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[2024] 3 S.C.R. 294 : 2024 INSC 170

Suman L. Shah

v.

The Custodian & Ors.

(Civil Appeal No(s). 4577 of 2011)

05 March 2024

[Pamidighantam Sri Narasimha and Sandeep Mehta,* JJ.]

Issue for Consideration

There were questionable transactions between the appellants and respondent Nos. 6, 7 and 8, the alleged benami companies of respondent No. 2 (notified party). Whether the Special Court committed manifest error in facts as well as in law in holding that the appellants herein were the garnishees of respondent No. 2. Whether the conclusions and findings passed by the Special Court, that the appellant herein failed to prove the fact that amounts had been repaid to the benami companies of the notified person-respondent No.2, can be sustained.

Headnotes

Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 – The miscellaneous applications were filed by the respondent-Custodian in the year 2008 seeking to recover the amounts of Rs.50 lakhs from appellant-S towards the dues of respondent Nos. 6 and 7 and amount of Rs.25 lakhs from appellant-L towards the dues of respondent No.8 – The Income Tax Department, vide letter dated 05.05.1998 informed the Custodian about respondent No. 2 being the benami owner of the companies (respondent Nos. 4 to 8 herein) – Special Court in its separate judgments directed appellants to pay the respective amounts due to the respondent Nos. 6, 7 and 8, being benami companies of respondent No. 2 – Propriety:

Held: Respondent No. 2 was notified under the Act of 1992 on 06.10.2001 and thus, by virtue of s.3(3) of the Act of 1992, all properties belonging to him stood automatically attached from the date of such notification – The appellants herein had borrowed the amounts in question from respondent Nos. 6, 7 and 8, way back in the years 1996-1997 – By that date, there could not have existed any justifiable reason for the appellants herein to have entertained

* Author

a belief that these were the benami companies of respondent No. 2 or that there was any breach of the provisions of the Act of 1992 by respondent no.2 or the respondent companies – The foundation behind the assertion made by the Custodian that the appellants herein were garnishees of respondent No. 2 through respondent Nos. 6, 7 and 8 is based entirely on a communication dated 05.05.1998 purportedly issued by the Income Tax Department – No witness from the Income Tax Department was examined in evidence before the Special Court in miscellaneous applications for recovery – Even the communication forwarded by the Income Tax Department and relied upon by the Custodian was not proved by proper evidence – Also, a bare perusal of ss.3 and 9A, it would become clear that the properties of the person notified u/s. 3(2) would stand attached automatically with effect from the date of notification by virtue of s.3(3) – Since respondent No.2 was notified (as being a debtor of the originally notified company FFSL) with effect from 06.10.2001, a *fortiori*, his properties would be deemed to be attached with effect from that date and not prior thereto – The applications for recovery having been filed by the Custodian with the allegation that the appellants herein were the debtors of the benami companies of the notified person, the primary onus of proving this assertion would be on the Custodian by virtue of s.101 of Evidence Act – It is only after the Custodian discharged this primary burden and established the existence of the debt, then by virtue of s.102 of the Evidence Act, perhaps, the onus could be shifted on to the appellants to rebut the same – The appellants herein took a categoric stand in their depositions that they had returned the amounts borrowed from respondent Nos. 6, 7 and 8, but the books of accounts were not available because of lapse of time – It was neither a requirement in law nor could it be expected from the appellants herein to retain the books of accounts after more than a decade of the alleged suspicious transactions – Therefore, the conclusions drawn and the findings recorded in the impugned judgments passed by the Special Court that the appellants herein failed to prove the fact that the amounts had been repaid to the benami companies of the notified person-respondent no.2 do not stand to scrutiny and cannot be sustained as being contrary to facts and law. [Paras 32-39]

List of Acts

Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992; Evidence Act, 1872.

List of Keywords

Recovery of money; Benami; Benami owner of companies; Attachment of property; Garnishee; Debtors of the benami companies; Primary burden of proof; Shift of burden of proof; Books of account; Lapse of time.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4577 of 2011

From the Judgment and Order dated 11.03.2011 of the Special Court Constituted under the Provisions of Special Court (Trial of Offences Relating to Transaction in Securities), Act, 1992 in Miscellaneous Application Nos.162 of 2008, 343 of 1994 and 193 of 1993

With

Civil Appeal No.4583 of 2011

Appearances for Parties

Anirudh Joshi, Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Ms. S. Lakshmi Iyer, Ms. Sukriti Bhatnagar, Ms. Chitra Agarwal, Ms. Manavi Agarwal, Ms. Divya Singh, Sunil, E. C. Agrawala, Advs. for the Appellant.

Arvind Kumar Tewari, Ms. Yosha Dutt, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. The factual and legal issues involved in these appeals are common and hence the same have been heard together and are being decided by this common judgment.

2. The instant appeals under Section 10 of the Special Court (Trial of Offences relating to transactions in Securities) Act, 1992 (hereinafter being referred to as the 'Act of 1992') arise out of the final judgments passed by the Special Court, Bombay constituted under the Act of 1992 of even date i.e. 11th March, 2011, in MA Nos. 162 and 184 of 2008 in MA No.343 of 1994 in MA No. 193 of 1993.

3. Before proceeding to consider the appeals on merits, it would be apposite to consider the broad scheme of the Act of 1992.

4. The Act was promulgated as large-scale irregularities committed by some share brokers in collusion with the employees of Banks and Financial Institutions(in short 'FIs') came to light in relation to transaction in Government/other securities leading to diversion of funds from the banks/FIs to the individual accounts of certain brokers.

5. The Act provided a mechanism to deal with the above situations and in particular, to ensure speedy recovery of the huge amounts illegally diverted, punish the guilty and restore the confidence of public at large in the security transactions and also to uphold and maintain the basic integrity and credibility of banks and FIs. The period of transactions in securities under the purview was from 1st April, 1991 to 6th June, 1992. A Special Court headed by a sitting Judge of the High Court was established for speedy trial of offences relating to transactions in securities and disposal of properties attached. The Act also provided for appointment of one or more custodians under Section 3 so as to attach the property/ properties of the offenders with a view to preventing diversion of such properties by the offenders.

6. Section 3(2) stipulates that the Custodian may, on being satisfied on information received that any person has been found involved in any offence relating to transactions in securities after 1st April, 1991 and on or before 6th June, 1992, notify the name of such person in Official Gazette.

7. Section 3(3) provides that any property, movable or immovable or both, belonging to the notified persons would stand attached simultaneously with the date of issuance of the notification.

8. Section 3(4) mandates the Custodian to deal with the attached properties in such manner as the Special Court may direct.

9. Section 11(1) empowers the Special Court to pass appropriate order(s) directing the Custodian for disposal of the attached property.

10. Under Section 11(2), liabilities of notified persons are required to be paid or discharged in full by distributing monies so realized after disposal of the attached assets.

11. Having taken into account the relevant provisions of the statute, the brief facts arising for consideration in the present appeals may be noted as below:-

(i) On 2nd July, 1992, Fairgrowth Financial Services Limited (hereinafter being referred to as the 'FFSL') was notified under Section 3(2) of the Act and all its properties stood attached. In 1993, the Custodian filed Miscellaneous Application No. 193 of 93 in the Special Court for the recovery of various sums of money belonging to FFSL from respondent No. 2-Pallav Sheth.

(ii) The Special Court passed a consent decree on 24th February, 1994 directing respondent No. 2-Pallav Sheth to pay a sum of Rs.51,49,07,417.92/- to the Custodian on behalf of FFSL. Respondent No. 2-Pallav Sheth committed default and as a consequence, the Custodian initiated attachment of his assets to recover the decretal amount.

(iii) During the years 1996-1997, the appellant-Suman L. Shah had borrowed a sum of Rs.50 lakhs from respondent No. 6-Klar Chemicals(P) Ltd. and a sum of Rs. 25 lakhs from respondent No. 7-Malika Foods (P) Ltd. (original respondent Nos. 5 and 6 before the Special Court) whereas appellant-Laxmichand Shah had borrowed Rs.45 lakhs from respondent No. 8-Jainam Securities(P) Ltd. (original respondent No.7 before the Special Court). As per the case set up by the Custodian before the Special Court, these were the benami companies of respondent No. 2-Pallav Sheth who had illegally parked the tainted money received from FFSL, the notified company in these benami companies (respondent Nos.6, 7 and 8) created by himself.

(iv) The Custodian notified respondent No.2-Pallav Sheth under Section 3(2) of the Act on 6th October, 2001. He was declared insolvent on 5th November, 2003 and as a consequence, all his assets and properties got vested in the Official Assignee i.e. respondent No.9 herein. As respondent No. 2-Pallav Sheth failed to pay the decretal amount, the Custodian sought information from respondent No. 3- Income Tax Department regarding the assets of respondent No. 2-Pallav Sheth. In turn, the Income Tax Department, vide letter dated 5th May, 1998 informed the Custodian about respondent No. 2-Pallav Sheth being the benami owner of the companies (respondent Nos. 4 to 8 herein).

(v) The Special Court, by an order passed in miscellaneous application registered for initiating contempt proceedings

against respondent No. 2-Pallav Sheth observed that respondent Nos. 4 to 8 were benami companies of respondent No.2-Pallav Sheth.

12. The Custodian claims to have acquired knowledge/information that the appellant Suman L. Shah had received an amount of Rs. 50 lakhs from respondent No. 6(out of which Rs. 25 lakhs were repaid by cheque and the entry dated 5th May, 1997 is available in the passbook) and Rs. 25 lakhs from respondent No.7 and that the appellant-Laxmichand Shah had received an amount of Rs.25 lakhs from respondent No.8.

13. Accordingly, Miscellaneous Application Nos. 162 of 2008 and 184 of 2008 were filed by the Custodian before the Special Court for recovery of Rs. Rs. 50 lakhs from the appellant Suman L. Shah (Civil Appeal No.4577 of 2011) and for recovery of Rs. 25 lakhs from the appellant/Laxmichand Shah (Civil Appeal No. 4583 of 2011), both being garnishees of respondent No. 2-Pallav Sheth i.e. the owner of the benami companies (respondent Nos.4 to 8).

14. The Special Court, vide judgment dated 11th March, 2011 passed in Miscellaneous Application No. 162 of 2008 directed the appellant Suman L. Shah to pay a sum of Rs. 50 lakhs(Rs. 25 lakhs each due to respondent Nos. 6 and 7) being benami companies of respondent No. 2-Pallav Sheth, to the Custodian with interest @ 12% per annum from 1st April, 1997 till realisation of the amount.

15. Vide another judgment of even date passed in Miscellaneous Application No. 184 of 2008, the Special Court directed appellant-Laxmichand Shah to pay a sum of Rs. 25 lakhs due to respondent No. 8, benami company of respondent No. 2-Pallav Sheth, to the Custodian with interest @ 12% per annum from 1st April, 1997 till realisation of the amount.

16. The Special Court further directed that the appellants shall deposit the amounts with the Custodian within a period of two months from the date of the judgment failing which the Custodian would be free to execute the orders as decrees of the Civil Court. Upon recovery, the amounts were directed to be paid to respondent No. 9-Official Assignee whereafter the appellants would stand discharged of their liabilities towards the benami companies of respondent No.2 Pallav Sheth.

17. Aggrieved by the judgments dated 11th March, 2011, Suman L. Shah and Laxmichand Shah have instituted Civil Appeal Nos. 4577 of 2011 and 4583 of 2011 before this Court.

18. While entertaining the appeals, vide order dated 13th May, 2011, this Court directed appellant-Suman L. Shah to deposit Rs.50 lakhs and appellant-Laxmichand Shah to deposit Rs. 25 lakhs with the Officer on Special Duty attached with the Special Court and to furnish a bank guarantee to the Custodian towards the balance amount, i.e., interest.

19. Both the appeals were dismissed by this Court vide order dated 23rd April, 2012 on account of non-compliance of the order dated 13th May, 2011.

20. The IAs seeking restoration of these Civil Appeals were accepted vide order dated 14th March, 2014, subject to deposit of a total sum to the tune of Rs. 2.20 crores by the appellants with the Officer on Special Duty, Special Court. The amount has been deposited and accordingly the appeals were taken on board.

21. Learned counsel representing the appellants contended that the Special Court committed manifest error in facts as well as in law in holding that the appellants herein were the garnishees of respondent No. 2-Pallav Sheth. It was contended that the questionable transactions between the appellants and respondent Nos. 6, 7 and 8, the alleged benami companies of respondent No. 2-Pallav Sheth (notified party) and judgment debtor of FFSL(notified party) were 13-14 years old and as no documentary proof relating to these transactions was provided by the Custodian on the record of the proceedings before the Special Court, the statement of appellants that the entire amounts of loan taken from respondent Nos. 6, 7 and 8 were repaid ought not to have been brushed aside.

22. It was contended that the appellants herein had taken the loans from respondent Nos. 6, 7 and 8 in the years 1996-1997, i.e., long before respondent No. 2-Pallav Sheth came to be notified under Section 3(2) of the Act of 1992, i.e., 6th October, 2001 and thus, the burden of proof regarding the existence of liability could not have been shifted on to the appellants and the onus essentially lay upon the Custodian to prove that these amounts had not been repaid and were still recoverable.

23. It was contended that the specific assertion made by the appellants in their deposition affidavits that the amounts in question borrowed from respondent Nos. 6, 7 and 8 had been repaid partly by cheque and partly by material supplied to these respondents could not be unsettled by the Custodian in crossexamination. Only a bald suggestion was given to the appellants in cross-examination that they did not have any document in the form of vouchers, receipts, invoices or entries in the book accounts to show the adjustment of the remaining amount.

24. It was urged that the letter dated 5th May, 1998 issued by respondent No. 3-Income Tax Department was referred to in the cross-examination of the appellants. However, the said letter was not proved by exhibiting the same in the proceeding before the Special Court. Learned counsel urged that the since the Custodian failed to bring the letter of the Income Tax Department on record, either by summoning the income tax officials or by producing any other admissible evidence, the Special Court committed a grave error on placing implicit reliance on such communication.

25. It was contended that the appellants herein being respondent Nos. 8 before the Special Court were not cross-examined either by respondent No. 2-Pallav Sheth or on behalf of the benami companies i.e. respondent Nos. 6, 7 and 8 and thus it could not be said with any degree of certainty that the amounts borrowed remained unpaid.

26. The pertinent assertion of learned counsel for the appellants was that since the appellants were never notified under the Act of 1992, the burden of proof could not have been shifted upon them so as to require them to disprove the case set up by the Custodian in the applications for recovery. In this regard, learned counsel for the appellants referred to the following observations made by the Special Court in the impugned order:-

> **"7**. It is true that oral evidence cannot be ignored, but at the same time, it has to be borne in mind that the Official Assignee - respondent No.9 has to recover the properties and assets of respondent No.1 for satisfaction of the decree against him. For the reasons best known to respondent No.1 or respondent Nos. 5 and 6, neither they filed any reply nor cross-examined respondent No.8. At the same time, it cannot be forgotten that the respondent No.8 is a

businessman and he was expected to maintain accounts of his business. It is impossible to believe that he would not have maintained accounts of his business. According to him, he had partly repaid these amounts to respondent Nos. 5 and 6 by cheques and partly the amounts were adjusted against the purchases made by respondent Nos. 5 and 6 from Shree Jalaram Timber Depot Pvt. Ltd. He has shown payment of Rs.25 lakh by cheque to respondent No.5 and that is reflected in his passbook. Whenever any payment is made by cheque and the cheque is encashed, naturally the debit entry is taken in the account of the person, who has issued the cheque. For a moment, if it is believed that other documents were not available, at least respondent No.8 could produce the passbook of his account showing the debit entries indicating payment by cheque to respondent Nos. 5 and 6. However, respondent No.8 did not produce any such passbook to show that certain payments were made by cheque and those cheques were encashed and the amounts were debited in his account. If Shree Jalaram Timber Depot Pvt. Ltd belonging to respondent No.8 had supplied certain material to respondents Nos. 5 and 6 and that amount was adjusted against the dues payable to respondents Nos. 5 and 6, there must have been some documents in the form of bill books, vouchers, receipts, entries in the account books. However, no such document was produced. It is true that respondent No.8 was not crossexamined by respondent No.1 or respondent Nos.5 and 6. Still, it is to be noted that best evidence in the form of documentary evidence was available with the respondent No.8, but he chose not to produce the best evidence and relied only on his oral testimony. Even though respondent No.8 contended that the documents are not traceable he has nowhere stated that the records were lost or destroyed. There is no satisfactory clarification as to why the records are not traceable. When the best evidence, which is expected to be available with him, has not been produced, the Court may draw an inference that if such record would be produced, it would go against his claim. Therefore, his contention that the amount of Rs.25 lakh each payable to respondent Nos. 5 and 6 has been

> actually repaid partly by cheque and partly by adjustment of the price of material supplied to them cannot be accepted. Therefore, I hold that the respondent No.8 is liable to pay amount of Rs.25 lakh to respondent No.5 and Rs.25 lakh to respondent No.6.

27. It was fervently contended by learned counsel for the appellants that the impugned judgments do not stand to scrutiny inasmuch as the onus of proof has been shifted on to the appellants without any justification and contrary to the principles enshrined in the Indian Evidence Act, 1872(hereinafter being referred to as the 'Evidence Act'). He thus, implored the Court to accept the appeals and set aside the judgments passed by the Special Court.

28. *Per contra*, learned counsel for the respondents submitted that the bald statements of the appellants herein in their affidavits that the amount borrowed from respondent Nos. 6, 7 and 8 i.e. the benami companies of the notified person i.e. respondent No.2- Pallav Sheth had been returned by way of adjustment towards material supplied was rightly discarded by the Special Court because such statements were not supported by any tangible proof, either oral or documentary. He urged that the appellants claim to be reputed businessmen and thus, it is wholly unbelievable that accounts of business had not been maintained by them so as to substantiate the plea of repayment being made to respondent Nos. 6, 7 and 8 by way of adjustment of material supplied. He thus, implored the Court to affirm the impugned judgments and dismiss the instant appeals.

29. We have given our anxious consideration to the submissions advanced at the bar and have perused the material available on record.

30. For adjudicating the issues raised in these appeals, few admitted facts need to be noted. The miscellaneous applications were filed by the respondent-Custodian in the year 2008 seeking to recover the amounts of Rs.50 lakhs from appellant Suman L. Shah towards the dues of respondent Nos. 6 and 7 and amount of Rs.25 lakhs from appellant Laxmichand Shah towards the dues of respondent No.8. The respondent Nos.6, 7 and 8 are alleged to be the benami companies of the respondent No. 2-Pallav Sheth.

31. Respondent No. 2-Pallav Sheth is the judgment debtor of FFSL which was a company notified under the provisions of the Act of 1992.

Respondent No. 2-Pallav Sheth was notified under the Act of 1992 on 6th October, 2001 and thus, by virtue of Section 3(3) of the Act of 1992, all properties belonging to him stood automatically attached from the date of such notification. The appellants herein had borrowed the amounts in question from respondent Nos. 6, 7 and 8, way back in the years 1996-1997. By that date, there could not have existed any justifiable reason for the appellants herein to have entertained a belief that these were the benami companies of respondent No. 2-Pallav Sheth or that there was any breach of the provisions of the Act of 1992 by Pallav Sheth or the respondent companies.

32. Even if it is assumed for the sake of arguments that respondent Nos. 4 to 8 were the benami companies of respondent No. 2-Pallav Sheth, he not having been notified under the Act of 1992 by the time the amounts were borrowed, the appellants could not be expected to entertain any doubt regarding the operation of the Act of 1992 either against these companies or even against respondent No. 2-Pallav Sheth or that the companies were the benami companies of Pallav Sheth.

33. The foundation behind the assertion made by the Custodian that the appellants herein were garnishees of respondent No. 2- Pallav Sheth through respondent Nos. 6, 7 and 8 is based entirely on a communication dated 5th May, 1998 purportedly issued by the Income Tax Department. An affidavit was filed on behalf of the Department in the proceedings before the Special Court but in such affidavit, there is no reference whatsoever to the outstanding dues of respondent Nos. 6, 7 and 8 or that the appellants were its debtors. Furthermore, there is no reference whatsoever in this affidavit with regard to letter dated 5th May, 1998 which was annexed with the affidavit filed on behalf of the Custodian and was heavily relied upon by the Special Court. No witness from the Income Tax Department was examined in evidence before the Special Court in miscellaneous applications for recovery.

34. While initiating recoveries, the Custodian relied upon the provisions of Sections 3 and 9A of the Act of 1992 which are reproduced hereinbelow:-

> **"3.** Appointment and functions of Custodian. —
>
> (1) The Central Government may appoint one or more Custodians as it may deem fit for the purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions insecurities after the 1st day of April, 1991 and on and before the 6th June, 1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that subsection shall stand attached simultaneously with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and section 4.

9A. Jurisdiction, powers, authority and procedure of Special Court in civil matters. —

(1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994) the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement, by any civil court in relation to any matter or claim—

(a) relating to any property standing attached under sub-section (3) of section 3;

(b) arising out of transactions in securities entered into after the 1st day of April, 1991, and on or before the 6th day of June, 1992, in which a person notified under subsection (2) of section 3 is involved as a party, broker, intermediary or in any other manner.

(2) Every suit, claim or other legal proceeding (other than an appeal) pending before any court immediately before the commencement of the Special Court (Trial

of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994), being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred on such commencement to the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceeding, proceed to deal with it, so far as may be, in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit.

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994), no court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1).

(4) While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure.

(5) Without prejudice to the other powers conferred under this Act, the Special Court shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a case for default or deciding it ex parte;

(h) setting aside any order of dismissal of any case for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government under sub-section (1) of section 14."

35. From a bare perusal of these provisions, it would become clear that the properties of the person notified under Section 3(2) would stand attached automatically with effect from the date of notification by virtue of Section 3(3). Since respondent No.2- Pallav Sheth was notified (as being a debtor of the originally notified company FFSL) with effect from 6th October, 2001, *a fortiori*, his properties would be deemed to be attached with effect from that date and not prior thereto.

36. The appellants herein took a pertinent plea before the Special Court that the dues towards respondent Nos. 6, 7 and 8, generated from borrowings made in the years 1996-1997 stood repaid and closed because the amounts had been repaid by cheque(s) and by way of adjustments towards materials supplied. The applications for recovery having been filed by the Custodian with the allegation that the appellants herein were the debtors of the benami companies of the notified person, the primary onus of proving this assertion would be on the Custodian by virtue of Section 101 of Evidence Act. It is only after the Custodian discharged this primary burden and established the existence of the debt, then by virtue of Section 102 of the Evidence Act, perhaps, the onus could be shifted on to the appellants to rebut the same.

37. The entire case of the Custodian regarding subsisting debts of the appellant towards respondent Nos. 6, 7 and 8 was based on

a communication received from the Income Tax Department. The appropriate witness to prove such communication would be the official concerned from the Income Tax Department. However, as has been mentioned above, no witness from the Income Tax Department was examined in support of the recovery application. Even the communication forwarded by the Income Tax Department and relied upon by the Custodian was not proved by proper evidence.

38. The appellants herein took a categoric stand in their depositions that they had returned the amounts borrowed from respondent Nos. 6, 7 and 8, but the books of accounts were not available because of lapse of time. The said plea of the appellants herein could not be treated as unnatural or an afterthought because once the transactions were completed and the loans were repaid, there was no reason for the appellants to have entertained a belief that after a period of about 13 years, they would be required to present the account books pertaining to transactions. It was neither a requirement in law nor could it be expected from the appellants herein to retain the books of accounts after more than a decade of the alleged suspicious transactions.

39. Resultantly, the conclusions drawn and the findings recorded in the impugned judgments passed by the Special Court that the appellants herein failed to prove the fact that the amounts had been repaid to the benami companies of the notified person, namely, Pallav Sheth do not stand to scrutiny and cannot be sustained as being contrary to facts and law.

40. As an upshot of the above discussion, the impugned judgments are hereby quashed and set aside.

41. The appeals are allowed accordingly.

42. The amounts deposited by the appellants in furtherance of the order dated 14th March, 2014 shall be reimbursed to them forthwith.

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

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals allowed.

[2024] 3 S.C.R. 309 : 2024 INSC 181

XXXX
v.
State of Madhya Pradesh & Another

(Criminal Appeal No. 3431 of 2023)

06 March 2024

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

Issue for Consideration

High Court, if justified in dismissing the petition filed by the appellant u/s. 482 Cr.P.C. for quashing of FIR registered against him u/ss. 376 (2)(n) and 506 IPC.

Headnotes

Penal Code, 1860 – ss. 376 (2)(n) and 506 – Punishment for committing rape repeatedly on the same woman – Punishment for Criminal intimidation – Complainant's case against the appellant alleging rape on false pretext of marriage; and that the appellant assured that he would marry her and take care of her daughter if she divorced her husband – However, the appellant refused to marry – Registration of FIR u/ss. 376 (2)(n) and 506 – Petition for quashing of FIR by the appellant – Dismissed by the High Court – Correctness :

Held: From the contents of the complaint, on the basis of which FIR was registered and the statement recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started – In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married – She falsely claimed that divorce from her earlier marriage took place in 2018 – However, the fact remains that decree of divorce was passed two years later – Complainant was a grown up lady about ten years elder to the appellant – She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage – In fact, it was a case of betraying her husband – Furthermore, the prosecutrix admitted that even after the appellant shifted to other State for his job, he used to come and stay with the family and they were living as husband and wife – Also appellant's stand that he had advanced loan to the prosecutrix which was not returned back – Thus, not a case where the prosecutrix had given her consent for sexual relationship with

* Author

the appellant under misconception – Impugned order passed by the High Court set aside – FIR registered u/s. 376(2)(n) and 506 and all subsequent proceedings thereto quashed. [Paras 8, 9.1, 10]

Case Law Cited

Naim Ahamed v. State (NCT of Delhi), [2023] 1 SCR 1061 **: (2023) SCC OnLine SC 89 – relied on.**

Prashant Bharti v. State (NCT of Delhi), [2013] 1 SCR 504 **: (2013) 9 SCC 293 – referred to.**

List of Acts

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

List of Keywords

Rape of a woman on false pretext of marriage; Quashing of FIR; Consequences of the moral and immoral acts; Consent for sexual relationship under misconception.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3431 of 2023

From the Judgment and Order dated 01.08.2022 of the High Court of M.P. Principal Seat at Jabalpur in MCRC No.15992 of 2021

Appearances for Parties

Ashwani Kumar Dubey, Adv. for the Appellant.

D. S. Parmar, AAG, Ms. Mrinal Gopal Elker, Saurabh Singh, Santosh Narayan Singh, Mohd. Faisal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. The appellant in the present case is aggrieved of the order[1] passed by the High Court[2] whereby a petition[3] filed by him under Section 482 Cr.P.C. for quashing of FIR[4] was dismissed.

1 Order dated 01.08.2022

2 High Court of Madhya Pradesh at Jabalpur

3 M.CR.C. No. 15992 of 2021

4 FIR No. 52 dated 11.12.2020 registered at P.S. Mahila Thana, Dist. Satna, (M.P.) under Sections 376(2)(n) and 506 IPC

2. Learned counsel for the appellant submitted that the FIR in the case in hand, which was got registered by respondent No.2/ complainant is nothing else but an abuse of process of law. The complainant was a married lady having a grown up daughter of 15 years of age living with her parents. Claiming that in the same house, the appellant was having physical relations with her with the consent of her parents and daughter will be hard to believe that too when she was already married. There could not be any question of promise to marry given by the appellant to her at that stage. There are large discrepancies in the complaint made to the police on the basis of which the FIR was registered if considered in the light of the statement which the complainant got recorded under Section 164 Cr.P.C. The relations between the parties are shown to be consensual, if any. The mis-statement by the complainant is evident from the fact that she claimed to have got divorce from the earlier marriage on 10.12. 2018 and married with the appellant in a temple in January 2019 but it is belied from the fact that decree of divorce from the earlier marriage of the complainant was passed only on 13.01.2021. There was no question of any marriage prior thereto. The initiation of proceedings against the appellant being an abuse of process of law deserve to be quashed. In support of the arguments, reliance was placed upon the decisions of this Court in **Naim Ahamed v. State (NCT of Delhi)**[5] and **Prashant Bharti v. State (NCT of Delhi)**[6]**.**

3. Learned counsel for the State submitted that after investigation, charge-sheet has already been filed. The Courts are normally slow to quash the FIR at that stage. In the case in hand, allegation of rape on false promise to marry is clearly made out. At the stage of quashing, only the contents in the FIR could be seen. On a perusal thereof, a clear case is made out against the appellant.

4. Learned counsel for the complainant submitted that on account of dispute with her husband from the earlier marriage, the complainant was living with her parents. She, at that time, was having a grown up daughter aged 15 years. The appellant was living in their house as a tenant. Finding that the complainant in disturbed matrimonial

5 [2023] 1 SCR 1061 : 2023 SCC OnLine SC 89

6 [2013] 1 SCR 504 : (2013) 9 SCC 293

life, from the advances made by the appellant, the complainant fell in the trap. On a false promise to marry, both had started having physical relations. They had even solemnized marriage in a temple in January 2019. Even her family also knew about their relations and marriage. It was all in good faith on the promise made by the appellant as the appellant had even shown the complainant as a nominee in an insurance policy purchased by him. With these facts on record, a clear case of rape on false promise to marry is made out against the appellant. The FIR does not deserve to be quashed at the initial stage.

5. Heard learned counsel for the parties and perused the paper book.

6. Firstly, we refer to the stand taken by the complainant in the FIR and the statement she got recorded under Section 164 Cr.P.C. There are discrepancies therein.

6.1 In the FIR, she stated that she was managing her own cloth shop. As there was a dispute with her husband, she was living separately. On 10.12.2018, she got divorce from her husband. She has a daughter aged 15 years. In 2017, Sadbhav Company had taken first floor of their house on rent in which the appellant, who was working with the company, stayed. During spare time, he would come and sit on her shop. Gradually, the relations developed. As she was living separate from her husband, the appellant proposed that in case she takes divorce, he will marry her. After the divorce of the complainant, on 10.01.2019, at about 11.00 PM, the appellant came to her room and had physical relations. He did not stop even when she said that they were yet to be married. Further, on a promise to marry, he had relations with her on 06.06.2020. When she insisted for marriage, the appellant said that his family was not agreeing. Finally, he refused on 11.12.2020. Thereafter, the FIR was got recorded on 11.12.2020.

6.2 While getting her statement recorded under Section 164 Cr.P.C., she admitted that she knew the appellant since 2017. On account of dispute with her husband, she was living with her parents. As she got acquainted with the appellant, they fell in love. In 2018, the appellant went to Maharashtra for job. However, he used to visit her home and take care of the complainant as well as her daughter. In 2019, the appellant assured the

complainant that he will marry her in case she takes divorce from her husband who used to harass and beat her. For this reason, she divorced her husband and solemnized marriage with the appellant in a temple in January 2019. Thereafter, they started living together with her daughter born from the previous marriage. Despite assurance, the appellant did not solemnize court marriage. After marriage was solemnized in temple, treating the appellant as her husband, they both started leading a married life having physical relations from January 2019 till June 2020. The appellant treated the complainant as his wife. Thereafter, the appellant refused to respond to her calls and even marry her.

6.3 There was complete change in the stand of the complainant in her statement recorded under Section 164 Cr.P.C. The fact remains that the parties admittedly were in relations from 2017 onwards. Some alleged promise to marry came in January 2019, from where they started having physical relations. It has also come on record that it is not only the consent of the complainant which is clearly evident but also of the parents and daughter of the complainant as they were living in the same house, where allegedly the appellant and the complainant were having physical relations.

7. Further, in the FIR the complainant stated that she got divorce from her earlier husband on 10.12.2018. In the statement under Section 164 Cr.P.C., she stated that marriage between the appellant and the complainant was solemnized in a temple in January 2019. However, the date of divorce as claimed by the complainant is belied from the copy of the decree annexed with the appeal as Annexure P-9, where divorce by mutual consent was granted to the complainant and her husband vide judgment dated 13.01.2021. The aforesaid fact could not be disputed. Meaning thereby, the complainant besides the facts in the FIR and also in the statement under Section 164 Cr.P.C. regarding her divorce from the earlier marriage, sought to claim that she had re-married with the appellant during subsistence of her earlier marriage.

8. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the

relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10.12.2018. However, the fact remains that decree of divorce was passed only on 13.01.2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of ₹1,00,000/- to the prosecutrix through banking channel which was not returned back.

9. Similar issue was considered by this Court in **Naim Ahamed's** case (supra) on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty. Relevant paragraph 21 thereof is extracted below:

> "21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such

allegations as 'rape' by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC."

9.1 The aforesaid arguments squarely cover the legal issue raised by the appellant.

10. For the reasons mentioned above, the impugned order passed by the High Court is set aside. FIR No.52 dated 11.12.2020, registered

under Section 376(2)(n) and 506 IPC at Police Station, Mahila Thana, District Satna (M.P.) and all subsequent proceedings thereto are quashed.

11. The appeal is accordingly allowed.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 3 S.C.R. 317 : 2024 INSC 187

Javed Ahmad Hajam
v.
State of Maharashtra & Anr.

(Criminal Appeal No. 886 of 2024)

07 March 2024

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

Issue for Consideration

High Court whether justified in dismissing the writ petition filed by the appellant for quashing the FIR filed against him for the offence punishable u/s.153-A, Penal Code, 1860.

Headnotes

Penal Code, 1860 – s.153-A – When not attracted – Appellant-Professor was a member of a WhatsApp group that consisted of college teachers, students, and parents – He had put up a Whatsapp status protesting against the decision to abrogate Article 370 of the Constitution of India; and a picture containing "Chand" and below that the words "14th August-Happy Independence Day Pakistan" were written – FIR registered against the appellant for offence punishable u/s.153-A – Allegation of commission of offence based on his WhatsApp status – High Court dismissed the writ petition filed by the appellant for quashing the FIR – Correctness:

Held: "Intention" as an essential ingredient of offence u/s.153-A– Alleged objectionable words or expressions used by the appellant cannot promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities – WhatsApp status of the appellant had a photograph of two barbed wires below which it was mentioned "August 5- Black Day- Jammu & Kashmir" – This was an expression of his individual view and his reaction to the abrogation of Article 370 – It does not reflect any intention to do something prohibited u/s.153-A – At best, it was a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a) – Describing the day the abrogation happened as a "Black Day" was an expression of protest and anguish –

* Author

Further, the appellant had posted that "Article 370 was abrogated, we are not happy"– He intended to criticise the action of the abrogation of Article 370 – He had expressed unhappiness over the act of abrogation – The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community – It was a simple protest against the decision to abrogate Article 370 – If every criticism or protest of the actions of the State is to be held as an offence u/s.153-A, democracy, an essential feature of the Constitution of India, will not survive – The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed u/Article 19(1)(a) – Effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men – The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view – The test is of the general impact of the utterances on reasonable people who are significant in numbers– Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-sec. (1) of s.153-A– Also, the picture containing "Chand" and below that the words "14th August-Happy Independence Day Pakistan", will not attract clause (a) of sub-sec.(1) of s.153-A – Nothing wrong with a citizen of India extending good wishes to the citizens of Pakistan on 14th August, their Independence Day – It's a gesture of goodwill – It cannot be said that such acts will tend to create disharmony or feelings of enmity, hatred or ill-will between different religious groups – Clause (b) of sub-sec.(1) of s.153-A not attracted – Impugned judgment and FIR, quashed. [Paras 10, 9, 11, 12, 14, 15]

Constitution of India – Articles 19, 21 – Right to dissent, a part of the right to lead a dignified and meaningful life guaranteed by Article 21 – Police to be sensitised about the democratic values enshrined in the Constitution:

Held: Right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21 – But the protest or dissent must be within four corners of the modes permissible in a democratic set-up – It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19 – In the present case, the appellant did

not at all cross the line – Now, the time has come to enlighten and educate the police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression – They must be sensitised about the democratic values enshrined in the Constitution. [Paras 10, 13]

Case Law Cited

Manzar Sayeed Khan v. State of Maharashtra & Anr., [2009] 6 SCR 431 **: (2007) 5 SCC 1;** *Ramesh v. Union of India,* [1988] 2 SCR 1011 **: (1988) 1 SCC 668;** *Patricia Mukhim v. State of Meghalaya & Ors.,* [2021] 7 SCR 65 **: (2021) 15 SCC 35 – relied on.**

Bhagwati Charan Shukla v. Provincial Government, **AIR 1947 Nag 1 – referred to.**

List of Acts

Penal Code, 1860; Constitution of India.

List of Keywords

WhatsApp status; Happy Independence Day Pakistan; Abrogation of Article 370; Criticise the action of the State; Expression of protest; Anguish; Freedom of speech and expression; Democracy, Right to dissent; Legitimate and lawful manner; Hatred; Ill-will; Gesture of goodwill; Disharmony; Enmity; Religious groups; Police sensitization; Abuse of process of law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.886 of 2024

From the Judgment and Order dated 10.04.2023 of the High Court of Judicature at Bombay in CRWP No. 94 of 2023

Appearances for Parties

Javed R Shaikh, Adil Muneer Andrabi, Towseef Dar, Yasser Jilani, Ms. Bisma Rashid, Aushaq Hussain, Saddam Hussain, Advs. for the Appellant.

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

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. A First Information Report (for short, 'the impugned FIR') was registered against the appellant for the offence punishable under Section 153-A of the Indian Penal Code, 1860 (for short, 'the IPC'). The appellant filed a writ petition before the High Court of Judicature at Bombay for quashing the FIR. By the impugned judgment dated 10th April 2023, the High Court has dismissed the writ petition.

2. The appellant was a Professor at Sanjay Ghodawat College in District Kolhapur, Maharashtra. He came to Kolhapur for employment. Earlier, he was a permanent resident of District Baramulla, Kashmir. The appellant was a member of a WhatsApp group. The allegation of commission of offence is based on what was seen on his WhatsApp status. The State Government has set out the precise text appearing on the WhatsApp status of the appellant in its counter affidavit. Clauses (c) and (d) of paragraph 3 of the counter affidavit read thus:

> **"3. .. ..**
>
> **a. .. ..**
>
> **b. .. ..**
>
> **c.** During the incident, the Petitioner was employed as a Professor at Sanjay Ghodavat College. The Petitioner was a member of a WhatsApp group that consisted of parents and teachers. Between August 13, 2022, and August 15, 2022, while being part of this WhatsApp group, the Petitioner posted two messages as their status:
>
> 1. "August 5 – Black Day Jammu & Kashmir."
>
> 2. "14th August – Happy Independence Day Pakistan."
>
> **d.** Furthermore, after aforementioned status, the Petitioner WhatsApp status on their mobile included the message: **"Article 370 was abrogated, we are not happy."** Based on these allegations, the

> present FIR was registered under Section 153-A of the Indian Penal Code, 1860, by the Hatkanangale Police Station in Kolhapur.
>
> .. .."

3. By the impugned judgment, the Division Bench of the High Court held that what was stated by the appellant regarding celebrating Independence Day of Pakistan will not come within the purview of Section 153-A of the IPC. However, the other objectionable part can attract the offence punishable under Section 153-A of the IPC.

SUBMISSIONS

4. The learned counsel appearing for the appellant submitted that by no stretch of the imagination, the words written on WhatsApp status by the appellant will promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. He relied upon a decision of this Court in the case of ***Manzar Sayeed Khan v. State of Maharashtra & Anr***[1]. He submitted that the prosecution of the appellant was a complete abuse of the process of law. The learned counsel representing the respondent-State of Maharashtra submitted that whether the words or signs of the appellant on his WhatsApp status promoted disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or not, is a matter of evidence. He submitted that it is only after examining the witnesses that the prosecution can establish the effect of these writings or signs on the minds of people. He submitted that at this stage, no conclusion regarding the impact of what is written by the appellant on the minds of the members of the public can be drawn. He would, therefore, submit that no interference is called for with the impugned judgment, and the trial may be allowed to proceed.

CONSIDERATION OF SUBMISSIONS

5. The only offence alleged against the appellant is the one punishable under Section 153-A of the IPC. Section 153-A of the IPC, as it exists with effect from 4th September 1969, reads thus:

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1 [2009] 6 SCR 431 : (2007) 5 SCC 1

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.—Whoever commits an offence specified in

> sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

In this case, clause (c) of sub-section (1) of Section 153-A of the IPC is admittedly not attracted.

6. In the case of ***Manzar Sayeed Khan***[1], while interpreting Section 153-A, in paragraph 16, this Court held thus:

> **"16.** Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. **The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning."**
>
> **(emphasis added)**

This Court referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in the case of ***Bhagwati Charan Shukla v. Provincial Government***[2]. A

2 AIR 1947 Nag 1

Division Bench of the High Court dealt with the offence of sedition under Section 124-A of the IPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in the case of ***Ramesh v. Union of India***[3]**.** In the said case, this Court dealt with the issue of applicability of Section 153-A of IPC. In paragraph 13, it was held thus:

> **"the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view**. … It is the standard of ordinary reasonable man or as they say in English law 'the man on the top of a Clapham omnibus'.**"**
>
> **(emphasis added)**

Therefore, the yardstick laid down by Vivian Bose, J, will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-A of IPC.

7. We may also make a useful reference to a decision of this Court in the case of ***Patricia Mukhim v. State of Meghalaya & Ors***[4]**.** Paragraphs 8 to 10 of the said decision read thus:

> **8.** "*It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society*."—Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section

3 [1988] 2 SCR 1011 : (1988) 1 SCC 668

4 [2021] 7 SCR 65 : (2021) 15 SCC 35

153-A IPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(*c*), it is relevant to reproduce the provisions which are as follows:

.....
.....
.....

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. **The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed.** [*Balwant Singh* v. *State of Punjab*, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]

10. The gist of the offence under Section 153-A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning [*Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417]."

(emphasis added)

8. Now, coming back to Section 153-A, clause (a) of sub-section (1) of Section 153-A of the IPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an

attempt is made to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous grounds. Clause (b) of sub-section (1) of Section 153-A of the IPC will apply only when an act is committed which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility.

9. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5th August 2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

10. In the case of ***Manzar Sayeed Khan***[1], this Court has read "intention" as an essential ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 – BLACK DAY – JAMMU & KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A.

At best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a). Every citizen of India has a right to be critical of the action of abrogation of Article 370 and the change of status of Jammu and Kashmir. Describing the day the abrogation happened as a "Black Day" is an expression of protest and anguish. If every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set-up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line.

11. The High Court has held that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J, the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred or ill-will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-section (1) of Section 153-A of the IPC.

12. As regards the picture containing "Chand" and below that the words "14th August–Happy Independence Day Pakistan", we are of the view that it will not attract clause (a) of sub-section (1) of Section 153-A

of the IPC. Every citizen has the right to extend good wishes to the citizens of the other countries on their respective independence days. If a citizen of India extends good wishes to the citizens of Pakistan on 14th August, which is their Independence Day, there is nothing wrong with it. It's a gesture of goodwill. In such a case, it cannot be said that such acts will tend to create disharmony or feelings of enmity, hatred or ill-will between different religious groups. Motives cannot be attributed to the appellant only because he belongs to a particular religion.

13. Now, the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression. They must be sensitised about the democratic values enshrined in our Constitution.

14. For the same reasons, clause (b) of sub-section (1) of Section 153-A of the IPC will not be attracted as what is depicted on the WhatsApp status of the appellant cannot be said to be prejudicial to the maintenance of harmony among various groups as stated therein. Thus, continuation of the prosecution of the appellant for the offence punishable under Section 153-A of the IPC will be a gross abuse of the process of law.

15. Accordingly, we set aside the impugned judgment dated 10th April 2023 of the High Court of Judicature at Bombay and quash the impugned FIR bearing no. 295 of 2022 registered at PS Hatkanangle, District Kolhapur, Maharashtra and the proceedings based on the impugned FIR.

16. The Appeal is, accordingly, allowed.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.

[2024] 3 S.C.R. 329 : 2024 INSC 156

Kumar @ Shiva Kumar
v.
State of Karnataka

(Criminal Appeal Nos. 1427 of 2011)

01 March 2024

[Bela M. Trivedi and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Appellant was convicted for the offence u/s. 306 IPC by the trial Court and the conviction was upheld by the High Court. Whether the prosecution proved the charge of abetment to commit suicide u/s. 306 IPC against the appellant.

Headnotes

Penal Code, 1860 – s. 306 – Prosecution case was that appellant was earlier residing in the house of the victim-deceased X as a tenant – It was alleged that appellant threatened victim to marry him when she was returning home after dropping children of her sister at school – Thereafter, she consumed poison in the house – Consequent to which, she died in the hospital – Trial Court convicted appellant u/s. 306 IPC – His conviction was upheld by the High Court – Propriety:

Held: The evidence on record, not only reveal glaring inconsistencies but also gaping holes in the version of the prosecution – That apart, there are material omissions too – PW-1 is the father and the first informant – According to him, he used to live in the same house as the deceased – On the fateful day, he had gone out of the house at 7:00 AM in the morning and returned back to the house at 10:00 AM and found that his daughter X was admitted to a nursing home for consuming poison – Whereas, PW-2, sister of deceased deposed that their father was living separately with another woman outside marriage – She also stated that she saw her father in the Hospital on the second day of hospitalization of the deceased – If the version of PW-2 is to be believed then the evidence of PW-1, the first informant, cannot be accepted – Both PW-1 and PW-2 claimed that the deceased had told them about the harassment meted out to her by the appellant fifteen days prior to the incident – However, neither of them confronted the appellant nor lodged any complaint before the police – According to PW-4

* Author

(another sister of deceased), the deceased X was taken to the nursing home only after 11:00 to 11:15 AM – This again contradicts the statement of PW-1 that when he had come back home on the fateful day at 10:00 AM, his daughter X was already taken to the nursing home – Also, it was stated in FIR that neighbours had noticed through window that X was lying unconscious – Only two of the neighbours were examined and even they were declared hostile – No other neighbours were examined by the police – There is no explanation by the prosecution for such glaring omission – Again, according to the informant PW-1, it was the neighbours who had first seen the deceased through the window lying on the floor in pain with the phone continuously ringing – It is not at all believable that when the receiver was hanging (as has come out from the evidence of PW-4), how the phone could go on ringing continuously – Adverse inference has to be drawn from such glaring contradictions and omissions – Further, the doctors who first treated X were not examined, they could have thrown light whether intake of Organophosphate compound was by way of injection (there were multiple injection marks present over front of both elbows of X) or consumed orally – There was no recovery of any syringe or container or bottle containing the pesticide – There is no answer as to why there was no investigation in this regard – There are no evidence on the basis of which the appellant can be held guilty of abetting the suicide of the deceased. [Paras 23, 24, 25, 30, 46]

Penal Code, 1860 – s. 306 – Instigation – Meaning of:

Held: Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then instigation may be inferred – A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. [Para 34.1]

Penal Code, 1860 – s. 306 – Direct or indirect act(s) of incitement to the commission of suicide:

Held: It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide – Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms

of s.306 would not be sustainable – It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide. [Paras 36, 39]

Case Law Cited

M. Mohan v. State, [2011] 3 SCR 437 : **(2011) 3 SCC 626**; *Ramesh Kumar v. State of Chhattisgarh*, [2001] Suppl. 4 SCR 247 : **(2001) 9 SCC 618**; *Chitresh Kumar Chopra v. State,* [2009] 13 SCR 230 **: (2009) 16 SCC 605**; *Amalendu Pal alias Jhantu v. State of West Bengal,* [2009] 15 SCR 836 **: (2010) 1 SCC 707**; *Rajesh v. State of Haryana*, **(2020) 15 SCC 359** – relied on.

State of West Bengal v. Orilal Jaiswal, [1993] Suppl. 2 SCR 461 : **(1994) 1 SCC 73**; *Ude Singh and Others v. State of Haryana,* [2019] 9 SCR 703 **: (2019) 17 SCC 301;** *Mahendra K. C. v. State of Karnataka and Another,* [2021] 10 SCR 582 **: (2022) 2 SCC 129 – referred to.**

Books and Periodicals Cited

A Textbook of Medical Jurisprudence and Toxicology by Jaising P Modi – referred to.

List of Acts

Penal Code, 1860.

List of Keywords

Evidence on record; Inconsistencies in version of prosecution; Material omissions; Contradictory statements; Abetment to commit suicide; Abetment; Instigation; Direct or indirect act(s) of incitement; Positive action proximate to the time of occurrence; Instigate or aid in committing suicide; Facets of medical jurisprudence and toxicology; Circumstantial evidence; Non-recovery of relevant objects.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1427 of 2011

From the Judgment and Order dated 17.09.2010 of the High Court of Karnataka at Bangalore in CRLA No. 1139 of 2004

Appearances for Parties

Rajesh Mahale, Adv. for the Appellant.

Muhammad Ali Khan, A.A.G., Omar Hada, Ms. Eesha Bakshi, Uday Bhatia, Kamran Khan, Arjun Sharma, D. L. Chidananda, Ravindera Kumar Verma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

This appeal by special leave takes exception to the conviction of the appellant under Section 306 of the Indian Penal Code, 1860 (IPC).

2. It may be mentioned that the Fast Track Court – III Mysore vide the judgment and order dated 06.07.2004 passed in S.C. No. 26/2002 convicted the appellant for the offence under Section 306 IPC and sentenced him to undergo rigorous imprisonment (RI) for three years and to pay fine of Rs. 2,000/-, in default to undergo RI for four months for the aforesaid offence. Appeal filed by the appellant under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the High Court of Karnataka, being Criminal Appeal No. 1139/2004 (SJ-A) was dismissed vide the judgment and order dated 17.09.2010 by upholding the conviction and sentence imposed by the trial court.

Prosecution case

3. Case of the prosecution is that the appellant was earlier residing in the house of the deceased as a tenant though on the date of the incident he was residing elsewhere as the term of the lease agreement had expired. On 05.07.2000 at about 09:00 AM, the deceased was returning home after dropping the children of her sister in the school. When she had reached near the Canara Bank, the appellant was waiting there and teased her to marry him. The deceased refused to respond. Appellant threatened her that if she did not agree to marry him, he would destroy the family of her sisters, outrage their modesty and would kill them. After she reached home, she informed her sisters about the above incident over telephone. Thereafter, she consumed poison in the house. The neighbours saw through the window of the house the deceased lying on the floor in a painful condition. They got the door of the house opened. The

deceased was suffering from pain due to consumption of poison. In the meanwhile, one of her sisters and her husband came to the house. All of them took the deceased to the Nirmala Devi Hospital whereafter she was shifted to the Mission Hospital. Ultimately, she died on 06.07.2000 at 07:30 PM.

4. Raju, the father of the deceased, lodged the first information alleging that appellant was responsible for his daughter committing suicide. The first information was lodged on 07.07.2000 at 06:30 AM.

5. On receipt of the first information, police registered Crime No. 100/2000 under Section 306 IPC. In the course of the investigation, post-mortem examination of the deceased was carried out and the viscera was sent for chemical analysis to the Forensic Science Laboratory, Bangalore (FSL). The chemical analysis report indicated presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood. Therefore, the doctor who had carried out the post-mortem examination opined that the death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate compound. On completion of the investigation, police submitted chargesheet where the appellant was named as the accused.

6. In order to prove its case, prosecution examined as many as thirteen witnesses and got eleven documents marked as exhibits. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C.

7. On examination of the evidence on record and after hearing both the sides, the trial court held that the prosecution had proved the charge against the appellant that he had abetted the deceased to commit suicide beyond reasonable doubt. Accordingly, the appellant was convicted for the said offence whereafter he was sentenced to undergo RI for three years and to pay fine of Rs. 2,000/- with a default stipulation.

8. As already mentioned above, the appellant had appealed against the aforesaid conviction and sentence before the High Court of Karnataka (for short 'the High Court' hereinafter). By the impugned judgment and order, the High Court held that there was no ground to interfere with the order of conviction. Accordingly, the appeal was dismissed as being devoid of any merit.

9. Aggrieved thereby, appellant moved this Court by filing a petition for special leave to appeal. While the prayer of the appellant for exemption from surrendering was rejected on 13.12.2010, notice was issued on 28.02.2011. Thereafter, this Court passed order dated 18.04.2011 directing the appellant to be released on bail subject to satisfaction of the trial court.

Submissions

10. Learned counsel for the appellant submits that both the trial court and the High Court had failed to appreciate the evidence on record in the proper perspective. Conviction of the appellant under Section 306 IPC is not supported by the evidence on record. Therefore, such conviction and the resultant sentence cannot be sustained.

    10.1 There are material contradictions in the evidence of the prosecution witnesses. According to learned counsel for the appellant, even if the prosecution case is accepted, no case for abetment to commit suicide by the deceased could be made out against the appellant. There is no evidence pointing out any act of instigation, conspiracy or aiding on the part of the appellant which had compelled the deceased to commit suicide.

    10.2 In so far the testimony of PW Nos. 1, 2, 3, 4 and 12 are concerned, there is a great deal of inconsistency and contradictions in their evidence. Besides, those witnesses being the relatives of the deceased, the trial court as well as the High Court ought to have considered their deposition with circumspection. PW-1 is the father of the deceased whereas PW Nos. 2 and 4 are the sisters of the deceased. On the other hand, PW No. 12 is the brother of the deceased. Their evidence are highly inconsistent. He submits that it has come on record that PW-1 i.e. the father of the deceased was living separately from the deceased with a woman outside marriage. On the other hand, PW-2 i.e. sister of the deceased in her deposition stated that it was the neighbours who had told her that deceased had consumed poison and that the neighbours had taken the deceased to Nirmala Nursing Home. She had never stated before the police under Section 161 Cr.P.C. that the appellant used to harass the deceased. Therefore, it was evident that she had improved upon her statement when in her deposition she stated that the appellant used to tease the deceased.

10.3 Learned counsel also submits that there were injury marks on the body of the deceased. The front of the right wrist showed superficial linear incised injury measuring 5cms in length, which was partially healed. This injury was not explained by the prosecution. That apart, the presence of the injury and the partial healing of the same was indicative of the fact that the said injury had occurred sometime prior to the date of occurrence. This would also be a reflection on the suicidal tendency of the deceased.

10.4 It is further submitted that though the deceased was hospitalised on 05.07.2000, there was delay in lodging of the first information. The First Information Report (FIR) was lodged only on 07.07.2000 at 06:30 AM though the deceased had died on the previous evening at 07:30 PM. This fact coupled with the non- disclosure of alleged harassment of the appellant to anyone by the deceased creates a great deal of doubt about the veracity of the prosecution case. Moreover, the appellant had got married just about two months prior to the incident. Therefore, there was no reason for the appellant to threaten the deceased to marry him failing which she and her family members would be visited with dire consequences.

