized to issue the patta in favour of the plaintiff, the patta issued in favour of plaintiff is forged? Defendant

6 Rajasthan Urban Improvement Act, 1959

6. Whether without declaration suit for injunction filed by the plaintiff is not maintainable? Defendant"

7. Issues No. 1 to 3 and 5, being inter-related, were decided together. The respondents-plaintiffs had not been able to make out the pleaded case on the basis of evidence led by them and the same were decided against them. Issue No. 4 was decided against the plaintiffs and in favour of the defendants and so was the finding recorded on issue No. 6. Finally, the Trial Court found that the respondents-plaintiffs were found to be in illegal possession of the land and were not entitled to the injunction prayed for. It was specifically noticed that the suit had not been filed for declaration as it was merely for injunction and the encroachers on the land were not found entitled to the relief of injunction.

8. In appeal before the First Appellate Court by the respondents, the findings recorded by the Trial Court were reversed and the suit was decreed. Even the issue regarding non-impleadment of Gram Panchayat, Titardi as necessary party in the suit was reversed. So was the position with regard to maintainability of the suit simpliciter for injunction without praying for relief of declaration. This is despite the fact that the respondents-plaintiffs had claimed their title or legality of possession on the land from the Gram Panchayat, which was not impleaded.

9. The High Court upheld the judgment and decree of the First Appellate Court in an appeal filed by the present appellants. The High Court noticed that allotment of land in favour of the respondents-plaintiffs in the year 1959 was proved with the evidence of two witnesses, who were members of the Gram Panchayat at the relevant time. The High Court also recorded that patta (lease) is in existence, which was granted by a statutory body, Gram Panchayat, Titardi. The respondents-plaintiffs were entitled to decree of permanent injunction. The suit simpliciter for injunction was held to be maintainable without seeking declaration. The High Court found that no substantial question of law was involved in the second appeal.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

10. In the aforesaid bunch of appeals and the Special Leave Petition, in which leave was granted, the High Court had disposed of all the appeals, merely relying upon its earlier judgment dated 14.07.2009

in S.B. Civil Second Appeal No.6/2008 titled as ***The Tehsildar, Urban Improvement Trust and another v. Late Smt. Ganga Bai Menariya through legal representatives.*** The aforesaid appeal decided by the High Court is subject matter of consideration before this Court in C.A. No.722 of 2012, which is being dealt with in the present judgment.

ARGUMENTS

Civil Appeal No. 722 of 2012

11. Learned counsel for the appellants submitted that the findings recorded by the First Appellate Court, as upheld by the High Court, are erroneous. In fact, the judgment and decree of the Trial Court was passed while properly appreciating the legal position and the evidence produced on record. It is a case in which the respondents-plaintiffs claimed that they had been granted patta (lease) of the land by Gram Panchayat, Titardi in the year 1959 and on the basis thereof, they were continuing in possession. However, the fact remains that the land was still being shown in the ownership of the Government. It was ear-marked for grazing cattles (pasture land). The Gram Panchayat did not have any authority to lease out the same. It cannot even change user of the land. Simpliciter a suit for permanent injunction was filed without seeking a declaration of the rights vested in the respondents-plaintiffs on the basis of documents produced by them on record, which was not maintainable. Gram Panchayat, Titardi from which the respondents-plaintiffs were claiming rights in the property, was not even impleaded as party. The patta (lease) in favour of the respondents-plaintiffs was sought to be proved merely by producing two witnesses, who were claimed to be the members of the Panchayat at the relevant time but not signatory to the document. The record from Gram Panchayat was not summoned. The High Court had failed to frame any substantial question of law.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

12. Additional argument raised in the bunch of other appeals was that the Gram Panchayat had granted patta (lease) in favour of the respondents therein in contravention of Rule 266 of the 1961 Rules[7]

7 The Rajasthan Panchayat (General) Rules, 1961

in terms of which the panchayat land could be sold by way of private negotiation only in case it was not possible to fetch reasonable price if the land was put to auction. Specific reasons were required to be recorded. The respondents-plaintiffs being in illegal possession of the land, notices were rightly issued for their eviction. It was after following the due process of law, which could not be challenged merely by filing a suit for injunction.

13. On the other hand, learned counsel for the respondents submitted that it was claimed that the respondents-plaintiffs had title of the property by way of lease executed by Gram Panchayat, Titardi on 13.12.1959. It is claimed by the appellants that chunk of land was transferred by District Collector vide order dated 15.4.1989 to the Urban Improvement Trust for extension of abadi. It was said to be Government bilanam. There was no reference of gochar land, as is sought to be claimed by the appellants. Notice was issued to the respondents more than 19 years after the land was transferred to Urban Improvement Trust. As the respondents wanted to protect their right in the land as also possession, the suit was filed merely for permanent injunction as they had title of the property on the basis of patta executed by Gram Panchayat in their favour. There was no need to file a suit for declaration. The patta (lease) executed by the Gram Panchayat was exhibited. It was issued by the Sarpanch in the presence of two witnesses. Both were examined as PW4 and PW5. The documents being more than 30 years old, there was presumption available under Section 90 of the 1872 Act[8]. There is no error in the judgment and decree passed by the First Appellate Court, as upheld by the High Court.

14. It was further argued that on 17.10.2012, the State Government introduced a Scheme, whereby land in possession of persons prior to the year 1965 was being regularised. In terms of that, 23.43 hectares of land in village Paneriyo Ki Madari was transferred by the appellants to Municipal Council, Udaipur vide letter dated 29.01.2013. NOC was also issued by Municipal Council, Udaipur on 04.04.2013 for issuance of patta under the State Grants Act, 1961 to the persons in possession of the land prior to 01.01.1965. Thus, in view of this subsequent developments, the appellants have nothing

8 Section 90 of the Indian Evidence Act, 1872

to do with the land in question. Number of pattas had already been issued in favour of occupants of the land. In fact, for part of the land in question, pattas have already been issued on 21.10.2012. The aforesaid Scheme i.e. known as '*Parshashan Shehron Ka Sang Abhiyan, 2012'.* It continued from time to time in the State till the year 2020-21.

15. It was further submitted that a clarification was issued by the State Government on 21.04.2022 regarding the Scheme of 2021 for issuance of free hold patta. As per the aforesaid clarification, the patta may be issued in favour of last purchaser in the absence of link document, who purchased land after 31.12.2018.

16. Heard leaned counsel for the parties and perused the relevant referred record.

DISCUSSION

Civil Appeal No. 722 of 2012

17. In the case in hand, the respondents claimed that they were given the land measuring 1330 square yards on lease by Gram Panchayat, Titardi on 13.12.1959. It is claimed that they were in possession of the land ever since then. The fact remains that no revenue record was produced by the respondents-plaintiffs to show that the land in question was ever mutated in their favour. In the evidence led, they were found to be in possession as even the case set up by the appellants is that they issued notice to the respondents-plaintiffs under Section 92A of the 1959 Act. To prove the lease in their favour, the respondents-plaintiffs had produced in evidence Ex.1, claimed to be lease deed dated 13.12.1959 executed by the Gram Panchayat in favour of late Ganga Bai widow of Jai Shankar Menaria. In the stand taken by the appellants, the land being reserved for grazing cattles could not possibly be leased out by the Gram Panchayat.

17.1. On one side, the plea sought to be taken by the respondents is that the document being more than 30 years old, there was presumption of truth in terms of Section 90 of the 1872 Act. This section provides that if the document is more than 30 years old and is being produced from proper custody, a presumption is available to the effect that signatures and every other part of such document, which purports to be in

the handwriting of any particular person, is in that person's handwriting and in case a document is executed or attested, the same was executed and attested by the persons by whom it purports to be executed and attested. This does not lead to a presumption that recitals therein are correct. (Reference can be made to the judgment of this Court in **Union of India v. Brahim Uddin and another**[9].

18. Nothing was referred to by learned counsel for the respondents from the record to show the reasons for producing copy of the document in Court and not summoning the record from the Gram Panchayat to prove execution of the alleged lease in their favour. The contents of the documents were required to be proved. Effort was made to prove the document by producing two witnesses. (PW4 and PW5 stated that the lease was granted in favour of the respondents). It was signed by the Sarpanch. There was no material on record to show that, except the oral statements of aforesaid two witnesses that at the relevant time, namely, in the year 1959, they were members of the Gram Panchayat otherwise the document Ex.1 (lease deed) placed on record by the respondents-plaintiffs as such does not contain their signatures. The document only contains signatures of some Sarpanch who had attested the same stating to be true copy. It was claimed that at the relevant time, Sarpanch was Kushal Singh, however before the evidence could be led, he expired and hence could not be produced in evidence. If the respondents-plaintiffs wished to prove the contents of the document in question, they could very well summon the record from the Gram Panchayat when a specific plea taken by the appellants was that the document was forged and the Gram Panchayat did not have competence to lease out the land.

19. The respondents-plaintiffs while filing the civil suit did not implead the Gram Panchayat as party. In such circumstances, the respondents-plaintiffs were required to prove the document as the competence of the Gram Panchayat to lease out the land itself was in question. The Gram Panchayat could have filed the written statement admitting or denying execution of the lease deed and place complete facts before the Court as per records.

9 [2012] 8 SCR 35 : (2012) 8 SCC 148

20. In the revenue record produced on record by the appellants, it is shown that the land in question was shown in ownership of Government (Bilanam Sarkar). Its new Khasra Number was 1163 and old Khasra Number is 838 in Mauza Madri Menaria, Tehsil Girva. As per jamabandi Ex. A-1, the land forming part of Khasra No. 838 was shown to be non-agricultural reserved for grazing cattles (shamlat deh).

21. In the light of the aforesaid stand and the evidence led on record by the appellants-defendants, it was incumbent on the respondents to have proved their title on the land, which they failed to establish. As per the stand of the appellants, the respondents were encroachers upon the land for which notice under Section 92A of the 1959 Act was issued to them. The same was replied to by the respondents stating therein that they have patta executed in their favour by the Gram Panchayat.

    21.1. Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. Reference can be made to the judgment of this Court in **Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and ors.**[10]

    21.2. In view of aforesaid discussions, in our opinion, the judgment of the High Court suffers from patent illegality. Consequently, the judgment and decree of the First Appellate Court as well as the High Court are set aside and that of the Trial Court is restored. As a consequence, the suit filed by the respondents is dismissed.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

22. In the aforesaid bunch of appeals, Radheshyam son of Bhagwati Prasad and his family members, as detailed below filed five civil suits praying for permanent injunction:

10 [2008] 5 SCR 331 : (2008) 4 SCC 594

The Tehsildar, Urban Improvement Trust And Anr. v. Ganga Bai Menariya (Dead) Through Lrs. And Others

Case No. and Title in Supreme Court of India	Case No. & title in the Trial Court	Case No.& title in the lower Appellate Court
C.A. No.524/2013 Urban Improvement Trust v. Radhey Shyam Tripathi	Original Civil Suit No.60/2002-Radheshyam v. Secretary, Urban Improvement Trust	Civil Appeal No.01/2004 (72/03)-Radheshyam v. Secretary, Urban Improvement Trust
C.A. No.8977/ 2012 Nagar Vikas Pranyas v. Sumitra Devi	Original Civil Suit No.61/2002-Sumitra Devi v. Secretary, Nagar Vikas Pranyas	Civil Appeal No.03/2004 (75/03)-Sumitra Devi v. Secretary, Nagar Vikas Pranyas
C.A.No.467/2013 Urban Improvement Trust v. Vipin Kumar S/o Radhey Shyam Tripathi	Original Civil Suit No.78/2002-Vipin Kumar v. Secretary, Urban Improvement Trust	Civil Appeal No.02/2004 (74/03)-Vipin Kumar v. Secretary, Urban Improvement Trust
C.A.No.468 of 2013 U.I.T. Udaipur v. Sumitra Devi W/o Radhe Shyam Tripathi	Original Civil Suit No.60/2002-Sumitra Devi v. Secretary, Urban Improvement Trust	Civil Appeal No.04/2004 (76/03)-Sumitra Devi v. Secretary, Urban Improvement Trust
C.A. arising out of S.L.P.(C) No.25200/2013 Urban Improvement Trust v. Radhey Shyam Tripathi s/o Bhagwati Prasad Tripathi	Original Civil Suit No.62/2002-Radhey Shyam v. Secretary, Urban Improvement Trust, Udaipur	Civil Appeal No.11/2004 (73/03)-Radhey Shyam v. Secretary, Urban Improvement Trust, Udaipur

22.1. The Trial Court decided the suits vide judgment and decree dated 30.04.2008. The First Appellate Court decided the appeals vide judgment dated 19.04.2004.

22.2. Civil Suits were filed claiming that the land in question was leased out to the plaintiffs on 27.08.1985 (as is evident from

the judgment of the Trial Court). However, in the documents annexed with the I.A.No.148204 in C.A. No.8977 of 2012, the transaction is shown to be sale. Though no prayer was made in the suit seeking a declaration as owner of the land as it was simpliciter for permanent injunction still the Trial Court framed the issue 'whether the disputed plot is of the ownership and possession of the plaintiff'. The second issue frame was 'as to whether the plaintiff is entitled to permanent injunction'. Both the issues were taken up together. While discussing the Issue no.1, the court recorded the ownership part was not to be gone into as it was merely a suit for permanent injunction but still it was to be considered as to whether the possession was valid or not. In support of his plea the plaintiff/respondent placed on record the document dated 27.08.1985, the lease deed. However, the same was not proved. The court also considered about the right of the Gram Panchayat to lease out the land with reference to the Rules applicable therefor. Finally, the Trial Court came to the conclusion that no case was made out by the plaintiff/respondent. Hence, the suit for permanent injunction was dismissed by the Trial Court on 30.04.2003.

22.3. The judgment and decree in all the suits were challenged by filing appeals. The First Appellate Court without considering the fact as to whether the alleged lease deed Ext.E-1 was proved by the respondent-plaintiff in accordance with law, had shifted the burden on defendants to prove otherwise. The issue regarding competence of the Gram Panchayat to lease out the land was just brushed aside. The appeal was accepted and decree of permanent injunction was passed by the First Appellate Court against which the appeal(s) were filed by the present appellants before the High Court. The same was disposed of in terms of the impugned judgment, though the issues were not identical.

22.4. It is admitted by all the respondents/plaintiffs in the bunch of appeals that the individual lease deeds were issued in their favour on 27.08.1985 by the Gram Panchayat.

22.5. The stand of the appellants is that the lease deeds were executed in contravention of Rule 266 of the 1961 Rules, which provides that Panchayat may transfer any land by way

of private negotiation in case any person has a plausible claim of title and auction may not fetch reasonable price, where for reasons to be recorded in writing, the Panchayat thinks that auction would not be convenient mode for disposal or where such a course is regarded by the Panchayat for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes.

23. In Chapter XIII of the 1961 Rules, complete procedure has been provided for sale of abadi land.

23.1. Rule 255 defines 'abadi land' to mean nazul land lying within the inhabited areas of Panchayat circle.

23.2. Under Rule 256, a person desirous of purchasing the abadi land can file an application in writing along with requisite fee.

23.3. On receipt of application, in terms of Rule 257, a plan of the land in question is to be prepared specifying the boundaries of the land to be sold.

23.4. After the plan is ready, local inspection of the site is to be made by three nominated Panchs who will submit their opinion on the following issues:

(a) whether the sale applied for will affect the facilities for going and coming enjoyed by the villagers;

(b) whether such sale will affect the rights of easements owned by other persons;

(c) whether such sale will affect beauty and cleanliness of the locality; and

(d) such other matters as may appear to be relevant (Rule 258).

23.5. A provisional decision is to be taken by the Panchayat as to whether the proposed sale should or should not be made (Rule 259).

23.6. If the decision is to sell the land, public notice is to be issued on Form 'L' inviting objections to the proposed sale (Rule 260).

23.7. Objections, if any, received are to be dispose of after affording opportunity of hearing to the objector (Rule 261).

23.8. If no objections are received, the Panchayat shall pass a resolution and order for sale of the land by auction and date and time thereof shall be fixed (Rule 262).

23.9. The procedure for auction, deposit of earnest money, confirmation of sale have been provided in Rules 262 and 265.

23.10. Rule 266 provides for transfer of abadi land by private negotiations in certain specified situations, namely:

(a) where any person has a plausible claim of the title of the land and the auction may not fetch reasonable price;

(b) where for the reasons to be recorded in writing, the Panchayat opines that auction may not be convenient mode for disposal of land;

(c) where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other backward classes; and

(d) where the persons are in possession of abadi land for 20 years or more but less than 42 years.

24. In the aforesaid situation, the land can be transferred by passing a resolution by the Panchayat.

25. Relevant Rule 266 is extracted below:

> "266. Transfer of abadi land by private negotiation. – (1) The Panchayat may transfer any abadi land by way of sale by private negotiation in the following cases:-
>
> (a) Where any person has a plausible claim of title to the land and an auction may not fetch reasonable price;
>
> (b) where for reasons to be recorded in writing the Panchayat thinks that an auction would not be a convenient mode of disposal of the land;
>
> (c) where such course is regarded by the Panchayat necessary for the advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes.
>
> (d) where the persons are in possession of the abadi land for 20 years or more but less than 42 years,

> one-third of the prevailing market price and in case of possession of over 40 years, one sixth of the prevailing market price shall be charged.
>
> (2) The Panchayat may, by resolution, transfer by way of sale without charging any price therefore, any abadi land of which the probable value does not exceed Rs. 200/- in favour of any institution for a public purpose."

26. The allotment to all the allottees was on the same day i.e. 27.08.1985. Along with I.A. No. 148204 of 2023 in C.A. No. 8977 of 2012, a copy of the register of sale deeds of populated land on Form No. 49 has been annexed as Annexure R-6. The sale deeds of land in favour of the respondents are shown at Sr. Nos. 104 to 109. With reference to Sr. Nos. 104 to 106, 108 and 109, the same are annexed as Annexures R-1 to R-5, whereas the sale deed executed in favour of Sanjay Kumar son of Radheshyam (Sr. No. 107) is not available. In the appeals being considered by this Court, the matter pertaining to Sanjay Kumar son of Radheshyam is not under consideration.

27. The following table will show the area leased out to the family members of the same persons on the same date:

Sr. No.	Name	Serial No./ Settlement No.	Area in Sq.ft.
1.	Radheshyam S/o Bhagwati Prasad R/o Manva Kheda	104	6120
2.	Sumitra Devi W/o Radheshyam R/o Manva Kheda	105	7645
3.	Vipin Kumar S/o Radheyshyam Tripathi R/o Manva Kheda	106	4500
4.	Sumitra Devi W/o Radheshyam R/o Manva Kheda	108	6104
5.	Radheshyam s/o Bhagwati Prasad R/o Manva Kheda	109	6097

28. In Civil Appeal No. 8977 of 2012, originally the suit was filed by the respondent only for permanent injunction in the year 2002 with the pleading that on 09.02.2002, an employee of the Town Improvement Trust visited the spot and threatened the respondent for forcible dispossession. Gram Panchayat, Village Kaladwas was not even

impleaded as party. No declaration was sought that the respondent was owner in possession of the plot, hence she could claim injunction. The only evidence led was in the form of copy of lease deed dated 27.08.1985 where the plaintiff appeared as PW1.

29. As recorded by the Trial Court, the respondents/plaintiffs had not been able to prove the document on the basis of which they were claiming a right of possession of the property in question. Even if the aforesaid document is considered, the sale was clearly violative of Rule 266 of the 1961 Rules, under which aforesaid alleged lease deed/sale deed has been issued in favour of the respondents/plaintiffs. In terms of Rule 266 of the 1961 Rules, only in certain specified situation, the land could be transferred by way of sale on private negotiation, namely, where any person has a plausible claim of title to the land and auction may not fetch reasonable price or it may not be the convenient mode for disposal of land or where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes. Another situation envisaged is where the person is in possession of land for more than 20 years but less than 42 years. Nothing was produced on record to show that the due process required for leasing out/sale of the land in favour of the respondents/plaintiffs by private negotiation was followed. Gram Panchayat from whom the land was taken was not impleaded as party to admit or deny the allegations made by the respondents/plaintiffs in the plaint.

30. For the reasons, mentioned above, we find merit in the present appeals. The same are accordingly allowed. The impugned judgments of the High Court as well as the First Appellate Court are set aside and that of the Trial Court is restored. Resultantly, the suits are dismissed.

31. Before parting with the order, we are pained to note certain facts which show total casualness on the part of the appellants. As has been noticed above, in the bunch of five appeals bearing C.A.No(s).8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal arising out of S.L.P.(C)No.25200/2013, challenge was to the order passed by the High Court in five different second appeals. Five different suits were filed by five persons of the family which were assigned different numbers though decided on the same day by separate judgments. Five different appeals were filed before the

First Appellate Court and when the matter was taken to the High Court, five different appeals were filed. The same were disposed of on 18.04.2012.

32. When five different suits were filed by different persons while filing the documents with the paper book filed in this Court, it was incumbent upon the appellants to place on record correct copies of the judgments of the Trial Court as well as the First Appellate Court for each of the case. However, it is evident from the paper books of the aforesaid five appeals that in all the appeals the Trial Court judgment placed on record was passed in Case No.60/2002 titled as Smt. Sumitra Devi w/o Radheshyam Tripathi dated 30.04.2003 and the judgment of the First Appellate Court placed on record in all the appeals is Misc. Civil Appeal No.01 of 2004 titled as Radheshyam son of Bhagwati Prasad Tripathi dated 19.04.2004. The related judgments of the individual cases before the Trial Court and the lower Appellate Court have not been placed on record in the respective appeals. With great deal of effort to join the loose ends, we could find out the details from the title of the impugned judgment of the High Court as the same mentioned the civil suit number as well as the appeal number in the First Appellate Court which was different in all five cases. It is evident from the table enumerated in para 19.1 of the judgment. We can only observe that the parties need to be more careful while filing the pleadings in this Court and so the Registry of this Court as any error therein may be disastrous for any of the parties.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals disposed of.

[2024] 2 S.C.R. 668 : 2024 INSC 128

Ram Singh
v.
The State of U.P.

(Criminal Appeal No. 206 of 2024)

21 February 2024

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

As per PW-1-informant (son of the deceased), on the fateful evening when he and his brother were sitting in the open space in front of the entrance door of his house, his mother was sitting close by on a cot and some neighbours were also sitting on another cot, the appellant came along with co-accused on whose instigation he fired on PW-1 but he slipped below the cot and the bullet hit his mother who died immediately. While the co-accused was acquitted on the same set of evidence, whether the conviction of the appellant u/s.301 r/w 302, u/s.307 IPC and his sentence were justified when there was no recovery of the weapon of crime, non-examination of ballistic expert.

Headnotes

Evidence – Non-recovery of the weapon of crime – Non-obtaining of ballistic opinion and non-examination of ballistic expert – When fatal:

Held: Non-recovery of the weapon of crime by itself would not be fatal to the prosecution case – When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime – Obtaining of ballistic report and examination of the ballistic expert is not an inflexible rule – When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eye witnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal – In the present case, the evidence of the eyewitnesses suffer from serious lacunae and cannot be said to be credible – That apart, material witnesses were not examined

* Author

– Thus, the evidence tendered on behalf of the prosecution cannot be said to be full proof so much so that non-recovery of the main material evidence i.e., weapon of offence, non-obtaining of ballistic opinion and non-examination of ballistic expert would be immaterial – Prosecution did not prove the accusation against the appellant beyond all reasonable doubt – Also, on the same set of evidence, the trial court gave the benefit of doubt to the co-accused primarily on the ground that there was a grudge between the accused and PW-1 – Appellant given benefit of doubt – Conviction and sentence set aside – Order of the trial Court and the High Court quashed. [Paras 29, 30, 33 and 34]

Evidence – Same set of evidence – Conviction of one accused and acquital of the other – Impermissibility:

Held: When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other – Any lingering doubt about the involvement of an accused in the crime he is accused of committing, must weigh on the mind of the court and in such a situation, the benefit of doubt must be given to the accused – This is more so when the co-accused is acquitted by the trial court on the same set of evidence. [Paras 32, 33]

Case Law Cited

Javed Shaukat Ali Qureshi Vs. State of Gujarat, [2023] 12 SCR 220 **: (2023) 9 SCC 164;** *Munna Lal Vs. State of U.P.,* [2023] 3 SCR 224 **: (2023) SCC Online SC 80;** *Gurucharan Singh Vs. State of Punjab,* [1963] 3 SCR 585 **: AIR 1963 SC 340;** *Sukhwant Singh Vs. State of Punjab,* [1995] 2 SCR 1190 **: (1995) 3 SCC 367;** *State of Punjab Vs. Jugraj Singh,* [2002] 1 SCR 998 **: (2002) 3 SCC 234;** *Gulab Vs. State of U.P.,* [2021] 9 SCR 678 **: (2022) 12 SCC 677;** *Pritinder Singh Vs. State of Punjab,* [2023] 10 SCR 1033 **: (2023) 7 SCC 727 – relied on.**

List of Acts

Penal Code, 1860.

List of Keywords

Non-recovery of weapon of crime; Non-examination of ballistic expert; Ballistic opinion; Non-obtaining of ballistic opinion;

Gunshot injury; Not proved beyond reasonable doubt; Glaring inconsistencies; Evidence of eyewitnesses not credible; Material witnesses; Same set of evidence; Benefit of doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 206 of 2024

From the Judgment and Order dated 05.02.2018 of the High Court of Judicature at Allahabad in CRLA No. 1611 of 1983

Appearances for Parties

Pradeep Kumar Mathur, Chiranjeev Johri, Chandra Nand Jha, M.K. Tiwari, Sitesh Kumar, Arvind Kumar, Advs. for the Appellant.

Rana Mukherjee, Sr. Adv., Samarth Mohanty, Ankit Goel, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

This appeal is directed against the judgment and order dated 05.02.2018 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1611 of 1983, confirming the conviction and sentence imposed on the appellant by the Additional Sessions Judge, Non-metropolitan Area, Kanpur in Sessions Trial No. 297 of 1982.

2. In the sessions trial, appellant Ram Singh was convicted under Section 301 read with Section 302 of the Indian Penal Code, 1860 (IPC). He was also convicted under Section 307 IPC. For the offence under Section 301/302 IPC, appellant was sentenced to undergo imprisonment for life and for the offence under Section 307 IPC, appellant was sentenced to undergo rigorous imprisonment for five years, both the sentences to run concurrently.

2.1. As noticed above, the appeal filed by the appellant before the High Court of Judicature at Allahabad ('High Court' for short) was dismissed. Consequently, the conviction and sentence of the appellant imposed by the Sessions Court was confirmed by the High Court.

Prosecution case

3. PW-1 Shri Radhey Lal lodged a first information before the Bhognipur Police Station in the District of Kanpur (U.P.) on 19.08.1982 at midnight stating that he and his brother Desh Raj were sitting in the open space in front of the entrance door of his house during the evening hours. His mother Dulli was sitting close by on a cot. On another cot, neighbours Lala Ram i.e. PW-3 and Man Singh i.e. PW-2 were sitting. They were chatting under a glowing lantern hanging on the roof-side of his residence. According to the informant, at about 08:00 PM, appellant Ram Singh accompanied by one Lala Ram came to his residence. He stated that both of them were residents of his village. Ram Singh was holding a country made pistol in his right hand. As per version in the first information, Lala Ram had instigated Ram Singh by loudly saying that these people were creating disturbances; so kill them. Ram Singh fired on the informant but he slipped below the cot. The bullet hit the left breast of his mother Dulli who cried aloud saying that she was dead. According to the informant, they also cried. Ram Singh and Lala Ram ran away towards the north. Mother died immediately due to the gunshot wound. Informant stated that the incident was seen by his brother Desh Raj and by his neighbours Lala Ram and Man Singh in the light of the lantern. On hearing the firing, many people living nearby came. They had seen the accused running. The mother was lying dead on bed. The informant further stated that about one and a half months back, there was a scuffle betfween his son Baan Singh and the appellant Ram Singh which matter was duly reported to the local police station. Lala Ram and Ram Singh belongs to the same party. Because of this, they came to the door of his residence when on the instigation of Lala Ram, Ram Singh fired a shot due to which his mother Dulli died.

   3.1. The first information as dictated by the informant, was reduced to writing by the scribe Sunder Lal, another brother of PW-1. The said first information was registered as FIR bearing No. 252/1982.

4. Police investigated the crime and on completion of the investigation submitted chargesheet charging appellant Ram Singh of having committed offence under Sections 301 and 302 of the IPC as well as under Section 307/34 IPC. On the other hand, the co-accused

Lala Ram was charged of having committed offence under Section 307/34 IPC.

4.1. To prove its case, prosecution examined six witnesses. After considering the evidence and materials on record, the Sessions Court convicted the appellant under Section 301 read with Section 302 IPC and also under Section 307 IPC. However, the other accused Lala Ram was given the benefit of doubt and accordingly was acquitted.

4.2. At this stage, we may mention that there are two Lala Ram in this case. One is Lala Ram, son of Prahalad Singh who is PW-3 and the other is Lala Ram, son of Dhanna Ram Yadav who was named as accused number 2 and acquitted by the trial court.

5. As noticed above, the trial court convicted the appellant under the aforesaid provisions of IPC and sentenced him accordingly. The co-accused Lala Ram, son of Dhanna Ram Yadav, was acquitted. The appeal filed by the appellant before the High Court was dismissed. Consequently, his conviction and sentence were confirmed.

Submissions

6. Learned counsel for the appellant submits that there are gross contradictions in the testimony of the prosecution witnesses. The so called eyewitnesses were no eyewitnesses at all. Rather, they were interested witnesses having previous political enmity with the appellant. It is because of such political rivalry that appellant was falsely implicated in the case.

6.1. He further submits that not only there are glaring inconsistencies in the version of the prosecution witnesses; crucial and material witnesses have not been examined. Even the country made pistol allegedly used by the appellant was not recovered. The pellets found at the site and also extricated from the body of the deceased were not sent for ballistic examination. In the absence of any ballistic report linking the pellets to the pistol allegedly used by the appellant, he could not have been convicted. Both the trial court and the High Court therefore fell in error in convicting the appellant.

6.2. Learned counsel submits that it is true that on 16.07.2018, this Court had issued notice only on the question of converting the

conviction from under Section 302 IPC to Section 304 IPC and also on the prayer for grant of bail, nonetheless, he had submitted before this Court on 31.10.2023 that he would argue for acquittal as well.

6.3. He further submits that the trial court had committed a fundamental error in convicting the appellant on the one hand and acquitting the co-accused Lala Ram on the other hand. Evidence against both were the same. When on the same set of evidence the co-accused was acquitted, the trial court ought to have acquitted the appellant as well. This aspect was overlooked by the High Court. In support of his submission, learned counsel has placed reliance on a decision of this Court in *Javed Shaukat Ali Qureshi Vs. State of Gujarat*, (2023) 9 SCC 164.

6.4. Contention of learned counsel for the appellant is that there are no materials on record to conclusively prove the guilt of the appellant. Rather, it is a case of no evidence. Therefore, appellant is entitled to be acquitted. Orders of the trial court as well as of the High Court should be set aside.

7. *Per contra*, learned counsel for the respondent-State argues that in view of the incriminating evidence against the appellant, both the Sessions Court as well as the High Court had rightly convicted the appellant. The ocular evidence clearly points to the positive act of the appellant firing the gunshot which killed the mother of PW-1, Dulli. Considering the gruesome nature of the murder and the testimony of the prosecution witnesses, conviction of the appellant is fully justified. High Court had rightly dismissed the criminal appeal of the appellant. No case for interference is made out.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

Evidence: appreciation and analysis

9. PW-1, who is the first informant and son of the deceased, stated in his evidence that they are the three brothers: Desh Raj, Sunder Lal and himself, he being the youngest. He lived with his mother at his village where his mother had property. In the same village, his maternal uncle used to reside. Both the accused were residents of his village and belonged to the same community. He deposed that he

had a rivalry with accused Ram Singh in connection with the election of village Pradhan. In that election, wife of the accused Ram Singh was one of the candidate. Ram Singh was also related to accused Lala Ram. PW-1 stated that he had voted for the candidate who stood against the wife of Ram Singh. In that election, Ram Singh's wife lost and in this connection, a fight had broken out between the son of PW-1 i.e. Baan Singh and accused Ram Singh in respect of which FIR and cross FIR were lodged. The cases were going on. Accused Lala Ram was deposing as a witness in Ram Singh's case. This incident had happened about a month and a half prior to the present incident. According to him, it was around 08:00PM in the evening when he was sitting at his door. His mother Dulli was sitting on the cot. The place was lit up by the hanging lantern which was hung on the roof. The two accused came from the north. Accused Lala Ram challenged PW-1 by saying that the latter was creating a lot of mischief and, therefore, he should be killed. Ram Singh fired from his country made pistol which he was carrying. Instead of hitting PW-1, the bullet hit his mother leading to her death. Thereafter, the two accused fled away. After this incident, PW-1 alongwith PW-2 Man Singh went to Bhognipur Police Station and on the way informed his brother Sunder Lal, the scribe, who wrote the first information which PW-1 carried to the police station.

9.1. In his cross-examination, he stated that accused Lala Ram was a witness in the case against his son. He explained that there was a pile of bricks about 3-4 steps north of the courtyard where the deceased was sitting. The deceased was sitting on the northern side of the cot whereas PW-1 and his brother Desh Raj were sitting at the other end of the cot. He added that when Ram Singh fired at him, he bent below the cot, so also his brother. He could not see as to whether PW-2 and PW-3 had bent or not. As per the version of PW-1, the first gunshot did not hit him. Second shot was not fired at him or his brother because his mother had died in the first gunshot itself. Accused Ram Singh was at a distance of three steps from his mother's cot. On hearing their screaming, several villagers came to the place of occurrence. At this, the two accused ran away. However, he stated that he could not say as to whether any villager had seen the accused running away or not as no villager had told him.

9.2. In the cross-examination, it further revealed that deceased Dulli used to live with the brother of PW-1 i.e. Desh Raj whose house was behind the house of PW-1. The other brother's house was also nearby. On that fateful evening, though dinner had been taken, the deceased had not eaten food. As they were conversing in the courtyard, his mother was sitting quiet on the cot and did not participate. This time, he stated that he and his brother were sitting on the floor at the time of gunshot. Though he had bent down when the shot was fired, nobody got under the cot. On receiving the gunshot, the mother had collapsed on the cot. He had cried while sitting but had not hugged his mother. He had gone to his brother Sunder Lal's hotel where the first information was written but his brother Sunder Lal did not accompany him to the police station.

9.3. He denied the suggestion that it was a false case because of personal enmity; that Desh Raj and others who were sitting on the cot with the deceased in Desh Raj's house and that while examining a country made pistol, a bullet was fired accidentally.

10. PW-2 Man Singh stated that the deceased was sitting on a cot in the courtyard. Desh Raj and PW-1 were sitting on the floor near the cot. Accused Lala Ram had instigated accused Ram Singh by saying that PW-1 was being mischievous and that he should be killed. At this, accused Ram Singh walked 2-3 steps and fired from his country made pistol but instead of hitting PW-1, his mother was hit and she died.

10.1. In his cross-examination, PW-2 stated that the deceased was sitting on a cot while PW-1 and his brother Desh Raj were sitting on the floor on the west side of the cot. He saw the accused in the lantern light. Though Lala Ram had instigated Ram Singh, he did not get up from the cot and kept sitting. When shot was fired, Desh Raj and Radhey Lal (PW-1) stood up. He did not run to see the deceased after being shot. She was shot from a distance of 2-3 steps.

11. PW-3 Lala Ram, son of Prahalad Singh, stated that at the relevant time on the date of incident, he and Man Singh PW-2 were sitting on the same cot. Dulli was sitting on bed. Desh Raj and Radhey Lal were sitting on the floor at a distance of one and a half hems away. The two accused came from the northern side. Accused Lala

Ram instigated accused Ram Singh to kill PW-1 saying that he was doing a lot of mischief. Ram Singh instantly fired from his country made pistol. The bullet did not hit Radhey Lal PW-1 but hit the left breast of his mother who was killed.

11.1. In his cross-examination, he stated that he had seen accused Ram Singh before accused Lala Ram started challenging PW-1. He did not see what Ram Singh was carrying and did not see any country made pistol in his hand. It would be wrong to say that he had seen country made pistol in the hands of Ram Singh. Sub-Inspector of Police had not questioned him. While he was examined in court, he admitted that there were party politics between the Pradhan of the village who got elected and the accused. He also denied the suggestion that he had not seen any such incident and that no such incident had happened.

12. PW-4 is the Sub-Inspector of Police, B.D. Verma. He stated that while preparing the inquest report, one *tikli* and 12 pellets were seized from the wound of the deceased. He also seized cans of normal and blood-stained soil and also blood-stained clothes of the deceased. The blood-stained clothes and the cans of soil were sent to the chemical examiner for chemical examination but the report was not received back. He further stated that during preparation of inquest report, one *tikli* and 12 pellets were seized from the wound of Dulli on the cot. However, in re-examination, he stated that the pellets taken out by the doctor in the hospital were produced in the court. The *tikli* which was taken out from the body of the deceased in the hospital was with the pellets.

13. PW-5 is Raghu Raj Singh who was the Pradhan of the village. The inquest report was prepared in his presence and had his signature. He stated that blood-stained cot strips, empty cartridge, *tikli* and pellets were collected from the spot.

13.1. In his cross-examination, he stated that he used to reside at a distance of 150 steps from the house of Dulli. He came to know about Dulli's death on hearing the sound of firing but he did not come out of his house due to fear. However, he contradicted himself when he stated that he could not tell by the sound of firing that Dulli was killed; rather he came to know about this 10-15 minutes later when one of the villagers

Raja Ram, son of Prahalad Yadav told him while running by. He further compounded the inconsistency by saying that he did not tell the Sub-Inspector about hearing the sound of firing because this did not happen.

14. The doctor who had conducted post-mortem examination, Dr. P.S. Mishra, was examined as PW-6. He stated that the entry wound of the bullet pellet 4cm × 3cm was on the left side of the left breast. The edges were inside with blackening. The wound was bone-deep. Third and fourth ribs on the left side chest were broken. There was laceration on the left lung. Both the lungs had blood. The heart was also lacerated. Semi-digested rice and pulse were found in the stomach of the deceased. He opined that cause of death of the deceased was due to shock and haemorrhage because of the above injuries. 55 small pellets were taken out of the body of the deceased during post-mortem.

15. During his examination under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), accused Ram Singh denied the accusation that he had killed the deceased by shooting her from a country made pistol. He stated that there was indeed a scuffle between the son of PW-1 and himself relating to the Pradhan election for which criminal cases were pending. The witnesses were testifying against him due to enmity.

16. Before we proceed further, we may mention that in the seizure memo dated 20.08.1982, which has been placed on record, it was stated that during preparation of inquest report of the deceased, the police had seized the *tikli* of the cartridge stuck on the wound of the deceased and 12 bore cartridge lying on the cot of strips.

17. From a careful scrutiny of the prosecution evidence, what is seen is that PW-1 alongwith his brother Desh Raj were chatting with PW-2 and PW-3 in the courtyard in front of the house of PW-1. PW-2 and PW-3 were sitting on one cot. The deceased was sitting on another cot. Thereafter the discrepancies in the version of the witnesses arise. At one point of time, PW-1 said that he was at his door; at another point he stated that he and his brother Desh Raj were sitting on the same cot in which his mother was sitting but on the other end of the cot. Then again he said that the two brothers were sitting on the floor. It has also come on record that according to the version of some of the prosecution witnesses, PW-1 and his brother Desh

Raj were sitting on the floor. Pausing here for a moment, we can visually analyse that the mother was sitting on the cot at a distance from her two sons. She was sitting laterally and not behind her two sons. According to the witnesses, the two accused came from the northern side and when they reached the pile of bricks, accused Lala Ram instigated accused Ram Singh that PW-1 was creating lot of mischief and, therefore, he should be killed. Ram Singh then moved 2-3 steps ahead and fired at PW-1. Now PW-1 says that he had hid himself below the cot; while the other version is that he had simply bent as he was sitting on the floor. On the other hand, PW-2 had stated in his cross-examination that when the shot was fired, PW-1 and his brother Desh Raj stood up. It is the prosecution case that Ram Singh had shot PW-1 but because of the evasive reaction of PW-1, the bullet fired by Ram Singh from his country made pistol hit the left breast of the deceased who thereafter died.

18. If this version is to be believed, then Ram Singh had fired at PW-1 from a close range and from a standing position. Therefore, trajectory of the shot would be from a height downwards. PW-1 was either sitting on the cot or on the floor and had taken evasive action (though PW-2 says that PW-1 stood up when the shot was fired); the mother was sitting diagonally on the other end of the cot. It is highly improbable that the shot fired at from such a close range and from a height downwards could have hit the left breast of the deceased who was sitting at a lateral distance and not behind PW-1.

19. Interestingly, neither Desh Raj, brother of PW-1 and son of the deceased, who was very much present at the place and time of occurrence was examined by the police nor the other brother Sunder Lal, the scribe, who had written the first information, was examined by the police. Omission to examine Desh Raj by the prosecution is most crucial as according to the prosecution version he was very much present when the incident occurred. We may also mention that the behaviour of Sunder Lal is also very unusual. He did not accompany PW-1 to the police station. There is also no evidence that he had rushed to the place of occurrence where his mother was killed. An adverse inference will have to be drawn against the prosecution for not examining material witnesses. Be that as it may, it was only PW-1 and PW-2 who had stated that Ram Singh had fired from a country made pistol at PW-1 but the bullet had hit mother of PW-1, who died of the bullet wound. On the other hand,

PW-3 categorically stated that he did not see accused Ram Singh carrying any country made pistol. Further, it has come on record that there was previous enmity between PW-1 and the accused relating to election of village Pradhan because of which there were cross cases between them.

20. The village Pradhan who testified as PW-5 stated that he was inside his house when he heard gunshot. He came to know that Dulli was killed about 10 to 15 minutes later when one Raja Ram, son of Prahalad Yadav, told him so while he was running by. Incidentally, the said Raja Ram was not examined by the police.

21. At this stage, what is noticeable is that the weapon of offence i.e. the country made pistol used by the accused in the offence, could not be recovered by the police and therefore not exhibited. Thus, the main material evidence i.e., the weapon of offence was not exhibited. In the seizure memo, it was mentioned that a 12 bore cartridge was lying on the cot and alongwith the *tikli* of the cartridge which was stuck on the wound of the deceased, were seized by the police. On the other hand, in the evidence of the doctor, PW-6 as well as from the post-mortem report, it has come on record that 55 small pellets were taken out from the body of the deceased during post-mortem. The bullet wound was bone-deep which clearly reveals that the deceased was shot at from close range. In his evidence, PW-4 Sub-Inspector B.D. Verma deposed that during preparation of the inquest report, one *tikli* and 12 pellets were seized from the wound of the deceased. The pellets as well as the *tikli* of the cartridge were not sent to any ballistic expert, as a result of which there is no ballistic report on the basis of which it could be said for sure that the pellets found outside the body and from within the body could be traceable to the *tikli* of the 12 bore cartridge which in turn could be traced to the country made pistol from which the shot was allegedly fired by the appellant. There is no explanation of the prosecution regarding the 55 pellets retrieved from the body of the deceased during post-mortem; whether those could be linked to the 12 bore cartridge and the *tikli.* Importantly, the country made pistol was never recovered. Prosecution has not said anything in this regard. That apart, as per the version of PW-4, the blood stained clothes of the deceased which were seized were sent to the chemical examiner but the report from the chemical examiner was not received till the date and time of his deposition.

22. From the above, it is evident that there are glaring inconsistencies in the prosecution version which have been magnified by the absence of the testimony of the material witnesses and the ballistic report coupled with the non-recovery of the weapon of crime.

Case law

23. In *Munna Lal Vs. State of U.P.,* (2023) SCC Online SC 80, this Court opined that since no weapon of offence was seized in that case, no ballistic report was called for and obtained. This Court took the view that failure to seize the weapon of offence on the facts and in the circumstances of the case, had the effect of denting the prosecution story so much so that the same together with non-examination of material witnesses constituted a vital circumstance amongst others for granting the appellants the benefit of doubt.

24. On the aspect of non-examination of ballistic expert and its impact on the prosecution case, one of the earliest decisions of this Court was rendered in *Gurucharan Singh Vs. State of Punjab,* AIR 1963 SC 340. This Court observed that there is no inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused by a gun and those *prima facie* appeared to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. However, in what cases the examination of a ballistic expert is essential for the proof of the prosecution case must naturally depend upon the circumstances of each case. This Court held as under:

> 41.... These observations do not purport to lay down an inflexible Rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable

> character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case….

25. This issue was again examined by this Court in *Sukhwant Singh Vs. State of Punjab,* (1995) 3 SCC 367. In that case, this Court observed that though the police had recovered an empty cartridge from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution did not send the recovered empty cartridges and the seized pistol to the ballistic expert for examination and expert opinion. This Court was of the view that if such opinion would have been called for, comparison could have been made which in turn could have provided link evidence between the crime and the accused. It was noted that this again was an omission on the part of the prosecution for which no explanation was furnished. It was thereafter that this Court declared as follows:

> 21.... It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.

25.1. Thus, in the aforesaid case, this Court emphasized that in cases where injuries are caused by firearms, the opinion of the ballistic expert becomes very important to connect the crime cartridge recovered during the investigation to the firearm used by the accused with the crime. Failure to produce expert opinion

in such cases affects the creditworthiness of the prosecution case to a great extent.

26. However, in *State of Punjab Vs. Jugraj Singh,* (2002) 3 SCC 234, this Court opined that when there are convincing evidence of eyewitnesses, non-examination of the expert would not affect the creditworthiness of the version put forth by the eyewitnesses.

27. This Court considered the issue as to failure of the prosecution to recover the crime weapon and also non-examination of ballistic expert in *Gulab Vs. State of U.P.,* (2022) 12 SCC 677. In that case, the deceased had sustained a gunshot injury with a point of entry and exit. In that case, prosecution had relied on the eyewitnesses' accounts of three eyewitnesses which were found to be credible. Therefore, non-recovery of the weapon of the offence would not dis-credit the case of the prosecution. After referring to the previous decisions, this Court opined that in the facts and evidence of the case, the failure to produce the report by a ballistic expert who could testify to the fatal injuries being caused by a particular weapon would not be sufficient to impeach the credible evidence of the direct witnesses.

28. In *Pritinder Singh Vs. State of Punjab,* (2023) 7 SCC 727, this Court in the facts and evidence of that case held that conviction could not be sustained. That apart, from not collecting any evidence as to whether the gun used in the crime belonged to the appellant or not, even the ballistic expert had not been examined to show that the wad and pellets were fired from the empty cartridges of the appellant. In that case which was based on circumstantial evidence, it was held that when there was serious doubt as to credibility of the witnesses, the failure to examine ballistic expert would be a glaring defect in the prosecution case.

29. Thus, what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain

ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.

30. Applying the above proposition to the facts of the present case, we find that the evidence tendered by the eyewitnesses suffer from serious lacunae. Thus, their evidence cannot be said to be credible. That apart, material witnesses have not been examined. On the whole, the evidence tendered on behalf of the prosecution cannot be said to be full proof so much so that non-recovery of the weapon of offence, non-obtaining of ballistic opinion and non-examination of ballistic expert would be immaterial.

31. In such circumstances, it cannot be said that the prosecution could prove the accusation against the appellant beyond all reasonable doubt. As a matter of fact, on the same set of evidence, the trial court gave the benefit of doubt to the other accused Lala Ram primarily on the ground that there was a grudge between the accused and PW-1.

32. This Court in the case of *Javed Shaukat Ali Qureshi,* has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under:

> 15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.

Conclusion

33. Thus, on a careful analysis of the evidence on record, we are of the view that the appellant should be given the benefit of doubt as according to us, the prosecution could not prove his guilt beyond all

reasonable doubt. Any lingering doubt about the involvement of an accused in the crime he is accused of committing, must weigh on the mind of the court and in such a situation, the benefit of doubt must be given to the accused. This is more so when the co-accused is acquitted by the trial court on the same set of evidence.

34. That being the position, we set aside the conviction and sentence of the accused. The judgment and order of the Additional Sessions Court dated 28.05.1983 as well as the judgment and order of the High Court dated 05.02.2018 are hereby set aside and quashed. Consequently, the appellant is directed to be released from jail forthwith, if not required in any other case.

35. Appeal is allowed in the above terms.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.

[2024] 2 S.C.R. 685 : 2024 INSC 130

N. Manogar & Anr.
v.
The Inspector of Police & Ors.

Criminal Appeal No. 1333 of 2024

16 February 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether the High Court was justified in setting aside the order passed by the trial court whereunder, the trial court rejected the application filed by the complainant u/s. 216/319 CrPC seeking the summoning of, and the impleadment of the appellants as accused persons in connection with the case u/ss. 452, 294(b), 323 and 506(1) IPC.

Headnotes

Code of Criminal Procedure, 1973 – ss. 216/319 – Discretionary powers under – Exercise of, by the High Court – Application by the complainant u/s. 216/319 seeking the summoning of, and the impleadment of the appellants as accused persons in connection with the case u/ss. 452, 294(b), 323 and 506(1) IPC – Rejected by the trial court, however, allowed by the High Court – Correctness:

Held: Trial court's order was well reasoned and did not suffer from any perversity – High Court impleaded the appellants' as accused persons in the underlying proceedings on the satisfaction of a prima-facie finding that the materials on record sufficient to proceed against the appellants – High Court failed to appreciate that the discretionary powers u/s. 319 CrPC ought to have been used sparingly where circumstances of the case so warrant – Moreover, the materials on record could not be said to have satisfied the threshold envisaged, that more than a prima facie case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction – Thus, the impugned order set aside. [Paras 9, 10, 11]

Case Law Cited

Hardeep Singh v State of Punjab & Ors., [2014] 2 SCR 1 : (2014) 3 SCC 92 - **relied on.**

Jogendra Yadav v. State of Bihar, [2015] 9 SCR 69 : **(2015) 9 SCC 244;** *Jitendra Nath Mishra v. State of Uttar Pradesh,* [2023] 7 SCR 642 : **(2023) 7 SCC 344;** *Sagar v. State of Uttar Pradesh & Anr.,* **(2022) 6 SCC 389 – referred to.**

List of Acts

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

List of Keywords

Discretionary powers; Approach adopted by the High Court; Summoning; Impleadment; Reasoned order; Perversity; Prima-facie finding.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1333 of 2024

Arising out of Special Leave Petition (Crl.) No(s). 8696 of 2021

From the Judgment and Order dated 13.09.2021 of the High Court of Judicature at Madras in CRLRC No. 133 of 2020

Appearances for Parties

S. Nagamuthu, Sr. Adv., M.P. Parthiban, Ms. Priyaranjani Nagamuthu, R. Sudhakaran, T. Hari Hara Sudhan, Ms. Shalini Mishra, Bilal Mansoor, Shreyas Kaushal, P.V.K. Deivendran, Advs. for the Appellants.

V. Krishnamurthy, Sr. AAG., D. Kumanan, Ms. Deepa S., Veshal Tyagi, Chandan Kumar, Madhu Prakash, P. Soma Sundaram, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The present appeal has been filed by the Appellant(s) assailing the correctness of a decision of the Madras High Court (the "**High Court**") dated 13.09.2021, setting aside an order dated 24.10.2019 passed by the Ld. XIV Metropolitan Magistrate, Egmore, Chennai (the

"**Trial Court**") whereunder, the Trial Court rejected the application instituted by the Complainant under Section 216 read with Section 319 of the Code of Criminal Procedure, 1973 (the "**CrPC**") seeking (i) the summoning of; and (ii) the impleadment of the Appellant(s) as accused person(s) in connection with Case Crime No. 7243 of 2018 under Section(s) 452, 294(b), 323 and 506(1) of the Indian Penal Code, 1860 (the "**IPC**") (the "**Impugned Order**").

3. The brief fact(s) culled out of the record are as follows:

3.1. Pursuant to an order of the High Court dated 24.01.2018, Respondent No. 1 registered a First Information Report ("**FIR**") dated 20.04.2018 under Section(s) 448, 294(b), 323 and 506(1) of the IPC pursuant to a complaint lodged by Respondent No. 2 i.e., the Complainant whereunder it was alleged that, Respondent No. 3 came to the Complainant's home asking about one Vidhul i.e., the Complainant's son. Upon being told that Viduhl was the Complainant' son Respondent No. 3 slapped the Complainant, pushed her on the sofa, made vulgar comments and thereafter dragged Vidhul out of the bathroom and physically assaulted him up until he fell unconscious. Subsequently, Respondent No. 3 extended threat(s) to the Complainant. Pertinently, it was also stated in the FIR that Respondent No. 3 was accompanied by her husband and another 'boy', however no role was ascribed to aforesaid person(s).

3.2. A chargesheet came to be filed before the Trial Court by Respondent No. 1 against Respondent No. 3 under Section(s) 294(b), 323, 506(1) and 448 IPC. Subsequently the charge under Section 448 IPC came to be altered to Section 452 IPC. Pertinently, the Complainant, other eyewitnesses and the doctor who examined the injured victim(s) only named; and ascribed a role to Respondent No. 3 in their statement(s) under Section 161 CrPC before the investigating authorities.

3.3. An application dated 27.01.2019 under Section 482 CrPC came to be preferred by the Complainant before the High Court seeking re-investigation qua the FIR. At this stage, for first time, the Complainant individually (a) named (i) Appellant No. 1 i.e., Respondent No. 3's husband; and (ii) Appellant No. 2 i.e., a

relative of Respondent No. 3; and (b) ascribed a particular role qua the alleged incident to them i.e., that the Appellant(s) trespassed into the Complainant's home, hurled vulgar abuses and also threatened to kill the Complainant's son. It was also stated that although the Complainant allegedly named the aforesaid person(s), the same was not recorded in the FIR ("**Re-Investigation Application**"). The High Court *vide* an order dated 05.02.2019 in the Re-Investigation Application, observed that the investigation had concluded; and a chargesheet had be filed by the investigating authorities. Accordingly, the High Court granted the Complainant liberty to prefer an application under Section(s) 319 read with 216 of the CrPC before the Trial Court seeking impleadment of the Appellants qua the proceedings emanating from the FIR. Further, the Trial Court was directed to consider the application of the Complainant under Section(s) 319 read with 216 of the CrPC and implead the Appellant(s) as accused person(s) during the examination of witnesses (if necessary) (the "**Re-Investigation Order**").

3.4. Pursuant to the Re-Investigation Order, an application dated 19.03.2019 under Section(s) 319 read with 216 of the CrPC came to be preferred by the Complainant before the Trial Court whereunder it was stated that (i) despite naming the Appellants, the FIR only came to be lodged against Respondent No. 3 i.e., allegedly the names of the Appellants were omitted by the investigating authorities; (ii) the statement(s) recorded by investigating authority under Section 161 of the CrPC were mechanically recorded and purposely did not disclose to names of the Appellants; (iii) that the prosecution witnesses ("**PWs**") Nos. 1-5 have named the Appellants' during their examination-in-chief before the Trial Court; and have also ascribed a specific role to the Appellants' (the "**Underlying Application**").

3.5. *Vide* an order dated 06.05.2019, the Trial Court partly allowed the aforesaid application i.e., impleaded Appellant No. 1 as an accused person in the proceedings emanating from the FIR observing *inter alia* that Appellant No. 1 i.e., a policeman ought to have prevented an offence from taking place and accordingly, his omission would necessarily amount to abetment, however,

the Trial Court rejected the prayer qua the impleadment of Appellant No. 2 as an accused on the ground that no reason(s) have been attributed as to how the Complainant; and other PWs' have been able to identify the unknown 'boy' as Appellant No. 2.

3.6. Aggrieved by the aforesaid order, revision petition(s) were filed by Appellant No. 1 and Respondent No.2 before the High Court. *Vide* an order dated 10.06.2019, the revision petition(s) came to be allowed by the High Court on the ground that the Appellants' were not issued notice in the Underlying Application and accordingly, the Underlying Application could not be decided without affording the Appellants' an opportunity of hearing as mandated by this Court in ***Jogendra Yadav vs. State of Bihar***, (2015) 9 SCC 244. Thus, the High Court remanded the Underlying Application back to be considered afresh by the Trial Court in line with our decision in ***Hardeep Singh v State of Punjab & Ors.***, (2014) 3 SCC 92 (the "**Remand Order**").

3.7. Pursuant to the Remand Order, the Trial Court *vide* an order dated 24.10.2019 dismissed the Underlying Application observing *inter alia* that there is no evidence qua the involvement of the Appellants to justify impleading the Appellants as accused person(s) in light of the fact that no specific allegation(s) had been levelled by the Complainant in either the underlying complaint; or before PW-6 i.e., the doctor treating the victim(s) immediately after the alleged offence (the "**Underlying Order**").

3.8. Aggrieved by the Underlying Order, the Complainant filed a criminal revision petition before the High Court. *Vide* the Impugned Order, the High Court held *inter alia* that the allegation(s) in the underlying complaint; and statement(s) recorded under Section 161 CrPC disclose that the Appellants were present with Respondent No. 3 at the time of the commission of the alleged offence; and accordingly trespassed into the home of the Complainant. Additionally, the High Court observed that the standard to be adopted by the Trial Court at the stage of invoking its' powers under Section 319 CrPC would be a *prima facie* satisfaction that that the accused person has committed the alleged offence. Accordingly, in view of the aforesaid, the High Court (i) allowed the criminal revision petition;

(ii) set aside the Underlying Order; and (ii) directed the Trial Court to implead the Appellants as Accused No. 2 and Accused No. 3 respectively, in the CC No. 7243 of 2018 before the Trial Court (the "**Underlying Proceedings**").

4. Mr. S. Nagamuthu, learned senior counsel appearing on behalf of the Appellants has submitted before us that the High Court has exercised jurisdiction under Section 319 of the CrPC and erroneously reversed the Trial Court Order without appreciating (i) that the allegation qua the Appellants are vague and omnibus; (ii) that there is no evidence on record to suggest the involvement of the Appellants in the alleged offence; and (iii) the *dicta* laid down by this Court in ***Hardeep Singh (Supra)***.

5. On the other hand, the learned counsel(s) appearing on behalf of the Respondent(s) have vehemently opposed the aforesaid contention; and submitted that the High Court has rightly appreciated the allegations disclosed in the underlying complaint, the statement(s) recorded under Section 161 CrPC and the examination-in-chief of the PWs to conclude that the evidence on record underscored the involvement of the Petitioners in the commission of a crime and accordingly, the Impugned Order could not be faulted on account of any perversity in view of our decision in ***Jitendra Nath Mishra v. State of Uttar Pradesh***, (2023) 7 SCC 344.

6. We have heard the learned counsel(s) appearing on behalf of the parties and perused the materials on record.

7. The principles of law governing the exercise of jurisdiction under Section 319 of the CrPC are well established. Notably, a constitution bench of this Court in ***Hardeep Singh (Supra)*** observed as under:

> *"105. Power Under Section 319 Code of Criminal Procedure is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the magistrate or the sessions judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence laid before the court that such power should be exercised and*

not in a casual and cavalier manner.

106. Thus we hold that though only a prima facie case is to be established from the evidence laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power Under Section 319 Code of Criminal Procedure."

8. The aforesaid position was reiterated by this Court in ***Sagar v. State of Uttar Pradesh & Anr.***, (2022) 6 SCC 389 wherein it was opined that:

> *"9. The Constitution Bench has given a caution that power Under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above has to be applied is one which is more that prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction…."*

9. In the present case, the High Court overturned the Trial Court Order; and accordingly impleaded the Appellants' as accused person(s) in the Underlying Proceedings on the satisfaction of a *prima-facie* finding that the materials on record i.e., (i) vague allegations emanating from the underlying complaint; (ii) the Complainant's statement under Section 161 of the CrPC; and (iii) the Complainant's examination-in-chief, are sufficient to proceed against the Appellant(s).

10. In our considered view, the approach adopted by the High Court was not in consonance with this Court's opinion in ***Hardeep Singh (Supra)***. The High Court failed to appreciate that the discretionary powers under Section 319 of the CrPC ought to have been used sparingly where circumstances of the case so warrant. In the present

case, the Trial Court Order was well reasoned and did not suffer from any perversity. Moreover, the materials on record could not be said to have satisfied the threshold envisaged under ***Hardeep Singh (Supra)*** i.e., more than a *prima facie* case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction.

11. Consequently, this appeal stands allowed and the Impugned Order is set aside. Pending application(s), if any, stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 2 S.C.R. 693 : 2024 INSC 129

Kuldeep Kumar
v.
U.T. Chandigarh and Others

(Civil Appeal No. 2874 of 2024)

20 February 2024

**[Dr Dhananjaya Y Chandrachud, CJI,*
J B Pardiwala and Manoj Misra, JJ.]**

Issue for Consideration

Result of the election to the post of Mayor at the Chandigarh Municipal Corporation declared by the Presiding Officer in favour of the eighth respondent, if was contrary to law in view of the alleged electoral malpractices by him during the counting of votes.

Headnotes

Punjab Municipal Corporation Act, 1976 – Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 – Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996 – Regulation 6, Clauses (9) to (13) – Election to the post of Mayor at the Chandigarh Municipal Corporation – Alleged electoral malpractices by the Presiding Officer (Respondent no.7) during the counting of votes – 36 votes were polled, of which 8 ballot papers were treated to be invalid by the Presiding Officer – Of the remaining 28 valid votes, the appellant (candidate of an alliance between the Aam Aadmi Party and the Indian National Congress) secured twelve votes, while the eighth respondent (a candidate of the Bharatiya Janta Party) secured sixteen votes – Result of the election was declared in favour of the eighth respondent – Correctness:

Held: It is evident from the physical inspection of the eight ballots that in each of those cases, the vote was duly cast in favour of the appellant – The Presiding Officer placed a line in ink by way of a mark at the bottom half of each of the ballots which were treated to be invalid – He had evidently put his own aforesaid mark to create a ground for treating the ballot to have been invalidly cast – In doing so, the Presiding Officer clearly acted beyond

* Author

the terms of his remit under the statutory regulations – These regulations have been framed by the Municipal Corporation in exercise of powers conferred by s.65 of the 1976 Act as extended to the Union Territory of Chandigarh – Clause (10) of Regulation 6 provides for three eventualities in which a ballot can be treated as invalid – None of the said eventualities were fulfilled in the present case – The vote was cast by placing a rubber stamp on the upper half of the ballot and hence the ink mark which was placed on the bottom half by the Presiding Officer would be of no consequence – Presiding Officer made a deliberate effort to deface the eight ballots cast in favour of the appellant so as to secure a result at the election by which the eighth respondent would be declared as the elected candidate – Result which was declared by the Presiding Officer being contrary to law is quashed and set aside – Appellant is declared to be the validly elected candidate for election as Mayor of the Chandigarh Municipal Corporation. [Paras 26-31, 39]

Constitution of India – Article 142 – Exercise of powers under – Free and fair elections – Election to the post of Mayor at the Chandigarh Municipal Corporation – Writ petition filed by the appellant before the High Court alleging electoral malpractices by the Presiding Officer during the counting of votes, sought the setting aside of the election process and for the holding of a fresh election process – High Court declined to stay the result of the election declared in favour of the eighth respondent – During the course of proceedings before this Court, the eighth respondent who was elected as Mayor tendered his resignation:

Held: It would be inappropriate to set aside the election process in its entirety when the only infirmity which has been found is at the stage when the counting of votes was recorded by the Presiding Officer – Allowing the entire election process to be set aside would further compound the destruction of fundamental democratic principles which has taken place as a consequence of the conduct of the Presiding Officer – Free and fair elections are a part of the basic structure of the Constitution – Elections at the local participatory level act as a microcosm of the larger democratic structure in the country – Local governments, such as municipal corporations, engage with issues that affect citizens' daily lives and act as a primary point of contact with

representative democracy – Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy – In such a case, this Court is duty-bound, particularly in the context of its jurisdiction u/Article 142, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuges – This Court must step in in such an exceptional situation to ensure that the basic mandate of electoral democracy at the local participatory level is preserved – Pertinently, this is not an ordinary case of alleged malpractice by candidates in an election, but electoral misconduct by the presiding officer himself – The brazen nature of the malpractice, visible on camera, makes the situation all the more extraordinary, justifying the invocation of the power of this Court u/Article 142. [Paras 36, 37]

Code of Criminal Procedure, 1973 – s.340 – Exercise of jurisdiction under – Election to the post of Mayor at the Chandigarh Municipal Corporation – Alleged electoral malpractices by the Presiding Officer during the counting of votes – Presiding Officer signed each of the ballot papers however, the video footage indicated that he had also placed certain marks on some of the ballot papers – During the course of the hearing, the Presiding Officer made a solemn statement before this Court that he did so because he found that the ballots had been defaced:

Held: The ballots had not been defaced when the Presiding Officer put his mark at the bottom – The ballots left no manner of doubt about the candidate for whom the ballot was cast – Presiding Officer is guilty of a serious misdemeanour in doing what he did in his role and capacity as Presiding Officer – A fit and proper case is made out for invoking the jurisdiction of this Court u/s.340 in respect of the conduct of the Presiding Officer – In the order dated 19.02.2024, the statement made by the Presiding Officer was recorded when he appeared personally before this Court – As Presiding Officer, he could not have been unmindful of the consequences of making a statement which, prima facie, appears to be false to his knowledge in the course of judicial proceedings – Notice to be issued to show cause to the Presiding Officer, as to why steps should not be initiated against him u/s.340. [Paras 30, 40]

Case Law Cited

Kihoto Hollohon v. Zachilhu and Ors., [1992] 1 SCR 686 **: AIR 1993 SC 412;** *Indira Nehru Gandhi v. Raj Narain,* [1976] 2 SCR 347 **: (1975) Supp SCC 1;** *Mohinder Singh Gill v. Chief Election Commissioner,* [1978] 2 SCR 272 **: (1978) 1 SCC 405 – followed.**

List of Acts

Punjab Municipal Corporation Act, 1976; Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994; Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations, 1996; Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Election; Mayor; Chandigarh Municipal Corporation; Electoral malpractices by Presiding Officer; Counting of votes; Defacing ballots; Free and fair elections; Fundamental democratic principles; Basic structure of the Constitution; Elections at local participatory level; Local governments, Municipal corporations; Representative democracy; Statement false to the knowledge; Complete justice.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2874 of 2024

From the Judgment and Order dated 31.01.2024 of the High Court of Punjab & Haryana at Chandigarh in CWP No.2169 of 2024

Appearances for Parties

Dr. Abhishek Manu Singhvi, Gurminder Singh, Sr. Advs., Shadan Farasat, Talha Abdul Rahman, Amit Bhandari, Siddharth Seem, Abhishek Babbar, Harshit Anand, M. Shaz Khan, Adnan Yousuf, Ramanpreet Bara, Ferry Sofat, R.P.S. Bara, Karamanbir Singh, Advs. for the Appellant.