10.5 In support of his submissions, learned counsel for the appellant has placed reliance on the following two decisions of this Court:

(i) *Ude Singh and Others Vs. State of Haryana,* (2019) 17 SCC 301

(ii) *Mahendra K.C. Vs. State of Karnataka and Another*, (2022) 2 SCC 129.

11. *Per contra*, learned counsel for the respondent submits that the evidence on record unmistakably point to the guilt of the appellant. Prosecution could prove that it was the appellant who had abetted the deceased to commit suicide. The charge against the appellant was proved by the prosecution beyond all reasonable doubt and therefore the trial court was fully justified in convicting the appellant under Section 306 IPC and imposing the sentence as above.

11.1 The High Court rightly affirmed the conviction of the appellant imposed by the trial court.

11.2 There is no rule of evidence that conviction cannot be based on the testimony of the evidence of the family members of the deceased. A holistic reading of the evidence of the prosecution witnesses more particularly that of PW Nos. 1, 2 and 4 would clearly establish the prosecution case which was further strengthened by the evidence of the doctor i.e. PW-13. He, therefore, submits that there is no merit in the appeal which is liable to be dismissed.

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

Evidence

13. Let us first deal with the evidence on record.

14. PW-1 Raju is first informant and father of the deceased. In his evidence he stated that his deceased daughter X was a final year B.Com student of Maharai College, Mysore. The accused (appellant) used to reside in the ground floor of his house at Vinayakanagar, Mysore. He had stayed there for five years as a tenant and had vacated the house after the tenancy period was over.

14.1 The deceased used to regularly take the two children of his another daughter Meena to Chinamaya School at Jayalakshmipuram around 9:00 AM. During that time, the accused used to meet her and often used to ask her to marry him. In fact, he had threatened his deceased daughter that if she refused to marry him, he would murder her and her sisters. The deceased had told him about these facts. On 06.07.2000 (corrected to 05.07.2000 during further examination of PW-1), the accused had threatened the deceased at about 09.30 AM near Canara Bank, Jayalakshmipuram that if she refused to marry him, he would pour acid on her and her sisters and murder them. According to him, on that day when he came to the house at 10:00 AM his daughter X was admitted to Kiran Hospital for consuming poison. He stated that the deceased was shifted to Mission Hospital, Mysore for further treatment. At about 7:00 PM on 06.07.2000 his daughter X died. The deceased had consumed poison due to the unbearable harassment and cruelty of the accused. The deceased had told him about the cruel treatment and harassment meted out

by the accused to her one week earlier to her death. She had consumed poison when she was in the house. The deceased had no other disappointment in her life except the harassment and cruelty of the accused.

14.2 In his cross-examination PW-1 stated that at the time of death of his daughter X, he was living in the house at Vinayakanagar, Mysore. His deceased daughter had informed him about the harassment of the accused one week prior to her death. However, he did not confront the accused in this regard; neither did he tell any other person nor lodged any complaint before the police. On the day of the incident he had left the house at 7:00 AM. When he came back home at 10:00 AM his daughter X was taken to the Kiran Hospital. When she was in the Mission Hospital, he visited the said hospital. His daughter X was being treated in the said hospital and she was not in a condition to walk. He went to the Mission Hospital at about 1:00 PM and was in the hospital till the death of his daughter. Police had come to the hospital at around 3:00 to 4:00 PM on the day of her death when PW-1 and his other daughters were present. Police tried to question and talk with his daughter X but she was not in a position to talk. Till her death she did not talk. She died on 06.07.2000 at about 07:30 PM. Police had visited the hospital about two to three times. He stated that on 07.07.2000 he had lodged the complaint which was written by Jayarama, who was present in the hospital till her death.

14.3 He further stated in the cross-examination that the accused was running a chit fund of which he was also a member. His daughter X was of marriageable age. He denied the suggestion put by the defence that he wanted to give his deceased daughter in marriage to the accused but the accused had refused. After the death of his daughter X, he came to know that the accused was a married man. However, he stated that he did not know where accused used to stay after he had left his house.

15. Sister of the deceased Meena is PW-2. In her deposition, she stated that she, her two children and her deceased sister were living together at Paduvarahalli (Vinayakanagar). Her two children were studying in Chinmaya Vidyalaya at Jayalakshmipuram. The two children were studying in 3rd and 5th standard. The deceased used to take

the children to school everyday and also used to bring them back from school. She used to take the children at around 9:00 AM in the morning and also used to bring them back home from the school.

15.1 She acknowledged that she knew the accused. Fifteen days prior to her death, the deceased had told PW-2 that the accused was teasing her and asking her to marry him. When she refused the proposal on the ground that he was a married man, the accused threatened to kill her and her sister. During this period of fifteen days, the deceased did not talk and was in a pensive mood.

15.2 She further stated in her deposition that on the day of the incident i.e. 05.07.2000, she had left for office at 07:45 AM. While leaving for her office, she had asked her sister X to take her children to school. According to her, she had received a phone message from her neighbour that her sister X was not keeping well and asked her to come home immediately. According to her, she reached home at around 12.30 noon. When she reached the house, the neighbours told her that her sister X had consumed poison and, therefore, she was taken to the Nirmala (Karuna) Nursing Home. Along with the neighbours she went to the Mission Hospital. She found her sister X in an unconscious condition. On the next day at about 7:30 PM her sister X died. She stated that as the accused had threatened her sister X that he would kill her if she did not agree to marry him, she had committed suicide. She further stated that her father had also visited the hospital. Prior to fifteen days of her death i.e. before the accused started harassing her sister, the later was happy and healthy.

15.3 In her cross-examination PW-2 stated that the house belonged to her mother. Her father PW-1 and her mother resided in the said house. Accused used to stay in the ground floor of their house for five years and had vacated the said house prior to the incident two to three months after expiry of the mortgage (sic) period. After vacating the house, the accused used to reside in a house at IV cross at Paduvarahalli (Vinayakanagar). He was working in a cement dealer shop. After vacating the house, he did not visit the house again and that PW-2 had not seen him.

15.4 At the time of the incident, her deceased sister X was aged about 21 or 22 years. She stated that she and the other family members did not try to conduct the marriage of the deceased. Her father PW-1 was not living with them as he was residing with another woman outside marriage separately. She stated that after the death of her husband she started staying in the said house of her mother. On the day of the incident, her mother had already died.

15.5 PW-2 stated that she had not disclosed to any other person the factum of ill treatment and harassment meted out to her deceased sister by the accused. She had also not stated before the police the fact that her deceased sister X had told her about the harassment of the accused fifteen days prior to her death and her being in a pensive mood.

15.6 She denied the suggestion of the defence that on the date of the incident she had taken her children to the school and that when she had returned to the house at 10:30 AM, she found her deceased sister X in an unconscious condition.

15.7 PW-2 further stated that they did not keep any poisonous medicine in the house. She did not find any bottle containing poison near the bed of the deceased. She denied a suggestion that she along with her another sister Shantha and her husband Diwakar had taken her sister X to Karuna Nursing Home.

15.8 PW-2 stated that she saw her father in the Mission Hospital at 5:00 PM on 06.07.2000. She had not told and informed her father about the incident relating to her sister. Till the dead body of X was taken, her father was in the hospital.

15.9 PW-2 stated that while it was true that the accused was a married person, she did not know that he had married two months prior to the incident. There are residential houses around the house. They were having good relation with the neighbours. The accused was having a chit fund when he used to reside in the house. PW-2 was also a member of the said chit fund. She denied the suggestion that they had tried to marry the deceased with the accused when he used to reside in their house and that the accused had declined to marry her deceased sister which was the reason for him to leave the

house. She also denied the suggestion that they had chit fund amount to be repaid to the accused. She further denied the suggestion that the deceased might have committed suicide for some other reason and that the accused was falsely implicated as he had refused to marry the deceased.

16. Diwakar is the husband of Shantha, the second sister of the deceased. Diwakar is PW-3. In his examination in chief, he stated that at the time of her death the deceased was residing with PW-2 at Vinayakanagar. PW-2 was also the sister of his wife Shantha.

16.1 On 05.07.2000 at about 09:30 AM, the deceased X had telephoned his wife Shantha and told her that she had consumed poison. At that time, he was present near his wife Shantha. According to PW-3, he and his wife Shantha immediately went to the house of the deceased at Paduvarahalli. The deceased talked with his wife Shantha. They shifted the deceased X to Nirmala Hospital and from there to Mission Hospital. On 06.07.2000, the deceased died in the hospital during the night time.

16.2 He stated that his wife Shantha had told him that the accused was responsible for the suicidal death of the deceased.

16.3 In his cross-examination PW-3 stated that before the death of X his wife Shantha had told him about the accused being responsible for X consuming poison. When they had gone to the house of X and were taking her to the hospital, X had told his wife Shantha that due to the harassment of the accused she had consumed poison. Earlier thereto he did not know this fact. He had seen the accused when he used to reside in a portion of the house as a tenant. The accused had vacated the house two years prior to the incident whereafter he had neither seen the accused nor knew about his whereabouts.

16.4 PW-3 denied the suggestion put forward by the defence that he had stated before the police that the deceased X was in an unconscious condition when they had reached her house and that his wife had not told him that the accused was the reason for the deceased consuming poison. However, he stated that he did not hear what the deceased X had told his wife Shantha.

17. Shantha herself deposed as PW-4. She stated that on 05.07.2000 at about 11:00 to 11:15 AM. the deceased had telephoned her and told her that while she was returning home from the school after dropping the children the accused accosted her on the way. He threatened her that she should marry him and in case of her refusal he would kill her by pouring acid on her. Because of this she had consumed poison to finish her life to bring an end to the matter. Immediately PW-4 and her husband PW-3 came to the house of the deceased.

    17.1 PW-4 stated that when they reached the house of the deceased X, she was lying on the floor and the phone receiver was in a hanging position. When PW-4 questioned X, she again told the above referred facts and the reason for her consuming poison. PW-4 stated that she along with PW-3 and the neighbours shifted X to Kiran Nursing Home and from there to Mission Hospital, Mysore. On 06.07.2000 at about 7:30 PM X died while on treatment in the Mission Hospital.

    17.2 In her cross-examination, PW-4 stated that she had told her neighbour about X telling her that she had consumed poison due to the ill treatment and harassment meted out to her by the accused. Her neighbours did not come to the house of the deceased with her. When she had reached the house of X people had gathered. According to PW-4, she knew the neighbours. When she talked with X, the said neighbours were present.

18. PW-11 is M.S. Sathyanaraya who was the investigating officer. In his testimony he stated that he had visited the spot of occurrence. He had sent the viscera of the deceased for chemical examination. He had submitted the chargesheet against the accused on 17.11.2000. He stated that after receiving the FSL report he had sent the same to the concerned doctor who had conducted post-mortem examination of the deceased for opinion regarding cause of death of the deceased. He had obtained the final opinion of the doctor in this regard.

    18.1 In his cross-examination he stated that he had not examined the owner of the house where the accused used to reside. He had also not examined the neighbours of the said house. To a pointed query, PW-11 stated that his investigation disclosed that the accused used to threaten the deceased on public road often. He did the same act fifteen days prior to the death

of deceased X. He admitted that he had not examined the witnesses of that area.

19. R. Vijaya Kumar is the elder brother of the deceased X. He is PW-12. He stated that his sister X had consumed poison in the house and had died in the hospital while undergoing treatment. On 05.07.2000 at about 01:30 PM he had received a phone message that his sister X had consumed poison. He reached Mysore at about 7:30 PM and went to see his sister X in the Mission Hospital where she was undergoing treatment. He found her to be not in a condition to talk.

    19.1 He stated that could come to know from his another sister PW-2 Meena that accused had harassed his sister X with proposal for marriage which was the reason for her to consume poison.

    19.2 He further stated that he had not told the police about the PW-2 telling him that the accused had threatened his sister. He did not know the details as to how his sister X had consumed poison and the amount of poison. He denied a suggestion that the accused was not responsible for the suicidal death of X and that it was because of their enmity with the accused that they had filed a false complaint against the accused.

20. Dr. Devdas P.K. PW-13 was the doctor who had conducted the post-mortem examination of the deceased on 07.07.2000. He stated that on examination of the dead body he found multiple injection marks present in front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length which was partially healed. He further stated that the stomach, small intestine and contents, liver, kidney and blood were preserved and sealed and thereafter sent for chemical analysis. On 09.01.2001, he received the chemical analysis report dated 10.10.2000. The report showed presence of organophosphorus compound in the viscera. Death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

    20.1 In his cross-examination PW-13 stated that organophosphorus compound is a pesticide, however, the quantity of the poison in the viscera of the blood of the deceased was not mentioned in the FSL report. The amount of organophosphorus could be detected during the treatment of the injury. The brain would be conscious till the poison effected the brain. PW-13 could not say the time when the deceased had consumed poison.

21. PW-1 in the first information had stated that before his elder daughter could reach the house the deceased X had become unconscious. Neighbours Kumari Hema, Mahesh, and Sarojamma along with other neighbours, including Smt. Hiremani, had seen through the window that the phone was ringing continuously and that his daughter had become unconscious. They had got the door opened and when they asked X why she had done so, her reply was that the accused was responsible and because of his harassment she had consumed poison. After that she collapsed. It was thereafter that her sister and brother-in-law came and took her to Nirmala Devi Hospital and thereafter to Mission Hospital.

22. The post-mortem report is dated 07.07.2000. From an external examination of the dead body it was found that there were multiple injection marks present over the front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length, partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved to be sent for chemical analysis. Accordingly, the blood and viscera were sealed and sent to FSL, Bangalore for chemical analysis on 07.07.2000. The final opinion was kept reserved pending receipt of the chemical analysis report. The chemical analysis report dated 10.10.2000 was received on 09.01.2001. As per the report, colour test TLC method responded for presence of organophosphorus pesticide in stomach, small intestine, liver, kidney and blood. Thereafter the doctor gave the final opinion opining that death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

23. The evidence on record, as noted above, not only reveal glaring inconsistencies but also gaping holes in the version of the prosecution. That apart, there are material omissions too. PW-1 is the father and the first informant. According to him, he used to live in the same house as the deceased. On the fateful day, he had gone out of the house at 7:00 AM in the morning and returned back to the house at 10:00 AM. When he came back home at 10:00 AM, he found that his daughter X was admitted to a nursing home for consuming poison whereafter the deceased was shifted to Mission Hospital, Mysore for further treatment. On the other hand, PW-2 Meena, who is the sister of the deceased and also daughter of PW-1, deposed that the house belonged to her mother who was already dead on the date

of the incident. Father, PW-1, was living separately with another woman outside marriage. According to her, she along with her two children and her deceased sister were living together in the house at Paduvarahalli (Vinayakanagar) after the death of her husband. She was rather categorical in her cross-examination when she stated that her father PW-1 was not living with them, as he was residing with another woman outside marriage separately. Interestingly, in her cross-examination, she stated that she saw her father in the Mission Hospital at 05:00 PM on 06.07.2000 i.e., on the second day of hospitalization of the deceased.

24. If the version of PW-2 is to be believed then the evidence of PW-1, the first informant, cannot be accepted at all. His statement that he used to stay in the same house as his deceased daughter X was belied by his own daughter PW-2, who stated that it was she and her two children, who used to stay in the house of her mother along with her deceased sister X, after the death of her husband. According to her, she saw PW-1 in the Mission Hospital at 05:00 PM on 06.07.2000. This itself is strange and not at all a normal behaviour of a father whose daughter had consumed poison and was struggling for her life in a hospital. If what PW-2 says is accepted, then PW-1 had gone to see his daughter in the hospital only in the evening of the next day of the incident, hours before her death. Be it stated that the deceased died on 06.07.2000 at 07:30 PM.

25. Both PW-1 and PW-2 claimed that the deceased had told them about the harassment meted out to her by the appellant fifteen days prior to the incident. However, neither of them confronted the appellant nor lodged any complaint before the police.

26. According to the evidence of PW-4 Shantha, another sister of deceased X and daughter of PW-1, the deceased had telephoned her in between 11:00 to 11:15 AM on 05.07.2000 informing her as to what had happened to her while returning home from the school that led her to consume poison to end her life. It was then that PW-4 and her husband PW-3 rushed to the house of the deceased. When they reached the house of the deceased, she was lying on the floor with the phone receiver in a hanging position. She and her husband along with the neighbours took the deceased to the nursing home and from there to the Mission Hospital.

27. If the version of PW-4 is to be accepted, then the deceased X had called her over telephone at around 11:00 to 11:15 AM on 05.07.2000. It was thereafter that she and her husband rushed to the house from where with the help of the neighbours, the deceased was taken to a nursing home and from there to the Mission Hospital. In other words, according to PW-4, the deceased X was taken to the nursing home only after 11:00 to 11:15 AM. This again contradicts the statement of PW-1 that when he had come back home on 05.07.2000 at 10:00 AM, his daughter X was already taken to the nursing home.

28. None of the near relatives of the deceased i.e. PW-1, PW-2, PW-4 and PW-12 (the elder brother of the deceased) had confronted the appellant as to why he was harassing the deceased with proposal for marriage and in the event of refusal, threatening her with dire consequences. Though they said that they knew about such harassment fifteen days prior to the date of incident, none of them thought it fit to lodge a police complaint. This creates grave doubt about the prosecution version.

29. Though delay in lodging first information by itself cannot be a ground to disbelieve the prosecution case, unexplained delay coupled with surrounding circumstances can certainly dent the prosecution version. Here is a person (PW-1) who evidently goes to the hospital to see his daughter struggling for life twenty-four hours after her admission in hospital, that too just hours before her death. Such a behaviour is unusual for father, to say the least. That apart, evidently, he was not stating the truth when he said that he used to reside in the same house as that of the deceased and when he returned home at 10:00 AM in the morning on the fateful day, the deceased was already taken to the nursing home by the neighbours. Evidence of PW-2 and PW-4 bely such statement of PW-1. His daughter died on 06.07.2000 at 07:30 PM, whereafter the body was taken by the police for post-mortem examination. Yet he waited till the next morning to lodge the police complaint. The police had also not examined Jayarama, the scribe, who had written the complaint, to ascertain the reason for such delay. According to PW-1, Jayarama was in the hospital till the death of the deceased. In the face of such glaring conduct of the first informant PW-1, adverse inference would have to be drawn. But crucially, the tendered evidence, as discussed above, are hearsay not worthy of much credence.

30. There is one more aspect. In the first information, PW-1 stated that neighbours Kumari Hema, Mahesh, Sarojamma and others including Smt. Hiremani, wife of police personnel Nanjunda Swami had noticed through the window that his deceased daughter X was lying unconscious and that the phone was continuously ringing. He further stated that these neighbours had got the door opened whereafter PW-3 and PW-4 came and took his deceased daughter X to the nursing home. Sarojamma and Mahesh had deposed as PW-8 and PW-9 but both were declared as hostile witnesses. Both stated that the police had not recorded their statements and that they did not know the cause of death of the deceased. Thus, only two of the neighbours were examined and even they were declared hostile. No other neighbours were examined by the police. There is no explanation by the prosecution for such glaring omission. Again, according to the informant PW-1, it was the neighbours who had first seen the deceased through the window lying on the floor in pain with the phone continuously ringing. It is not at all believable that when the receiver was hanging (as has come out from the evidence of PW-4 Shantha), how the phone could go on ringing continuously. Adverse inference has to be drawn from such glaring contradictions and omissions.

Relevant legal provisions

31. In India attempt to commit suicide is an offence under Section 309 IPC. This section provides that whoever attempts to commit suicide and does any act towards the commission of such offence, he shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. But once the suicide is carried out i.e., the offence is complete, then obviously such a person would be beyond the reach of the law; question of penalising him would not arise. In such a case, whoever abets the commission of such suicide would be penalised under Section 306 IPC. Section 306 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.

31.1 Thus, as per Section 306 of IPC, if any person commits suicide, then 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.

32. The crucial word in Section 306 of IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. Section 107 of IPC reads thus:

> **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 facilitates the commission thereof, is said to aid the doing of that act.

32.1 From a reading of Section 107 IPC what is deducible is that a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. Explanation 1 clarifies that even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise 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. Similarly, it is clarified by way of Explanation-2 that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

Case law

33. Suicide is distinguishable from homicide inasmuch as it amounts to killing of self. This Court in *M. Mohan Versus State*[1] went into the meaning of the word suicide and held as under:

> **37**. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

34. In *Ramesh Kumar versus State of Chhattisgarh*[2], this Court delved into the meaning of the word 'instigate' or 'instigation' and held as under:

> **20**. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

34.1 Thus, this Court held that to 'instigate' means to goad, urge, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of

1 [2011] 3 SCR 437 : (2011) 3 SCC 626

2 [2001] Supp. 4 SCR 247 : (2001) 9 SCC 618

> the consequence. But, a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then instigation may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

35. Again in the case of *Chitresh Kumar Chopra versus State*[3], this Court elaborated further and observed that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'. This Court held as follows:

> **17.** Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).
>
> **18.** Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

35.1 Thus, this Court has held that in order to prove that the accused had abetted the commission of suicide by a person, the following has to be established:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or

3 [2009] 13 SCR 230 : (2009) 16 SCC 605

wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.

36. In *Amalendu Pal alias Jhantu versus State of West Bengal*[4], this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

> **13**. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

37. Similar is the view expressed by this court in *Ude Singh* (supra).

38. In *Rajesh versus State of Haryana*[5], this Court after referring to Sections 306 and 107 of the IPC held as follows:

4 [2009] 15 SCR 836 : (2010) 1 SCC 707

5 (2020) 15 SCC 359

> **9**. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

39. Reverting back to the decision in *M. Mohan* (supra), this Court observed that abetment would involve 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. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.

40. Sounding a note of caution, this Court in *State of West Bengal versus Orilal Jaiswal*[6] observed that the court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that the victim committing suicide was hypersensitive 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 to

6 [1993] Supp. 2 SCR 461 : (1994) 1 SCC 73

commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

Non-recovery of trace of poison (pesticide)

41. There is one more aspect in this case. In a case of death due to consumption or administering of poison or insecticide or pesticide, be it homicidal or suicidal, recovery of the trace of such poison or insecticide or pesticide is crucial.

42. The post-mortem examination report indicated multiple injection marks over the front of both the elbows of the deceased. That apart, it was also noticed that there was a superficial linear incised injury measuring 5cms in length in the front of the right wrist which was partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved. Those were sealed and sent for chemical analysis to FSL, Bangalore on 07.07.2000. The chemical analysis report is dated 10.10.2000. The report dated 10.10.2000 stated that colour test for TLC method was carried out which responded to the presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood. On this basis, the doctor who carried out the post-mortem examination i.e. PW-13 gave the final opinion that death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate compound.

43. Before proceeding further, it needs to be noted that the chemical analysis report is dated 10.10.2000 whereas the final opinion of PW-13 is dated 09.01.2001, there being a delay of three months. Ofcourse, PW-13 stated that he received the report only on 09.01.2001 on which date he gave the final opinion. Investigating officer offered no explanation as to why there was such delay in handing over of the chemical analysis report to PW-13.

44. Be that as it may, PW-13 in his deposition also stated about multiple injection marks being present over front of both the elbows besides the partially healed wrist wound on the body of the deceased. He stated that it was only on 09.01.2000 that he had received the chemical analysis report dated 10.10.2000 which showed presence of Organophosphate compound in the viscera. In his cross-examination, he explained that Organophosphate compound is a pesticide. The quantity of the poison in the viscera of the blood of the deceased was

not mentioned in the FSL report. That apart, he further stated that the smell of Organophosphate compound could be detected during the treatment. The patient would be conscious till the poison affected the brain. The deceased was treated in the hospital before she died.

45. *A Textbook of Medical Jurisprudence and Toxicology* by Jaising P Modi is considered as authority on various facets of medical jurisprudence and toxicology. In its 27th edition, Organophosphate compounds and allied poisons are dealt with under the heading Inorganic Irritant Poisons (I) in Chapter 3. It says Organophosphate compounds are extensively used as pesticides for soft body insects in agriculture. Their easy availability and quick action are the reason for their popularity for suicidal and homicidal purposes. Worth Health Organisation has classified Organophosphate compounds on the basis of their lethality into low toxicity, moderate and highly toxic compounds. Organophosphate compounds include Hexaethyl Tetraphosphate (HETP), Tetraethyl Pyrophosphate (TEPP) – Tetron and Fosvex etc. The Organophosphate compounds are absorbed from the skin, respiratory and GI system. According to the route of entry, the respiratory or GI symptoms are more marked. Organophosphate toxicity can lead to symptoms such as miosis, urination, diarrhoea etc. Early headache, nausea, giddiness, dimness of vision, twitching of the eye muscles, tremulous tongue, profuse frothing etc. may be present. Later, vomiting, sweating, delirium, weakness and paralysis of respiratory muscles, arflexia, incontinence, bronchospasm, cyanosis, pulmonary edema, convulsions etc. whereafter, coma and death may follow. Tetraethyl pyrophosphate is the most toxic and HETP the least. A single dose that will produce symptoms is 5 mg intramuscular or 25 mg orally. 44-50 mg of TEPP intramuscular or 25-100 mg orally will be a fatal dose. In fatal cases, the symptoms begin in 30 minutes and death results in 30 minutes to 3 hours.

46. In this case, the doctors who had treated the deceased in the first nursing home and later on in the Mission Hospital, were not examined by the police. They were also not summoned as court witnesses. Their testimony could have been crucial. They could have thrown light into the nature of intake of the Organophosphate compound: whether by way of injection or consumed orally? Whether they could detect the smell of Organophosphate compound emanating from the patient? This serious lacuna is further compounded by the fact that the prosecution had failed to recover any syringe or needle from the

crime scene. No container or bottle containing the pesticide were also recovered from the room where the deceased was found lying on the floor or in any part of the house. There is no evidence to suggest that police had made an endeavour to search for such container or bottle. If the deceased had injected the poison herself, considering the multiple injection marks over the front of both the elbows, then the syringe and the needle would have been there, in and around her. If she had orally consumed the poison, then also the bottle or the container of the poison would have been present in the crime scene or near about. There is absolutely no evidence in this regard. There is also no evidence to show as to how the deceased had acquired the pesticide. In addition to non-recovery of the syringe or the needle or the container, the police were unable to show the source from where the particular pesticide was obtained by the deceased. If the prosecution case is to be believed, then the syringe and the needle or the container must have been present in the scene of occurrence itself. Those were not found by the prosecution. Neither any trace of pesticide was seen by the investigating officer in the room. The FSL report as well as the chemical analysis report are silent as to whether any trace of the pesticide was detected from any of the seized articles. Prosecution is silent as to why no investigation was done in this regard. In a case of this nature, where the oral evidence including that of PW Nos. 1, 2 and 4 are not at all convincing, the absence of the container or the bottle containing the pesticide from where the deceased had orally consumed the pesticide, becomes very crucial. Similarly, recovery of syringe and needle if the deceased had injected the poison, is also crucial. As a general principle, it can be said that in a case of death by poisoning, be it homicidal or suicidal and which is based on circumstantial evidence, recovery of the trace of poison consumed by or administered to the deceased is of critical importance. It forms a part of the chain; rather it would complete the chain to prove homicide or suicide.

Conclusion

47. Human mind is an enigma. It is well neigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties,

disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant.

48. Coming to the facts of the present case, we do not find any evidence on the basis of which we can hold the appellant guilty of abetting the suicide of the deceased. While the death of a young woman is certainly very tragic, it cannot be said with any degree of certainty that suicide has been proved; the other essential ingredient constituting the offence under Section 306 IPC, *viz,* abetment cannot also be said to have been proved.

49. Thus on a conjoint reading of the entire materials on record, this Court is of the opinion that the prosecution had failed to prove the charge of abetment to commit suicide under Section 306 IPC against the appellant. The settled legal position, the evidence on record and the glaring omissions of the prosecution as pointed out above, leaves no room for doubt. We are therefore of the unhesitant view that the conviction of the appellant is wholly unsustainable.

50. That being the position, conviction of the appellant under Section 306 of the IPC is set aside. The judgment and order of the trial court dated 06.07.2004 as affirmed by the High Court vide the judgment and order dated 17.09.2010 are hereby set aside and quashed.

51. Since the appellant is already on bail, the bail bonds shall stand discharged.

52. The appeal is accordingly allowed. No costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 3 S.C.R. 356 : 2024 INSC 186

M/s A.K. Sarkar & Co. & Anr.
v.
The State of West Bengal & Ors.

(Criminal Appeal No. 1447 of 2024)

07 March 2024

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

Issue for Consideration

The Prevention of Food Adulteration Act, 1954 was repealed by the Food Safety and Standards Act, 2006 wherein s. 52 provides a maximum penalty of Rs.3,00,000/- for misbranded food. The issue arose whether the appellant can be granted the benefit of the new legislation-2006 Act and be awarded a lesser punishment as is presently prescribed under the new law, though it was not in force when the offence was committed.

Headnotes

Prevention of Food Adulteration Act, 1954 – ss. 16(1)(a)(i) read with s.7, s. 2(ix)(k) – Prevention of Food Adulteration Rules, 1955 – r. 32(c) and (f) – Misbranding food – Case registered against appellants that the packets of sugar boiled confectionary sold by them at their shop/godown did not show the prescribed particulars of complete address of the manufacturer and the date of manufacturing, thus violation of r. 32(c) and (f) – Conviction of appellant no.1, its partners-appellant no.2 and third accused u/s. 16(1)(a)(i) read with s. 7 – Appellant no.2 and third accused sentenced to undergo simple imprisonment for 6 months along with a fine of Rs.1,000/- each, whereas appellant no.1 directed to pay a fine of Rs.2,000/- – District and Sessions Judge upheld the order as regards appellant no.1 and appellant no.2, however set aside the conviction of the third accused – High Court though upheld the concurrent findings of conviction but reduced the sentence of appellant no.2 from 6 months to 3 months simple imprisonment – Correctness:

Held: Concurrent findings of the courts below, and no question of doubt as to the findings that the packets which were taken from shop/ godown of the appellants were misbranded as defined u/s. 2(ix)(k), as they were not labelled in accordance with the requirements of the Act or the Rules made thereunder – As regards sentencing,

* Author

the prohibition contained in Art. 20 is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime but there is no prohibition, to impose a lesser punishment which is now applicable for the same crime – Appellant no. 2, is about 60 years of age and twenty-four years have elapsed since the commission of the crime – Though the findings of the courts below regarding the offence is upheld, however, the sentence of appellant no.2 converted from 3 months simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- – Sentence of appellant no.1 of Rs. 2000/- upheld – Constitution of India – Art. 20(1). [Paras 6,7, 10]

Constitution of India – Art. 20(1) – Protection in respect of conviction for offences – Mandate of Art. 20(1):

Held: Person cannot be punished for an offence which was not an offence at the time it was committed, nor can he be subjected to a sentence which is greater than the sentence which was applicable at the relevant point of time – Art. 20 (1) does not prohibit this Court, to award a lesser punishment in a befitting case, when this Court is of the opinion that a lesser punishment may be awarded since the new law on the penal provision provides a lesser punishment i.e. lesser than what was actually applicable at the relevant time – Prohibition contained in Art. 20 is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime – There is no prohibition, for this Court to impose a lesser punishment which is now applicable for the same crime. [Para 8]

Case Law Cited

T. Barai v. Henry Ah Hoe, [1983] 1 SCR 905 **: (1983) 1 SCC 177;** *Nemi Chand v. State of Rajasthan*, **(2018) 17 SCC 448;** *Trilok Chand v. State of Himachal Pradesh*, **(2020) 10 SCC 763 – referred to.**

List of Acts

Prevention of Food Adulteration Act, 1954; Food Safety and Standards Act, 2006

List of Keywords

Prevention of Food Adulteration; Food Safety and Standards; Misbranded food; Benefit of the new legislation; Lesser punishment; Higher punishment.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1447 of 2024

From the Judgment and Order dated 12.04.2018 of the High Court at Calcutta in CRR No. 1436 of 2005

Appearances for Parties

Ms. Nandini Sen Mukherjee, Adv. for the Appellants.

Ms. Mantika Haryani, Ms. Ripul Swati Kumari, Ms. Astha Sharma, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Sohhom Sau, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

Leave granted.

2. The present appeal arises out of a proceeding under the Prevention of Food Adulteration Act, 1954 (for short 'the Act') where the present appellant no.1, its partners appellant no.2 and Amit Kumar Sarkar, were charged under Section 16(1)(a)(i) read with Section 7 of the Act and were convicted by the Trial court. Appellant no.2 and Amit Kumar Sarkar were sentenced to undergo simple imprisonment for a period of six months along with a fine of Rs.1,000/- each, whereas appellant no.1 was directed to pay a fine of Rs.2,000/-.

3. The appeal of the appellants against the order of conviction and sentence by the Trial Court was dismissed by the District and Sessions Judge but the conviction of Amit Kumar Sarkar, the third accused in the case, was set aside and he was acquitted. In Revision proceedings, the High Court of Calcutta though upheld the concurrent findings of conviction but reduced the sentence of appellant no.2 from 6 months to 3 months simple imprisonment.

4. Brief facts leading to this appeal are that on 06.12.2000, a food inspector while inspecting the shop/godown of the appellants at 71, Biplabi Rash Behari Basu Road, Calcutta took samples of some sugar boiled confectionaries, which were kept for sale and for human consumption. After payment, the food inspector purchased 1500 grams

of sugar boiled confectionery contained in three packets of 500 grams each, and as per due process sent the samples for examination in a laboratory. The public analysis/Lab report shows that the food articles were not adulterated, but it said that the packets did not show the prescribed particulars such as complete address of the manufacturer and the date of manufacturing. Thus, there was violation of Rule 32(c) and (f) of the Prevention of Food Adulteration Rules, 1955 (for short 'Rules'). In view of these findings, the inspector filed a complaint before the Trial Court under Section 16(1)(a)(i) read with Section 7 of the Act.

5. The plea of the appellants before the Trial Court was that they had not manufactured the food articles, instead Bose Confectionary, Calcutta had manufactured these items. All the same, the appellants could not show any valid proof of their contention and thus, the Trial Court and the Appellate Court (as well as the Revisional Court) did not accept this contention raised by the appellants. The appellant stood convicted of the offence under Section 16(1)(a)(i) read with Section 7 of the Act and appellant no.2 was sentenced to undergo 3 months simple imprisonment along with fine. While appellant no.1 was sentenced to pay a fine of Rs.2,000/-.

6. Before this Court, learned Counsel for the appellants would argue that the entire case of the prosecution is liable to be dismissed for the simple reason that the appellants were charged under Rule 32 (c) and (f) of the Rules but these provisions were not related to misbranding and were regarding something else.

7. All the same, this contention is totally misconceived inasmuch on the date of occurrence i.e., 06.12.2000 when the samples were taken, the provisions which were applicable were Rule 32 (c) and (f) only (as the Rules had been amended vide G.S.R 422(E) dated 29.04.1987), and Rule 32 as per the Gazette Notification reads as under :-

> *"32. Package of food to carry a label: --*
>
> (a) .....
>
> (b) .....
>
> (c) *The name and complete address of the manufacturer or importer or vendor or packer.*
>
> (d) .....
>
> (e) .....

(f) *The month and year in which the commodity is manufactured or prepacked."*

Therefore, this contention of the learned counsel for the appellant regarding non-applicability of the provision is not correct. There are concurrent findings of three Courts below and there is absolutely no question of us having any measure of doubt as to the findings, inasmuch as that the packets which were taken from shop/godown of the appellants were misbranded as defined under Section 2(ix)(k) of the Act, as they were not labelled in accordance with the requirements of the Act or the Rules made thereunder. The only question which now remains is of sentence. The plea here is of reduction of sentence and if only fine can be imposed, which is permissible as per the law currently applicable.

8. Article 20(1) of the Constitution of India reads as under:

> *"(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2) .....*
>
> *(3) ....."*

The above provision has been interpretated several times by this Court and broadly the mandate here is that a person cannot be punished for an offence which was not an offence at the time it was committed, nor can he be subjected to a sentence which is greater than the sentence which was applicable at the relevant point of time. All the same, the above provision does not prohibit this Court, to award a lesser punishment in a befitting case, when this Court is of the opinion that a lesser punishment may be awarded since the new law on the penal provision provides a lesser punishment i.e. lesser than what was actually applicable at the relevant time. The prohibition contained in Article 20 of the Constitution of India is on subjecting a person to a higher punishment than which was applicable for that crime at the time of the commission of the crime. There is no prohibition, for this Court to impose a lesser punishment which is now applicable for the same crime.

9. The Prevention of Food Adulteration Act, 1954 was repealed by the introduction of the Food Safety and Standards Act, 2006 where Section 52 provides a maximum penalty of Rs.3,00,000/- for misbranded food. There is no provision for imprisonment.

The provision, which is presently applicable, is as follows :

> *"52. **Penalty for misbranded food**. (1) 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 misbranded, shall be liable to a penalty which may extend to three lakh rupees. (2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed."*

Whether the appellant can be granted the benefit of the new legislation and be awarded a lesser punishment as is presently prescribed under the new law? This Court in ***T. Barai v. Henry Ah Hoe* (1983) 1 SCC 177,** had held that when an amendment is beneficial to the accused it can be applied even to cases pending in Courts where such a provision did not exist at the time of the commission of offence. It was said as under:-

> *"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction*

requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

A reference to the above case was given by this Court in ***Nemi Chand*** *v.* ***State of Rajasthan (2018) 17 SCC 448*** where six months of imprisonment awarded under the Act was modified to only a fine of Rs.50,000/-.

The above principle was applied by this Court again in ***Trilok Chand*** *v.* ***State of Himachal Pradesh, (2020) 10 SCC 763*** and the sentence of three months of imprisonment and Rs.500/- of fine for misbranding under the Act, 1954 was modified to that of only a fine of Rs.5,000/-.

10. The present appellant no.2, at this stage, is about 60 years of age and the crime itself is of the year 2000, and twenty-four years have elapsed since the commission of the crime. Vide Order dated 06.08.2018, this Court had granted exemption from surrendering to appellant no.2. Considering all aspects, more particularly the nature of offence, though we uphold the findings of the Courts below regarding the offence, but we hereby convert the sentence of appellant no.2 from three months of simple imprisonment along with fine of Rs.1,000/- to a fine of Rs.50,000/- (Rupees Fifty Thousand only). The sentence of appellant no.1 which is for a fine of Rs. 2000/- is upheld. The amount shall be deposited with the concerned Court within a period of three weeks from today. Accordingly, the appeal is partly allowed.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal partly allowed.

[2024] 3 S.C.R. 363 : 2024 INSC 183

The Travancore Devaswom Board
v.
Ayyappa Spices & Ors.

(Civil Appeal Nos. 3866-3867 of 2024)

06 March 2024

[A.S. Bopanna and Pamidighantam Sri Narasimha,* JJ.]

Issue for Consideration

Whether the writ petition at the behest of respondent no.1 should have been entertained by the High Court; and whether the appellant-Board qualifies as a "food business operator" as defined u/s.3(1)(j) of the Food Safety and Standards Act, 2006.

Headnotes

Judicial review – Public tenders for procurement – Interested party invoking writ jurisdiction, exercise of power of judicial review – Contract by tender for sourcing raw material (cardamom) for preparation of Aravana Prasadam in the Sabarimala Temple – Eventually, respondent no.2 was given supply orders for cardamom – High Court allowing the writ petition filed as a PIL by respondent no.1 inter alia directed prosecution of the appellant-Board for violation of the Food Safety and Standards Act, 2006 and held that the appellant is a 'food business operator' as per s.3(1)(j), 2006 Act – Correctness:

Held: In matters of public tenders for procurement, judicial review is restrained– Constitutional courts should exercise caution while interfering in contractual and tender matters disguised as public interest litigations – In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review – Respondent no.1 had earlier supplied cardamom to the appellant and had also participated in the two tenders released by the appellant which were later cancelled – Its real grievance was about the grant of contract in favour of respondent no.2– Being an interested party, respondent no.1 could not have invoked the jurisdiction of High Court – Writ petition also challenged the manner in which the cardamom was sourced – Appellant initially

* Author

tried to purchase cardamom by issuing tenders and calling for bids, not just once, but twice over – However, these tenders were cancelled since none of the bidders supplied cardamom of appropriate quality– It was in these compelling circumstances, considering the impending festive season and the imminent need to prepare a humungous quantity of Aravana Prasadam, that the appellant invoked the urgency clause in its regulations to procure cardamom from local sources – Thus, it cannot be said that the decision was arbitrary, irrational or unreasonable – All the prospective bidders were given a fair chance as the notice to purchase cardamom was published on the notice board of the Temple – Cardamom samples submitted by the bidders were then tested in a lab, which was established by the Commissioner of Food Safety as per an order of the High Court – Thereafter, price negotiations were conducted and respondent no.2 was given supply orders after quoting the lowest rates – Decision of the appellant was legal, fair and transparent – High Court erred in entertaining the writ petition filed by respondent no.1 and should have dismissed it on the question of maintainability itself – In this view of the matter, issue no.2 relating to applicability of the Act to the appellant does not arise for consideration – No illegality/arbitrariness in awarding the contract to respondent no.2– Impugned interim order and the judgment passed by High Court, set aside. [Paras 19, 21-23, 25]

Case Law Cited

Ashok Kumar Pandey v. State of West Bengal, [2003] Supp. 5 SCR 716 **: (2004) 3 SCC 349;** *UFLEX Ltd. v. Government of Tamil Nadu,* [2021] 7 SCR 571 **– relied on.**

S.P. Gupta v. Union of India, [1982] 2 SCR 365 **: (1981) Supp SCC 87;** *Tata Cellular v. Union of India,* [1994] Supp. 2 SCR **122 : (1994) 6 SCC 651;** *Michigan Rubber v. State of Karnataka,* [2012] 8 SCR 128 **: (2012) 8 SCC 216;** *Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited & Ors.,* [2019] 6 SCR 950 **: (2019) 14 SCC 81 – referred to.**

List of Acts

Food Safety and Standards Act, 2006.

List of Keywords

Sabarimala Temple; Public tenders; Contractual/Tender Matters; Public Interest Litigation (PILs); Judicial review; Illegality/ arbitrariness; Interested party; Writ jurisdiction; Writ petition maintainability.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3866-3867 of 2024

From the Judgment and Order dated 27.03.2023 in IA No.03 of 2023 and dated 11.04.2023 in WP (C) No.41743 of 2022 of the High Court of Kerala at Ernakulam

Appearances for Parties

V. Giri, Sr. Adv., P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Bharat Sood, Ms. Miranda Solaman, Advs. for the Appellant.

K M Nataraj, A.S.G., Abhilash M.R., Sayooj Mohandas, Rajkumar, Vinodh Kanna B., Ms. Meenakshi Kalra, C. K. Sasi, Ms. Meena K Poulose, Gurmeet Singh Makker, Yuvraj Sharma, Vatsal Joshi, Sandeep Singh, Rukhmini Bobde, T S Sabarish, Anuj Srinivas Udupa, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. *Tirth* and *prasad* offered at places of worship are regarded as sacred and bond the worshiper with the worshipped. While in temples and gurudwaras, *prasad* or *bhog* may be an essential part of their religion, it is not uncommon for other places of worship to serve some food, toast or drink as a religious offering.

3. As of 2019, it is believed that India has a place of worship for every 400 people. While in most of these religious places, food is prepared and served at a large scale on special occasions, there are hundreds of temples and gurudwaras, which serve tens of thousands of devotees twice every day. Several temples and gurudwaras have their own unique and traditional way of preparing the *prasad* or *bhog*

like the *Laddu* of Tirupati and *Karah Prasad* of the Golden Temple at Amritsar[1]. Though somewhat connected with divine blessing in the form of *prasad* or *bhog*, this case draws us back to aggressive competing business interests - for supply of 7000 kilograms of cardamom for making *Aravana Prasadam*.

4. Travancore Devaswom Board is in appeal challenging the decision of the High Court of Kerala[2] allowing the writ petition filed as a public interest litigation by respondent company in a contract by tender for sourcing raw material for preparation of *Aravana Prasadam* in the Sabarimala Temple. By the first impugned order dated 27.03.2023, the High Court confirmed the order restraining distribution of *Aravana Prasadam* and by the second impugned order dated 11.04.2023, the High Court finally allowed the writ petition and directed – (i) prosecution of the appellant board for violation of the Food Safety and Standards Act, 2006[3]; (ii) that the appellant board is a 'food business operator' as per Section 3(1)(j) of the Act; and (iii) that the seized stock shall be destroyed in accordance with law.

Facts:

5. The appellant-Board is a statutory and an autonomous body which manages certain temples in the southern part of India, including the Sabarimala Temple. One of the many functions of the appellant-Board, in so far as the Sabarimala Temple is concerned, is the preparation and distribution of the *Aravana Prasadam.* The appellant-Board is also tasked with procuring the raw material necessary for its preparation. One such raw material is cardamom. In order to procure the same, the appellant-Board issues tenders in frequent intervals. Respondent no. 1 was the successful bidder in 2021 and it supplied 9000 kilograms of cardamom to the appellant-Board for the years 2021-2022.

6. In order to procure cardamoms for the period from 01.11.2022 to 30.09.2023, the appellant-Board issued a tender on 16.06.2022.

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1 Guidance Document for Maintaining Food Safety & Hygiene in Places of Worship, Food Safety and Standards Authority of India, 1st Edition, January 2018.

2 Arising out of order dated 27.03.2023 in I.A. No. 3 of 2023 and judgment and final order dated 11.04.2023 passed by the High Court of Kerala at Ernakulam in W.P. No. 41743 of 2022.

3 Hereinafter referred to as the 'Act'.

However, this tender was cancelled as all the bidders supplied cardamom which contained pesticides beyond the permissible limit. A fresh tender came to be issued on 24.08.2022 and this was also cancelled for the same reason. It is an admitted position that respondent no. 1 has participated in these tenders.

7. Since the first two tenders had failed to fetch an appropriate bid, the appellant-Board issued a third tender on 12.10.2022. However, as the festive season was fast-approaching, the appellant-Board was constrained to invoke the urgency clause and authorise the Executive Officer of Sabarimala Temple to procure cardamom from local sources. Accordingly, on 04.11.2022, since a decent number of cardamom traders were present in the temple premises, a notice inviting quotations along with samples was published on the notice board of the Sabarimala Temple.

8. Pursuant to the above notice, four bids were received. Respondent no. 1 was not one of them. The cardamom samples submitted by these four bidders was subjected to testing at the Quality Testing Laboratory at Pamba, a place located close to the Temple. Two out of the four samples failed to meet the minimum standards. Subsequent to price negotiations with the remaining two bidders, respondent no. 2 was given supply orders aggregating to 7000 kilograms of cardamom. However, at the instance of the other bidders, the samples submitted by respondent no. 2 were sent for re-examination to Government Analysts Lab, Thiruvananthapuram, and the report dated 03.12.2022 said that the cardamom samples submitted by respondent no. 2 contained pesticides above the permissible threshold.

9. It is at this stage that respondent no. 1 filed a writ petition before the High Court seeking the following two reliefs:

> "*Issue a writ of mandamus or appropriate writ, direction or order to the respondents to conduct an analysis of the cardamom which was purchased after cancellation of Ext. P9 tender at Government Analytical Lab Thiruvananthapuram under the supervision of this Court.*
>
> *Issue a writ of Certiorari or appropriate writ, direction to the respondents to cancel the local purchase of cardamom as it was done without competition and newspaper advertisement.*"

10. After taking cognizance of the matter, the High Court passed an order dated 23.12.2022 directing the sample to be subjected to re-examination at the Government Analyst Laboratory, Thiruvananthapuram. The resultant report dated 28.12.2022 was nothing different from the previous report, labelling the cardamom as 'unsafe'. In fact, even the Commissioner of Food Safety through his report dated 05.01.2023 termed the product as 'unsafe'. Further, the High Court through its order dated 06.01.2023 directed the samples to be sent to the FSSAI Office at Kochi for re-examination. Even FSSAI, Kochi, termed the product as 'unsafe' through its report dated 11.01.2023. Therefore, placing reliance on these developments, the High Court of Kerala by its order dated 11.01.2023 restrained the appellant-Board from distributing the *Aravana Prasadam* and directed the sealing of the warehouse where the *Aravana Prasadam* was stored.

11. Pending disposal of the writ petition, the appellant-Board filed I.A. No. 3 of 2023 on 17.01.2023 before the High Court. Through this application, it sought the following relief:

> "[…] *permit the petitioners to draw sample, from the stock of Aravana kept sealed, through the food safety officers and to send the same for analysis to any laboratory accredited by FSSAI to test whether the Aravana prasadam confirms to the food standards prescribed by FSSAI and is safe for human consumption, in the interest of justice, pending disposal of the writ petition.*"

In this application, it was asserted that the sale of *prasadam* was stopped on 11.01.2023. It stated that the available stock of 6,65,159 cans of *prasadam*, balance stock of 800 grams of cardamom, and 43.92 kilograms of cardamom powder were sealed. While this was to be sampled by the Government Analyst's Laboratory, Thiruvananthapuram, the appellant-Board sought that the same be sampled by another laboratory in parallel.

12. The writ petition itself came to be partly disposed of by the High Court through the impugned *interim* order dated 27.03.2023, where the High Court dismissed the I.A. No. 3 of 2023. The High Court relied on the tests conducted previously to dismiss the said application. It further held that the appellant-Board falls under the definition of "*food business operator*", for the purposes of section 3(1)(j) of the Act, with a co-relative obligation to ensure that the food sold / distributed, and

the raw material used for its preparation are safe and pure. Eventually, the final impugned order came to be passed on 11.04.2023 where the High Court allowed the writ petition, and the impugned interim order dated 27.03.2023 was affirmed. It further ordered the destruction of the seized stock and directed that appropriate criminal proceedings be initiated. The appellant-Board has filed the instant appeals against the above-referred two orders.

Before this Court:

13. This Court issued notice on 15.05.2023, and stayed the orders impugned herein. By the same order FSSAI was directed to get an analysis of the *Aravana Prasadam* and file a report before this Court. The relevant portion of this direction is as follows:

> "*Further, the competent authority under the Food Safety and Standards of India (FSSAI) shall, in the meanwhile, take random samples for the stock of Aravanam Prasadam available and get an analysis done with regard to the quality and as to whether the same is fit for human consumption*."

14. Pursuant to our direction, the FSSAI got the sample analysed and filed a report of its opinion before this Court on 12.06.2023. The relevant portion of the opinion is as follows:

> *"Opinion:*
>
> *1. Pesticides mentioned in the analytical report are below limit of quantification and is satisfactory.*
>
> *2. Microbiological parameters conforms to ready to eat grain products and is not substandard. Based on the above analytical report it is fit for consumption."*

Submissions:

15. At the outset, Sri V. Giri, learned senior counsel appearing for the appellant-Board, submitted that even though the report of FSSAI called by this Court clarifies that the *Aravana Prasadam* is fit for human consumption, the appellant-Board is no longer desirous to distribute the *Prasadam* in view of the long lapse of time. We had taken note of the statement and proceeded to hear the submission of the parties.

15.1 On merits, Sri Giri submitted that the writ petition was a motivated one. It was submitted that respondent no. 1 had

concealed the fact that he had supplied cardamom in the past and also that he had contested the earlier two tenders which later came to be cancelled. It was further submitted that the filing of the writ petition suggests unresolved business conflicts and underlying rivalry. In this light, it was contended that the High Court should not have entertained the writ petition and should have dismissed it at the very threshold. He relied on the decisions of this Court in ***S.P. Gupta v. Union of India*****, (1981) Supp SCC 87** and ***Ashok Kumar Pandey v. State of West Bengal*****, (2004) 3 SCC 349** for this purpose.

15.2 The second leg of Mr. Giri's submission is against the determination of appellant-Board as a "*food business operator*". It is contended that *Aravana Prasadam* is not a sale for revenue or profits, but considered as an offering to devotees. It was submitted that the *Aravana Prasadam* holds religious significance to devotees, and is treated as an offering from the deity itself. Therefore, subjecting it to stringent regulations under the Act would hinder its object, purpose and functions. He also submitted that the Board itself takes all measures to ensure that the health of the devotees is never compromised. As a matter of principle, it is submitted that Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, do not contemplate regulating religious offerings integral to religious and cultural practices.

16. Learned counsel appearing for respondent no. 1 made submissions regarding their *bonafide* action in initiating the PIL in this case. It asserted that its primary intent was not to hinder the distribution of *Aravana Prasadam* but to highlight malpractices within the administration of the Sabarimala Temple, one such issue is the opaque manner in which the supply order was issued to respondent no. 2 i.e., without open tenders. The respondent no. 1 also raised an issue regarding the supply order being issued without a proper quality check.

17. Sri Natraj, learned ASG, representing the Ministry of Health & Family Welfare and FSSAI, submitted that he is not concerned with the factual matrix of the case but confined his arguments to the legal issue. He submitted that *prasadam* is understood as offerings made to a deity and returned to devotees. It is considered sacred. While

it is sacred and symbolical, it is not meant for appetite satiation. He also submitted that there is no fundamental or statutory right to enforce a specific form or standard of *prasadam*. He would submit that judicial review based on an individual's claim of quality is not permissible, and therefore, the High Court should not have interfered in the matter.

18. Two questions emerge for our consideration – (i) whether the writ petition at the behest of respondent no. 1 should have been entertained by the High Court; and (ii) whether the appellant-Board qualifies as a "*food business operator*" as defined under Section 3(1)(j) of the Act.

Re: Whether the writ petition at the behest of Respondent No. 1 should have been entertained by the High Court?

19. The principle that in matters of public tenders for procurement, judicial review is restrained is well established[4]. In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review. In a recent decision, ***UFLEX Ltd. v. Government of Tamil Nadu,*** **Civil Appeal Nos. 4862-63 of 2021**, this Court has held that constitutional courts should exercise caution while interfering in contractual and tender matters, disguised as public interest litigations. The following observations are important for the purpose of this case:

> "*1. The enlarged role of the Government in economic activity and its corresponding ability to give economic "largesse" was the bedrock of creating what is commonly called the "tender jurisdiction". The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek*

4 *Tata Cellular* v. *Union of India*, [1994] Supp. 2 SCR 122 : (1994) 6 SCC 651, *Michigan Rubber* v. *State of Karnataka*, [2012] 8 SCR 128 : (2012) 8 SCC 216, *Caretel Infotech Ltd.* v. *Hindustan Petroleum Corporation Limited & Ors.*, [2019] 6 SCR 950 : (2019) 14 SCC 81.

to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation (PIL) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted."