Tushar Mehta, SG., Maninder Singh, Mukul Rohatgi, Adundhamauli Prasad, Sr. Advs., Ms. Bansuri Swaraj, Siddhesh Shirish Kotwal, Prateek Gupta, Varun Chugh, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, Pawan Upadhyay, T. Illayarasu, Ms. Ashita Chawla, Ajay Sabharwal, Rangasaran Mohan, Amarpal Singh Dua, Raghunatha Sethupathy B., Mutu Thangadurai, Ms. Misha Rohatgi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. Leave granted.

2. The present appeal arises from an interim order of a Division Bench of the High Court of Punjab & Haryana[1] dated 31 January 2024. The order impugned originates in a writ petition alleging electoral malpractices by the presiding officer who conducted the election to the post of Mayor at the Chandigarh Municipal Corporation. The High Court issued notice and listed the petition after three weeks, but it declined to stay the result of the election or grant any other interim relief. The appellant approached this Court assailing the Order and raised serious allegations about the sanctity of the election. With the course the proceedings have taken, this judgment will result in a final order on the writ petition before the High Court.

3. Section 38 of the Punjab Municipal Corporation Act 1976[2], extended to the Union Territory of Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994[3], provides that the Chandigarh Municipal Corporation shall, at its first meeting in each year, elect one of its elected members to be the Mayor of the Corporation. Section 60(a) of the Act provides that the meeting for the election of the Mayor shall be convened by the 'Divisional Commissioner', who shall nominate a councillor who is not a candidate for the election, to preside over the meeting. Similarly, Regulation 6(1) of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996[4] provides that a meeting for the election of a Mayor shall be convened by the 'prescribed authority' who shall nominate a Councillor who is not a candidate to preside over the meeting. The Deputy Commissioner of the Union Territory of Chandigarh has been designated as Presiding Authority for this purpose by a Notification dated 4 October 1994.

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1 "High Court"

2 "Act"

3 Act No 45 of 1994

4 "Regulations"

4. On 10 January 2024, Shri Vinay Pratap Singh, IAS, Deputy Commissioner, Union Territory of Chandigarh acting in his capacity as the Prescribed Authority directed the convening of a meeting of the Councillors in terms of Section 38 of the Act at 11 am on 18 January 2024. The seventh respondent, Shri Anil Masih, one of the councillors who was not standing for the mayor election was nominated as the presiding authority. The agenda of the meeting was to conduct the election of Mayor, Senior Deputy Mayor, and Deputy Mayor of the Corporation and the elected Councillors desirous of contesting the election were called upon to file their nominations for the posts.

5. A writ petition under Article 226 of the Constitution was instituted by the appellant in the High Court seeking a direction to the Deputy Commissioner to ensure that free and fair elections take place for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation which were scheduled to be held on 18 January 2024 and for the appointment of a commissioner under the auspices of the High Court to supervise the election process.

6. During the course of hearing the appeal, the appellant submitted that he would be content if the petition was disposed of with directions to the official respondents to (a) acknowledge the acceptance of the withdrawal of the candidature of certain individuals for the three electoral posts; (b) permit persons nominated by the contested candidates to observe the proceedings of the elections; and (c) video record the entire election process.

7. In response to the above submission, it was stated on behalf of the respondents representing the various authorities, *inter alia*, that the entire voting and election process would be video recorded. Likewise, it was stated that the Chandigarh police would ensure that free and fair elections take place. In view of the position adopted by the authorities, by an Order dated 17 January 2024 (a day before the proposed election), the petition was disposed of by a Division Bench of the High Court.

8. Elections were not conducted on 18 January 2024, resulting in a fresh round of litigation before the High Court. The order dated 18 January 2024 postponing the elections and rescheduling them to 6 February 2024 was challenged before the High Court. The election allegedly could not take place as Shri Anil Masih, the presiding officer, had taken leave of absence on the ground of ill health and due to the purported 'law and order' situation in Chandigarh.

9. On 23 January 2024, the High Court observed that the postponement of the elections for a period of eighteen days was unreasonable. By its judgment dated 24 January 2024, the High Court held that there was no valid ground for the postponement of the elections. Consequently, while setting aside the postponement order dated 18 January 2024, the High Court directed that the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor be conducted at 10 am on 30 January 2024. The High Court also issued other directions to ensure free and fair elections, as set out below:

> "i) The respondents-authorities shall conduct the elections to the posts of Mayor; Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Chandigarh, on 30.01.2024 at 10 a.m. at the scheduled place as indicated in the order dated 10.01.2024 (Annexure P.1 in CWP-1350-2024).
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> ii) The Prescribed Authority, shall ensure that the scheduled elections, are held under the Presiding Officer, as may be nominated by the said Authority. The official respondents shall remain bound by their statements made before the Coordinate Bench of this Court on 17.01.2024 in CWP-1201-2024, to ensure conduct of free and fair elections.
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> iii) The Councillors, who would come for voting in the aforesaid elections, shall not be accompanied by any supporters or by the security personnel belonging to any other State.
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> iv) The Chandigarh Police, shall ensure to provide adequate security to the Councillors, who would come for voting, in view of the fact that they will not be accompanied by any security personnel belonging to any other State.
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> v) The Chandigarh Police shall also ensure that neither any rukus nor any untoward incident takes place in or around the premises of the Chandigarh Municipal Corporation Office, prior to, during or after the election process."

10. Pursuant to the above litigation before the High Court, the programme for the elections was notified on 26 January 2024. The election for

the post of Mayor was conducted on 30 January 2024 with Shri Anil Masih, the seventh respondent, acting as the Presiding Officer. Two candidates were in the fray for the post of Mayor. The appellant , Kuldeep Kumar, was a candidate fielded by an alliance between the Aam Aadmi Party and the Indian National Congress. From the submissions before the Court, it appears that the alliance came into being after nominations were filed on 16 January 2024, after which certain candidates had withdrawn their nominations, as recorded by the High Court in one of its earlier orders. The second candidate, Manoj Kumar Sonkar, the eighth respondent was a candidate set up by the Bharatiya Janta Party. Thirty-five councillors were eligible to vote at the election of the Mayor apart from which, the Member of Parliament from the Union Territory of Chandigarh was also eligible to cast a vote at the election. There were therefore thirty-six eligible voters for the election.

11. The results were announced by the Presiding Officer on 30 January 2024. The result sheet which tabulated the outcome is reproduced below:

"MUNICIPAL CORPORATION CHANDIGARH

ELECTION OF MAYOR

RESULT SHEET

Sr. No.	Name of the Councillors	Vote Polled
1.	Sh. Kuldeep Kumar	12
2.	Sh. Manoj Kumar	16
NUMBER OF VALID VOTES POLLED:		28
NUMBER OF INVALID VOTES POLLED:		08
TOTAL VOTES POLLED:		36

SIGNATURE OF PRESIDING OFFICER

I, Anil Masih, Presiding Officer, declare Sh. Manoj Kumar having been elected as Mayor, Municipal Corporation Chandigarh for the year 2024.

Dated: 30.01.2024 PRESIDING OFFICER"

12. The result sheet indicates that thirty-six votes were polled, of which eight were treated to be invalid. Of the twenty-eight valid votes which remained, the appellant polled twelve votes, while the eighth respondent polled sixteen votes. The Presiding Officer declared the result of the election in favour of the eighth respondent. As directed by the High Court, the election process, including the counting of votes was video recorded.

13. Alleging electoral malpractices by the presiding officer/seventh respondent during the counting of votes, the appellant instituted a writ petition before the High Court of Punjab & Haryana. A Division Bench of the High Court declined to stay the result of the election and directed that the petition be posted after three weeks. The proceedings before this Court were instituted at this stage assailing the interim order of the High Court.

14. On 5 February 2024, the video recording of the counting process was played in open court. This Court passed the following order:

> "1. Issue notice.
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> 2. Pursuant to the interim order of the High Court in an earlier writ petition, the proceedings for conducting the election to the Post of Mayor of the Chandigarh Municipal Corporation were videographed. During the course of the hearing, the video has been played in Court.
>
> 3. The Returning Officer shall remain present before this Court on the next date of listing to explain his conduct as it appears in the video.
>
> 4. *Prima facie*, at this stage, we are of the considered view that an appropriate interim order was warranted, which the High Court has failed to pass, in order to protect the purity and sanctity of the electoral process.
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> 5. We direct that the entire record pertaining to the election of the Mayor of the Chandigarh Municipal Corporation shall be sequestered under the custody of the Registrar General of the High Court of Punjab and Haryana. This shall include:

(i) The ballot papers;

(ii) Videography of the entire electoral process; and

(iii) All other material in the custody of the Returning Officer.

6. This exercise shall be carried out forthwith by 5 pm this evening.

7. Mr Tushar Mehta, Solicitor General appearing on behalf of the Returning Officer, states that the Returning Officer has handed over the entire record in a sealed format to the Deputy Commissioner, UT Chandigarh on 30 January 2024.

8. The Deputy Commissioner, UT Chandigarh, shall comply with the above direction by handing over the entirety of the record to the Registrar General of the High Court of Punjab and Haryana for safe keeping and custody.

9. The ensuing meeting of the Chandigarh Municipal Corporation, which is to take place on 7 February 2024, shall stand deferred, pending further orders of this Court.

10. List the Special Leave Petition on 19 February 2024."

15. On 19 February 2024, when the proceedings were listed before this Court again, the following order was passed:

"1. Mr Gurminder Singh, senior counsel apprised the Court that in pursuance of the interim order dated 05 February 2024, the ballot papers have been sequestered under the custody of the Registrar General of the High Court of Punjab and Haryana on 05 February 2024.

2. During the course of the hearing, the Returning Officer Mr Anil Masih is present before this Court. Responding to a query of the Court, Mr Masih stated that he had, besides signing the ballot papers, put his mark at eight ballot papers during the course of the counting of the votes. He states that he did so as he found that the ballot papers were defaced.

3. We direct that the ballot papers which have been placed in the custody of the Registrar General be produced before this Court at 2.00 pm on 20 February 2024 by a judicial officer to be nominated by the Registrar General for the purpose of transporting the ballot papers to this Court.

4. Proper security arrangements shall be made to ensure the safe transit of the judicial officer nominated by the Registrar General in pursuance of this Order. Arrangements shall also be made to secure proper preservation and custody of the ballot papers with the judicial officer.

5. The judicial officer shall also produce the entire video of the counting of the votes before the Returning Officer which took place on 30 January 2024.

6. List the Special Leave Petition at 2.00 pm on 20 February 2024."

16. In pursuance of the above directions, the entire record pertaining to the election of the Mayor was sequestered under the custody of the Registrar General of the High Court, including (i) the ballot papers; (ii) the video footage of the electoral process; and (iii) all material in the custody of the Returning Officer/Presiding Officer. Pursuant to the order dated 19 February 2024, the entire record has been produced before this Court in sealed and secure custody by Shri Varun Nagpal, OSD (Litigation) of the High Court of Punjab & Haryana.

17. On 5 February 2024, during the course of the hearing, parts of the video footage recorded in pursuance of the order of the High Court were played before this Court. The entire video footage has been produced before the Court pursuant to order dated 19 February 2024 and played on the open screens during the hearing.

18. Elections to the post of Mayor are governed by the provisions of the Chandigarh Municipal Corporation (Procedure and Conduct of Business) Regulations 1996. Regulation 6 provides for election of the Mayor, including the process of nomination, withdrawal of candidatures and the conduct of the election by a secret ballot. Clauses (9) to (13) of Regulation 6 have a material bearing on the subject matter of the present dispute and serve as a yardstick to

test the actions of the Presiding Officer/seventh respondent. The relevant provisions are reproduced below:

> "(9) No member shall vote for more than one candidate. At the time of voting, each member shall place a cross (X) on the right hand side of the ballot paper opposite the name of the candidate for whom the (sic) wishes to vote, and will then fold the ballot paper and without showing the front of the paper to any person, insert the same in the ballot box in the presence of the presiding authority.
>
> (10) If a member votes for more candidates than one or places any mark on the paper by which he may be identified, his ballot paper shall be considered invalid and will not be counted. A vote recorded on a ballot paper used at the meeting shall be rejected if the marks indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given.
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> (11) As soon as the period fixed for casting of votes is over, the presiding authority shall open the ballot box and initial each ballot paper.
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> (12) The votes for all the candidates shall then be counted by the presiding authority with the assistance of the Municipal officials or employees as may be designated by the presiding authority and the candidates shall be arranged in the order of the number of votes obtained by each of them.
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> (13) If there are only two candidates, then the one who gets the larger number of votes shall be declared elected."

19. In terms of Regulation 6(9), a councillor can vote for only one candidate. While voting, each member has to place a cross (X) on the right-hand side of the ballot paper opposite the name of the candidate for whom he wishes to vote, after which the ballot paper has to be folded and inserted in the ballot box in the presence of the Presiding Officer. Regulation 6(10) stipulates when the ballot paper would be treated as invalid and provides for three eventualities.

The first is where a member votes for more candidates than one. The second eventuality is where the member places any mark on the paper by which he may be identified. The third eventuality is if the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful for which candidate the vote has been cast. Finally, Regulation 6(11) provides that as soon as the period fixed for casting of the votes is over, the presiding authority shall open the ballot box and initial each ballot paper.

20. From the record, it emerges that Shri Anil Masih, the Presiding Officer had signed each of the ballot papers. However, the video footage appears to indicate that he had also placed certain marks on some of the ballot papers. This was corroborated on 19 February 2024, when Shri Anil Masih, the Presiding authority/seventh respondent, who was present before this Court, stated that besides signing the ballot papers, he had placed his mark on eight ballot papers during the counting of the votes. He stated that he did so as he found that the ballot papers were defaced and sought to highlight them.

21. The grievance of the appellant, urged before this Court by Dr Abhishek Manu Singhvi and Mr Gurminder Singh, senior counsel is that the video footage leaves no manner of doubt that the Presiding Officer while initialing the ballot papers placed an ink mark on the lower half of eight ballot papers, all of which were cast in favour of the appellant. It has been urged that the votes were treated as invalid only as a result of the marks which were put by the Presiding Officer. Consequently, it has been submitted that a deliberate effort was made by the Presiding Officer to treat eight of the votes which were cast in favour of the appellant as invalid and to declare the eighth respondent as the elected candidate on the basis that he had secured sixteen votes. Hence, it has been submitted that the electoral process has been vitiated by the misconduct of the presiding authority, as a consequence of which the democratic process leading up to the election of the Mayor of the Chandigarh Municipal Corporation has been seriously impaired.

22. Mr Mukul Rohatgi, senior counsel appeared on behalf of the Presiding Officer/seventh respondent and urged that the entire process of the election was not only video recorded but both the contesting candidates and their representatives were present in the assembly hall where the counting took place. Mr Rohatgi further submitted that

apart from initialing the ballot papers, the Presiding Officer placed certain marks in the bottom half of the eight ballots which were treated as invalid based on his assessment that these ballots had already been defaced.

23. Mr Maninder Singh, senior counsel appearing on behalf of the eighth respondent submitted that the relief sought by the appellant in the underlying writ petition before the High Court is for setting aside the result of the election and for the conduct of a fresh election. During the pendency of these proceedings, the eighth respondent has tendered his resignation and hence, it has been submitted that a fresh election would have to be held in terms of the provisions of Section 38(3) of the Act.

24. Mr Tushar Mehta, Solicitor General appeared for the Union Territory of Chandigarh and clarified that he is not representing the Presiding Officer/seventh respondent in these proceedings.

25. As stated above, Regulation 6(9) indicates that at the time of voting, each member shall place a cross (X) on the right-hand side of the ballot paper opposite the name of the candidate for whom the member wishes to vote. The ballot paper is then folded and placed in the ballot box. The entire record (including the ballots in question) has been produced before this Court in secure custody.

26. The entirety of the dispute turns on the eight ballot papers which were treated to be invalid by the Presiding Officer. We have perused the ballot papers in question. All the ballot papers contain the name of the appellant in the upper half and the name of the eighth respondent in the lower half. Below the names of the candidates is the signature of the Presiding Officer. After the ballots are cast, the Presiding Officer is required to initial each ballot in terms of Regulation 6(11). Each of the ballot papers bears two signatures of the Presiding Officer. It is evident from the physical inspection of the eight ballots which were treated to be invalid that in each of those cases, the vote was cast by the member in favour of the appellant. The Presiding Officer has placed a line in ink by way of a mark at the bottom half of each of the ballots which have been treated to be invalid. During the course of the hearing yesterday, the Presiding Officer informed this Court that he did so because he found that the ballots had been defaced. Before recording the statement of the Presiding Officer in the above terms, we had placed him on notice of the serious consequences

which are liable to ensue if he was found to have made a statement before this Court which was incorrect.

27. The eight ballots which have been perused before the Court have also been perused by the counsel appearing on behalf of the appellant and for the successful candidate among others. It is evident that in each of the eight ballots, the vote had been duly cast in favour of the appellant. Further, the Presiding Officer has evidently put his own mark on the bottom half of the ballots to create a ground for treating the ballot to have been invalidly cast.

28. In doing so, the Presiding Officer has clearly acted beyond the terms of his remit under the statutory regulations. These regulations have been framed by the Municipal Corporation in exercise of powers conferred by Section 65 of the Act as extended to the Union Territory of Chandigarh. Clause (10) of Regulation 6 provides for three eventualities, as already noticed earlier, in which a ballot can be treated as invalid, namely:

    (i) Where a member has voted for more than one candidate;

    (ii) Where a member places any mark on the paper by which he may be identified; and

    (iii) If the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful over which candidate the vote has been cast.

29. None of the above eventualities are fulfilled in the present case.

30. There is absolutely no dispute about the factual position that in each of the eight ballots the vote was cast for one person which is evident from the rubber stamp appearing on the upper half of the ballot in each of those cases. Likewise, there is no mark on the ballot which would indicate that the person who cast the vote would be identified. The third ground which evinces a situation where the mark is placed in such a manner so as to make it doubtful for which candidate the vote has been cast would not arise on a plain perusal of the ballots. Even if the mark which was placed by the Presiding Officer is taken into consideration, that mark does not create any doubt about the candidate in favour of whom the vote was cast. The vote was cast by placing a rubber stamp on the upper half of the ballot and hence the ink mark which was placed on the bottom half by the Presiding Officer would be of no consequence. The ballots had not been

defaced when the Presiding Officer put his mark at the bottom. The ballots left no manner of doubt about the candidate for whom the ballot was cast. But that apart, it is evident that the Presiding Officer is guilty of a serious misdemeanour in doing what he did in his role and capacity as Presiding Officer.

31. As stated above, Regulation 6(1) requires the nomination of a councillor who is not a candidate at the election to preside over the meeting. This provision has been made to ensure that the person who acts as Presiding Officer would do so with objectivity. It is evident that the Presiding Officer in the present case has made a deliberate effort to deface the eight ballots which were cast in favour of the appellant so as to secure a result at the election by which the eighth respondent would be declared as the elected candidate.

32. Before this Court yesterday, the Presiding Officer made a solemn statement that he had done so because he found that each of the eight ballots was defaced. It is evident that none of the ballots had been defaced. As a matter of fact, it is also material to note that after the votes are cast, the ballot is folded in a vertical manner to ensure that if the ink on the rubber stamp appears on the corresponding half of the ballot it will appear alongside the name of the candidate for whom the vote has been cast. The conduct of the Presiding Officer must be deprecated at two levels. Firstly, by his conduct, he has unlawfully altered the course of the Mayor's election. Secondly, in making a solemn statement before this Court on 19 February 2024, the Presiding Officer has expressed a patent falsehood, despite a prior warning, for which he must be held accountable.

33. For the above reasons, we have come to the conclusion that the result, which was declared by Shri Anil Masih, the Presiding Officer is plainly contrary to law and would have to be set aside. We order accordingly.

34. During the course of these proceedings, the eighth respondent who was elected as Mayor has tendered his resignation. Senior counsel appearing on behalf of the eighth respondent has adverted to the provisions of Section 38(3) in terms of which on the occurrence of any casual vacancy, *inter alia*, in the office of the Mayor, the Corporation is required within a month of the occurrence of the vacancy to elect one of its members as Mayor to hold office for the remainder of the term of office of the predecessor.

35. In the underlying writ petition before the Punjab & Haryana High Court, the appellant had, *inter alia*, sought the setting aside of the election process and for the holding of a fresh election process and consequential reliefs. However, we are of the considered view that it would be inappropriate to set aside the election process in its entirety when the only infirmity which has been found is at the stage when the counting of votes was recorded by the Presiding Officer. Allowing the entire election process to be set aside would further compound the destruction of fundamental democratic principles which has taken place as a consequence of the conduct of the Presiding Officer.

36. This Court has consistently held that free and fair elections are a part of the basic structure of the Constitution.[5] Elections at the local participatory level act as a microcosm of the larger democratic structure in the country. Local governments, such as municipal corporations, engage with issues that affect citizens' daily lives and act as a primary point of contact with representative democracy. The process of citizens electing councillors, who in turn, elect the Mayor, serves as a channel for ordinary citizens to ventilate their grievances through their representatives – both directly and indirectly elected. Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy.

37. We are of the considered view that in such a case, this Court is duty-bound, particularly in the context of its jurisdiction under Article 142 of the Constitution, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuges. Allowing such a state of affairs to take place would be destructive of the most valued principles on which the entire edifice of democracy in our country depends. We are, therefore, of the view that this Court must step in in such an exceptional situation to ensure that the basic mandate of electoral democracy at the local participatory level is preserved. Pertinently, this is not an ordinary case of alleged malpractice by candidates in an election, but electoral misconduct by the presiding officer himself. The brazen nature of the malpractice, visible on camera, makes the situation all the more

5 Kihoto Hollohon v. Zachilhu and Ors., [1992] 1 SCR 686 : AIR 1993 SC 412; Indira Nehru Gandhi v. Raj Narain, [1976] 2 SCR 347 : 1975 Supp SCC 1.

extraordinary, justifying the invocation of the power of this Court under Article 142.

38. From the result sheet, which has been reproduced in para 11, it has emerged that while the appellant is reflected to have polled twelve votes, eight votes cast in favour of the appellant were treated as invalid. As detailed above, each of those eight invalid votes was in fact validly cast in favour of the appellant. Adding the eight invalid votes to the twelve votes which the Presiding Officer recorded to have been polled by the appellant would make his tally twenty votes. The eighth respondent, on the other hand, has polled sixteen votes.

39. We accordingly order and direct that the result of the election as declared by the Presiding Officer shall stand quashed and set aside. The appellant, Kuldeep Kumar, is declared to be the validly elected candidate for election as Mayor of the Chandigarh Municipal Corporation.

40. Further, we are of the considered view that a fit and proper case is made out for invoking the jurisdiction of this Court under Section 340 of the Code of Criminal Procedure 1973 in respect of the conduct of Shri Anil Masih, the Presiding Officer. In paragraph 2 of the order dated 19 February 2024, we have recorded the statement which was made by the Presiding Officer when he appeared personally before this Court. As Presiding Officer, Shri Anil Masih could not have been unmindful of the consequences of making a statement which, *prima facie*, appears to be false to his knowledge in the course of judicial proceedings.

41. The Registrar (Judicial) is accordingly directed to issue a notice to show cause to Shri Anil Masih of the Chandigarh Municipal Corporation who was the Presiding Officer at the election which took place on 30 January 2024, as to why steps should not be initiated against him under Section 340 of the Code of Criminal Procedure 1973. The notice shall be made returnable on 15 March 2024.

42. Shri Anil Masih shall have an opportunity to file his response to the notice to be issued in pursuance of the above directions in the meantime.

43. The ballots and the video footage which were unsealed for the perusal of the Court shall be sealed again and returned to the OSD (Litigation) of the High Court of Punjab and Haryana for safekeeping

before the Registrar General of the High Court. This shall be subject to further orders of the competent court.

44. The other elections which are required to be held in terms of the regulations shall now take place in accordance with law, save and except for the election of the Mayor which has been resolved by the final directions which have been issued herein-above.

45. Before concluding, we echo the observations by Justice VR Krishna Iyer, (speaking for himself, Beg, CJ and Bhagwati, J) in **Mohinder Singh Gill v. Chief Election Commissioner.**,[6] albeit in a different context of the powers of the Election Commission of India and the parameters of Article 329(b) of the Constitution, pertaining to elections to the Houses of Parliament and the State Legislatures. Justice Krishna Iyer observed:

> "2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless, words:
>
> "At the bottom of all tributes paid to democracy is the **little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper** — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."
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> If we may add, the little, **large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men "dressed in little, brief authority". For "be you ever so high, the law is above you**".
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> (emphasis supplied)

In order to maintain the purity of the electoral process, the "little cross" on the "little bit of paper" must be made **only** by the metaphorical "little man" walking into the "little booth" and no one else.

6 [1978] 2 SCR 272 : (1978) 1 SCC 405

46. The writ petition before the High Court shall stand disposed of in terms of the above directions.

47. List the Civil Appeal on 15 March 2024 for considering the response of the seventh respondent to the notice which has been directed to be issued to him.

Headnotes prepared by: Divya Pandey

Result of the case: Directions issued.

[2024] 2 S.C.R. 713 : 2024 INSC 137

Smt. Vidya K. & Ors.
v.
State of Karnataka & Ors.

(Civil Appeal No. 2899-2907 of 2024)

22 February 2024

[Pamidighantam Sri Narasimha,* and Aravind Kumar, JJ.]

Issue for Consideration

Whether a notification for filling up 18 posts of lecturers of Home Science in First Grade College run by State of Karnataka is liable to be quashed for not providing the breakup of the 'subjects' within Home Science.

Headnotes

Karnataka Education Department Service (Department of Collegiate Education) (Recruitment) Rules, 1964, and the Karnataka Education Department Service (Department of Collegiate Education) (Special Recruitment) Rules, 1993 – Recruitment – Notification inviting application for the posts of lecturers of Home Science – Respondent no. 8 approached the Tribunal seeking quashing of the notification on the ground that the breakup of the specialised subjects within Home Science are not specified in the notification – The Tribunal quashed the notification on the ground that specifying the subject categories is necessary for advertising the vacant posts – High Court confirmed the order of the Tribunal – Propriety:

Held: The advertisement dated 24.12.2007 refers to the relevant Rules, and in fact, specifies all the requirements such as eligibility criteria, selection methods, educational qualifications, age limit etc. – There is no dispute about the fact that the recruitment *inter alia* is to the post of a lecturer in an undergraduate program in Government First Grade Colleges – In fact, Rule 3 of the 1993 Rules provides qualifications which concerns appointment to the post of lecturers in undergraduate programs – The reason for emphasising the Rule position is to indicate that these lecturers, upon appointment, would be teaching undergraduate students in the Home Science department – The qualification is therefore, confined to, a postgraduation degree in Home Science – As long as a candidate holds a master's degree in Home Science, he/she

* Author

will be qualified for applying to the post – It does not matter in which speciality within Home Science the master's degree is obtained – Appointments to these posts are in the nature of 'status', which means that the service and its conditions can be unilaterally changed by the amendment of the Rules – The first duty of the Tribunal is to verify and examine the claims made by a party in the context of the Rule that governs the field – If the Rule does not prescribe a subject-wise speciality, there is no justification for the Tribunal or the High Court to examine the propriety, or for that matter, the beneficial effect of the rule – Thus, the High Court committed an error in not focussing on what the Rule provides for and whether the advertisement is in consonance with the Rule – If the High Court had confined itself to the basic features of judicial review, it would have avoided committing the error that it did. [Paras 8, 9, 10, 12, 17]

Jurisprudence – Service Jurisprudence – Importance of Rules:

Held: Service jurisprudence must begin and end with rules that govern the process of qualification, recruitment, selection, appointment and conditions of service. [Para 12]

List of Acts

Karnataka Education Department Service (Department of Collegiate Education) (Recruitment) Rules, 1964; Karnataka Education Department Service (Department of Collegiate Education) (Special Recruitment) Rules, 1993.

List of Keywords

Service Law; Recruitment; Appointment to the post of lecturers; Subject categories; Beneficial effect of the rule; Consonance of advertisement with Rules.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2899-2907 of 2024

From the Judgment and Order dated 28.03.2013 of the High Court of Karnataka at Bengaluru in CMWP Nos. 19495, 19496,19497, 19498, 19499, 19500, 19501, 19502 and 19503 of 2009

With

Civil Appeal Nos. 2936-2954, 2908-2916, 2917-2935 and 2955-2963 of 2024

Appearances for Parties

Aman Panwar, A.A.G., V. Lakshminarayana, Sr. Adv., Dinesh Kumar Garg, Pratham Narendrakumar, Dhananjay Garg, Abhishek Garg, Sparsha Shetty, Ishaan Tiwari, R.P. Bansal, Shekhar G Devasa, Manish Tiwari, Ms. Thashmitha Muthanna, Shashi Bhushan Nagar, Vishwanath Chaturvedi, M/S. Devasa & Co., G.V.Chandrashekar, Ms. Anjana Chandrashekar, Anup Jain, Ms. K. V. Bharathi Upadhyaya, Arjun Harkauli, Bimlesh Kumar Singh, Rajeev Kumar Gupta, Kanwal Chaudhary, Ms. Niharika, Santosh Kumar Yadav, Neeraj Agarwal, V. N. Raghupathy, Manendra Pal Gupta, Shivam Singh Baghel, Anil Jaryal Thakur, K. K. Mani, Phatick Chandra Das, Advs. for the appearing Parties.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave Granted.

2. The short question arising for our consideration is whether a notification for filling up 18 posts of lecturers of Home Science in First Grade College run by State of Karnataka is liable to be quashed for not providing the breakup of the 'subjects' within Home Science. The Karnataka Administrative Tribunal quashed the notification on the ground that specifying the subject categories is necessary for advertising the vacant posts[1]. Writ Petitions[2] filed by the Karnataka Public Service Commission as well as the successful candidates were dismissed by the High Court confirming the order of the Tribunal. Thus, the present appeal.

3. Having examined the rules and regulations which govern the process of recruitment, we found no difficulty in arriving at the conclusion that the requirement, as assumed by the Tribunal and the High Court, is not a mandate of the recruitment Rules. Even otherwise, the Tribunal and the High Court have erroneously based their

1 Order dated 12.06.2009 passed in Application No. 1002/2008 and Application No. 2794/2008 by the Karnataka Administrative Tribunal, Bangalore.

2 Judgment dated 28.03.2013 passed in W.P. Nos. 19495-503/2009 and W.P. Nos. 20289-20297/2009 connected with W.P. No. 21474/2009 (S-KAT).

conclusions on policy considerations relating to how such a breakup would be beneficial to the candidates. For the reasons to follow, we have allowed the appeals, set-aside the judgments and upheld the recruitment process. Consequently, appointments made on the basis of the advertisement are affirmed.

4. The short facts leading to the present appeal are as follows. The Karnataka Public Service Commission (hereinafter 'KPSC') issued a notification on 24.12.2007 for filling up approximately 2500 posts of lecturers in the Government First Grade Colleges. Of the said posts, we are concerned with the recruitment to 18 posts in the department of Home Science. Following the advertisement, the appellants in the lead matter and two other connected matters, having the required qualification, were selected to the post of Home Science lecturer on 23.09.2008. In the meanwhile, respondent no. 8 approached the Tribunal seeking quashing of the notification by filing an Application on the ground that the breakup of the specialised subjects within Home Science are not specified in the notification. There was no interim order passed by the Tribunal, but the recruitment was made subject to the outcome of the Application.

5. The Application was finally taken up for hearing and the Tribunal by its order dated 12.06.2009 allowed the same and quashed the advertisement dated 24.12.2007. The Tribunal held that – (i) Home Science is not a subject, but a course which comprises of different subjects; (ii) in the past, KPSC had released notifications specifying vacancies against each specialisation, and appointments were also made after notifying vacancies against each specialisation; and (iii) if posts are not filled up subject-wise, and a lecturer possessing degree in Home Science in a particular subject is made to teach students in another subject, the education of the students would suffer.

6. Questioning the legality and validity of the Tribunal's decision, the appellants, who were successfully appointed candidates and KPSC filed Writ Petitions before the High Court. By the order impugned herein, the High Court dismissed the said Petitions. The reasoning of the High Court is that – (i) though the notification dated 24.12.2007 specifies subjects within the field of Arts and Science, for Home Science, no subjects or specialisations were mentioned; (ii) the Karnataka Education Department Service (Department of Collegiate

Education) (Special Recruitment) Rules, 1993, require that the vacancy must be specified subject wise which was not done for Home Science; and (iii) if any student wants to take up specialised subjects in his masters' degree, he is required to have studied that subject, and therefore providing the breakup of subjects within Home Science is necessary.

7. The appeals before us are by the appointed candidates, the State of Karnataka and the KPSC. We have heard all the counsels for the appellants and the respondents.

8. The issue as to whether the notification calling for applications for recruitment to the 18 posts of lecturers in the department of Home Science is illegal for not providing the subject wise specified categories, would depend upon the Rules governing the recruitment process, which are the Karnataka Education Department Service (Department of Collegiate Education) (Recruitment) Rules, 1964, and the Karnataka Education Department Service (Department of Collegiate Education) (Special Recruitment) Rules, 1993. Rules 3 and 4 of the 1993 Rules provide as follows: -

> *"3. Qualification and Age - No person shall be eligible for recruitment under these rules unless he, has –*
>
> *(a) (i) Obtained a Master's Degree in the relevant subject with at least 55 per cent marks or its equivalent grade;*
>
> *(ii) been, declared successful in the National Education Test", provided further that candidates possessing Ph.D/M. Phil. are exempted from appearing for NET.*
>
> *(b) ...*
>
> *4. Notification of vacancies - Appointing Authority shall notify the vacancies under each subject to the Karnataka Public Service Commission which shall make the selection in accordance with these rules."*

9. The advertisement dated 24.12.2007 refers to the relevant Rules, and in fact, specifies all the requirements such as eligibility criteria, selection methods, educational qualifications, age limit etc. Under the educational qualification, the notification, which is in consonance with Rule 3 stated above, specifies as under: -

> *"1. Must be a holder of a Master's Degree in the concerned subject with minimum of fifty five percent of marks. Provided that in the respect of Scheduled Caste and Scheduled Tribes candidates the minimum marks shall be fifty percent.*
>
> *2. Must have passed National Eligibility test conducted by the U.G.C. or C.S.I.R of SLET conducted by the State Government or any authority accredited by the U.G.C."*

10. There is no dispute about the fact that the recruitment *inter alia* is to the post of a lecturer in an undergraduate program in Government First Grade Colleges. That, it is a lecturer post, is also evident from the pay scale of Rs. 8000-13500 that it carries. In fact, Rule 3 of the 1993 Rules provides qualifications which concerns appointment to the post of lecturers in undergraduate programs. The reason for emphasising the Rule position is to indicate that these lecturers, upon appointment, would be teaching undergraduate students in the Home Science department. The qualification is therefore, confined to, a post-graduation degree in Home Science. As long as a candidate holds a master's degree in Home Science, he/she will be qualified for applying to the post. It does not matter in which speciality within Home Science the master's degree is obtained.

11. We may conclude this issue by referring to a statement made by the University Grants Commission (hereinafter 'UGC') in the affidavit which is to the following effect: -

> "*12. That the present Special Leave Petition pertains to the issue as to "whether the post of lecturer in Home Science is required to be classified subject-wise or not".*
>
> *13. In this regard, it is already submitted on behalf of UGC that there is no separate subject wise provision for the post of lecturers Home Science."*

12. Service jurisprudence must begin and end with rules that govern the process of qualification, recruitment, selection, appointment and conditions of service. Appointments to these posts are in the nature of 'status', which means that the service and its conditions can be unilaterally changed by the amendment of the Rules. The first duty of the Tribunal is to verify and examine the claims made by a party in the context of the Rule that governs the field. If the Rule does

not prescribe a subject-wise speciality, there is no justification for the Tribunal or the High Court to examine the propriety, or for that matter, the beneficial effect of the rule.

13. The reasoning adopted by the High Court is as follows:

> *"14. The material on record discloses that all persons who have basic degree in Science is not eligible for being admitted to M.Sc. in Home Science. If any student wants to take up specialized subject, he also should have studied that subject as a subject in the basic degree. Under these circumstances, though the Government had asked the KPSC to recruit 18 Lecturers in Home Science, the KPSC being specialized Agency should have known that while inviting applications, mentioning of mere Home Science would not be sufficient. In fact, the Rules on which reliance is placed categorically states that the candidate should have obtained a Master Degree in the 'relevant subject' with at least 55% marks or its equivalent grade and the Amended Rule (4) makes it very clear that the Appointing Authority shall notify the vacancies under 'each subject' to the KPSC which shall make selection in accordance with these Rules. Home Science is not a subject. Home Science is a stream or genesis. In that view of the matter, the notification calling for applications in Home Science is vague. Only the specialized subject has to be mentioned as they have mentioned in the case of Arts, Science and Commerce. The candidate possessing M.Sc. in Home Science with specialized subject is in disadvantageous position to apply as against the said vacancies. In their anxiety, if the applicant had applied for the post of Lecturer in Home Science, that cannot be held against her. The State and the KPSC should act in accordance with law."*

14. It does not require detailed reasoning to find the error in the judgment of the High Court. The fact that an undergraduate student would be required to choose a specialisation when he takes up a PG program has no bearing on the qualification of the lecturer teaching the undergraduate students. Further, the assumption of the High Court that Home Science is not a subject, instead it is a stream, or

a genesis has no application to the recruitment of lecturers for an undergraduate program. For under-graduation, Home Science in itself is the subject. In fact, UGC also considers Home Science as a subject, with subject code no. 12, as per the latest information bulletin issued by it towards National Eligibility Test conducted in December, 2023. To teach undergraduates, the qualification prescribed is simply a post-graduation degree in the subject of Home Science. We repeat, it does not matter in which subject of Home Science that the post-graduation is obtained.

15. The other reasoning given by the High Court is that on an earlier occasion, the KPSC, while recruiting for the post of probationary officers in the Dept. of Woman & Child Welfare, had mentioned the qualification as Master's Degree in Social Works or Home Science *with a specialization in Child Development or Nutrition*. Even this reasoning is misplaced because this advertisement was for recruitment to an executive post. While recruiting a person as a probationary officer in the Dept. of Woman & Child Welfare, the employer is certainly entitled to indicate the specialisation that is expected. This has nothing to do with advertisement for recruitment for the post of a lecturer.

16. Till date, the lecturers of Home Science in undergraduate program run by the Government First Grade Colleges have been treated as one cadre and recruitment to the posts were advertised as such. If one has to follow the logic adopted by the High Court, then the entire notification will collapse as the subjects of History, Economics, Political Science, Sociology etc. are also mentioned without the so-called specialisations and they must be set aside by the same logic. For example, History has its specialised subjects in post-graduation such as Ancient History, Archaeology, Epigraphy, Modern Indian History, World History, European History, South-east Asian History, West Asian History etc. The simple answer is that for under graduation, History is a subject in itself.

17. We conclude by holding that the High Court committed an error in not focussing on what the Rule provides for and whether the advertisement is in consonance with the Rule. If the High Court had confined itself to the basic features of judicial review, it would have avoided committing the error that it did.

18. For the reasons stated above, we allow the appeals and set aside the judgement of the High Court of Karnataka at Bangalore in W.P. Nos. 19495-19503/2009, W.P. Nos. 20289-20297/2009 connected with W.P. No. 21474/2009 (S-KAT) dated 28.03.2013 and the order dated 12.06.2009 passed in Application No. 1002/2008 and Application No. 2794/2008 by the Karnataka Administrative Tribunal, Bangalore. Pending applications, if any, stand disposed of.

19. No order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals allowed.

[2024] 2 S.C.R. 722 : 2024 INSC 131

Ravindra Kumar
v.
State of U.P. & ORS.

(Civil Appeal No. 5902 of 2012)

22 February 2024

[J.K. Maheshwari and K.V. Viswanathan,* JJ.]

Issue for Consideration

There was a non-disclosure of a criminal case (in which the candidate was acquitted) in the verification form of the employment. The State cancelled the selection of the appellant. Was the State justified in cancelling the selection of the appellant.

Headnotes

Service Law – Recruitment – Selection – Non-disclosure of a criminal case in verification – Appellant applied for the post of constable – After submitting application, he was embroiled in a criminal case – He cleared exam – In the criminal case, appellant was acquitted – After being selected, the appellant submitted affidavit that no criminal case was ever registered against him – His selection was cancelled vide letter dated 12.04.2005 as appellant had concealed the offence and filed false affidavit:

Held: On the date of the application, there was no criminal case pending and there was no suppression in the application form – The verification documents after noticing the criminal case and the subsequent acquittal stated that his character was good, that no complaints were found against him and that his general reputation was good – The SHO, who forwarded the report to the Superintendent of Police after reiterating the contents of the report observed that appellant was acquitted and no appeal was filed – The SHO certified the character of the candidate as excellent and that he was eligible to do Government Service under the State Government – The Superintendent of Police, in his letter to the Commandant, endorsed the report and reiterated that the character of the candidate was excellent – In the instant case, the Appointing Authority has mechanically held selection as irregular and illegal because the appellant had furnished an affidavit with incorrect facts – On applying the broad principles set out in para 93.7 of Satish

* Author

Chandra Yadav, the order of cancellation dated 12.04.2005 is neither fair nor reasonable – Clause 9 (i.e. if any fact is concealed in the affidavit by the candidate, his candidature is liable for cancellation) of the recruitment notification has to be read in the context of the law laid down in the cases of the Supreme Court – Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities – Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide – Thus, the order dated 12.04.2005 is quashed and set aside – The respondents are directed to appoint the appellant in service on the post of Constable. [Paras 29 and 30]

Case Law Cited

Commissioner of Police and Others Vs. Sandeep Kumar, [2011] 3 SCR 964 **: (2011) 4 SCC 644;** *Pawan Kumar vs. Union of India and Another,* [2022] 7 SCR 928 **: (2022) SCC OnLine SC 532***; Mohammed Imran vs. State of Maharashtra and Others,* **(2019) 17 SCC 696;** *Satish Chandra Yadav vs. Union of India and Others,* [2022] 10 SCR 537 **: (2023) 7 SCC 530 – relied on.**

Director General of Police, Tamilnadu, Mylapore vs. J. Raghunees, **(2023) SCC OnLine SC 1379 – distinguished.**

Avtar Singh Vs. Union of India and Others, [2016] 7 SCR 445 **: (2016) 8 SCC 471 – referred to.**

Ram Kumar vs. State of U.P. and Others, [2011] 10 SCR 506 **: (2011) 14 SCC 709;** *Morris v. Crown Office,* **(1970) 2 QB 114 – referred to.**

List of Keywords

Service Law; Recruitment; Selection; Employment; Non-disclosure of a crimal case; Verification in employment; Holistic view based on objective criteria.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5902 of 2012

From the Judgment and Order dated 29.10.2010 of the High Court of Judicature at Allahabad in SA No. 896 of 2005

Appearances for Parties

P. Choudhury, Saurabh Ajay Gupta, Nishant Bishnoi, Ms. Srishti Prabhakar, Ankit Choudhury, R. K. Singh, Nivedit Singh, Advs. for the Appellant.

Ms. Garima Prashad, A.A.G., Ms. Ruchira Goel, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. The vexed question is back again. Is it a hard and fast and a cut and dried rule that, in all circumstances, non-disclosure of a criminal case (in which the candidate is acquitted) in the verification form is fatal for the candidate's employment? We think not and it ought not to be so too. Fortunately, we have a judicial chorus supporting our view. Each case will turn on the special facts and circumstances. We have endeavoured to analyse the applicable precedents and have followed those line of cases, which have a striking similarity to the facts at hand.

Facts of the case:

2. Ravindra Kumar (the appellant), on 12.02.2004, applied for the post of Constable. His record was unblemished. Five days after submitting the application, i.e. on 17.02.2004, he was embroiled in a criminal case for offences punishable under Sections 324, 352 and 504 Indian Penal Code, 1860 ("**IPC**"), which he claims was a false case. He cleared the written exam and the interview. Earlier he had cleared the physical efficiency test too.

3. In the meantime, the criminal case took an interesting turn as by the judgment dated 13.09.2004, the appellant was acquitted. At that criminal trial, the informant PW-1 Srikant, who according to the prosecution, was allegedly injured in the incident on account of injuries allegedly inflicted by the appellant and by Vijendra, Ishwar Dayal and Radhey Shyam, turned hostile. The son of the informant, PW-2 Ram Gulam with whom according to the prosecution, the accused party was quarreling, till PW-1 Srikant intervened and allegedly

became subject to physical attack, also turned hostile. Ram Gulam clearly deposed that he could not identify any of the accused. The witnesses even stated that the Daroga Ji (Station House Officer) did not record their statement. In the cross-examination, they also stated that there was a big crowd at the occurrence and as such they could not identify the assailants. Insofar as Section 504 IPC was concerned which deals with intentional insult with the intent to provoke breach of peace, both the parties have filed a compromise memo, which was accepted by the Court. In view of the above, they were acquitted of all the charges.

4. The Appellant, after being selected, was required to submit an Affidavit disclosing criminal antecedents, if any. The Appellant submitted the affidavit on 30.10.2004, wherein, he *inter alia*, stated that no criminal case, cognizable or non-cognizable, has ever been registered against him.

5. Thereafter, he was asked to report for training and when he reported, he was not sent for training on the ground that there was a character verification pending. Subsequently, on 12.04.2005, he was given the following letter cancelling his selection:

> "It is to inform that you have been selected on the post of Recruit Constable PAC by the Selection Committee, 8th Battalion PAC, Bareilly after the examination. After selection, you submitted affidavit dated 30.10.2004, in which, you have mentioned that no criminal case/case, cognizable or non cognizable, has never been registered against you and no challan and police investigations are pending against you. On getting made your character verification from the Superintendent of Police of your Home District Deoria, this fact has come in light that a Crime No.95/04 under Section 324/504 and 352 I.P.C. was registered against you at the Police Station - Gauri Bazar, District Deoria discharged you from the charge in question on 13.09.2004.
>
> It is clear from the above that you have concealed the above offence and filed false affidavit. Therefore, due to producing false affidavit, your selection on the post of Recruit Constable in PAC is hereby cancelled."

6. The case of the Department was that, under Clause 9 of the recruitment notification dated 20.01.2004, if any fact is concealed in the affidavit by the candidate, his candidature is liable for cancellation. Clause 9, being relevant, is extracted herein below:

> "9. **Character Verification:**
>
> Character verification of all the candidates found eligible as above will be done as per the government rules prevailing at that time. In character verification, eligible candidates will have to furnish an affidavit in the prescribed format on a non-judicial stamp paper duly attested by a public notary. The format of the affidavit will be made available by the Selection Committee to the candidates finally selected in the interview. If it is found through the character verification or any other means that facts have been concealed in the affidavit by the candidate, not only will the selection of the candidate be cancelled but legal action can also be taken against him. No candidate/person/ organization will have the right to protest in any court in case the selection is cancelled due to false facts being mentioned in the affidavit or not providing the prescribed required information."

7. The multiple Clauses of the Affidavit, verified on 30.10.2004, namely, Clause 4, 5, 6, 7 and 11 read as under:

> "4. That to the best of my knowledge, no criminal case/ matter (cognizable or non-cognizable) has ever been registered against me, nor has the police challaned me in any such criminal case, nor is any police investigation pending against me. NO
>
> 5. That I have never been arrested in any criminal case (cognizable or non-cognizable) nor have I ever surrendered in any such criminal case. NO
>
> 6. That the details of the criminal cases which have been registered against me or in which I have been challaned or which were/are pending against me in the court or under investigation by the police are as follows (if the information is nil then write 'zero')

> 7. That the details of the criminal cases pending against me in any court and in which I was punished or acquitted or discharged are as follows (if the information is nil then write 'zero') ZERO
>
> 11. That if anything mentioned in the application is found to be false or the facts are found to be concealed and if I am immediately unconditionally terminated from the Uttar Pradesh Police Service and also given statutory punishment, then it will be acceptable to me."

8. In the meantime, the police verification proceeded. On 09.12.2004, the report of Police Station, Gauri Bazar, District Deoria stated that while a case in crime no. 95 of 2004 under Sections 324, 352 and 504 IPC was registered against the candidate, the candidate was acquitted and there was no appeal filed against the acquittal order. Further, there was no other case pending in any court nor was any case registered against the candidate at the police station. The SHO further mentioned as follows:

> "The character of the candidate is excellent. As per my consent the candidate is eligible to do government service under the State Government"

Moreover, the Gram Pradhan also seconded the "excellent" character of Appellant in the Character Certificate issued by him. The Character Certificate issued by the Gram Pradhan reads as under:-

> "CHARACTER CERTIFICATE
>
> It is certified that Ravindra Kumar s/o Late Pardesi Prasad, is a permanent resident of Village Bagapar, Post Katora, Police Station Gauri Bazar, District Deoria (Uttar Pradesh). I know and recognize him very well. His character is excellent. I wish him a bright future.
>
> Signature and seal
>
> Gram Pradhan"

9. Thereafter, on 10.12.2004, the Superintendent of Police, Deoria, whilst taking note of the report of Police Station, Gauri Bazar, District Deoria, informed the Commandant, 8th Battalion, PAC., Bareilly that, in his opinion, the candidate was eligible to do government service

under the State Government. The relevant portion of the letter dated 10.12.2004 is reproduced as follows-

> "….The character of the candidate is excellent. Therefore, the candidate Shri Ravindra Kumar s/o Shri Pardesi Ram r/o Bagapar, Post Kathaura, Police Station Gauri Bazar, District Deoria is eligible to do government service under the State government."

10. The State of U.P., in support of the cancellation letter dated 12.04.2005, relies on a letter dated 31.12.2004 written on behalf of the Inspector General of Police, PAC to the Commandant, 8th Battalion, PAC wherein it was stated, that with regard to the cases of the appellant and two others, who were found to be acquitted in criminal cases during character verification and who had not mentioned the factum of those cases in the affidavit, it was to be ensured that action as per the rules regarding submission of false affidavit be taken against those candidates. The State has also placed on record a letter of 07.01.2005 by the Inspector General of Police to all the Commandants of PAC Battalion, U.P. stating that with regard to submission of false affidavit, action should be taken as per the instructions issued. In the cases of candidates who had mentioned the facts related to the charges registered against them in the affidavit, action should be taken as per their discretion and the Government orders.

11. The State has also placed on record the "Form of verification of character" setting out that it was necessary to verify the character and antecedents before appointment of any candidate. The Verifying Authority was to report directly if found eligible. If the candidate is ineligible according to report then the report was to be sent to the District Magistrate. The District Magistrate was to call the candidate and record his statement and write down his opinion as to what he considers about the candidate and also send the statement of the candidate. In the note appended, it was even set out that, even a conviction need not by itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object, the overthrow by violent means of Government as by law established in Union of India then mere conviction need not be regarded as

a disqualification. It is also mentioned in Clause 4 of the Form of Verification of Character as follows:-

> "4. It is further requested that the following general rules regarding conduct of candidates for government jobs should also be kept in mind.
>
> The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point."

Proceedings in the High Court:-

12. Aggrieved by the letter dated 12.04.2005 of the cancellation of selection, the appellant filed a Civil Misc. Writ Petition No. 39418 of 2005 before the High Court of Judicature at Allahabad. The appellant argued that there was no deliberate or willful concealment on his part as he has been acquitted in the criminal case. The Ld. Single Judge, *vide* judgement dt. 16.05.2005, dismissed the Writ Petition holding that the petitioner has suppressed material information with regard to his involvement in a criminal case at the time of filling up the form. It was held that the subsequent acquittal of his involvement in the criminal case will not absolve him from the fact that he had suppressed material information.

13. The Appellant, being aggrieved by the Judgement of Ld. Single Judge, filed an appeal bearing Special Appeal No. 896/2005. The Division Bench, *vide* impugned judgment dated 29.10.2020, dismissed the Special Appeal holding that if a person swears a false affidavit at the time of enrollment, he is not fit to be enrolled in the disciplined service. It was further held that the act of swearing false affidavit on its own, is an act, which touches upon the conduct and character of the person. The suppression of the material information from the employer does not get vindicated by the subsequent acquittal in the case. Moreover, the appointing authority was not required to go into the details of the allegations in the criminal case, the evidence led in the trial and the reasons for which the criminal court had convicted or acquitted the candidate.

14. The Appellant, being aggrieved of the Judgment dated 29.10.2010, is before us in the instant appeal.

Contentions:-

15. Before us Mr. Premashis Choudhary, learned advocate for the appellant, contended that there was no willful concealment; that at the time of submitting of the application form on 12.02.2004, there was no criminal case pending against the appellant; and at that stage there was no requirement to furnish any affidavit. The appellant was acquitted in the criminal case on 13.09.2004 i.e. much prior to the filing of his affidavit on 30.10.2004. Since no criminal case was pending at the time of filing of affidavit, the appellant was under a bona fide belief that there was no requirement to disclose. It is further contended that as such there was no intention to deceive.

16. On the other hand, Ms. Garima Prashad, learned Additional Advocate General and Ms. Ruchira Goel, learned Standing Counsel for the State have contended that the appellant made a false representation in Clauses 4, 5, 6 and 7 of his Affidavit. Further, along with the appellant, two other persons, who were found to have been given false statements, have also been visited with the cancellation. Moreover, the present case is covered in favour of the State, by the judgment of this Court in case of ***Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471***, particularly, para 38.1, 38.2, 38.3 and 38.11 thereof.

Questions for consideration:-

17. In the above background, the questions that arise for consideration are:-

i. Was the State justified in cancelling the selection of the appellant, vide its order of 12.04.2005?

ii. To what relief, if any, is the appellant entitled to?

Discussion and findings:

18. As the facts reveal, admittedly on 12.02.2004, when the appellant applied for the post of Constable, there was no criminal case registered or pending. Five days after submitting the application, no doubt, he was embroiled in a criminal case which has since resulted in an acquittal by the trial court, *vide* order dated 13.09.2004, and no appeal was filed against the same. There is no dispute that under Clause 9 of the recruitment notification dated 20.01.2004, he was

required to furnish an Affidavit in the format given by the Selection Committee. It is also specifically mentioned in Clause 9 that if it is found that facts have been concealed in the Affidavit the selection of the candidate is liable for cancellation. As will be seen from paras 4, 5, 6 and 7 of the affidavit, information (though somewhat repetitive) was sought. It did obligate the candidate to disclose any criminal case which was registered against him; any arrest made in the past, the details of the cases which were pending and, most importantly, the details of acquittals were also called for. It is also an undisputed fact that the appellant said 'No' to each of these queries. The appellant's explanation is that since he was acquitted, he bona fide believed that he was only obliged to give details of any pending proceedings.

19. The State had taken the position that Clause 9 of the recruitment notification and the queries in the affidavit were quite clear and that there being suppression, the cancellation was perfectly justified.

20. The law on this issue is settled by a three-Judge Bench of this Court in ***Avtar Singh*** ***(Supra).*** Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:-

> "34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.
>
> 35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.
>
> 36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more

rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/ nature of duties/services and power has to be exercised on due consideration of various aspects.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while

addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of *suppressio veri or suggestio falsi*, knowledge of the fact must be attributable to him."

(Emphasis supplied)

21. As would be clear from ***Avtar Singh* (Supra),** it has been clearly laid down that though a person who has suppressed the material information cannot claim unfettered right for appointment, he or she has a right not to be dealt with arbitrarily. The exercise of power has to be in a reasonable manner with objectivity and having due regard to the facts. In short, the ultimate action should be based upon objective criteria after due consideration of all relevant aspects.

22. ***Avtar Singh* (Supra)** also noticed the judgment in ***Commissioner of Police and Others Vs. Sandeep Kumar, (2011) 4 SCC 644*.** In ***Sandeep Kumar* (supra)**, this Court set out the story of the character "Jean Valjean" in Victor Hugo's novel *Les Miserables*, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of Lord Denning in ***Morris v. Crown Office, (1970) 2 QB 114*** and concluded as follows:-

"10… …

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

Thereafter, in ***Avtar Singh*** ***(supra)*** dealing with ***Sandeep Kumar (supra)***, this Court observed as under***:***

> "24… …
>
> This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [*Morris v. Crown Office*, (1970) 2 QB 114 : (1970) 2 WLR 792 (CA)] , the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course."

23. In ***Ram Kumar vs. State of U.P. and Others***, ***(2011) 14 SCC 709***, another case noticed and discussed in ***Avtar Singh*** ***(Supra)*** arising out of near identical facts and construing a similar clause in the verification form, this Court, while granting relief, held as follows:-

> **"**9**.** We have carefully read the Government Order dated 28-4-1958 on the subject "*Verification of the character and antecedents of government servants before their first appointment*" and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:
>
> "The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:
>
> The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.
>
> xxx xxx
>
> 12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the

sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.

xxx xxx

17. For the aforesaid reasons, we allow the appeal, set aside the order of the learned Single Judge and the impugned order of the Division Bench and allow the writ petition of the appellant and quash the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad. The appellant will be taken back in service within a period of two months from today but he will not be entitled to any back wages for the period he has remained out of service. There shall be no order as to costs."

Ram Kumar ***(supra)*** was also a case of cancellation of selection to the post of Constable.

24. More recently in ***Pawan Kumar vs. Union of India and Another, (2022) SCC OnLine SC 532***, involving appointment to the post of Constable in Railway Protection Force and setting aside the order of discharge due to alleged suppression in the verification form, this Court, after noticing ***Avtar Singh*** ***(Supra)*** held as under:-

"11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.

13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/

recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

19. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17th November, 2015 and the order of discharge dated 24th April, 2015 and dated 23rd December, 2021 are hereby quashed and set aside. The Respondents are directed to reinstate the appellant in service on the post of Constable on which he was selected pursuant to his participation in reference to employment notice no. 1/2011 dated 27th February, 2011. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force and at the same time he will be entitled for all notional benefits, including pay, seniority and other consequential benefits, etc. Necessary orders shall be passed within a period of one month from today. No costs."

25. In ***Mohammed Imran*** vs. ***State of Maharashtra and Others,*** (2019) 17 SCC 696, no doubt, a case where a candidate made the disclosure of criminal case, this Court speaking through Navin Sinha, J. made the following telling observation which resonates with the hard realities of everyday existence :

"5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly,

> judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case."

26. We have also kept in mind the recent judgment of this Court in ***Satish Chandra Yadav vs. Union of India and Others***, (2023) 7 SCC 530 and the broad principles set out by this Court in para 93, especially, paras 93.1, 93.3 & 93.7. Even the broad principles set out therein recognize that each case should be scrutinized thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. ***Avtar Singh*** ***(Supra)*** in para 38.2 has held that while passing the order of cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. Further, in para 38.4.3 of ***Avtar Singh*** ***(Supra)*** the principle that, in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. We have read and understood the broad principles laid down in ***Satish Chandra Yadav*** ***(supra)*** with the following crucial para in ***Avtar Singh*** ***(Supra):***

> "35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right

not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases."

27. We have also examined the judgment in ***Director General of Police, Tamilnadu, Mylapore vs. J. Raghunees***, (2023) SCC OnLine SC 1379 and we find that the case of the appellant is more aligned with the facts in the judgment of this Court in ***Pawan Kumar (supra), Sandeep (supra)*** and ***Ram Kumar (supra).*** Hence, we find that the judgment in ***J. Raghunees (supra)*** is clearly distinguishable.

28. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgement of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.

29. Having discussed the legal position above, it is necessary to set out certain special features that obtain in the case at hand.

i. The appellant hails from the small village Bagapar, P.O. Kataura, Police Station Gauri Bazar, District Deoria, U.P.

ii. On the date of the application, there was no criminal case pending and there was no suppression in the application form.

iii. The criminal case was registered when he was 21 years of age for the offences very similar to the one referred to in ***Sandeep Kumar (supra)*** and even in the criminal case he was acquitted.

iv. No doubt, the multiple columns in the verification affidavit, questions were asked from him in different permutations and combinations. He must have been in a deep dilemma as there was an imminent prospect of losing his employment.

v. Most importantly, we find from the verification documents fairly and candidly made available by the learned Additional Advocate General, that the verification report after noticing the criminal case and the subsequent acquittal stated that his character was

good, that no complaints were found against him and that his general reputation was good.

vi. Not stopping there, the person who visited the spot even wished him a bright future in the report.

vii. The SHO, Gauri Bazar Police Station, who forwarded the report to the Superintendent of Police after reiterating the contents of the report observed that he was acquitted and no appeal was filed. Further, there was no other case pending and nor was any case registered against the candidate.

viii. The SHO certified the character of the candidate as excellent and that he was eligible to do Government Service under the State Government. He annexed the report of the Police Station as well as the report of the Gram Pradhan and the Court documents.

ix. The Superintendent of Police, in his letter to the Commandant, endorsed the report and reiterated that the character of the candidate was excellent.

x. While examining whether the procedure adopted for enquiry by the authority was fair and reasonable, we find that the order of cancellation of 12.04.2005 does not even follow the mandate prescribed in Clause 4 of the Form of verification of character set out in the earlier part of this judgment. Like it was found in ***Ram Kumar (supra)*** instead of considering whether the appellant was suitable for appointment, the Appointing Authority has mechanically held his selection was irregular and illegal because the appellant had furnished an affidavit with incorrect facts. Hence, even applying the broad principles set out in para 93.7 of ***Satish Chandra Yadav (supra)***, we find that the order of cancellation dated 12.04.2005 is neither fair nor reasonable. Clause 9 of the recruitment notification has to be read in the context of the law laid down in the cases set out hereinabove.

30. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non- disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant.

Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.

Relief:

31. For the reasons set out hereinabove, the appeal is allowed and the order of the learned Single Judge and the impugned order of the Division Bench dated 29.10.2010 in Special Appeal No. 896/2005 are set aside. The order of 12.04.2005 of the third respondent, Commandant 27th Battalion, PAC, Sitapur is quashed and set aside. The respondents are directed to appoint the appellant in service on the post of Constable for which he was selected, pursuant to his participation in reference to the Recruitment Notification dated 20.01.2004. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force. At the same time, we direct that the appellant will be entitled for all notional benefits, including pay, seniority and other consequential benefits. Necessary orders shall be passed within a period of four weeks from today. There shall be no order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.

[2024] 2 S.C.R. 743 : 2024 INSC 138

Ram Nath
v.
The State of Uttar Pradesh & Ors.

(Criminal Appeal No. 472 of 2012)

21 February 2024

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

Issue for Consideration

Interplay between the provisions of Chapter IX of the Food Safety and Standards Act, 2006 (FSSA) and ss.272 and 273 of the Penal Code, 1860; whether the view taken by the Allahabad High Court in the case of M/s. Pepsico India Holdings (Pvt) Ltd. & Anr v. State of Uttar Pradesh & Ors., holding that after coming into force of the FSSA w.e.f 29th July 2010, it would have an overriding effect on other food related laws, including the Prevention of Food Adulteration Act, 1954 and ss. 272, 273, IPC, challenged in Criminal Appeal No. 476-478 of 2012 is correct.

Headnotes

Food Safety and Standards Act, 2006 – ss.89, 59 – Overriding effect of this Act over all other food related laws – Punishment for unsafe food – Penal Code, 1860 – ss.272, 273 – Adulteration of food or drink intended for sale – Sale of noxious food or drink – State of Uttar Pradesh issued an order granting power to the authorities to initiate prosecutions u/ss.272 and 273, IPC as well as under the Prevention of Food Adulteration Act, 1954 – FIRs were filed alleging commission of offences u/ss.272, 273, IPC – Petitions seeking quashing thereof, dismissed by High Court – Accused herein inter alia pleaded that s.89 will have an overriding effect over the provisions of the IPC:

Held: By virtue of s.89 of the FSSA, s.59 will override the provisions of ss.272 and 273, IPC – Therefore, there will not be any question of simultaneous prosecution under both the statutes – Impugned orders set aside in Criminal Appeal Nos. 472 of 2012, 479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 – The offences, subject matter of these appeals are quashed and set aside – Authorities at liberty to act in accordance with the FSSA for offences

* Author

punishable u/s.59 of the FSSA – Criminal Appeal Nos. 476-478 of 2012, dismissed. [Paras 21, 22]

Food Safety and Standards Act, 2006 – ss.59, 48 – Penal Code, 1860 – ss.272, 273 – Offence u/s.59 of the FSSA made out even in absence of intention as provided in s.272, IPC – Knowledge an essential ingredient in sub-sec.1 of s.48, and thus, a part of s.59, FSSA:

Held: When the offences u/ss.272 and 273, IPC are made out, even the offence u/s.59 of the FSSA will be attracted – In fact, offence u/s.59 of the FSSA is more stringent – s.273 of the IPC applies when a person sells or, offers or exposes for sale any article of food or drink which has been rendered noxious or has become unfit for food or drink – s.273 incorporates requirements of knowledge or reasonable belief that the food or drink sold or offered for sale is noxious – s.59 of the FSSA does not require the presence of intention as contemplated by s.272, IPC – Under s.59 of the FSSA, a person commits an offence who, whether by himself or by any person on his behalf, manufactures for sale or stores or sells or distributes any article of food for human consumption which is unsafe – So, the offence u/s.59 of the FSSA is made out even if there is an absence of intention as provided in s.272, IPC – However, knowledge is an essential ingredient in sub-sec.1 of s.48, and therefore, it will be a part of s.59 of the FSSA. [Para 18]

Interpretation of Statutes – Food Safety and Standards Act, 2006 – s.89 – Overriding effect of this Act over all other food related laws – Main Section gives overriding effect to the provisions of the FSSA over any other law – Section unambiguous, aid of the title of the Section or its marginal note not to be taken to interpret the same:

Held: The title of the section indeed indicates that the intention is to give an overriding effect to the FSSA over all 'food-related laws' – However, in the main Section, there is no such restriction confined to 'food-related laws', and it is provided that provisions of the FSSA shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force – So, the Section indicates that an overriding effect is given to the provisions of the FSSA over any other law – The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same – Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature – Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA. [Para 20]

Food Safety and Standards Act, 2006 – Chapter IX – ss.49-58 – Offences and Penalties – Chapter X – Adjudication and Food Safety Appellate Tribunal – Discussed – Code of Criminal Procedure, 1973.

Food Safety and Standards Act, 2006 – s.3 clause (zz), (a), (zx) – "unsafe food"; "adulterant"; "sub-standard":

Held: The concept of unsafe food is more comprehensive than the concept of adulterated food – Unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health – If any adulterant is added to an article of food, which renders the article of food injurious to health, the food article becomes unsafe food – Further, substandard food cannot be unsafe food. [Paras 9-11]

Food Safety and Standards Act, 2006 – Objects and reasons – Discussed.

Case Law Cited

Swami Achyutanand Tirth v. Union of India & Ors, **(2014) 13 SCC 314;** *State of Maharashtra & Anr. v. Sayyed Hassan Sayyed Subhan & Ors.*, **(2019) 18 SCC 145**; *State of M.P. v. Kedia Leather & Liquor Ltd. and Ors.*, [2003] Suppl. 2 SCR 727 **: (2003) 7 SCC 389**; *Jeewan Kumar Raut & Anr. v. Central Bureau of Investigation*, [2009] 10 SCR 272 **: (2009) 7 SCC 526**; *State of Uttar*

Pradesh v. Aman Mittal and Anr, [2019] 11 SCR 1180 : **(2019) 19 SCC 740 – referred to**.