20. We find merit in the argument of the appellant-Board that respondent no. 1 could not have invoked the jurisdiction of the High Court, being an interested party. The reliance placed by the appellant-Board on the precedent of this Court in ***Ashok Kumar Pandey*** **(*supra*)** is apposite. In a similar context, this Court held:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest

trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal case [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Kazi Lhendup Dorji v. Central Bureau of Investigation [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873] . A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] and K.R. Srinivas v. R.M. Premchand [(1994) 6 SCC 620].

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches

the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. ..."

21. In the present case, respondent no. 1, the writ petitioner, is an interested party. It had supplied cardamom to the appellant-Board for the year 2021-2022. It had also participated in the two tenders released by the appellant-Board, which later came to be cancelled. Although this information has not been concealed, it is quite evident that the writ petitioner was interested in the outcome of the writ petition. The second prayer in the writ petition, which has been extracted before, is for cancellation of the purchase of cardamom from respondent no. 2. This prayer makes it clear that the real grievance is about the grant of contract in favour of respondent no. 2. The High Court should not have entertained the writ petition on behalf of an interested person who sought to convert a judicial review proceeding for enhancing personal gain.

22. This writ petition also challenged the manner in which the cardamom was sourced. We cannot lose sight of the fact that the appellant-Board initially tried to purchase cardamom by issuing tenders and calling for bids, not just once, but twice over. However, these tenders were cancelled since none of the bidder's supplied cardamom of appropriate quality. It is in these compelling circumstances, considering the impending festive season and the imminent need to prepare a humungous quantity of *Aravana Prasadam*, that the appellant-Board invoked the urgency clause in its regulations and authorised the Chief Executive Officer of the Sabarimala Temple to procure cardamom from local sources. Thus, it cannot be said that the decision is arbitrary, irrational or unreasonable. There is neither arbitrariness nor malice in the decision of the appellant-Board as all the prospective bidders were given a fair chance as the notice to purchase cardamom was published on the notice board. The cardamom samples submitted by the bidders were then tested in a nearby lab, which was also established by the Commissioner of Food Safety as per an order of the High Court. Thereafter, price negotiations were conducted, and respondent no. 2 was given supply orders after quoting the lowest rates. We are of the opinion that the decision of the appellant-Board is legal, fair and transparent. For the above reasons, we are of the view that the High Court committed an error in entertaining the writ petition filed by respondent no. 1.

23. In view of the above discussion we are of the opinion that the High Court should have dismissed the Writ Petition on the question of maintainability itself. In this view of the matter, issue no. 2 relating to applicability of the Act to the appellant Board does not arise for consideration in this case.

24. After hearing the parties and at the time of reserving the judgment on 03.11.2023, we passed the following order:-

> "…
>
> *At this stage, the learned senior counsel for the petitioner(s) would submit that the stock of Aravanam Prasadam, which was to be distributed earlier, but prevented pursuant to the interim and final orders of the High Court, is still lying in the premises but the petitioner-Board is not intending of using the same.*
>
> *In that regard, we take note of the report filed on behalf of the Food Safety and Standard Authority of India (FSSAI) which would indicate that Aravanam Prasadam is fit for human consumption.*
>
> *However, as the petitioner-Board itself has taken a decision that the Aravanam Prasadam will not be distributed, the stock presently existing will have to be destroyed as per the appropriate procedure as indicated by the State Government.*
>
> *Under these circumstances, we direct the State Government to destroy/dispose of the existing stock of Aravanam Prasadam in an appropriate manner by following the necessary procedure. For this purpose, we also direct the Travancore Devaswom Board to extend complete co-operation and ensure that the stock is destroyed/disposed as it is stated that the next season for opening of the temple is due and fresh Aravanam Prasadam will have to be stored.*
>
> *All necessary steps may be taken by the State Government and the Travancore Devaswom Board as expeditiously as possible."*

25. In conclusion, we allow the appeals and set aside the Impugned Interim Order dated 27.03.2023 in I.A. No. 3 of 2023 and the impugned

final judgment dated 11.04.2023 passed by a Division Bench of the High Court in W.P. No. 41743 of 2022, and hold that there was no illegality or arbitrariness in awarding the contract to respondent no. 2.

26. Pending application(s) shall be disposed of accordingly.

27. There shall be no order as to costs.

Headnotes prepared by: Divya Pandey

Result of the case: Appeals allowed.

[2024] 3 S.C.R. 377 : 2024 INSC 191

Shahid Ali
v.
The State of Uttar Pradesh

(Criminal Appeal No. 1479 of 2024)

11 March 2024

[Vikram Nath and Satish Chandra Sharma,* JJ.]

Issue for Consideration

In a celebratory firing during a marriage ceremony, the Appellant shot the deceased resulting in his demise. Whether the Appellant could be held guilty of the offence under Section 304 Part I or Part II of the IPC as against Section 302 IPC.

Headnotes

Penal Code, 1860 – s. 302, 304 Part I, 304 Part II – Arms Act, 1959 – s.25, s.27 – Deceased shot with country-made pistol – Succumbed to death after bullet hit the deceased on his neck – FIR registered under s.302 along with s.25, 27 Arms Act - All Eyewitnesses turned hostile – Trial Court based on evidence arrived at the conclusion that Appellant guilty of the offence alleged under the FIR – High Court affirmed the judgment passed by the Trial Court – Held, sentence under s.302 set aside and Appellant convicted for offence under s.304 Part II IPC – Sentence under s.25 & 27 Arms Act sustained.

Held: The Appellant shot the deceased at a marriage ceremony resulting in injury on his neck leading to his demise on the spot - FIR came to be registered under s. 302 IPC - The Appellant confessed to his guilt in his statement under s.161 CrPC - Another FIR registered under s.25 & 27 of the Arms Act, 1959 - PW1, father of the deceased, supported the case of prosecution – All the eyewitnesses turned hostile and the Trial Court based on the evidence arrived at the conclusion that the Appellant was guilty of S.302 IPC – The High Court upheld the judgment of the Trial Court convicting the Appellant under s.302 IPC – Question to be determined whether the Appellant's act of engaging in celebratory firing during a marriage ceremony could be construed to be an act so imminently dangerous to cause death or such bodily injury likely to cause death – Prevalent act of celebratory firing condemned – Totality of circumstances to be considered – No previous

* Author

enmity – No intention attributed to the Appellant to cause death – Appellant not guilty of offence under s. 302 in the facts of the case – Appellant guilty of culpable homicide with the meaning of s. 299 IPC punishable under s.304 Part II IPC – Conviction under s.302 set aside, conviction under s. 25 & 27 Arms Act sustained [Paras 12-18]

List of Acts

Penal Code, 1860; Arms Act, 1959

List of Keywords

Celebratory firing; Hostile witnesses; No previous enmity; No intention.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1479 of 2024

From the Judgment and Order dated 04.04.2019 of the High Court of Judicature at Allahabad in CRLA No.1462 of 2018

Appearances for Parties

Sanjay Kumar Dubey, Shuchi Singh, Rakesh Kumar Tewari, Mr./ Ms. Krishna Kant Dubey, Vivek Kumar Pandey, Ujjawal Kr. Dubey, Aman, Advs. for the Appellant.

Ardhendumauli Kumar Prasad, Sr. A.A.G., Vishnu Shankar Jain, Aayush Mishra, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. The present appeal is arising out of a judgment of conviction and order dated 23.02.2018, passed by Sessons Judge, Firozabad in S.T. No. 290 of 2016 titled '*State of U.P. v. Shahid Ali*' whereunder, the Appellant was convicted and sentenced to undergo (i) rigorous imprisonment for life with a fine of Rs. 10,000/- under Section 302 IPC and in default of payment of fine, to undergo six months

rigorous imprisonment; and (ii) 5 years rigorous imprisonment under Sections 25/ 27 of the Arms Act, 1959 (the "**Arms Act**") with fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for three months.

3. The judgment of conviction and sentence was unsuccessfully assailed by the appellant before the High Court of Judicature at Allahabad (the "**High Court**") *vide* Criminal Appeal No. 1462 of 2018, titled '*Shahid Ali v. State of U.P.*' which came to be dismissed by the High Court *vide* an order dated 04.04.2019 (the "**Impugned Order**").

4. On 03.12.2021, this Court issued notice limited to the question of nature of offence, that is, as to whether the Appellant could be held guilty of the offence under Section 304 Part I or Part II of the IPC as against Section 302 IPC.

5. The facts of the case reveal that an FIR was lodged by PW1 - Gulab Ali i.e., the *chowkidar* of village Katena Sikeriya, District Firozabad, at Police Station Jasrana, by stating that on 17.03.2016, the marriage ceremony of the daughter of Nizamuddin was being celebrated. Pertinently (i) Ishfaq Ali (the "**Deceased**"); (ii) other co-accused person i.e., Shahid Ali; and (iii) other relatives were also invited to the said marriage. It was further stated in the FIR that on 17.03.2016 at about 3:30PM i.e., amidst the marriage ceremony, the Appellant shot at Ishfaq Ali which resulted in an injury on his neck and ultimately led to his demise on the spot itself. In the FIR, previous enmity between the Deceased and the accused came to be revealed. Furthermore, it was stated that a large number of person(s) saw the alleged incident as there were many people at the marriage ceremony. Accordingly, an FIR came to be registered as Crime Case No. 108 of 2016 under Section 302 IPC at PS Jasrana, District Firozabad. The said FIR has been proved as Ex. Ka-13. Thereafter an entry regarding FIR was made in the G.D. Rapat No. 34 Ex. Ka-4 on 17.03.2016 at 1705 hrs. Thereafter, PW 10 i.e., Lokendra Pal Singh, Station House Officer at Police Station Jasrana, investigated the matter, conducted inquest on the dead body of the Deceased and prepared an inquest report (Ex. Ka-7). The site plan (Ex.Ka-5) was also prepared. The dead body of the Deceased was brought to the hospital and a post-mortem was carried out by a Medical Officer i.e., Dr. Nitin Jaggi, on 18.03.2016. The statement of accused who was arrested was recorded in jail by the investigating officer and accused confessed to his guilt in

his statement recorded under Section 161 of Cr.P.C. Another FIR was also registered against the Appellant for an offence punishable under Section 25/27 of the Arms Act on 08.04.2016 which came to be registered as Case Crime No. 147 of 2016, at PS Jasrana. An investigation was carried out in pursuant to the FIR(s) and a charge-sheet was filed. The case was committed to the court of Sessions by the Magistrate and charges were framed for *inter alia* an offence punishable under Section 302 of the Indian Penal Code and for offences punishable under Section 25/27 of the Arms Act.

6. The prosecution in support of its case has examined 12 witnesses, namely, PW1 Gulab Ali, PW2 Idrish Ali, PW3 Nizamuddin, PW 4 Raju Ali, PW5 Mohd. Shakeel, PW6 Shamsher Ali, PW7 Chaman Babu, PW8 Dr. Nitin Jaggi, PW9 HCP Kshetrapal Singh, PW10 SO/IO Lokendrapal Singh, PW11 SI Yashpal Singh and PW 12 Constable Clerk, Bhupendra Singh.

7. The prosecution also placed on record documentary evidence viz., written report Ext.Ka-1, post-mortem report Ext.Ka-2, chik FIR Ext. Ka-3, copy of G.D. Ext.Ka-4, site-plan Ext.Ka-5, site-plan in regard to spot recovery of weapon Ext.Ka-6, inquest report Ext.Ka-7, challanash Ext.Ka-8, photonash Ext.Ka-9, letter to R.I. Ext.Ka-10, letter to CMO Ext.Ka-11, charge sheet Ext.Ka-12 u/s 302 IPC against accused the Appellant, recovery memo Ext.Ka-13, FIR Ext.Ka-13, site-plan Ext. Ka-14, sanction to prosecute from the D.M Ext.Ka-15, copy of G.D. Ext.Ka-16 and charge sheet Ext.Ka-17 u/s 25/27 Arms Act against accused the Appellant.

8. The evidence on record has been carefully examined by this Court. PW1 Gulab Ali who was the informant of the case has initially supported the prosecution case. He has categorically stated that the Deceased was shot at with the country made pistol and the bullet hit him on his neck and thereafter succumbed to his injuries on the spot. However, in his cross-examination, the same witness Gulab Ali stated that did not see the alleged incident with his own eyes and that he is unaware of any old enmity between the Deceased and the Appellant. He has further clarified in his cross-examination that he spoke about the enmity between the parties on the basis of hearsay evidence of the people who were present at marriage ceremony.

9. PW2 Idrish Ali i.e., son of the Deceased who was present at the spot initially supported the prosecution case in his examination-

in-chief, however, subsequently during his cross-examination he has stated that there was no enmity between the Deceased and the Appellant his father and his father Ishfaq Ali was shot dead by some person on 17.03.2016. PW2 also turned hostile during the trial. PW3 Nizamuddin whose daughter's marriage was being solemnized on 17.03.2016, also initially supported the prosecution case, however, in his cross-examination, he has stated that the Appellant was his *Bhanja* and that he did not see the Appellant firing the shot at Deceased. PW4 Raju Ali also categorically stated that there was no enmity between Appellant and the Deceased and he was also declared as a hostile witness by the prosecution. In his cross-examination, he has categorically stated that he has not given any statement incriminating the accused to the police. PW5 Mohd. Shakeel who was also allegedly present at the time of incident did not support the prosecution case and he was also declared hostile. PW6 Shamsher Ali also did not support the prosecution case and he has categorically stated that he has not given any statement under Section 161 Cr.P.C. implicating the accused. He was also declared hostile. PW7 Chaman Babu, another eye witness, was also declared hostile. PW 8 Dr. Nitin Jaggi who carried out the post-mortem stated before the Court that the Deceased died on account of gunshot wound and supported the prosecution case to the extent that he has carried out the post-mortem. He has supported his opinion that the Deceased died on account of haemorrhage as a result of ante-mortem gun shot injuries. PW9 Head Constable Kshetrapal Singh who was a formal witness supported the prosecution case and proved the First Information Report which was lodged on 17.03.2016. PW10 Station Officer Lokendra Pal Singh also supported the prosecution case. PW11 Sub Inspector Yashpal Singh who was present along with PW-10 during the police custody remand of the Appellant has deposed that recovery of firearm and cartridge was made at the instance of the Appellant and has supported the prosecution case. PW12 constable Bhupendra Singh who is also an eye witness of the recovery of the fire arm in question and the cartridge has also supported the prosecution case.

10. The evidence on record reveals that all the eyewitnesses have turned hostile and the Trial Court on the basis of the evidence has arrived at the conclusion that the Appellant was guilty of the offences alleged under the FIR; and accordingly proceeded to convict the Appellant.

Subsequently, the High Court affirmed the order passed by the Trial Court. Aggrieved, the Appellant preferred the present petition. *Vide* an order dated 03.12.2021, this Court issued notice and on a limited question in the matter i.e. as to whether the appellant could be held guilty of offence under Section 304 Part I or Part II of the IPC, as against under Section 302 of the IPC.

11. The undisputed facts of the case reveal that the incident took place on 17.03.2016 amidst the marriage ceremony of Nizamuddin's daughter. Thereafter, the recovery of a weapon along with cartridge(s) from Appellant has been proved before the Trial Court. It is also undisputed fact that the Deceased died on account of a single bullet injury; and that there was no known prior enmity between the Deceased and Appellant.

12. The fulcrum of the dispute before this Court is whether the Appellant's act of engaging in celebratory firing during a marriage ceremony could be construed to be an act so imminently dangerous so as to, in all probability, cause death or such bodily injury as was likely to cause death?

13. The act of celebratory firing during marriage ceremonies is an unfortunate yet prevalent practise in our nation. The present case is a direct example of the disastrous consequences of such uncontrolled and unwarranted celebratory firing. Be that as it may, in the absence of any evidence on record to suggest that either that the Appellant aimed at and / or pointed at the large crowd whilst engaging in such celebratory firing; or there existed any prior enmity between the Deceased and the Appellant, we find ourselves unable to accept the Prosecution's version of events as were accepted by the Trial Court and confirmed by the High Court.

14. At this juncture it would be apposite to refer to a decision of this Court in ***Kunwar Pal Singh v. State of Uttarakhand***, (2014) 12 SCC 434 wherein, this Court in a similar situation observed as under:

> *"12. In these circumstances, we find that the intention of the appellant to kill the deceased, if any, has not been proved beyond a reasonable doubt and in any case the appellant is entitled to the benefit of doubt which is prominent in this case. It is not possible therefore to sustain the sentence under Section 304 Part I IPC, which requires that the act by*

which death is caused, must be done with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. Though it is not possible to attribute intention it is equally not possible to hold that the act was done without the knowledge that it is likely to cause death. Everybody, who carries a gun with live cartridges and even others know that firing a gun and that too in the presence of several people is an act, is likely to cause death, as indeed it did. Guns must be carried with a sense of responsibility and caution and are not meant to be used in such places like marriage ceremonies.

x-x-x

14. In the present case, we are of the view that the appellant is guilty of committing the act which caused the death of the deceased since the act was done with the knowledge that is it likely to cause death within the meaning of Section 304 Part II IPC. In the circumstances, the appeal is allowed in part, however, we reduce the sentence imposed upon the appellant to a period of 7 (seven) years without making any alteration in the fine amount imposed by the trial court and confirmed by the High Court."

15. Pertinently, the view in ***Kunwar Pal Singh (Supra)*** came to be followed in ***Bhagwan Singh v. State of Uttarakhand***, (2020) 14 SCC 184 wherein this Court observed as under:

"15. The facts and circumstances of the instant case, however, do not permit to draw such a conclusion. We have already rejected the prosecution version to the extent that the appellant aimed at Smt Anita and then fired the shot(s). The evidence on record contrarily shows that the appellant aimed the gun towards the roof and then fired. It was an unfortunate case of misfiring. The appellant of course cannot absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure, like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause

multiple gunshot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to "culpable homicide" within the meaning of Section 299, though punishable under Section 304 Part 2 IPC."

16. There can be no qualm about the fact that the Appellant opened fire in a crowded place i.e., a marriage ceremony without taking reasonable measures for safety, which led to the unfortunate demise of the Deceased.

17. In this context, keeping in view the totality of circumstances of the case i.e., especially the fact that (i) there was no previous enmity between the Deceased; (ii) no intention may be attributed to the Appellant as may be culled out from the record to cause death of the Deceased; and (iii) position of law enunciated by this Court in ***Kunwar Pal Singh (Supra)*** and subsequently, followed in ***Bhagwan Singh (Supra)***, we find that the Appellant is guilty of commission of 'culpable homicide' within the meaning of Section 299 IPC i.e., punishable under Section 304 Part II of the IPC.

18. In view of the aforesaid, the conviction and sentence of the Appellant under Section 302 IPC is set aside. The Appellant is convicted for an offence under Section 304 Part II of the IPC. The appellant has already undergone approximately 8 years of incarceration. Considering the facts and circumstances of the case, we award a sentence equivalent to the period already undergone. The conviction and sentence awarded to the Appellant under Sections 25 & 27 of the Arms Act remains unaltered. Resultantly, the Appellant be released forthwith, if not required in any other case.

19. The appeal is allowed accordingly, in part. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by:
Mukund P Unny, Hony. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.)

Result of the case:
Appeal partly allowed.

[2024] 3 S.C.R. 385 : 2024 INSC 189

Anil Mishra
v.
State of U.P. & Ors.

(Criminal Appeal No. 1335 of 2024)

01 March 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether High Court was justified in setting aside the entire proceedings of the case against the accused on the basis of a Settlement Agreement where the complainant in the FIR was not made a party.

Headnotes

During the pendency of the trial, a Settlement Agreement was executed between the accused persons, i.e. Respondent Nos. 2 to 4; and one of the victims i.e. Respondent No.5 – Trial Court on considering the said agreement rejected the same by observing that (i) chargesheet has been filed under Sections 147, 148, 149, 323 and 364 of the IPC of which Section(s) 147, 148, 149, 364 of the IPC are non-compoundable in nature;(ii) the FIR was lodged by the Appellant yet he was not made a party to the Settlement Agreement; and (iii) the Appellant had filed objections to the Settlement Agreement – Aggrieved, an application was filed by the accused persons before the High Court under Section 482 CrPC – High Court set aside entire proceedings.

Held: Appellant herein is (i) an injured victim qua the alleged offence; and (ii) the original complainant in the FIR. Appellant neither entered into any settlement with the accused persons nor was courting any such idea. This Court, in ***Gian Singh v. State of Punjab (2012) 10 SCC 303*** laid down the principles governing the exercise of jurisdiction under Section 482 CrPC by High Courts vis-à-vis quashing of an FIR, criminal proceedings or complaint. In ***Gian Singh***, this Court *inter alia* held that the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings; or continuation of the criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim

and the wrongdoer; and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end; and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings. In the present case, High Court has certainly erred by quashing the FIR and the criminal proceedings. The High Court failed to notice that the Appellant i.e., an injured victim and original complainant was not a party to the Settlement Agreement and nor was agreeable to such a course of action. Accordingly, the Impugned Order neither secured the ends of justice nor prevented an abuse of process of law, thus the Impugned Order was erroneous and contrary to the principles laid down in **Gian Singh**. [Paras 11 and 12].

Case Law Cited

Gian Singh v. State of Punjab, **[2012] 8 SCR 753 : (2012) 10 SCC 303 - relied on.**

List of Acts

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

List of Keywords

Quashing under Section 482 CrPC; Settlement Agreement; Settlement and compromise; Complainant not party to Settlement Agreement; Exercise of jurisdiction under Section 482 CrPC- Principles; Contrary to the interest of justice; Securing the ends of justice; Prevention of abuse of process of law; Non compoundable.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1335 of 2024

From the Judgment and Order dated 06.04.2023 of the High Court of Judicature at Allahabad in A482 No.38114 of 2022

Appearances for Parties

Konark Tyagi, Adv. for the Appellant.

Yasharth Kant, Mrs. Anamika Agarwal, Ms. Sonal Kushwah, Rajesh Kumar, Navank Shekhar Mishra, Ms. Vimal Sinha, Aviral Kashyap, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The present appeal is arising out of order dated 06.04.2023 passed by the High Court of Judicature at Allahabad (the "**High Court**") in an application under Section 482 of the Code of Criminal Procedure, 1973 ("**CrPC**") bearing number 38114 of 2022, titled '*Jitendra Mishra @ Sanjay and Ors. Vs. State of Uttar Pradesh and Anr.'* (the "**Impugned Order**").

3. The facts of the case reveal that the Appellant herein lodged a First Information Report on 07.08.1999 bearing number 966 of 1999 under Section(s) 364, 147, 148, 149 & 323 of the Indian Penal Code, 1860 ("**IPC**") against Respondent Nos. 2 to 4 (the "**Accused Persons**") alleging *inter alia* that (i) the Appellant and Respondent No. 5 were beaten-up and accordingly, injured by Accused Persons who were wielding guns, rifles, revolvers and pistols; and (ii) Respondent No. 5 was further abducted by the Accused Persons (the "**FIR**").

4. The matter was investigated by the police and thereafter a charge-sheet was filed against the Accused Persons qua offences under Sections 147, 148, 149, 323 and 364 of the IPC (the "**Chargesheet**"). Pursuant to the filing of the Chargesheet, Ld. Civil Judge, Junior Division, Tirwa, District, proceeded to take cognizance of the offences and *inter alia* issued process to the Accused Persons; and rejected objections filed by the Accused Persons *vide* order(s) dated (a) 29.11.1999; and (b) 18.04.2000 in Criminal Cases No. 1265 of 1999 and 1264 of 1999 (the "**Summoning Order**").

5. Aggrieved, the Accused Persons preferred (i) a criminal revision petition assailing *inter alia* the Summoning Order (the "**Revision Petition**"); and (ii) an application under Section 482 CrPC seeking the quashing of the Chargesheet before the High Court (the "**Quashing Petition**"). Pertinently, *vide* an order dated 28.05.2010, the High Court dismissed both (i) the Revision Petition; and (ii) the Quashing Petition (the "**1st HC Order**").

6. Thereafter, the Appellant preferred an application before the Chief Judicial Magistrate, Farrukhabad (the "**Trial Court**") for issuance of non-bailable warrants ("**NBWs**") against Accused Persons. *Vide* an

order dated 17.01.2020, the Trial Court ordered the issuance of non-bailable warrants. On 28.09.2022, during the pendency of the trial before the Trial Court, the Accused Persons brought a settlement agreement dated 28.09.2022 executed *inter alios* the Accused Person(s) and Respondent No. 5 (the "**Settlement Agreement**") to the notice of the Trial Court. Accordingly, an application was preferred by the Accused Persons under Section 482 CrPC before the High Court seeking quashing of the proceedings emanating from the FIR on the basis of the Settlement Agreement (the "**1st Settlement Application**"). However, *vide* an order dated 23.12.2022 in the 1st Settlement Application, the High Court directed the Trial Court to consider the Settlement Agreement; and pass appropriate order(s) within a period of 1 (one) month (the "**2nd HC Order**").

7. Pursuant to the 2nd HC Order, Trial Court considered the Settlement Agreement; and *vide* an order dated 23.01.2023, the Trial Court observed *inter alia* that (i) the Chargesheet has been filed under Sections 147, 148, 149, 323 and 364 of the IPC of which Section(s) 147, 148, 149, 364 are non-compoundable in nature; (ii) the FIR was lodged by the Appellant herein who was an injured person, yet wasn't made a party to the Settlement Agreement; and (iii) that the Appellant had filed an objection to the Settlement Agreement. Accordingly, in view of the aforesaid the Trial Court rejected the Settlement Agreement (the "**Underlying Order**").

8. Aggrieved by Underlying Order, another application was preferred by the Accused Persons before the High Court under Section 482 of the CrPC seeking the quashing of (i) the FIR; and (ii) the proceeding(s) emanating from the FIR on the basis of the Settlement Agreement (the "**2nd Settlement Application**"). The High Court *vide* the Impugned Order allowed the 2nd Settlement Application. The operative paragraph(s) of the Impugned Order are reproduced as under:

> *"On behalf of the applicant, this application is filed under Section 482 Cr.P.C. for quashing of Case No. 1288 of 2003, Case Crime No. 966 of 1999 under Section 364, 147, 148, 149, 323 I.P.C., Police Station Kotwali Farrukhabad: District Farrukhabad which is under consideration of court of Learned Chief Judicial Magistrate, Farrukhabad on the ground that the entire proceeding should be cancelled on the basis of the agreement dated 28-09-2022 between the parties.*

Learned Counsel for the applicants and opposite party No. 3 states that a settlement agreement has been reached between the parties on date 28-09-2022 in which it is mentioned that a First Information Report was lodged by the complainant against unknown people. The complainant has not taken the name of any accused in his statement under Section 161 and 164 Cr.P.C. It has also been mentioned in the said agreement that the mutual relations between the two parties have become quite cordial and there is no dispute of any kind left between them. The attested copy of the said agreement has been attached to this application as Annexure 4.

Learned counsel for the applicants and Mr. Md. Nadeem, learned counsel for opposite party number 3, have stated that they want disposal of the present case and do not want to pursue this issue further, hence the entire subsequent proceedings should be set aside. In support of his argument he cited the judgment of the Hon'ble Supreme Court in ***Narinder Singh & Ors. v. State of Punjab & Anr. 2014 Law Suit (SC) 202, Yogendra Yadav & Ors. v. State of Jharkhand & Anr., Dimpey Gujral W/o Vivek Gujral & Ors. v. Union Territory & Ors.*** *and drawn the attention of the Court towards the said judgments.*

Hearing the learned counsel for the parties and the learned Additional Government Advocate and examining the file and after considering the above precedents of the Hon'ble Supreme Court, this application submitted under Section 482 CrPC is eligible to be accepted.

Accordingly, this application is accepted and the entire proceedings of the above mentioned case are set aside."

9. The Learned Counsel appearing on behalf of the Appellant has submitted that the Appellant is an injured victim of the alleged offence; and also, is the original complainant in relation to the FIR. Accordingly, it has been vehemently contended before us that the High Court erred in law as well as in facts by allowing the 2nd Settlement Application. It was also submitted before us that the Impugned Order suffers from perversity and illegality on account of the fact that it fails to consider that the Appellant i.e., the original complainant, was neither a party

to the Settlement Agreement nor was amenable to such a course of action. In this context, it was submitted that the High Court ought not to have exercised its jurisdiction under 482 CrPC in favour of the Accused Persons.

10. On the other hand, Learned Counsel appearing on behalf of Accused Persons has submitted that the Accused Persons entered into a settlement / compromise with Respondent No. 5 i.e., the principal victim who was allegedly abducted, and accordingly, once Respondent No. 5 had settled the matter, there was no justifiable cause to continue criminal proceedings against the Accused Persons. Thus, it was submitted that the Impugned Order, was a well-reasoned order, that warrants no interference from this Court.

11. We have heard the counsel(s) appearing on behalf of the parties and perused the record. Admittedly and undisputedly, the Appellant herein is (i) an injured victim qua the alleged offence; and (ii) the original complainant qua the FIR. Furthermore, from the materials placed on record and the arguments advanced, it can safely be concluded that the Appellant neither entered into any settlement with the Accused Persons nor was courting any such idea. Accordingly, in view of the aforesaid circumstances, we fail to understand how the High Court proceeded to quash the FIR; and the proceedings emanating thereof in exercise of its jurisdiction under Section 482 CrPC. This Court in ***Gian Singh v. State of Punjab***, (2012) 10 SCC 303 authoritatively laid down principles governing the exercise of jurisdiction under Section 482 CrPC by High Courts vis-à-vis quashing of an FIR, criminal proceeding or complaint. The same is reproduced as under:

> *"61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim*

have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative,

the High Court shall be well within its jurisdiction to quash the criminal proceeding."

12. Thus, it is our considered opinion that the High Court has certainly erred by quashing (i) the FIR; and (ii) the criminal proceeding(s) emanating from the FIR on the basis of the Settlement Agreement. The High Court failed to notice that the Appellant i.e., an injured victim; and original complainant was not a party to the Settlement Agreement and nor was agreeable to such a course of action. Accordingly, we find that Impugned Order neither secured the ends of justice nor prevented an abuse of process of law, thus we find that the Impugned Order was erroneous and contrary to principles laid down in ***Gian Singh* (Supra)**.

13. With the aforesaid observations, the appeal is accordingly allowed, and the Impugned Order is set aside. The proceedings emanating from FIR i.e., Case No. 1288 of 2003, stand restored to the file of the Trial Court, with a direction to the Trial Court to dispose of the same expeditiously, preferably, within a period of one year, in view of the fact that the FIR pertains to the year 1999.

14. Pending application(s), if any, are disposed of.

Headnotes prepared by:
Adeeba Mujahid, Hony. Associate Editor
(*Verified by:* Liz Mathew, Sr. Adv.)

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 393 : 2024 INSC 190

The State of Haryana
v.
Ashok Khemka & Anr.

(Civil Appeal No. 3959 of 2024)

11 March 2024

[Vikram Nath and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the High Court was right in interfering with the order of the Central Administrative Tribunal which approved the decision of Accepting Authority altering the Personal Appraisal Report score under All India Services (Performance Appraisal Report) Rules, 2007.

Headnotes

The Principal Secretary, State of Haryana challenged before Central Administrative Tribunal (CAT), Chandigarh branch, Chandigarh the decision of the Accepting Authority, Chief Minister of Haryana downgrading his Performance Appraisal Report (the "PAR") score - No provision in the PAR Rules indicating that a contravention thereof would render the PAR in question invalid or would be met with any identified immediate consequence.

Held: When a provision declares no serious consequences for non-adherence of timelines then it becomes directory- The Authority has met the timelines prescribed under Rule 5(1) of the PAR Rules and complied with the mandatory timelines prescribed - No reason to expunge the remarks and overall grades awarded to 1st Respondent. [Paras 19-21]

Constitution of India - Art. 226 - Whether the interference of the order of the Central Administrative Tribunal (CAT) by the High Court was warranted – Principles discussed.

Held: The overall grading and assessment of IAS Officers requires an in-depth understanding of different aspects of an administrative functionary such as their personality traits, tangible and quantifiable professional parameters which may include inter alia the competency and ability to execute projects; adaptability; problem-

* Author

solving and decision-making skills; planning and implementation capabilities; and the skill to formulate and evaluate strategy - High court erred in entering into a specialized domain, i.e., evaluating the competency of an IAS officer - No requisite expertise and administrative expertise to conduct such an evaluation - Appeal allowed [Paras 27-28 & 31]

Case Law Cited

Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited, [2019] 6 SCR 950 **: (2019) 14 SCC 81;** *State of Jharkhand & Ors. v. Linde India Limited & Anr,* [2022] 17 SCR 858 **: (2022) 107 GSTR 381 - Relied on.**

Bhavnagar University v. Palitana Sugar Mill Private Limited, [2002] Supp. 4 SCR 517 **: (2003) 2 SCC 111;** *May George v. Tahsildar,* [2010] 7 SCR 204 **: (2010) 13 SCC 98 - Referred to.**

Dev Dutt v. Union of India : [2008] 8 SCR 174 **: (2008) 8 SCC 725 - Distinguished.**

List of Acts

Constitution of India; All India Services (Performance Appraisal Report) Rules, 2007.

List of Keywords

IAS Officer; Effect of non-adherence of timelines; Power of High Court under Art. 226.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.3959 of 2024

From the Judgment and Order dated 18.03.2019 of the High Court of Punjab & Haryana at Chandigarh in CWP No.317 of 2019

Appearances for Parties

Lokesh Sinhal, Alok Sangwan, Sr. A.A.Gs., Dr. Hemant Gupta, A.A.G., Mukul Rohtagi, Sr. Adv., Samar Vijay Singh, Nikunj Gupta, Sumit Kumar Sharma, Rajat Sangwan, Vaibhav Yadav, Shivang Jain, Ms. Payal Gupta, Ms. Nitikaa Guptha, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, Advs. for the Appellant.

Shreenath A. Khemka, Ganesh A. Khemka, Ambhoj Kumar Sinha, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

Introduction[1]

1. Leave granted.

2. The present appeal preferred by the State of Haryana seeks to assail the correctness of an order dated 18.03.2019 passed by the High Court of Punjab and Haryana (the "**High Court**") in a writ petition bearing number CWP 317 of 2019 (O&M) wherein the High Court set aside an order dated 03.12.2018 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (the "**CAT**") and, accordingly (i) expunged the opinion of the Accepting Authority; and (ii) restored (a) the opinion of the Reviewing Authority*;* and (b) the grade awarded by the Reviewing Authority i.e., 9.92 qua Respondent No. 1's performance appraisal report under the provisions of the All India Services (Performance Appraisal Report) Rules, 2007 (the "**PAR Rules**") (the "**Impugned Order**").

Factual Matrix

3. On 07.06.2017, Respondent No. 1 i.e., an Indian Administrative Services ("**IAS**") Officer belonging to the batch of 1991 and presently holding the rank of Principal Secretary, Government of Haryana, submitted his self-appraisal form qua the annual performance appraisal report envisaged under the PAR Rules for the period commencing 08.04.2016 up until 31.03.2017 (the "**PAR**").

4. Thereafter on 08.06.2017, Respondent No. 1 came to be appraised by the Reporting Authority *i.e.*, the Chief Secretary, Government of Haryana and, accordingly came to be awarded, *inter alia,* an overall grade of 8.22. Subsequently on 27.06.2017, a divergent view was taken by the Reviewing Authority i.e., the Health Minister of

1 **NOTE**: For ease of reference any capitalised terms used but not defined hereinafter, shall have the meaning ascribed to such term under the All-India Services (Performance Appraisal Report) Rules, 2007.

Haryana who upgraded Respondent No. 1's overall grade to '9.92'. On 31.12.2017, the Accepting Authority i.e., the Chief Minister of Haryana rejected the aforesaid and downgraded Respondent No. 1's overall grade to '9' in the PAR.

5. Aggrieved by the aforesaid, Respondent No. 1 made a representation under Rule 9(2) of the PAR Rules on 12.01.2018 seeking, *inter alia,* the (i) quashing of the remarks and overall grading recorded by the Accepting Authority; and (ii) restoration of remarks and overall grading awarded by the Reviewing Authority (the "**Underlying Representation**").

6. Pursuant to the Underlying Representation, additional remark(s) were submitted by (i) the Reporting Authority on 5.02.2018; and (ii) the Reviewing Authority on 12.02.2018, to the Accepting Authority for further action under Rule 9(7B) of the PAR Rules. Despite the aforesaid, no decision was taken by the Accepting Authority qua the Underlying Representation.

7. Accordingly, aggrieved by the inaction *vis-à-vis* the Underlying Representation, Respondent No. 1 preferred an application bearing number O.A. No. 60/1058/2018 before the CAT seeking deletion of the remarks and overall grades recorded by the Accepting Authority; and restoration of the overall grades and remarks awarded by the Reviewing Authority in the PAR (the "**OA**"). *Vide* an order dated 03.12.2018, the CAT dismissed the OA relying upon Rule 5(1) of the PAR Rules read with Paragraph 9.4 of Appendix -II of the 'General Guidelines for Filing-Up the PAR Form for IAS Officers Except the Level of Secretary or Additional Secretary or Equivalent to the Government of India' (the "**Guidelines**") (the "**CAT Order**"). The operative paragraph(s) of the CAT Order are reproduced as under:

> *"7. A co-joint reading of the aforementioned rule and guideline makes it clear that, they provide a window, by not having a barring clause on the Accepting Authority recording remarks beyond the prescribed time limit, and have actually set a date of 31st December of the year in which the financial year ended as the time limit for recording PAR. Thus, the limit fixed for writing the appraisal report by various authorities, in the Schedule 2, is the minimum or ideal period within which the remarks are required to be made. Further, if the PAR*

is not recorded by 31st December of the yar in which the financial year ended, no remarks shall be recorded thereafter. We note that the for the financial year 2016-2017, the period under report challenged by the applicant, 31.12.2017 would be the ultimate time limit for recording PAR and the outer limit of time, beyond which no remarks can be made in the appraisal report.

8. A perusal of Annexure A-1 reflects that the appraisal report of the applicant by the Accepting Authority was written on 31.12.2017 and was written well within the limit prescribed under the relevant Rule 5(1) and guideline 9.4. Applicant appears to have overlooked the applicability of these two rules while presenting his case to the Bench for expunging the remarks and over-all grade recorded by the Accepting Authority."

8. Subsequently, Respondent No. 1 preferred a writ petition before the High Court. *Vide* the Impugned Order, the High Court set-aside the CAT Order observing, *inter alia,* that (i) the Accepting Authority failed to appreciate the various practical constraints faced by Respondent No. 1 i.e., an upright, intelligent and honest officer, in the discharge of his duties; (ii) that the Reviewing Authority revised the Reporting Authority's overall grading qua Respondent No. 1 in a transparent, fair and reasoned manner; and (iii) that the Underlying Representation had still not been decided by the Accepting Authority. Accordingly, in view of the aforesaid the overall grades and remarks awarded by the Reviewing Authority to Respondent No. 1 in the PAR came to be resorted by the High Court.

Submissions

9. Mr. Mukul Rohatgi, Learned Senior Counsel appearing on behalf of the Appellant submitted before this Court that the timelines prescribed under Rule 5(1) of the PAR Rules were met by the State of Haryana in respect of Respondent No. 1's PAR. Accordingly, it was submitted that no prejudice was caused to Respondent No. 1 merely on account of a delay vis-à-vis the timelines prescribed under Schedule 2 of the Guidelines issued under the PAR Rules (the "**Schedule**"). In this regard, our attention was drawn to the performance appraisal report(s) of Respondent No.1 dated (i) 24.09.2015; (ii) 30.12.2016; and (iii) 28.12.2018 whereunder no grievance was raised by Respondent No. 1, nor any allegation of prejudice was levelled against the Appellant.

10. Further, Mr. Rohatgi drew the attention of this Court to Section V of the PAR. In this context, it was submitted that the Accepting Authority i.e., the Chief Minister of Haryana, knew the performance and achievement of all senior IAS officers serving the Government of Haryana; and accordingly revised the overall grades and remarks awarded to Respondent No. 1 in an impartial and objective manner. Additionally, Mr. Rohatgi submitted that the overall grade '9' forms a part of the 'outstanding' grade and is more than sufficient for the purposes of empanelment / promotion of Respondent No. 1. Thus, it is his submission that no prejudice could have been said to have been caused to Respondent No. 1 in the present case as he was awarded grades in consonance with a recommendation for empanelment / promotion.

11. Finally, Mr. Rohatgi contended that the Underlying Representation is pending consideration before the Accepting Authority; and that the grievance of Respondent No. 1 would be considered by the Accepting Authority as per the procedure envisaged under the PAR Rules. In the aforementioned context, it was stressed that the High Court ought not to have interfered and set-aside the CAT Order *vide* the Impugned Order.

12. On the other hand, Mr. Shreenath A. Khemka, Learned Counsel appearing on behalf of Respondent No. 1, submitted that the timelines prescribed under the Schedule are sacrosanct. Accordingly, it was submitted that upon the expiry of the timelines enumerated under the Schedule, the Accepting Authority could not have submitted revised the remarks and / or the overall grades awarded by the Reviewing Authority.

13. Further, it was vehemently contended before us that the Accepting Authority had acted arbitrarily and without appreciating the material(s) on record, it proceeded to downgrade the overall grade awarded to Respondent No. 1 from '9.92' to '9'. In this regard, it was contended that the Accepting Authority had acted in contravention of the principles enunciated by this Court in ***Dev Dutt v. Union of India***, (2008) 8 SCC 725.

14. Lastly, Mr. Khemka submitted that prejudice has been caused to Respondent No. 1 on account of the non-decision qua the Underlying Representation under Rule 9(7B) of the PAR Rules; coupled with the fact that Respondent No. 1 is in the sunset of his service i.e., having

a tenure of only 1 (one) year of service left before his superannuation. Accordingly, in the totality of circumstances, it was submitted that the Impugned Order ought not to be set-aside.

Analysis

15. We have heard the counsel(s) appearing on behalf of the parties and perused the material on record. There can be no controversy qua the *factum* that the timelines prescribed under the Schedule have been contravened. In this regard it would be pertinent to reproduce the key-timeline(s) prescribed under the PAR Rules vis-à-vis the dates of actual compliance by the relevant authority(ies):

#	PARTICULARS	CUT-OFF DATE	PRESCRIBED TIME FRAME*	ACTUAL DATE OF COMPLIANCE	ACTUAL DAYS TAKEN**
1.	Blank PAR Form to Be Given to The Officer Reported Upon	01.06.2017	-	-	-
2.	Filing In Section II by The Officer Reported Upon	15.06.2017	15 Days	07.07.2017	7 Days
3.	Appraisal By Reporting Authority	15.07.2017	30 Days	08.07.2017	1 Days
4.	Appraisal By Reviewing Authority	15.08.2017	30 Days	27.07.2017	19 Days
5.	Appraisal By Accepting Authority	15.09.2017	30 Days	31.12.2017	184 Days
6.	Disclosure To the Officer Reported Upon	30.09.2017	15 Days	31.12.2017	0 Days
7.	Comments Of the Officer Reported Upon, If Any (If None, Transmission of The PAR to the DOPT)	15.10.2017	15 Days	12.01.2018	12 Days

8.	Forwarding Of Comments of The Officer Reported Upon to The Reviewing and The Reporting Authority, In Case the Officer Reported Upon Makes Comments	31.10.2017	15 Days	-	-
9.	Comments Of Reporting Authority	15.11.2017	15 Days	05.02.2018	24 Days
10.	Comments Of Reviewing Authority	30.11.2017	15 Days	12.02.2018	7 Days
11.	**Comments Of Accepting Authority/PAR to Be Finalized and Disclosed to Him**	**15.12.2017**	**15 Days**	**No Decision**	-
12.	Representation to the Referral Board by the officer reported upon	31.12.2017	15 Days	-	-
13.	Forwarding of representation to the Referral Board along with the comments of reporting Authority/ reviewing Authority and accepting Authority	31.01.2018	30 Days	-	-

14.	Finalization by Referral Board if the officer reported of the Accepting Authority.	28.02.2018	30 Days	-	-
15.	Disclosure to the officer reported upon	15.03.2018	15 Days	-	-
16.	End of entire PAR process	31.03.2018	15 Days	-	-

*Approximated on a 30-days-to-a-month basis
**Actual day(s) taken from compliance of the previous stage.

16. Upon a perusal of the aforesaid, undoubtedly, and admittedly the Accepting Authority populated its remarks and awarded an overall grade on 31.12.2017 i.e., after a delay of 184 (one hundred eighty-four) days. Accordingly, we must now consider the effect of a contravention of the timelines prescribed under the Schedule in view of Rule 5(1) of the PAR Rules. For ease of reference Rule 5(1) of the PAR Rules is reproduced as under:

> *"Rule 5(1): Performance Appraisal Reports: - (1) A performance appraisal report assessing the performance, character, conduct and qualities of every member of the Service shall be written for each financial year or as may be specified by the Government in the Schedule 2.*
>
> *Provided that performance appraisal report may not be written in such cases as may be specified by the Central Government, by general or special order.*
>
> *Provided further that if a PAR relating to a financial year is not recorded by the 31st December of the year in which the financial year ended, no remarks shall be recorded thereafter. And the officer may be assessed on the basis of the overall record and self-assessment for the year, if he has submitted his self-assessment on time."*

17. At this juncture, it would be apposite to refer to a decision of this Court in ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd.***, (2003) 2 SCC 111 wherein this Court whilst weighing the consideration(s)

qua the mandatory nature of timelines prescribed upon a public functionary observed as under:

> *"42. We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative."*

18. Furthermore, this Court in ***May George v. Tahsildar***, (2010) 13 SCC 98 devised a test qua the mandatory nature of an obligation emanating from a provision of law. In this regard, this Court observed as under:

> *"25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."*

19. In this context we must now consider the implication and / or outcome (if any) of a contravention of the timeline(s) prescribed under the Schedule. A perusal of the PAR Rules would reveal that a contravention of the said timelines, neither render the underlying PAR invalid, nor would be met with any identified immediate consequence. The aforesaid interpretation is also supported by the empirical data i.e., previous performance appraisal report(s) of Respondent No. 1 which were admittedly beyond the timelines prescribed under the Schedule, however within the period prescribed under Rule 5(1) of

the PAR Rules. Furthermore, even though the High Court *vide* the Impugned Order, set-aside the CAT Order, the High Court observed that the timelines prescribed under the Schedule were not water-tight and in fact, were flexible.

20. Thus, we find ourselves unable to accept the contention raised by Mr. Khemka i.e., that the Accepting Authority was either precluded from populating its comment(s) after the cut- off date as more particularly identified at Serial Number 5 in Table 1 above; or that upon the expiry of the cut-off date, the Reviewing Authority's comments would be deemed to have been adopted by the Accepting Authority.

21. Admittedly, the Accepting Authority has met the timelines prescribed under Rule 5(1) of the PAR Rules and accordingly, in view of the compliance with mandatory timelines prescribed under the PAR Rules we find no reason to expunge the remarks and overall grades awarded to Respondent No. 1 by the Accepting Authority on the PAR on account of a contravention of the timelines prescribed under the Schedule.

22. Now we turn our attention to the fulcrum of the dispute before this Court i.e., whether the High Court ought to have interfered with the CAT Order in exercise of its jurisdiction under Article 226 of the Constitution of India?

23. At the outset we would like to deal with Respondent No. 1's reliance on ***Dev Dutt* (Supra).** The said case underscored the importance of, *inter alia,* communicating entries of evaluation to the candidate, irrespective of whether such evaluation was adverse in the eyes of the assessing entity i.e., the Court stressed the fact that in matters of selection and promotion, a comparative lens must be adopted whereunder the adverse nature of an evaluation must be contingent not only on whether such evaluation would have an adverse impact on the candidate but also whether it would affect the candidates' chances of promotion to the next category.

24. In this context, although it was submitted by Mr. Khemka that prejudice has been caused to Respondent No. 1, we find ourselves unable to accept the said contention on account of the fact that Respondent No. 1 was awarded an overall grade '9' which undisputedly forms a part of the 'outstanding' grade i.e., the highest category awarded to an IAS officer. Accordingly, in our opinion there can be no qualm that the said overall grade is more than sufficient for the purposes

of empanelment / promotion vis-à-vis Respondent No. 1. Thus, the reliance placed on ***Dev Dutt*** ***(Supra)*** by Respondent No. 1 is misplaced in the present factual matrix.

25. Now, turning to the issue framed in Paragraph 22 of this Judgement above, we find ourselves grappling with a foundational principle of our constitution i.e., that the judiciary must exercise restraint and avoid unnecessary intervention qua administrative decision(s) of the executive involving specialised expertise in the absence of any *mala-fide* and / or prejudice. In this regard it would be appropriate to refer to our decision in ***Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.***, *(2019) 14 SCC 81* whereunder this Court observed as under:

> *"38.…It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice."*

26. Similarly, this Court in ***State of Jharkhand v. Linde India Ltd.***, (2022) 107 GSTR 381 whilst delineating the scope of interference of the High Court exercising jurisdiction under Article 226 of the Constitution of India vis-à-vis a finding of fact by experts observed as under:

> *"7. As per the settled position of law, the High Court in exercise of powers under article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record. The High Court ought to have appreciated that there was a detailed inspection report by a six members committee who after detailed enquiry and inspection and considering the process of manufacture of steel specifically came to the conclusion that the work of oxygen is only of a "refining agent" and its main function is to reduce the carbon content as per the requirement. The said findings accepted by the assessing officer and confirmed up to the Joint Commissioner-revisional authority were not required to be interfered with by the High Court in exercise of powers under article 226 of the Constitution. The High Court lacks the expertise on deciding the disputed questions and more*

particularly the technical aspect which could have been left to the committee consisting of experts."

27. The overall grading and assessment of an IAS officer requires an in-depth understanding of various facets of an administrative functionary such as personality traits, tangible and quantifiable professional parameters which may include *inter alia* the competency and ability to execute projects; adaptability; problem-solving and decision-making skills; planning and implementation capabilities; and the skill to formulate and evaluate strategy. The aforesaid indicative parameters are typically then analysed by adopting a specialised evaluation matrix and thereafter, synthesised by a competent authority to award an overall grade to the candidate at the end of the appraisal / evaluation. Accordingly, in our considered view, the process of evaluation of an IAS officer, more so a senior IAS officer entails a depth of expertise, rigorous and robust understanding of the evaluation matrix coupled with nuanced understanding of the proficiency required to be at the forefront of the bureaucracy. This administrative oversight ought to have been left to the executive on account of it possessing the requisite expertise and mandate for the said task.

28. Accordingly, it is our opinion that the High Court entered into a specialised domain i.e., evaluating the competency of an IAS officer by way of contrasting and comparing the remarks and overall grades awarded to Respondent No. 1 by (i) the Reporting Authority; (ii) the Reviewing Authority; and (iii) the Accepting Authority, without the requisite domain expertise and administrative experience to conduct such an evaluation. The High Court ought not to have ventured into the said domain particularly when the Accepting Authority is yet to pronounce its decision qua the Underlying Representation.

Conclusion

29. Given this backdrop, we are of the opinion that the learned Division Bench of the High Court erred in law. Accordingly, we set aside the judgement of the Division Bench of the High Court. Additionally, as we have been informed that the Accepting Authority is yet to take a decision on the Underlying Representation, we direct the Accepting Authority to take a decision on the Underlying Representation under Rule 9(7B) of the PAR Rules within a period of 60 (sixty) days from the date of pronouncement of this Judgement. Thereafter, Respondent

No. 1 is granted liberty to take recourse to remedies as may be available under law.

30. Before parting we must place on record our appreciation for Mr. Shreenath A. Khemka, Learned Counsel appearing on behalf of Respondent No. 1, for the spirited and able assistance rendered to the Court.

31. With the aforesaid observations, the appeal is allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

Headnotes prepared by:
Swathi H. Prasad, Hony. Associate Editor
(*Verified by*: Liz Mathew, Sr. Adv.)

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 407 : 2024 INSC 200

Sri Pubi Lombi
v.
The State of Arunachal Pradesh & Ors.

(Civil Appeal No. 4129 of 2024)

13 March 2024

[J.K. Maheshwari* and Sanjay Karol, JJ.]

Issue for Consideration

In absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, whether the interference made by the Division Bench of the High Court in setting aside the judgment of the Single Judge was justified merely on the pretext that the proposed modification (in transfer order) is arbitrary or without application of mind for the sole reason that it was mooted by a MLA.

Headnotes

Service Law – Modified transfer order – Challenge to – The Single Judge of the High Court by upholding modified order of transfer dated 20.04.2023 observed that transfer made on the basis of UO Note dated 28.02.2023 put up by the MLA itself cannot be held to vitiate the transfer until there is an allegation of any malafide exercise of powers by the respondents-authorities in issuing the order – However, the Division Bench of the High Court set aside the order of the Single Judge – Propriety:

Held: It is settled that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest – The interference is only justified in a case of malafide or infraction of any professed norm or principle – In view of the judicial decisions of the Supreme Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted – In the instant case, in absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, interference as made by

* Author

the Division Bench setting aside the well-reasoned judgment of the Single Judge is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA – The Division Bench has committed an error in setting aside the judgment of the Single Judge of the High Court. [Paras 9.2, 10, 14]

Judicial Review – Scope – Transfer orders – Discussed. [Paras 9.2 - 9.5]

Case Law Cited

Union of India and others v. S.L. Abbas, [1993] 3 SCR 427 **: (1993) 4 SCC 357;** *N.K. Singh v. Union of India and others,* [1994] Suppl. 2 SCR 772 **: (1994) 6 SCC 98;** *Mohd. Masood Ahmad v. State of U.P. and others,* [2007] 10 SCR 72 **: (2007) 8 SCC 150;** *State of Punjab v. Joginder Singh Dhatt,* **AIR 1993 SC 2486;** *Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Ors.,* [2012] 9 SCR 690 **: (2013) 1 SCC 524 – relied on.**

Union of India and another v. N.P. Thomas, **1993 Suppl. (1) SCC 704 – referred to.**

List of Keywords

Service Law; Transfer order; Modified transfer order; Plea of malafide; Violation of statutory provision; Judicial interference; Judicial Review; Transfer prejudicial to public interest.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4129 of 2024

From the Judgment and Order dated 22.09.2023 of the Gauhati High Court in WA No. 266 of 2023

Appearances for Parties

B.K. Sharma, Sr. Adv., Kaushik Choudhury, H.K. Das, S.P. Sharma, Saksham Garg, Jyotirmoy Chatterjee, Kasif Ahmed, Advs. for the Appellant.