M/s. Pepsico India Holdings (Pvt) Ltd. & Anr v. State of Uttar Pradesh & Ors, **2010 SCC OnLine All 1708 – approved.**

List of Acts

Food Safety and Standards Act, 2006; Prevention of Food Adulteration Act, 1954; Penal Code, 1860; Code of Criminal Procedure, 1973; General Clauses Act, 1897.

List of Keywords

Overriding effect; Food/drink adulteration; Intention; Knowledge; Reasonable belief; Simultaneous prosecution; Interpretation of Statutes; Section unambiguous, Aid of the title of the Section/marginal note.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 472 of 2012

From the Judgment and Order dated 05.10.2010 of the High Court of Judicature at Allahabad in WPCRL No. 18831 of 2010

With

Criminal Appeal Nos. 479, 476-478 Of 2012 And Criminal Appeal No. 1068 of 2024

Appearances for Parties

Vikramjit Banerjee, ASG., Ardhendumauli Kumar Prasad, A.A.G., Maninder Singh, Sr. Adv., Garvesh Kabra, Amit Singh, Mrs. Nikita Jaju, Ahmer Shaikh, Yadunandan Bansal, Rauf Rahim, Ali Asghar Rahim, Ambhoj Kumar Sinha, Dheeraj Nair, Kumar Kislay, Ms. Avni Sharma, Ms. Ridhima Sharma, Ajay Sabharwal, Ms. Ashita Chawla, Abhishek Singh, Nachiketa Joshi, Navanjay Mahapatra, T.S.Sabarish, Gurmeet Singh Makker, Mrs. Niranjana Singh, Siddharth Singla, Vishnu Shankar Jain, Ashish Madaan, Ms. Annaya Sahu, Parth Yadav, Ms. Mani Munjal, Vishwa Pal Singh, Jamnesh Kumar, Parth Shekhar, Ms. Ambali Vedasen, Shubham Singh, Ms. Monica Haseja,

Md Sontu Mia, Nikhil Kumar, Binod Kumar Singh, Himanshu Shekhar, Advs. for the appearing Parties.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted in Special Leave Petition (Crl.) No. 1379 of 2011.

2. The issue involved in these appeals is about the interplay between the provisions of Chapter IX of the Food Safety and Standards Act, 2006 (for short, 'the FSSA') and Sections 272 and 273 of the Indian Penal Code (for short, 'the IPC').

FACTUAL ASPECT

3. Criminal Appeal No. 472 of 2012 takes exception to the order dated 5th October 2010 passed by a Division Bench of Allahabad High Court. The appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') seeking quashing of the prosecution for the offences punishable under Sections 272 and 273 of the IPC. On 11th May 2010, the State of Uttar Pradesh issued an order granting power to the authorities to initiate prosecutions under Sections 272 and 273 of the IPC as well as under the Prevention of Food Adulteration Act, 1954 (for short, 'PFA'). On 28th August 2010, a First Information Report (for short, 'FIR') was lodged by a food inspector representing the Regional Food Controller, Agra, against the petitioner alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was that, though the appellant did not possess a licence to sell the commodity of mustard oil, he continued to carry on the business of sale. Another allegation was that the petitioner had adulterated the mustard oil, edible oil and rice brine oil. The petitioner approached the High Court to quash the FIR on various grounds. The appellant relied on Allahabad High Court's decision dated 8th September 2010, in the case of ***M/s. Pepsico India Holdings (Pvt) Ltd. & Anr v. State of Uttar Pradesh & Ors[1].*** By the impugned order, the High Court dismissed the petition filed by the appellant. Incidentally, the decision in the

1 2010 SCC OnLine All 1708

case of ***Pepsico India***[1] is the subject matter of challenge by the State of Uttar Pradesh in Criminal Appeal No. 476-478 of 2012. In this case, FIR was registered against the respondent on 11th August 2010, alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was of adulteration in the cold drinks manufactured by the respondent. The view taken in the case of ***Pepsico India***[1] was that, from 29th July 2010, when the FSSA came into force, the provisions thereof would have an overriding effect over the food-related laws, including Sections 272 and 273 of the IPC. Further, it was held that the police have no authority or jurisdiction to investigate a case under the FSSA.

4. Criminal Appeal No. 479 of 2012 takes an exception to the order dated 15th September 2010, wherein the High Court declined to quash an offence punishable under Sections 272 and 273 of the IPC. In Special Leave Petition (Crl.) No. 1379 of 2011, the challenge is to the order dated 3rd August 2010 of the Allahabad High Court by which a petition under Section 482 of CrPC filed by the appellant for quashing the FIR alleging commission of offences under Section 272 and 273 of the IPC was dismissed.

5. In Short, the controversy is whether the view taken in the case of ***Pepsico India***[1], which is the subject matter of challenge in Criminal Appeal No. 476-478 of 2012, is correct. In the said decision, it was held that after coming into force of the FSSA with effect from 29th July 2010, it would have an overriding effect on other food-related laws, including the PFA. Therefore, the High Court held that invocation of Sections 272 and 273 of the IPC concerning food adulteration pursuant to a Government order dated 11th May 2010 was bad in law.

SUBMISSIONS

6. Detailed submissions have been made on behalf of the State of Uttar Pradesh in Criminal Appeal No. 476-478 of 2012. On behalf of the State, reliance was placed on the decisions of this Court in the cases of ***Swami Achyutanand Tirth v. Union of India & Ors.***[2] and the ***State of Maharashtra & Anr. v. Sayyed Hassan Sayyed Subhan & Ors.***[3] The submission is that there is no bar to the trial

2 (2014) 13 SCC 314

3 (2019) 18 SCC 145

of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the same offence. The learned counsel submitted that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted under either one of the two enactments or both enactments but shall not be liable to be punished twice for the same offence. Reliance was placed upon Section 26 of the General Clauses Act, 1897 (for short, 'the GC Act'). Learned counsel for the State also relied upon another decision of this Court in the case of ***State of M.P. v. Kedia Leather & Liquor Ltd. and Ors.***[4] He submitted that the area of operation of the IPC and a food-related law like the FSSA are entirely different and, therefore, the same are mutually exclusive. The learned counsel urged that Section 89 gives overriding effect to the provisions of the FSSA over all other food-related laws, as is evident from the title of the Section. He submitted that the IPC is not a food-related law by any stretch of the imagination. Therefore, wherever Sections 272 and 273 of the IPC are attracted even after coming into force of the FSSA, the offender can be prosecuted under the said IPC provisions.

7. The learned counsel appearing for the accused invited our attention to the objects and reasons of the FSSA and its preamble. Their submission is that the FSSA is very exhaustive legislation dealing with all aspects of food, including adulteration, unsafe food, etc. Their submission is that Section 89 will have an overriding effect over the provisions of the IPC. Our attention is also invited to Section 5 and Section 41 of the IPC. The submission is that in view of Section 5, any special law will remain unaffected by the provisions of the IPC. Reliance was placed on a decision of this Court in the case of ***Jeewan Kumar Raut & Anr. v. Central Bureau of Investigation.***[5] The counsel for the accused also placed reliance on the decision of this Court in the case of ***State of Uttar Pradesh v. Aman Mittal and Anr***[6]**,** in support of the proposition that the FSSA, being a special law, will exclude the applicability of the IPC for the fields which are covered by the provisions of the special Act.

4 [2003] Suppl. 2 SCR 727 : (2003) 7 SCC 389

5 [2009] 10 SCR 272 : (2009) 7 SCC 526

6 [2019] 11 SCR 1180 : (2019) 19 SCC 740

CONSIDERATION OF SUBMISSIONS

8. Different provisions of the FSSA were brought into force on different dates by notifications issued from time to time. The last of such notification is of 29th July 2010. All the provisions of the FSSA were in force as on 29th July 2010 except Section 22. The offences subject matter of these appeals were registered after 29th July 2010. We have carefully considered the submissions made across the bar. The statement of objects and reasons of the FSSA mentions explicitly that the multiplicity of food laws creates confusion. The multiplicity of laws, standard setting and various implementing/enforcement agencies are detrimental to the growth of the nascent food processing industry. It is further provided that the FSSA provides a single window to guide and regulate the persons engaged in manufacturing, marketing, processing, handling, transport, import and sale of goods. The preamble of the FSSA records that it was an enactment to consolidate the laws relating to food. It is a very comprehensive legislation on all the aspects of food.

9. Clause (zz) of Section 3 of the FSSA defines unsafe food, which reads thus:

> **"(*zz*) "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health:—**
>
> *(i)* by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances; or
>
> *(ii)* by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or
>
> *(iii)* by virtue of its unhygienic processing or **the presence in that article of any harmful substance; or**
>
> *(iv)* by the substitution of any inferior or cheaper substance whether wholly or in part; or
>
> ***(v)* by addition of a substance directly or as an ingredient which is not permitted; or**
>
> *(vi)* by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils, or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations."

(Emphasis added)

Thus, the concept of unsafe food is more comprehensive than the concept of adulterated food. Unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health.

10. The word sub-standard has been defined under clause (zx) of Section 3, which reads thus:

> "(*zx*) "sub-standard", an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe;"

Therefore, sub-standard food cannot be unsafe food.

11. Another important definition is of adulterant under clause (a) of Section 3, which reads thus:

> "(*a*) "adulterant" means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter;"

Coming back to the definition of unsafe food, sub-clause (v) of Clause (zz) of Section 3 provides that by adding a substance directly or as

an ingredient which is not permitted makes an article of food unsafe food. The presence of any harmful substance in the article of food makes it unsafe food. Therefore, if any adulterant is added to an article of food, which renders the article of food injurious to health, the food article becomes unsafe food.

12. The offences and penalties are contained in Chapter IX. Sub-Section 1 of Section 48 lays down how any article of food can be rendered injurious to health. Sub-Section 1 of Section 48 reads thus:

> "(1) A person may render any article of food injurious to health by means of one or more of the following operations, namely: —
>
> *(a)* adding any article or substance to the food;
>
> *(b)* using any article or substance as an ingredient in the preparation of the food;
>
> *(c)* abstracting any constituents from the food; or
>
> *(d)* subjecting the food to any other process or treatment,
>
> with the knowledge that it may be sold or offered for sale or distributed for human consumption."

Thus, if a person knows that a particular article of food is being offered for sale or distribution for human consumption and adds any adulterant (article or substance) to the food, he renders the food article injurious to health. In Chapter IX, Sections 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 deal with penalties. Sections 59 to 64 and 66 specifically deal with offences. Section 74 of Chapter X empowers the Central Government or State Government to establish Special Courts for the trial of offences relating to grievous injury or death of the consumer for which the punishment of imprisonment is more than 3 years.

13. In sub-Section 3 of Section 34, it is provided that the trial of any offence under the FSSA by the Special Court shall have precedence over the prosecution of any other case against the accused in any other Court. In cases where offences are not triable by the Special Court, under Section 73 of the FSSA, there is a power vesting in the Courts of Judicial Magistrates to try the case summarily by

following Sections 262 to 265 of the CrPC. Against any decision or order of the Special Court, an appeal is provided to the High Court under Section 76. The appeal lies before a bench consisting of at least two Judges. Another salutary provision is Section 77, which prohibits any Court from taking cognizance of the offence under the FSSA after the expiry of a period of one year from the date of the commission of the crime. However, the Commissioner of Food Safety, for reasons recorded, can extend the period from one year to three years. Section 79 of the FSSA overrides Section 29 of CrPC and provides that it shall be lawful for the Court of ordinary jurisdiction to pass any sentence authorised under the FSSA except a sentence of imprisonment for a term exceeding six years in excess of its powers conferred by Section 29 of CrPC. Section 78 provides that at any time during the trial of any offence under the FSSA, when an offence has been alleged to have been committed by any person not being the importer, manufacturer, distributor or dealer, based on evidence adduced before it, the Court has the power to proceed against the importer, manufacturer, distributor or dealer. This provision explicitly gives an overriding effect over the provision of sub-Section 3 of Section 319 of CrPC. Another salutary provision is Section 80, which lists the defences that may or may not be allowed in the prosecution under the FSSA. For example, it is provided that it is no defence that the accused had a mistaken but reasonable belief as to the facts that constituted the offence.

14. Therefore, as far as offences relating to food and food safety are concerned, there are very exhaustive provisions made in the FSSA dealing with all aspects of food and food security.

15. In the facts of these cases, the offence under Section 59 of the FSSA is very relevant, which reads thus:

> "59. Punishment for unsafe food.—Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,—
>
> *(i)* where such failure or contravention does not result in injury, with **[imprisonment for a term which may**

extend to three months and also with fine which may extend to three lakh rupees];[7]

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.**"**

Any person, whether by himself or by any other person on his behalf, manufactures or, stores or, sells or imports unsafe food for human consumption, becomes guilty of an offence of dealing with unsafe food. As can be noted, there are different punishments provided, starting from imprisonment for 3 months and extending to imprisonment for life and a fine, depending upon the extent and nature of injury caused by unsafe food. The fine is in the range of rupees three lakh to rupees ten lakh.

16. In these appeals, we are dealing only with Sections 272 and 273 of the IPC. The same read thus:

> **"272. Adulteration of food or drink intended for sale.**— Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7 Subs. for "imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees" by Act 18 of 2023, S. 2 and Sch. (w.e.f. 8-11-2023).

> **273. Sale of noxious food or drink.**—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

17. Section 272 is an offence of adulteration of any article of food or drink. The definition of food under Clause (a) of Section 3 of the FSSA also includes a liquid. If adulteration of an article of food is made which makes such articles noxious as food or drink, the person who adulterates is guilty of an offence punishable under Section 272 of the IPC. It contemplates the accused adulterating food with the intention to sell adulterated food. Thus, intention is an ingredient of the offence. When by adulterating an article of food or liquid, it becomes harmful or poisonous, it can be said that it becomes noxious. If, by adulteration, an article of food becomes noxious, it becomes unsafe food within the meaning of Section 3 (zz) of FSSA.

18. Section 273 of the IPC applies when a person sells or, offers or exposes for sale any article of food or drink which has been rendered noxious or has become unfit for food or drink. Section 273 incorporates requirements of knowledge or reasonable belief that the food or drink sold or offered for sale is noxious. Section 59 of the FSSA does not require the presence of intention as contemplated by Section 272 of the IPC. Under Section 59 of the FSSA, a person commits an offence who, whether by himself or by any person on his behalf, manufactures for sale or stores or sells or distributes any article of food for human consumption which is unsafe. So, the offence under Section 59 of the FSSA is made out even if there is an absence of intention as provided in Section 272 of the IPC. However, knowledge is an essential ingredient in sub-Section 1 of Section 48, and therefore, it will be a part of Section 59 of the FSSA. The maximum punishment for the offence under Section 272 of the IPC is imprisonment for a term which may extend to six months or with a fine. The substantive sentence for the offence punishable under Section 273 is the same, whereas, under Section 59, the punishment is of simple

imprisonment extending from three months to a life sentence with a fine of rupees three lakh up to 10 lakhs.

19. Moreover, a limitation of one year is provided for the offence under Section 59, which is extendable up to three years as provided in Section 77 of the FSSA. By virtue of Section 468 of CrPC, the limitation for taking cognizance of the offence punishable under Sections 272 and 273 is one year. There is a power to extend time under Section 473 of CrPC. The power is not limited to three years.

CONCLUSION

20. Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning unsafe food. In this context, we must consider the effect of Section 89 of the FSSA. Section 89 reads thus:

> "89. Overriding effect of this Act over all other food related laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act."

The title of the section indeed indicates that the intention is to give an overriding effect to the FSSA over all 'food-related laws'. However, in the main Section, there is no such restriction confined to 'food-related laws', and it is provided that provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the Section indicates that an overriding effect is given to the provisions of the FSSA over any other law. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature. Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the

FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

21. The decision of this Court in the case of ***Swami Achyutanand Tirth***[2] does not deal with this contingency at all. In the case of ***the State of Maharashtra***[3], the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.

22. Accordingly, Criminal Appeal No. 472 of 2012, Criminal Appeal No.479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 succeed, and we set aside the impugned orders. The offences, subject matter of these appeals, are hereby quashed and set aside with liberty to the authorities to initiate appropriate proceedings in accordance with the law if not already initiated. Therefore, the concerned authorities are free to act in accordance with the FSSA for offences punishable under Section 59 of the FSSA. Criminal Appeal Nos. 476-478 of 2012 are dismissed.

23. No orders as to costs.

Headnotes prepared by: Divya Pandey

Result of the case:
Criminal Appeal Nos. 472 of 2012, 479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 allowed; Criminal Appeal Nos. 476-478 of 2012, dismissed.

[2024] 2 S.C.R. 758 : 2024 INSC 145

M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v.
The Assam State Electricity Board and Others

(Miscellaneous Application (Civil) No. 2045 of 2022)
IN
(Curative Petition (Civil) Diary No. 23828 of 2020)
IN
(Review Petition (Civil) No.789 of 2019)
IN
(Civil Appeal No. 8450 of 2016)

26 February 2024

[Aniruddha Bose* and Sudhanshu Dhulia, JJ.]

Issue for Consideration

Whether registry has the power to dismiss a curative petition solely on the ground that no averment has been made to the effect that the review petition was dismissed by circulation.

Headnotes

Supreme Court Rules, 2013 – Ord. XLVIII r.2 (1) – Curative petition – Registry's power to dismiss – Dismissal of review petition in open court after oral hearing and not by circulation – Curative petitions filed thereagainst – Order of the registrar declining registration of curative petitions on the ground that no averment made to the effect that the review petition was dismissed by circulation – Legality:

Held: Instant matter ought to be decided by a Bench of this Court and not by the Registry – Registry cannot be vested with power to decide whether a review petition, after being dismissed in open Court hearing, merited relook through the curative jurisdiction – That would be a judicial exercise – A curative petition arising from an order dismissing a review petition upon hearing in open Court must contain a plea or prayer seeking excuse from compliance of making averment as contained in Ord. XLVIII r. 2(1) – Proper course for the Registry on receiving such a petition with a prayer to be excused from the above requirement would be to obtain instructions from the Judge in chambers and thereafter communicate such instructions to the parties – r. 2, second part, provides that the

* Author

Registrar herself can direct the applicant to serve the other party with a notice of motion returnable before the Court while she opines that it is desirable that the application should be dealt with in the open Court but would not apply where the applicant approaches this Court after the review petition is dismissed in open court hearing – In cases where review plea is dismissed by circulation, the curative petition has to be circulated first to a Bench of three senior-most Judges of this Court and the Judges who passed the judgment complained of, if available – Thereafter, the course prescribed in sub-clauses (2), (3) and (4) of r. 4 of Ord. XLVIII would be followed as may be applicable – In the instant appeal, said course not followed when the order was passed declining registration of the curative petition – Said order being contrary to the provisions of the Rules, thus, set aside, however, not a fit case to remand the matter to the Registrar as substantial time has lapsed – No case made out for invoking the curative jurisdiction to take relook into the case – Purpose would not be served in sending the matter back to the Chamber Judge for instructions in the given circumstances. [Paras 18, 19, 21, 22, 23]

Supreme Court Rules, 2013 – Ord. XLVIII – Curative petition – Limitation for filing:

Held: Curative jurisdiction being a special jurisdiction derived from inherent power or jurisdiction of this Court, the limitation prescribed for filing of review petition cannot be extended to apply in the cases of curative petition – Curative jurisdiction of this Court does not flow from its power to review, but this jurisdiction is derived from Arts 129 and 142 of the Constitution of India – Moreover, r. 3 of Order XLVIII specifically stipulates that curative petition has to be filed within reasonable time from the date of judgment or order passed in a review petition – No timeframe has been formulated in the 2013 Rules either for filing a curative petition. [Para 11]

Case Law Cited

Rupa Ashok Hurra vs Ashok Hurra and Another, [2002] 2 SCR 1006 **: (2002) 4 SCC 388 – followed.**

P.N. Eswara Iyer and Others vs Registrar, Supreme Court of India, [1980] 2 SCR 889 **: (1980) 4 SCC 680;** *Rama Rao Poal vs Samaj Parivartana Samudaya,* **Curative Petition (Civil) D. No.35404/2015;** *Mohd. Arif vs Registrar, Supreme Court of India,* [2014] 11

SCR 1009 : (2014) 9 SCC 737; *Union of India & Ors. vs M/s. Union Carbide Corporation & Ors.*, Curative Petition (Civil) Nos. 345-347 of 2010 – **referred to.**

List of Acts

Supreme Court Rules, 2013; Constitution of India; Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

List of Keywords

Curative petition; Registry's power to dismiss curative petition; Oral hearing and not by circulation; Registration of curative petition; Review petition; Dismissed in open Court hearing; Curative jurisdiction; Judicial exercise; Instructions from the Judge in chambers; Review plea; Remand; Limitation; Special jurisdiction; Inherent power or jurisdiction; Time frame.

Case Arising From

INHERENT JURISDICTION : Miscellaneous Application (Civil) No.2045 of 2022

In

Curative Petition (Civil) Diary No.23828 of 2020

In

Review Petition (Civil) No.789 of 2019

In

Civil Appeal No.8450 of 2016

From the Judgment and Order dated 31.10.2022 in D No.23828 of 2020 of the Supreme Court of India

With

Miscellaneous Application (Civil) Nos.2046, 2047, 2048 and 2050 of 2022 in Curative Petition (Civil) Diary Nos.23829, 23830, 23831 of 2020 and 14718 Of 2021 in Review Petition (Civil) Nos.786-787 of 2019 in Civil Appeal Nos.8442-8443 of 2016 with Miscellaneous Application (Civil) No.2049 of 2022 in Curative Petition (Civil) No.23833 of 2020 in Review Petition (Civil) No.788 of 2019 in Civil Appeal No.8445 of 2016

M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others

Appearances for Parties

Anand Sanjay M. Nuli, Dharm Singh, Ms. Nandiny Pandey, Suraj Kaushik, Akhila Wali, M/s. Nuli & Nuli, Advs. for the Appellants.

Vijay Hansaria, Sr. Adv., Ms. Kavya Jhawar, Ms. Sneha Kavita, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

The appellants before us are firms who are aggrieved by an order of a Registrar (J-IV) of this Court passed on 31.10.2022 declining registration of a set of petitions labelled as "curative petitions." This was a common order passed in six similar petitions (including the one instituted by the appellant in the Miscellaneous Application No. 2045 of 2022, instituted by Brahmaputra Concrete Pipe Industries) founded on similar factual and legal grounds. These appeals have been filed under Rule 5 of Order XV of the Supreme Court Rules, 2013 (hereinafter the "2013 Rules"). In this judgment, we shall refer to the pleadings and orders made in Misc. Application No.2045 of 2022 treating it as the lead matter. The said Rule reads:-

*"**Order XV***
PETITIONS GENERALLY

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***5.** The Registrar may refuse to receive a petition on the ground that it discloses no reasonable cause or is frivolous or contains scandalous matter but the petitioner may within fifteen days of the making of such order, appeal by way of motion, from such refusal to the Court.*

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2. The order of the Registrar, which is under appeal before us, reads:-

> *"The above mentioned Curative Petitions filed by M/s. Nuli & Nuli, Advocates against the judgment dated 18.12.2019 passed in the Review Petitions were heard and disposed of in the Open Court.*
>
> *In this regard the relevant Rule 2(1), Order XLVIII, S.C.R., 2O13 reads as under:*
>
> > *"The petitioner, in the curative petition, shall aver specifically that grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation."*
>
> *Since the aforesaid Review Petitions were disposed of in open court and not by circulation, the aforementioned Curative Petitions are declined for registration and are lodged under Order XV Rule 5 of Supreme Court Rules, 2013.*
>
> *Inform the Advocate accordingly."*

3. The origin of the dispute ultimately leading to passing of the aforesaid order relates to maintainability of a suit instituted by the appellant under "The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993" (the 1993 Act). The suit of the appellant was decreed by the Civil Judge, Senior Division, Tinsukia, Assam (Trial Court) but was dismissed by the High Court in appeal mainly on the ground of the suit not being maintainable. The High Court, inter-alia, held that the suit under the 1993 Act would not lie in respect of the transactions which had taken place prior to 23.09.1992, the date on which the Act became operational. The appeal against the High Court judgment was dismissed by a three Judge Bench of this Court on 23.01.2019. The plea of review of the said judgment also failed and the review petition was dismissed on 18.12.2019 after open court hearing. In this judgment, we shall deal with the legality of the Registrar's order refusing to receive the curative petitions of the appellants.

4. The 1993 Act was preceded by an ordinance permitting certain small scale industrial undertakings to claim interest on delayed payment. That ordinance was promulgated on 23.09.1992. The ordinance later

transformed into the aforesaid statute. A question arose as to whether the right to sue for interest under the said Act could relate back to delayed payments made under agreements entered into before the date of promulgation of the ordinance or not. A Full Bench of the Gauhati High Court opined that the right to claim interest under the said statute would not extend to agreements or contracts entered prior to 23.09.1992.

5. In this judgment, we shall discuss the factual position involved in the petition filed by the appellant in the lead matter. Its case had ultimately reached this Court and in the judgment delivered on 23.01.2019, it was held by the three Judge Bench that the material date for instituting the suit for interest would depend on whether delivery was made by the supplier after coming into operation of the said statute or not. If that was the case, then a suit for recovery of interest on delayed payment would be maintainable in the opinion of the three Judge Bench. In the case of the appellant before us, the three Judge Bench found no evidence of any delivery being made subsequent to the statute becoming operational. What the appellant had sought to rely on was the dates of raising of bills subsequent to 23.09.1992. The three-Judge Bench of this Court was not satisfied that the goods were supplied subsequent to that date, in respect of which interest was being claimed on account of delayed payment.

6. As we have already indicated, the three Judge Bench of this Court dismissed the review petition in open court after oral hearing, finding no error apparent on the face of record of the judgment under review. It was thereafter the curative petition was instituted with which we are concerned in this judgment.

7. Under the Constitution of India or any other statutory provision, there is no specific jurisdiction conferred on this Court to entertain curative petitions excepting the Rules of this Court made in 2013. The Supreme Court Rules 2013 deals with the procedure for filing of curative petitions and we shall revert to these Rules later in this judgment. Article 137 of the Constitution of India lays down the jurisdiction of the Court to review its own judgment or order. Article 145 of the Constitution of India empowers this Court to make rules for regulating the general practice and procedure of the Court. The said two Articles read:-

"137: Review of judgements or orders by the Supreme Court

Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or order made by it.

145: Rules of Court, etc.

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including –

(a) rules as to the persons practicing before the Court;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court or such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexations or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal of the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and so such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the

case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion."

8. The expression "curative petition" was used by Constitution Bench of this Court comprising of five Hon'ble Judges in the case of **Rupa Ashok Hurra -vs- Ashok Hurra and Another** [(2002) 4 SCC 388]. This Court, in the said judgment, opined that to prevent abuse of the Court's process and to cure a gross miscarriage of justice, the Supreme Court may reconsider its judgments in exercise of its inherent powers. This inherent power or jurisdiction was traced to Articles 129 and 142 of the Constitution of India. It was inter-alia, held in this judgment:-

*"**50**. The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.*

***51.** Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of the principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.*

***52.** The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification*

by a Senior Advocate with regard to the fulfilment of the above requirements.

53. *We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three seniormost Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a Senior Counsel to assist it as amicus curiae. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.*

54. *Insofar as the present writ petitions are concerned, the Registry shall process them, notwithstanding that they do not contain the averment that the grounds urged were specifically taken in the review petitions and the petitions were dismissed in circulation."*

9. As would be evident from the aforesaid passages of the said judgment, one of the pre-conditions for filing a curative petition is that the petitioner must specifically aver that the grounds mentioned in such petition had been taken in the review petition and that it was dismissed by circulation. This is contained in paragraph 52 of the said report. The grounds on which a curative petition could be founded have been specified in paragraph 51 of the report in the case **Rupa Ashok Hurra** (supra). The provision pertaining to filing of curative petitions have been incorporated in Order XLVIII of the 2013 Rules. The said Rules, along with its sub-clauses is reproduced below:-

"ORDER XLVIII
CURATIVE PETITION

1. Curative Petitions shall be governed by Judgment of the Court dated 10"" April, 2002 delivered in the case of 'Rupa Ashok Hurrah v. Ashok Hurrah and Ors.' in Writ Petition (C) No. 509 of 1997.

2. (1) The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation.

(2) A Curative Petition shall be accompanied by a certificate of the Senior Advocate that the petition meets the requirements delineated in the above case.

(3) A curative petition shall be accompanied by a certificate of the Advocate on Record to the effect that it is the first curative petition in the impugned matter.

3. The Curative Petition shall be filed within reasonable time from the date of Judgment or Order passed in the Review Petition.

4. (1) The curative petition shall be first circulated to a Bench of the three senior-most judges and the judges who passed the judgment complained of, if available.

(2) Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation without any oral arguments but the petitioner may supplement his petition by additional written arguments.

(3) If the Bench before which a curative petition was circulated concludes by a majority that the matter needs hearing then it shall be listed before the same Bench, as far as possible.

(4) If the Court, at any stage, comes to the conclusion that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner."

10. The main point urged on behalf of the appellant is that the Registrar has no power or jurisdiction to decline registration of a curative petition and it should be decided by a Bench of this Court. There appears to be no decision directly on this point and we had requested Mr. Raju Ramachandran, learned Senior Advocate to assist us as an Amicus Curiae in this matter, a request he graciously accepted. Mr. Anand Sanjay M. Nuli has appeared on behalf of the appellants and we have already recorded his main submissions. Mr. Vijay Hansaria, learned Senior Counsel appearing on behalf of the respondent has

drawn our attention to the Order XLVIII of the 2013 Rules to point out that since this was a case where review petition was dismissed in open Court hearing after oral submissions were advanced, it does not satisfy the mandate of the five Judge Bench laid down in the case of **Rupa Ashok Hurra** (supra). Mr. Hansaria has also taken the point of delay in filing the curative petition. The review petition was dismissed on 18.12.2019 and the curative petition was filed on 31.10.2020, after a lapse of ten months. He has taken us through the provisions of Rule 3 of Order XLVIII of the 2013 Rules which requires a curative petition to be filed within a reasonable time from the date of judgment or order passed in the review petition. But the Rules do not provide any specific time period within which a curative petition has to be filed from the date of dismissal of the review petition. Thus, it ought to be left to the discretion of the Court while entertaining such petition to decide the question of delay.

11. Mr. Hansaria also referred to the thirty days' limitation period for filing a review petition in terms of Order XLVII, Rule 2 of the 2013 Rules. Our opinion on this point is that the curative jurisdiction being a special jurisdiction derived from inherent power or jurisdiction of this Court, the limitation prescribed for filing of review petition cannot be extended to apply in the cases of curative petition. We hold so because curative jurisdiction of this Court does not flow from its power to review, but this jurisdiction is derived from Articles 129 and 142 of the Constitution of India. Moreover, Rule 3 of Order XLVIII of the 2013 Rules specifically stipulates that curative petition has to be filed within reasonable time from the date of judgment or order passed in a review petition. No timeframe has been formulated in the 2013 Rules either for filing a curative petition.

12. Mr. Hansaria's further argument has been that the judgment in the case of **Rupa Ashok Hurra** (supra) requires to be reconsidered. But the aforesaid decision having been delivered by a high authority, of five Hon'ble Judges of this Court, we cannot test its legality or comment on the question as to whether it requires to be reconsidered or not. For this reason, we are unable to accept his submission on this point. He cited a decision of this Court in the case of **P.N. Eswara Iyer and Others -vs- Registrar, Supreme Court of India** [(1980) 4 SCC 680] in which distinction has been drawn between an original or first hearing of a matter and a relook thereto at the stage of review. In this judgment, it was held that

the parameters for hearing these two proceedings are different. This judgment was delivered in connection with amendment of the Supreme Court Rules, 1966 dispensing with oral hearing of review petitions. But this authority does not aid the respondent, having been delivered in a different context under different set of Rules. In any case, oral hearing has not altogether been dispensed with in curative jurisdiction also and it has been left at the discretion of the Bench to decide as to whether the curative petitions ought to be dismissed by circulation without oral arguments or there shall be oral submission after notice to the opposite party. This procedure is contained in Rule 4 of Order XLVIII of the 2013 Rules which has been reproduced earlier in this judgment.

13. While in the case **Rupa Ashok Hurra** (supra), it was specified by the five Judge Bench that a curative petition must contain an averment that review petition was dismissed by circulation, the consequence of dismissal on oral hearing in open Court has not been specified in that judgment. Rules have been framed lifting the directions of this Court in the case of **Rupa Ashok Hurra** (supra) to statutory level. While testing the appellant's submissions, we shall refer to these Rules as well.