Saurabh Mishra, Sr. Adv., Gagan Sanghi, Rameshwar Prasad Goyal, Abhimanyu Tewari, Ms. Eliza Bar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J. K. Maheshwari J.

1. Leave granted.

2. The judgment dated 22.09.2023 passed by the Division Bench of the Gauhati High Court in Writ Appeal No. 266/2023 reversing the judgment of the learned Single Judge dated 11.07.2023 passed in Writ Petition (Civil) No. 199 (AP) 2023 has been assailed by the appellant (respondent No. 5 in Writ Court). The learned Single Judge by upholding order of transfer dated 20.04.2023 observed that transfer made on the basis of UO Note dated 28.02.2023 put up by the Member of the Legislative Assembly, 29-Basar (ST) Assembly Constituency (MLA) itself cannot be held to vitiate the transfer until there is an allegation of any malafide exercise of powers by the respondents-authorities in issuing the order.

3. Writ Petition (Civil) No. 199 (AP) 2023 was filed before the High Court by respondent No. 5 herein challenging the modified order of transfer dated 20.04.2023. Learned Single Judge dismissed the writ petition in absence of having any allegation of malafide, being transfer is one of the ingredients of the service. The relevant part of the said order is reproduced as thus: -

> "17. Taking note of the law laid down by the Hon'ble Supreme Court in the case of Mohd. Masood Ahmad (supra); the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar (ST) Assembly Constituency, requesting the competent authority for transfer of the Respondent No. 5 as Deputy Director of School Education, Government of Arunachal Pradesh, Leparada, cannot be faulted with.
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> Accordingly, even if the respondent authorities had modified the earlier order of transfer, dated 15.11.2022, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, vide the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, acting on the U.O. Note, dated 28.02.2023, put up by

> the Member of Legislative Assembly, 29- Basar(ST) Assembly Constituency; that itself, cannot be held to vitiate the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar.
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> 19. Accordingly, in the absence of any mala fide exercise of power by the respondent authorities or violation of any statutory provision in issuing the impugned order, dated 20.04.2023, by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar; I am, therefore, not inclined to interfere with the impugned order, dated 20.04.2023, issued by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, in the facts and circumstances of the instant case, even if the aforesaid order, dated 20.04.2023, has been issued by the authority acting on the basis of the U.O. Note, dated 28.02.2023, put up by the Member of Legislative Assembly, 29-Basar(ST) Assembly Constituency, having regard to the law laid down by the Hon'ble Supreme Court in Mohd. Masood Ahmad (supra).
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> 20. In that view of the matter; I do not find any merit in this writ petition and the same is hereby dismissed."

4. On filing writ appeal by the Respondent No. 5 the Division Bench of the High Court while setting aside the order of learned Single Judge observed that the UO Note of the MLA was approved without application of mind and any remark of administrative exigencies by department to substantiate that it was in public interest or in exigency of the service. The relevant excerpt of the impugned judgment reads as:

> " 27. The appellant who was already under order of transfer is having a legitimate expectation to join and continue in the transferred place of posting. However, his transfer order was suddenly modified without any proposal being mooted by his employer but acting on the proposal of the Local MLA and in favour of respondent No.5. In the above backdrop, this court is of the considered opinion that such order of transfer is neither issued in the exigencies of

service nor in public interest, rather the same is a result of arbitrary exercise of power.

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29. This Court cannot approve such kind of sheerly lackadaisical administrative procedure adopted in the decision-making process inasmuch as the proper administration under the Constitutional scheme of governance, every State action must be supported by reason. In the present case, the fact cannot be ignored that the appellant was already under order of transfer and he was released on 19.04.2023 and he joined at the place of transfer on 20.04.2023 and therefore, in the present case, it was further necessary to have the decision impugned supported by reason in cancelling the earlier transfer order that too when the proposal of transfer of respondent No. 5 was initiated not by the administrative department in public interest or in exigencies of services rather it was purely on the basis of U.O. Note given by local MLA. Therefore, in the considered opinion of this Court, the impugned order cannot be said to be an order of transfer in public interest or in exigencies of services."

5. The judgment of the Division Bench has been questioned before us, inter-alia, contending that in the matter of transfer scope of judicial review is limited, only when such transfer is in violation of the statutory provisions or due to malafide reasons. As a corollary, it is not open to the Court to interfere with the orders of transfer on a post which is transferrable, in absence of any malafide alleged or infraction of any professed norms if such transfer is not detrimental. Further, it was canvassed that transfer on the instance of MP/MLA always would not per se vitiate the order of transfer.

6. Per contra learned counsel appearing for respondent No. 5 who was Writ Petitioner before the High Court submits that the malafide is of two kinds: - one malice in fact and the second malice in law, in the peculiar facts of this case the Division Bench has rightly set aside the order which do not warrant interference.

7. Conversely, learned counsel for the State has supported the contention of the appellant and urged that after consideration of the UO Note of the MLA, modified order of transfer has been passed in

public interest after due application of mind, and the Division Bench has committed an error in setting aside the well-reasoned judgment of learned Single Judge.

8. We have heard learned counsel for the parties and first we wish to appreciate the law and principles laid-down in the matter of transfer persuading judicial review.

9. In the case of ***Union of India and others v. S.L. Abbas; (1993) 4 SCC 357***, it is clearly observed by this Court that the scope of judicial review is only available when there is a clear violation of statutory provision or the transfer is persuaded by malafide, non-observation of executive instructions does not confer a legally enforceable right to an employee holding a transferable post. The relevant paragraph reads as under:

> "7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject……."

9.1 Further, following the footsteps of ***S.L. Abbas*** (supra) this Court in the case of ***Union of India and another v. N.P. Thomas; 1993 Supp (1) SCC 704*** held that the interference by the Court in an order of transfer on the instance of an employee holding a transferrable post without any violation of statutory provision is not permissible.

9.2 This Court further curtailed the scope of judicial review in the case of ***N.K. Singh v. Union of India and others; (1994) 6 SCC 98*** holding that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. It was further reiterated that interference is only justified in a case of malafide or infraction of any professed norm or principle. Moreover, in the cases where the career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference to the transfer must be eschewed. It is further held that the evidence requires to prove such transfer is prejudicial and in absence thereof interference

is not warranted. The law reiterated by this Court is reproduced, in following words: -

"9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

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"23. .....Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

"24. …Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised."

9.3 The issue involved in the present case is somewhat similar in the case of ***Mohd. Masood Ahmad v. State of U.P. and others; (2007) 8 SCC 150*** wherein this Court in paragraph 8 has observed as thus: -

"8. ….. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee……"

9.4 It is not tangential to mention that this Court in the case of ***State of Punjab v. Joginder Singh Dhatt; AIR 1993 SC 2486*** observed as thus: -

"3……..It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting……"

9.5 It is also imperative to refer the judgement of this Court in the case of ***Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Ors.; (2013) 1 SCC 524*** where it reiterated one of the pertinent principles of administrative law is that when allegations of malafide are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer. The relevant excerpt is reproduced as thus:

"27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned……."

10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by

the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.

11. On examining the facts of the present case, it is apparent that respondent No. 5 herein was transferred from the Government Higher Secondary School (GHSS) Kanubari, Longding district to Leparada as Deputy Director of School Education (DDSE) vide order dated 15.11.2022 and was directed to join in the last part of April, 2023. The UO Note dated 28.02.2023 has been written by the MLA specifying the administrative exigency and public interest in posting the appellant on the post of DDSE, Leparada. The said UO Note has been examined and competent authority has exercised its discretion in favour of the appellant, and the respondent No. 5 herein has been retained on the same post in the same district in same status which he was holding prior to order of transfer dated 15.11.2022 un-affecting his salary. Besides, it is also averred by the State that the modified order dated 20.04.2023 was passed prior to effective period during which respondent no. 5 was directed to join i.e., in the last part of April, 2023.

12. As per the counter affidavit filed by the State Government, even before us it is specifically averred that the order of transfer dated 20.04.2023 modifying the previous order dated 15.11.2022 has been issued in public interest after due application of mind and without any malafide intentions. As far as the stance of respondent no. 5 herein is concerned, the plea of malafide against transferring authority has not been agitated even before this Court or the High Court. Further, the impugned transfer order is also not alleged to be violative of any prescribed statutory provision.

13. In view of the stand taken by the Government and in absence of plea of malafide and no averment regarding violation of statutory provision taken by the private respondent before the High Court, interference as made by the Division Bench setting aside the well-reasoned judgment of the Single Judge is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA. In our view the Division Bench has committed an error in setting aside the judgment of the learned Single Judge.

14. Accordingly, the Civil Appeal is hereby allowed, the judgment and order dated 22.09.2023 passed by the Division Bench of the High

Court is hereby set aside, restoring the order dated 11.07.2023 of the learned Single Judge. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 417 : 2024 INSC 209

Association for Democratic Reforms and Another
v.
Union of India and Others

(Miscellaneous Application Diary No 11805 of 2024)
In
(Miscellaneous Application No 486 of 2024)
In
(Writ Petition (C) No. 880 of 2017)

15 March 2024

[Dr Dhananjaya Y Chandrachud, CJI, Sanjiv Khanna, B R Gavai, J B Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

Matter pertains to the application filed by ECI seeking return of data as regards Electoral Bonds filed before this Court in compliance with the interim order dated 12.04.2019, to enable it to comply with the order of this Court dated 11.04.24 directing ECI to upload the data furnished on its website.

Headnotes

Elections – Electoral Bonds – Application by ECI seeking return of data as regards Electoral Bonds filed before this Court to enable it to upload all the documents since it did not retain a copy of the data which was collated by it, being placed before this Court in sealed custody:

Held: Issuance of directions to the Registrar (Judicial) to get the data filed by ECI scanned and digitized and thereafter, return the same to the counsel of ECI, who would then upload the data on its website within the stipulated period – Also issuance of notice to State Bank of India since SBI has not disclosed the alpha-numeric numbers of the Electoral Bonds alongwith the direction for the presence of a Senior Officer of SBI, responsible for the management and storage of details of Bonds purchased and redeemed, on the next date of hearing.

Case Law Cited

Association for Democratic Reforms v. Union of India, [2021] 2 SCR 851 **: Writ Petition (Civil) No 880 of 2017 – referred to.**

* Author

List of Keywords

Scanning and digitization of documents; Electoral bonds; Alpha-numeric numbers of the Electoral Bonds.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Miscellaneous Application Diary No.11805 of 2024

In

Miscellaneous Application No.486 of 2024

In

Writ Petition (Civil) No.880 of 2017

From the Judgment and Order dated 11.03.2024 in MA No.486 of 2024 of the Supreme Court of India

Appearances for Parties

Prashant Bhushan, Ms. Neha Rathi, Ms. Kajal Giri, Pranav Sachdeva, Ms. Shivani Kapoor, Kamal Kishore, Advs. for the Petitioners.

Amit Sharma, Dipesh Sinha, Ms. Pallavi Barua, Ms. Aparna Singh, Advs. for the Applicant.

Tushar Mehta, SG, Kapil Sibal, Sr. Adv., for the Respondents.

Judgment / Order of the Supreme Court

Order

1. An application has been filed by the Election Commission of India[1] seeking further directions.

2. In the order of this Court dated 11 March 2024, this Court had directed that ECI shall upload on its website the data furnished to this Court in compliance with the interim order dated 12 April 2019 which was being maintained in the custody of this Court. While issuing this direction, the Court has presumed that a copy of the data which was lodged before the Registry of this Court would be available with the ECI.

1 "ECI"

3. Mr Amit Sharma, counsel appearing on behalf of the ECI states that, as a matter of fact, ECI did not retain a copy of the data which was collated by it since it was being placed before this Court in sealed custody.

4. The request, therefore, of the ECI is that the data which was filed before this Court be returned to it to enable it to comply with the order of this Court for uploading all the documents. This request of the ECI has not been opposed by Mr Kapil Sibal and Mr Vijay Hansaria, senior counsel and Mr Prashant Bhushan, counsel for the petitioners.

5. We accordingly issue the following directions:

   (i) The Registrar (Judicial) of this Court shall ensure that the data which has been filed by ECI in pursuance of the interim orders of this Court is scanned and digitized. This may be carried out preferably by 5 pm tomorrow (16 March 2024);

   (ii) Once the above exercise is completed, the originals shall be returned to Mr Amit Sharma, counsel appearing on behalf of ECI;

   (iii) ECI shall then upload the data on its website on or before 5 pm on 17 March 2024; and

   (iv) A copy of the scanned and digitized files shall also be made available to Mr Amit Sharma to obviate the replication of the process of digitization.

6. The Miscellaneous Application is accordingly disposed of.

7. The judgment of the Constitution Bench in ***Association for Democratic Reforms vs Union of India***[2] required the State Bank of India[3] to furnish to the ECI all details of the Electoral Bonds purchased, and, as the case may, redeemed by political parties, including the date of purchase/redemption, name of the purchaser and the denomination of the Electoral Bond purchased. It has been submitted that SBI has not disclosed the alpha-numeric numbers of the Electoral Bonds.

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2 [2021] 2 SCR 851 : Writ Petition (Civil) No 880 of 2017

3 "SBI"

8. The Solicitor General of India submits that since he is not appearing for SBI, notice may be issued to it.

9. We direct the Registry to issue notice to SBI, returnable on 18 March 2024. Additionally, we also direct the presence of a Senior Officer of SBI who is responsible for the management and storage of details of Bonds purchased and redeemed on the next date of hearing.

10. A copy of this order shall be served by the Registrar (Judicial) on Mr Sanjay Kapur, Standing Counsel for SBI.

Headnotes prepared by: Nidhi Jain

Result of the case:
Miscellaneous Application disposed of.

[2024] 3 S.C.R. 421 : 2024 INSC 202

Srikant Upadhyay & Ors.
v.
State of Bihar & Anr.

(Criminal Appeal No. 1552 of 2024)

14 March 2024

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

Issue for Consideration

Whether there could be any bar on the Trial Court for proceeding u/s. 82 Cr.P.C., merely because an anticipatory application for bail has been filed or because such an application was adjourned without passing any interim order.

Headnotes

Code of Criminal Procedure, 1973 – s.438 and s.82 – Application for anticipatory bail was filed in November 2022 and brought up for hearing on 04.04.2023, on which it was dismissed – Meanwhile, proclamation was issued u/s. 82 Cr.P.C. on 04.01.2023 and thereafter process u/s.83 Cr.P.C. was initiated on 15.03.2023 – The core contention of the appellants is that the rejection of the application for anticipatory bail without considering the application on merits for the reason of issuance of proclamation u/s. 82, Cr.P.C., is unsustainable – Propriety:

Held: In view of the proviso u/s. 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail – In short, nothing prevents the court from adjourning such an application without passing an interim order – The appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order – At any rate, the said application was rejected on 04.04.2023 –Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions u/s. 82, Cr.PC, merely because of the pendency of an application for anticipatory bail –

* Author

If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation u/s. 82, Cr.PC, by filing successive applications for anticipatory bail – It is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps u/s. 83, Cr.PC, in accordance with law. [Para 23]

Code of Criminal Procedure, 1973 – s. 438 and s.82 – Various orders by trial Court – Issuance of non-bailable warrants – Disobedience by the conduct – Proclamation issued u/s. 82 – Appellants sought pre-arrest bail – Whether appellants were entitled to pre-arrest bail:

Held: The facts would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court – They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail – Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested – Even after the issuance of non-bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling – It is a fact that even after coming to know about the proclamation u/s. 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences – Considering the conduct of the appellants, there is no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail. [Para 16]

Code of Criminal Procedure, 1973 – s.82 – Non-attendance in obedience to proclamation u/s. 82 Cr.P.C. – Filing of an anticipatory bail application through an advocate – Whether filing of such application through advocate could be treated as appearance before the Court:

Held: The view taken by the Gujarat High Court in Savitaben Govindbhai Patel & Ors. v. State of Gujarat is approved that filing of an anticipatory bail through an advocate would not and could not be treated as appearance before a court by a person against whom such proceedings (u/ss.82/83 of Cr.P.C.) are instituted. [Paras 19 and 20]

Case Law Cited

Lavesh v. State (NCT of Delhi), [2012] 7 SCR 469 **: (2012) 8 SCC 730;** *State of Madhya Pradesh v. Pradeep Sharma,* [2013] 12 SCR 772 **: (2014) 2 SCC 171 – relied on.**

Savitaben Govindbhai Patel & Ors. v. State of Gujarat, **2004 SCC OnLine Guj 345 – approved.**

Prem Shankar Prasad v. State of Bihar and Anr., [2021] 6 SCR 1176 **: (2022) 14 SCC 516;** *HDFC Bank Ltd. v. J.J.Mannan & Anr.,* [2009] 16 SCR 590 **: 2010 (1) SCC 679 – referred to.**

Shrenik Jayantilal Jain and Anr. v. State of Maharashtra Through EOW Unit II, Mumbai, **[2014 SCC Online Bom 549] – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Prevention of Witch (Daain) Practices Act, 1999.

List of Keywords

Anticipatory bail; Pre-arrest bail; Issuance of proclamation; Adjournment of bail application; Interim order; Trial Court orders; Issue of non-bailable warrant; Disobedience by conduct; Steps for proclamation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1552 of 2024

From the Judgment and Order dated 04.04.2023 of the High Court of Judicature at Patna in CRLM No.67668 of 2022

Appearances for Parties

Basant R Sr. Adv., Anand Shankar, Debashis Mukherjee, Param Nand, Kavinesh Rm, Onkar Nath, Advs. for the Appellants.

Anshul Narayan, Prem Prakash, Bhanwar Pal Singh Jadon, Susheel Tomar, Satya Prakash, Chetan Jadon, Ms. Abha R. Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

Leave granted.

1. This appeal is directed against the order dated 04.04.2023 in CRLM No.67668 of 2022 passed by the High Court of Judicature at Patna whereby and whereunder the application for anticipatory bail filed by the appellant was dismissed. The pre-arrest bail application was moved in connection with FIR No.79 of 2020, registered against him and co-accused at Govidganj, Police Station, District East Champaran, Bihar, under Sections 341, 323, 354, 354 (B), 379, 504, 506 and 149 of the Indian Penal Code, 1860 (for short, 'IPC') and Section 3/4 of Prevention of Witch (Daain) Practices Act, 1999 (for short, 'the Daain Act').

2. Heard, Mr. Basant R., learned Senior Counsel for the appellants and Mr. Anshul Narayan, learned counsel for the respondent-State.

3. The question of seminal importance that arises for consideration can better be explained and understood by referring to a decision of this Court in ***Prem Shankar Prasad v. State of Bihar and Anr.***[1], which was rendered after referring to the earlier decisions of this Court in ***State of Madhya Pradesh v. Pradeep Sharma***[2] and ***Lavesh v. State (NCT of Delhi)***[3]. In ***Lavesh's*** case (supra), this Court held in paragraph 12 thus: -

> *"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms*

1 [2021] 6 SCR 1176 : (2022) 14 SCC 516

2 [2013] 12 SCR 772 : (2014) 2 SCC 171

3 [2012] 7 SCR 469 : (2012) 8 SCC 730

> *of Section 82 of the Code he is not entitled to the relief of anticipatory bail."*
>
> **(Underline supplied)**

4. In the decision in ***Pradeep Sharma's*** case (supra) this Court held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 Cr.PC., he is not entitled to relief of anticipatory bail. After extracting Section 438, Cr.PC., it was further held therein thus:-

> *"The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty."*

5. In ***Prem Shankar Prasad's*** case (supra), this Court took note of the fact that the respondent-accused was absconding and concealing himself to avoid service of warrant of arrest and the proceedings under Sections 82/83, Cr.PC have been initiated against him, set aside the order of the High Court granting anticipatory bail ignoring the proceedings under Sections 82/83, Cr.PC. Thus, it is obvious that the position of law, which was being followed with alacrity, is that in cases where an accused against whom non-bailable warrant is pending and the process of proclamation under Sections 82/83, Cr.PC is issued, is not entitled to the relief of anticipatory bail.

6. The learned Senior Counsel appearing for the appellants-accused would contend that the *well-nigh* settled position of law in respect of pre-arrest bail as above, is inapplicable in a case where a person apprehending arrest has already filed an application seeking anticipatory bail and it is pending sans any interim orders and during its pendency if the Trial Court issues proclamation under Section 82, Cr.PC. In short, the proposition of law raised is – when an application seeking anticipatory bail filed by a person apprehending arrest is pending without any interim protection, whether initiation of proceeding for issuance of proclamation under Section 82, Cr. PC would make that application worthy for further consideration on its own merits? According to the learned Senior Counsel appearing for the appellants even in such envisaged circumstances and despite

the pendency of non-bailable warrant, the pending application for anticipatory bail is liable to be considered on its own merits and at any rate, on the aforesaid grounds the pending application of pre-arrest bail could not be dismissed.

7. *Per contra*, the learned counsel appearing for the State vehemently opposed the proposition(s) mooted on behalf of the appellants. It is submitted that the issuance of non-bailable warrant and initiation of the proceedings under Section 82, Cr.PC are justiciable. Certainly, in the absence of an interim protection, there can be no legal trammel for issuing non-bailable warrant or for initiating proceedings under Section 82, Cr. PC. merely because of the pendency of an application for anticipatory bail though more often than not, under such circumstances subordinate Courts would wait for orders of the High Court. It be so, existence of any such circumstance would disentitle a person to press for pre-arrest bail. Even a pending application is not maintainable, it is contended.

8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in ***HDFC Bank Ltd. v. J.J.Mannan & Anr.***[4]).

9. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr.PC, courts must keep reminded of the position that law aides only

4 [2009] 16 SCR 590 : 2010 (1) SCC 679

the abiding and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance. We will dilate this discussion with reference to the factual matrix of this case. However, we think that before dealing with the same, a small deviation to have a glance at the scope and application of the provisions under Section 82, Cr.PC will not be inappropriate.

10. There can be little doubt with respect to the position that the *sine qua non* for initiation of an action under Section 82, Cr. PC is prior issuance of warrant of arrest by the Court concerned. In that regard it is relevant to refer to Section 82 (1), Cr. PC, which reads thus: -

> ***"82. Proclamation for person absconding**. — (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."*

11. The use of expression '*reason to believe*' employed in Section 82 (1) Cr. PC would suggest that the Magistrate concerned must be subjectively satisfied that the person concerned has absconded or has concealed himself. In the context of Section 82, Cr. PC, we will have to understand the importance of the term '*absconded'*. Its etymological and ordinary sense is that one who is hiding himself or concealing himself and avoiding arrest. Since the legality of the proceedings under Section 82, Cr. PC is not under challenge, we need not go into that question. As noticed above, the nub of the contentions is that pending the application for pre-arrest bail, proclamation under Section 82, Cr.P.C., should not have been issued and at any rate, its issuance shall not be a reason for declining to consider such application on merits. Bearing in mind the position of law revealed

from the decisions referred to hereinbefore and the positions of law, we will briefly refer to the factual background of the case.

12. For considering the aforesaid proposition of law, we think it absolutely unnecessary to deal with FIR No. 37 of 2018 dated 28.03.2018 filed against Respondent No.2, Mr. Rajiv Kumar Upadhyay and four others, and also FIR No.66 of 2018 registered against appellant No.4 (first accused) and four other family members of the appellants. Civil Suit No.140 of 2019 filed against the family members of the appellants for illegal encroachment is also not to be considered as nothing would turn out of it in relation to the question posed for consideration. We may hasten to add that if the question whether the appellants are entitled to anticipatory bail survives, even after answering the aforementioned question(s) posed for consideration, we may refer to the relevant aspects in relation to the said cases.

13. As noticed hereinbefore, the appellants herein moved the application for anticipatory bail in connection with FIR No.79 of 2020 registered at Govindgunj Police Station. It is a fact that the subject FIR was registered pursuant to the directions of the learned Chief Judicial Magistrate, East Champaran, Motihari on complaint No.395 of 2020 filed by Respondent No.4 under Section 156 (3), Cr. PC. The allegations in the complaint are as follows: -

On 22.02.2020, at about 8.00 am, when Jagmati Kunwar, the grandmother of respondent No.4 reached in front of the house of appellant No.2, Shashikant Upadhyay, he said that she is the witch who made his child sick and shall not be spared. Then, the appellants and eight other family members gathered around her and the 4th appellant caught hold of her hair and asked the others to bring dung. Thereupon, accused Paritosh Kumar brought dung and accused Rishu put dung into the mouth of Jagmati Kunwar. Consequently, she vomited and fell down. When respondent No.2/ complainant and other witnesses went for her help, the second appellant Shashikant Upadhayay assaulted and abused respondent No.2. Co-accused Paritosh Kumar and Jishu Kumar tore the blouse of Kiran Devi and she was disrobed. Another co-accused Soni Devi snatched a gold chain from the complainant. The co-accused Ravikant and appellant No.5 tore the clothes of Jagmati Kunwar and made her half-naked.

14. Later, after completing the investigation, charge sheet was filed on 08.08.2022 only for offences under Sections 341, 323 and 504 IPC, that too only against accused Lakhpati Kunwar (accused No.7). However, the learned Trial Court, on perusal of the FIR, charge sheet and case diary found that sufficient materials are available in the case diary to proceed against the other 12 accused, including the appellants herein and accordingly vide order dated 20.02.2021 took cognizance of the offences under Sections 341, 323, 354B, IPC and Section 3/4 of the Daain Act and issued summons to all accused including the appellants and fixed 12.04.2022 as the date for their appearance. The accused were absent on that day and hence on 12.04.2022, the Trial Court issued bailable warrants. On 25.05.2022, the accused, other than the appellants herein, appeared and applied for regular bail before the Trial Court and the Trial Court granted them regular bail. Subsequently, the complainant/the second respondent herein, applied for cancellation of bail granted to them and as per the order dated 09.06.2022 the grantees of bail were issued with show cause notices. Upon receiving the notice for cancellation of bail, they unsuccessfully approached the Sessions Court challenging the order taking cognizance, in Criminal Revision Petition No.94 of 2022. Pursuant to the dismissal of the Revision Petition, the Trial Court posted the application for cancellation of bail on different dates. The fact is that despite such developments, the appellants herein neither appeared before the Trial Court nor sought for regular bail. In the meanwhile, the appellants herein moved a bail-cum-surrender application (described as such by them), before the Trial Court. However, it was withdrawn on 23.08.2022 on the fear of arrest. Thereupon, the Trial Court fixed the date for appearance of the appellants on 30.08.2022. Before the date fixed for their appearance, the appellants filed application for anticipatory bail before the Sessions Court and, thereafter on 06.09.2022, informed the Trial Court about its listing before the Sessions Court on 27.09.2022 for final hearing. The Trial Court thereupon posted the matter for appearance of the appellants to 11.10.2022. The anticipatory bail moved by the appellants was dismissed on 27.09.2022 and thereupon, the Trial Court took up the matter on 03.11.2022. Since the appellants remained absent, the Trial Court issued non-bailable warrants and listed the matter to 04.11.2022 for their production. Meanwhile, the appellants herein approached the High Court by filing CRLM No.67668 of 2022 seeking anticipatory bail. It is to be noted that non-bailable warrants were pending against

them when they moved the said application for anticipatory bail. On 04.12.2022, on behalf of the appellants, the Trial Court was informed about the filing of anticipatory bail application before the High Court. Consequently, the matter was listed on 04.01.2023. On 04.01.2023, pursuant to the non-appearance of the appellants despite the earlier order for their appearance and the issuance of non-bailable warrants, the Trial Court issued proclamation under Section 82(1), Cr. PC. Later, proceedings under Section 83, Cr.PC were also initiated. On 15.03.2023, on behalf of the appellants it was prayed to postpone the process under Section 82/83, Cr. PC. However, the Trial Court proceeded to issue the process under Section 83, Cr. PC, based on the proclamation under Section 82(1) Cr.PC. On 04.04.2023, the application for anticipatory bail filed by the appellants was dismissed, obviously taking note of the proceedings under Sections 82/83, Cr. PC and observing that owing to such developments the application for pre-arrest bail could not be maintained.

15. The core contention of the appellants is that the rejection of the application for anticipatory bail without considering the application on merits for the reason of issuance of proclamation under Section 82, Cr. PC, is unsustainable. It is the further contended that at no stage, the appellants were "*evading the arrest*" or "*absconding*" but were only exercising their legal right to seek anticipatory bail. It is in the aforesaid circumstances that the learned Senior Counsel appearing for the appellants raised the contention that when an application for anticipatory bail is pending, the issuance of proclamation, following issuance of non-bailable warrant could not be a reason for non-considering the application for anticipatory bail on merits.

16. For a proper consideration of the aforesaid contentions and allied questions, it is only appropriate to refer to certain provisions of law as also certain relevant decisions. From the chronology of events narrated hereinbefore, it is evident that for reasons best known to the appellants, subsequent to the filing of the final report in terms of the provisions under Section 173 (2), Cr.P.C in FIR No.79/2020 and issuance of summons, issuance of bailable warrants and issuance of non-bailable warrants; pursuant to the failure of the appellants to appear before the Court on the date fixed for their appearance based on bailable warrants, they did not care to take any action in accordance with law except moving applications for bail. Same was the position even after the issuance of the proclamation under

Section 82, Cr.PC. As noted earlier, in the case of similarly situated co-accused of the appellants, they appeared and obtained regular bail pursuant to the issuance of bailable warrants. Thus, a scanning of the acts and omissions of the appellants, it can only be seen that virtually, the appellants were defying the authority of law and moving applications for bail when they apprehended arrest owing to their non-attendance and dis-obedience. It is in the context of the aforesaid facts revealed from the materials on record that the contention of the appellants that they were only pursuing their right to file application for anticipatory bail and, therefore, they were not either evading the arrest or absconding, has to be appreciated.

17. Section 70 (2), Cr. PC mandates that every warrant issued under Section 70 (1), Cr. PC shall remain in force until it is cancelled by the Court which issued it, or until it is executed. In this case, as noticed hereinbefore, the bailable warrants and thereafter the non-bailable warrants, were issued against the appellants. They were neither cancelled by the Trial Court nor they were executed. It is not their case that they have successfully challenged them. Sections 19, 20, 21, 174 and 174 A, IPC assume relevance in this context. They, insofar as relevant read thus:

> ***19. "Judge"**. —The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person*
>
> *who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body or persons, which body of persons is empowered by law to give such a judgment.*
>
> ***20. "Court of Justice"**.—The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.*
>
> ***21. "Public servant"**.—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—*
>
> *…*

[Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

***174. Non-attendance in obedience to an order from public servant**.—Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,*

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

***174A .Non-appearance in response to a proclamation under section 82 of Act 2 of 1974**.— Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.*

18. Taking note of the aforesaid facts with respect to the issuance of summons, warrants and subsequently the proclamation, a conjoint reading of Sections 19, 20 and 21, IPC containing the terms "*Judge*", "*Court of Justice*" and "*Public Servant*" and Sections 174 and 174A, IPC can make them liable even to face further proceedings. Same is

the position in case of non-attendance in obedience to proclamation under Section 82, Cr. PC.

19. Bearing in mind the aforesaid provisions and position, we will refer to certain relevant decisions. In ***Savitaben Govindbhai Patel & Ors. v. State of Gujarat***[5], the High Court of Gujarat observed thus: -

> *"9. Filing of an Anticipatory Bail Application by the petitioners-accused through their advocate cannot be said to be an appearance of the petitioners-accused in a competent Court, so far as proceeding initiated under Section 82/83 of the Code is concerned; otherwise each absconding accused would try to create shelter by filing an Anticipatory Bail Application to avoid obligation to appear before the court and raises the proceeding under Section 83 of the Code claiming that he cannot be termed as an absconder in the eye of law. Physical appearance before the Court is most important, if relevant scheme of Sections 82 and 83, is read closely."*
>
> *(underline supplied)*

20. We are in full agreement with the view taken by the Gujarat High Court that filing of an anticipatory bail through an advocate would not and could not be treated as appearance before a court by a person against whom such proceedings, as mentioned above are instituted. The meaning of the term "absconded" has been dealt by us hereinbefore. We found that its etymological and original sense is that the accused is hiding himself. What is required as proof for absconding is the evidence to the effect that the person concerned was knowing that he was wanted and also about pendency of warrant of arrest. A detailed discussion is not warranted in this case to understand that the appellants were actually absconding. It is not in dispute that they were served with the "summons". The fact that bailable warrants were issued against them on 12.04.2022 is also not disputed, as the appellants themselves have produced the order whereunder bailable warrants were issued against them. We have already referred to Section 70 (2), Cr. PC which would reveal the position that once a warrant is issued it would remain in force until it

5 2004 SCC OnLine Guj 345

is cancelled by the Court which issued it or until its execution. There is no case for the appellants that either of such events had occurred in this case to make the warrants unenforceable. They also got no case that their application was interfered with by a higher Court. That apart, it is a fact that the appellants themselves on 23.08.2022, moved a bail-cum-surrender application before the Trial Court but withdrew the same fearing arrest. It is also relevant to note that in the case on hand even while contending that they were before a Court, the appellants got no case that in terms of the provisions under Section 438 (1-B), Cr. PC an order for their presence before the Court was ordered either suo motu by the Court or on an application by the public prosecutor. When that be the circumstance, the appellants cannot be allowed to contend that they were not hiding or concealing themselves from arrest or that they were not knowing that they were wanted in a Court of law.

21. To understand and consider another contention of the appellants it is worthy to extract ground No.3 raised by the appellants in SLP which reads thus:

> *"III. Because the Hon'ble High Court has failed to appreciate that proclamation under section 82 Cr.P.C. was issued on 04.01.2023 by the Ld. Trial Court and thereafter process under section 83 Cr.P.C. have been initiated on 15.03.2023 whereas the application for anticipatory bail by the petitioner before the Hon'ble High Court was filed in November, 2022, however, the same was came for hearing on 04.04.2023. It is, therefore, evident that when the petitioners preferred filing of anticipatory bail before the Hon'ble High Court then none of the petitioner was declared absconder and process under section 82/83 Cr.P.C. were not initiated against them."*

22. The above extracted ground taken by the appellant constrains us to consider the question whether there could be any bar on the Trial Court for proceeding under Section 82 Cr.PC, merely because an anticipatory application for bail has been filed or because such an application was adjourned without passing any interim order. We may hasten to add here that it is always preferable to pass orders, either way, at the earliest. In the case on hand, application for anticipatory bail was filed by the appellants before the High Court in November, 2022 and brought up for hearing on 04.04.2023, on which day it was

dismissed as per the impugned order. The very ground, extracted above, would reveal that in the meanwhile, proclamation under Section 82 Cr.PC, was issued on 04.01.2023 and thereafter process under Section 83 Cr.PC was initiated on 15.03.2023.

23. There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438 (1), Cr.PC, would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in ***Shrenik Jayantilal Jain and Anr. v. State of Maharashtra Through EOW Unit II, Mumbai***[6] and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 04.04.2023. Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82, Cr.PC, merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as

6 [2014 SCC Online Bom 549]

a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82, Cr.PC, by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr.PC, in accordance with law.

24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied

and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non-bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

26. The upshot of the discussion is that there is no ground for interfering with the order of the High Court rejecting the application for anticipatory bail rather not considering application on merits. Since their action is nothing short of defying the lawful orders of the Court and attempting to delay the proceedings, this appeal must fail. Consequently, it is dismissed.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal dismissed.

[2024] 3 S.C.R. 438 : 2024 INSC 205

Rakesh Ranjan Shrivastava
v.
The State of Jharkhand & Anr.

(Criminal Appeal No. 741 of 2024)

15 March 2024

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

Issue for Consideration

Whether the provision of sub-section (1) of s.143A, Negotiable Instruments Act, 1881, which provides for the grant of interim compensation, is directory or mandatory. If it is held to be a directory provision, what are factors to be considered while exercising powers under sub-section (1) of Section 143A of the N.I. Act.

Headnotes

Negotiable Instruments Act, 1881 – s.143A(1) – Grant of interim compensation – Directory or mandatory:

Held: Power under sub-section (1) of s.143A is discretionary and not mandatory – Sub-section (1) of s.143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint u/s.138, even before any adjudication is made on the guilt of the accused – The power can be exercised at the threshold even before the evidence is recorded – If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint u/s.138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount – Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice – If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness and can be held to be violative of Article 14 of the Constitution – Considering the drastic consequences of exercising the power u/s.143A before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall" - In the present case, the Trial Court mechanically passed the order of deposit of Rs.10,00,000/- without considering the issue of prima facie case and other relevant factors – It is true that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, but the direction was issued to pay the amount without application of mind – Even the High Court did not apply its mind – Impugned

* Author

orders set aside – Trial Court to consider the application for grant of interim compensation afresh. [Paras 19, 14, 17 and 18]

Negotiable Instruments Act, 1881 – s.143A(1) – Exercise of powers under – Factors to be considered – While deciding the prayer made u/s.143A, the Court must record brief reasons indicating consideration of all relevant factors – Broad parameters for exercising the discretion u/s.143A:

Held: The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application – The presumption u/s.139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation as the presumption is rebuttable – The financial distress of the accused can also be a consideration – A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case – If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation – If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted – While doing so, it will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. – There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated – The parameters stated are not exhaustive. [Paras 19, 16]

Negotiable Instruments Act, 1881 – ss.143A, 138 – Code of Criminal Procedure, 1973 – ss.2(w), (x), 259, 262-265:

Held: Power u/s.143A(1) is to direct the payment of interim compensation in a summary trial or a summons case upon the recording of the plea of the accused that he was not guilty and, in other cases, upon framing of charge – As the maximum punishment u/s.138 of the N.I. Act is of imprisonment up to 2 years, in view of clause (w) r/w clause (x) of s.2, Cr.PC, the cases u/s.138 of the N.I. Act are triable as summons cases – However, sub-section (1) of s.143 provides that notwithstanding anything contained in the Cr.PC, the Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265 of the Cr.PC – However, when at the commencement of the trial or during the course of a summary trial, it appears to the Court that a sentence of imprisonment for a term exceeding one year may have to be

passed or for any other reason it is undesirable to try the case summarily, the case shall be tried in the manner provided by the CrPC – Therefore, the complaint u/s.138 becomes a summons case in such a contingency – Further, u/s.259 of the Cr.PC, subject to what is provided in the said Section, the Magistrate has the discretion to convert a summons case into a warrant case – Only in a warrant case, there is a question of framing charge – Therefore, clause (b) of sub-section (1) of s.143A will apply only when the case is being tried as a warrant case – In the case of a summary or summons trial, the power under sub-section (1) of s.143A can be exercised after the plea of the accused is recorded. [Para 10]

Negotiable Instruments Act, 1881 – s.143A – Code of Criminal Procedure, 1973 – s.421 – Recovery of interim compensation:

Held: Under s.143A(5), it is provided that the amount of interim compensation can be recovered as if it were a fine u/s.421 of the Cr.PC – Therefore, by a legal fiction, the interim compensation is treated as a fine for the purposes of its recovery – s.421 deals with the recovery of the fine imposed by a criminal court while passing the sentence – Thus, recourse can be taken to s.421 of the Cr.PC. for recovery of interim compensation. [Para 11]

Negotiable Instruments Act, 1881 – s.143A – Object – Discussed.

Negotiable Instruments Act, 1881 – s.143A – Non-payment of interim compensation – Consequences:

Held: Non-payment of interim compensation fixed u/s.143A has drastic consequences – To recover the same, the accused may be deprived of his immovable and movable property – If acquitted, he may get back the money along with the interest as provided in s.143A(4) from the complainant – But, if his movable or immovable property has been sold for recovery of interim compensation, even if he is acquitted, he will not get back his property – Though, the N.I. Act does not prescribe any mode of recovery of the compensation amount from the complainant together with interest as provided in s.143A(4), as sub-section (4) provides for refund of interim compensation by the complainant to the accused and as sub-section (5) provides for mode of recovery of the interim compensation, obviously for recovery of interim compensation from the complainant, the mode of recovery will be as provided in s.421 of the CrPC – It may be a long-drawn process involved for the recovery of the amount from the complainant – If the complainant

has no assets, the recovery will be impossible. [Para 12]

Negotiable Instruments Act, 1881 – ss.148, 143A – Tests applicable for the exercise of jurisdiction u/s.148(1) not to apply u/s.143A(1):

Held: Sub-section (1) of s.148 confers on the Appellate Court a power to direct the appellant/accused to deposit 20 per cent of the compensation amount – It operates at a different level as the power thereunder can be exercised only after the appellant/accused is convicted after a full trial – In the case of s.143A, the power can be exercised even before the accused is held guilty – s.143A can be invoked before the conviction of the accused, and therefore, the word "may" used therein can never be construed as "shall" – The tests applicable for the exercise of jurisdiction u/sub-section (1) of s.148 can never apply to the exercise of jurisdiction u/sub-section (1) of s.143A of the N.I. Act. [Paras 13, 15.1]

Words and expressions – 'may' – Interpretation:

Held: The word "may" ordinarily does not mean "must" – Ordinarily, "may" will not be construed as "shall" – But this is not an inflexible rule – The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may" – It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power – The legislative intent also plays a role in the interpretation of such provisions – Even the context in which the word "may" has been used is also relevant. [Para 9]

Case Law Cited

Surinder Singh Deswal v. Virender Gandhi, **[2019] 8 SCR 746 : (2019) 11 SCC 341**; *Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.*, **(2023) 10 SCC 446 – referred to**.

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973.

List of Keywords

Interim compensation; Directory or mandatory; Recovery of interim compensation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.741 of 2024

From the Judgment and Order dated 03.01.2023 of the High Court of Jharkhand at Ranchi in CRMP No.836 of 2021

Appearances for Parties

Shubham Bhalla, Rajnish Ranjan, Yajur Bhalla, Ms. Anchita Nayyar, Ms. Ragini Sharma, Ms. Akansha Gulati, Ms. Nitya Maheshwari, Ms. Gauri Bedi, Jaisurya Jain, Rohit Pandey, Alex Noel Dass, Vijay Kumar Dwivedi, Advs. for the Appellant.

Prateek Yadav, Mohd. Shahrukh, Yogesh Yadav, Pati Raj Yadav, Ms. Pratima Yadav, Ranbir Singh Yadav, Vishnu Sharma, Ms. Madhusmita Bora, Dipankar Singh, Mrs. Anupama Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. The issue involved in this criminal appeal is whether the provision of sub-section (1) of Section 143A of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), which provides for the grant of interim compensation, is directory or mandatory. If it is held to be a directory provision, the question that arises is, what are factors to be considered while exercising powers under sub-section (1) of Section 143A of the N.I. Act.

FACTUAL ASPECTS

The case of the 2nd respondent in the Complaint

2. The 2nd respondent (hereinafter referred as 'the respondent') is the complainant in a complaint under Section 138 of the N.I. Act. The complaint was filed in the Court of the Chief Judicial Magistrate at Bokaro. The case in the complaint is that the appellant and the respondent formed various companies on different terms and conditions regarding profit sharing. On 23rd September 2011, an appointment letter was issued by the appellant in his capacity as

the Managing Director of the company M/s Thermotech Synergy Pvt. Ltd. and on behalf of a proprietary concern, M/s Tech Synergy, by which the post of Executive Director was offered by the appellant to the respondent on consolidated salary of Rs. 1,00,000/- per month.

3. On 1st June 2012, the appellant formed a partnership with one Rahul Kumar Basu, in which the respondent was shown as an indirect partner. According to the respondent's case, M/s Tech Synergy was merged with another company - M/s Megatech Synergy Pvt. Ltd. It is alleged by the respondent that in August 2012, there was an agreement to pay him 50 per cent of the profit. One more partnership firm came into existence on 3rd June 2013, wherein the appellant, respondent, and Rahul Kumar were shown as partners. It is the case of the respondent that the appellant agreed to give a 50 per cent share in the profits of another company, Geotech Synergy Pvt. Ltd. It is alleged that the appellant did not pay the amounts due and payable to the respondent. Therefore, a legal notice was issued to the appellant by the respondent. According to the case of the respondent, the appellant was liable to pay the total amount of Rs. 4,38,80,000/- to the respondent, and in fact, a civil suit has been filed by the respondent in the Civil Court at Bokaro for recovery of the said amount. After that, on 13th July 2018, there was a meeting between parties at Ranchi when the appellant agreed to pay a sum of Rs. 4,25,00,000/- to the respondent, and two cheques in the sum of Rs. 2,20,00,000/- and 2,05,00,000/- dated 6th August 2018 and 19th September 2018 respectively were handed over to the appellant. As the first cheque in the sum of Rs. 2,20,00,000/- was dishonoured, a complaint was filed after the service of a statutory notice alleging the commission of an offence punishable under Section 138 of the N.I. Act on which the learned Magistrate took cognizance of the offence.

Application under Section 143A of the NI Act

4. Before the Court of the learned Magistrate, the respondent moved an application under Section 143A of the N.I. Act seeking a direction against the appellant/accused to pay 20 per cent of the cheque amount as compensation. By the order dated 7th March 2020, the learned Judicial Magistrate allowed the application and directed the

appellant to pay an interim compensation of Rs. 10,00,000/- to the respondent within 60 days. The Sessions Court affirmed the order of the learned Magistrate in a revision application. The said orders were subjected to a challenge before the High Court. The learned Judge of Jharkhand High Court dismissed the petition by the impugned judgment. These orders are the subject matter of challenge in the present criminal appeal.

SUBMISSIONS

5. The learned counsel appearing for the appellant pointed out that sub-section (1) of Section 143A of the N.I. Act uses the word 'may'. Therefore, the provision is discretionary. He submitted that the Trial Court cannot pass an order to pay interim compensation mechanically. He submitted that the Court must apply its mind to the facts of the case before passing the drastic order of deposit. He submitted that the existence of a prima facie case is essential for exercising the power under Section 143A. Only after prima facie consideration of the merits of the complainant's case and defence of the accused, the Court must conclude whether a case is made out for the grant of interim compensation. After the Court comes to the conclusion that a case for grant of interim compensation has been made out, the Court has to apply its mind to the quantum of interim compensation. In every case, the Court cannot grant 20 per cent of the cheque amount as interim compensation.

6. The learned counsel appearing for the respondent submitted that considering the very object of Section 138 of the N.I. Act, sub-section (1) of Section 143A will have to be held as mandatory. He submitted that there is a presumption under Section 139 of the N.I. Act that unless a contrary is proved, the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or liability. He submitted that the question of rebutting the said presumption would arise only after the evidence is adduced. Therefore, the defence of the accused at the stage of considering an application under sub-section (1) of Section 143A is irrelevant. In every case, an order of payment of interim compensation must follow. He submitted that unless it is held that sub-section (1) of Section 143A is mandatory, the very object of the legislature of enacting this provision will be frustrated.

CONSIDERATION OF SUBMISSIONS

The object of Section 143A

7. Section 143A was brought on the statute book by Act No. 20 of 2018 with effect from 1st September 2018. Section 143A reads thus:

> **"143-A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—**
>
> ***(a)*** **in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and**
>
> ***(b)*** **in any other case, upon framing of charge.**
>
> **(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the cheque amount.**
>
> (3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
>
> (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
>
> (5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall

be reduced by the amount paid or recovered as interim compensation under this section."

(emphasis added)

7.1. In the statement of objects and reasons, it was stated that unscrupulous drawers of the cheques prolong the proceedings of a complaint under Section 138 by filing appeals and obtaining a stay. Therefore, injustice is caused to the payee of a dishonoured cheque, who has to spend considerable time and resources in Court proceedings to realise the value of the cheque. It was further observed that such delays compromise the sanctity of the cheque transactions. Therefore, it was proposed to amend the N.I. Act to address the issue of undue delay in the final resolution of the cheque dishonour cases. It was also stated that the proposed amendments would strengthen the credibility of cheques and help trade and commerce.

8. We may note here that by the same Act No.20 of 2018, Section 148 was brought on the statute book, which provides that in an appeal preferred by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such a sum which shall be a minimum 20 per cent of the fine or compensation awarded by the Trial Court. The proviso to sub-section (1) of Section 148 clarifies that the amount payable under sub-section (1) of Section 148 is in addition to interim compensation paid by the appellant/ accused under Section 143A. There are no separate objects and reasons set out for the addition of Section 148.

MANDATORY OR DIRECTORY

9. There is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant.

10. The power under sub-section (1) of Section 143A is to direct the payment of interim compensation in a summary trial or a summons

case upon the recording of the plea of the accused that he was not guilty and, in other cases, upon framing of charge. As the maximum punishment under Section 138 of the N.I. Act is of imprisonment up to 2 years, in view of clause (w) read with clause (x) of Section 2 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.PC'), the cases under Section 138 of the N.I. Act are triable as summons cases. However, sub-section (1) of Section 143 provides that notwithstanding anything contained in the Cr.PC, the learned Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265 of the Cr.PC. However, when at the commencement of the trial or during the course of a summary trial, it appears to the Court that a sentence of imprisonment for a term exceeding one year may have to be passed or for any other reason it is undesirable to try the case summarily, the case shall be tried in the manner provided by the CrPC. Therefore, the complaint under Section 138 becomes a summons case in such a contingency. We may note here that under Section 259 of the Cr.PC, subject to what is provided in the said Section, the learned Magistrate has the discretion to convert a summons case into a warrant case. Only in a warrant case, there is a question of framing charge. Therefore, clause (b) of sub-section (1) of Section 143A will apply only when the case is being tried as a warrant case. In the case of a summary or summons trial, the power under sub-section (1) of Section 143A can be exercised after the plea of the accused is recorded.

11. Under sub-section (5) of Section 143A, it is provided that the amount of interim compensation can be recovered as if it were a fine under Section 421 of the Cr.PC. Therefore, by a legal fiction, the interim compensation is treated as a fine for the purposes of its recovery. Section 421 of the Cr.PC deals with the recovery of the fine imposed by a criminal court while passing the sentence. Thus, recourse can be taken to Section 421 of the Cr.PC. for recovery of interim compensation, which reads thus:

> **"421. Warrant for levy of fine.**—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—
>
> *(a)* issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause *(a)* of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause *(b)* of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

12. Non-payment of interim compensation by the accused does not take away his right to defend the prosecution. The interim compensation amount can be recovered from him treating it as fine. The interim compensation amount can be recovered by the Trial Court by issuing a warrant for attachment and sale of the movable property of the accused. There is also a power vested with the Court to issue a warrant to the Collector of the District authorising him to realise the interim compensation amount as arrears of land revenue from the movable or immovable property, or both, belonging to the accused. For recovery of the interim compensation, the immovable or movable property of the accused can be sold by the Collector. Thus, non-payment of interim compensation fixed under Section 143A has drastic consequences. To

recover the same, the accused may be deprived of his immovable and movable property. If acquitted, he may get back the money along with the interest as provided in sub-section (4) of Section 143A from the complainant. But, if his movable or immovable property has been sold for recovery of interim compensation, even if he is acquitted, he will not get back his property. Though, the N.I. Act does not prescribe any mode of recovery of the compensation amount from the complainant together with interest as provided in sub-section (4) of Section 143A, as sub-section (4) provides for refund of interim compensation by the complainant to the accused and as sub-section (5) provides for mode of recovery of the interim compensation, obviously for recovery of interim compensation from the complainant, the mode of recovery will be as provided in Section 421 of the CrPC. It may be a long-drawn process involved for the recovery of the amount from the complainant. If the complainant has no assets, the recovery will be impossible.

13. At this stage, we may note sub-section (1) of Section 148. Section 148 reads thus:-

> **"148. Power of Appellate Court to order payment pending appeal against conviction.—**(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:
>
> Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
>
> (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
>
> (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:
>
> Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount

> so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

Sub-section (1) of Section 148 confers on the Appellate Court a power to direct the appellant/accused to deposit 20 per cent of the compensation amount. It operates at a different level as the power thereunder can be exercised only after the appellant/accused is convicted after a full trial.

14. In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20 per cent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143A provides for penalising an accused even before his guilt is established. Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143A is discretionary.

15. Even sub-section (1) of Section 148 uses the word "may". In the case of ***Surinder Singh Deswal v. Virender Gandhi***[1], this Court, after considering the provisions of Section 148, held that the word

1 [2019] 8 SCR 746 : (2019) 11 SCC 341

"may" used therein will have to be generally construed as "rule" or "shall". It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in the case of ***Surinder Singh Deswal***[1]***,*** this Court, in the case of ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors.***[2]*,* in paragraph 6, held thus:

> **"6.** What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. **Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded**."
>
> **(Emphasis added)**

15.1. As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word "may" used therein can never be construed as "shall". The tests applicable for the exercise of jurisdiction under sub-section (1) of Section 148 can never apply to the exercise of jurisdiction under sub-section (1) of Section 143A of the N.I. Act.

FACTORS TO BE CONSIDERED WHILE EXERCISING DISCRETION

16. When the court deals with an application under Section 143A of the N.I. Act, the Court will have to *prima facie* evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the

2 (2023) 10 SCC 446

accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors.

17. In the present case, the Trial Court has mechanically passed an order of deposit of Rs.10,00,000/- without considering the issue of prima facie case and other relevant factors. It is true that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, but the direction has been issued to pay the amount without application of mind. Even the High Court has not applied its mind. We, therefore, propose to direct the Trial Court to consider the application for grant of interim compensation afresh. In the meanwhile, the amount of Rs. 10,00,000/- deposited by the appellant will continue to remain deposited with the Trial Court.

18. Hence, impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103/2018 under Section 143A (1) of the N.I. Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs. 10,00,000/- shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the Trial Court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

19. Subject to what is held earlier, the main conclusions can be summarised as follows:

a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall."

b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

   i. The Court will have to *prima facie* evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

   ii. A direction to pay interim compensation can be issued, only if the complainant makes out a *prima facie* case.

   iii. If the defence of the accused is found to be *prima facie* plausible, the Court may exercise discretion in refusing to grant interim compensation.

   iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

   v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

20. The Appeal is partly allowed on the above terms.

Headnotes prepared by: Divya Pandey

Result of the case: Partly allowed.

[2024] 3 S.C.R. 454 : 2024 INSC 201

Snehadeep Structures Pvt. Limited
v.
Maharashtra Small Scale Industries Development Corporation Ltd.

(Civil Appeal No. 3856 of 2024)

05 March 2024

[Sanjiv Khanna and Dipankar Datta, JJ.]

Issue for Consideration

High Court whether justified in setting aside the arbitral award and holding that Maharashtra Small Scale Industries Development Corporation Ltd. (MSSIDCL) cannot be said to be a buyer within the meaning of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and therefore, the appellant (SSPL) was not entitled to claim interest under the 1993 Act against MSSIDCL; whether the proviso to s.3, 1993 Act would be applicable to the agreement in question entered into between the parties on 30.03.1995, albeit the proviso was enacted and enforced with effect from 10.08.1998.