14. Mr. Ramachandran, learned Amicus Curiae has argued that the making of averment to the effect that the review petition was dismissed by circulation should not by itself guide the question of maintainability of a curative petition. His submission is that in terms of Order LV Rule 2 of the 2013 Rules, this Court has been vested with power to excuse from compliance with the requirements with any of the rules and if an application to that effect is made, the Registry should take instructions from the Judge in chamber in that regard and communicate the same to the parties. The said Rule further provides that if in the opinion of the Registrar, it is desirable that the application should be dealt with in open Court, she may direct the applicant to serve the other parties with a notice of motion returnable before the Court. Mr. Ramachandran has also cited an order passed on 08.02.2016 in the case of **Rama Rao Poal -vs- Samaj Parivartana Samudaya** [Curative Petition (Civil) D. No.35404/2015], in which this Court had initially directed that the question of maintainability ought to be decided by the concerned Bench. In the said order, a Coordinate Bench of this Court observed:-

"Two issues arise in the appeal. The first is whether a curative petition would be maintainable against an order passed in a review petition which has been heard in open Court. The second is whether the pre-conditions laid down in "Rupa Ashok Hurra vs. Ashok Hurra & Anr. ", (2002) 4 SCC 389, are satisfied. The Registrar has decided both the issues against the applicant/petitioner holding the curative petition to be not maintainable.

Upon hearing the learned counsel for the applicant/ petitioner and after perusing the relevant provisions of the Supreme Court Rules, 2013, we are of the view that the aforesaid questions are to be decided by the Bench.

The Registry is therefore directed to circulate the curative petition in accordance with the relevant provisions of the Supreme Court Rules.

Appeal against the Registrar order is disposed of in the above terms."

15. That proceeding had also reached the Coordinate Bench in appeal from an order of a Registrar. Subsequently, however, a Bench of this Court comprising of four Hon'ble Judges dismissed the curative petition on 29.03.2016.

16. Moreover, in the judgment of this Court in the case of **Mohd. Arif -vs- Registrar, Supreme Court of India** [(2014) 9 SCC 737] it has been observed that where death sentence is awarded, a right of limited oral hearing shall be given to the convict at the stage of review petition. Subsequently, in the case of **Union of India & Ors. -vs- M/s. Union Carbide Corporation & Ors.** [Curative Petition (Civil) Nos.345-347 of 2010], a five Judge Bench of this Court by an order passed on 14.03.2023, upon hearing the parities in exercise of its curative jurisdiction chose to dismiss the same. In this proceeding the Court was examining a curative petition brought by Union of India seeking to re-open the settlement arrived at in the case arising out of Bhopal gas tragedy that occurred in 1984. Earlier review petitions questioning the settlement order stood dismissed and Union of India had not asked for review thereof. Mr. Ramachandran has submitted that the earlier review petitions were dismissed after hearing in open Court and in spite of that, the Constitution Bench chose to hear the parties invoking curative jurisdiction of this Court.

17. In the decision of this Court in the case of **Union Carbide** (supra), the Constitution Bench of this Court in substance reaffirmed the direction contained in the case of **Rupa Ashok Hurra** (supra) limiting the scope of curative petitions by holding :-

> *"28. We have great hesitation in allowing such a prayer and granting such sui generis relief through the means of curative petitions. Although this Court in Rupa Ashok Hurra chose not to enumerate all the grounds on which a curative petition could be entertained; the Court was clear in observing that its inherent power ought not to be exercised as a matter of course, and that it should be circumspect in reconsidering an order of this Court that had become final on dismissal of the review petition. Nevertheless, looking at the nature of the matter before us, it would be advisable to also examine the curative petition(s), apart from the aforesaid preliminary objection."*

18. What is apparent from the tenor of the aforesaid judgments is that the question of maintainability of a curative petition has to be ultimately examined by a Bench of this Court. The composition of such bench has also been laid down in the case of **Rupa Ashok Hurra** (supra). This has further been incorporated in Rule 4 of Order XLVIII of the 2013 Rules. But the question of composition of the Bench can arise only after the curative petition is entertained. The point with which we are dealing with in this judgment is not whether the curative petition ought to be dismissed by circulation or not. The issue we have to address is as to whether Registry has the power to dismiss a curative petition solely on the ground that no averment has been made to the effect that the review petition was dismissed by circulation. We accept the submission of Mr. Ramachandran that this is a matter which ought to be decided by a Bench of this Court and not by the Registry. This is a judicial exercise. That is what in effect flows from the Bench of coordinate strength in its order of 08.02.2016 in the case of **Rama Rao Poal** (supra). Moreover, while in the case of **Rupa Ashok Hurra** (supra) certain conditions have been prescribed on satisfaction of which a curative petition would lie, there is no discussion or stipulation in the judgment that in absence of averment to that effect, the curative petition ought to be dismissed at the registration stage itself. Further, the grounds on which the Registrar may refuse to receive a petition have been

enumerated in Rule 5 of Order XV of the 2013 Rules. In the order under appeal, the aforesaid Rule has been referred to. But this Rule does not empower the Registrar to decline registration of a curative petition on the ground as disclosed in declining registration of the present curative petition. Hearing of a review petition in open Court cannot be brought within the ambit of the expression "that it discloses no reasonable cause" as employed in Rule 5 of Order XV of the 2013 Rules. That factor would be, at best, a technical shortcoming. Considering the importance of the question raised before it, in the case of **Union Carbide** (supra) the Constitution Bench of this Court chose to examine the curative petition in spite of there being dismissal of the review petition in open Court hearing though ultimately the curative petition stood dismissed.

19. Now we shall turn to the question as regards the course open to the Registry after it finds a curative petition lacking the averment to the effect that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. We have referred to two precedents where this Court chose to invoke its curative jurisdiction after the respective review petitions were dismissed in open Court. Registry cannot be vested with power to decide whether a review petition, after being dismissed in open Court hearing, merited relook through the curative jurisdiction. As we have already observed, that would be a judicial exercise. The Registry in a situation of this nature, cannot keep the matter pending as "defective" either, as is done in the cases of delayed filing of petition unaccompanied by applications for condonation of delay. We are referring to this context by way of an illustration only. In such a situation, filing of an application for condonation of delay would cure the initial defect and it would be for the Court to decide as to whether the delay has to be condoned or not. In cases like the present one, curing the defect would not be within the Registry's jurisdiction. We also do not think an appeal under Order XV Rule 5 of the 2013 Rules would be the proper course, as under that Rule situations in which Registry can refuse to entertain a petition have been clearly expressed. Failure to make averment in terms of Rule 2(1) of Order XLVIII of the 2013 Rules is not one of the conditions which vests the Registry to refuse to receive a curative petition in itself.

20. In our opinion, the course to be followed by the Registry in a proceeding of this nature is contained in Order LV Rule 2 of the

2013 Rules. This was the submission of the learned Amicus Curiae and we quote below the said Rule:-

> ***"ORDER LV***
> ***POWER TO DISPENSE AND INHERENT POWERS***
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> *2. An application to be excused from compliance with the requirements of any of the rules shall be addressed, in the first instance, to the Registrar, who shall take instructions ofthe Judge in Chambers thereon and communicate the same to the parties, but, if, in the opinion of the Registrar, it is desirable that the application should be dealt with in open Court, he may direct the applicant to serve the other party with a notice ofmotion returnable before the Court.*
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21. We are of the view that a curative petition arising from an order dismissing a review petition upon hearing in open Court must contain a plea or prayer seeking excuse from compliance of making averment as contained in Order XLVIII Rule 2(1) of the 2013 Rules. The proper course for the Registry on receiving such a petition with a prayer to be excused from the above requirement would be to obtain instructions from the Judge in chambers and thereafter communicate such instructions to the parties. In the second part of Rule 2 it is provided that the Registrar herself can direct the applicant to serve the other party with a notice of motion returnable before the Court while she opines that it is desirable that the application should be dealt with in the open Court. The said part of the Rule would not apply in a case where the applicant seeking to invoke curative jurisdiction approaches this Court after the review petition is dismissed in open court hearing. The applicant for invoking curative jurisdiction, in such a situation, as we have already observed, must file an application praying to be excused from compliance with Rule 2(1) of Order XLVIII of the 2013 Rules and such application shall also contain a request

for the matter to be placed before the chamber judge for proper instructions. In other cases pertaining to curative petitions, in which the review plea is dismissed by circulation, the curative petition has to be circulated first to a Bench of three senior-most Judges of this Court and the Judges who passed the judgment complained of, if available. Thereafter, the course prescribed in sub-clauses (2), (3) and (4) of Rule 4 of Order XLVIII of the 2013 Rules shall be followed as may be applicable.

22. So far the present appeal is concerned, this course was not followed when the order was passed declining registration of the curative petition. This order, in our opinion, is contrary to the provisions of the Rules and thus, we set aside the impugned order.

23. We, however, do not consider it fit to remand the matter to the Registrar as the curative petitions were filed in the year 2020 and substantial time has lapsed since then. We have ourselves gone through the initial order passed in the Special Leave Petition as also the order of the Review Court. We have perused the curative petitions as well. We do not think any case has been made out by the appellant for invoking the curative jurisdiction to take relook into the appellant's case. Hence, we refrain from entertaining the curative petitions. We do not think any purpose would be served in sending the matter back to the Chamber Judge for instructions in the given circumstances.

24. We record our appreciation for the assistance given to us by Mr. Ramachandran, learned senior counsel as Amicus Curiae.

25. The appeal shall stand disposed of in the above terms.

26. This judgment will cover five other miscellaneous applications which are in effect appeals from the order of the Registrar and all these appeals shall stand disposed of in the same terms.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal disposed of.

[2024] 2 S.C.R. 776 : 2024 INSC 143

Shailesh Kumar
v.
State of U.P. (Now State of Uttarakhand)

(Criminal Appeal No. 684 of 2012)

26 February 2024

[M. M. Sundresh* and S.V.N. Bhatti, JJ.]

Issue for Consideration

What is the goal of investigation and what is the role of investigating officer; Are s.172 CrPC and ss. 145 & 161 of the Evidence Act to be read in consonance with each other; Can a General Diary entry precede the registration of FIR.

Headnotes

Code of Criminal Procedure, 1973 – Goal of investigation and the role of investigating officer:

Held: An investigation of a crime is a lawful search of men and materials relevant in reconstructing and recreating the circumstances of an offence said to have been committed – With the evidence in possession, an Investigating Officer shall travel back in time and, therefore tick off the time zone to reach the exact time and date of the occurrence of the incident under investigation – The goal of investigation is to determine the truth which would help the Investigating Officer to form a correct opinion on the culpability of the named accused or suspect – Once such an opinion is formed on a fair assessment of the evidence collected in the investigation, the role of the court comes into play when the evidence i.e. oral, documentary, circumstantial, scientific, electronic, etc. is presented for and on behalf of the prosecution – During the entire play, the rules of evidence ought to be honoured, sprinkled with the element of fairness through due procedure – Adequate opportunities would have to be given to challenge every assumption – Administration of criminal justice lies in determining the guilt of the accused beyond reasonable doubt – The power of the State to prosecute an accused commences with investigation, collection of evidence and presentation before the Court for acceptance. [Para 17]

* Author

Code of Criminal Procedure, 1973 – Evidence Act, 1872 – Maintenance of case diary u/s. 172 CrPC and application of s. 145 and s. 161 of the Evidence Act – S.172 CrPC and ss. 145 & 161 of the Evidence Act are to be read in consonance with each other subject to the limited right conferred under sub-section (3) of s.172 of CrPC:

Held: A case diary is maintained by an Investigating Officer during his investigation for the purpose of entering the day-to-day proceedings of the investigation – While doing so, the Investigating Officer should mandatorily record the necessary particulars gathered in the course of investigation with the relevant date, time and place – Under sub-section (1-A) and (1-B) of s.172 of CrPC, the Investigating Officer has to mention, in his case diary, the statement of witnesses recorded during investigation with due pagination – The object of these sub-sections is to facilitate a fair investigation since a statement made u/s. 161 of CrPC is not expected to be signed as mandated by s.162 of CrPC – When a police officer uses case diary for refreshing his memory, an accused automatically gets a right to peruse that part of the prior statement as recorded in the police officer's diary by taking recourse to s.145 or s.161, as the case may be, of the Evidence Act – S.172(3) of CrPC makes a specific reference to s.145 and s.161 of the Evidence Act – Therefore, whenever a case is made out either u/s.145 or u/s. 161 of the Evidence Act, the benefit conferred thereunder along with the benefit of s.172(3) of CrPC has to be extended to an accused – Thus, the accused has a right to cross-examine a police officer as to the recording made in the case diary whenever the police officer uses it to refresh his memory – Though s.161 of the Evidence Act does not restrict itself to a case of refreshing memory by perusing a case diary alone, there is no exclusion for doing so – Similarly, in a case where the court uses a case diary for the purpose of contradicting a police officer, then an accused is entitled to peruse the said statement so recorded which is relevant, and cross-examine the police officer on that count – What is relevant in such a case is the process of using it for the purpose of contradiction and not the conclusion – To make the position clear, though s.145 r/w. s.161 of the Evidence Act deals with the right of a party including an accused, such a right is limited and restrictive when it is applied to s.172 of CrPC – Suffice it is to state,that the said right cannot be declined when the author of a case diary uses it to refresh

his memory or the court uses it for the purpose of contradiction – Therefore, there is no hesitation in holding that s.145 and s.161 of the Evidence Act on the one hand and s.172(3) of CrPC on the other are to be read in consonance with each other, subject to the limited right conferred under sub-section (3) of s.172 of CrPC. [Paras 20, 26, 27]

Code of Criminal Procedure, 1973 – First Information Report *vis-a-vis* Case Diary:

Held: In Lalita Kumari v. Government of Uttar Pradesh & Others, the Supreme Court held that an Information disclosing commission of a cognizable offence shall first be entered in a book kept by the officer in charge of police station and not in the General Diary – A General Diary entry cannot precede the registration of FIR, except in cases where preliminary inquiry is needed – While an FIR is to be registered on an information disclosing the commission of a cognizable offence, so also a recording is thereafter required to be made in the case diary. [Para 28]

Evidence Act, 1872 – s. 165 – Judge's power to put questions or order production:

Held: S.165 of the Evidence Act speaks of the power of the court to put questions and order production of documents in the course of trial – This is a general and omnibus power given to the court when in search of the truth – Such a power is to be exercised against any witness before it, both in a civil as well as a criminal case – The object is to discover adequate proof of a relevant fact and, therefore, for that purpose, the Judge is authorised and empowered to ask any question of his choice – When such a power is exercised by the court, there is no corresponding right that can be extended to a party to cross-examine any witness on an answer given in reply to a question put forth by it, except with its leave. [Para 29]

Penal Code, 1860 – s. 302 – Prosecution case that victim-deceased went to picnic along with PW-2 and PW-3 – On their return, they were intercepted by appellant with a knife, who inflicted two fatal blows on the chest and stomach of the victim – Prosecution sought to bring home the guilt of the appellant primarily in the form of: (a) dying declaration, (b) eye witnesses, (c) recovery and (d) alleged arrest of the appellant nearer to the scene of the offence – Trial Court convicted

appellant u/s. 302 IPC and sentenced him to imprisonment for life – High Court confirmed the conviction – Propriety:

Held: The victim-deceased was first examined by the PW-5 (who was working in the hospital) – The presence of PW-1 (father of deceased) before PW-5 is extremely doubtful – His presence was not spoken to at all by PW-5 – The evidence of PW-1 is quite unnatural as he has neither spoken about the motive in his statement recorded u/s. 161 of CrPC, nor about the so-called dying declaration which was not even witnessed by PW-5 – PW-5 has clearly stated that the deceased was in a very serious condition, blood was oozing out and, therefore, he could not give adequate treatment – The deceased was immediately referred to the second hospital – The testimony of PW-1 is also contradictory to PW-3 and PW-8 (doctor who examined deceased in the second hospital) – Similarly, evidences of PW-2 and PW-3 cannot be relied upon, PW-2 admittedly was not examined by PW-11 (investigating officer) for over 2 weeks, for which no explanation was given – This witness also stated that he was not the friend of the deceased, therefore, his presence at the place of occurrence creates a serious doubt as to how he happened to accompany the deceased to the picnic spot – PW-3, though accompanied the deceased, was not present thereafter, as deposed by PW-5 and did not admit the deceased to the second hospital as deposed by PW-8 – The prosecution has not chosen to examine the driver of the vehicle i.e the tempo in which the deceased was taken to the hospital – There is no explanation as to how PW-9-another police officer from different jurisdiction authored the inquest report – Also, it is totally unbelievable for PW-6 to reach the place of occurrence out of inquisitiveness – The arrest of the accused at the instance of PW-7 is yet another instance of the prosecution trying to make out a case – It is incomprehensible that the appellant would be present at the place of the occurrence when he is attempting to flee – Similar logic goes to the recovery of the knife, it was found in an open place – On perusal of the case diary, it was found various corrections had been made, while some pages were even missing – A clear attempt is made to correct the dates – When the trial court perused the case diary for the purpose of contradicting the statement of a police officer, it ought not to have fixed the onus on the appellant – It has failed to discharge its duty enshrined u/s. 172(3) of CrPC r/w. s. 145 or s.161, as the case may be, of the Evidence Act – These aspects as discussed were not looked

into in a proper perspective – Thus, the appellant has made out a case for acquittal. [Paras 32-39]

Case Law Cited

Lalita Kumari v. Government of Uttar Pradesh & Others, [2013] 14 SCR 713 : **(2014) 2 SCC 1 – followed.**

Arvind Kumar @ Nemichand & Ors. v. State of Rajasthan, [2021] 11 SCR 237; *Common Cause and Others v. Union of India*, [2015] 6 SCR 731 : **(2015) 6 SCC 332**; *Bhagwant Singh v. Commissioner of Police*, [1983] 3 SCR 109 : **(1983) 3 SCC 344**; *Baleshwar Mandal v. State of Bihar*, **(1997) 7 SCC 219**; *Balakram v. State of Uttarakhand and Others*, [2017] 5 SCR 367 : **(2017) 7 SCC 668**; *Ram Chander v. State of Haryana*, [1981] 3 SCR 12 : **(1981) 3 SCC 191 – relied on.**

Manoj and Others v. State of Madhya Pradesh, [2022] 9 SCR 452 : **(2023) 2 SCC 353 – referred to.**

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List of Acts

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

List of Keywords

Investigation; Goal of investigation; Role of investigating officer; Case Diary; Maintenance of case diary; Cross-examination as to previous statements in writing; Right of the accused to cross-examine as to case diary used to refresh memory; Refreshing of memory perusing case diary; Contradiction of police officer using case diary; FIR *vis-à-vis case* diary; Power of Judge to put questions.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.684 of 2012.

From the Judgment and Order dated 15.11.2010 of the High Court of Uttarakhand at Nainital in CRLA No.888 of 2001

Appearances for Parties

D. P. Singh, Vikram Singh, Amit Gupta, Archit Singh, Manu Mishra, Ms. Shreya Dutt for M/s. Mitter & Mitter Co., Advs. for the Appellant.

Saurabh Trivedi, Ashutosh Kumar Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

M. M. Sundresh, J.

1. The appellant convicted by the Additional Sessions Judge/Special Judge, Anti-Corruption U.P (East) Dehradun in ST 166/1992 under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") for life imprisonment, as confirmed by the Division Bench of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 888 of 2001 seeks acquittal.

2. Heard learned counsel Mr. D.P Singh appearing for the appellant and the learned counsel Mr. Saurabh Trivedi appearing for the respondent. We have perused the entire records placed before us, and taken due note of the synopsis notes submitted.

BRIEF FACTS

3. The deceased, Gajendra Singh went to a picnic along with two friends, Suresh (PW-2) and Sunil Mandal (PW-3) at about 11 a.m. on the fateful day – 21.06.1992. On their return, they were intercepted by the appellant riding on a motorcycle. The appellant by uttering the words "Today I shall pay all your dues", attacked the deceased Gajendra Singh with a knife inflicting two fatal blows on the chest and stomach respectively. The motive of the attack appears to be the failure of the appellant in completing the work for which the deceased gave a sum of Rs.500/-.

4. PW-2 and PW-3 took the deceased, who was bleeding profusely on a tempo whose driver has not been examined, to the hospital in which PW-5 was working. After admitting the deceased in the hospital, PW-2 went to the house of the deceased by travelling, which took him 15 minutes, and passed on the information of attack on deceased, to his father, PW-1. On examination, PW-5 found that the deceased was in a serious condition and, therefore, merely gave first aid and referred the deceased to a hospital in

Dehradun. After reaching the hospital, PW-1 made an enquiry with the deceased who gave a dying declaration narrating the incident. PW-5 did not speak about the presence of any of the witnesses except the fact that the deceased was admitted by PW-3 and, therefore, did not refer to the said dying declaration given to PW-1. PW-1 dictated the complaint to one Mr. Inder Singh (not examined) and went to the police station situated just opposite to the hospital. Prior to the aforesaid action on the part of PW-1, PW-5 has made an entry in the emergency medical register which was subsequently filled up by another person named Dr. B.V. Sharma (not examined). Dr. B.V. Sharma sent report immediately to the police station.

5. Before PW-1 could reach the police station, the report from the hospital had reached and, therefore, investigation was triggered. However, neither First Information Report (FIR) had been registered nor noting had been made in the general diary. In fact, the available noting on the general diary did not disclose any offence committed on 21.06.1992, as per the statement of PW-13, who produced the same before the court.

6. PW-2 and PW-3 took the deceased to the nearby hospital at Dehradun as per the version of PW-1 and PW-2, while PW-3 said it was himself and PW-1 who undertook the said exercise. As per the version of PW-8, the doctor who attended the deceased at the Dehradun hospital, the deceased was brought to the hospital by his brother Mr. Bhupender Singh (not examined).

7. PW-11 took up the investigation. He went to the place of occurrence, drew the sketch and prepared the site plan. While returning, he was informed by PW-7, another brother of the deceased that he received information that the appellant was trying to escape to Dehradun. PW-6, who heard about the occurrence, went to the place of occurrence out of curiosity. The appellant was found and arrested at about 50-60 yards from the place of occurrence by PW-11 in the presence of PW-6, PW-7 and one Mr. Sanjeev Saini (not examined). The knife that was said to have been used for committing the offence was recovered from an open place at about 50 steps near the place of occurrence. No arrest memo has been prepared though an entry was made in the general diary. Recovery memo was signed by PW-6 and PW-7 alone.

8. The post-mortem was conducted by PW-4, Dr. Jaideep Dutta, which indicated two major injuries, in tune with the case of the prosecution. PW-9, being the police officer of a different jurisdiction, prepared the inquest report, presumably on the ground that the ultimate death happened there, as the second hospital was situated within his jurisdiction.

9. After the initial investigation by PW-11, PW-12 took over the further investigation, but did not take adequate care to check and verify the earlier statements given by the witnesses. Some of the witnesses have been examined at the earliest while the others like PW-2, PW-6 and PW-7 were examined 2 weeks thereafter. The FIR was curiously sent by post and, therefore, reached the jurisdictional magistrate days thereafter.

10. During the course of trial, the prosecution examined 13 witnesses. In the questioning made under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the appellant clearly denied all the charges levelled against him. On a request made on behalf of the appellant, the general diary was summoned and perused by the trial court. This was done as a question was raised on the story propounded by the prosecution which goes to the date and time of the occurrence. On perusal, the trial court found out that there were certain interpolations with specific reference to the dates and certain pages were missing and jumbled. While giving a finding that the noting of the date as 22.06.1992 and thereafter striking it off to 21.06.1992 as a clerical mistake, the trial court went on to put the blame on the appellant that he maneuvered to do so in connivance with somebody, though the said correction could only help the case of the prosecution.

11. While convicting the appellant, the trial court placed heavy reliance upon the evidence of PW-1 to PW-3. The discrepancies *qua* the emergency medical register and amongst the statements of PW-1, PW-2 and PW-3 were brushed aside as minor and natural or ignorable discrepancies due to the passage of time. Much reliance has been placed on the recovery of the two-wheeler, though not mentioned in the site plan. The delay in recording the statement of the witnesses were also taken lightly. The so-called dying declaration given before PW-1 was accepted, despite a clear statement made by PW-5 that none was present during the stay of the deceased with him till he was sent to the other hospital.

12. The High Court concurred with the decision of the trial court by placing reliance upon the post-mortem report and the testimony of PW-1 to PW-3.

SUBMISSION OF THE APPELLANT

13. Learned counsel for the appellant submitted that the evidence of PW-1 ought not to have been accepted by both the courts. The report from the hospital had reached the police station much before. The person to whom PW-1 dictated the complaint has not been examined. There is no material for motive and the testimony of PW-1 is contrary to the one given by PW-3, PW-5 and PW-8. Similarly, the presence of PW-2 is extremely doubtful as his evidence was recorded weeks thereafter. He was also not found to be present by PW-3 in the second hospital, though PW-3 deposed otherwise. Therefore, evidence of PW-2 also ought to have been eschewed. His statement that it is PW-1 and himself who took the deceased to the second hospital is found to be incorrect in view of the testimony of PW-8. The courts below ought to have placed adequate reliance upon the evidence of PW-5 and PW-8, the doctors, who were admittedly working in the hospital at the relevant point of time. The fact that the FIR was not registered immediately after the information was received clearly indicates that it was ante-dated. This contention is also strengthened by the inquest report prepared by the police officer of a different police station i.e. by PW-9.

14. Learned counsel vehemently contended that the trial court has committed grave error in not noting the fact that no time, date and adequate particulars were mentioned in the case diary. The object and rationale behind Section 172 of CrPC coupled with Sections 145, 161 and 165 of the Indian Evidence Act, 1872 (hereinafter referred to as "Evidence Act") have been clearly overlooked by both the courts. The motive has not been proved as witnesses have not spoken about it in their statements under Section 161 of CrPC. It is a case of completely botched up investigation and, therefore, the appellant deserves acquittal.

SUBMISSION OF THE RESPONDENT

15. Learned counsel for the State placed substantial reliance upon the recovery of the vehicle. It is stated that admittedly the vehicle belonged to the father of the appellant. That is the reason why

an application was filed seeking its custody, which came to be allowed. Both the courts have rightly held that the discrepancies are bound to happen in view of the passage of time from the date of incident till the deposition is recorded in the Court. PW-2 and PW-3 did not have any ulterior motive or reason to implicate the appellant. PW-3's statement has been recorded at the earliest. There is nothing wrong in the inquest report submitted by PW-9. As there is no perversity, appreciation by both the courts of the evidence available on record for coming to their conclusion does not warrant any interference.

DISCUSSION

16. Before considering the factual submissions of both sides, we shall first deal with the position of law which is relevant for deciding the appeal.

Investigation and the Role of Investigating Officer

17. An investigation of a crime is a lawful search of men and materials relevant in reconstructing and recreating the circumstances of an offence said to have been committed. With the evidence in possession, an Investigating Officer shall travel back in time and, therefore tick off the time zone to reach the exact time and date of the occurrence of the incident under investigation. The goal of investigation is to determine the truth which would help the Investigating Officer to form a correct opinion on the culpability of the named accused or suspect. Once such an opinion is formed on a fair assessment of the evidence collected in the investigation, the role of the court comes into play when the evidence i.e. oral, documentary, circumstantial, scientific, electronic, etc. is presented for and on behalf of the prosecution. In its journey towards determining the truth, a court shall play an active role while acknowledging the respective roles meant to be played by the prosecution and the defence. During the entire play, the rules of evidence ought to be honoured, sprinkled with the element of fairness through due procedure. Adequate opportunities would have to be given to challenge every assumption. Administration of criminal justice lies in determining the guilt of the accused beyond reasonable doubt. The power of the State to prosecute an accused commences with investigation, collection of evidence and presentation before the Court for acceptance.

18. The investigating agency, the prosecutor and the defence are expected to lend ample assistance to the court in order to decipher the truth. As the investigating agency is supposed to investigate a crime, its primary duty is to find out the plausible offender through the materials collected. It may or may not be possible for the said agency to collect every material, but it has to form its opinion with the available material. There is no need for such an agency to fix someone as an accused at any cost. It is ultimately for the court to decide who the culprit is. **Arvind Kumar @ Nemichand & Ors. v. State of Rajasthan, [2021] 11 SCR 237,**

> **"Fair, Defective, Colourable Investigation**
>
> **40. An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates**. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. **We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.**
>
> **41. There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation *per se* would not enure to the benefit of the accused, unless it goes into the root of the very case of the**

prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

xxx xxx xxx

44. We would only reiterate the aforesaid principle *qua* a fair investigation through the following judgment of Kumar v. State, (2018) 7 SCC 536:

> "27. The action of investigating authority in pursuing the case in the manner in which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in Parbhu v. King Emperor [Parbhu v. King Emperor, AIR 1944 PC 73], wherein the Court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.
>
> 28. **The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without having regard to the ultimate result.** In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the

aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked."

45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge."

(emphasis supplied)

19. Common Cause and Others v. Union of India, (2015) 6 SCC 332,

"31. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State."

Case Diary

Section 172 of CrPC

"172. Diary of proceedings in investigation.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a dairy, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(1-A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1-B) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply."

Section 145 of the Evidence Act

"145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

Section 161 of the Evidence Act

"161. Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon."

20. A case diary is maintained by an Investigating Officer during his investigation for the purpose of entering the day-to-day proceedings of the investigation. While doing so, the Investigating Officer should

mandatorily record the necessary particulars gathered in the course of investigation with the relevant date, time and place. Under sub-section (1-A) and (1-B) of Section 172 of CrPC, the Investigating Officer has to mention, in his case diary, the statement of witnesses recorded during investigation with due pagination. Sub-section (1-A) and (1-B) were inserted by Act 5 of 2009 with effect from 31/12/2009. The object of these sub-sections is to facilitate a fair investigation since a statement made under Section 161 of CrPC is not expected to be signed as mandated by Section 162 of CrPC. To highlight the importance of adhering to the requirements of these sub-sections, we rely upon the Law Commission of India's One Hundred and Fifty Fourth Report (154th) on Code of Criminal Procedure, 1973, Chapter IX,

> "7. After giving our earnest consideration and in view of the fact that there is unanimity in respect of the need for making substantial changes in the law, we propose that there should be changes on the following lines :
>
> …The signature of the witness on the statement thus recorded need not be obtained. But, if the witness so examined desires a copy of such statement so recorded shall be handed over to him under acknowledgement. **To reflect the shift in emphasis, a corresponding amendment to Section 172 should also be made to the effect that the Investigating Officer maintaining the case diary should mention about the statement of the circumstances thus ascertained, and also attach to the diary for each day, copies of the statement of facts thus recorded under Section 161 CrPC. Neither the accused nor his agent shall be entitled to call for such diaries which can be put to a limited use as provided under Section 172 CrPC. Under the existing provisions of the Code, the preparation of the earliest record of the statement of witness is left in the hands of Investigating Officer and as the mode of recording as provided in section 162 does not ensure the accuracy of the record (It is well known that many good cases are spoiled by insidious incorrect entries at the instance of the accused and it is also well known that many innocent persons**

> **are sent up along with the guilty at the instance of informant's party),…"**
>
> (emphasis supplied)

21. In furtherance of the above suggestion, the Law Commission of India accordingly provided a draft amendment to Section 172 of CrPC for the consideration of the Parliament,

> "… On the above mentioned lines, the relevant Sections can be amended as follows:
>
> xxxx
>
> 172(1) Every police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement if the circumstances ascertained through his investigation; **and also attach to the diary for each day copies of statement of facts, if any, recorded under Section 161 in respect of the person or persons whose examination was completed that day.**
>
> (2) Any criminal Court may send for the police diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.
>
> (3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred (to) by this Court."
>
> (emphasis supplied)

22. While it is the responsibility and duty of the Investigating Officer to make a due recording in his case diary, there is no corresponding right under sub-section (3) of Section 172 of CrPC for accused to seek production of such diaries, or to peruse them, except in a case where they are used by a police officer maintaining them to refresh his memory, or in a case where the court uses them for the purpose of contradicting the police officer. In such a case, the provision of Section 145 or Section 161, as the case may be, of the Evidence Act, shall apply.

23. Law is quite settled that an improper maintenance of a case diary by the Investigating Officer will not enure to the benefit of the accused. Prejudice has to be shown and proved by the accused despite non-compliance of Section 172 of CrPC in a given case. However, this does not take away the mandatory duty of the police officer to maintain it properly. As the court is the guardian of truth, it is the duty of the Investigating Officer to satisfy the court when it seeks to contradict him. The right of the accused is, therefore, very restrictive and limited. **Bhagwant Singh v. Commissioner of Police, (1983) 3 SCC 344,**

> **"17.** The other inference which disturbs us is that the entries in the police case diary (set forth in the annexure to the counter-affidavit on the record) do not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. **The haphazard maintenance of a document of that status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. We think it to be of the utmost importance that the entries in a police case diary should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity**."
>
> (emphasis supplied)

24. Baleshwar Mandal v. State of Bihar, (1997) 7 SCC 219,

> **"5. Under Section 172 CrPC read with Rule 164 of Bihar Police Manual dealing with the investigation, an Investigating Officer investigating a crime is under obligation to record all the day-to-day proceedings and information in his case diary, and also record the time at which the information was received and the place visited by him, besides the preparation of site plan and other documents. The Investigating Officer is also required to send bloodstained clothes and earth seized from the place of occurrence for chemical examination. Failure on the part of the Investigating Officer to comply with the provisions of Section 172 CrPC is a serious lapse on his part resulting in diminishing the value**

and credibility of his investigation. In this case the Investigating Officer neither entered the time of recording of the statements of the witnesses in the diary nor did he send the bloodstained clothes and earth seized from the place of occurrence for examination by a serologist. The High Court also adversely commented upon the lapses on the part of the Investigating Officer in not complying with the provisions of the Code of Criminal Procedure. **We, therefore, take it that, in fact, there was serious lapse on the part of the Investigation Officer in not observing the mandate of Section 172 CrPC while investigating the case which has given rise to this appeal. But the question that arises for consideration is, has any prejudice been caused to the accused in the trial by non-observance of rules by the Investigating Officer?** The evidence on record before the Sessions Court and the appellate court does not show that due to the lapses on the part of the Investigating Officer in not sending the bloodstained clothes and earth seized from the place of occurrence for chemical examination and further not noting down the time of recording the statement of the witnesses in the diary has resulted in any prejudice to the defence of the accused. In the present case, the place of occurrence and the identity of the deceased are not disputed. Further, the testimony of the eyewitnesses which is consistent and does not suffer from infirmity, was believed by both the courts below. **Once the eyewitnesses are believed and the courts come to the conclusion that the testimony of the eyewitnesses is trustworthy, the lapse on the part of the Investigating Officer in not observing the provisions of Section 172 CrPC unless some prejudice is shown to have been caused to the accused, will not affect the finding of guilt recorded by the Court.** Neither before the High Court nor before this Court, it was pointed out in what manner the accused were prejudiced by non-observance of the provisions of Section 172 CrPC and the rules framed in this regard. We are, therefore, of opinion that judgments of the courts below do not suffer on account of omission on the part of the Investigating Officer in not sending the earth seized from the place of

occurrence for chemical examination or in not entering the time of recording of the statements of witnesses in the diary."