Headnotes

Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 – s.2(b), (c), (f); proviso to s.3; s.4 – "buyer"; "supplier" – Liability of buyer to make payment – Date from which and rate at which interest is payable:

Held: On a reading of s.3 of the 1993 Act, as it stood before the enactment of the proviso, the buyer and the supplier could agree upon the date of payment – In case of absence of stipulation with regard to the date of payment, the "appointed day" in terms of s.2(b) of the 1993 Act, would be the date, on which the payment is due – This is also clear from reading s.4, which states the date from which interest is payable – As per s.4, the buyer is liable to pay interest if he fails to pay the amount to the supplier as required by s.3 – After enactment of the proviso to s.3, the contractual rights of the parties to agree to the date of payment, have been restricted in terms of the said proviso – Thus, if the contractual date of payment exceeds 120 days from the day of

acceptance or the day of deemed acceptance, interest would be payable for the period beyond 120 days from the day of acceptance or the date of deemed acceptance – In the present case, the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL, postulated and the parties had agreed that MSSIDCL would be liable to pay SSPL only after the goods were delivered and accepted by the consignee-Maharashtra State Electricity Board (MSEB) and on the payment being received by MSSIDCL from the MSEB – No reason to interfere with the conclusion in the impugned judgment passed by the High Court, setting aside the arbitral award – Further, by way of Act No.23 of 1998, which came in effect from 10.08.1998, amending clause 2(f), MSSIDCL is to be treated or deemed to be a supplier to MSEB – However, this will not deviate from the fact that MSSIDCL was the buyer under the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL – Equally, the G.O. 2(1)/A/93- SSI Bd. and Policy dated 05.05.1993 issued by the Ministry of Industry, Department of SSI, Agro and Rural Industries, Office of the Development Commissioner (Small Scale Industries), had an effect of treating MSSIDCL as a supplier for the purpose of claiming interest from the buyer, that is MSEB, with whom they have entered into a contract for the purpose of the 1993 Act – The liability to pay and the privity of contract in terms of the supply/purchase order dated 30.03.1995 is between MSSIDCL and SSPL – The contractual relationship, rights and obligations inter se MSSIDCL and SSPL do not undergo any change. [Paras 6, 8-10, 13, 14]

List of Acts

Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993; Arbitration and Conciliation Act, 1996.

List of Keywords

“Buyer”; “Supplier”; Interest; Date of payment; Appointed date, Acceptance date; Deemed date of acceptance; Small scale Industries.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.3856 of 2024

From the Judgment and Order dated 26.03.2018 of the High Court of Judicature at Bombay in AN No. 203 of 2017

Appearances for Parties

Ranjit Kumar, Siddharth Bhatnagar, Sr. Advs., Ms. Tahira Karanjawala, Arjun Sharma, Shreyas Maheshwari, Ms. Sukanya Das, Aditya Sidhra, M/s. Karanjawala & Co., Advs. for the Appellant.

Dr. S. Muralidhar, Sr. Adv., Zubin Morris, Nirav Shah, Udit Gupta, Ms. Prachi Gupta, Ms. Pragya Gupta, Ms. Pallak Bhagat, M/s. Udit Kishan And Associates, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Leave granted.

2. We have heard learned Senior Advocate appearing for the appellant – Snehadeep Structures Pvt. Limited[1] and the Respondent - Maharashtra Small Scale Industries Development Corporation Ltd.[2]

3. During the course of the hearing, our attention was drawn to Sections 3, 4 and 5 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993[3]. For the sake of convenience, the said Sections are reproduced below: -

> "3. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:
>
> Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.
>
> 4. Date from which and rate at which interest is payable.- Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall,

1 For short, "SSPL".

2 For short, "MSSIDCL".

3 For short, "1993 Act".

notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one-and-half time of Prime Lending Rate charged by the State Bank of India.

Explanation.- For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

5. Liability of buyer to pay compound interest.- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interest) at the rate mentioned in section 4 on the amount due to the supplier."

4. We would also reproduce the definition clauses (b), (c) and (f) to Section 2, which are applicable, unless the context otherwise requires. The same read thus: -

(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation.-For the purposes of this clause,-

(i) "the day of acceptance" means,-

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding, acceptance of goods or services within thirty days from the day of the delivery, of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of

goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(c) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

xxx xxx xxx

(f) "supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or Union territory and includes,-

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956)."

5. The ***proviso*** to Section 3, and the amendment to Section 2(f) to include the addition of National Small Industries Corporation and the Small Industries Development Corporation of a State or a Union Territory to the definition of "supplier", were incorporated by Act No. 23 of 1998 with effect from 10.08.1998.

6. On a reading of Section 3 of the 1993 Act, as it stood before the enactment of the ***proviso***, the buyer and the supplier could agree upon the date of payment. In case of absence of stipulation with regard to the date of payment, the "appointed day" in terms of Section 2(b) of the 1993 Act, would be the date, on which the payment is due. This is also clear from reading Section 4, which states the date from which interest is payable. As per Section 4, the buyer is liable to pay interest if he fails to pay the amount to the supplier as required by Section 3. ***Non-obstante*** part of Section 4 only deals with the stipulation in a contract whereby liability to pay interest is barred/prohibited. It does not, in any way, override the contractual clause with regard to the date of payment. In other words, in case the contract states that interest will not be payable even in the case of belated payment, then Section 4 of the Act will come into operation, overriding the negative contractual clause.

7. The effect of the ***proviso*** to Section 3, made applicable with effect from 10.08.1998, is that the supplier and the buyer may agree by contract on the date of payment, but in no case can the date of payment exceed 120 days from the day of acceptance or the day of deemed acceptance. The terms 'the appointed date', 'the acceptance date' and 'the deemed date of acceptance' have been defined ***vide*** clause (b) to Section 2 of the 1993 Act.

8. After enactment of the ***proviso*** to Section 3, the contractual rights of the parties to agree to the date of payment, have been restricted in terms of the said ***proviso***. In other words, if the contractual date of payment exceeds 120 days from the day of acceptance or the day of deemed acceptance, interest would be payable for the period beyond 120 days from the day of acceptance or the date of deemed acceptance.

9. When we turn to the facts of the present case, the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL, had stated as under: -

> "25. The price of the goods delivered and accepted by the consignee and when received from the consignee will be paid to the supplier by the Corporation subject to deductions of advances, if any, paid by the Corporation and the service changes [***sic***] and other moneys payable to the Corporation by the supplier. No advance payment will be made for any supply of the goods unless otherwise agreed by the Corporation."

10. The contract had, therefore, postulated and the parties had agreed that MSSIDCL would be liable to pay SSPL only after the goods are delivered and accepted by the consignee, namely, Maharashtra State Electricity Board[4] and on the payment being received by MSSIDCL from the MSEB.

11. If the ***proviso*** to Section 3 applies, this contractual clause will get modified in terms of the ***proviso*** to Section 3, which has fixed the upper time limit for payment to 120 days from the day of acceptance or the day of deemed acceptance. However, the question would

4 For short, "MSEB".

arise as to whether the said ***proviso*** would be applicable to the agreement in question, which was entered into between the parties on 30.03.1995, albeit the ***proviso*** was enacted and enforced with effect from 10.08.1998.

12. Even if, for the sake of argument, it is to be accepted that the ***proviso*** to Section 3 would be applicable in respect of supplies or payments due or payable after 10.08.1998, the issue with regard to calculation and computation of interest requires examination and determination of the day of acceptance or the day of deemed acceptance, as interest would be payable only after a period of 120 days from such date.

13. In these circumstances and in view of the aforesaid position, we do not find any good ground and reason to interfere with the conclusion in the impugned judgment passed by the Division Bench of the High Court, setting aside the arbitral award dated 30.06.2003. We would, however, record that the award having been set aside, the provisions of Section 43(4) of the Arbitration and Conciliation Act, 1996 would come into operation and would accordingly apply.

14. We clarify that MSEB need not be a party to the proceedings, if any, which may be initiated by SSPL or MSSIDCL. However, any adjudication for payment of interest under Sections 3 to 5 of 1993 Act, including the question relating to application of the ***proviso***, would require ascertainment of the appointed date, the date of acceptance or the deemed date of acceptance. To this limited extent, ascertainment of facts with reference to the consignee – MSEB, to whom the goods were supplied by SSPL, is required. By way of Act No.23 of 1998, which came in effect from 10.08.1998, amending clause 2(f), MSSIDCL is to be treated or deemed to be a supplier to MSEB. However, this will not deviate from the fact that MSSIDCL was the buyer under the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL. Equally, the G.O. 2(1)/A/93-SSI Bd. and Policy dated 05.05.1993 issued by the Ministry of Industry, Department of SSI, Agro and Rural Industries, Office of the Development Commissioner (Small Scale Industries), has an effect of treating MSSIDCL as a supplier for the purpose of claiming interest from the buyer, that is MSEB, with whom they have entered into a contract for the purpose of the 1993 Act. The liability to pay and the privity of contract in terms of the supply/purchase order dated 30.03.1995 is between MSSIDCL and SSPL. The contractual

relationship, rights and obligations inter se MSSIDCL and SSPL do not undergo any change.

15. On the question of liability under Section 5 as well, there is a dispute as it is accepted that the principal amount has been paid. A question would arise whether under Section 5, interest as compounded is to be treated as a principal amount. This aspect has not been considered in the award passed by the sole arbitrator, which has awarded compound interest on the interest element with monthly rest at 1.5 times the Prime Lending Rate charged by the State Bank of India.

16. We are informed that certain payments were made by MSSIDCL and a substantial amount of over Rs.1.30 crores has been paid to/withdrawn by SSPL. It will be open to MSSIDCL to move an application under Section 144 of the Code of Civil Procedure, 1908 for restitution or execution, as it may be advised. MSSIDCL would be entitled to enforce the security in case SSPL does not pay or refund the said amount.

17. The appeal is dismissed in the above terms. However, there shall be no order as to costs.

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

Headnotes prepared by: Divya Pandey

Result of the case: Appeal dismissed.

[2024] 3 S.C.R. 462 : 2024 INSC 161

Sita Soren
v.
Union of India

(Criminal Appeal No. 451 of 2019)

04 March 2024

[Dr Dhananjaya Y Chandrachud,* CJI, A.S. Bopanna, M. M. Sundresh, Pamidighantam Sri Narasimha, J.B. Pardiwala, Sanjay Kumar and Manoj Misra, JJ.]

Issue for Consideration

Instant Reference pertains to reconsideration of the correctness of the view of the majority judgment in *PV Narasimha Rao's case granting immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for speaking or casting a vote.

Headnotes

Constitution of India – Arts. 105 and 196 – Powers, privileges and immunities of the Houses of Parliament or Legislature, as the case may be, and of members and committees – Member of Parliament or the Legislative Assembly, if can claim immunity from prosecution on a charge of bribery in a criminal court – Reconsideration of the correctness of the majority view in *PV Narasimha Rao's case which grants immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for casting a vote or speaking:

Held: Judgment of the majority in *PV Narasimha Rao's case has wide ramifications on public interest, probity in public life and parliamentary democracy – There is a grave danger of this Court allowing an error to be perpetuated if decision not reconsidered – Thus, said case not concurred with and overruled. [Para 188]

Constitution of India – Arts. 105 and 196 – Powers, privileges and immunities of the Houses of Parliament or Legislature, and of members and committees – Allegation against the member of Legislative Assembly that she accepted bribe from an independent candidate for casting her vote in his favour in the Rajya Sabha elections, however, in an open ballot, she did not cast her vote in favour of the alleged bribe giver but her own party candidate – Chargesheet against the member –

* Author

Petition for quashing of criminal charges, claiming protection of Art.194(2), relying on *PV Narasimha Rao's case that member would enjoy immunity from prosecution for accepting bribe for speaking or giving their vote in Parliament – Rejected by the High Court – Matter before the Supreme Court where the two-judge bench referred the matter to three-judge bench, who further referred to five-judges bench – Bench of five-judges doubted the correctness of *PV Narasimha Rao wherein the majority judgment held that the legislator is conferred with immunity when they accept bribe for speaking or giving their vote in Parliament, whereas minority held that giving bribe to influence legislator to vote or speak in Parliament, not protected by Arts. 105(2) and 194(2), and referred the matter to bench of seven judges:

Held: Interpretation placed on the issue in question in the judgment of the majority in *PV Narasimha Rao's case results in a paradoxical outcome – Such an interpretation is contrary to the text and purpose of Arts. 105 and 194 – Reconsidering *PV Narasimha Rao's case does not violate the principle of *stare decisis* – Members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning – Constitution envisions probity in public life – Corruption and bribery of members of the legislature erode the foundation of the Parliamentary democracy – Bribery is not protected by parliamentary privilege – Delivery of result irrelevant to the offence of bribery – Voting for elections to the Rajya Sabha falls within the ambit of Art. 194(2) – Thus, said case not concurred with and overruled. [Paras D, G, I, 188]

Judicial Precedent – Overruling of the long-settled law in *PV Narasimha Rao's case, if warranted:

Held : Period of time over which the case has held the field is not of primary consequence – It is not appropriate for this Court to confine itself to a rigid understanding of the doctrine of *stare decisis* – Ability of this Court to reconsider its decisions is necessary for the organic development of law and the advancement of justice – If this Court is denuded of its power to reconsider its decisions, the development of constitutional jurisprudence would virtually come to a standstill – Thus, reconsidering *PV Narasimha Rao's case does not violate the principle of *stare decisis* – *PV Narasimha Rao's case has wide ramifications on public interest, probity in public life and the functioning of parliamentary democracy – It contains several apparent errors, its interpretation of the text of Art. 105; its conceptualization of the scope and purpose of parliamentary

privilege and its approach to international jurisprudence all of which resulted in a paradoxical outcome – There is an imminent threat of allowing an error to be perpetuated if the decision in *PV Narasimha Rao's case is not reconsidered – Mistaken interpretation of the Constitution, must not be perpetuted merely because of rigid allegiance to a previous opinion of five judges of this Court. [Paras 31, 33, 40, 44, 188.1]

Constitution of India – Arts. 105 and 194 – Parliamentary privileges, if collective right of the house – Two constituent elements of privileges:

Held: First is the sum of rights enjoyed by the House of Parliament collectively and the second is the rights enjoyed by members of the House individually – Rights and immunities such as the power to regulate its own procedure, the power to punish for contempt of the House or to expel a member, belong to the first element of privileges held by the House as a collective body for its proper functioning, protection of members, and vindication of its own authority and dignity – Second element of rights exercised individually by members of the House includes freedom of speech and freedom from arrest, among others – Privilege exercised by members individually is in turn qualified by its necessity, in that the privilege must be such that "without which they could not discharge their functions" – These privileges enjoyed by members of the House individually are a means to ensure and facilitate the effective discharge of the collective functions of the House – Privileges enjoyed by members of the House which exceed those possessed by other bodies or individuals, are not absolute or unqualified – Thus, the privileges and immunities enshrined in Arts. 105 and 194 belong to the House collectively – Exercise of the privileges individually by members must be tested on the anvil of whether it is tethered to the healthy and essential functioning of the House. [Paras 76, 77, 84]

Constitution of India – Arts. 105 and 194 – Parliamentary privileges – Necessity test to claim and exercise a privilege:

Held: Members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning – Assertion of a privilege by an individual member of Parliament or Legislature would be governed by a twofold test, first, the privilege claimed has to be tethered to the collective functioning of the House, and second, its necessity must bear a functional relationship to the discharge of the essential duties of a legislator – Burden of

satisfying that a privilege exists and that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege – Houses of Parliament or Legislatures, and the committees are not islands which act as enclaves shielding those inside from the application of ordinary laws – Lawmakers are subject to the same law that the law-making body enacts for the people it governs and claims to represent. [Paras 87, 90, 91]

Constitution of India – Arts. 105 and 194 – Parliamentary privilege – Privileges, if attract immunity to a member of Parliament or of the Legislatures who engages in bribery in connection with their speech or vote:

Held: Bribery is not protected by parliamentary privilege – Bribery is not in respect of anything said or any vote given – Bribery is not immune under clause (2) of Art.105 and Art.194 because a member engaging in bribery commits a crime which is unrelated to their ability to vote or to make a decision on their vote – Same principle applies to bribery in connection with a speech in the House or a Committee – Individual member of the legislature cannot assert a claim of privilege to seek immunity u/Arts 105 and 194 from prosecution on a charge of bribery in connection with a vote or speech in the legislature – Such a claim to immunity fails to fulfil the twofold test that the claim is tethered to the collective functioning of the House and that it is necessary to the discharge of the essential duties of a legislator. [Para G, 188.4, 188.7]

Constitution of India – Arts. 105 and 194 – Parliamentary privilege – Expression 'in respect of' and 'anything' in Clause (2) of Art. 105 – Interpretation:

Held: Clause (2) of Art. 105 grants immunity "in respect of anything" said or any vote given – Extent of this immunity must be tested on the anvil of the test of intrinsic relation to the functioning of the House and the necessity test – Phrase "in respect of" is significant to delineate the ambit of the immunity granted under Clause (2) of Art. 105 – Words "in respect of" in Clause (2) apply to the phrase "anything said or any vote given," and in the latter part to a publication by or with the authority of the House – Expressions "anything" and "any" must be read in the context of the accompanying expressions in Arts 105(2) and 194(2) – Words "anything" or "any" may not be interpreted without reading the operative word on which it applies i.e. "said" and "vote given" respectively – Words "anything" and "any" when read with their respective operative words mean that a member may claim immunity

to say as they feel and vote in a direction that they desire on any matter before the House – These are absolutely outside the scope of interference by the courts – Words "in respect of" means 'arising out of' or 'bearing a clear relation to' and cannot be interpreted to mean anything which may have even a remote connection with the speech or vote given. [Paras 99, 102-103, 188.6]

Constitution of India – Arts. 105 and 194 – Power, privileges and immunity in Parliament – Purpose and object:

Held: Constitution envisions probity in public life – Purpose and object for which the Constitution stipulates powers, privileges and immunity in Parliament must be borne in mind – Privileges are essentially related to the House collectively and necessary for its functioning – Hence, the phrase "in respect of" in Art. 105 must have a meaning consistent with the purpose of privileges and immunities – Arts. 105 and 194 seek to create a fearless atmosphere in which debate, deliberations and exchange of ideas can take place within the Houses of Parliament and the state legislatures – Purpose is destroyed when a member is induced to vote or speak in a certain manner not because of their belief/ position on an issue but because of an act of bribery – Corruption and bribery of members of the legislature erode the foundation of Indian Parliamentary democracy – It is destructive of the aspirational and deliberative ideals of the Constitution and creates a polity which deprives citizens of a responsible, responsive and representative democracy. [Paras 104, 188.5, 188.8]

Constitution of India – Arts. 105 and 194 – Parliamentary privileges – Courts and the House, if exercise parallel jurisdiction over allegations of bribery:

Held: Issue of bribery is not one of exclusivity of jurisdiction by the House over its bribe-taking members – Purpose of a House acting against a contempt by a member for receiving a bribe serves a purpose distinct from a criminal prosecution – Jurisdiction which is exercised by a competent court to prosecute a criminal offence and the authority of the House to take action for a breach of discipline in relation to the acceptance of a bribe by a member of the legislature exist in distinct spheres – Scope, purpose and consequences of the court exercising jurisdiction in relation to a criminal offence and the authority of the House to discipline its members are different – Potential of misuse against individual members of the legislature is neither enhanced nor diminished by recognizing the jurisdiction of the court to prosecute a member of

the legislature who is alleged to have indulged in an act of bribery. [Paras 188.9, 188.10]

Constitution of India – Arts. 105 and 194 – Parliamentary privileges – Offence of bribery, stage at which it crystallizes:

Held: Offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained – Delivery of results is irrelevant to the offence of bribery – To read Arts. 105(2) and 194(2) in the manner proposed in the majority judgment in *PV Narasimha Rao's* case results in a paradoxical outcome – Such an interpretation results in a situation where a legislator is rewarded with immunity when they accept a bribe and follow through by voting in the agreed direction – On the other hand, a legislator who agrees to accept a bribe, but may eventually decide to vote independently will be prosecuted – Such an interpretation belies not only the text of Arts. 105 and 194 but also the purpose of conferring parliamentary privilege on members of the legislature – Offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification – It does not matter whether the vote is cast in the agreed direction or if the vote is cast at all – Offence of bribery is complete at the point in time when the legislator accepts the bribe – Prevention of Corruption Act, 1988 – s. 7. [Paras 117, 126, 188.11]

Constitution of India – Arts. 105 and 194 – Parliamentary privileges – Votes casted by elected members of the state legislative assembly in an election to the Rajya Sabha, if protected by Art. 194(2):

Held: Voting for elections to the Rajya Sabha falls within the ambit of Art.194(2) – Text of Art. 194 consciously uses the term 'Legislature' instead of 'House' to include parliamentary processes which do not necessarily take place on the floor of the House or involve 'lawmaking' in its pedantic sense – Rajya Sabha or the Council of States performs an integral function in the working of the democracy and the role played by Rajya Sabha constitutes a part of the basic structure of the Constitution – Role played by elected members of the state legislative assemblies in electing members of Rajya Sabha is significant and requires utmost protection to ensure that vote is exercised freely and without fear of legal persecution – Any other interpretation belies the text of Art.194(2) and the purpose of parliamentary privilege – Protection Arts. 105 and 194 colloquially called "parliamentary privilege" and not "legislative

privilege" – It cannot be restricted to only law-making on the floor of the House but extends to other powers and responsibilities of elected members, taking place in the Legislature or Parliament, even when the House is not sitting. [Paras 180, 187]

Constitution of India – Art. 194 – Use of the term "Legislature" instead of the "House of Legislature" at appropriate places – Effect:

Held: It is evident from the drafting of the provision that the two terms have not been used interchangeably – First limb of Art. 194(2) pertains to "anything said or any vote given by him in the Legislature or any committee thereof" – However, in the second limb, the phrase used is "in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes, or proceedings" – There is a clear departure from the term 'Legislature' used in the first limb, to use the term "House of such a Legislature" in the second limb of the provision – Provision creates a distinction between the two – Terms "House of Legislature" and "Legislature" have different connotations – "House of Legislature" refers to the juridical body, which is summoned by the Governor pursuant to Art. 174 – Term "Legislature", on the other hand, refers to the wider concept under Art. 168, comprising the Governor and the Houses of the Legislature – Use of the phrase "in the Legislature" instead of "House of Legislature" is significant. [Paras 174, 175.]

Constitution of India – Arts. 105, 194 – Parliamentary privilege under:

Held: Is integral to deliberative democracy in facilitating the functioning of a parliamentary form of governance – It ensures that legislators in whom citizens repose their faith can express their views and opinions on the floor of the House without 'fear or favour' – Legislator belonging to a political party with a minuscule vote share can fearlessly vote on any motion; a legislator from a remote region of the country can raise issues that impact her constituency without the fear of being harassed by legal prosecution; and a legislator can demand accountability without the apprehension of being accused of defamation. [Para 1]

Constitution of India – Art. 105, clause (1), (2), (3), (4) – Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof – Explanation:

Held: Clause (1) declares that there shall be freedom of speech in Parliament, subject to the Constitution and to the rules and

standing orders regulating the procedure in Parliament – First limb of Clause (2) prescribes that a member of Parliament shall not be liable before any court in respect of "anything said or any vote given" by them in Parliament or any committee thereof and second limb prescribes that no person shall be liable before any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings – Clauses (1) and (2) explicitly guarantee freedom of speech in Parliament – Clause (1) is a positive postulate which guarantees freedom of speech whereas Clause (2) is an extension of the same freedom postulated negatively – Clause (3) states that in respect of privileges not falling under Clauses (1) and (2) of Art. 105, the powers, privileges and immunities, shall be such as may from time to time be defined by Parliament by law – Clause (3) allows Parliament to enact a law on its privileges from time to time – Clause (4) extends the freedoms in the above clauses to all persons who by virtue of the Constitution have a right to speak in Parliament – Thus, four clauses in Arts. 105 and 194 form a composite whole which lend colour to each other and together form the corpus of the powers, privileges and immunities of the Houses of Parliament or Legislature, and of members and committees. [Paras 63-66, 73]

Parliamentary privileges – History of privileges of legislatures in India:

Held: History can be traced to the history of parliamentary privileges in the House of Commons in the UK as well as the struggle of the Indian Legislatures to claim these privileges under colonial rule – Unlike the House of Commons in the UK, India does not have 'ancient and undoubted' privileges which were vested after a struggle between Parliament and the King – Statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution. [Paras 49, 188.2]

Parliamentary privileges – Bribery vis-à-vis privileges – Jurisprudence in foreign jurisdictions – Evolution and position of the law on privileges vis-a-vis bribe received by a member of Parliament in other jurisdictions-United Kingdom, United States of America, Canada, and Australia – Explained and discussed. [Paras 128-167]

Prevention of Corruption Act, 1988 – s. 7 – Offence relating to public servant being bribed – Offence of bribery, when complete – Constituent elements of the offence:

Held: Under s. 7, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence – It is not necessary that the act for which the bribe is given be actually performed – First explanation to the provision strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper – Thus, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained. [Para 117]

Judicial review – Amenability – Claim to parliamentary privilege :

Held: Claim to parliamentary privilege conforms to the parameters of the Constitution, as such amenable to judicial review. [Para 188.3]

Judicial discipline – Procedure of:

Held: Decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength – A Bench of lesser strength cannot disagree with or dissent from the view of the law taken by the bench of larger strength – However, a bench of the same strength can question the correctness of a decision rendered by a co-ordinate bench – In such situations, the case is placed before a bench of larger strength – In consonance with judicial discipline, the correctness of the decision in *PV Narasimha Rao's* case was only doubted by the co-equal bench of five judges of this Court in a detailed order and accordingly, the matter was placed before this bench of seven judges – Thus, no infirmity in the reference to seven judges bench to reconsider the decision in **PV Narasimha Rao's* case. [Paras 24, 25, 30]

Doctrines/Principles – Doctrine of *stare decisis* – Meaning:

Held: Doctrine of *stare decisis* provides that the Court should not lightly dissent from precedent – However, the doctrine is not an inflexible rule of law, and it cannot result in perpetuating an error to the detriment of the general welfare of the public – Larger bench of this Court may reconsider a previous decision in appropriate cases, bearing in mind the tests formulated in the precedents of this Court – This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the

interests of the public or if it is inconsistent with the legal philosophy of the Constitution – In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to public interest and the polity. [Paras 33, 188.1]

Interpretation of Constitution – Interpretation of a provision of the Constitution:

Held: Court must interpret the text in a manner that does not do violence to the fabric of the Constitution. [Para 92]

Interpretation of Constitution – Marginal note to the Article – Importance of:

Held: With reference to Articles of the Constitution, a marginal note may be used as a tool to provide some clue as to the meaning and purpose of the Article – However, the real meaning of the Article is to be derived from the bare text of the Article – When language of the Article is plain and ambiguous, undue importance cannot be placed on the marginal note appended to it – Furthermore, marginal note to a Section in a statute does not control the meaning of the body of the Section if the language employed is clear. [Para 173]

Interpretation of statutes – Principles of statutory interpretation – Illustrations appended to s. 7 of the Prevention of Corruption Act – Relevance:

Held: Illustrations appended to a Section are of value and relevance in construing the text of a statutory provision and they should not be readily rejected as repugnant to the Section – Illustration to the first explanation of s. 7 of the PC Act aids in construing the provision to mean that the offence of bribery crystallizes on the exchange of the bribe and does not require the actual performance of the act – Similarly, in the formulation of a legislator accepting a bribe, it does not matter whether she votes in the agreed direction or votes at all – At the point in time when the bribe is accepted, the offence of bribery is complete – Prevention of Corruption Act, 1988. [Para 118]

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List of Keywords

Bribery for speaking or casting a vote; Bribery vis-à-vis privileges; Parliamentary privilege; Legislative privilege; Ancient privileges; Statutory privilege; Constitutional privilege; History of privileges of legislatures; Immunities of the Houses of Parliament or Legislature; Reconsideration of PV Narasimha Rao case; Probity in public life; Parliamentary democracy; Principle of stare decisis; Elections to Rajya Sabha; Overruled; Judicial Precedent; Constitutional jurisprudence; Freedom of speech; House of Parliament; Necessity test; Collective functioning of the House; Immunity "in respect of anything" said or any vote given; Parallel jurisdiction; House of Legislature; Legislature; Colonial rule; House of Commons in the

UK; Foreign jurisdictions; Obtaining, accepting or attempting to obtain an undue advantage; Judicial review; Judicial discipline; Illustrations appended to a Section; Marginal note to a Section; Reforms of Committee, 1924.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.451 of 2019

From the Judgment and Order dated 17.02.2014 of the High Court of Jharkhand at Ranchi in WPCRL No.128 of 2013

Appearances for Parties

Paramjit Singh Patwalia, Sr. Adv.(Amicus Curiae), Ms. Harshika Verma, Dipanshu Krishnan, Gauravjit Singh Patwalia, Manan Daga, Ms. Samradhi Srivastava, Gaurav Agrawal, Advs.

Raju Ramachandran, Sr. Adv., Kaushik Laik, Vivek Singh, Ashay Kaushik, M.V. Mukunda, Shashank Tiwari, Rahul Arya, Pratap Shankar, Ms. Devyani Gupta, Ms. Tanvi Anand Advs. for the Appellant.

R Venkataramani, Attorney General for India, Tushar Mehta, Solicitor General, K M Nataraj, A.S.G., K Parmeshwar, Kanu Agrawal, Ms. Chinmayee Chandra, Udai Khanna, Akshay Amritanshu, Ankur Talwar, Anmol Chandan, Anandh Venkataramani, Mrs. Vijayalakshmi Venkataramani, Vinayak Mehrotra, Ms. Mansi Sood, Chitvan Singhal, Ms. Sonali Jain, Abhishek Kumar Pandey, Raman Yadav, Kartikey Aggarwal, Arvind Kumar Sharma, Advs. for the Respondent.

Gopal Sankaranarayan, Vijay Hansaria, Sr. Advs., Ashwini Kumar Upadhyay, Ashwani Kumar Dubey, Vishal Sinha, Ms. Jhanvi Dubey, Ms. Tanya Shrivastava, Ms. Aditi Gupta, Ms. Trisha Chandran, Vaibhav Tiwari, Rishabh Shukla, Ms. Sneha Kalita, Ms. Kavya Jhawar, Ms. Jessy Kurian, K.S. Bhati, Ms. SR. Leona, Ms. Shilpa Bagade, Ms. Joyshree Barman, Shubham Singhal, Abhimanyu Bhandari, Ms. Rooh-e-hina Dua, Arav Pandit, Harshit Khanduja, Ms. Dhanakshi Gandhi, Sahib Kochhar, Ms. Shreya Arora, Randeep Sachdeva, Dr. Vivek Sharma, K.V. Dhananjay, A Velan, Pawan Shyam, Ms. Navpreet Kaur, Sushant VA, Ojaswi, Dheeraj SJ, Mritunjay Pathak, Sachin S, Anand Nandan, Amit Pawan, Aakash, Zubair, Vikash, Dr. Dhruv Mishra, Mohd Faiz, Ms. Shivangi, Rameshwar Prasad Goyal, Advs. for the Intervenor/Impleadors.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

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* Ed. Note: Pagination is as per the original Judgment.

1. Parliamentary privilege, codified in Articles 105 and 194 of the Constitution, is integral to deliberative democracy in facilitating the functioning of a parliamentary form of governance. It ensures that legislators in whom citizens repose their faith can express their views and opinions on the floor of the House without 'fear or favour'. With the protection of parliamentary privilege, a legislator belonging to a political party with a minuscule vote share can fearlessly vote on any motion; a legislator from a remote region of the country can raise issues that impact her constituency without the fear of being harassed by legal prosecution; and a legislator can demand accountability without the apprehension of being accused of defamation.

2. Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege? It is this question of constitutional interpretation that this Court is called upon to decide.

A. Reference

3. The Criminal Appeal arises from a judgment dated 17 February 2014 of the High Court of Jharkhand.[1] An election was held on 30 March 2012 to elect two members of the Rajya Sabha representing the State of Jharkhand. The appellant, belonging to the Jharkhand Mukti Morcha,[2] was a member of the Legislative Assembly of Jharkhand. The allegation against the appellant is that she accepted a bribe from an independent candidate for casting her vote in his favour. However, as borne out from the open balloting for the Rajya Sabha seat, she did not cast her vote in favour of the alleged bribe giver and instead cast her vote in favour of a candidate belonging to her own party. The round of election in question was annulled and a fresh election was held where the appellant voted in favour of the candidate from her own party again.

4. The appellant moved the High Court to quash the chargesheet and the criminal proceedings instituted against her. The appellant claimed protection under Article 194(2) of the Constitution, relying on the judgment of the Constitution bench of this Court in **PV Narasimha**

1 Writ Petition (Criminal) No 128 of 2013

2 "JMM"

Rao v. State (CBI/SPE)[3]. The High Court declined to quash the criminal proceedings on the ground that the appellant had not cast her vote in favour of the alleged bribe giver and thus, is not entitled to the protection under Article 194(2). The High Court's reasoning primarily turned on this Court's decision in **PV Narasimha Rao** (supra). The controversy in **PV Narasimha Rao** (supra) and the present case turns on the interpretation of the provisions of Article 105(2) of the Constitution (which deals with the powers, privileges, and immunities of the members of Parliament and Parliamentary committees) and the equivalent provision in Article 194(2) of the Constitution which confers a similar immunity to the members of the State Legislatures.

5. On 23 September 2014, a bench of two judges of this Court, before which the appeal was placed, was of the view that since the issue arising for consideration is "substantial and of general public importance", it must be placed before a larger bench of three judges of this court. On 7 March 2019, a bench of three judges which heard the appeal observed that the precise question was dealt with in a judgment of a five-judge bench in **PV Narasimha Rao** (supra)**.** The bench was of the view that "having regard to the wide ramification of the question that has arisen, the doubts raised and the issue being a matter of public importance", the matter must be referred to a larger bench.

6. Finally, by an order dated 20 September 2023, a five-judge bench of this Court recorded *prima facie* reasons doubting the correctness of the decision in **PV Narasimha Rao** (supra) and referred the matter to a larger bench of seven judges. The operative part of the order reported as **Sita Soren v. Union of India**[4], is extracted below:

> **"24.** We are inclined to agree …that the view which has been expressed in the decision of the majority in PV Narasimha Rao requires to be reconsidered by a larger Bench. Our reasons prima facie for doing so are formulated below:
>
> Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution

3 [1998] 2 SCR 870 : (1998) 4 SCC 626

4 [2023] 12 SCR 753 : 2023 SCC OnLine SC 1217

must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences. While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not prima facie appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the legislature of a state;

Secondly, in the course of judgment in PV Narasimha Rao, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and the member of the legislature would be liable to be prosecuted on a charge of bribery if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words "in respect of" in Article 105(2) are construed to mean 'arising out of'. In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and

> Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority.
>
> …
>
> **26.** For the above reasons, prima facie at this stage, we are of the considered view that the correctness of the view of the majority in PV Narasimha Rao should be reconsidered by a larger Bench of seven judges."

7. The scope of the present judgment is limited to the reference made by the order of this Court dated 20 September 2023 doubting the correctness of **PV Narasimha Rao** (supra). The merits of the appellant's case and whether she committed the alleged offence are not being adjudicated by this Court at this stage. Nothing contained in this judgment may be construed as having a bearing on the merits of the trial or any other proceedings arising from it.

B. Overview of the judgment in PV Narasimha Rao

8. The general elections for the Tenth Lok Sabha were held in 1991. Congress (I) emerged as the single largest party and formed a minority government with Mr PV Narasimha Rao as the Prime Minister. A motion of no-confidence was moved in the Lok Sabha against the government. The support of fourteen members was needed to defeat the no-confidence motion. The motion was defeated with two hundred and fifty-one members voting in support and two hundred and sixty-five members voting against the motion. A group of Members of Parliament[5] owing allegiance to the JMM and the

5 "MP"

Janata Dal (Ajit Singh) Group[6] voted against the no-confidence motion. Notably, one MP belonging to the JD (AS), namely, Ajit Singh, abstained from voting.

9. A complaint was filed before the Central Bureau of Investigation[7] alleging that a criminal conspiracy was devised by which the above members belonging to the JMM and the JD (AS) entered into an agreement and received bribes to vote against the no-confidence motion.[8] It was alleged that PV Narasimha Rao and several other MPs were parties to the criminal conspiracy and passed on "several lakhs of rupees" to the alleged bribe-takers to defeat the no-confidence motion.[9]

10. A prosecution was launched against the alleged bribe-givers and bribe-takers, and cognizance was taken by the Special Judge, Delhi. The accused moved the High Court of Delhi to quash the charges. The High Court dismissed the petitions. Appeals were preferred to this Court and culminated in the **PV Narasimha Rao** (supra) decision. Two major questions came up for consideration before the Court. First, whether by virtue of Article 105 of the Constitution, an MP can claim immunity from prosecution on a charge of bribery in a criminal court. Second, whether an MP falls within the purview of the Prevention of Corruption Act, 1988, and who is designated as the sanctioning authority for the prosecution of an MP under the PC Act. In the present judgment, we are concerned solely with the holding of the five-judge bench on the first question, i.e., the scope of the immunity from prosecution under Article 105(2) when an MP is charged with bribery.

11. Three opinions were authored in the case – by SC Agarwal, J (for himself and Dr AS Anand, J), SP Bharucha, J (for himself and S Rajendra Babu, J) and an opinion by GN Ray, J.

12. Justice SP Bharucha (as the learned Chief Justice then was) held that the alleged bribe-takers who cast their vote against the no-confidence motion enjoyed immunity from prosecution in a court of law under Article 105(2) of the Constitution. However, Ajit Singh

6 "JD (AS)"

7 "CBI"

8 "Bribe-takers"

9 "Bribe-givers"

(who abstained from voting) and the alleged bribe-givers were held not to enjoy the same immunity. Justice Bharucha held that for breach of parliamentary privileges and its contempt, Parliament may proceed against both the alleged bribe-takers and bribe-givers. Justice Bharucha held:

12.1. The provisions of Article 105(1) and Article 105(2) suggest that the freedom of speech for MPs is independent of the freedom of speech and its exceptions contained in Article 19. MPs must be free of all constraints about what they say in Parliament. A vote is treated as an extension of speech and is given the protection of the spoken word;

12.2. The expression "in respect of" in Article 105(2) must receive a "broad meaning" and entails that an MP is protected from any proceedings in a court of law that relate to, concern or have a connection or nexus with anything said or a vote given by him in Parliament;

12.3. The alleged bribe-takers are entitled to immunity under Article 105(2) as the alleged conspiracy and acceptance of the bribe was "in respect of" the vote against the no-confidence motion. The stated object of the alleged conspiracy and agreement was to defeat the no-confidence motion and the alleged bribe-takers received the bribe as a "motive or reward for defeating" it. The nexus between the alleged conspiracy, the bribe and the no-confidence motion was explicit;

12.4. The object of the protection under Article 105(2) is to enable MPs to speak and vote freely in Parliament, without the fear of being made answerable on that account in a court of law. It is not enough that MPs should be protected against proceedings where the cause of action is their speech or vote. To enable them to participate freely in parliamentary debates, MPs need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is not difficult to envisage an MP who has made a speech or cast a vote that is not to the "liking of the powers that be" being troubled by legal prosecution alleging that he had been paid a bribe to achieve a certain result in Parliament;

12.5. The seriousness of the offence committed by the bribe-takers does not warrant a narrow construction of the Constitution.

Such a construction runs the risk of impairing the guarantee of an effective parliamentary democracy;

12.6. The immunity under Article 105(2) is operative only insofar as it pertains to what has been said or voted. Therefore, Ajit Singh, the MP who abstained from voting, was not protected by immunity and the prosecution against him would proceed;

12.7. With regard to whether the bribe-givers enjoy immunity, since the prosecution against Ajit Singh would proceed, the charge against the bribe-givers of conspiracy and agreeing with Ajit Singh to do an unlawful act would also proceed. Further, Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by an MP. The provision merely provides that an MP shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. Those who have conspired with the MP in the commission of that offence have no such immunity. The bribe-givers can, therefore, be prosecuted and do not have the protection of Article 105(2).

13. On the other hand, SC Agarwal, J held that neither the alleged bribe-takers nor the alleged bribe-givers enjoyed the protection of Article 105(2). An MP does not enjoy immunity under Article 105(2) from being prosecuted for an offence involving the offer or acceptance of a bribe for speaking or giving his vote in parliament or any committee. In his opinion, Justice Agarwal held as follows:

13.1. The object of the immunity under Article 105(2) is to ensure the independence of legislators for the healthy functioning of parliamentary democracy. An interpretation of Article 105(2) which enables an MP to claim immunity from prosecution for an offence of bribery would place them above the law. This would be repugnant to the healthy functioning of parliamentary democracy and subversive of the rule of law;

13.2. The expression "in respect of" precedes the words "anything said or any vote given" in Article 105(2). The words "anything said or any vote given" can only mean speech that has been made or a vote that has already been given and does not extend to cases where the speech has not been made or the vote has not been cast. Therefore, interpreting the expression "in respect of" widely would result in a paradoxical situation. An

MP would be liable to be prosecuted for bribery if he accepted a bribe for not speaking or not giving his vote on a matter, but he would enjoy immunity if he accepted the bribe for speaking or giving his vote in a particular way and actually speaks or gives his vote in that manner. It is unlikely that the framers of the Constitution intended to make such a distinction;

13.3. The phrase "in respect of" must be interpreted to mean "arising out of". Immunity under Article 105(2) is available only to give protection against liability for an act that follows or succeeds as a consequence of making the speech or giving of vote by an MP and not for an act that precedes the speech or vote and gives rise to liability which arises independently of the speech or vote;

13.4. The offence of criminal conspiracy is made out on the conclusion of an agreement to commit the offence of bribery and the performance of the act pursuant to the agreement is not of any consequence. Similarly, the act of acceptance of a bribe for speaking or giving a vote against the motion arises independently of the making of the speech or giving of the vote by the MP. Hence, liability for the offence cannot be treated as "in respect of anything said or any vote given in Parliament;" and

13.5. The international trend, including law in the United States, Australia and Canada, reflects the position that legislators are liable to be prosecuted for bribery in connection with their legislative activities. Most of the Commonwealth countries treat corruption and bribery by members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There is no reason why legislators in India should not be covered by laws governing bribery and corruption when all other public functionaries are subject to such laws.

14. GN Ray, J in a separate opinion concurred with the reasoning of Agarwal, J that an MP is a public servant under the PC Act and on the question regarding the sanctioning authority under the PC Act. However, on the interpretation of Article 105(2), GN Ray, J concurred with the judgment of Bharucha, J. Hence, the opinion authored by Bharucha, J on the interpretation of Article 105(2) represents the

view of the majority of three judges of this Court.[10] The opinion authored by SC Agarwal, J on the other hand, represents the view of the minority.[11]

C. Submissions

15. Over the course of the hearing, we have heard Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant, Mr R Venkataramani, Attorney General for India, Mr Tushar Mehta, Solicitor General of India, Mr PS Patwalia, senior counsel, *amicus curiae*, Mr Gopal Sankarnarayanan, senior counsel, and Mr Vijay Hansaria, senior counsel, appearing on behalf of intervenors. This Court being a court of record, the submissions made by the learned advocates are briefly listed below.

16. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant submitted that the judgment of the majority in **PV Narasimha Rao** (supra) is squarely applicable to the present case. Further, he argued that the majority judgment is well-reasoned and there are no grounds to reconsider the settled position of law. In this regard, he made the following submissions:

    16.1. The overruling of long-settled law in **PV Narasimha Rao** (supra) is unwarranted according to the tests laid down by this court on overturning judicial precedents;[12]

    16.2. The object behind conferring immunity on MPs and MLAs was to shield them from "being oppressed by the power of the crown". The apprehension of parliamentarians being arrested shortly before or after the actual voting or making of a speech in the Parliament (such vote or speech directed against the Executive) was the precise reason for introducing the concept of privileges and immunities;

    16.3. The concept of constitutional privileges and immunities is not in derogation of the Rule of Law, but it is a distinct feature of our constitutional structure. The majority judgment preserves

10 The opinion authored by SP Bharucha, J has been referred to as majority judgment hereinafter

11 The opinion authored by SC Agarwal, J has been referred to as minority judgment hereinafter

12 Keshav Mills Co. Ltd v. CIT, [1965] 2 SCR 908 : AIR 1965 SC 1636, para 23; Krishena Kumar v. Union of India, [1990] 3 SCR 352 : (1990) 4 SCC 207, para 33; Shanker Raju v. Union of India, [2011] 2 SCR 1: (2011) 2 SCC 132, para 10; Shah Faesal and Ors. v. Union of India (UOI), [2020] 3 SCR 1115 : (2020) 4 SCC 1, para 17

the privilege of MPs and MLAs to protect their dignity as legislators and is not opposed to the rule of law;

16.4. The majority judgment gave due regard and recognition to Parliament's exclusive powers to take appropriate steps against corrupt practices by its members, just as the Parliament recognizes the limits on discussions in the House, such as the inability to entertain discussions on the conduct of judges of constitutional courts under Article 121 of the Constitution;

16.5. The present position on parliamentary privilege in India and the UK entails that (a) it is fundamental to a democratic polity and courts have exercised judicial restraint; and (b) the privilege must necessarily relate to the exercise of "legislative functions", which in India relates to voting and making of speeches. While determining whether an act is immune from judicial scrutiny, the 'necessity test' is to be applied, i.e., whether there is a nexus between the act in question and the legislative process of voting/making speeches;

16.6. The so-called "anomaly" in the majority judgment flows from the plain language of Articles 105(2) and 194(2) and any attempt to whittle down their protective scope to adhere to what is seemingly "logical", "fair" or "reasonable" would be constitutionally unjustified. However, while advancing his oral submissions in rejoinder, Mr Ramachandran conceded that the view that an abstention from voting would not be protected under Article 105(2) was incorrect and abstaining from voting, in fact, constitutes casting a vote;

16.7. The minority judgment in **PV Narasimha Rao** (supra) has erred in reading "in respect of" as "arising out of". Such a reading is not warranted by either the plain language or the intent of the provision;

16.8. The fact that the offence of bribery in criminal law is complete when the bribe is given and is not dependent on the performance of the promised favour is of no consequence to the constitutional immunity under Articles 105(2) and 194(2). Once a speech is made or a vote is given, the nexus, i.e., "in respect of", is fulfilled;

16.9. The overruling of the majority judgment will have severe unintended consequences. In view of political realities, if the parliamentary immunity conferred upon MPs/ MLAs is whittled down, it would enhance the possibility of abuse of the law by political parties in power; and

16.10. Voting in the Rajya Sabha Elections is within the scope of protection of Article 194(2) as it has all the "trappings" of any other law-making process in the legislature.

17. Mr Venkataramani, the learned Attorney General for India advanced a preliminary submission that the decision in **PV Narasimha Rao** (supra) is inapplicable to the instant case. He submitted that the exercise of franchise by an elected member of the legislative assembly in a Rajya Sabha election does not fall within the ambit of Article 194(2), and thus, **PV Narasimha Rao** (supra) does not have any application to the present case. He submits that the objective of Article 194(2) is to protect speech and conduct in relation to the functions of the legislature. Therefore, any conduct which is not related to legislative functions, such as the election of members to the Rajya Sabha, will fall outside the ambit of Article 194(2). According to the learned Attorney General, the election of members to the Rajya Sabha is akin to any other election process and cannot be treated as a matter of business or function of the legislature.

18. In response to the learned Attorney General's submissions that the polling for Rajya Sabha cannot be considered a proceeding of the House, Mr Ramachandran has submitted that the cases relied on by the learned Attorney General were not rendered in a context where parliamentary privilege or immunity was sought to be invoked and the passing reference to the concept of 'legislative proceedings' was in an entirely different context. Further, certain legislative processes such as ad-hoc committees, standing committees, elections of the constitutional offices of the President/Vice President, and members of the Rajya Sabha, do not necessarily take place on the floor of the House when it is in session. However, they have all the 'trappings' of carrying out the 'legislative process'.

19. Mr P S Patwalia, *amicus curiae* has submitted that the majority judgment must be reconsidered, and the view of the minority reflects the correct position of law. In this regard, Mr Patwalia made the following submissions:

19.1. The majority judgment has erroneously given a wide interpretation to the expression "in respect of" and granted immunity to MPs from criminal prosecution when they accept a bribe to cast a vote in Parliament. The object of Article 105 is not to place MPs above the law when the offence has been committed before the MP enters the House of Parliament;

19.2. The ratio of the judgments of this court rendered after **PV Narasimha Rao** (supra) militates against the grant of immunity to MPs for taking a bribe for casting votes;[13]

19.3. The minority judgment correctly notes that the offence of bribery is complete before the member even enters the House and therefore, the offence has no connection or correlation with the vote that she may cast in Parliament. The protection under Articles 105(2) and 194(2) is not available when the alleged criminal acts are committed outside Parliament;

19.4. The proposition that MPs are immune from prosecution for an offence of bribery in connection with their votes in Parliament is subversive of the rule of law;

19.5. The majority judgment results in an anomalous situation, where an MP who accepts a bribe and does not cast his vote can be prosecuted, while a member who casts his vote is given immunity;

19.6. The position of law in the United Kingdom, as developed over the years, confirms the proposition that the claim of privilege cannot be extended to immunity from prosecution for the offence of bribery; and

19.7. The international trend (particularly in the United States, Canada and Australia) is that parliamentary privilege does not extend to the offence of bribery. This trend is correctly relied on in the minority judgment, while the majority judgment relies on decisions which have been subsequently diluted even in their original jurisdictions.

13 Raja Ram Pal v. Hon'ble Speaker Lok Sabha, [2007] 1 SCR 317 : (2007) 3 SCC 184, Lokayukta, Justice Ripusudan Dayal v. State of M.P. [2014] 3 SCR 242 : (2014) 4 SCC 473 and State of Kerala v. K. Ajith, [2021] 6 SCR 774 : (2021) SCC OnLine 510

20. Mr Gopal Sankarnarayan, senior counsel appearing on behalf of the intervenor endorsed the view taken by the *amicus curiae*. Additionally, he made the following submissions:

    20.1. While the majority judgment has been doubted on multiple occasions, the minority judgment has been extensively relied on by this Court;

    20.2. The word "any" employed in Articles 105 and 194 of the Constitution ought to be given a narrow interpretation and should not mechanically be interpreted as 'everything', especially as it grants an exceptional immunity not available to the common person;

    20.3. The expression "in respect of" must be read narrowly. It must be tied down to 'legitimate acts' that are a part of the legislative process involving speech or a vote in Parliament or before a committee. Any other interpretation would violate the sanctity of the democratic process and the trust placed in the legislators by the public;

    20.4. Strict interpretation ought to be given to laws dealing with corruption which affects the public interest;

    20.5. The offence of bribery is complete on receipt of the bribe well before the vote is given or speech is made in Parliament. The offence under Section 7 (and Section 13) of the PC Act does not require 'performance'. Therefore, the delivery of results is irrelevant to the offence being established and the distinction created by the majority is artificial;

    20.6. The effect of the majority judgment is that it creates an illegitimate class of public servants which is afforded extraordinary protection which would be a violation of Article 14, as also being manifestly arbitrary; and

    20.7. Internationally, the legal position in the USA, UK, Canada, Australia, South Africa and New Zealand supports the minority judgment.

21. Mr Tushar Mehta, the learned Solicitor General of India highlighted the significance of preserving parliamentary privileges. He submitted that the issue for consideration before this Court is not the contours of parliamentary privileges but whether the offence of bribery is

complete outside the legislature. Mr Mehta submitted that the offence of bribery under the PC Act, both before and after the 2018 amendment, is complete on the acceptance of the bribe and is not linked to the actual performance or non-performance of the official function to which the bribe relates.

22. Mr Vijay Hansaria, Senior Advocate appearing on behalf of the intervenor, supplemented the arguments assailing the majority judgment. He submitted that the principle of parliamentary privilege must be interpreted in the context of the criminalization of politics and through the prism of constitutional morality. In his written submissions, Mr A Velan, Advocate for the intervenor supported the submission that the majority judgment in **PV Narasimha Rao** (supra) ought to be reconsidered.

D. Reconsidering PV Narasimha Rao does not violate the principle of *stare decisis*

23. We begin by addressing the preliminary argument of Mr Raju Ramachandran, that overruling of the long-settled law in **PV Narasimha Rao** (supra) is unwarranted by the application of the tests laid down by this Court on overturning judicial precedent. The order of reference provides reasons for *prima facie* doubting the correctness of the decision in **PV Narasimha Rao** (supra) including its impact on the "polity and the preservation of probity in public life." However, since the learned Senior Counsel has reiterated the preliminary objection to reconsidering the decision in **PV Narasimha Rao** (supra) before this bench of seven judges, the argument has been addressed below.

24. A decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser strength cannot disagree with or dissent from the view of the law taken by the bench of larger strength. However, a bench of the same strength can question the correctness of a decision rendered by a co-ordinate bench. In such situations, the case is placed before a bench of larger strength.[14]

25. In the present case, the case was first placed before a bench of two judges who referred the case to a bench of three judges. The

14 Central Board of Dawoodi Bohra Community vs. State of Maharashtra, [2004] Suppl. 6 SCR 1054 : (2005) 2 SCC 673, para 12

bench of three judges referred the case to a bench of five judges. In consonance with judicial discipline, the correctness of the decision in **PV Narasimha Rao** (supra) was only doubted by the co-equal bench of five judges of this Court in a detailed order. Accordingly, the matter has been placed before this bench of seven judges.

26. Doubts about the correctness of the decision in **PV Narasimha Rao** (supra) have been raised by this Court in several previous decisions as well. For instance, in **Kalpana Mehta v. Union of India**,[15] one of us (D.Y. Chandrachud, J) observed:

> "**221.** The view of the minority was that the offence of bribery is made out against a bribe-taker either upon taking or agreeing to take money for a promise to act in a certain manner. Following this logic, S.C. Agrawal, J. held that the criminal liability of a Member of Parliament who accepts a bribe for speaking or giving a vote in Parliament arises independent of the making of the speech or the giving of the vote and hence is not a liability "in respect of anything said or any vote given" in Parliament. **The correctness of the view in the judgment of the majority does not fall for consideration in the present case. Should it become necessary in an appropriate case in future, a larger Bench may have to consider the issue.**"
>
> (emphasis supplied)

27. Similar observations have been made by this Court in **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha.**[16] The Court has relied on the minority judgment in several decisions, notably **Kuldip Nayar v. Union of India.**[17] and **Amarinder Singh v. Punjab Vidhan Sabha**.[18] As the correctness of the decision in **PV Narasimha Rao** (supra) did not directly arise in these cases the Court refrained from making a reference or conclusive observations about the correctness of this decision. However, the present case turns almost entirely on the law laid down in **PV Narasimha Rao** (supra).