(emphasis supplied)

25. Manoj and Others v. State of Madhya Pradesh, (2023) 2 SCC 353,

"**203.** The scheme of the CrPC under Chapter XII (Information to Police and Powers to Investigate) is clear — the police have the power to investigate freely and fairly; in the course of which, it is mandatory to maintain a diary where the day-to-day proceedings are to be recorded with specific mention of time of events, places visited, departure and reporting back, statements recorded, etc. While the criminal court is empowered to summon these diaries under Section 172(2) for the purpose of inquiry or trial (and not as evidence), Section 173(3) makes it clear that the accused cannot claim any *right* to peruse them, unless the police themselves, rely on it (to refresh their memory) or if the court uses it for contradicting the testimony of the police officers. [*Mukund Lal* v. *Union of India*, 1989 Supp (1) SCC 622 : 1989 SCC (Cri) 606; *Malkiat Singh* v. *State of Punjab*, (1991) 4 SCC 341 : 1991 SCC (Cri) 976]

204. In *Manu Sharma* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , in the context of police diaries, this Court noted that "*[t]he purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation*". **This object is rendered entirely meaningless if the police fail to maintain the police diary accurately. Failure to meticulously note down the steps taken during investigation, and the resulting lack of transparency, undermines the accused's right to fair investigation; it is up to the trial court that must take an active role in scrutinising the record extensively, rather than accept the prosecution side willingly, so as to bare such hidden or concealed actions taken during the course of investigation.** [Role of the courts in a criminal trial has

been discussed in *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999.]"

(emphasis supplied)

26. When a police officer uses case diary for refreshing his memory, an accused automatically gets a right to peruse that part of the prior statement as recorded in the police officer's diary by taking recourse to Section 145 or Section 161, as the case may be, of the Evidence Act.

27. Section 172(3) of CrPC makes a specific reference to Section 145 and Section 161 of the Evidence Act. Therefore, whenever a case is made out either under Section 145 or under Section 161 of the Evidence Act, the benefit conferred thereunder along with the benefit of Section 172(3) of CrPC has to be extended to an accused. Thus, the accused has a right to cross-examine a police officer as to the recording made in the case diary whenever the police officer uses it to refresh his memory. Though Section 161 of the Evidence Act does not restrict itself to a case of refreshing memory by perusing a case diary alone, there is no exclusion for doing so. Similarly, in a case where the court uses a case diary for the purpose of contradicting a police officer, then an accused is entitled to peruse the said statement so recorded which is relevant, and cross-examine the police officer on that count. What is relevant in such a case is the process of using it for the purpose of contradiction and not the conclusion. To make the position clear, though Section 145 read with Section 161 of the Evidence Act deals with the right of a party including an accused, such a right is limited and restrictive when it is applied to Section 172 of CrPC. Suffice it is to state, that the said right cannot be declined when the author of a case diary uses it to refresh his memory or the court uses it for the purpose of contradiction. Therefore, we have no hesitation in holding that Section 145 and Section 161 of the Evidence Act on the one hand and Section 172(3) of CrPC on the other are to be read in consonance with each other, subject to the limited right conferred under sub-section (3) of Section 172 of CrPC. **Balakram v. State of Uttarakhand and Others, (2017) 7 SCC 668,**

> **"9. The aforementioned provisions are to be read conjointly and homogenously. It is evident from sub-section (2) of Section 172 CrPC, that the trial court has unfettered power to call for and examine the entries**

in the police diaries maintained by the investigating officer. This is a very important safeguard. The legislature has reposed complete trust in the Court which is conducting the inquiry or the trial. If there is any inconsistency or contradiction arising in the evidence, the Court can use the entries made in the diaries for the purposes of contradicting the police officer as provided in sub-section (3) of Section 172 CrPC. It cannot be denied that the Court trying the case is the best guardian of interest of justice. Under sub-section (2) the criminal court may send for diaries and may use them not as evidence, but to aid it in an inquiry or trial. **The information which the Court may get from the entries in such diaries usually will be utilised as foundation for questions to be put to the police witness and the court may, if necessary in its discretion use the entries to contradict the police officer, who made them. But the entries in the police diary are neither substantive nor corroborative evidence, and that they cannot be used against any other witness than against the police officer that too for the limited extent indicated above.**

10. Coming to the use of police diary by the accused, sub-section (3) of Section 172 clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court. **But, in case the police officer uses the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then the provisions of Sections 145 and 161, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross-examination of a witness as to the previous statements made by him in writing or reduced into writing and if it was intended to contradict him in writing, his attention must be called to those portions which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's right as to the writing used**

to refresh memory. It can, therefore, be seen that, the right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory.

11. In other words, in case if the Court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of the accused getting any right to use entries even to that limited extent does not arise. The accused persons cannot force the police officer to refresh his memory during his examination in the Court by referring to the entries in the police diary.

12. Section 145 of the Evidence Act consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statements made by him without such writing being shown to him. But the second limb provides that, if it is intended to contradict him by the writing, his attention must before writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Sections 155(3) and 145 of the Evidence Act deal with the different aspects of the same matter and should, therefore, be read together.

13. Be that as it may, as mentioned supra, **right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses such entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the provisions of Sections 145 and 161 of the Evidence Act. Thus, a witness may be cross-examined as to his previous statements made by him as contemplated under Section 145 of the Evidence Act if such previous**

statements are brought on record, in accordance with law, before the Court and if the contingencies as contemplated under Section 172(3) CrPC are fulfilled. Section 145 of the Evidence Act does not either extend or control the provisions of Section 172 CrPC. We may hasten to add here itself that there is no scope in Section 172 CrPC to enable the Court, the prosecution or the accused to use the police diary for the purpose of contradicting any witness other than the police officer who made it."

(emphasis supplied)

First Information Report vis-a-vis Case Diary

Section 154 of CrPC

"154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf…"

28. The mandate of Section 154 of CrPC implies that every information disclosing commission of a cognizable offence shall be entered in a book to be kept by the officer in charge of the police station in such form as the State Government may prescribe. In **Lalita Kumari v. Government of Uttar Pradesh & Others, (2014) 2 SCC 1**, the Constitution Bench of this Court while answering the question as to whether the information disclosing commission of a cognizable offence shall first be entered into the General Diary or in a book kept by the Officer in charge of Police Station which in common parlance is referred as First Information Report has critically analyzed the interplay between Section 154 of CrPC and Section 44 of the Police Act, 1861. This Court also had occasion to analyze the legislative history of CrPC 1861, CrPC 1973 and the Police Act 1861 to answer the aforesaid question, whereby it was held that an Information

disclosing commission of a cognizable offence shall first be entered in a book kept by the officer in charge of police station and not in the General Diary. Therefore, it is amply clear that a General Diary entry cannot precede the registration of FIR, except in cases where preliminary inquiry is needed. While an FIR is to be registered on an information disclosing the commission of a cognizable offence, so also a recording is thereafter required to be made in the case diary. Lalita Kumari (Supra),

> **"57. It is contented by the learned ASG appearing for the State of Chhattisgarh that the recording of first information under Section 154 in the "book" is subsequent to the entry in the General Diary/ Station Diary/Daily Diary, which is maintained in the police station. Therefore, according to the learned ASG, first information is a document at the earliest in the General Diary, then if any preliminary inquiry is needed the police officer may conduct the same and thereafter the information will be registered as FIR. This interpretation is wholly unfounded. The first information report is in fact the "information" that is received first in point of time, which is either given in writing or is reduced to writing. It is not the "substance" of it, which is to be entered in the diary prescribed by the State Government. The term "General Diary" (also called as "Station Diary" or "Daily Diary" in some States) is maintained not under Section 154 of the Code but under the provisions of Section 44 of the Police Act, 1861 in the States to which it applies, or under the respective provisions of the Police Act(s) applicable to a State or under the Police Manual of a State, as the case may be.**

58. Section 44 of the Police Act, 1861 is reproduced below:

> "**44.*Police officers to keep diary*.**—It shall be the duty of every officer in charge of a police station to keep a General Diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names

> of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.
>
> The Magistrate of the district shall be at liberty to call for and inspect such diary."

59. It is pertinent to note that during the year 1861, when the aforesaid Police Act, 1861 was passed, the Code of Criminal Procedure, 1861 was also passed. Section 139 of that Code dealt with registration of FIR and this section has also referred to the word "diary", as can be seen from the language of this section, as reproduced below:

> "**139.*Complaint, etc., to be in writing*.**—Every complaint or information preferred to an officer in charge of a police station, shall be reduced into writing, and the substance thereof shall be entered in a *diary* to be kept by such officer, in such form as shall be prescribed by the local Government."
>
> (emphasis supplied)

Thus, the Police Act, 1861 and the Code of Criminal Procedure, 1861, both of which were passed in the same year, used the same word "diary".

60. However, in the year 1872, a new Code came to be passed which was called the Code of Criminal Procedure, 1872. Section 112 of the Code dealt with the issue of registration of FIR and is reproduced below:

> "**112.*Complaint to police to be in writing*.**—Every complaint preferred to an officer in charge of a police station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it, and the substance thereof shall be entered in a *book* to be kept by such officer in the form prescribed by the local Government."

It is, thus, clear that in the Code of Criminal Procedure, 1872, a departure was made and the word "book" was used in place of "diary". The word "book" clearly referred to the FIR book to be maintained under the Code for the registration of FIRs.

61. The question that whether the FIR is to be recorded in the FIR book or in the General Diary, is no more res integra. This issue has already been decided authoritatively by this Court.

62. In *Madhu Bala* v. *Suresh Kumar* [*Madhu Bala* v. *Suresh Kumar*, (1997) 8 SCC 476 : 1998 SCC (Cri) 111], this Court has held that FIR must be registered in the FIR register which shall be a book consisting of 200 pages. It is true that the substance of the information is also to be mentioned in the Daily Diary (or the General Diary). But, the basic requirement is to register the FIR in the FIR book or register. Even in *Bhajan Lal* [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , this Court held that FIR has to be entered in a book in a form which is commonly called the first information report.

63. It is thus clear that registration of FIR is to be done in a book called FIR book or FIR register. Of course, in addition, the gist of the FIR or the substance of the FIR may also be mentioned simultaneously in the General Diary as mandated in the respective Police Act or Rules, as the case may be, under the relevant State provisions.

64. The General Diary is a record of all important transactions/events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers, etc. It is in this context that gist or substance of each FIR being registered in the police station is also mentioned in the General Diary since registration of FIR also happens to be a very important event in the police station. Since General Diary is a record that is maintained chronologically on

day-to-day basis (on each day, starting with new number 1), the General Diary entry reference is also mentioned simultaneously in the FIR book, while FIR number is mentioned in the General Diary entry since both of these are prepared simultaneously.

65. It is relevant to point out that FIR book is maintained with its number given on an annual basis. This means that each FIR has a unique annual number given to it. This is on similar lines as the case numbers given in courts. **Due to this reason, it is possible to keep a strict control and track over the registration of FIRs by the supervisory police officers and by the courts, wherever necessary. Copy of each FIR is sent to the superior officers and to the Judicial Magistrate concerned.**

66. On the other hand, General Diary contains a huge number of other details of the proceedings of each day. Copy of General Diary is not sent to the Judicial Magistrate having jurisdiction over the police station, though its copy is sent to a superior police officer. **Thus, it is not possible to keep strict control of each and every FIR recorded in the General Diary by the superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day**.

67. The signature of the complainant is obtained in the FIR book as and when the complaint is given to the police station. On the other hand, there is no such requirement of obtaining signature of the complainant in the General Diary. Moreover, at times, the complaint given may consist of large number of pages, in which case it is only the gist of the complaint which is to be recorded in the General Diary and not the full complaint. This does not fit in with the suggestion that what is recorded in the General Diary should be considered to be the fulfilment/compliance with the requirement of Section 154 of registration of FIR. In fact, the usual practice is to record the complete complaint in the FIR book (or annex it with the FIR

form) but record only about one or two paragraphs (gist of the information) in the General Diary.

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70. If at all, there is any inconsistency in the provisions of Section 154 of the Code and Section 44 of the Police Act, 1861, with regard to the fact as to whether the FIR is to be registered in the FIR book or in the General Diary, the provisions of Section 154 of the Code will prevail and the provisions of Section 44 of the Police Act, 1861 (or similar provisions of the respective corresponding Police Act or Rules in other respective States) shall be void to the extent of the repugnancy. Thus, FIR is to be recorded in the FIR book, as mandated under Section 154 of the Code, and it is not correct to state that information will be first recorded in the General Diary and only after preliminary inquiry, if required, the information will be registered as FIR.

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72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

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97. The Code contemplates two kinds of FIRs : the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. **The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under**

Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

97.1. (*a*) It is the first step to "access to justice" for a victim.

97.2. (*b*) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

97.3. (*c*) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

97.4. (*d*) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR."

(emphasis supplied)

Ram Chander v. State of Haryana, (1981) 3 SCC 191,

"3…. The court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

Justice O. Chinnappa Reddy

Section 165 of the Evidence Act

"165. Judge's power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

> Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

29. Section 165 of the Evidence Act speaks of the power of the court to put questions and order production of documents in the course of trial. This is a general and omnibus power given to the court when in search of the truth. Such a power is to be exercised against any witness before it, both in a civil as well as a criminal case. The object is to discover adequate proof of a relevant fact and, therefore, for that purpose, the Judge is authorised and empowered to ask any question of his choice. When such a power is exercised by the court, there is no corresponding right that can be extended to a party to cross-examine any witness on an answer given in reply to a question put forth by it, except with its leave. Emphasizing upon the importance of Section 165 of the Evidence Act, Sir James Stephen while presenting the report of the Select Committee, at the time of passing of the Evidence Act observed,

"It is absolutely necessary that the judge should not only hear what is put before him by others, but that he should ascertain by his own inquiries how the facts actually stand. In order to do this, it will frequently be necessary for him to go into matters which are not themselves relevant to the matters in issue, but may lead to something that is, and it is in order to arm judges with express authority to do this that section 165, which has been so much objected to, has been framed".

> **"A judge or Magistrate in India frequently has to perform duties which in England would be performed by Police Officer or attorneys. He has to sift out the truth for himself as well as he can, and with little assistance of a professional kind. Section 165 is intended to arm the judge with the most extensive**

power possible for the purpose of getting at the truth. The effect of this section is that, in order to get to the bottom of the matter before the count, he will be able to look at and enquire into every fact whatever."

(emphasis supplied)

30. Ram Chander v. State of Haryana, **(1981) 3 SCC 191,**

"O. Chinnappa Reddy, J.— What is the true role of a judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland [Pollock and Maitland : The History of English Law] point out, the question 'How is that', or, is he to, in the words of Lord Denning 'drop the mantle of a judge and assume the robe of an advocate'? [*Jones* v. *National Coal Board*, (1957) 2 All ER 155 : (1957) 2 WLR 760] Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the Judge who tried the case put questions to some of the witnesses.

2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:

> **Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial.** [*Sessions Judge, Nellore* v. *Intha Ramana Reddy* ILR 1972 AP 683 : 1972 Cri LJ 1485]

3. With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:

People accustomed to the procedure of the court are likely to be overawed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence as they may wish, but the parties may begin to think, quite wrongly it may be, that the judge is not

> holding the scales of justice quite eventually. [Extracted by Lord Denning in supra f.n. 2]

In *Jones* v. *National Coal Board* [*Jones* v. *National Coal Board*, (1957) 2 All ER 155 : (1957) 2 WLR 760] Lord Justice Denning observed:

> The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an advocate; and the change does not become him well.
>
> **We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence Counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (*sic* the) old'."**
>
> (emphasis supplied)

ON FACTS

31. We have given our consideration to the circumstances, motive, role of the accused and the volition of the prosecution to bring home the guilt of the appellant primarily in the form of: (a) Dying Declaration, (b)

Eye witnesses, (c) Recovery and (d) Alleged arrest of the appellant nearer to the scene of the offence.

32. The presence of PW-1 before PW-5 is extremely doubtful. His presence was not spoken to at all by PW-5. The evidence of PW-1 is quite unnatural as he has neither spoken about the motive in his statement recorded under Section 161 of CrPC, nor about the so-called dying declaration which was not even witnessed by PW-5. PW-5 has clearly stated that the deceased was in a very serious condition, blood was oozing out and, therefore, he could not give adequate treatment. The deceased was immediately referred to the second hospital. There was no necessity for PW-1 to dictate the complaint to one Mr. Inder Singh who curiously has not been examined by the prosecution. In any case, there was no need for PW-11 to wait for PW-1 to come to him for registration of FIR, which he was mandated to do so, as soon as he received the report from the hospital. The testimony of PW-1 is also contradictory to PW-3 and PW-8.

33. On the similar line, we do not wish to rely upon the evidence of PW-2 and PW-3. PW-2 admittedly was not examined by PW-11 for over 2 weeks, for which no explanation is forthcoming. This witness also states that he was not a friend of the deceased and, therefore, his presence at the place of occurrence creates a serious doubt as to how he happened to accompany the deceased to the picnic spot. PW-3, though accompanied the deceased, was not present thereafter, as deposed by PW-5 and did not admit the deceased to the second hospital as deposed by PW-8. On the contrary, the evidence of PW-3 is that it is PW-1 and himself who admitted the deceased. Furthermore, even his presence thereafter was not noticed by PW-5.

34. Though we rely upon the evidence of PW-5 to a certain extent, the emergency medical register was not completely filled up by him. Nobody knows the reason as to why he partially filled up the register and the remaining part was filled by Dr. B.V. Sharma, who was not examined by the prosecution. By placing reliance upon his testimony partly, we would only come to the conclusion that his evidence goes against the prosecution version on two counts, namely, the presence of any other witness and the condition of the deceased.

35. The prosecution has not chosen to examine the driver of the vehicle i.e the tempo in which the deceased was taken to the hospital. Even PW-5 has stated that the blood was oozing out from the body of the

deceased. This is another contradiction in the statement of PW-2 and PW-3 in this regard. PW-8 in his evidence has stated that the deceased was brought by another brother of the deceased. Even this witness has not been examined for the reason known to the prosecution.

36. PW-9 is an important witness being a police officer hailing from a different jurisdiction. It is very curious to know that he was the author of the inquest report after the investigation was taken up by PW-11. Despite this being very strange, no plausible explanation was forthcoming from him. Though PW-11 was trying to say that at times due to the instructions from the higher officers, it is done so, when an offence is committed an Investigating Officer is duty bound to take up the investigation and complete it. After taking up the investigation he thereafter cannot delegate it, except for justifiable reasons. This lends credence to the case projected by the defence that the interpolations and missing pages in the case diary clearly indicate that the FIR was ante-dated. Perhaps that is the reason why the FIR reached the jurisdictional magistrate belatedly and also the examination of the witnesses including PW-2 under section 161 of CrPC was done days after the occurrence.

37. PW-6 and PW-7 are not natural witnesses. It is totally unbelievable for PW-6 to reach the place of occurrence out of inquisitiveness. There is no need for him to be in that very place. The arrest of the accused at the instance of PW-7 is yet another instance of the prosecution trying to make out a case. It is incomprehensible that the appellant would be present at the place of the occurrence when he is attempting to flee. Similar logic goes to the recovery of the knife. If PW-11 is stated to have made an inspection and drawn the sketch, he would have very well found the knife at a nearby place. It is nobody's case that it was hidden, on the contrary, it was found in an open place.

38. From the aforesaid discussion, we have no doubt that the date, time and place of occurrence could have been different. The trial court strangely placed the onus on the appellant even with respect to the corrections made in the case diary along with the missing pages. On perusal of the case diary, we find that at several places such corrections have been made, while some pages were even missing. A clear attempt is made to correct the dates. Such corrections

actually were put against the appellant while they indeed helped the case of the prosecution. The finding of the trial court in this regard is neither logical nor reasonable. Even on the question of motive, there is absolutely no material as witnesses did not speak about the same in their statements recorded under Section 161 of CrPC. Mere recovery of a motorcycle *per se* will not prove the case of the prosecution especially when it has not been proved as to how it was recovered. The evidence of PW-13 clearly shows that no date, time and proper recording have been made in the case diary. When the trial court perused the case diary for the purpose of contradicting the statement of a police officer, it ought not to have fixed the onus on the appellant. It has failed to discharge its duty enshrined under Section 172(3) of CrPC read with Section 145 or Section 161, as the case may be, of the Evidence Act. To be noted, it was brought on a request made by the appellant and the court was using it for the purpose of contradiction.

39. On a perusal of the impugned judgment and that of the trial court in convicting the appellant, we find that the aspects discussed by us have not been looked into in a proper perspective. The appellant has certainly made out a case for acquittal. Accordingly, the conviction rendered by the High Court, confirming that of the trial court stands set aside. The appellant is acquitted of all the charges.

40. The appeal is allowed. The appellant was granted bail vide Order of this Court dated 06.04.2015. Hence, bail bonds stand discharged.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 2 S.C.R. 812 : 2024 INSC 136

Anun Dhawan & Ors.
v.
Union of India & Ors.

(Writ petition (Civil) No. 1103 of 2019)

22 February 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

In the instant writ petition, Petitioners claiming to be social activists sought directions against the States and Union Territories to formulate a scheme to implement the concept of Community Kitchens to combat hunger, malnutrition and starvation and the deaths resulting therefrom. The Petitioners also sought direction against National Legal Services Authority to formulate a scheme in order to further the provisions of Art.50(1)A of the Constitution, as also against the Central Government to create a National Food Grid beyond the scope of the Public Distribution Scheme.

Headnotes

Public health – Food and nutritional security – Alternate welfare schemes – Scope of judicial review in examining policy matters – Prayer of Petitioner to direct the States/UTs to implement the concept of Community Kitchens – Tenability – National Food Security Act, 2013 – Constitution of India – Art. 32.

Held: There being a systematic legal framework provided under the National Food Security Act, 2013 (NFSA) for the implementation of the schemes and programmes like Targeted Public Distribution System, Mid-day Meal Scheme, Integrated Child Development Services and Maternity Cash Entitlement along with a Monitoring Mechanism and a Grievance Redressal Mechanism, and the States/UTs having also implemented various other schemes and programmes under the said Act, this Court does not propose to direct the States/UTs to implement the concept of Community Kitchens as prayed for by the petitioners in the instant petition – It is well settled that the scope of judicial review in examining the policy matters is very limited – The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy

* Author

which the executive is entitled to formulate – The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available – Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review – When the NFSA with a 'right based approach' for providing food and nutritional security, is in force and when other welfare schemes under the said Act have also been framed and implemented by the Union of India and the States, to ensure access to adequate quantity of quality food at affordable prices to people to live a life with dignity, this Court does not propose to give any further direction in that regard. [Paras 7, 8 and 9]

Constitution of India – Arts. 21 and 47 – Right to Food – Discussed.

Held: Though the Constitution of India does not explicitly provide for Right to food, the fundamental Right to life enshrined in Art.21 of the Constitution does include Right to live with human dignity and right to food and other basic necessities – Art.47 of the Constitution also provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. [Para 5]

National Food Security Act, 2013 – Object and purpose of the Act – Discussed.

Held: Keeping in view the goal of eradicating extreme poverty and hunger as one of the goals of United Nations, and keeping in view the constitutional guarantees for ensuring food security of the people as also for improving the nutritional status of the population, especially of women and children, the Parliament has enacted the National Food Security Act, 2013 – The object of the Act is to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto – With the enactment of the NFSA there was a paradigm shift in the approach to food security from "welfare to rights based approach." [Para 6]

Case Law Cited

Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others, [2007] 5 SCR 7 **: (2007) 4 SCC 737 – referred to.**

List of Acts

National Food Security Act, 2013 ; Constitution of India

List of Keywords

Constitution of India; Food and nutritional security; Hunger; Starvation; Malnutrition; Community Kitchen; Right to Food; Right to life; Human dignity; Welfare scheme; Judicial review; Policy matter; Public health; Rights based approach; Social activist.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.1103 of 2019

(Under Article 32 of The Constitution of India)

Appearances for Parties

Ms. Ashima Mandla, Surya Pratap Singh, Fuzail Ahmad Ayyubi, Advs. for the Petitioners.

K.M. Nataraj, Vikramjit Banerjee, A.S.Gs., Ms. Garima Prasad, Sr. A.A.G., B.K. Satija, Ms. Ankita Choudhary, Tapesh Kumar Singh, A.A.Gs., Gurminder Singh, Sr. Adv./A.G., R Bala, Dr. Manish Singhvi, V.K. Mudigl, Sr. Advs., Chinmayee Chandra, Amit Sharma B, Mrs. Sonali Jain, Raman Yadav, Chitvan Sinhal, Abhishek Kumar Pandey, Kartikay Agrawal, Arvind Kumar Sharma, Amrish Kumar, Raj Bahadur Yadav, Gaurav Agrawal, Chandra Prakash, Siddhesh Shirish Kotwal, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, T. Illayarasu, Nirnimesh Dube, Ms. Purnima Krishna, Shuvodeep Roy, Dr. Joseph Aristotle S., Rajiv Kumar Choudhry, Ms. Deepanwita Priyanka, Shreekant Neelappa Terdal, Mukesh Kumar Maroria, Ms. Indira Bhakar, Vinayak Sharma, Krishan Kant Dubey, Piyush Beriwal, Rajesh Singh Chauhan, Apoorv Kurup, Harish Pandey, Shashwat Parihar, Debojit Borkakati, Chirag M. Shroff, Dhananjay Kataria, Sumeer Sodhi, Ms. Shreya Singh, Manish Kumar, Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Raavi Sharma, Sandeep Kumar Jha, Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Vinayak Mohan, Samar Vijay Singh, Sukhdev Sharma, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, V. N. Raghupathy, Manendra Pal Gupta, Sunny Choudhary, Rajesh K. Singh, Mayur Chaturvedi, Karan

Bishnoi, Shailesh Madiyal, Santosh Kumar-I, Aravindh S., Abbas, Ms. Kavya Geetha, Ms. Archana Pathak Dave, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Uttara Babbar, Satish Pandey, Akshai Malik, Khawar Saleem, Nikhil Jain, Ms. Divya Jain, Ms. Monica Dhingra, Ms. K. Enatoli Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Changa, Prang Newmai, Ms. Mukti Chowdhary, Ajay Pal, Tapesh Kumar Singh, Prashant Bhardwaj, Aditya Pratap Singh, Priyanshu Malik, Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Rajkumari Divyasana, R. Rajaselvan, Shreyas Awasthi, Bhanu Mishra, Ms. Astha Sharma, Ranjan Mukherjee, Shibashish Misra, Gurmeet Singh Makker, Mrs. Vaishali Verma, Ms. Sonali Jain, Chitvan Singhal, Kartikay Aggarwal, Abhimanyu Tewari, Ms. Eliza Bar, Avijit Mani Tripathi, Upendra Mishra, P.S. Negi, T.K. Nayak, Ms. Marbiang Khongwir, Ms. Taruna Ardhendumauli Prasad, Pranav Sachdeva, Sanjay Kumar Visen, Ankur S. Kulkarni, Pashupathi Nath Razdan, M. Shoeb Alam, Abhinav Mukerji, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Abraham Mathew, Santosh Krishnan, Sahil Bhalaik, Hitesh kumar Sharma, S.K. Rajora, Akhileshwar Jha, Amit Kumar Chawla, Ms. Ritika Raj, Ms. Komal, Ms. Niharika Dwivedi, M. Yogesh Kanna, Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Ms. Rachna Gandhi, Raghvendra Kumar, Anand Kumar Dubey, Ms. Inderdeep Kaur Raina, Kartikeya Rastogi, Karan Sharma, Ms. Princy Sharma, Ms. Mrinal Elker Mazumdar, Ms. Indira Bhaskar, Vineet Singh, Kumar Vaibhav, Ms. Devina Sehgal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. The petitioners claiming to be the social activists have filed the present petition under Article 32 of the Constitution of India seeking various directions against the States and Union Territories to formulate a scheme to implement the concept of Community Kitchens to combat hunger, malnutrition and starvation and the deaths resulting thereof. The petitioners have also sought direction against the National Legal Services Authority to formulate a scheme in order to further the provisions of Article 50(1)A of the Constitution, as also against the Central Government to create a National Food Grid beyond the scope of the Public Distribution Scheme.

2. This Court vide the order dated 27.10.2021 had directed the Union of India to interact with the concerned stakeholders for consideration of the Community Kitchens Scheme or any other similar schemes relating to Community Kitchens which are already in operation in different states. Subsequently also various orders were passed by the Court directing the States to attend the meetings managed by the Union of India for exploring the possibility of framing up of the Community Kitchens Scheme.

3. The States/Union Territories have filed their counter affidavits/ responses stating in detail about the schemes adopted and enforced in their respective states like Poshan Abhiyan, Take Home Ration, Pradhan Mantri Garib Kalyan Anna Yojana, Mid-Day Meal, Open Market Sales Scheme, One Nation One Ration Card Scheme, Annapurna Scheme, Antyodaya Anna Yojana etc. also stating that some of the schemes are monitored by the Integrated Child Development Services and Integrated Tribal Development Program. The States in their respective affidavits had also stated that there were no deaths reported due to starvation or malnutrition. The Union of India has also submitted that the Government is committed to focus on combating hunger and malnutrition by implementing various schemes through the State Governments to enhance the food security. As per the submission, the Pradhan Mantri Garib Kalyan Anna Yojana was launched to address economic disruptions and is extended to free grain provision to Antyodaya Anna Yojana and Priority Households to alleviate poverty burdens; Atma Nirbhar Bharat Package allocated additional food grain for migrants during the Covid-19 crisis; Pradhan Mantri Poshan Shakti Nirman Scheme aims to improve nutrition among school students and accordingly allocates food grains; Scheme for Adolescent Girls focuses to improve the health and nutrition of adolescent girls aged 11 to 18 years; Annapurna Scheme provides indigent senior citizens with free food grains. The Advisories are being issued from time to time to include millets and to widen nutritional standards to enhance nutrition levels amongst the beneficiaries.

4. The learned counsels for the petitioners submitted that undoubtedly the Union of India and the States have taken the steps to combat hunger, malnutrition and starvation by implementing various Central and State Government Schemes, however according to them even if the hunger, malnutrition or starvation may not necessarily result in

death, the Centre and States have the constitutional duty to ensure basic sustainability of human life. The learned ASG Mr. R. Bala submitted that this being not an adversarial litigation, the details of schemes, programmes, policies and other measures taken by the Central Government and the State Governments have been submitted to satisfy the conscience of the court that they have successfully implemented the schemes for protecting the fundamental rights of the citizens. He also submitted that there is no further need for continued monitoring by this Court.

5. It is significant to note that though the Constitution of India does not explicitly provide for Right to food, the fundamental Right to life enshrined in Article 21 of the Constitution does include Right to live with human dignity and right to food and other basic necessities. The Article 47 of the Constitution also provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

6. Keeping in view the goal of eradicating extreme poverty and hunger as one of the goals of United Nations, and keeping in view the constitutional guarantees for ensuring food security of the people as also for improving the nutritional status of the population, especially of women and children, the Parliament has enacted the National Food Security Act, 2013 (for short NFSA). The object of the said Act is to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto. With the enactment of the NFSA there was a paradigm shift in the approach to food security from "welfare to rights based approach." The said Act has been implemented in all States/ UTs. One of the guiding principles of the Act is its "life cycle approach, wherein special provisions have been made for pregnant women and lactating mothers and children in the age group of 6 months to 14 years, by entitling them to receive nutritious meals free of cost, through a widespread network of Integrated Child Development Services (ICDS) centers, called Anganwadi centers under the ICDS schemes, and also through the schools under Mid-day Meal (MDM) scheme". Higher nutritional norms have also been prescribed for malnourished children. Pregnant women and lactating mothers are entitled to receive cash maternity benefit to partly compensate them for the wage loss during the period of pregnancy and to supplement

nutrition. The Central Government after consultation with the State Governments, has also framed the Rules called Cash Transfer of Food Subsidy Rules 2015, in exercise of the powers conferred by clause (d) of sub section 2 of Section 39 read with clause (h) of sub section 2 of Section 12 of the NFSA. Under the said Rules, the State Governments have been enabled to implement the scheme with the approval of the Central Government to provide food subsidy in cash directly into the bank accounts of entitled households to purchase the entitled quantity of food grains from the open market. Significantly, Chapter VI under the Head "Women Empowerment" has been incorporated which provides that the eldest woman who is not less than 18 years of age in every eligible household, shall be head of the household for the purpose of issue of ration cards. The Grievance Redressal Mechanism at the District and the State level has also been provided for expeditious and effective redressal of grievances of the aggrieved persons in the matters relating to distribution of entitled food grains or meals under Chapter II and to enforce entitlements under the Act.