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15 [2018] 4 SCR 1 : (2018) 7 SCC 1

16 [2007] 1 SCR 317 : (2007) 3 SCC 184

17 (2006) 7 SCC 1

18 [2010] 4 SCR 1105 : (2010) 6 SCC 113

28. That the correctness of **PV Narasimha Rao** (supra) arises squarely in the facts of this case becomes clear from the impugned judgment of the High Court. The High Court formulated the question for consideration to be "whether Article 194(2) of the Constitution of India confers any immunity on the Members of the Legislative Assembly for being prosecuted in a criminal court of an offence involving offer or acceptance of bribe." This is the precise question that this Court adjudicated on in **PV Narasimha Rao** (supra) as well, in the context of Article 105(2).

29. Further, both the counsel for the appellant and the counsel for CBI relied on the reasoning in **PV Narasimha Rao** (supra). The High Court, in its analysis, held that since Article 194(2) is *pari materia* to Article 105(2), the law laid down in **PV Narasimha Rao** (supra) covers the field. The High Court relied on **PV Narasimha Rao** (supra) in holding that an MP who has not cast his vote is not covered by the immunity. Since the appellant did not vote as agreed, she was held not to be protected from immunity under Article 194(2).

30. The issue which arose before the High Court turned on the decision in **PV Narasimha Rao** (supra). Therefore, this proceeding provides the correct occasion to settle the law once and for all. There is no infirmity in the reference to seven judges to reconsider the decision in **PV Narasimha Rao** (supra).

31. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant has argued that a position of law which has stood undisturbed since 1998 should not be interfered with by the Court. We do not consider it appropriate for this Court to confine itself to such a rigid understanding of the doctrine of *stare decisis*. The ability of this Court to reconsider its decisions is necessary for the organic development of law and the advancement of justice. If this Court is denuded of its power to reconsider its decisions, the development of constitutional jurisprudence would virtually come to a standstill. In the past, this Court has not refrained from reconsidering a prior construction of the Constitution if it proves to be unsound, unworkable, or contrary to public interest. This delicate balance was eloquently explained by HR Khanna, J in **Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay**[19] in the following terms:

19 [1975] 1 SCR 1 : (1974) 2 SCC 402

> "**22.** […] The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well-established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. […]"

32. A Bench of seven judges of this Court in **Bengal Immunity Company Limited v. State of Bihar and Ors.,**[20] delineated the powers of this Court to reconsider its own decisions in view of the doctrine of *stare decisis*. Both SR Das, CJ and Bhagwati, J, in their separate opinions, detailed the power of this Court to reconsider its judgments, particularly when they raise issues of constitutional importance. SR Das, J explored the judgments delivered in various jurisdictions, such as England, Australia, and the United States to conclude that this Court cannot be denuded of its power to depart from its previous decisions, particularly on questions of interpretation of the Constitution. The Court observed that an erroneous interpretation of the Constitution could result in a situation where the error is not rectified for a long period of time to the detriment of the general public. The test laid down by the Court was rooted in establishing the "baneful effect" of the previous decision on the "general interests of the public". It was observed:

> "**15.** […] in a country governed by a Federal Constitution, such as the United States of America and the Union of India are, it is by no means easy to amend the Constitution if an erroneous interpretation is put upon it by this Court. (See Article 368 of our Constitution). **An erroneous interpretation of the Constitution may quite conceivably be perpetuated or may at any rate**

20 [1955] 2 SCR 603 : 1955 SCC OnLine SC 2

> **remain unrectified for a considerable time to the great detriment to public well being … There is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public. Article 141 which lays down that the law declared by this Court shall be binding on all courts within the territory of India quite obviously refers to courts other than this Court. The corresponding provision of the Government of India Act, 1935 also makes it clear that the courts contemplated are the subordinate courts.**"
>
> (emphasis supplied)

NH Bhagwati, J also emphasized the distinction between deviating from a decision dealing with the interpretation of statutory provisions and an interpretation of the Constitution, while opining that while an incorrect interpretation of a statute may be corrected by the legislature, it is not as easy to amend the Constitution to correct an unworkable interpretation. Akin to the exposition by SR Das, J, the test to reconsider previous decisions in the opinion of Bhagwati, J is whether the previous decision is "manifestly wrong or erroneous" or "public interest" requires it to be reconsidered.

33. The doctrine of *stare decisis* provides that the Court should not lightly dissent from precedent. However, this Court has held in a consistent line of cases,[21] that the doctrine is not an inflexible rule of law, and it cannot result in perpetuating an error to the detriment of the general welfare of the public. This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the interests of the public or if "it is inconsistent with the legal philosophy of the Constitution". In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to public interest and the polity. The period of time over which the case has held the field is not of primary consequence.

21 *See* Sambhu Nath Sarkar v. State of W.B., [1974] 1 SCR 1 : (1973) 1 SCC 856; Lt. Col. Khajoor Singh v. Union of India, [1961] 2 SCR 828; Union of India v. Raghubir Singh, [1989] 3 SCR 316 : (1989) 2 SCC 754; Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, [2002] 3 SCR 100 : (2002) 5 SCC 111; Supreme Court Advocates-on-Record Assn. v. Union of India, [2015] 13 SCR 1 : (2016) 5 SCC 1

This Court has overruled decisions which involve the interpretation of the Constitution despite the fact that they have held the field for long periods of time when they offend the spirit of the Constitution.

34. The judgment of the majority in **PV Narasimha Rao** (supra) deals with an important question of constitutional interpretation which impacts probity in public life. The decision has been met with notes of discord by various benches of this Court ever since it was delivered in 1998. An occasion has arisen in this case to lay down the law and resolve the dissonance. This is not an instance of this Court lightly transgressing from precedent. In fact, this case is an example of the Court giving due deference to the rule of precedent and refraining from reconsidering the decision in **PV Narasimha Rao** (supra) until it arose squarely for consideration.

35. The appellant has relied on judgments of this Court in **Shanker Raju v. Union of India**[22], **Shah Faesal v. Union of India**[23], **Keshav Mills Co. Ltd. v. CIT**[24] and **Krishena Kumar v. Union of India**[25]. These judgments reiterate the proposition that (i) the doctrine of *stare decisis* promotes certainty and consistency in law; (ii) the Court should not make references to reconsider a prior decision in a cavalier manner; and (iii) a settled position of law should not be disturbed merely because an alternative view is available. However, all these judgments recognize the power of this Court to reconsider its decisions in certain circumstances – including considerations of "public policy"; "public good" and to "remedy continued injustice". In the facts which arose in those cases, this Court found that there was no compelling reason to reconsider certain judgments of this Court.

36. In **Shanker Raju** (supra), this Court was dealing with the interpretation of the Administrative Tribunals (Amendment) Act, 2006 and the appointment of a judicial member of the Central Administrative Tribunal. The two-judge Bench observed that it was bound by the decision of a bench of larger strength adjudicating a similar issue and could not reconsider the view taken in that decision merely because an alternative view was available.

22 [2011] 2 SCR 1 : (2011) 2 SCC 132

23 [2020] 3 SCR 1115 : (2020) 4 SCC 1

24 [1965] 2 SCR 908

25 [1990] 3 SCR 352 : (1990) 4 SCC 207

37. In **Shah Faesal** (supra), a Constitution Bench of this Court was adjudicating on the question of whether the petitions were to be referred to a larger bench of seven judges on the ground that there were purportedly two contradictory decisions by benches of five judges. The Court observed that references to larger benches cannot be made casually or based on minor inconsistencies between two judgments. In that context, the Court found that the decisions were not irreconcilable with each other nor was one of the decisions *per incuriam*. While laying down the law on the doctrine of *stare decisis*, the Court held that in certain cases the Court may reconsider its decisions, particularly when they prove to be "unworkable" or "contrary to well-established principles". The Court also adverted to the transition in the practice of the House of Lords in the UK, from an absolute prohibition on reconsidering previous decisions to the present position, which permits overruling of decisions in certain circumstances. The Court also quoted the Canadian position to the effect that while precedent should not routinely be deviated from reconsidering previous decisions is permissible when it is necessary in "public interest".

38. The decision in **Keshav Mills** (supra) interpreted the provisions of the Income Tax Act, 1922 and in the circumstances of that case, the Court did not find any compelling reasons to reconsider previous decisions on a similar point of law. The Court recognized that it is permissible in circumstances where it is in the "interests of the public" or if there are any other "valid" or "compulsive" reasons, to reconsider a prior decision. Further, the Court noted that it would not be wise to lay down principles to govern the approach of the Court in reviewing its decisions as it is based on several considerations, including, the impact of the error on the "general administration of law" or on "public good". This exposition is, in fact, contained in the same paragraph that the appellant relies on to advance a rigid understanding of *stare decisis*. The bench of seven judges of this Court (speaking through Gajendragadkar, CJ) observed:

> "**23.** […] In reviewing and revising its earlier decision, this Court should ask itself **whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised.** When this Court decides questions

of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. **That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error**; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case, it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: —What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? **What would be the impact of the error on the general administration of law or on public good?** Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? **And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief?** These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a

> unanimous decision of a Bench of five learned Judges of this Court."
>
> (emphasis supplied)

39. Similarly, **Krishena Kumar** (supra) was a case about pension payable to government employees. There, too, although the Court did not find compelling reasons to reconsider its previous decisions in that factual context, it recognized that the Court does have the power to do so in order to "remedy continued injustice" or due to "considerations of public policy".

40. The context in the above cases cited by the appellant is not comparable with the present case. As set out in the order of reference and in the course of this judgment, the decision in **PV Narasimha Rao** (supra) has wide ramifications on public interest, probity in public life and the functioning of parliamentary democracy. The majority judgment contains several apparent errors *inter alia* in its interpretation of the text of Article 105; its conceptualization of the scope and purpose of parliamentary privilege and its approach to international jurisprudence all of which have resulted in a paradoxical outcome. The present case is one where there is an imminent threat of this Court allowing an error to be perpetuated if the decision in **PV Narasimha Rao** (supra) is not reconsidered.

41. Finally, the appellant also relies on the judgment of this Court in **Ajit Mohan v. Legislative Assembly, National Capital Territory of Delhi**[26], where this Court observed that there are "divergent views" amongst constitutional experts on "whether full play must be given to the powers, privileges, and immunities of legislative bodies, as originally defined in the Constitution, or (whether it) is to be restricted." However, it has been urged, that this Court refused to express its views on the matter on the ground that such an opinion must be left to the Parliament. The appellant submits that similarly, in this case, the Court must refrain from taking a conclusive view and leave the issue for the determination of Parliament. The argument is misconceived.

42. This judgment does not seek to determine or restrict the "powers, privileges, and immunities" of the legislature as defined in the Constitution. Rather, this judgment has a limited remit which is to

26 [2021] 14 SCR 611 : (2022) 3 SCC 529

adjudicate on the correct interpretation of Article 105 and Article 194 of the Constitution. Therefore, this Court is adjudicating upon the interpretation of the Constitution as it stands, and not on the question of whether "full play" should be given to the privileges.

43. In a separate but concurring opinion in **Mark Graves v. People of the State of New York**[27] while overruling two previous decisions of the United States Supreme Court on a question of constitutional importance, Frankfurter, J pithily observed:

> "Judicial exegesis is unavoidable with reference to an act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the unfolding future. But **the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.**"
>
> (emphasis supplied)

44. The above formulation holds true for the Constitution of India as well, which is a transformative document that raises delicate issues of constitutional interpretation. Cognizant of the consequences of the majority judgment, we endeavour to stay true to what the "Constitution itself" fathomed as the remit of Articles 105(2) and 194(2) even if it may be at the cost of moving away from "what we have said about it" in **PV Narasimha Rao** (supra). We believe that we must not perpetuate a mistaken interpretation of the Constitution, merely because of rigid allegiance to a previous opinion of five judges of this Court.

45. Having adverted to the background, submissions and preliminary issues, we turn to the subject which arises for consideration.

E. History of parliamentary privilege in India

46. In a deliberative democracy, the aspirations of the people are met by discourse in democratic institutions. The foremost among these institutions are Parliament and the State Legislatures. The object of the Constitution to give life and meaning to the aspirations of the people is carried out by its representatives through legislative business, deliberations, and dialogue. Parliament is called the "grand inquest

27 306 US 466 (1939)

of the nation." Not only can the actions and legislative priorities of the government of the day be scrutinised and criticised to hold it accountable, but Parliament also acts as a forum for ventilating the grievances of individuals, civil society, and public stakeholders. When the space for deliberation in the legislature shrinks, people resort to conversations and democratic actions outside the legislature. This privilege of the citizens to scrutinise the proceedings in Parliament is a concomitant right of a deliberative democracy which is a basic feature of the Constitution. Our Constitution intended to create institutions where deliberations, views and counterviews could be expressed freely to facilitate a democratic and peaceful social transformation.

47. Parliament is a quintessential public institution which deliberates on the actualisation of the aspirations of all Indians. The fulcrum of parliamentary privileges under a constitutional and democratic set up is to facilitate the legislators to freely opine on the business before the House. Freedom of speech in the legislature is hence a privilege essential to every legislative body.

48. A deliberative democracy imagines deliberation as an ethic of good governance and is not restricted to the parliamentary sphere alone. The opinion of Sanjeev Khanna, J. in **Rajeev Suri v DDA**,[28] elucidates the contours of deliberative democracy as follows:

> "**653.** Deliberative democracy accentuates the right of participation in deliberation, in decision-making, and in contestation of public decision-making. Contestation before the courts post the decision or legislation is one form of participation. Adjudication by courts, structured by the legal principles of procedural fairness and deferential power of judicial review, is not a substitute for public participation before and at the decision-making stage. **In a republican or representative democracy, citizens delegate the responsibility to make and execute laws to the elected government, which takes decisions on their behalf. This is unavoidable and necessary as deliberation and decision-making is more efficient in smaller groups.** The process requires gathering, processing and drawing inferences from information especially in contentious

28 [2021] 15 SCR 283 : (2022) 11 SCC 1

matters. Vested interests can be checked. Difficult, yet beneficial decisions can be implemented. Government officers, skilled, informed and conversant with the issues, and political executive backed by the election mandate and connected with electorate, are better equipped and positioned to take decisions. This enables the elected political executive to carry out their policies and promises into actual practice. Further, citizens approach elected representatives and through them express their views both in favour and against proposed legislations and policy measures. **Nevertheless, when required draft legislations are referred to Parliamentary Committees for holding elaborate consultation with experts and stakeholders. The process of making primary legislation by elected representatives is structured by scrutiny, consultation and deliberation on different views and choices infused with an element of garnering consensus.**

…

656. However, delegation of the power to legislate and govern to elected representatives is not meant to deny the citizenry›s right to know and be informed. **Democracy, by the people, is not a right to periodical referendum; or exercise of the right to vote, and thereby choose elected representatives, express satisfaction, disappointment, approve or disapprove projected policies. Citizens' right to know and the Government's duty to inform are embedded in the democratic form of governance as well as the fundamental right to freedom of speech and expression.** Transparency and receptiveness are two key propellants as even the most competent and honest decision-makers require information regarding the needs of the constituency as well as feedback on how the extant policies and decisions are operating in practice. This requires free flow of information in both directions. When information is withheld/denied suspicion and doubt gain ground and the fringe and vested interest groups take advantage. This may result in social volatility. [With reference to Olson's 7th implication, "7. Distributional

> coalitions … reduce the rate of economic growth…". '*The Rise and Decline of Nations*' by Mancur Olson and subsequent studies.]"
>
> (emphasis supplied)

The freedom of elected legislators to discuss and debate matters of the moment on the floor of the House is a key component of a deliberative democracy in a Parliamentary form of government. The ability of legislators to conduct their functions in an environment which protects their freedom to do so without being overawed by coercion or fear is constitutionally secured. As citizens, legislators have a fundamental right to the freedom of speech and expression. Going beyond that, the Constitution secures the freedom to speak and debate in the legislatures both of the Union and States. This is the protection afforded to individual legislators. The recognition of that right is premised on the need to secure the institutional foundation of Parliament and the State legislatures as key components of the dialogue, debate and critique which sustains democracy.

49. In the Indian context, deliberative democracy as well as the essential privilege of freedom of speech in legislatures cannot be understood without reference to its history and development in the aftermath of the struggle for independence from colonial rule. India provides an example in history where representative institutions have evolved in stages. The privileges of legislatures in India have been closely connected with the history of these institutions. This history can be traced to the history of parliamentary privileges in the House of Commons in the UK as well as the struggle of the Indian Legislatures to claim these privileges under colonial rule. The steps which were initiated under colonial rule to bring political and parliamentary governance to India always fell short of the aspirations of Indians. This can primarily be attributed to the fact that British rule was resistant to the desire of Indians to be independent. Hence, the Indian legislatures were not acknowledged to have comparable privileges to those of the House of Commons in the UK. In **Kielly v. Carson**[29], the Privy Council had propounded that the House of Commons in the UK had acquired privileges by ancient usage and colonial legislatures had no *lex et consuetudo parliament* or the law and custom of Parliament as

29 (1841-42) 4 Moo. PC 63

their rights emanated from a statute. This implied that there were no inherent rights granted to legislatures under colonial rule.

50. Under the rule of the East India Company, law making lay in the exclusive domain of the executive till 1833. The Government of India Act 1833 redesignated the Governor-General of Bengal as the Governor-General of India with exclusive legislative powers. The Governor-General was to have four members one of whom would be a law member who was not entitled to act as a member of the Council except for legislative purposes. This was an introductory measure for legislatures in India because the Council of the Governor-General would hold distinct meetings to transact its executive functions and legislative functions. This procedure was envisaged for convenience in enacting laws in the vast and diverse social milieu in India rather than a desire to provide representation as a means for framing better laws. However, reflecting the need for legislative privileges in carrying out the duties of the legislators, the first law member, Lord Macaulay, made efforts to secure some special facilities in the nature of powers by his draft standing orders. These special facilities included providing complete information on the subject of the legislation, the right to be present in all meetings of the Council of the Governor-General, freedom of speech, and freedom of voting.[30]

51. The privileges of attendance and voting even in non-legislative business were extended by the Charter Act 1853. It marked a further separation of the executive and legislative functions. The Legislative Council was to have additional members to help transact the legislative business and give their independent considerations to the laws under scrutiny. These members in the Legislative Council did not have any privileges by statute, but the absence of restrictions on their freedom of speech was construed as conferring inherent rights and privileges on them. The Council therefore attempted to assume to itself powers akin to a mini Parliament modelled around the House of Commons in the UK. The Legislative Council under the Acts of 1833 and 1853 had the power to frame their own rules of procedure.

52. This power was taken away in the Indian Council Act 1861. However, Section 10 of the 1861 Act introduced between six and twelve non-official members into the Legislative Councils, who could be British

30 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 317-18

or Indians. There was an implicit recognition of the freedom of speech and vote of these additional members. The British Parliament had recognised the existence of the privilege for the members of the Indian Councils, which was also confirmed by the Secretary of State for India.[31] Nevertheless the provisions of the 1861 Act were sufficiently stringent and did not allow the Council to have any activity beyond the limited sphere prescribed by the Act. Moreover, there was a marked difference between the freedom of speech effectively enjoyed by official members and nominated Indian members.[32]

53. The Government of India Act 1909 marked a significant shift in the evolution of India's political institutions. The Act allowed more Indians to be a part of Legislative Councils and enlarged their functions. Members were allowed to ask questions and supplementary questions to the executive. The Act was a way forward for electoral and representative governance by prescribing the indirect election of Indians to the Council. However, even in these Councils, discussion on certain subjects was not permitted. Non-official members continued to assert the privilege of free speech in the Council. Despite being indirectly elected, the Indian members of legislatures in India diluted the rigidity of colonial governance in India. In the absence of official support, privileges grew as a convention rather than law. The executive felt at liberty to violate the privileges of the Legislative Council and at any rate maintained that the Councils in India did not have any privilege akin to the UK House of Commons.[33]

54. The Government of India Act 1919 separated the legislatures from executive control. It introduced dyarchy, by prescribing two classes of administrators – the Executive councillors who were not accountable to the legislature and the ministers who would enjoy the confidence of the legislature. The Act extended more powers to the legislatures than previously enjoyed by them. However, members were restricted on the range of subjects which they could discuss, participate in and vote upon. Many privileges were not specified in the 1919 Act or rules of the procedure of the House. Nevertheless, the legislature claimed privileges as an inherent right of the legislature in the face of

31 Legislative Dispatch No. 14 of 9 August 1861, para 23

32 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 102-103

33 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 139-141, 158

an unwilling executive. The reason for the hesitation of the colonial Government of India was that a government run by a foreign power was not willing to extend parliamentary privileges to Indian legislators as a recognition of their possessing sovereign powers.[34] The 1919 Act gave a qualified privilege of freedom of speech to the Houses of Legislature. Section 24(7) of the 1919 Act read thus:

> "(7) Subject to the rules and standing orders affecting the Council, there shall be freedom of speech in the Governors' Legislative Councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such Council or by reason of anything contained in any official report of the proceedings of any such Council."

A corresponding provision was made in Section 11(7) of the Act with respect to provincial Legislative Councils. The freedom of speech in the Legislative Councils was subject to the Rules promulgated by the Governor-General. Therefore, while freedom of speech was extended to the Legislative Councils, they were ultimately made subject to the pleasure of the Governor-General and the Secretary of State for India for the legislature's rule making power. The Act therefore did not make provisions to grant freedom of speech to Indian legislatures but rather aimed to place restrictions on the freedom of speech in the House. These restrictions materially impeded the ability of the legislatures to hold discussions on issues of public importance and introduce legislation. The Act however did grant the legislature power to define its own privilege.

55. A committee was set up in 1924 within a few years of the introduction of the Government of India Act 1919. The committee was tasked with enquiring into the difficulties or defects in the 1919 Act and exploring remedies for securing them. The Reforms Committee of 1924 made reference to the privileges of Indian legislative bodies and opined that:

> "…at present such action would be premature. At the same time we feel that the legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is

34 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 322

> freedom of speech in all the legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends."[35]

56. Interestingly, the committee suggested that certain additional privileges be granted to Indian Legislatures. The committee further recommended introducing a penal provision for influencing votes within the legislature through *inter alia* bribery. The report stated:

> "We are given to understand that there are at present no means, of dealing with the corrupt influence of votes within the legislature. We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law."

57. The government introduced a Legislative Bodies Corrupt Practices Bill which proposed to penalise (i) the offering of bribe to a member of a legislature in connection with his functions; and (ii) the receipt on demand by a member of the legislature of a bribe in connection with his functions.[36] The Bill ultimately lapsed and was not reintroduced.

58. The provisions of the 1919 Act were substantially retained in Section 28(1) of the Government of India Act 1935. Section 28(1) read thus:

> "(1) Subject to the provisions of this Act and the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings."

35 Report of the Reforms Enquiry Committee (1924), 75

36 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 213-214

A corresponding provision was made in Section 71(1) of the 1935 Act with respect to Provincial Legislatures. The House was empowered to make rules for the conduct of proceedings. However, they were always to give way to the rules framed by the Governor-General for the House. Parliamentary privileges had struck root in India on legislators demanding parity with the UK House of Commons with reasonable adjustments to account for Indian needs. This was because legislators in India felt that their discharge of legislative functions would be adversely affected in the absence of these privileges. Prominent among the demands of legislators were the power to punish for contempt of the House, supremacy of the Chair in matters of the House, and freedom of speech and freedom from arrest to allow members to partake in the proceedings and discharge their functions.

59. At no point were these privileges demanded as a blanket immunity from criminal law. Even in the face of colonial reluctance, the demand for parliamentary privileges in India was always tied to the relationship which it bore to the functions which the Indian legislators sought to discharge.

60. This background prevailed when the Constituent Assembly was deciding the fate of Articles 85 and 169 of the draft Constitution which have since become Articles 105 and 194 of the Constitution. Our founding parents intended the Constitution to be a 'modernizing' force. Parliamentary form of democracy was the first level of this modernizing influence envisaged by the framers of the Constitution.[37] The Constitution was therefore born in an environment of idealism and a strength of purpose born of the struggle for independence. The framers intended to have a Constitution which would light the way for a modern India.[38]

61. When the Constituent Assembly convened to discuss Article 85 of the draft Constitution, Mr HV Kamath moved an amendment to remove the reference to the House of Commons in the UK and replace it with the Dominion Legislature in India immediately before the commencement of the Constitution. Opposing this amendment Mr Shibban Lal Saxena said, "So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our

37 Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), ix

38 Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), xiii

privileges he is welcome to have his amendment adopted."[39] The members of the Constituent Assembly were therefore keenly aware that their privileges under the colonial rule were not 'ancient and undoubted' like the House of Commons in the UK but a statutory grant made by successive enactments and assertion by legislatures.

F. Purport of parliamentary privilege in India

I. Functional analysis

62. Article 105 which is located in Part V Chapter II of the Constitution stipulates the powers, privileges, and immunities of Parliament, its members and committees. An analogous provision concerning State Legislatures is in Article 194 of the Constitution. Article 105 reads as follows:

> "**105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.**
>
> (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> (2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
>
> (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

39 CAD Vol VIII 19 May, 1949 Draft Article 85

> (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

63. Article 105 of the Constitution has four clauses. Clause (1) declares that there shall be freedom of speech in Parliament. This freedom is subject to the Constitution and to the rules and standing orders regulating the procedure in Parliament. Therefore, the freedom of speech in Parliament would be subject to the provisions that regulate its procedure framed under Article 118. It is also subject to Article 121 which restricts Parliament from discussing the conduct of any Judge of the Supreme Court or of a High Court in the discharge of their duties except upon a motion for presenting an address to the President praying for the removal of the Judge. The freedom of speech guaranteed in Parliament under Article 105(1) is distinct from that guaranteed under Article 19(1)(a). In **Alagaapuram R Mohanraj v. TN Legislative Assembly**[40] this Court delineated the differences in these freedoms as follows:

a. While the fundamental right of speech guaranteed under Article 19(1)(a) inheres in every citizen, the freedom of speech contemplated under Articles 105 and 194 is not available to every citizen but only to a member of the legislature;

b. Article 105 is available only during the tenure of the membership of those bodies. On the other hand, the fundamental right under Article 19(1)(a) is inalienable;

c. Article 105 is limited to the premises of the legislative bodies. Article 19(1)(a) has no such geographical limitations; and

d. Article 19(1)(a) is subject to reasonable restrictions which are compliant with Article 19(2). However, the right of free speech available to a legislator under Articles 105 or 194 is not subject to such limitations. That an express provision is made for freedom of speech in Parliament in clause (1) of Article 105 suggests that this freedom is independent of the freedom of speech

40 [2016] 6 SCR 611 : (2016) 6 SCC 82

conferred by Article 19 and is not restricted by the exceptions contained therein.

64. Clause (2) of Article 105 has two limbs. The first prescribes that a member of Parliament shall not be liable before any court in respect of "anything said or any vote given" by them in Parliament or any committee thereof. The second limb prescribes that no person shall be liable before any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings. The vote given by a member of Parliament is an extension of speech. Therefore, the freedom of a member of Parliament to cast a vote is also protected by the freedom of speech in Parliament. In **Tej Kiran Jain v. N Sanjeeva Reddy,**[41] a six-judge bench of this Court held that Article 105(2) confers immunity in respect of "anything said" so long as it is "in Parliament." Therefore, the immunity is qualified by the fact that it must be attracted to speech during the conduct of business in Parliament. This Court held that the word "anything" is of the widest import and is equivalent to "everything". It is only limited by the term "in Parliament".

65. Clauses (1) and (2) explicitly guarantee freedom of speech in Parliament. Clause (1) is a positive postulate which guarantees freedom of speech whereas Clause (2) is an extension of the same freedom postulated negatively. It does so by protecting the speech, and by extension a vote, from proceedings before a court. Freedom of speech in the Houses of Parliament and their committees is a necessary privilege, essential to the functioning of the House. As we have noted above, the privilege of free speech in the House of Parliament or Legislature can be traced to the struggle of the Indian legislators and was granted in progression by the colonial government. This privilege is not only essential to the ability of Parliament and its members to carry out their duties, but it is also at the core of the function of a democratic legislative institution. Members of Parliament and Legislatures represent the will of the people and their aspirations. The Constitution was adopted to have a modernizing influence. The Constitution is intended to meet the aspirations of the people, to eschew an unjust society premised on social hierarchies and discrimination, and to facilitate the path towards an egalitarian

41 [1971] 1 SCR 612 : (1970) 2 SCC 272

society. Freedom of speech in Parliament and the legislatures is an arm of the same aspiration so that members may express the grievances of their constituents, express diverse perspectives and ventilate the perspectives of their constituents. Freedom of speech in Parliament ensures that the government is held accountable by the House. In **Kalpana Mehta** (supra) one of us (DY Chandrachud, J) had occasion to elucidate the importance of this privilege:

> "**181.** […] Parliament represents collectively, through the representative character of its Members, the voice and aspirations of the people. Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents.
>
> **182.** The Constitution recognises free speech as a fundamental right in Article 19(1)(a). A separate articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. **It embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy.** Elected Members of Parliament represent the voices of the citizens. In giving expression to the concerns of citizens, Parliamentary speech enhances democracy. […]"
>
> (emphasis supplied)

66. Notably, unlike the House of Commons in the UK, India does not have 'ancient and undoubted' rights which were vested after a struggle between Parliament and the King. On the contrary, privileges were always governed by statute in India. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution. However, while the drafters of the Constitution expressly envisaged the freedom of speech in Parliament, they left the other privileges to be decided by Parliament through legislation.

Clause (3) of Article 105 states that in respect of privileges not falling under Clauses (1) and (2) of Article 105, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law. Until Parliament defines these privileges, they are to be those which the House and its members and committees enjoyed immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Section 15 reads as follows:

> **"15. Amendment of article 105.-**In article 105 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted."

67. The privileges enjoyed by the House and its members and committees immediately before the coming into force of Section 15 of the Forty-fourth amendment to the Constitution were those enjoyed by the House of Commons in the UK at the commencement of the Constitution of India. This was also the case with Clause (3) of Article 194 which was amended by Section 26 of the Forty-fourth amendment to the Constitution. The reference to the House of Commons was accepted by the Constituent Assembly for two reasons. First, Indian legislators did not enjoy any privilege prior to the commencement of the Constitution and therefore a reference to the Dominion Parliament would leave the House with virtually no privileges. Second, it was not possible to make an exhaustive list of privileges at the time nor was it preferable to enlist such a long list as a schedule to the Constitution.[42]

68. Clause (3) allows Parliament to enact a law on its privileges from time to time. It may be noted here that the House of Commons in

42 See reply of Sir Alladi Krishnaswami Ayyar and Dr BR Ambedkar to the Constituent Assembly, CAD Vol VIII 19 May 1949 Draft Article 85 and Vol X 16 October 1949 Draft Article 85.

the UK does not create new privileges.[43] Its privileges are those which have been practiced by the House and have become ancient and undoubted.

69. Further, unlike the House of Commons in the UK, Parliament in India cannot claim power of its own composition. The extent of privileges in India has to be within the confines of the Constitution. Within this scheme, the Courts have jurisdiction to determine whether the privilege claimed by the House of Parliament or Legislature in fact exists and whether they have been exercised correctly. In a steady line of precedent, this Court has held that in the absence of legislation on privileges, the Parliament or Legislature may only claim such privilege which belonged to the House of Commons at the time of the commencement of the Constitution and that the House is not the sole judge to decide its own privilege.

70. When the Parliament or Legislatures enact a law on privileges, such a law would be subject to the scrutiny of Part III of the Constitution. The interplay between Part III of the Constitution and Article 105(3) arose in the decision of this Court in **MSM Sharma v. Sri Krishna Sinha**,[44] where a Constitution bench speaking through SR Das, CJ held that the privileges of the House of Parliament under Clause (3) of Article 105 are those which belonged to the House of Commons in the UK at the commencement of the Constitution which would prevail over the fundamental rights guaranteed to citizens under Article 19(1)(a) of the Constitution. However, if the Parliament were to enact a law codifying its privilege then it may not step over the fundamental rights of citizens by virtue of Article 13 of the Constitution. K Subba Rao, J (as the learned Chief Justice then was) dissented from the majority and held that the import of privileges held by the House of Commons in the UK was only a transitory provision till the Parliament or legislatures enact a law codifying their respective privileges. Therefore, Justice Subba Rao held in his dissent that the legislature cannot run roughshod over the fundamental rights of citizens who in theory have retained their rights and only given a part of it to the legislature.

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43 It was agreed in 1704 that no House of Parliament shall have power, by any vote or declaration, to create new privilege that is not warranted by known laws and customs of Parliament. The symbolic petition by the Speaker of the House of Commons to the crown claiming the 'ancient and undoubted' privileges of the House of Commons are therefore not to be changed.

44 [1959] Suppl. 1 SCR 806 : AIR 1959 SC 395

71. In **Special Refence No. 1 of 1964**,[45] a seven-judge Bench of this Court opined on the privileges of the State Legislature upon a Presidential reference. The reference was in the aftermath of the Speaker of the UP Legislative Assembly directing the arrest and production of two judges of the High Court. The two judges had interfered with a resolution to administer reprimand to a person who had published a pamphlet libelling one of the members of the Assembly. Gajendragadkar, CJ speaking for the majority did not disagree with the decision in **MSM Sharma** (supra) which held that Article 105(3) and Article 194(3) would prevail over Article 19(1)(a) of the Constitution. However, the Court held that Article 21 was to prevail over Articles 105(3) and 194(3) in a conflict between the two. The Court held that the Parliament or Legislature is not the sole judge of its privileges and the courts have the power to enquire if a particular privilege claimed by the legislature in fact existed or not, by consulting the privileges of the Commons. The determination of privileges, the Court held, and whether they conform to the parameters of the Constitution is a question that must be answered by the courts. This Court opined that:

> "**37.** The next question which faces us arises from the preliminary contention raised by Mr Seervai that by his appearance before us on behalf of the House, the House should not be taken to have conceded to the Court the jurisdiction to construe Article 194(3) so as to bind it. As we have already indicated, his stand is that in the matter of privileges, the House is the sole and exclusive judge at all stages. […]
>
> …
>
> **42.** In coming to the conclusion that **the content of Article 194(3) must ultimately be determined by courts and not by the legislatures**, we are not unmindful of the grandeur and majesty of the task which has been assigned to the legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our

45 [1965] 1 SCR 413 : 1964 SCC OnLine SC 21

> country, and that naturally gives the legislative chambers a high place in the making of history today. […]"
>
> (emphasis supplied)

72. The opinion in **Special Reference No. 1 of 1964** (supra) was further affirmed by another seven-judge bench of this Court in **State of Karnataka v. Union of India**[46] which held that whenever a question arises whether the House has jurisdiction over a matter under its privileges, the adjudication of such a claim is vested exclusively in the courts. Relying on **Special Reference No. 1 of 1964** (supra) and **State of Karnataka** (supra) a Constitution bench of this Court in **Raja Ram Pal** (supra) held that the court has the authority and jurisdiction to examine if a privilege asserted by the House (or even a member by extension) in fact accrues under the Constitution. Further, in **Amarinder Singh** (supra) a Constitution bench of this Court held that the courts are empowered to scrutinise the exercise of privileges by the House.[47] The interplay between fundamental rights of citizens and the privileges of the Houses of Parliament or Legislature is pending before a Constitution bench of this Court in **N Ravi** v. **Speaker, Legislative Assembly Chennai**.[48]

73. Clause (4) of Article 105 extends the freedoms in the above clauses to all persons who by virtue of the Constitution have a right to speak in Parliament. The four clauses in Articles 105 and 194 form a composite whole which lend colour to each other and together form the corpus of the powers, privileges and immunities of the Houses of Parliament or Legislature, as the case may be, and of members and committees.

74. We have explored the trajectory of parliamentary privileges, especially that of freedom of speech in the Indian legislatures. It has been a timeless insistence of the legislators that their freedom of speech to carry out their essential legislative functions be protected and sanctified. Whereas the drafters of our Constitution have expressly guaranteed the freedom of speech in Parliament and legislature, they left the other privileges uncodified.

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46 [1978] 2 SCR 1 : (1977) 4 SCC 608, para 63

47 (2010) 6 SCC 113, para 54

48 WP (Crl) No. 206-210/2003 etc.

75. In a consistent line of precedent this Court has held that – firstly, Parliament or the state legislature is not the sole judge of what privileges it enjoys and secondly, Parliament or legislature may only claim privileges which are essential and necessary for the functioning of the House. We have explored the first of these limbs above. We shall now analyse the jurisprudence on the existence, extent and exercise of privileges by the House of Parliament, its members and committees.

II. Parliamentary privilege as a collective right of the House

76. According to Erskine May, parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the "High Court of Parliament" and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.[49] The term 'High Court of Parliament' dates back to the time when all powers of legislating and dispensing justice vested in the Monarch who in turn divested them to a body which would carry out the function of the legislature as the King sitting in the High Court of Parliament. To that extent, the term is redundant in the Indian context where the Constitution is supreme and the power of the Parliament over its domain flows from and is defined by the Constitution. However, the definition provides an authoritative guide to understanding the meaning and remit of parliamentary privileges. The definition evidently divides privileges into two constituent elements. The first is the sum of rights enjoyed by the House of Parliament and the second is the rights enjoyed by members of the House individually. Rights and immunities such as the power to regulate its own procedure, the power to punish for contempt of the House or to expel a member for the remainder of the session of the House, belong to the first element of privileges held by the House as a collective body for its proper functioning, protection of members, and vindication of its own authority and dignity. The second element of rights exercised individually by members of the House includes freedom of speech and freedom from arrest, among others.

49 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

77. The privilege exercised by members individually is in turn qualified by its necessity, in that the privilege must be such that "without which they could not discharge their functions." We shall elucidate this limb later in the course of this judgment. These privileges enjoyed by members of the House individually are a means to ensure and facilitate the effective discharge of the collective functions of the House.[50] It must therefore be noted that whereas the privileges enjoyed by members of the House exceed those possessed by other bodies or individuals, they are not absolute or unqualified. The privilege of an individual member only extends insofar as it aids the House to function and without which the House may not be able to carry out its functions collectively.

78. Subhash C Kashyap has explained parliamentary privileges as they may be understood in the Indian context.[51] In his book on parliamentary procedure, the author has opined as follows:

> "[…] In Parliamentary parlance the term 'privilege means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by the members of each House individually without which they cannot discharge their functions efficiently and effectively. The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of the institution of Parliament and its members. They are granted by the Constitution to enable them to discharge their functions without any let or hindrance. **Parliamentary Privileges do not exempt members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the applications of the laws of the land unless there are good and sufficient reasons in the interest of Parliament itself to do so.** The fundamental principle is that all citizens including members of Parliament should be treated equally before the law. The privileges

50 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

51 Subhash C. Kashyap, Parliamentary Procedure—Law, Privileges, Practice and Precedents, 3rd ed., Universal Law Publishing Co, 502.

> are available to members only when they are functioning in their capacity as members of Parliament and performing their parliamentary duties."
>
> (emphasis supplied)

79. The understanding which unequivocally emerges supports the claim that the privileges which accrue to members of the House individually are not an end in themselves. The purpose which privileges serve is that they are necessary for the House and its committees to function. Therefore, we may understand parliamentary privileges as those rights and immunities which allow the orderly, democratic, and smooth functioning of Parliament and without which the essential functioning of the House would be violated.

80. The framers of the Constitution intended to establish a responsible, responsive and representative democracy. The value and importance of such a democracy weighed heavily on the framers of the Constitution given the history of an oppressive colonial government to which India had been subjected. The history of parliamentary democracy shows that the colonial government denied India a responsible government where initially Indians were kept out of legislating on laws which would be enforced on its diverse social tapestry. Even when Indians were allowed in legislatures, a responsive government which could be accountable to the people in a meaningful way was yet a distant reality in the colonial period. The ability of the legislature in turn to scrutinise the actions of the executive was effaced and despite the statutory guarantee of freedom of speech for members of the House in the Government of India Act 1919, the guarantee remained illusory to the extent that many subjects were restricted from being discussed in the legislatures.

81. In that sense, the foundations of a deliberative democracy premised on responsibility, responsiveness, and representation sought to ensure that the executive government of the day is elected by and responsible to the Parliament or Legislative Assemblies which comprise of elected representatives. These representatives would be able to express their views on behalf of the citizens and ensure that the government lends ear to their aspirations, complaints and grievances. This aspect of the functioning of the House is essential to sustain a meaningful democracy. This necessitates that members of the House be able to attend the House and thereafter speak their

minds without fear of being harassed by the executive or any other person or body on the basis of their actions as members of the House in the exercise of their duties. In the absence of this feature Parliament and the state legislatures would lose the essence of their representative character in a democratic polity.

82. The privileges enshrined under Article 105 and Article 194 of the Constitution are of the widest amplitude but to the extent that they serve the aims for which they have been granted. The framers of the Constitution would not have intended to grant to the legislatures those rights which may not serve any purpose for the proper functioning of the House. The privileges of the members of the House individually bear a functional relationship to the ability of the House to collectively fulfil its functioning and vindicate its authority and dignity. In other words, these freedoms are necessary to be in furtherance of fertilizing a deliberative, critical, and responsive democracy. In **State of Kerala v. K Ajith,**[52] one of us (DY Chandrachud, J) held that a member of the legislature, the opposition included, has a right to protest on the floor of the legislature. However, the said right guaranteed under Article 105(1) of the Constitution would not exclude the application of ordinary criminal law against acts not in direct exercise of the duties of the individual as a member of the House. This Court held that the Constitution recognises privileges and immunities to create an environment in which members of the House can perform their functions and discharge their duties freely. These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal.

83. MN Kaul and SL Shakdher have in their celebrated work on the Practice and Procedure of Parliament endorsed this view by stating that[53]

> "In modern times, parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded as a protection of the members of

52 [2021] 6 SCR 774 : (2021) 17 SCC 318

53 MN Kaul and SL Shakdher, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

> Parliament against an executive authority not responsible to Parliament. **The entire background in which privileges of Parliament are now viewed has changed because the Executive is now responsible to Parliament. The foundation upon which they rest is the maintenance of the dignity and independence of the House and of its members.**"
>
> (emphasis supplied)

The privileges enjoyed by members of the House are tethered intrinsically to the functioning of the House collectively. A House of Parliament or Legislature functions through the collective will of its individual members. These members acting as constituents of the House may not claim any privilege or immunity unconnected with the working of the entire House.

84. While some cherished freedoms exercised individually by members of the House, including the freedom of speech, have been undeniably understood to be essential to the functioning of the House as a whole, other exercises such as damaging public property or committing violence are not and cannot be deemed to have immunity. The privileges and immunities enshrined in Articles 105 and 194 of the Constitution with respect to Houses of Parliament and the Legislatures, their members and committees, respectively belong to the House collectively. The exercise of the privileges individually by members must be tested on the anvil of whether it is tethered to the healthy and essential functioning of the House.

III. Necessity test to claim and exercise a privilege

85. Having established that the privileges and immunities exercisable by members of the House individually must be tethered to the functioning of the House we must now explore which privileges may be deemed to accrue to the House collectively and by extension to individual members. In **State of Karnataka** (supra) a seven-Judge bench of this Court speaking through MH Beg, CJ held that the powers under Article 194 (as well as Article 105) are those which depend upon and are necessary for the conduct of the business of each House. In that sense, these powers may not even apply to all the privileges which accrue to the House of Commons but may not be necessary for the functioning of the House. The learned Chief Justice stated:

> "**57.** It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the "powers" meant to be indicated here are not independent. **They are powers which depend upon and are necessary for the conduct of the business of each House**. They cannot also be expanded into those of the House of Commons in England for all purposes. For example, it could not be contended that each House of a State Legislature has the same share of legislative power as the House of Commons has, as a constituent part of a completely sovereign legislature. Under our law it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in legislative power as is assigned to it by the Constitution itself. […]"
>
> (emphasis supplied)

86. This Court held that in India the source of authority is the Constitution which derives its sovereignty from the people. The powers and privileges claimed by a House cannot traverse beyond those which are permissible under the Constitution. The Constitution only allows exercise of those powers, privileges, and immunities which are essential to the functioning of the House or a committee thereof. MN Kaul and SL Shakdher have opined that[54]

> "**In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance".** They apply to individual members "only insofar as they are **necessary in order that the House may freely perform its functions**. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects". Privileges

54 MN Kaul and SL Shakdher, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

> of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so."
>
> (emphasis supplied)

87. The evolution of parliamentary privileges as well as the jurisprudence of this Court establish that members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning. To give any privilege unconnected to the functioning of the Parliament or Legislature by necessity is to create a class of citizens which enjoys unchecked exemption from ordinary application of the law. This was neither the intention of the Constitution nor the goal of vesting Parliament and Legislature with powers, privileges and immunities.

88. In **Amarinder Singh** (supra) a Constitution bench of this Court held that the test to scrutinise the exercise of privileges is whether they were necessary to safeguard the integrity of legislative functions. KG Balakrishnan, CJ after exploring a wealth of material on the subject opined that privileges serve the distinct purpose of safeguarding the integrity of the House. This Court held that privileges are not an end in themselves but must be exercised to ensure the effective exercise of legislative functions. The Chief Justice observed that:

> "**35.** The evolution of legislative privileges can be traced back to medieval England when there was an ongoing tussle for power between the monarch and Parliament. In most cases, privileges were exercised to protect the Members of Parliament from undue pressure or influence by the monarch among others. Conversely, with the gradual strengthening of Parliament there were also some excesses in the name of legislative privileges. **However, the ideas governing the relationship between the executive and the legislature have undergone a sea change since then. In modern parliamentary democracies, it is the legislature which consists of the people's representatives who are expected to monitor executive functions. This is achieved by embodying the idea of "collective responsibility" which entails that those**

who wield executive power are accountable to the legislature.

36. However, legislative privileges serve a distinct purpose. **They are exercised to safeguard the integrity of legislative functions against obstructions which could be caused by members of the House as well as non-members.** Needless to say, it is conceivable that in some instances persons holding executive office could potentially cause obstructions to legislative functions. Hence, there is a need to stress on the operative principles that can be relied on to test the validity of the exercise of legislative privileges in the present case.

…

47. […] **the exercise of legislative privileges is not an end in itself. They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions.** These functions include the right of members to speak and vote on the floor of the House as well as the proceedings of various Legislative Committees. In this respect, privileges can be exercised to protect persons engaged as administrative employees as well. **The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions.** […]."

(emphasis supplied)

89. In **Lokayukta, Justice Ripusudan Dayal v. State of MP**,[55] a three-judge bench of this Court held that the scope of a privilege enjoyed by a House and its members must be tested on the basis of the necessity of the privilege to the House for its free functioning. This Court further held that members of the House cannot claim exemption from the application of ordinary criminal law under the garb of privileges which accrue to them as members of the House under the Constitution. P Sathasivam, CJ opined that

55 [2014] 3 SCR 242 : (2014) 4 SCC 473

"**51.** The scope of the privileges enjoyed depends upon the need for privileges i.e. why they have been provided for. The basic premise for the privileges enjoyed by the Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House. […]

52. It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution.

…

76. It is made clear that privileges are available only insofar as they are necessary in order that the House may freely perform its functions. For the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, the jurisdiction of the Lokayukt or the Madhya Pradesh Special Police Establishment is for all public servants (except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act) and no privilege is available to the officials and, in any case, they cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. Privileges do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiation."

(emphasis supplied)

90. The necessity test for ascertaining parliamentary privileges has struck deep roots in the Indian context. We do not need to explore the well-established jurisprudence on the necessity test in other jurisdictions beyond the above exposition of Indian jurisprudence on the subject at this juncture. The evolution of parliamentary privileges in various

parliamentary jurisdictions has shown a consistent pattern that when an issue involving privileges arises, the test applied is whether the privilege claimed is essential and necessary to the orderly functioning of the House or its committee. We may also note that the burden of satisfying that a privilege exists and that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege. The Houses of Parliament or Legislatures, and the committees are not islands which act as enclaves shielding those inside from the application of ordinary laws. The lawmakers are subject to the same law that the law-making body enacts for the people it governs and claims to represent.

91. We therefore hold that the assertion of a privilege by an individual member of Parliament or Legislature would be governed by a twofold test. First, the privilege claimed has to be tethered to the collective functioning of the House, and second, its necessity must bear a functional relationship to the discharge of the essential duties of a legislator.

G. Bribery is not protected by parliamentary privilege

I. Bribery is not in respect of anything said or any vote given

92. The question remains as to whether these privileges attract immunity to a member of Parliament or of the Legislatures who engages in bribery in connection with their speech or vote. The test of intrinsic relation to the functioning of the House and the necessity test evolved by this Court in the context of determining the remit of privileges under Articles 105(3) and 194(3) must weigh while delineating the privileges under Clauses (1) and (2) of the provisions as well. When this Court is called upon to answer a question of interpretation of a provision of the Constitution, it must interpret the text in a manner that does not do violence to the fabric of the Constitution. This Court's opinion in PV Narasimha Rao (supra) hinged on two phrases in clause (2) of Article 105 of the Constitution. These phrases were "in respect of" and the following word "anything." Clause (2) of the Article reads as follows

> "(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the

> publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

93. In **State (NCT of Delhi) v Union of India**,[56] Dipak Misra, CJ observed that the Court should interpret a constitutional provision and construe the meaning of specific words in the text in the context in which the words occur by referring to the other words of the said provision. This Court held in that case that the meaning of the word "any" can be varied depending on the context in which it appears and that the words "any matter" was not to be understood as "every matter".

94. The decision in **Tej Kiran Jain** (supra) interpreted the word "anything" in Clause (1) of Article 105 to be of the widest amplitude and only subject to the words appearing after it which were "in Parliament." The clause does give wide freedom of speech in Parliament. The word 'anything' cannot be interpreted to allow interference of the court in determining if the speech had relevance to the subject it was dealing with at the time the speech was made. In **Tej Kiran Jain** (supra) the followers of a religious head who had made a speech on untouchability filed a suit in the High Court seeking damages for defamation alleged to have been committed in the Lok Sabha during a calling attention motion on the speech. This Court held that the Court cannot dissect a speech made in Parliament and adjudicate if the speech has a direct relation to the subject matter before it. Parliament has absolute control over which matters it directs its attention towards and thereafter the members or persons at liberty to speak may not be subjected to the fear of prosecution against anything that they may say in the House.

95. That context evidently changes in Clause (2) of Article 105 which gives immunity to members of the House and the committees thereof in any proceeding in any court in respect of "anything" said or any vote given in the House. MH Beg, CJ in **State of Karnataka** (supra) had foreseen a situation where a criminal act may be committed in the House and had observed that it could not be protected under the Constitution. The Chief Justice opined that :

> "**63.** […] A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can,

56 [2018] 7 SCR 1 : (2018) 8 SCC 501

> but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. **For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature**. […]"
>
> (emphasis supplied)

96. In **K Ajith** (supra) a member of the Kerala Legislative Assembly was accused of climbing over the Speaker's dais and causing damage to property during the presentation of the budget by the Finance Minister of the State. The question which arose before this Court was whether the member could be prosecuted before a court of law for his conduct inside the House of the Legislature. This Court speaking through one of us (DY Chandrachud, J) after exploring the evolution of law in this regard in the UK observed that:

> "**36.** […] it is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity *only if the action bears nexus to the effective participation of the member in the House*."

97. This Court further held that privileges accruing inside the legislature are not a gateway to claim exemption from the general application of the law:

> "**65. Privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen. To claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law.** The entire foundation upon which the application for

withdrawal under Section 321 was moved by the Public Prosecutor is based on a fundamental misconception of the constitutional provisions contained in Article 194. The Public Prosecutor seems to have been impressed by the existence of privileges and immunities which would stand in the way of the prosecution. Such an understanding betrays the constitutional provision and proceeds on a misconception that elected members of the legislature stand above the general application of criminal law."

(emphasis supplied)

98. In **Lokayukta, Justice Ripusudan Dayal** (supra) criminal proceedings were initiated against administrative officers of the Madhya Pradesh Legislative Assembly for allegedly engaging in corruption and financial irregularity. The Speaker of the Assembly initiated proceedings for breach of privilege against the Lokayukta and vigilance authorities. This Court while holding that initiation of criminal proceedings for corruption may not amount to a breach of privilege had opined that:

"**48. It is clear that in the matter of the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, insofar as the jurisdiction of the Lokayukt or the Madhya Pradesh Special Establishment is concerned, all public servants except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act fall in the same category and cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply.** […].

49. As rightly submitted by Mr K.K. Venugopal, in India, **there is the rule of law and not of men and, thus, there is primacy of the laws enacted by the legislature which do not discriminate between persons to whom such laws would apply.** The laws would apply to all such persons unless the law itself makes an exception on a valid classification. No individual can claim privilege against the application of laws and for liabilities fastened on commission of a prohibited act."

(emphasis supplied)

99. The principle which emerges from the above cases is that the privilege of the House, its members and the committees is neither contingent merely on location nor are they merely contingent on the act in question. A speech made in Parliament or Legislature cannot be subjected to any proceedings before any court. However, other acts such as damaging property or criminal acts may be subjected to prosecution despite being within the precincts of the House. Clause (2) of Article 105 grants immunity "in respect of anything" said or any vote given. The extent of this immunity must be tested on the anvil of the tests laid down above. The ability of a member to speak is essentially tethered to the collective functioning of the House and is necessary for the functioning of the House. A vote, which is an extension of the speech, may itself neither be questioned nor proceeded against in a court of law. The phrase "in respect of" is significant to delineate the ambit of the immunity granted under Clause (2) of Article 105.

100. In **PV Narasimha Rao** (supra) the majority judgment interprets the phrase "in respect of" as having a broad meaning and referring to anything that bears a nexus or connection with the vote given or speech made. It therefore concluded that a bribe given to purchase the vote of a member of Parliament was immune from prosecution under Clause (2) of Article 105. By this logic, the majority judgment concluded that a bribe-accepting member who did not comply with the *quid pro quo* was not immune from prosecution as his actions ceased to have a nexus with his vote. As we have noted above, the interpretation of a phrase which appears in a provision cannot be interpreted in a way that does violence to the object of the provision. The majority in **PV Narasimha Rao** (supra) has taken the object of Article 105 to be that members of Parliament must have the widest protection under the law to be able to perform their function in the House. This understanding of the provision is overbroad and presumptive of enhanced privileges translating to better functioning of members of the House.

101. Privileges are not an end in themselves in a Parliamentary form of government as the majority has understood them to be. A member of Parliament or of the Legislature is immune in the performance of their functions in the House or a committee thereof from being prosecuted because the speech given or vote cast is functionally related to their performance as members of the legislature. The claim

of a member to this immunity is its vital connect with the functioning of the House or committee. The reason why the freedom of speech and to vote have been guaranteed in Parliament is because without that Parliament or the legislature cannot function. Therefore, the extent of privilege exercisable by a member individually must satisfy the two fold test laid down in Part F of this judgment namely its tether to the collective functioning of the House and its necessity.

102. The words "in respect of" in Clause (2) of Article 105 apply to the phrase "anything said or any vote given," and in the latter part to a publication by or with the authority of the House. We may not interpret the words "anything" or "any" without reading the operative word on which it applies i.e. "said" and "vote given" respectively. The words "anything said" and "any vote given" apply to an action which has been taken by a person who has the right to speak or vote in the House or a committee thereof. This means that a member or person must have exercised their right to speak or abstained from speaking inside the House or committee when the occasion arose. Similarly, a person or member must have exercised their option of voting in favour, against, or in abstention to claim immunity under Articles 105(2) and 194(2).

103. The words "anything" and "any" when read with their respective operative words mean that a member may claim immunity to say as they feel and vote in a direction that they desire on any matter before the House. These are absolutely outside the scope of interference by the courts. The wide meaning of "anything" and "any" read with their companion words connotes actions of speech or voting inside the House or committee which are absolute. The phrase "in respect of" applies to the collective phrase "anything said or any vote given." The words "in respect of" means arising out of or bearing a clear relation to. This may not be overbroad or be interpreted to mean anything which may have even a remote connection with the speech or vote given. We, therefore, cannot concur with the majority judgment in **PV Narasimha Rao** (supra).

II. The Constitution envisions probity in public life

104. The purpose and object for which the Constitution stipulates powers, privileges and immunity in Parliament must be borne in mind. Privileges are essentially related to the House collectively and necessary for its functioning. Hence, the phrase "in respect of"

must have a meaning consistent with the purpose of privileges and immunities. Articles 105 and 194 of the Constitution seek to create a fearless atmosphere in which debate, deliberations and exchange of ideas can take place within the Houses of Parliament and the state legislatures. For this exercise to be meaningful, members and persons who have a right to speak before the House or any committee must be free from fear or favour induced into them by a third party. Members of the legislature and persons involved in the work of the Committees of the legislature must be able to exercise their free will and conscience to enrich the functions of the House. This is exactly what is taken away when a member is induced to vote in a certain way not because of their belief or position on an issue but because of a bribe taken by the member. Corruption and bribery of members of the legislature erode the foundation of Indian Parliamentary democracy. It is destructive of the aspirational and deliberative ideals of the Constitution and creates a polity which deprives citizens of a responsible, responsive and representative democracy.

105. The minority judgment in **PV Narasimha Rao** (supra) held that the words "in respect of" must be understood as "arising out of" and that a bribe taken by a member of the House cannot be deemed as arising out of his vote. The minority opined that:

> "**46.** […] The expression "in respect of" in Article 105(2) has, therefore, to be construed keeping in view the object of Article 105(2) and the setting in which the expression appears in that provision.
>
> **47.** … the object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basic structure of the Constitution. **An interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law**

> **would not only be repugnant to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the Constitution.** It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. (See: *Sub-Committee on Judicial Accountability* v. *Union of India* [(1991) 4 SCC 699] SCC at p. 719.) […]"
>
> (emphasis supplied)

106. The minority then points out the paradoxical result which would emerge if members were given immunity from prosecution for their speech or vote but would not be protected if the bribe was received for not speaking or not voting. The minority goes on to hold that:

> "**47.** […] Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of". If the expression "in respect of" is thus construed, the immunity conferred under Article 105(2) would be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member in Parliament even though it may have a connection with the speech made or the vote given by the Member if such an act gives rise to a liability which arises independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Member in Parliament. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament."

107. The offence of bribery is complete on the acceptance of the money or on the agreement to accept money being concluded. The offence is not contingent on the performance of the promise for which money is given or is agreed to be given. The minority opinion in **PV Narasimha Rao** (supra) based its view on another perspective which was not dealt with by the majority. The minority opinion stated that the act of bribery was the receipt of illegal gratification prior to the making of the speech or vote inside the House. Interpreting the phrase "in respect of" to mean "arising out of", the minority concluded that the offence of bribery is not contingent on the performance of the illegal promise. The minority observed that:

> "**50.** … the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way."

108. A Constitution bench of this Court in **Kihoto Hollohan v. Zachillhu**,[57] while deciding on the validity of the Constitution (Fifty Second Amendment) Act 1985 which introduced the Tenth schedule to the Indian Constitution opined that the freedom of speech in Parliament

57 [1992] 1 SCR 686 : 1992 Supp (2) SCC 651

under clause (2) of Article 105 is not violated. This Court understood the provision to necessarily mean that the politically sinful act of floor crossing is neither permissible nor immunized under the Constitution. This Court held that:

> "**40.** The freedom of speech of a Member is not an absolute freedom. That apart, the provisions of the Tenth Schedule do not purport to make a Member of a House liable in any 'Court' for anything said or any vote given by him in Parliament. It is difficult to conceive how Article 105(2) is a source of immunity from the consequences of unprincipled floor-crossing.
>
> …
>
> **43.** Parliamentary democracy envisages that matters involving implementation of policies of the government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften (sic) the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines."

III. Courts and the House exercise parallel jurisdiction over allegations of bribery

109. Mr Raju Ramachandran, learned senior advocate on behalf of the Petitioner, has argued that bribery has been treated as a breach of privilege by the House which has used its powers to dispense discipline over bribe-taking members. He argues that immunity for a vote, speech or conduct in the House of Parliament does not in any manner leave culpable members blameless or free from sanction. Such members have been punished including being expelled by the

House. Mr Ramachandran cites many examples of actions taken by the House against its members who were found to have received bribes. In our exposition of the history of parliamentary privileges in India, we have illustrated how bribery was initially deemed to be a breach of privilege by the House of Commons in the UK. Based on the position of law in the UK the British government was uncertain about the position in India but assumed it to be governed as a matter of breach of privilege in the absence of an express statutory enactment. The Report of the Reforms Enquiry Committee in 1924 had recommended bribery to be made a penal offence so that members may be prosecuted for crimes before a court of law.

110. The issue of bribery is not one of exclusivity of jurisdiction by the House over its bribe-taking members. The purpose of a House acting against a contempt by a member for receiving a bribe serves a purpose distinct from a criminal prosecution. The purpose of the proceedings which a House may conduct is to restore its dignity. Such a proceeding may result in the expulsion from the membership of the House and other consequences which the law envisages. Prosecution for an offence operates in a distinct area involving a violation of a criminal statute. The power to punish for criminal wrongdoing emanates from the power of the state to prosecute offenders who violate the criminal law. The latter applies uniformly to everyone subject to the sanctions of the criminal law of the land. The purpose, consequences, and effect of the two jurisdictions are separate. A criminal trial differs from contempt of the House as it is fully dressed with procedural safeguards, rules of evidence and the principles of natural justice.

111. We therefore disagree with Mr Ramachandran that the jurisdiction of the House excludes that of the criminal court for prosecuting an offence under the criminal law of the land. We hold this because of our conclusion above that bribery is not immune under clause (2) of Article 105. A member engaging in bribery commits a crime which is unrelated to their ability to vote or to make a decision on their vote. This action may bring indignity to the House of Parliament or Legislature and may also attract prosecution. What it does not attract is the immunity given to the essential and necessary functions of a member of Parliament or Legislature.

112. We may refer to the opinion of SC Agrawal, J who arrived at the same view in which he was in the minority:

> "**45.** It is no doubt true that a Member who is found to have accepted bribe in connection with the business of Parliament can be punished by the House for contempt. But that is not a satisfactory solution. In exercise of its power to punish for contempt the House of Commons can convict a person to custody and may also order expulsion or suspension from the service of the House. **There is no power to impose a fine. The power of committal cannot exceed the duration of the session and the person, if not sooner discharged by the House, is immediately released from confinement on prorogation.** (See: *May's Parliamentary Practice*, 21st Edn., pp. 103, 109 and 111.) **The Houses of Parliament in India cannot claim a higher power. The Salmon Commission has stated that "whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions". (para 306) The Salmon Commission has also expressed the view that in view of the special expertise that is necessary for this type of inquiry the Committee of Privileges do not provide an investigative machinery comparable to that of a police investigation**."
>
> (emphasis supplied)

113. Therefore, we hold that clause (2) of Article 105 does not grant immunity against bribery to any person as the receipt of or agreement to receive illegal gratification is not "in respect of" the function of a member to speak or vote in the House. Prosecution for bribery is not excluded from the jurisdiction of the criminal court merely because it may also be treated by the House as contempt or a breach of its privilege.

IV. Delivery of results is irrelevant to the offence of bribery

114. Another aspect that arises for consideration is the stage at which the offence of bribery crystallizes. It has been urged by the Solicitor General that the offence is complete outside the legislature and is 'independent' of the speech or the vote. Therefore, the question of

privilege does not arise in the first place and the question is answered by the provisions of the Prevention of Corruption Act, 1988. Similarly, Mr Gopal Sankarnarayan, learned senior counsel has submitted that the offence of bribery is complete on receipt of the bribe well before the vote is given or speech made in Parliament. It has been urged that the performance of the promise is irrelevant to the offence being made out, and hence, the distinction made in **PV Narasimha Rao** (supra) is entirely artificial.

115. Interestingly, the judgment of the majority in **PV Narasimha Rao** (supra) did not consider this question at all. The minority judgment, on the other hand, discusses this aspect and notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. Agarwal, J observed:

> "**50.** The construction placed by us on the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. **The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way.**"
>
> (emphasis supplied)

116. Section 7 of the Prevention of Corruption Act, 1988 reads as follows:

> **"7. Offence relating to public servant being bribed.** — Any public servant who, —
>
> (a) **obtains or accepts or attempts to obtain** from any person, an undue advantage, with the **intention to perform** or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
>
> (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
>
> (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.
>
> Explanation 1. —**For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.**
>
> Illustration. —**A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.**
>
> Explanation 2.—For the purpose of this section,—
>
> (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another

person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts or attempts to obtain the undue advantage directly or through a third party."

(emphasis supplied)

117. Under Section 7 of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The first explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained.

118. It is trite law that illustrations appended to a section are of value and relevance in construing the text of a statutory provision and they should not be readily rejected as repugnant to the section.[58] The illustration to the first explanation aids us in construing the provision to mean that the offence of bribery crystallizes on the exchange of the bribe and does not require the actual performance of the act. It provides a situation where "A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section." It is clear that regardless of whether S actually processes the ration card application on time, the offence of bribery is made out. Similarly, in the formulation of a legislator accepting a bribe, it does not matter whether she votes in the agreed direction or votes at all. At the point in time when she accepts the bribe, the offence of bribery is complete.

119. Even prior to the amendment to the PC Act in 2017, Section 7 expressly delinked the offence of bribery from the actual performance

58 Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 136.

of the act for which the undue advantage is received. The provision read as follows:

> **"7. Public servant taking gratification other than legal remuneration in respect of an official act. —**
>
> Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.
>
> Explanations. —
>
> …
>
> (d) "**A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression**.
>
> …"
>
> (emphasis supplied)

120. The unamended text of Section 7 of the PC Act also indicates that the act of "accepting", "obtaining", "agreeing to accept" or "agreeing to obtain" illegal gratification is a sufficient condition. The act for which the bribe is given does not need to be actually performed. This was further clarified by Explanation (d) to the provision. In explaining the phrase 'a motive or reward for doing', it was made clear that the person receiving the gratification does not need to intend to or be in a position to do or not do the act or omission for which the motive/reward is received.

121. In **Chaturdas Bhagwandas Patel v. State of Gujarat**[59] a two-judge Bench of this Court reiterated that to constitute the offence of bribery, a public servant using his official position to extract illegal gratification is a sufficient condition. It is not necessary in such a case for the Court to consider whether the public servant intended to actually perform any official act of favour or disfavour. In the facts of the case, the public servant induced the complainant to give a bribe to get rid of a charge of abduction. It was later revealed that no complaint had even been registered against the complainant for the alleged abduction. However, the Court held that the mere demand and acceptance of the illegal gratification was sufficient, regardless of whether the recipient of the bribe performed the act for which the bribe was received.

122. Recently, in **Neeraj Dutta v. State (NCT of Delhi)**[60] a Constitution Bench listed out the constituent elements of the offence of bribery under Section 7 of the PC Act (as it stood before the amendment in 2017). Justice BV Nagarathna formulated the elements to constitute the offence:

> "5. The following are the ingredients of Section 7 of the Act:
>
> (i) the accused must be a public servant or expecting to be a public servant;
>
> (ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;
>
> (iii) for himself or for any other person;
>
> (iv) any gratification other than legal remuneration; and
>
> (v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour."

Consequently, the actual "doing or forbearing to do" the official act is **not** a constituent part of the offence. All that is required is that the illegal gratification should be obtained as a "motive or reward" for such an action or omission – whether it is actually carried out or not is irrelevant.

59 [1976] 3 SCR 1052 : (1976) 3 SCC 46

60 [2023] 2 SCR 997 : (2023) 4 SCC 731

123. During the course of the hearing, a hypothetical question arose in this regard. What happens in a situation when the bribe is exchanged within the precincts of the legislature? Would the offence now fall within the ambit of parliamentary privilege? This question appears to be ill-conceived. When this Court holds that the offence of bribery is complete on the acceptance or attempt to accept undue advantage and is not dependent on the speech or vote, it automatically pushes the offence outside the ambit of Articles 105(2) and 194(2). This is not because the acceptance of undue advantage happened outside the legislature but because the offence is independent of the "vote or speech" protected by Articles 105(2) and 194(2). The remit of parliamentary privilege is intricately linked to the nexus of the act to the 'vote' or 'speech' and the transaction of parliamentary business.

124. The majority judgment in **PV Narasimha Rao** (supra) did not delve into when the offence of bribery is complete or the constituent elements of the offence. However, on the facts of the case, the majority held that those MPs who voted as agreed were covered by the immunity, while those who did not vote at all (Ajit Singh) were not covered by the immunity under Articles 105(2) and 194(2). This erroneously links the offence of bribery to the performance of the act. In fact, in the impugned judgment as well, the High Court has relied on this position to hold that the appellant is not covered by the immunity as she eventually did not vote as agreed on and voted for the candidate from her party.

125. The understanding of the law in the judgment of the majority in **PV Narasimha Rao** (supra) creates an artificial distinction between those who receive the illegal gratification and perform their end of the bargain and those who receive the same illegal gratification but do not carry out the agreed task. The offence of bribery is agnostic to the performance of the agreed action and crystallizes based on the exchange of illegal gratification. The minority judgment also highlighted the *prima facie* absurdity in the paradox created by the majority judgment. Agarwal, J observed that:

> **"47.** […] If the construction placed by Shri Rao on the expression "in respect of" is adopted, a Member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but

> he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. **It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a Member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a Member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter.** Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of" […]"
>
> (emphasis supplied)

126. Indeed, to read Articles 105(2) and 194(2) in the manner proposed in the majority judgment results in a paradoxical outcome. Such an interpretation results in a situation where a legislator is rewarded with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but may eventually decide to vote independently will be prosecuted. Such an interpretation belies not only the text of Articles 105 and 194 but also the purpose of conferring parliamentary privilege on members of the legislature.

H. International position on bribery vis-à-vis privileges

127. The above exposition has sought to elucidate the law governing the subject of parliamentary privileges in India and its implications on a member of the legislature engaging in bribery. It has been the leitmotif of most judgments on the subject in India to delve into the law in other jurisdictions before outlining the position of parliamentary privileges in India. The jurisprudence on parliamentary privileges in India has since grown in its own right and we have referred to the rich jurisprudence of this Court and the history of parliamentary

privileges in India. However, since both the majority and the minority judgments in **PV Narasimha Rao** (supra) have relied heavily on jurisprudence in foreign jurisdictions, it is appropriate to lay out, in brief, the evolution and position of the law on privileges as it relates to the issue of a bribe received by a member of Parliament in other jurisdictions. We shall first direct our attention to the position of law in the United Kingdom followed by the United States of America, Canada, and Australia.

I. United Kingdom

128. As we have explored above, the law on parliamentary privileges in UK was developed after a struggle by the House of Commons with the Tudor and Stuart Kings. In **The King** v. **Sir John Elliot**,[61] at the peak of the confrontation between the Commons and the King in 1629, the King's Bench prosecuted three members of the House of Commons, Sir John Elliot, Denzel Hollis and Benjamin Valentine, for making seditious speech, disturbing public tranquillity, and violently holding the Speaker in his position to stop the House from being adjourned. The members of Parliament were found guilty, fined and imprisoned. Sir John Elliot was sent to be imprisoned in a tower where his health declined and he ultimately passed away. The report of the trial came to be published in 1667 and was noticed by the House of Commons. The House resolved that the judgment was illegal and against the privileges of Parliament. On a writ of error presented by Denzel Hollis, the House of Lords reversed the judgment of the King's Bench.

129. With the glorious revolution of 1688, the last of the Stuart Kings, James, was expelled and a new dynasty was instated. The bitter struggle led to a firmly established constitutional monarchy with the House of Commons ultimately claiming both sovereignty and certain privileges which became ancient and undoubted as a result of the persistence of the House and its gradual recognition. Erskine May notes that:

> "at the commencement of every Parliament it has been the custom for the Speaker, in the name, and on behalf of, the Commons, to lay claim by humble petition to their

61 (1629) 3 St. Tr. 294

> ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings."[62]

130. The clause stipulating freedom of speech in Parliament and immunity from prosecution flows from the Bill of Rights 1689. The Act was a crucial constitutional initiative by Parliament in England to lay claim to its status by grounding it in statute. The statute was to secure Parliament from royal interference in or through the courts. Article IX of the Bill of Rights stipulates:

> "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

The clause guarantees freedom of speech in Parliament and protects it from being "impeached or questioned" in any court or place out of Parliament.

131. Two aspects of Article IX of the Bill of Rights may be outlined at the outset. First, the privilege under Article IX in UK is not attached to individual members only. It immunizes the freedom of speech and debates or proceedings in Parliament and stipulates that it shall not be 'impeached or questioned.' Secondly, Article IX stipulates that the proceedings in Parliament may only be 'impeached or questioned' in Parliament. This has led to debate as to whether any material from Parliamentary proceedings can be placed before the Courts and whether the jurisdiction of Parliament ousts the jurisdiction of the Courts. As we shall elucidate below, the position as it stands allows for material from Parliamentary proceedings in the UK to be placed before the Court provided that it is not used to imply or argue *mala fides* behind the action. The courts in the UK have also interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of Parliament to discipline a member for taking bribe would not automatically oust the jurisdiction of the courts.

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62 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 242.

132. The parliamentary immunity attracted to speech made in Parliament came to be applied in the case of **Ex Parte Wason**,[63] where a member of Parliament was accused of conspiring to make a statement which they knew to be false. A person had furnished a petition to Earl Russel to present before the House of Lords which charged the Lord Chief Baron of deliberately telling a falsehood before a Parliamentary committee. This would have led to the removal of the Lord Chief Baron upon an address by both Houses of Parliament for such a removal. Earl Russel, Lord Chelmsford, and Lord Chief Baron conspired to make speeches in the House of Lords to the effect that the allegations of falsehood were unfounded despite knowing that the allegations were true. The magistrate refused to take the applicant's recognizance on the grounds that a speech made in Parliament could not disclose any indictable offence. The Queen's Bench affirmed the order.

133. Cockburn, CJ opined that speeches made in either House could not give rise to civil or criminal proceedings regardless of the injury caused to the interests of a third person. Concurring with the opinion Lush, J held that:

> "[…] I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House."

The Queen's Bench therefore held that a speech made inside the House cannot be questioned in any proceeding before a court in a civil or criminal action and neither can the motives behind the performance of such acts be questioned.

134. The issue of bribery was only governed by common law till 1889. Different common law offences were attracted based on corruption by different offices and their functions. The Public Bodies Corrupt Practices Act 1889, which applied only to local government bodies, created the first statutory offence of corruption. Subsequently, the Prevention of Corruption Act 1906 extended the offence of corruption to the private sector. Neither of these statutes covered the acceptance

63 (1969) 4 QB 573

of bribe by a member of Parliament. In the absence of a statute, the question of taking bribe by a member of Parliament had remained a question of breach of privilege and only the House was empowered to take action against such corruption.

135. The Royal Commission on Standards of Conduct in Public Life, chaired by Lord Salmon, submitted its report in 1976 which *inter alia* recommended bringing "corruption, bribery and attempted bribery of a Member of Parliament acting in his Parliamentary capacity within the ambit of the criminal law." While presenting his report to the House of Lords, Lord Salmon said:

> "To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake. The passage in the Bill of Rights is: "That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament." **Now this is a charter for freedom of speech in the House. It is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has no more to do with the topic which we are discussing than the Merchandise Marks Act. The crime of corruption is complete when the bribe is offered or given or solicited and taken.**
>
> We have recommended that the Statutes relating to corruption should all be replaced by one comprehensive Statute which will sweep away the present anomalies. If you are not an agent—and Members of Parliament neither of this House nor of the other place are agents—if you are not the member of a public body (and we are not members of public bodies) the Statutes do not touch you. At Common Law you cannot be convicted of bribery and corruption unless you are the holder of an office, and most of us are not the holders of an office."
>
> (emphasis supplied)

136. No action was taken by Parliament on this recommendation of the Salmon Report. However, in **R** v. **Greenway**,[64] a member of Parliament was accused of accepting a bribe for helping the interests of a company. A case to quash the prosecution was filed. The member of Parliament asserted that his actions were protected by parliamentary privileges. Rejecting this assertion, Buckley, J held that:

> "That a member of Parliament against whom there is a prime facie case of corruption should be immune from prosecution in the courts of law is to my mind an unacceptable proposition at the present time. I do not believe it to be the law."

137. Another commission was constituted after allegations of sleaze by many members of Parliament. The Standing Committee on Standards in Public Life under the Chairmanship of Lord Nolan submitted its report in 1994. The report expressed doubt as to who would have jurisdiction over a bribe taking member of Parliament. To resolve the jurisdictional question between the House and the court the report recommended for clarity from Parliament in the form of a statute. The report recommended that:

> "The Salmon Commission in 1976 recommended that such doubt should be resolved by legislation, but this has not been acted upon. **We believe that it would be unsatisfactory to leave this issue outstanding when other aspects of the law of Parliament relating to conduct are being clarified. We recommend that the Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament**. This could usefully be combined with the consolidation of the statute law on bribery which Salmon also recommended, which the government accepted, but which has not been done. This might be a task which the Law Commission could take forward."
>
> (emphasis supplied)

This recommendation was referred by the government to the Law Commission. The Law Commission submitted its report in 1998

64 [1998] PL 357, referred to as *R v Currie* in PV Narasimha Rao (supra)

recommending a new law which makes the offence of corruption applicable to all. This led to a sequence of events which ultimately culminated in the enactment of the Bribery Act 2010. The Act covers instances where members of Parliament engage in corruption.

138. While efforts were being made by lawmakers, the courts in UK continued answering questions on the scope of Article IX of the Bill of Rights on members of Parliament who engage in bribery. The allegations which had led to the constitution of the Nolan committee came before the courts in **R** v. **Parliamentary Commissioner for Standards Ex Parte Fayed**,[65] and in **Hamilton v. Al Fayed**.[66] In the first case, a person had accused a member of Parliament of taking corruption money from him while the member was serving as a minister in the government. The Parliamentary Commissioner of Standards had cleared a member of Parliament of charges pertaining to taking of bribes. The complainant filed for leave to apply for judicial review. The Court of Appeal allowed the application and held that:

> "It is important on this application to identify the specific function of the Parliamentary Commissioner for Standards which is the subject of complaint on this application. **It is that a Member of Parliament received a corrupt payment. Mr. Pannick rightly says that parliamentary privilege would not prevent the courts investigating issues such as whether or not a Member of Parliament has committed a criminal offence, or whether a Member of Parliament has made a statement outside the House of Parliament which it is alleged is defamatory**. He submits that, consistent with this, the sort of complaint which the applicant makes in this case is not in relation to an activity in respect of which the Member of Parliament would necessarily have any form of parliamentary immunity."
>
> (emphasis supplied)

139. In **Hamilton v. Al Fayed** (supra), another case emanating from the same facts against another member of Parliament, a question arose as to whether parliamentary privileges may be waived. The Court

65 [1998] 1 WLR 669

66 [2001] 1 A.C. 395

while returning specific findings on facts, also held that "courts are precluded from entertaining in any proceedings (whatever the issue which may be at stake in those proceedings) evidence, questioning or submissions designed to show that a witness in parliamentary proceedings deliberately misled Parliament." In arriving at such a conclusion the court relied on the judgment in **Prebble v. Television New Zealand**.[67]

140. In the above case, the respondent had transmitted a programme making allegations against the government that a minister had conspired with a businessman and public officials to promote and implement state asset sales with the object of allowing the businessman to obtain assets at unduly favourable terms. The minister sued the channel for defamation. The channel sought to make a defence of truth and place reliance on things said and acts done in Parliament. It argued that the protection under Article IX of the Bill of Rights would only protect a member from being held liable for his speech in either House. However, they could be placed on record as a defence if it is not being used to inflict liability upon a speech made in either House. The Privy Council held that parties to a litigation cannot bring into question anything said or done in the House or impute any motive to those actions. The Court allowed reliance on the official publication of the House proceedings to the extent that they are not used to suggest that the words were improperly spoken, or any statute was passed for improper use.

141. The question of reliance on legislative material was further weighed in favour of the legislature in 2009. In **Office of Government Commerce** v. **Information Commissioner (Attorney General intervening)**,[68] the Queen's Bench Division held that opinions of parliamentary committees would be irrelevant before a court given the nature of their work. This holding was influenced by the words and associated history of Article IX of the Bill of Rights, which is worded more broadly than Clause (2) of Articles 105 and 194 of the Constitution of India. The minority opinion in **PV Narasimha Rao** (supra) throws light on the issue as follows:

67 (1994) 3 ALL ER 407

68 [2009] 3 WLR 627

> "**41.** […] The protection given under clause (2) of Article 105 is narrower than that conferred under Article 9 of the Bill of Rights in the sense that the immunity conferred by that clause is personal in nature and is available to the Member in respect of anything said or in any vote given by him in the House or any committee thereof. The said clause does not confer an immunity for challenge in the court on the speech or vote given by a Member of Parliament. The protection given under clause (2) of Article 105 is thus similar to protection envisaged under the construction placed by Hunt, J. in R. v. Murphy [(1986) 5 NSWLR 18] on Article 9 of the Bill of Rights which has not been accepted by the Privy Council in Prebble v. Television New Zealand Ltd. [(1994) 3 All ER 407, PC] The decision in Ex p Wason [(1869) 4 QB 573 : 38 LJQB 302] which was given in the context of Article 9 of the Bill of Rights, can, therefore, have no application in the matter of construction of clause (2) of Article 105. […]"

The issue of whether courts can rely on observations contained in Parliamentary committee reports now stands settled by a Constitution Bench of this Court in **Kalpana Mehta** (supra).

142. The majority judgment in **PV Narasimha Rao** (supra) relied on the earlier cases from the UK which generally interpret Article IX to protect speech and debate. Relying on these judgments, the majority extrapolated a general principle of not allowing the production of anything before the courts which may be casually or incidentally related to the acts of a legislator. The Court then grounded this principle by interpreting Article 105(2) in an overbroad manner to attach immunity for bribes received in furtherance of legislative functions. The Court brushed aside the opinion of Buckley, J in **R** v. **Greenway** on the ground that it remains to be tested in appeal. The majority therefore failed to contextually apply the different clauses governing the freedom of speech in UK and India. The cases referred to by the majority, while helpful to understand the law generally, do not aid in immunizing bribes received for influencing of votes. As we have noted above, one of the reasons behind the claim of exclusive jurisdiction over bribery by the Parliament was that members of Parliament were not covered by the anti-corruption statute. However, a constitutional interpretation has to answer whether, in the absence

of a statute, a member of Parliament can claim immunity for taking corruption money and thereby influence his vote.

143. Since the judgment of this Court in **PV Narasimha Rao** (supra) the courts in UK have narrowly interpreted the immunity under Article IX. In **R** v. **Chaytor**,[69] members of Parliament were prosecuted for false accounting for having submitted fake claims and making financial gains. The UK Supreme Court held that the purpose of Article IX of the Bill of Rights is to protect the freedom of speech in the House. The Court opined that the provision must be given a narrower view and held that the prosecution would not violate the privilege of Parliament. The Court relied on the holding in **Greenway** (supra) that the nexus between a bribe and a speech made in Parliament does not oust the jurisdiction of the courts. The Court therefore opined that submitting a claim for expenses and taking part in such proceedings has an even more tenuous link to parliamentary privileges and cannot be immune from prosecution. The Court applied the test of whether the action of the member of Parliament which was being questioned bore on the core or essential function of the Parliament. Lord Phillip opined that:

> "**47.** The jurisprudence to which I have referred is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. **In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament**."
>
> (emphasis supplied)

144. Lord Rodger in the course of his concurring opinion further shed light on the issue being amenable to the contempt jurisdiction of the House

69 [2010] 3 WLR 1707

of Parliament. Lord Rodger held that this would be an overlapping jurisdiction and would not amount to an ouster of the court's jurisdiction. In **Makudi v. Baron Triesman of Trottenham**,[70] the Court of Appeal held that a statement made by a witness in public which repeated his testimony before a parliamentary committee would not attract immunity as it was an extra-parliamentary speech which was too remote to the utterance before the parliamentary committee. The Court also opined when the immunity may be attracted. The Court held that:

> "**25.** I accept, however, that there may be instances where the protection of Article 9 indeed extends to extra-Parliamentary speech. No doubt they will vary on the facts, but generally I think such cases will possess these two characteristics: (1) a public interest in repetition of the Parliamentary utterance which the speaker ought reasonably to serve, and (2) so close a nexus between the occasions of his speaking, in and then out of Parliament, that the prospect of his obligation to speak on the second occasion (or the expectation or promise that he would do so) is reasonably foreseeable at the time of the first and his purpose in speaking on both occasions is the same or very closely related. […]"

145. The courts in the UK have, overtime, advanced a narrower view than the earlier cases governing the field of privileges. They have interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of courts is not ousted by the immunity of members or the ability of the House to take contempt action against bribery.

II. United States of America

146. Parliamentary privileges in the United States of America emanate from Section 6 of Article 1 in the Constitution. The relevant part of the provision, referred to as the Speech and Debate Clause, is influenced by Article IX of the English Bill of Rights 1689. The clause reads as follows:

> "**The Senators and Representatives** shall receive a Compensation for their Services, to be ascertained by

70 [2014] QB 839

> Law, and paid out of the Treasury of the United States. They **shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged** from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and **for any Speech or Debate in either House, they shall not be questioned in any other Place**."
>
> (emphasis supplied)

Courts in the US have given a broad interpretation to the Speech and Debate clause so far as legislative acts of the members of Congress are concerned. Beyond that the Courts have held that a member of Congress may be liable under a criminal statute of general application. All that is prohibited is reliance on the official acts of the member to prove the prosecution case.

147. In **United States** v. **Thomas F Johnson**,[71] a member of Congress was accused of conflict of interest and conspiring to defraud the United States. The allegation against Johnson was that he entered into a conspiracy to exert influence and obtain dismissal of pending indictments against a saving and loan company and its officers on mail fraud charge. As part of the conspiracy, Johnson made speeches favourable to independent savings and loan associations in the House. The accused was found guilty by the trial court. His conviction was set aside by the Court of Appeals for the Fourth Circuit on the ground that the allegations were barred under the Speech and Debate Clause from being raised in the Court. The US Supreme Court in interpreting the Speech and Debate Clause held that the Government may not use the speech made by a member of Congress or question its motivation in a court of law. However, the prosecution may make a case without relying on the speech given by the Congressman. The Court opined that its decision does not apply to a prosecution for violating a general criminal law which 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'

148. The US Supreme Court has relied on **Johnson** (supra) in subsequent cases involving bribery by members of Congress to hold that they

71 383 US 169 (1966)

may be prosecuted so long as they do not rely on a speech or vote given by the legislator. In **United States v. Brewster**,[72] a Senator was accused of accepting a bribe in return for being influenced in his performance of official acts with respect to postage rate legislation. The trial court dismissed the charges on the ground that the Senator attracted parliamentary privileges. The US Supreme Court by majority held that the Speech and Debate Clause prevented prosecutors from introducing evidence that the member of Congress actually performed some legislative act, such as making a speech or introducing legislation, as part of a corrupt plan, but that other evidence might establish that the member had violated the anti-corruption laws. The Court held that:

> "**43.** The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. **In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process**. […]
>
> …
>
> **60.** It is beyond doubt that the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts. So expressed, the **privilege is broad enough to insure the historic independence of the Legislative Branch, essential to our separation of powers, but narrow enough to guard against the excesses of those who would corrupt the process by corrupting its Members**. […]
>
> …
>
> **62.** The question is whether it is necessary to inquire into how appellee spoke, how he debated, how he voted, or anything he did in the chamber or in committee in order

72 408 US 501 (1972)

> to make out a violation of this statute. The illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that appellee fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."
>
> (emphasis supplied)

The US Supreme Court therefore opined that the privileges exercised by members of Congress individually was to preserve the independence of the legislature. The independence was exactly what would be compromised if the Speech and Debate Clause were to be understood as providing immunity to acts of bribery by members of Congress. Therefore, immunity under the Constitution is only attracted to actions which are clearly a part of the legislative process.

149. The Court in **Brewster** (supra) was conscious of the potential misuse of investigating powers by the Executive but held that a House acting by a majority would be more detrimental to the rights of the accused if it were left to be the final arbiter. The Court noted that a member of Congress would be deprived of the procedural safeguards that Court affords to accused persons. The Court further held that:

> "**58.** We would be closing our eyes to the realities of the American political system if we failed to acknowledge that **many non-legislative activities are an established and accepted part of the role of a Member, and are indeed 'related' to the legislative process. But if the Executive may prosecute a Member's attempt, as in Johnson, to influence another branch of the Government in return for a bribe, its power to harass is not greatly enhanced if it can prosecute for a promise relating to a legislative act in return for a bribe.** We therefore see no substantial increase in the power of the Executive and Judicial Branches over the Legislative Branch resulting from our holding today. […]
>
> **59.** […] As we noted at the outset, **the purpose of the Speech or Debate Clause is to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the**

legislative process. But financial abuses by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of Members of Congress is unlikely to enhance legislative independence. […]

…

63. Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It is not an ‹act resulting from the nature, and in the execution, of the office.› Nor is it a ‹thing said or done by him, as a representative, in the exercise of the functions of that office,› 4 Mass., at 27. Nor is inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under this statute or this indictment. **When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here or, as in Johnson, for use of a Congressman's influence with the Executive Branch. And an inquiry into the purpose of a bribe 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'** 383 U.S., at 185, 86 S.Ct., at 758.

64. Nor does it matter if the Member defaults on his illegal bargain. To make a prima facie case under this indictment, the Government need not show any act of appellee subsequent to the corrupt promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act. If, for example, there were undisputed evidence that a Member took a bribe in exchange for an agreement to vote for a given bill and if there were also undisputed evidence that he, in fact, voted against the bill, can it be thought that this

> alters the nature of the bribery or removes it from the area of wrongdoing the Congress sought to make a crime?
>
> …
>
> **67.** Mr. Justice BRENNAN suggests that inquiry into the alleged bribe is inquiry into the motivation for a legislative act, and it is urged that this very inquiry was condemned as impermissible in Johnson. That argument misconstrues the concept of motivation for legislative acts. **The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions.** In Johnson, the Court held that, on remand, Johnson could be retried on the conspiracy-to-defraud count, so long as evidence concerning his speech on the House floor was not admitted. […]."
>
> (emphasis supplied)

The Court therefore rejected the idea that anything having a nexus to legislative functions would automatically attract immunity under the Speech and Debate Clause of the US Constitution.

150. In **Gavel v. United States**,[73] certain secret documents were made part of the record of a sub-committee hearing in the US Senate by Senator Gavel. He then published the entire document in a private publication. An aide to the Senator was subpoenaed by the grand jury which was investigating the matter. The question which arose for consideration of the US Supreme Court was whether the aide of the Senator enjoyed any immunity under the Speech and Debate Clause and to what extent could he be questioned. The US Supreme Court held that given the expansive nature of legislative work, an aide to a member of Congress would be protected under the Speech and Debate Clause but only to the extent that it pertained to aiding the legislator in discharge of his legislative functions. The Court further held that private publication of the document was not a necessary part of the functions of the Senator and no immunity would extend in that regard. The Court held that:

73 408 US 606 (1972)

"**26.** Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. **Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.** As the Court of Appeals put it, the courts have extended the privilege to matters beyond pure speech or debate in either House, but 'only when necessary to prevent indirect impairment of such deliberations.' United States v. Doe, 455 F.2d, at 760.

…

27. Here, private publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the Senate; nor does questioning as to private publication threaten the integrity or independence of the Senate by impermissibly exposing its deliberations to executive influence. The Senator had conducted his hearings; the record and any report that was forthcoming were available both to his committee and the Senate. Insofar as we are advised, neither Congress nor the full committee ordered or authorized the publication. [The sole constitutional claim asserted here is based on the Speech or Debate Clause. We need not address issues that may arise when Congress or either House, as distinguished from a single Member, orders the publication and/or public distribution of committee hearings, reports, or other materials. Of course, Art. I, § 5, cl. 3, requires that each House ‹keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy . . ..› This Clause has not been the subject of extensive judicial examination. See Field v. Clark, 143 U.S. 649, 670–671, 12 S.Ct. 495, 496–497, 36 L.Ed. 294 (1892); United States v. Ballin, 144 U.S. 1, 4, 12 S.Ct. 507, 508, 36 L.Ed. 321 (1892).] We cannot but conclude that the Senator's arrangements with

> Beacon Press were not part and parcel of the legislative process."
>
> (emphasis supplied)

151. The Court in **Gavel** (supra) applied the same standard it did in **Brewster** (supra) to hold that only acts which are essential to the deliberations of the House or in discharge of the functions vested under the Constitution are immune from prosecution before a court of law. Other acts which may in some way be related to the speech or vote of a legislator will not be protected under the Speech and Debate Clause unless they were essential to the legislator's function. The Court therefore held a consistent position that members of Congress would only have immunity under the Constitution for their 'sphere of legitimate legislative activity.'

152. In **United States v. Helstoski**,[74] a member of the House of Representatives was accused of accepting money in return for introducing certain private bills to suspend the application of immigration laws. Relying on its previous rulings in **Johnson** (supra), **Brewster** (supra) and **Gavel** (supra) the US Supreme Court held that the purpose of the Speech and Debate Clause was to free the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator. The Court reaffirmed the position of American law that material from the legislative acts of the accused Congressman may not be relied on or placed before the grand jury but proof of bribe and promise to commit a future legislative act may be investigated as they do not constitute an essential function of the legislator in discharge of his duties.

153. We may helpfully refer to another decision before concluding the analysis of the position of law in the United States. In **Hutchinson** v. **Proxmire**,[75] a Senator would release a publication highlighting what he perceived to be "wasteful government spending". The Senator made a speech on the floor of the Senate and had it published in the press. The complainant, who was funded by public institutes for his research, was named by the Senator. The press release was circulated to over one hundred thousand people including agencies

74 442 US 477 (1979)

75 439 US 1066 (1979)

which funded the research of the complainant. The complainant filed a suit claiming loss of respect in his profession, loss of income and the ability to earn income in the future. The District Court granted summary judgment in favour of the Senator, holding that the publication fell under the 'information function' of Congress and would be immune under the Speech and Debate Clause.

154. The US Supreme Court held that the intention of the Speech and Debate Clause was not to create an absolute privilege in favour of members of Congress. The clause, the Court held, is only attracted to "legislative activities" and would not protect republishing of defamatory statements. The Court held that:

> "Whatever imprecision there may be in the term "legislative activities," it is clear that **nothing in history or in the explicit language of the clause suggests any intention to create an absolute privilege from liability or suit for defamatory statements made outside the Chamber**.
>
> …
>
> Claims under the clause going beyond what is needed to protect legislative independence are to be closely scrutinized.
>
> …
>
> Indeed, the precedents abundantly support the conclusion that a Member may be held liable for republishing defamatory statements originally made in either House. We perceive no reason from that long-established rule."
>
> (emphasis supplied)

155. The principle which emerges from the approach taken with regard to privileges in the United States is that a member of Congress is not immune for engaging in bribery to perform legislative acts in terms of speech or vote. The Speech and Debate Clause does not give any absolute immunity to a legislator with respect to all things bearing a nexus with legislative activity. The immunity is attracted only to those functions which are essential and within the legitimate sphere of legislative business. The only privilege a Congressperson may attract in a prosecution is that the content of the speech, vote or legislative acts may not be produced as evidence by the prosecution.

156. The majority judgment in **PV Narasimha Rao** (supra) has interpreted **Johnson** (supra) and the dissenting opinion in **Brewster** (supra) to arrive at the same conclusion which it did upon a reflection of the law in the UK. Here too, the majority judgment fails on two accounts. Firstly, it fails to account for the fact that the Speech and Debate Clause which is substantially borrowed from Article IX of the English Bill of Rights confers immunity to the speech and vote made in parliament. The understanding arrived at in the majority judgment was not informed by the evolution of law in a line of cases in the United States. On the contrary, the majority judgment relied solely on the dissenting opinion in **Brewster** (supra) without adequate substantiation for such reliance. Secondly, the majority judgment has extended its interpretation of the Speech and Debate Clause and pigeon-holed the interpretation of Article 105(2) to satisfy this understanding.

III. Canada

157. The precise question of whether bribing legislators to vote in a certain direction falls within the ambit of parliamentary privilege was adjudicated upon by the Queen's Bench in **R** v. **Bunting et al.**[76] In that case, the defendants had sought the quashing of an indictment for conspiracy to change the Government of the Province of Ontario by bribing members of the legislature to vote against the government. The Court conclusively held that the offence of bribery and conspiracy to bribe members of the legislature fell within the jurisdiction of the court and such an inquiry would not encroach on parliamentary privilege. Further, it was held that if the defendants were proceeded against by the court, they may also be parallelly inquired against by the legislature for violation of rights and privileges. The proceedings are for different offences, may be conducted in their own right and such situations do not constitute a case of double punishment or double jeopardy. The Court (speaking through Wilson, CJ) held:

> "It is to my mind a proposition very clear that **this Court has jurisdiction over the offence of bribery as at the common law in a case of this kind, where a member of the Legislative Assembly is concerned either in the giving or in the offering to give a bribe, or in the**

76 [1885] 17 O.R. 524

> **taking of it for or in respect of any of his duties as a member of that Assembly; and it is equally clear that the Legislative Assembly has not the jurisdiction which this Court has in a case of the kind;** and it is also quite clear that the ancient definition of bribery is not the proper or legal definition of that offence.
>
> …
>
> There is nothing more definitely settled than that the House of Commons in England, and the different colonial Legislatures, have not, and never have had, criminal jurisdiction.
>
> …
>
> But if these three persons had agreed that the two members of the House of Lords should make these false statements, or vote in any particular manner, in consideration of a bribe paid or to be paid to them, that would have been a conspiracy to do an act, not necessarily illegal perhaps, but to do the act by illegal means, bribery being an offence against the law; and the offence of conspiracy would have been complete by reason of the illegal means by which the act was to be effected. **That offence could have been inquired into by the Court, because the inquiry into all that was done would have been of matters outside of the House of Lords, and there could therefore be no violation of, or encroachment in any respect upon, the lex parliament".**
>
> (emphasis supplied)

158. The decision in **Bunting** (supra) was before the Court in **PV Narasimha Rao** (supra). The Minority expressly relied on the decision, recognizing that bribing a legislator was treated as a common law offence under the criminal law in Canada and Australia and a legislator can be prosecuted in a criminal court for the offence. Agarwal, J noted:

> "**54.** […] In Australia and Canada where bribery of a legislator was treated as an offence at common law the courts in **White** [13 SCR (NSW) 332], **Boston** [(1923) 33 CLR 386] and **Bunting** [(1884-85) 7 Ontario Reports 524] had held that the legislator could be prosecuted in the

criminal court for the said offence. **It cannot, therefore, be said that since acceptance of bribe by a Member of the House of Commons was treated as a breach of privilege by the House of Commons and action could be taken by the House for contempt against the Member, the Members of the House of Commons, on 26-1-1950, were enjoying a privilege that in respect of conduct involving acceptance of bribe in connection with the business of Parliament, they could only be punished for breach of privilege of the House and they could not be prosecuted in a court of law. Clause (3) of Article 105 of the Constitution cannot, therefore, be invoked by the appellants to claim immunity from prosecution in respect of the charge levelled against them.**

55. […] In the earlier part of the judgment we have found that **for the past more than 100 years legislators in Australia and Canada are liable to be prosecuted for bribery in connection with their legislative activities** and, with the exception of the United Kingdom, most of the Commonwealth countries treat corruption and bribery by Members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. **There appears to be no reason why legislators in India should be beyond the pale of laws governing bribery and corruption when all other public functionaries are subject to such laws.** We are, therefore, unable to uphold the above contention of Shri Thakur."

(emphasis supplied)

The majority judgment, on the other hand, makes a reference to **Bunting** (supra) but chooses to not rely on the judgment or any other judgment by Canadian courts placed on record in the case.

159. Another interesting line of jurisprudence, expanded by the Supreme Court of Canada after the decision in **PV Narasimha Rao** (supra), is relevant to answer the question before this Court. While dealing with the remit of parliamentary privilege, the Supreme Court of Canada has adopted the test of 'necessity' in a formulation similar to the test

formulated in Part F of this judgment. In this regard, the landmark decision of the Supreme Court of Canada in **Canada (House of Commons) v. Vaid**,[77] may be noted in some detail.

160. In the above case, the former Speaker of the House of Commons was accused of dismissing his chauffeur for reasons that allegedly constituted workplace discrimination under the Canadian Human Rights Act, 1985. This was resisted by the House of Commons which contended that such an inquiry constituted an encroachment on parliamentary privilege and the hiring and firing of House employees are "internal affairs" which may not be questioned or reviewed by any tribunal or court apart from the House itself. The court did not accept this contention.

161. The Supreme Court of Canada held that legislative bodies do not constitute enclaves shielded from the ordinary law of the land. The party that seeks to rely on immunity under the broader umbrella of parliamentary privilege has the onus of establishing its existence. In Canada, the House of Commons in the UK is used as the benchmark to determine the existence of parliamentary privilege. Therefore, to determine whether a privilege does in fact exist, the first step is to scrutinize if it is authoritatively established in relation to the Canadian Parliament or the House of Commons. If the existence is not established, the doctrine of necessity is to be applied to determine if the act is protected by parliamentary privilege. In essence, the legislature or the member seeking immunity must prove that the activity for which privilege is claimed is closely and directly connected with the fulfilment by the legislature of its functions and that external interference would impact the autonomy required for the assembly to carry out its functions with "dignity and efficiency".

162. The Supreme Court of Canada held as follows:

> "While much latitude is left to each House of Parliament, such a purposive approach to the definition of privilege implies important limits. There is general recognition, for example, that privilege attaches to "proceedings in Parliament". Nevertheless, as stated in Erskine May (19th ed. 1976), at p. 89, not "everything that is said or done within

77 [2005] 1 SCR 667

> the Chamber during the transaction of business forms part of proceedings in Parliament. Particular words or acts may be entirely unrelated to any business which is in course of transaction or is in a more general sense before the House as having been ordered to come before it in due course." (This passage was referred to with approval in Re Clark.) Thus in **R. v. Bunting** (1885), 7 O.R. 524, for example, the Queen's Bench Division held that a conspiracy to bring about a change in the government by bribing members of the provincial legislature was not in any way connected with a proceeding in Parliament and, therefore, the court had jurisdiction to try the offence. Erskine May (23rd ed.) refers to an opinion of "the Privileges Committee in 1815 that the re-arrest of Lord Cochrane (a Member of the Commons) in the Chamber (the House not sitting) was not a breach of privilege. Particular words or acts may be entirely unrelated to any business being transacted or ordered to come before the House in due course.
>
> …
>
> All of these sources point in the direction of a similar conclusion. **In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency.**"
>
> (emphasis supplied)

163. Similarly, the decision of the Supreme Court of Canada in **Chagnon v. Syndicat de la fonction publique et parapublique du Québe**,[78] relies on **Vaid** (supra) and adopts the test of 'necessity' in similar

78 [2018] 2 SCR 687

terms. In that case, security guards who were employed by the National Assembly of Québec were dismissed from service by the President of the assembly. The dismissal was assailed before the labour arbitrator. This was objected to on the ground that the decision to dismiss the guards is not subject to review and is protected by parliamentary privilege. The Supreme Court of Canada, in its majority opinion, held that the dismissal of the security guards was not protected by parliamentary privilege. The Court opined that the inherent nature of parliamentary privilege indicates that its scope must be anchored to its rationale, i.e. to protect legislatures in the discharge of their legislative and deliberative functions. A court recognizing a parliamentary privilege entails that the court cannot review its exercise. Therefore, a purposive approach must be adopted to ensure that it is only as broad as necessary to perform the assembly's constitutional role. In the factual context, the Court held that the necessity of a parliamentary privilege over the management of the security guards could not be established. The management of guards could be dealt with under ordinary law without impeding the security of the assembly or its ability to deliberate on issues.

IV. Australia

164. The position of law in Australia has been consistent since 1875. The courts have held that an attempt to bribe a member of the legislature to influence their votes constitutes a criminal offence under common law. The decision of the Supreme Court of New South Wales in **R** v. **Edward White**[79] was a landmark in this regard. Sir James Martin (CJ) observed:

> "The point now for the consideration of the Court, whether or not the objection so taken is a valid one, or in other words, whether an attempt to bribe a member of the Legislative assembly is a criminal offence. **I am clearly of the opinion that such an attempt is a misdemeanor at common law.** Although no case can be found on an information or indictment against a person for attempting to bribe a member of the Legislature, there are several cases which show that such an attempt is an offence.

79 13 SCR (NSW) 332

> …
>
> The injury to the public is more direct and is certainly greater in tampering with the person actually elected than with the persons who elect him. **A person sent into the Legislature by means of votes corruptly obtained may be an able and conscientious member; but a legislator who suffers his vote to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundation.** It would be a reproach to the common law if the offer to, or the acceptance of, a bribe by such a person were not an offence."
>
> (emphasis supplied)

Similarly, Justice Hargrave also observed as follows:

> "These numerous modern authorities clearly establish that the old common law prohibition against bribery has been long since extended beyond mere judicial officers acting under oaths of office, to all persons whatever holding offices of public trust and confidence; **and it seems impossible to understand why members of our Legislative Assembly and Legislative council, who are entrusted with the public duty of enacting our laws, should not be at least equally protected from bribery and corruption as any Judge or constable who has to carry out the law."**
>
> (emphasis supplied)

165. Subsequently, the decision in **White** (supra) was also followed by the High Court of Australia in **R v. Boston**.[80] This was a case where certain private parties entered into an agreement to bribe members of the legislative assembly such that they would use their official position to secure the acquisition of certain estates. The argument that was advanced before the Court was unique. The appellant did not dispute the proposition established in **White** (supra) that an agreement to pay money to a member of the assembly to influence their vote would amount to a criminal offence. However, it was

80 (1923) 33 CLR 386

submitted that the bribe in this case was to induce the member of the assembly to use his position outside and not inside the assembly in favour of the bribe-givers. The Court rejected the artificial distinction between illegal gratification to perform acts inside the parliament and acts outside the parliament and held that in both cases, the act of bribery impairs the capacity of the member to exercise a disinterested judgment, thereby, impacting their ability to act as a representative of the people. Knox, CJ held:

> "[…] In my opinion, the payment of money to, and the receipt of money by, a member of Parliament to induce him to use his official position, whether inside or outside Parliament, for the purpose of influencing or putting pressure on a Minister or other officer of the Crown to enter into or carry out a transaction involving payment of money out of the public funds, are acts tending to the public mischief, and an agreement or combination to do such acts amounts to a criminal offence. From the point of view of tendency to public mischief I can see no substantial difference between paying money to a member to induce him to use his vote in Parliament in a particular direction and paying him money to induce him to use his position as a member outside Parliament for the purpose of influencing or putting pressure on Ministers.
>
> …
>
> Payment of money to a member of Parliament to induce him to persuade or influence or put pressure on a Minister to carry out a particular transaction tends to the public mischief in many ways, irrespective of whether the pressure is to be exercised by conduct inside or outside Parliament. It operates as an incentive to the recipient to serve the interest of his paymaster regardless of the public interest, and to use his right to sit and vote in Parliament as a means to bring about the result which he is paid to achieve. **It impairs his capacity to exercise a disinterested judgment on the merits of the transaction from the point of view of the public interest and makes him a servant of the person who pays him, instead of a representative of the people.**"
>
> (emphasis supplied)

166. Courts in Australia have also followed the position of law laid down by the Supreme Court of the UK in **Chaytor** (supra) that the House of Commons does not have exclusive jurisdiction to deal with criminal conduct by members of the House. The only exception to such cases is when the existence of parliamentary privilege makes it virtually impossible to determine the issues or if the proceedings interfere with the ability of the House to conduct its legislative and deliberative business. For instance, in **Obeid v. Queen**[81], the appellant was charged with the offence of misconduct in office by using his position to gain a pecuniary advantage for himself. One of the grounds argued before the Court of Criminal Appeal for New South Wales was that since Parliament had the power to deal with such contraventions by members of the assembly, the court should have refrained from exercising jurisdiction. The Court followed **Chaytor** (supra) to hold that the Court and Parliament may have concurrent jurisdiction in respect of criminal matters and there was no law which prohibited the court from determining matters that do not constitute "proceedings in parliament".

167. The decisions in **White** (supra) and **Boston** (supra) were placed before the Court in **PV Narasimha Rao** (supra). The minority judgment discussed both judgments in detail and relied on them to conclude that giving a bribe to influence a legislator to vote or speak in Parliament constitutes a criminal offence, which is not protected by Articles 105(2) and 194(2). The majority judgment, however, does not refer to the Australian precedents.