7. Thus, there being a systematic legal framework provided under the NFSA for the implementation of the schemes and programmes like Targeted Public Distribution System, Mid-day Meal Scheme, Integrated Child Development Services and Maternity Cash Entitlement along with a Monitoring Mechanism and a Grievance Redressal Mechanism, and the States/UTs having also implemented various other schemes and programmes under the said Act, we do not propose to direct the States/UTs to implement the concept of Community Kitchens as prayed for by the petitioners in the instant petition.

8. It is well settled that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy which the executive is entitled to formulate. The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review.[1]

1 Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others, (2007) 4 SCC 737

9. As elaborated earlier, when the NFSA with a 'right based approach' for providing food and nutritional security, is in force and when other welfare schemes under the said Act have also been framed and implemented by the Union of India and the States, to ensure access to adequate quantity of quality food at affordable prices to people to live a life with dignity, we do not propose to give any further direction in that regard. We have not examined whether the concept of Community Kitchens is a better or wiser alternative available to the States to achieve the object of NFSA, rather we would prefer to leave it open to the States/UTs to explore such alternative welfare schemes as may be permissible under the NFSA.

10. Subject to the afore stated observations, the Writ Petition is disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose with assistance of Sanyam Mishra, LCRA

Result of the case: Writ Petition disposed of

[2024] 2 S.C.R. 820 : 2024 INSC 147

CDR Seema Chaudhary
v.
Union of India and Others

(Review Petition (Civil) No. 1036 of 2023)

In

Civil Appeal No 2216 of 2022

26 February 2024

[Dr Dhananjaya Y Chandrachud,* CJI and Hima Kohli, J.]

Issue for Consideration

Issues pertains to the grant of Permanent Commission to Women Short Service Commission Officers in the Indian Navy.

Headnotes

Armed Forces – Indian Navy – Women Short Service Commissioned Officers – Grant of permanent commission – Petitioner commissioned in the Indian Navy as a Short Service Commissioned Officer in the Judge Advocate Generals' Branch of the Indian Navy – Petitioner was considered for permanent commission but denied on the ground that there were no vacancies – Petitioner moved this Court u/Art. 32 of the Constitution, but was relegated to the Armed Forces Tribunal – Directions of the tribunal formed the subject matter of challenge before this Court in Civil Appeal which was disposed of – Hence, the instant review petition:

Held: Serious element of prejudice caused to the petitioner must be rectified so as to enforce the final directions of this Court in **Lieutenant Commander Annie Nagaraja's* case – Issuance of directions to consider the case of the petitioner for the grant of Permanent Commission afresh by reconvening a Selection Board – Selection Board to consider the petitioner's case on a stand alone basis uninfluenced by any previous consideration of her case for PC and by

* Author

any observations contained in the order of the AFT – It is clarified that in the event that pursuant to the directions of the AFT, if a proportional increase in the vacancies is required to be created to accommodate the petitioner, this would be carried out without creating any precedent for the future – Exercise of considering the petitioner afresh for PC to be carried out on or before the stipulated date. [Paras 16-18,19,20]

Case Law Cited

Union of India vs Lieutenant Commander Annie Nagaraja* [2020] 10 SCR 433 **: (2020) 13 SCC 1 - relied on.

List of Acts

Constitution of India.

List of Keywords

Permanent Commission; Short Service Commission Officers; Indian Navy; Judge Advocate Generals' Branch; Vacancies; Armed Forces Tribunal; Review petition; Binding judgment; Selection Board; Proportional increase in the vacancies.

Case Arising From

INHERENT JURISDICTION : Review Petition (Civil) No.1036 of 2023

In

Civil Appeal No.2216 Of 2022

From the Judgment and Order dated 20.10.2022 in C. A. No.2216 of 2022 of the Supreme Court of India

Appearances for Parties

Devadatt Kamat, Sr. Adv., Shivendra Singh, Javedur Rahman, Mudassir, Advs. for the Petitioner.

R. Balasubramanian, Sr. Adv., Dr. Arun Kr Yadav, Dy. Gov./Adv., Anmol Chandan, Vatsal Joshi, Aniirudh Sharma Ii, Ishaan Sharma, Sarthak Karol, Kiran Bala Sahay, Dr. N. Visakamurthy, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. A batch of petitions pertaining to the grant of Permanent Commission[1] to Short Service Commission[2] Officers in the Indian Navy was disposed of by this Court by its judgment in ***Union of India vs Lieutenant Commander Annie Nagaraja***[3]. The review petitioner was one of the officers before this Court. The submissions which were urged on her behalf were set out in paragraph 52 of the judgment.

2. In order to appreciate the grievance in the review petition, a reference to some of the salient facts would be in order. The petitioner was commissioned in the Indian Navy as a Short Service Commissioned Officer[4] in the Judge Advocate Generals'[5] Branch of the Indian Navy on 6 August 2007. She was promoted on 6 August 2009 as a Lieutenant and, thereafter, on 6 August 2012 as a Lieutenant Commander. During the course of her service, she was granted an extension in November 2016 for a period of two years and, thereafter, for an equivalent duration in August 2018. On 5 August 2020, the petitioner was informed that she would stand released from service on 5 August 2021.

3. The judgment of this Court in ***Lieutenant Commander Annie Nagaraja*** *case (supra)* was rendered by this Court on 17 March 2020. The directions which were issued by this Court would be of relevance to the present case and are hence set out below:

> "109.1. The statutory bar on the engagement or enrolment of women in the Indian Navy has been lifted to the extent envisaged in the Notifications issued by the Union Government on 9-10-1991 and 6-11-1998 under Section 9(2) of the 1957 Act.

1 "PC"

2 "SSC"

3 [2020] 10 SCR 433 : (2020) 13 SCC 1

4 "SSCO"

5 "JAG"

109.2. By and as a result of the policy decision of the Union Government in the Ministry of Defence dated 25-2-1999, the terms and conditions of service of SSC officers, including women in regard to the grant of PCs are governed by Regulation 203, Chapter IX, Part III of the 1963 Regulations.

109.3. The stipulation in the Policy Letter dated 26-9-2008 making it prospective and restricting its application to specified cadres/branches of the Indian Navy shall not be enforced.

109.4. The provisions of the implementation guidelines dated 3-12-2008, to the extent that they are made prospective and restricted to specified cadres are quashed and set aside.

109.5. All SSC officers in the Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered for the grant of PCs arises from the Policy Letter dated 25-2-1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women officers in the batch of cases before the High Court and AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy position as on the date of judgments of the Delhi High Court and AFT or as it presently stands, whichever is higher.

109.6. The period of service after which women SSC officers shall be entitled to submit applications for the grant of PCs shall be the same as their male counterparts.

109.7. The applications of the serving officers for the grant of PCs shall be considered on the basis of the norms contained in Regulation 203 namely : (*i*) availability of vacancies in the stabilised cadre at the material time; (*ii*) determination of suitability; and (*iii*) recommendation of the Chief of the Naval Staff. Their empanelment shall be based on inter se merit evaluated on the ACRs of the officers under consideration, subject to the availability of vacancies.

109.8. SSC officers who are found suitable for the grant of PC shall be entitled to all consequential benefits including arrears of pay, promotions and retiral benefits as and when due.

109.9. Women SSC officers of the ATC cadre in *Annie Nagaraja case* [*Annie Nagaraja* v. *Union of India*, 2015 SCC OnLine Del 11804] are not entitled to consideration for the grant of PCs since neither men nor women SSC officers are considered for the grant of PCs and there is no direct induction of men officers to PCs. In exercise of the power conferred by Article 142 of the Constitution, we direct that as a one-time measure, SSC officers in the ATC cadre in *Annie Nagaraja case* [*Annie Nagaraja* v. *Union of India*, 2015 SCC OnLine Del 11804] shall be entitled to pensionary benefits. SSC officers in the ATC cadre in *Priya Khurana case* [*Priya Khurana* v. *Union of India*, 2016 SCC OnLine AFT 798], being inducted in pursuance of the specific representation contained in the advertisements pursuant to which they were inducted, shall be considered for the grant of PCs in accordance with Directions 109.5 and 109.6 above.

109.10. All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the Letter dated 26-9-2008 and who are not presently in service shall be deemed, as a one-time measure, to have completed substantive pensionable service. Their pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service.

109.11. As a one-time measure, all SSC women officers who were before the High Court and AFT who are not granted PCs shall be deemed to have completed substantive qualifying service for the grant of pension and shall be entitled to all consequential benefits."

4. The petitioner was an officer who was recruited before the Policy Letter[6] of 26 September 2008 was issued. The PL stipulated that while

6 "PL"

women SSCOs would be considered for grant of PC in stipulated branches (JAG, Education and Naval Architecture), the letter would have prospective effect. It was as a result of the application of the PL dated 26 September 2008 that the petitioner was initially not considered to be eligible for the grant of PC. In the directions contained in paragraph 109.1 and 109.2, extracted above, this Court noted that the statutory bar on the enrolment of women in the Indian Navy was lifted in terms of the notifications issued by the Union Government on 9 October 1991 and 6 November 1998 under Section 9(2) of the Navy Act. Moreover, this Court held that the policy decision of the Union Government dated 25 February 1999 would govern the conditions of service of SSCOs including women officers in regard to the grant of PCs in terms of Regulation 203 Chapter IX Part III of the 1963 Regulations.

5. Having come to the above conclusion, this Court specifically directed that the PL dated 26 September 2008, making it prospective and restricting it to specified cadres, would stand quashed and set aside. This Court directed that all SSCOs in the Education, Law and Logistic Cadres who were "presently in service", shall be considered for the grant of PC. This entitlement arose from the PL dated 25 February 1999 read with Regulation 203 of Chapter IX of the Naval Regulations 1963.

6. It is not in dispute that the case of the petitioner for being considered for the grant of PC squarely arose in terms of the directions contained in paragraph 109.5 of the judgment. The petitioner was considered for the grant of PC after the judgment of this Court, but has been denied PC on the ground that there were no vacancies.

7. The petitioner had earlier moved this Court under Article 32 of the Constitution, but was relegated to the Armed Forces Tribunal[7] by an order dated 24 August 2021. When the petitioner moved the AFT, the Tribunal issued certain directions in its judgment dated 3 January 2022. The AFT, *inter alia*, issued the following directions:

> "122(a) Respondents to identify and generate a proportional number of vacancies as a onetime measure to give a fair and viable consideration to the overborne cadres including

7 "AFT"

> Exec/Law, Exec/GS, Exec/NAI which required vacancies for fair consideration in Dec 2020. The following applicants in this batch of cases be then considered afresh in their own batches, along with those who were in service on 17.03.2020:
>
> (i) Cdr Seema Chaudhary, Exec/Law, in OA 1972/2021.
>
> (ii) Cdr Raja Kanwar, Exec/GS, in OA 1965/2021.
>
> (iii) Cdr Bhupesh Kumar, Exec/GS, in OA 1966/2021.
>
> 122(d) Considering the peculiarities of Law cadre, eligible SSC Law cadre officers of 2011 and 2014 batches who also ought to have been considered in Selection Board Dec 2020, be now considered along with Cdr Seema Chaudhary (applicant in OA 1972/2021) in the fresh consideration directed to be undertaken."

8. The above directions formed the subject matter of challenge before this Court in Civil Appeal No 2216 of 2022.

9. The batch of civil appeals including the above civil appeal by the petitioner came to be disposed of by this Court by its order dated 20 October 2022. From the judgment of this Court, it has emerged that the principal submission before this Court was that the AFT had relied on certain information which had been placed in a sealed cover to which the officers before it were not privy. Based on the submission, this Court restored the proceedings back to the AFT.

10. Mr Devadatt Kamat, senior counsel appearing on behalf of the petitioner submits that inadvertently the specific facts of the case of the petitioner were not drawn to the attention of the Court. It has been submitted that the issue pertaining to the breach of the principles of natural justice did not arise in the case of the review petitioner since her case stood on a distinct foundation.

11. During the course of the hearing, Mr R Balasubramanian, senior counsel appearing on behalf of the Naval authorities and the Union of India does not dispute the factual position that the issue which was dealt with in the judgment of this Court dated 20 October 2022 did not arise in the appeal which was filed by the petitioner against the judgment of the AFT.

12. That being the position, we are of the view that the ends of justice would require that the order which was passed by this Court on 20 October 2022 in Civil Appeal No 2216 of 2022 pertaining to the petitioner, should be recalled. We order accordingly. We have accordingly heard the civil appeal on merits in order to ensure that a final resolution is brought to the matter.

13. The facts as they have been set out in the earlier part of this judgment indicate that the petitioner is a JAG Branch officer recruited on Short Service Commission in 2007. Clearly, therefore, she was recruited at a time when the PL dated 25 February 1999 held the field. The subsequent PL dated 26 September 2008 which was prospective in nature was specifically dealt with in the judgment of this Court in ***Lieutenant Commander Annie Nagaraja*** *case*. The Court directed that the PL which made it prospective and confined to certain specific branches would not be enforced. In other words, the case of the petitioner for being considered for the grant of PC was squarely required to be dealt with in terms of the position as it stood independent of the PL dated 26 September 2008.

14. The submission which has been urged on behalf of the petitioner is that the directions which have been issued by the AFT in its impugned order dated 3 January 2022 are contrary to the binding directions of this Court in its judgment in ***Lieutenant Commander Annie Nagaraja***. This submission has been advanced on the ground that the petitioner who was an in-service officer on the date of the judgment in ***Lieutenant Commander Annie Nagaraja*** was required to be considered in terms of the directions issued by this Court. However, the AFT in its impugned judgment dated 3 January 2022, directed that the petitioner should be considered together with officers drawn from the 2011 and 2014 batches on the ground that they ought to have been also considered in the Selection Board in December 2020. It has been submitted that this direction for the petitioner to be considered together with the officers of later batches, namely, 2011 and 2014 has caused serious prejudice to her.

15. Mr R Balasubramanian, senior counsel appearing on behalf of the Union of India, on the other hand, submits that such a consideration with subsequent batches was made in order to ensure that a fair

opportunity was granted to all concerned officers and to widen the field of consideration.

16. There is merit in the challenge to the direction which has been issued by the AFT requiring that the candidature of the petitioner for the grant of PC should be dealt with the batches of 2011 and 2014. To do so would amount to introducing a condition which was not a part of the judgment of this Court in ***Lieutenant Commander Annie Nagaraja***. The binding judgment, which has to be enforced is the decision of this Court in ***Lieutenant Commander Annie Nagaraja***. Any directions de-hors the judgment of the Court could not obviously be issued. Though the case of the petitioner has been considered after the decision in ***Lieutenant Commander Annie Nagaraja***, there is a serious element of prejudice which has been caused to the petitioner which must be rectified so as to enforce the final directions of this Court.

17. We accordingly order and direct that in the peculiar facts and circumstances of this case, the case of the petitioner for the grant of PC shall be considered afresh by reconvening a Selection Board. The Selection Board shall consider the case of the petitioner on a stand alone basis since it is common ground that she was the only serving JAG Branch officer of the 2007 batch whose case for the grant of PC was required to be considered. The consideration by the Selection Board shall take place uninfluenced by any previous consideration of her case for PC and uninfluenced by any observations contained in the order of the AFT.

18. We however clarify that in the event that pursuant to the directions of the AFT, if a proportional increase in the vacancies is required to be created to accommodate the petitioner, this shall be carried out without creating any precedent for the future. We have issued this direction under Article 142 of the Constitution so as to ensure that while no other officer is displaced, a long standing injustice to the petitioner is duly rectified.

19. Any Annual Confidential Report which has not been communicated to the petitioner shall not be considered for the purpose of the grant of PC.

20. The exercise of considering the petitioner afresh for PC shall be carried out on or before 15 April 2024.

21. Should the petitioner be aggrieved by any further decision that is taken, she shall be at liberty to pursue her remedies in accordance with law. It is understood by both the petitioner, who is personally present before the Court, as well as the counsel for the Naval authorities that all pending proceedings before the AFT relating to the petitioner shall stand disposed of in view of the present directions.

22. The Review Petition is accordingly disposed of.

23. Pending applications, if any, stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case:
Review Petition disposed of.

[2024] 2 S.C.R. 830 : 2024 INSC 149

Naresh Kumar
v.
State of Haryana

Criminal Appeal (No.) 1722 of 2010

22 February 2024

[J. B . Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

Conviction of the appellant for the offence punishable u/s.306, Penal Code, 1860, if justified.

Headnotes

Penal Code, 1860 – s.306 – Abetment of suicide – Evidence Act, 1872 – s.113A – Presumption as to abetment of suicide by a married woman – When cannot be raised – Conviction of the appellant u/s.306, IPC – Correctness:

Held: In order to convict a person u/s.306, IPC there has to be a clear mens rea to commit the offence – Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide – It also requires an active act or direct act which led the deceased to commit suicide – The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous – Presumption u/s.113A is discretionary – Before the said presumption is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard – The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption u/s.113A, Evidence Act would not automatically apply – PW-4 and PW-5 (brother and father of the deceased) only stated that after the marriage, there was a demand of some money by the appellant, as he wanted to start a ration shop and on account of such demand, the deceased used to remain tense – However, what ultimately led the deceased to take such a drastic step of committing suicide is not clear – Their evidence does not disclose any form of incessant cruelty or harassment on his part which would in ordinary circumstances drag the wife to commit suicide as if she was left with no other alternative – Mere demand of money from the wife or her parents

* Author

for running a business without anything more would not constitute cruelty or harassment – Prosecution did not establish the guilt of the accused beyond reasonable doubt – Order of conviction passed by Trial Court as affirmed by the High Court, set aside – Appellant acquitted. [Paras 22, 29, 28, 10, 11 and 35-37]

Evidence Act, 1872 – s.113A – Requirements under – Discussed.

Evidence Act, 1872 – s.113A – Assessment of evidence – Duty of Courts:

Held: Court should be extremely careful in assessing evidence u/s.113A for finding out if cruelty was meted out – If it transpires that a victim committing suicide was hyper sensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty. [Para 30]

Evidence Act, 1872 – ss.113A, 113-B– Presumptions under both the sections – Fine distinction between:

Held: In s.113A the legislature has used the word 'may', whereas in s.113B the word used is 'shall' – The term 'the Court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband' would indicate that the presumption is discretionary, unlike the presumption u/s.113B, which is mandatory – From the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved – Court has the discretion to raise or not to raise the presumption, because of the words 'may presume' – It must take into account all the circumstances of the case which is an additional safeguard. [Paras 27, 29 and 32]

Administration of Justice – Administration of Criminal Justice – Penal Code, 1860 – s.306 – Abetment of suicide – Appreciation of evidence – Guilt of the accused to be determined in accordance with law – Correct application

of principles of law – Duty of Courts – In 1993, appellant's wife committed suicide by consuming poison allegedly on account of incessant harassment by him – Appellant held guilty u/s.306 IPC, his parents were acquitted by Trial Court – Appellant's conviction upheld by High Court – Acquitted by Supreme Court in 2024:

Held: Ordeal of the appellant which started in 1993 has come to an end in 2024, i.e. almost after a period of 30 years of suffering – Although, a young woman died leaving behind her 6 months old infant and no crime should go unpunished – But at the same time, the guilt of the accused has to be determined in accordance with law and on the basis of evidence on record – Courts below faltered as they failed to apply the correct principles of law to the evidence on record on the subject of abetment of suicide and got enamoured by just three aspects, that the deceased committed suicide within seven years of marriage, the accused was demanding money from the parents of the deceased for starting some business, and the deceased used to remain tense – Though, these are not irrelevant considerations and are in fact relevant but, in the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence – In the present case, on the basis of evidence on record, conviction of the appellant for the offence punishable u/s. 306 of the IPC was not sustainable – Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable u/s.306 of the IPC, it is more arduous – Court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record – Otherwise it may give an impression that the conviction is not legal but rather moral. [Para 34]

Words and expressions – 'may presume' in s.113A, Evidence Act, 1872 – Discussed.

Case Law Cited

Geo Varghese v. State of Rajasthan and another, **[2021] 10 SCR 393 : (2021) 19 SCC 144;** *M.*

Arjunan v. State, represented by its Inspector of Police, **(2019) 3 SCC 315;** *Ude Singh & Others v. State of Haryana,* [2019] 9 SCR 703 **: (2019) 17 SCC 301;** *Mariano Anto Bruno & another v. The Inspector of Police,* [2022] 14 SCR 889 **: (2022) SCC Online SC 1387;** *Gurcharan Singh v. State of Punjab,* [2020] 8 SCR 741 **: (2020) 10 SCC 200;** *Kashibai & Others v. The State of Karnataka,* [2023] 3 SCR 175 **: (2023) SCC Online SC 575 – relied on.**

Lakhjit Singh v. State of Punjab, **(1994) Suppl. 1 SCC 173;** *Pawan Kumar v. State of Haryana,* [1998] 1 SCR 746 **: (1998) (3) SCC 309;** *Smt. Shanti v. State of Haryana,* [1990] Suppl. 2 SCR 675 **: (1991) 1 SCC 371 – referred to.**

List of Acts

Penal Code, 1860; Evidence Act, 1872; Code of Criminal Procedure, 1973; Criminal Law (Second Amendment) Act 46 of 1983; Criminal Justice Act, 1967.

List of Keywords

Abetment of suicide; Abetment of suicide by married woman; Within seven years of marriage; Presumption not automatic; Presumption discretionary/mandatory; Mere harassment not sufficient; Mens rea; Intention; Abetting the commission of suicide; Active act or direct act; Cruelty or incessant harassment; Demand of money; Cruelty meted out or not; Incitement to commit suicide; Victim committing suicide hyper sensitive; Appreciation of evidence; Correct application of principles of law; Criminal Justice System; Guilt not established beyond reasonable doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1722 of 2010

From the Judgment and Order dated 03.09.2008 of the High Court of Punjab & Haryana at Chandigarh in CRLA No.726 of 1998

Appearances for Parties

S.D. Singh, Mrs. Shweta Sinha, Ram Kripal Singh, Siddharth Singh, Mrs. Aparna Jha, Advs. for the Appellant.

Raj Singh Rana, A.A.G., Samar Vijay Singh, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. This appeal is at the instance of a convict accused and is directed against the judgment and order dated 03.09.2008 passed by the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 762-SB of 1998, by which the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the judgment and order of conviction passed by the Additional Sessions Judge, Karnal dated 08.09.1998/10.09.1998 in Sessions Trial No. 06 of 1996 holding the appellant guilty of the offence punishable under Section 306 of the Indian Penal Code (for short 'IPC').

2. The short facts necessary to be narrated for disposal of this appeal, are as under:-

   The deceased, Rani, was married to the appellant herein. The marriage was solemnized on 10.05.1992. The marriage of Rani with the convict was her second marriage. In the wedlock with the convict, Rani gave birth to a girl child.

   The case of the prosecution is that soon after marriage, the appellant-convict and her parents started demanding money as the appellant convict wanted to start a ration shop. It may not be out of place to state at this stage that the parents of the appellant-convict herein were also put to trial for the alleged offence. However, they came to be acquitted by the Trial Court.

   The record reveals that on 19th November, 1993, Rani committed suicide by consuming poison. According to the case of the prosecution, Rani committed suicide on account of incessant harassment at the end of her husband i.e., the appellant herein and in such circumstances, the appellant-convict was charged

with the offence of abetting the commission of suicide by his wife punishable under Section 306 of the IPC.

In the course of the trial many witnesses were examined, however, we have looked into the oral evidence of PW-4, namely, Madan Lal, who happens to be the brother of the deceased and PW-5, Narata Ram, who happens to be the father of the deceased.

ORAL EVIDENCE ON RECORD:

3. PW-4 Madan Lal (brother of the deceased) son of Narata Ram in his examination in chief has deposed as under:-

> *"We are four brothers and 9 sisters. My younger sister Rani was married to Naresh accused on 10-5-92 at Kurukshetra as per Hindu rites and custom. At the time of her marriage she was aged about 18/19 years. A female child was born to my sister Rani after marriage. The daughter of Rani at the time of death of Rani was aged about 4 or 5 months. After about 2/2½ months of marriage, Fakir Chand, Anguri and Naresh demanded a sum of Rs. 50,000/- for starting business of Kiryana shop for accused Naresh. We being poor person could not arrange for the said money. We had performed the marriage of our sister by selling family property (later portion is volunteered). About one or quarter before death of Rani we got opened a shop at our village Raison for accused Naresh Kumar which he had run for about 8 or 9 months. Accused Naresh had run the shop for about 11 months. Since accused Naresh suffered loss, he wound up the shop and left for Delhi. About 1½ month before death of Rani, accused Naresh had taken her to Delhi. On 17-11-93 my sister Rani along with accused Naresh came to our house. My sister Rani stated that accused Naresh, Fakir Chand and Anguri Devi are raising demand of Rs. 20,000/- for opening a shop for Naresh. I, my father and my mother told accused Naresh that we would arrange the amount and pay the same after about 8 or 10 days. On 19-11-93 accused Naresh and my sister left for Delhi at about 7 a.m. saying that they are going and amount be sent later. My sister Rani used to remain tense because*

of repeated demands by the accused. Getting fed up my sister consumed some poisonous thing on 19-11-93. On learning that my sister had consumed some poisonous thing, we came to Karnal. Police met me at G.H. Karnal where my statement Ex. PJ was recorded by the police which was read over to me and after admitting the contents, I signed the same. After post mortem, the dead body of my sister was handed over to us on 20-11-93."

4. PW-5 Narata Ram (father of the deceased) in his examination in chief has deposed as under:-

"I have four sons and 9 daughters. My daughter Rani was married to Naresh accused on 10-5-92 at Kurukshetra. After about 2½ months of marriage all the accused started harassing my daughter. They raised demand of Rs. 50,000/- for opening a shop for Naresh. Being poor people we could not arrange the amount. By arranging some amount we opened a shop for accused Naresh at Raison. Accused Naresh continued the shop for about 7 or 8 months. The accused Naresh Dulian Kha Pee Kay left the shop and went to Delhi. After about 5 or 7 months accused Naresh came to take my daughter Rani to Delhi. On 17-11-93 accused Naresh alongwith my daughter Rani came to our house. My daughter Rani told that all the accused are demanding a sum of Rs. 20,000/- for starting business at Delhi. I expressed my inability to pay same day. At this Naresh told that either pay the amount or he shall finish himself by consuming some poison. Accused Naresh then left with my daughter. My daughter used to remain tense due to repeated demands of the accused. On learning that Rani had consumed some poisonous thing we came to G.H. Karnal."

5. The learned counsel appearing for the appellant convict submitted that the Courts below committed an error in holding the appellant guilty of having abetted the commission of suicide by the deceased. He would submit that there is not an iota of evidence to even remotely suggest that there was any kind of harassment, physical or mental, to the deceased by her husband.

6. In such circumstances, he would submit that the conviction be set aside and the appellant convict be acquitted.

7. On the other hand, Ms. Sabarni Som, the learned counsel appearing for the State of Haryana, submitted that no error not to speak of any error of law could be said to have been committed by the Courts below in holding the appellant guilty of the alleged offence. Much emphasis was laid on the fact that the deceased committed suicide within seven years from the date of her marriage.

8. The learned counsel appearing for the State tried to fortify her above referred submission by relying on Section 113A of the Indian Evidence Act, 1872 (for short 'the Evidence Act') which enables raising of presumption as to abetment of suicide by a married woman. She would submit that the oral evidence of PW-4 and PW-5 has been well appreciated and the Courts below have rightly held the appellant guilty of the alleged offence.

ANALYSIS:

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment?

10. We have looked into the evidence of PW-4 i.e., the brother of the deceased and also the evidence of PW-5 i.e., the father of the deceased. Both these witnesses have only stated that after the marriage, there was a demand of some money by the convict, as he wanted to start a ration shop. It appears from the evidence of both these witnesses that on account of such demand, the deceased used to remain tense.

11. What ultimately led the deceased to take such a drastic step of committing suicide is not clear. To put it in other words, the plain reading of the oral evidence of both these witnesses does not disclose any form of incessant cruelty or harassment on the part of the husband which would in ordinary circumstances drag the wife to commit suicide as if she was left with no other alternative. Mere demand of money from the wife or her parents for running a business without anything more would not constitute cruelty or harassment.

12. Section 306 of the IPC reads as under :-

> *"306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

13. Thus, the basic ingredients to constitute an offence under Section 306 of the IPC are suicidal death and abetment thereof. Abetment of a thing is defined under Section 107 IPC as under:-

> *"107. Abetment of a thing.—A person abets the doing of a thing, who—*
>
> *First.—Instigates any person to do that thing; or*
>
> *Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.*
>
> *Explanation 1.— A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*
>
> *Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."*

14. This Court in *Geo Varghese v. State of Rajasthan and another*, (2021) 19 SCC 144, has considered the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC observed as under:-

> *"14. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.*
>
> *. . .*

15. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 SCC 618, has defined the word 'instigate' as under:-

> *"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act"."*

16. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S. Cheena Vs. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190, it was observed as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

15. This Court in *M. Arjunan v. State, represented by its Inspector of Police*, (2019) 3 SCC 315, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under:-

> *"7. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit*

suicide are satisfied, accused cannot be convicted under Section 306 IPC."

16. This Court in *Ude Singh & Others v. State of Haryana*, (2019) 17 SCC 301, held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

> *"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.*
>
> *16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the*

> *case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."*

17. This Court in *Mariano Anto Bruno & another v. The Inspector of Police*, 2022 SCC OnLine SC 1387, Criminal Appeal No. 1628 of 2022 decided on 12th October, 2022, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC observed as under:-

> *"44. . . . It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."*

18. This Court in *Gurcharan Singh v. State of Punjab*, (2020) 10 SCC 200, observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

19. This Court in *Kashibai & Others v. The State of Karnataka*, 2023 SCC Online SC 575, Criminal Appeal No. 627 of 2023 (arising out of SLP (Crl.) No. 8584/2022) decided on 28th February, 2023, observed that to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

20. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person *intends* a consequence when he (1)*foresees* that it will happen if the given series of acts or omissions continue, and (2)*desires* it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

21. For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the *mens rea* is assessed. It states:

> *"A court or jury, in determining whether a person has committed an offence,*
>
> (a) *shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but*
>
> (b) *shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."*
>
> Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

22. It is now well settled that in order to convict a person under Section 306 of the IPC there has to be a clear *mens rea* to commit the offence. Mere harassment is not sufficient to hold an accused guilty

of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous.

23. We take notice of the fact that the High Court has laid much emphasis on Section 113A of the Evidence Act.

24. Section 113A of the Evidence Act reads thus:-

> *"113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*
>
> *Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)."*

25. This Section was introduced by the Criminal Law (Second Amendment) Act 46 of 1983. The Indian Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act were amended keeping in view the dowry death problems in India.

26. The Section requires proof (1) that her husband or relatives subjected her to cruelty and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

27. Although, it is not necessary for us to refer to Section 113B of the Evidence Act which raises presumption as to dowry death yet with a view to indicate the fine distinction between the two presumptions we are referring to Section 113B. In Section 113A the legislature has used the word 'may', whereas in Section 113B the word used is 'shall'.

28. In this appeal, we are concerned with Section 113A of the Evidence Act. The mere fact that the deceased committed suicide within

a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under Section 113A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

29. What is important to note is that the term 'the Court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband' would indicate that the presumption is discretionary, unlike the presumption under Section 113B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

30. The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hyper sensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

31. Section 113A has been interpreted by this Court in *Lakhjit Singh v. State of Punjab,* 1994 Suppl (1) SCC 173, *Pawan Kumar v. State of Haryana,* 1998(3) SCC 309, and *Smt. Shanti v. State of Haryana*, 1991(1) SCC 371.

32. This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words 'may presume'. It must take into account all the circumstances of the case which is an additional safeguard.

33. In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306 of IPC by raising presumption under Section 113A.

34. Before we part with this matter, we may only observe that the criminal justice system of ours can itself be a punishment. It is exactly what has happened in this case. It did not take more than 10 minutes for this Court to reach to an inevitable conclusion that the conviction of the appellant convict for the offence punishable under Section 306 of the IPC is not sustainable in law. The ordeal for the appellant started some time in 1993 and is coming to the end in 2024, i.e. almost after a period of 30 years of suffering. At the same time, we are also mindful of the fact that a young woman died leaving behind her 6 months old infant. No crime should go unpunished. But at the same time, the guilt of the accused has to be determined in accordance with law. To put it in other words, the guilt of the accused has to be determined on the basis of legal evidence on record. The question is : On what and where did the two courts falter? In our opinion, the two courts faltered as they failed to apply the correct principles of law to the evidence on record on the subject of abetment of suicide. The two courts got enamoured by just three things, (i) the deceased committed suicide within seven years of marriage, (ii) the accused was demanding money from the parents of the deceased for starting some business, and (iii) the deceased used to remain tense. We do not say that these are irrelevant consideration. All the three aspects are relevant. But there are settled principles of law to be made applicable to the matters of the present type. In the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence. Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable under Section 306 of the IPC, it is more arduous. The court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record. Otherwise it may give an impression that the conviction is not legal but rather moral.

35. For all the foregoing reasons, we have reached to the conclusion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.

36. In the result, the appeal succeeds and is, hereby, allowed. The judgment and order of conviction passed by the Trial Court as affirmed by the High Court is, hereby, set aside.

37. The appellant stands acquitted of the charge framed against him.

38. Pending the present appeal, vide order dated 13.05.2009 a coordinate Bench had ordered release of the convict on bail. Since the appeal is being allowed and the convict is being acquitted, the bail bond(s) furnished then shall also stand discharged.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.