I. Elections to the Rajya Sabha are within the remit of Article 194(2)

168. We may lastly direct our attention to an argument raised by Mr Venkataramani, the learned Attorney General. The Attorney General submitted that the decision **PV Narasimha Rao** (supra) is inapplicable to the facts of the present case. The factual situation in **PV Narasimha Rao** (supra) pertained to a no-confidence motion, while in the present case, the appellant voted to fill vacant seats in the Council of States or the Rajya Sabha. In the counter affidavit filed by the Respondent, it was submitted that since polling for the Rajya Sabha Election was held **outside** the house in the lobby, it cannot be considered as a proceeding of the House like a no-confidence motion. However,

81 [2017] NSWCCA 221

during oral arguments and in his written submissions, the Attorney General premised the argument that polling to the Rajya Sabha is not protected by Article 194(2) on the ground that such an election does not form part of the legislative proceedings of the House regardless of the geographical location of the election. To buttress this argument, the Attorney General relied on three judgments of this Court in **Pashupati Nath Sukul v. Nem Chandra Jain and Ors.**,[82] **Madhukar Jetly** v. **Union of India,**[83] and **Kuldip Nayar v. Union of India.**[84]

169. Such an argument, although attractive at first blush, appears to be misconceived. In essence, the question is whether votes cast by elected members of the state legislative assembly in an election to the Rajya Sabha are protected by Article 194(2) of the Constitution. Before addressing the judgments relied on by the learned Attorney General, we will analyze the provisions of the Constitution that govern this interesting question of constitutional interpretation.

170. Article 80 governs the election of members to the Council of States or the Rajya Sabha. The provision reads as follows:

> **"80. Composition of the Council of States. —**
>
> (1) The Council of States shall consist of—
>
> (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
>
> (b) not more than two hundred and thirty-eight representatives of the States and of the Union territories.
>
> (2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.
>
> …

82 [1984] 1 SCR 939 : (1984) 2 SCC 404

83 (1997) 11 SCC 111

84 [2006] Suppl. 5 SCR 1 : (2006) 7 SCC 1

> (4) The representatives of each State in the Council of States shall be **elected by the elected members of the Legislative Assembly of the State** in accordance with the system of proportional representation by means of the single transferable vote.
>
> …"
>
> (emphasis supplied)

171. Pursuant to Article 80, the Rajya Sabha consists of twelve members who are nominated by the President and not more than two hundred and thirty-eight representatives of the States and Union Territories. Significantly, under Article 80(4), the representatives of the Rajya Sabha shall be elected by the elected members of the Legislative Assembly of the states. Therefore, the power to 'vote' for the elected members of the Rajya Sabha is solely entrusted to the elected members of the Legislative Assemblies of the states. It constitutes an integral part of their powers and responsibilities as members of the legislative assemblies of each of the states.

172. The next question that arises, therefore, is whether the text of Article 194(2) places any restriction on such a vote being protected by parliamentary privilege. As stated above, Article 194(2) of the Constitution reads as follows:

> "**194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof. —**
>
> …
>
> (2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes, or proceedings.
>
> …"

173. The marginal note to Article 194 uses the phrase "powers, privileges, etc. of the **Houses** of Legislatures and of the members and committees thereof." It is a settled position of law that the marginal

note to a section in a statute does not control the meaning of the body of the section if the language employed is clear. With reference to Articles of the Constitution, a marginal note may be used as a tool to provide "some clue as to the meaning and purpose of the Article". However, the real meaning of the Article is to be derived from the bare text of the Article. When the language of the Article is plain and ambiguous, undue importance cannot be placed on the marginal note appended to it.[85] In **Kesavananda Bharati v. State of Kerala**,[86] Hegde, J (speaking for himself and A K Mukherjea, J) observed as follows:

> "**620.** […] To restate the position, Article 368 deals with the amendment of the Constitution. The Article contains both the power and the procedure for amending the Constitution. No undue importance should be attached to the marginal note which says "Procedure for amendment of the Constitution". **Marginal note plays a very little part in the construction of a statutory provision. It should have much less importance in construing a constitutional provision**. The language of Article 368 to our mind is plain and unambiguous. Hence we need not call into aid any of the rules of construction about which there was great deal of debate at the hearing. As the power to amend under the Article as it originally stood was only implied, the marginal note rightly referred to the procedure of amendment. The reference to the procedure in the marginal note does not negative the existence of the power implied in the Article."
>
> (emphasis supplied)

174. Distinct from the marginal note, in the text of the provision, there is a conscious use of the term "**Legislature**" instead of the "**House** of Legislature" at appropriate places. It is evident from the drafting of the provision that the two terms have not been used interchangeably. The first limb of Article 194(2) pertains to "anything said or any vote given by him in the **Legislature** or any committee thereof". However,

85 Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 188-189; Bengal Immunity Company Limited v. State of Bihar, [1955] 2 SCR 603

86 [1973] Suppl. 1 SCR 1 : (1973) 4 SCC 225

in the second limb, the phrase used is "in respect of the publication by or under the authority of a **House of such a Legislature** of any report, paper, votes, or proceedings." There is a clear departure from the term 'Legislature' which is used in the first limb, to use the term "House of **such** a Legislature" in the second limb of the provision. It is clear, therefore, that the provision creates a distinction between the "Legislature" as a whole (in the first limb) and the "House" of the same legislature (in the second limb).

175. As correctly submitted by Mr Raju Ramachandran, senior counsel for the appellant, the terms "House of Legislature" and "Legislature" have different connotations. "House of Legislature" refers to the juridical body, which is summoned by the Governor pursuant to Article 174.[87] The term "Legislature", on the other hand, refers to the wider concept under Article 168,[88] comprising the Governor and the Houses of the Legislature. It functions indefinitely and continues to exist even when the Governor has not summoned the House.

176. The use of the phrase "in the Legislature" instead of "House of Legislature" is significant. There are several parliamentary processes which do not take place on the floor of the House, i.e. when it is in session, having been summoned by the Governor. For instance, there are *ad hoc* committees and standing committees which examine various issues, including matters of policy or government administration. Many of these committees do not deliberate on laws or bills tabled in the House or cease to function when the 'House' is not sitting. There appears to be no reason why the deliberations that take place in such committees ("anything said") would not be protected by parliamentary privilege.

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87 **174. Sessions of the State Legislature, prorogation and dissolution.—** (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
(2) The Governor may from time to time— (a) prorogue the House or either House; (b) dissolve the Legislative Assembly.]

88 **168. Constitution of Legislatures in States.—(**1) For every State there shall be a Legislature which shall consist of the Governor, and—
(a) in the States of Andhra Pradesh], Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses;
(b) in other States, one House.
(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

177. The elections to the Rajya Sabha conducted under Article 80 as referred to above, may also take place when the House is not in session as seats may fall vacant when the legislative assembly of the state is not in session. However, the elections remain a part of the functioning of the Legislature and take place within the precincts of the Legislative Assembly. Similarly, the elections for the President of India under Article 54[89] and for the Vice President under Article 66[90] may also take place when Parliament or the state legislative assemblies are not in session. However, they are an integral part of the powers and responsibilities of elected members of the Parliament and state legislative assemblies. The vote for such elections is given in the Legislature or Parliament, which is sufficient to invoke the protection of the first limb of Articles 105(2) and 194(2). Such processes are significant to the functioning of the legislature and in the broader structure of parliamentary democracy. There appears to be no restriction either in the text of Article 105(2) and Article 194(2), which pushes such elections outside of the protection provided by the provisions. Further, the purpose of parliamentary privilege to provide legislators with the platform to "speak" and "vote" without fear is equally applicable to elections to the Rajya Sabha and elections for the President and Vice President as well.

178. We will now address the cases relied on by the Attorney General to advance his argument. In **Pashupati Nath Sukul** (supra)**,** a bench of three judges of this Court held that a member of the legislative assembly may propose a candidature for a seat in and vote at an election to the Rajya Sabha even before taking the constitutional oath required under Article 188 of the Constitution. The Court observed that an election to fill seats in the Rajya Sabha does not form a part of the legislative proceedings of the House nor do they constitute a vote given in the **House** on any issue arising before it. Therefore, it is not hit by Article 193 of the Constitution which states that a member of the Legislative Assembly cannot sit and vote in the **House** before subscribing to the oath. Interestingly, the Court also noted that in the intervening period between the name of the elected member appearing in the notification and the member taking the constitutional oath, she is entitled to all the privileges, salaries, and allowances

89 The electoral college consists of elected MPs and MLAs.

90 The electoral college consists of elected MPs.

of a member of the Legislative Assembly. It is clear that the Court recognized that members of the legislative assembly are entitled to privileges even when they cannot participate or are not participating in 'law-making'. One of these privileges is the parliamentary privilege bestowed on members of the legislative assembly under Article 194. The Court held as follows:

> "**18.** […] The rule contained in Article 193 of the Constitution, as stated earlier, is that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words "sitting and voting" in Article 193 of the Constitution imply the summoning of the House under Article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting. An elected member incurs the penalty for contravening Article 193 of the Constitution only when he sits and votes at such a meeting of the House. Invariably there is an interval of time between the constitution of a House after a general election as provided by Section 73 of the Act and the summoning of the first meeting of the House. **During that interval an elected member of the Assembly whose name appears in the notification issued under Section 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly, one of them being the right to function as an elector at an election held for filling a seat in the Rajya Sabha.** That is the effect of Section 73 of the Act which says that on the publication of the notification under it the House shall be deemed to have been constituted. **The election in question does not form a part of the legislative proceedings of the House carried on at its meeting. Nor the vote cast at such an election is a vote given in the House on any issue arising before the House.** The Speaker has no control over the election. The election is held by the Returning Officer appointed for the purpose. As mentioned earlier, under Section 33 of the Act the nomination paper has to be presented to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock

> in the afternoon before the last day notified for making nominations under Section 30 of the Act. Then all further steps such as scrutiny of nominations and withdrawal of nominations take place before the Returning Officer. Rule 69 of the Conduct of Elections Rules, 1961 provides that at an election by Assembly members where a poll becomes necessary, the Returning Officer for such election shall, as soon as may be after the last date for the withdrawal of candidatures, send to each elector a notice informing him of the date, time and place fixed for polling. Part VI of the Conduct of Elections Rules, 1961 which contains Rule 69 and Part VII thereof deal with the procedure to be followed at an election by Assembly members. Rule 85 of the Conduct of Elections Rules, 1961 provides that as soon as may be after a candidate has been declared to be elected, the Returning Officer shall grant to such candidate a certificate of election in Form 24 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the Council of States or as the case may be, the Secretary of the Legislative Council. All the steps taken in the course of the election thus fall outside the proceedings that take place at a meeting of the House."
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> (emphasis supplied)

179. In **Madhukar Jetley** (supra), the Court relied on **Pashupati Nath Sukul** (supra) and reiterated that an election to the Rajya Sabha does not form part of the legislative proceedings of the House and the vote cast at such an election does not constitute a vote given at a sitting of the House. Pertinently, both **Pashupati Nath Sukul** (supra) and **Madhukar Jetley** (supra) did not relate to any question bearing on the interpretation and scope of Article 194(2) or any claim for parliamentary privilege.

180. As stated above, there is no dispute with the proposition that elections to the Rajya Sabha are not part of the law-making functions and do not take place during a sitting of the House. However, the text of Article 194 consciously uses the term 'Legislature' instead of 'House' to include parliamentary processes which do not necessarily

take place on the floor of the House or involve 'law-making' in its pedantic sense.

181. Finally, the learned Attorney General placed reliance on **Kuldip Nayar** (supra). In this case, a Constitution bench of this Court was adjudicating the validity of an amendment to the Representation of the People Act, 1951 by which (a) the requirement that a candidate for elections to the Rajya Sabha be an elector from a constituency in the state was removed; and (b) an open ballot was introduced in the elections to the Rajya Sabha.

182. One of the submissions before the Court to assail the use of open ballots in elections to the Rajya Sabha was that the votes are protected by Article 194(2). It was contended that the right to freedom of speech guaranteed to MLAs under Articles 194(1) and (2) is different from the right to free speech and expression under Article 19(1)(a), which is subject to reasonable restrictions. It was urged that the absolute freedom to vote under Article 194(2) of the Constitution was being diluted through a statutory amendment to the Representation of the People Act, 1951 permitting open ballots. While addressing this argument, the Court held that elections to fill seats in the Rajya Sabha are not proceedings of the legislature but a mere exercise of franchise, which falls outside the net of Article 194. The Court (speaking through YK Sabharwal, CJ) held as follows:

> "**Arguments based on Legislative Privileges and the Tenth Schedule**
>
> …
>
> **372.** It is the contention of the learned counsel that the same should be the interpretation as to the scope and tenor of the provision contained in Article 194(2) concerning the privileges of the Members of the Legislative Assemblies of the States who constitute State-wise electoral colleges for electing representatives of each State in the Council of States under the provisions of Article 80(4). The counsel argue that the freedom of expression without fear of legal consequences as flowing from Article 194(2) should inure to the Members of the Legislative Assemblies while discharging their function as electoral college under Article 80(4).

> **373.** This argument, though attractive, does not deserve any credence in the context at hand. **The proceedings concerning election under Article 80 are not proceedings of the "House of the Legislature of the State" within the meaning of Article 194. It is the elected Members of the Legislative Assembly who constitute, under Article 80 the electoral college for electing the representative of the State to fill the seat allocated to that State in the Council of States. It is noteworthy that it is not the entire Legislative Assembly that becomes the electoral college, but only the specified category of members thereof. When such members assemble at a place, they do so not to discharge functions assigned under the Constitution to the Legislative Assembly. Their participation in the election is only on account of their ex-officio capacity of voters for the election. Thus, the act of casting votes by each of them, which also need not occur with all of them present together or at the same time, is merely exercise of franchise and not proceedings of the legislature.**"
>
> (emphasis supplied)

183. The protection under Article 105 and Article 194 guarantees that the vote of an elected member of Parliament or the state legislature, as the case may be, cannot be the subject of proceedings in court. It does not guarantee a "secret ballot". In fact, even when elected members of Parliament or of the state legislature vote on Bills during a sitting of the House, which undisputedly falls within the ambit of Articles 105 and 194, they are not assured of a secret ballot. While voting is ordinarily carried out by a voice vote, members of the legislature can seek what is referred to as a "division vote." In such a case the division of votes, i.e. which member voted in favour or against the motion is visible to the entire House and the general public. It cannot be gainsaid that the purpose of parliamentary privilege under Article 194(2) is not to provide the legislature with anonymity in their votes or speeches in Parliament but to protect them from legal proceedings pertaining to votes which they cast or speeches which they make. That the content of the votes and speeches of their elected representatives be accessible to citizens is an essential part of parliamentary democracy.

184. Mr Raju Ramachandran, senior counsel on behalf of the appellant has argued that the observations in **Kuldip Nayar** (supra) do not constitute the *ratio decidendi* of the judgment and are *obiter*. It is trite law that this Court is only bound by the ratio of the previous decision. There may be some merit to this contention. However, in any event, this being a combination of seven judges of this Court, it is clarified that voting for elections to the Rajya Sabha falls within the ambit of Article 194(2). On all other counts, the decision of the Constitution bench in **Kuldip Nayar** (supra) remains good law.

185. Interestingly, **Kuldip Nayar** (supra) is yet another case where the Court relied on the minority judgment in **PV Narasimha Rao** (supra) to strengthen the proposition that while interpreting the Constitution, the Court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. Applying this proposition of law to the question of whether voting to the Rajya Sabha is covered within the ambit of Article 194(2) also brings us to a similar conclusion.

186. One of us (DY Chandrachud, J) in **K.S. Puttaswamy (Aadhaar-5J.) v. Union of India**,[91] had occasion to reflect on the significance of the Rajya Sabha and bicameralism on the "foundations of our democracy". It was observed that:

> "**1106.** The institutional structure of the Rajya Sabha has been developed to reflect the pluralism of the nation and its diversity of language, culture, perception and interest. The Rajya Sabha was envisaged by the Makers of the Constitution to ensure a wider scrutiny of legislative proposals. **As a second chamber of Parliament, it acts as a check on hasty and ill-conceived legislation, providing an opportunity for scrutiny of legislative business. The role of the Rajya Sabha is intrinsic to ensuring executive accountability and to preserving a balance of power. The Upper Chamber complements the working of the Lower Chamber in many ways. The Rajya Sabha acts as an institution of balance in relation to the Lok Sabha and represents the federal structure of India. Both the existence and the role**

91 [2018] 8 SCR 1 : 2018 SCC OnLine SC 1642

of the Rajya Sabha constitute a part of the basic structure of the Constitution. The architecture of our Constitution envisions the Rajya Sabha as an institution of federal bicameralism and not just as a part of a simple bicameral legislature. Its nomenclature as the "Council of States" rather than the "Senate" appropriately justifies its federal importance.

…

1108. […] As a revising chamber, the Constitution-Makers envisioned that it will protect the values of the Constitution, even if it is against the popular will. The Rajya Sabha is a symbol against majoritarianism.

…

1110. Participatory governance is the essence of democracy. It ensures responsiveness and transparency. An analysis of the Bills revised by the Rajya Sabha reveals that in a number of cases, the changes recommended by the Rajya Sabha in the Bills passed by the Lok Sabha were eventually carried out. The Dowry Prohibition Bill is an example of a legislation in which the Rajya Sabha's insistence on amendments led to the convening of a joint sitting of the two Houses and in that sitting, one of the amendments suggested by the Rajya Sabha was adopted without a division. The Rajya Sabha has a vital responsibility in nation building, as the dialogue between the two Houses of Parliament helps to address disputes from divergent perspectives. The bicameral nature of Indian Parliament is integral to the working of the federal Constitution. It lays down the foundations of our democracy. That it forms a part of the basic structure of the Constitution, is hence based on constitutional principle. The decision of the Speaker on whether a Bill is a Money Bill is not a matter of procedure. It directly impacts on the role of the Rajya Sabha and, therefore, on the working of the federal polity."

(emphasis supplied)

187. The Rajya Sabha or the Council of States performs an integral function in the working of our democracy and the role played by the Rajya

Sabha constitutes a part of the basic structure of the Constitution. Therefore, the role played by elected members of the state legislative assemblies in electing members of the Rajya Sabha under Article 80 is significant and requires utmost protection to ensure that the vote is exercised freely and without fear of legal persecution. The free and fearless exercise of franchise by elected members of the legislative assembly while electing members of the Rajya Sabha is undoubtedly necessary for the dignity and efficient functioning of the state legislative assembly. Any other interpretation belies the text of Article 194(2) and the purpose of parliamentary privilege. Indeed, the protection under Articles 105 and 194 has been colloquially called a "parliamentary privilege" and not "legislative privilege" for a reason. It cannot be restricted to only law-making on the floor of the House but extends to other powers and responsibilities of elected members, which take place in the Legislature or Parliament, even when the House is not sitting.

J. Conclusion

188. In the course of this judgment, while analysing the reasoning of the majority and minority in **PV Narasimha Rao** (supra) we have independently adjudicated on all the aspects of the controversy namely, whether by virtue of Articles 105 and 194 of the Constitution a Member of Parliament or the Legislative Assembly, as the case may be, can claim immunity from prosecution on a charge of bribery in a criminal court. We disagree with and overrule the judgment of the majority on this aspect. Our conclusions are thus:

188.1. The doctrine of *stare decisis* is not an inflexible rule of law. A larger bench of this Court may reconsider a previous decision in appropriate cases, bearing in mind the tests which have been formulated in the precedents of this Court. The judgment of the majority in **PV Narasimha Rao** (supra), which grants immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for casting a vote or speaking has wide ramifications on public interest, probity in public life and parliamentary democracy. There is a grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered;

188.2. Unlike the House of Commons in the UK, India does not have 'ancient and undoubted' privileges which were vested

after a struggle between Parliament and the King. Privileges in pre-independence India were governed by statute in the face of a reluctant colonial government. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution;

188.3. Whether a claim to privilege in a particular case conforms to the parameters of the Constitution is amenable to judicial review;

188.4. An individual member of the legislature cannot assert a claim of privilege to seek immunity under Articles 105 and 194 from prosecution on a charge of bribery in connection with a vote or speech in the legislature. Such a claim to immunity fails to fulfil the twofold test that the claim is tethered to the collective functioning of the House and that it is necessary to the discharge of the essential duties of a legislator;

188.5. Articles 105 and 194 of the Constitution seek to sustain an environment in which debate and deliberation can take place within the legislature. This purpose is destroyed when a member is induced to vote or speak in a certain manner because of an act of bribery;

188.6. The expressions "anything" and "any" must be read in the context of the accompanying expressions in Articles 105(2) and 194(2). The words "in respect of" means 'arising out of' or 'bearing a clear relation to' and cannot be interpreted to mean anything which may have even a remote connection with the speech or vote given;

188.7. Bribery is not rendered immune under Article 105(2) and the corresponding provision of Article 194 because a member engaging in bribery commits a crime which is not essential to the casting of the vote or the ability to decide on how the vote should be cast. The same principle applies to bribery in connection with a speech in the House or a Committee;

188.8. Corruption and bribery by members of the legislatures erode probity in public life;

188.9. The jurisdiction which is exercised by a competent court to prosecute a criminal offence and the authority of the House

to take action for a breach of discipline in relation to the acceptance of a bribe by a member of the legislature exist in distinct spheres. The scope, purpose and consequences of the court exercising jurisdiction in relation to a criminal offence and the authority of the House to discipline its members are different;

188.10. The potential of misuse against individual members of the legislature is neither enhanced nor diminished by recognizing the jurisdiction of the court to prosecute a member of the legislature who is alleged to have indulged in an act of bribery;

188.11. The offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification. It does not matter whether the vote is cast in the agreed direction or if the vote is cast at all. The offence of bribery is complete at the point in time when the legislator accepts the bribe; and

188.12. The interpretation which has been placed on the issue in question in the judgment of the majority in **PV Narasimha Rao** (supra) results in a paradoxical outcome where a legislator is conferred with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but eventually decides to vote independently will be prosecuted. Such an interpretation is contrary to the text and purpose of Articles 105 and 194.

189. The reference is answered in the above terms. Having answered the question of law raised by the Impugned Judgement of the High Court in this reference, the Criminal Appeal stands disposed of in the above terms.

190. Pending applications, if any, stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case:
Reference answered and
Criminal Appeal disposed of.

[2024] 3 S.C.R. 585 : 2024 INSC 210

U.P. Avas Evam Vikas Parishad
v.
Chandra Shekhar And Ors.

(Civil Appeal No. 3855 of 2024)

05 March 2024

[Surya Kant* and K.V. Viswanathan, JJ.]

Issue for Consideration

High Court, if justified in quashing the acquisition in respect of the Khasra on the ground that the tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with s. 29 of the UP Avas Evam Vikas Parishad Adhiniyam, 1965.

Headnotes

UP Avas Evam Vikas Parishad Adhiniyam, 1965 – s. 29 – Issuance of pre-acquisition notice to tenure-holders – Requirement of – Public notice issued by the Board regarding Housing Scheme, however no notice served on respondents who claimed to be tenure holders but served in favour of other, who cliams to be the tenure-holder – High Court quashed the acquisition in respect of Khasra on the ground that the respondent-tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with s. 29 resulting in denial of the valuable right of objections available to them, and non-observance thereto, vitiates the acquisition qua the plot – Correctness:

Held: The 1965 Act mandates issuance of a pre-acquisition notice to such individuals whose land/property falls within the purview of the proposed Scheme – The Board, at best, could have claimed deemed or substantial compliance of audi alteram partem rule provided that Khasra of respondent was expressly notified in the public notice but those were conspicuously missing – No individual notices served on the respondents since they were not recorded as tenure-holders of the subject land immediately before the issuance of a notice u/s. 29 – In the absence of any public or individual notice proposing to acquire Khasra the respondents were denied an effective opportunity to submit objections to oppose the acquisition in question – Impugned

* Author

judgment holding that the acquisition process qua the Khasra stands vitiated on account of non-compliance with the prescribed procedure, not interfered with – Furthermore, the tenure-holders/ owners of Khasra was still under the acquisition process when 2013 Act came into force, thus, entitled to be paid compensation in accordance with s. 24(1) of the 2013 Act – Appropriate Government to dispense with the procedure contemplated under Chapter II of the 2013 Act since the acquired land has already been utilized for the notified public purpose and would delay the assessment and payment of compensation to the true tenure holders – Prescribed Authority to accord an opportunity to submit objections u/s. 15 of the 2013 Act and, thereafter, pass an award as per s. 24(1) of the 2013 Act – Whosoever is found entitled to the compensation after the decision in the title suit, the appellant-Board would release the compensation to them within the stipulated period – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s. 24(1). [Paras 16, 17, 19-21]

List of Acts

U.P. Avas Evam Vikas Parishad Adhiniyam, 1965; Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

List of Keywords

Acquisition; Tenure holders; Opportunity to submit objections against the proposed acquisition; Pre-acquisition notice; Audi alteram partem rule; Non-compliance with the prescribed procedure; Compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.3855 of 2024

From the Judgment and Order dated 07.10.2015 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WP No.97 of 2014

Appearances for Parties

Vishwajit Singh, Sr. Adv., Abhishek Kumar Singh, Pankaj Singh, Ms. Vibha Bhat, Ms. Anamika Yadav, Advs. for the Appellant.

Sanyat Lodha, Lavam Tyagi, Shaurya Sahay, Shobhit Dwivedi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

1. Leave granted.

2. The appellant-U.P. Avas Evam Vikas Parishad (Board) is aggrieved by the judgment dated 07.10.2015, passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, whereby acquisition in respect of Khasra No.673 (mentioned as plot No. 673 in the impugned judgment), situated within the revenue estate of village Hariharpur, Tehsil and District Lucknow, has been quashed on the ground that the respondent-tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with Section 29 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (in short, `the 1965 Act').

3. The 1965 Act was enacted by the State legislature through Act No.1 of 1966 and has, thereafter, been re-enacted by U.P. Act No.30 of 1974, to provide for the establishment, incorporation and functioning of a Housing and Development Board in Uttar Pradesh.

4. Section 28 of the 1965 Act contemplates that when any Housing or Improvement Scheme is framed, the Board shall prepare a notice depicting the boundaries of the area comprised in that Scheme; the details of the land proposed to be acquired and the date by which the objections to the Scheme are to be invited. Such notice is required to be published weekly for three consecutive weeks in the Gazette and two daily newspapers having circulation in the area comprised in the Scheme, at least one of which shall have to be a Hindi newspaper.

5. Section 29 of the 1965 Act provides that the Board shall serve a notice in such form on such persons or classes of persons in the prescribed manner for executing the Scheme.

6. Section 30 of the 1965 Act enables the person on whom a notice under Section 29 has been served to make an objection in writing to the Board against the Scheme or the proposed acquisition or levy, etc. After consideration of such objections, and when the prior sanction from the State Government is obtained, the Scheme shall be notified under Section 32 of the 1965 Act, and it shall come into force therefrom.

7. Section 55 of the 1965 Act confers power to acquire land for implementation of the Scheme under the Act, and it reads as follows:

> "**55. Power to acquire land**.- (1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. I of 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modification specified in the Schedule to this Act.
>
> (2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. I of 1894)."

8. In purported exercise of its powers under Section 28 of the Act, the appellant-Board issued a notice on 17.07.2004 (Annexure P-1) giving a description of the Scheme called as the Sultanpur Road Bhoomi Vikas Evam Grahsthan Yojna at Lucknow. The said notice vividly described the lands/properties which were to fall within the Scheme, the map of the area, particulars of the Scheme and the details of the land which was proposed to be acquired was notified to be available in the Office of the Housing Commissioner. It was further stipulated that the objections to the Scheme shall also be received by the Office of the Housing Commissioner (Land Acquisition Section) within 30 days from the date of publication of the said notification.

9. It is a matter of record that Khasra No.673 at village Hariharpur did not find any mention in the aforesaid notification dated 17.07.2004.

10. The case of the respondents is that Khasra Nos.672 and 673 were mutated in their favour on 10.10.1999, as can be seen from the entries in the revenue record, a copy whereof has been placed on record as Annexure P.6.

11. It is also not in dispute that the tenure holding/ownership of Khasra No.673 was later on changed in favour of one Chandrika S/o Harishchandra, Guruprasad S/o Jawahir, and the entries to this effect were reportedly made in the revenue record on 13.08.2003 and 09.02.2004.

12. While the respondents pleaded that the entries in the revenue record were altered fraudulently behind their backs in collusion and connivance with Chandrika and others and the statutory procedure envisaged to make such changes was not followed, the case of the Board is that the notice proposing to acquire the subject-land was issued to Guruprasad, in whose favour the entries subsisted on the date immediate prior to the issuance of Notification under Section 28 of the 1965 Act. In other words, the appellant's stand is that they were not obligated to serve any notice on the respondents as they were not amongst the interested persons as per the entries in the revenue record, and that such a notice was duly served on the persons who were recorded as the tenure-holders as per the revenue record.

13. The question whether the appellant-Board ought to have served individual notice upon the respondents under Section 29 of the 1965 Act, has been answered by the High Court vide the impugned judgment in favour of the respondents for two sets of reasons. Firstly, the High Court, with regard to the entries made in favour of Chandrika and others, has observed as follows:

> "It has been brought to our notice by the learned Standing Counsel, on the basis of enquiry, which has been held by the respondents, that surprisingly the name of Chandrika has been found to be recorded in khatas of three villages to the extent of area 9.64 hectares. The entry of Chandrika in respect of khatas of three villages is not to be confined to this extent only, but the authorities are obliged to make further enquiry in respect of such entries prevailing in Sadar Tehsil in district Lucknow.
>
> It is to be noted that not only Chandrika whose name has been recorded in clandestine manner, but there may be other persons, whose names have also been recorded in the like manner and the poor farmers do not come to know that some name has been entered on the eve of acquisition and that too without any knowledge to them. If the name of any person has to be recorded in the khata, then it is incumbent upon the Tehsildar to give notice and hear the recorded tenure holder personally and thereafter make any change in the khata of the recorded tenure holder.

> The novel method adopted in entering the name of Chandrika in so many khatas itself throws doubt upon the manner in which, the entry in the name of Chandrika has been made. This is a serious matter and it requires thorough enquiry.
>
> The Secretary, Board of Revenue himself or his nominee was directed to conduct an enquiry into the matter. The Secretary, Board of Revenue or his nominee does not mean that the Secretary, Board of Revenue will not supervise the enquiry personally. It is incumbent upon the Secretary, Board of Revenue to supervise the enquiry personally and call the officers and also to scrutinize the facts and the evidence 'collected by the officers and thereafter take action in accordance with law."
>
> [Emphasis applied]

14. Thereafter, the High Court proceeded on the premise that the effect of no notice having been served on the respondents entails denial of the very valuable right of objections available to them. That limited opportunity is akin to Section 5A of the Land Acquisition Act, 1894, and non-observance thereto, vitiates the acquisition process *qua* plot No. 673 and the same cannot sustain.

15. We have heard learned Senior Counsel appearing on behalf of the appellant as well as learned counsel appearing on behalf of the respondents and carefully perused the material placed on record.

16. The 1965 Act mandates issuance of a pre-acquisition notice to such individuals whose land/property falls within the purview of the proposed Scheme. On a liberal reading to such provision, the appellant, at best, could have claimed deemed or substantial compliance of *audi alteram partem* rule provided that Khasra No. 673 was expressly notified in the public notice dated 17.07.2004. Unfortunately, Khasra Nos. 672 and 673 are conspicuously missing in the public notice dated 17.07.2004. No individual notices were indisputably served on the respondents for the reason that they were not recorded as tenure-holders of the subject land immediately before the issuance of a notice under Section 29 of the 1965 Act. In the absence of any public or individual notice proposing to acquire Khasra No.673, we find merit in the cause espoused on behalf of the respondents.

17. Nevertheless, we are equally conscious of the fact that there is a combative title dispute between the respondents on one hand, and Chandrika and others on the other. We, therefore, decline to hold or declare the respondents to be the true tenure-holders of the subject land. All that we say is that in the absence of any public or individual notice proposing to acquire Khasra No. 673, the observations made by the High Court to the extent that the respondents have been denied an effective opportunity to submit objections to oppose the acquisition in question, appears to be correct and based upon the record. That being so, the impugned judgment to the extent it holds that the acquisition process *qua* Khasra No.673 stands vitiated on account of non-compliance with the prescribed procedure, does not call for any interference.

18. Having held so, the question that falls for further consideration is as to what should be the future course of action for the appellant-Board, so that neither the public interest to utilize the subject-land for the Scheme that has been substantially developed is frustrated nor the true tenure holders are deprived of the adequate compensation for their land. It may be seen from Section 55 of the 1965 Act that the compensation for the acquired land was required to be assessed in accordance with the provisions of the Land Acquisition Act 1894, which stood repealed w.e.f. 01.01.2014 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"). Section 55 of the 1965 Act cannot be given effect unless it is declared by way of a deeming fiction that instead of 1894 Act which now stands repealed, the compensation shall be assessed in accordance with the provisions of the 2013 Act. We hold accordingly. Since the acquisition could not attain finality before 01.01.2014, we are of the considered opinion that the Acquiring Authority/Board are obligated to pay compensation to the ex-propriated owners, as is to be assessed in accordance with Section 24(1) of the 2013 Act.

19. Consequently, we hold that the tenure-holders/owners of Khasra No.673, which was still under the acquisition process when 2013 Act came into force, shall be entitled to be paid compensation in accordance with Section 24(1) of the 2013 Act.

20. We may hasten to add that the procedure prescribed under Chapter-II of the 2013 Act, mandates to carry out the Social Impact Assessment

Study in certain situations. The adherence to such a cumbersome procedure in the instant case will be an exercise in futility for two reasons. Firstly, a major part of the acquired land has already been utilized for the notified public purpose. Secondly, the study referred to above, will delay the assessment and payment of compensation to the true tenure-holders/owners of Khasra No.673. Consequently, we direct the appropriate Government to dispense with the procedure contemplated under Chapter II of the 2013 Act. The Prescribed Authority is permitted to accord an opportunity to submit objections under Section 15 of the 2013 Act and, thereafter, pass an award as per Section 24(1) of the 2013 Act. The Prescribed Authority/Collector shall give notice to the respondents as well as to other persons who claim interest in Khasra Nos.672 and 673, within a period of six weeks. The objections, if any, shall be filed within four weeks and on consideration of such objections, the Collector shall be obligated to pass an award on or before 30.06.2024.

21. We further direct that the awarded amount shall be kept in a nationalized bank in the FDR where it can fetch the maximum rate of interest. The FDR shall be renewed from time to time till the title dispute between the respondents and other claimants is resolved by a court of competent jurisdiction. Whosoever is found entitled to, the appellant-Board shall release the compensation to them as early as possible but not later than four weeks after the final adjudication of the title dispute.

22. The parties shall maintain *status quo* regarding the nature of the land, creation of third-party rights or any encumbrance over the subject-land until the award is passed, as directed above. On the passing of the award and deposit of the compensation amount, the appellant-Board shall be at liberty to utilize the said land for the notified Scheme and/or for any other public purpose in accordance with law.

23. Ordered accordingly.

24. The appeal stands disposed of in the above terms. No order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal disposed of.

[2024] 3 S.C.R. 593 : 2024 INSC 203

Baban Balaji More (Dead) by LRs. & others
v.
Babaji Hari Shelar (Dead) by LRs. & others

(Civil Appeal No. 8356 of 2017)

14 March 2024

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

Issue for Consideration

Whether the Maharashtra Tenancy and Agricultural Lands Act, 1948 had application to the subject Watan lands; whether the appellants (legal heirs of the original Watandar) were right in proceeding against the tenants u/ss.5, 11 & 11A, Maharashtra Hereditary Offices Act, 1874 after the death of the original Watandar, in February/March, 1958; whether the tenancy in question was lawfully subsisting on Tillers' Day and were the tenants entitled to exercise their right of statutory purchase of the tenanted agricultural Watan lands. Interpretation and harmonious construction of the 1874 Act, 1948 Act and the Maharashtra Revenue Patels (Abolition of Offices) Act, 1962.

Headnotes

Maharashtra Tenancy and Agricultural Lands Act, 1948 – ss.88, 88CA, 29-31, 32-32-R – Maharashtra Hereditary Offices Act, 1874 – ss.5, 11, 11A – Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 – s.8 – Applicability of the 1948 Act to the subject Watan lands – After the Abolition Act that came into effect from 01.01.1963, lawfully leased Patel Watan land whose lease was subsisting as on 01.01.1963, if was covered by the Tenancy Act and the tenant of such Watan land if had the right to purchase such land:

Held: All Watan lands were not to be treated as Government lands – Subject Watan lands were not covered by s.88(1)(a), Tenancy Act and could not be treated as Government lands – By virtue of the 'Explanation' to s.88(1)(a) of the Tenancy Act, all other Watan lands, including the subject Watan lands, were covered by all the provisions of the Tenancy Act – However, s.88CA thereof, introduced in July, 1958, granted such Watan lands exemption from ss.32 to 32-R, 33-A, 33-B and 33-C – Therefore, ss.29 and

* Author

31, Tenancy Act were very much applicable to such Watan lands all through – Thus, the heirs of the original Watandar (appellants) could not have aspired to secure possession without reference to the procedure u/s.29, 31 – Limited exemption from certain provisions of the Tenancy Act, afforded by s.88CA thereof, continued until the Abolition Act came into force on 01.01.1963 – Thereafter, as the very institution of Patel Watan stood abolished, the limited exemption extended to such Watan lands u/s.88CA, Tenancy Act also ceased – Therefore, after the advent of the Abolition Act, Patel Watan land which was lawfully leased, and the lease of which was subsisting as on 01.01.1963, stood covered by the Tenancy Act in its entirety and the tenant of such Watan land was entitled to all the benefits under the provisions thereof, including the right to purchase such land – It was not open to the appellants (legal heirs of the original Watandar) to proceed against the tenants under the provisions of ss.5, 11 & 11A, 1874 Act after the death of the original Watandar, in February/March, 1958 as the provisions of the Tenancy Act were very much applicable to the subject lands by then and more so, ss.29 and 31 thereof – Thus, the appellants could not have taken lawful possession of these lands from the tenants pursuant to the order dtd. 18.04.1961 passed u/ss.5, 11 & 11A, 1874 Act – The same was rightly held to be invalid in the revisionary order and that finding was correctly held to be justified by High Court– Thus, the tenancy was lawfully subsisting on 01.04.1957, i.e., Tillers' Day, and the tenants were entitled to exercise their right of statutory purchase of these tenanted agricultural Watan lands u/s.32 of the Tenancy Act in terms of s.8 of the Abolition Act, after the exemption afforded by s.88CA ceased to exist – That right became operational on 27.11.1964, when these Watan lands were regranted to the heirs of the original Watandar – Impugned judgment not interfered. [Paras 20-23, 33]

Maharashtra Tenancy and Agricultural Lands Act, 1948 – s.88(1)(a) – Explanation – Merely explained the position and was not substantive in nature – Maharashtra Hereditary Offices Act, 1874 – ss.5, 23:

Held: Insertion of the 'Explanation' was not an amendment of the provision which would have prospective effect and not apply to the application filed on 14.06.1958 u/s.5 of the Maharashtra Hereditary Offices Act, 1874 – The 'Explanation' merely explained the position and was not substantive in nature – It is, therefore, deemed to

have come into operation from the date on which s.88(1) was amended in August, 1956 – Thereby, the limited applicability of the provision to certain Watan lands was clearly delineated – The 'Explanation' to s.88 clarified the position w.r.t Watan lands, other than those covered by s.23 of the 1874 Act, as it manifests that only Watan land assigned as remuneration to an officiator performing service u/s.23 of the 1874 Act etc. shall be deemed to be land belonging to the Government – Thus, only Watan lands covered by s.23, 1874 Act were to be treated as Government lands as per s.88(1)(a) – This is further clarified by s.88CA inserted in the year 1958, which stated that ss.32 to 32-R, 33-A, 33-B and 33-C would not apply to land held as Inam or Watan for service useful to the Government, excepting land assigned as remuneration u/s.23 of the 1874 Act etc. – Thus, only Watan lands assigned as remuneration for service u/s.23 of the 1874 Act were to be treated as Government lands and stood excluded from the provisions of the Tenancy Act – Admittedly, predecessor of the appellants was not an 'officiator' covered by s.23 of the 1874 Act. [Paras 19, 20]

Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 – s.8 proviso to – Application of existing tenancy law:

Held: The proviso to s.8 indicates that for the purpose of fixing the purchase price under the provisions of the Tenancy Act so as to enable the purchase of such land by the tenant, the lease shall be deemed to have commenced from the date of regrant of the land u/ss.5, 6 or 9, as the case may be – The argument of the appellants that the tenants ought to have challenged the regrant order dated 27.11.1964 is without merit – In fact, the tenants were benefited by the said regrant order as the exercise of their right to purchase the land hinged upon the passing of that regrant order, in terms of the proviso to s.8 – The argument to the contrary is rejected. [Paras 23, 31]

Case Law Cited

Sadashiv Dada Patil v. Purushottam Onkar Patil (Dead) by LRs., [2006] Supp. 6 SCR 843 **: (2006) 11 SCC 161 – relied on.**

Dattatraya Keshav Deshpande v. Tukaram Raghu Chorage, **AIR 1921 Bom 17;** *Govind Ramchandra Patil v. Bapusaheb Krishnarao Patil and others,* **Special Civil**

Application No.1741 of 1961, decided on 13.12.1962; *Kallawwa Shattu Patil and others v. Yallappa Parashram Patil and another,* **(1992) 1 Mah.LJ 34;** *Pradeeprao @ Virgonda Shivgonda Patil v. Sidappa Girappa Hemgire since deceased through his heirs and LRs. Ginnappa Sidappa Hemgire and others,* **(2004) 3 Mah. L.J. 75;** *Kondabai Ganu Barkale (since deceased) through her Legal Heirs Smt. Housabai P Bhongale and others v. Pandit @ Shankar D. Patil (since deceased) through his Legal Heirs Waman S.Patil and others,* **(2016) 2 Mah. LJ 282 – relied on.**

List of Acts

Maharashtra Hereditary Offices Act, 1874; Maharashtra Tenancy and Agricultural Lands Act, 1948; Maharashtra Revenue Patels (Abolition of Offices) Act, 1962; Bombay Tenancy Act, 1939.

List of Keywords

Watan lands; Watandar; Patel Watan; Tillers' Day; Statutory purchase; Tenanted agricultural Watan lands.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.8356 of 2017

From the Judgment and Order dated 01.02.2005 of the High Court of Bombay in WP No.1774 of 1982

Appearances for Parties

B.H. Marlapalle, Sr. Adv., Shivaji M. Jadhav, Brij Koshor Sah, Ms. Apurva, Adarsh Kumar Pandey, Vignesh Singh, Aditya S. Jadhav, Avinish Kumar Saurabh, Ajit Pravin Wagh, Ramnesh Kumar Sahu, Alok Kumar, Rahul Kumar, M/s. S.M. Jadhav and Company, Sushil Sonkar, Arvind S. Avhad, Advs. for the Appellants.

V. Giri, Vinay Navare, Sr. Advs., Pramod Gore, Nitin S. Tambwekar, Seshatalpa Sai Bandaru, Prashant Pakhiddey, Manav Gill, Byron Sequeria, K. Rajeev, Ms. Kavya S. Lokande, Hitesh Kumar Sharma, Vidrendra Mohan Sharma, Akhileshwar Jha, Abhijit Kamble, Ms. Sandhya S. Pawar, Ms. Madhvi S. Sawant, Naresh Kumar, Shashibhushan P. Adgaonkar, Omkar Jayant Deshpande, Mrs. Pradnya Shashibhushan Adgaonkar, Rana Sandeep Bussa,

Col. Amit Kumar, M/s. Lawyer S Knit & Co, Ms. Bina Madhavan, S. Udaya Kumar Sagar, N.V. Vechalekar, Eeshan D. Khaire, Ms. Niharika Tanneru, Sanjay Kharde, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, C.K. Sasi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J

1. This appeal entails correlation of three vintage legislations, requiring not only their interpretation but also their harmonious construction. The oldest of the three statutes is the Maharashtra Hereditary Offices Act, 1874 (for brevity, 'the 1874 Act'). The next is the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for brevity, 'the Tenancy Act'), and the third is the Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 (for brevity, 'the Abolition Act').

2. The 1874 Act was enacted to declare and amend the law relating to *Watans*, i.e., hereditary offices. Balaji Chimnaji More, the predecessor of the present appellants, held a *Patel Watan* since prior to August, 1898. He was assigned *Watan* property, viz., a 50% share in an extent of 20 acres of land in Survey No. 386 and a 50% share in an extent of 16 acres in Survey No. 410 of Village Chikhali. Babaji Hari Shelar and Ganapati Dhondiba Tapkir (or Tapkire), the predecessors of the respondents herein, were cultivating this *Watan* property as tenants since 1955-56 or thereabouts.

3. While so, Balaji Chimnaji More died sometime in February/March, 1958. Thereupon, his legal heirs, namely, Baban Balaji More, Rama Balaji More and Jagannath Balaji More, filed an application on 14.06.1958 under Section 5 of the 1874 Act. As per this provision, a *Watandar* was not competent to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any *Watan* or any part thereof or any interest therein to or for the benefit of any person who was not a *Watandar* of the same *Watan*, without the sanction of the State Government or the Commissioner, as the case may be. By order dated 18.04.1961, the Assistant Collector, I/C, Haveli Taluka, Poona, held that the tenancy created by the father of the applicants could not extend beyond his lifetime and the applicants

would, therefore, have the right to recover possession of the said lands after the death of their father. He, accordingly, allowed their application and ordered that possession of the lands falling to their share should be handed over to them under Sections 11 and 11A of the 1874 Act.

4. Aggrieved thereby, the tenants, viz., Babaji Hari Shelar and the legal heirs of late Ganapati Dhondiba Tapkir, namely, Laxman Ganapati Tapkir, Rama Ganapati Tapkir, Damu Ganapati Tapkir and Babu Ganapati Tapkir, filed Watan Appeal No. 6 of 1961 before the Additional Collector, Poona, under Section 77 of the 1874 Act. However, the said appeal was dismissed, *vide* order dated 27.03.1962.

5. Thereupon, the tenants carried the matter to the Additional Commissioner, Poona Division, Poona, on 14.04.1962. Order dated 12.06.1962 was passed by the Additional Commissioner, treating the proceeding as an appeal instituted against the order dated 27.03.1962 passed in Watan Appeal No. 6 of 1961. Thereby, the Additional Commissioner rejected the appeal. The appellants would argue that this proceeding cannot be treated as an appeal, inasmuch as the statutory scheme allowed only one appeal under Section 77 of the 1874 Act, and they would contend that this proceeding should be construed to be a revision filed under Section 79 thereof, with necessary consequences. This aspect will be dealt with hereinafter.

6. In any event, during the pendency of this proceeding, the possession of the lands in question was handed over on 22.04.1962 to the legal heirs of the deceased *Watandar*, in terms of the order dated 18.04.1961 passed by the Assistant Collector, I/C, Haveli Taluka, Poona.

7. At this stage, the Abolition Act was promulgated and it came into effect from 01.01.1963. As per Section 3 thereof, all *Patel Watans* stood abolished from the appointed date, i.e., 01.01.1963. In consequence, all incidents appertaining to the said *Watans*, including the right to hold office and *Watan* property, stood extinguished. Further, Section 3(c) provided that, subject to the provisions of Sections 5, 6 and 9, all *Watan* lands stood resumed and were subject to payment of land revenue under the provisions of the relevant Code, as if they were unalienated land. Section 5 thereof, however, provided for regrant of the *Watan* land to the *Watandar*. Section 5(1) stated that *Watan* land resumed under Section 3 shall on an application therefor,

being in relation to cases not falling under Sections 6 and 9, be regranted to the *Watandar* of the *Watan* to which it appertained on payment by or on behalf of the *Watandar* to the State Government of the occupancy price equal to twelve times the amount of the full assessment of such land within the prescribed period and in the manner prescribed and, thereupon, the *Watandar* shall be an occupant within the meaning of the relevant Code in respect of any such land and shall be primarily liable to pay land revenue to the State Government in accordance with the provisions of that Code. The *proviso* to Section 5(1) stipulated that in respect of *Watan* land which was not assigned under the existing *Watan* law as remuneration of an officiator, the occupancy price equal to six times the amount of the full assessment of such land shall be paid by or on behalf of the *Watandar* for the regrant of such land.

8. The appellants made an application under Section 5 of the Abolition Act for regrant of the *Watan* lands, as their case did not fall within the ambit of either Section 6 or Section 9 of the 1874 Act. By order dated 27.11.1964, the *Mamlatdar*, Haveli, noted that they had paid an amount equal to six times the assessment on 17.11.1964; that a Certificate of the Talhati stating to that effect was also on record; and accordingly ordered that the said lands be regranted to them, subject to conditions.

9. In the meanwhile, it appears that the tenants filed a revision before the Government assailing the orders passed against them. However, the appellants claim that it was only on 11.12.1964 that they suddenly received a copy of the letter dated 10.07.1964 addressed to Damu Ganapati Tapkir by the Officer on Special Duty, Revenue and Forest Department, Government of Maharashtra, stating that, pursuant to Government Letter dated 01.11.1963, he was to state that the Government was pleased to set aside the order dated 18.04.1961 passed by the Pranth Officer, Taluka Haveli, District Poona; the order dated 27.03.1962 passed by the Collector, Poona, in Watan Appeal 6 of 1961; and the order dated 12.06.1962 passed by the Commissioner, Poona Division, in Case No. W.T.N.P.6/33. Thereupon, the Collector, Poona, directed the *Mamlatdar*, Haveli, to ensure delivery of possession of the lands to the tenants.

10. Aggrieved by this development and complaining that they were not given notice or a hearing prior to the Government's decision, the

appellants preferred an appeal before the Commissioner, Poona, assailing the direction of the Collector, Poona, to the *Mamlatdar*, Haveli, to hand over possession of the subject lands to the tenants. The Commissioner, Poona, rejected their request, *vide* letter dated 02.12.1964. They then approached the Chief Minister, State of Maharashtra, by way of written representation dated 11.12.1964. However, they were informed by the Officer on Special Duty, Revenue and Forest Department, Government of Maharashtra, *vide* letter dated 30.12.1964, that their representation dated 11.12.1964 could not be considered. Aggrieved by the rejection of their representation under letter dated 30.12.1964, the appellants filed Special Civil Application No. 61 of 1965 before the Bombay High Court under Article 227 of the Constitution. Interim stay was granted therein on 15.01.1965 and the case was disposed of on 25.03.1969, in these terms:

> 'By consent, the Court makes absolute the rule granted by it on 15.01.1965, sets aside the order of the State Government dated 01.11.1963 communicated to the petitioners on 10.07.1964 by the Officer on Special Duty and remands the matter to Government with a direction to rehear the matter after giving opportunity to the petitioners and the respondents to be heard in their defence.
>
> No order as to costs.'

11. The revision was taken up as Case No. PTIL-3464/102644-L-5 by the Officer on Special Duty (Appeals and Revisions), Revenue and Forest Department, Government of Maharashtra. This revision was allowed by Order dated 03.05.1982 and all the orders passed by the authorities against the tenants were set aside. In consequence, the lands were directed to be restored to the tenants. In the order dated 03.05.1982, it was noted that the Abolition Act had come into force on 01.01.1963 but as on that date, the tenants were not in possession as it was an admitted fact that the appellants were delivered possession on 24.04.1962. However, the revisional authority opined that the mere factum of losing possession would not be determinative of termination of the tenancy and if the order to that effect was based on a wrong presumption or wrong interpretation of law, the tenancy could not be said to have been terminated even if such an order was executed. The authority opined that the argument that the possession of the tenants became unauthorized upon the

death of the original *Watandar* and that no tenancy rights subsisted on the appointed date, viz., 01.01.1963, could not be accepted. The authority concluded that the Assistant Collector's and Additional Collector's orders in deciding the case under Section 11 of the 1874 Act, ignoring the provisions of the Tenancy Act, were wrong. In effect, the authority held that the tenancy must be presumed to be continuing and that the orders passed to the contrary were improper and illegal and, consequently, execution of such orders had no effect on the rights of the tenants. Holding so, the authority allowed the tenants' revision, set aside the orders passed against them and directed that the lands be restored to them.

12. Assailing this order, the appellants filed Writ Petition No. 1774 of 1982 before the Bombay High Court. In the judgment dated 01.02.2005 passed therein, the High Court observed that possession of the lands was delivered to the heirs of the *Watandar* on 24.04.1962 during the pendency of revisional proceedings, only because there was no stay of the order passed by the lower authority, and held that such delivery would be subject to final determination of the rights of the parties. Further, taking note of the fact that the Abolition Act came into effect on 01.01.1963, the High Court held that the tenancy was still subsisting on that day despite the delivery of possession of the lands to the heirs of the *Watandar*, as the proceedings were still pending and execution of the order directing delivery of possession was subject to the final outcome thereof. The High Court, therefore, concluded that the tenancy was not legally and validly determined. As regards the appellants' contention that Section 5 of the 1874 Act automatically determined the tenancy, the High Court rejected it on the ground that once a legal and valid tenancy was subsisting on 01.01.1963, the tenants would be entitled to all the benefits under Section 8 of the Abolition Act and the provisions of the Tenancy Act. The High Court accordingly held that there was no merit in the writ petition and dismissed it. It is this judgment that is subjected to challenge before us in this appeal.

13. While issuing notice on 04.04.2005, this Court, directed *status quo* existing as on that day to be maintained. This order is still in operation.

14. It would be appropriate at this stage to note the statutory scheme of the 1874 Act and the other relevant provisions thereof. Section 4 of the 1874 Act defines *Watan* property and *Watandar*. The definition of *Watan* property, to the extent relevant, reads thus:

> 'Watan property" means the moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise……'

Watandar is defined as under:

> 'Watandar" means a person having an hereditary interest in a watan. It includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. It includes a person adopted by an owner of a watan or part of a watan, subject to the conditions specified in sections 33 to 35'

Section 5 of the 1874 Act, to the extent relevant, reads thus:

> '5. (1) Without the sanction of the State Government, or in the case of a mortgage, charge, alienation, or lease of not more than thirty years, of the Commissioner it shall not be competent—
>
> (a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan; …..'

15. Section 11 of 1874 Act authorized the Collector to declare any alienation of the nature described in Section 10 thereof to be null and void, if it had taken place, otherwise than by virtue of, or in execution of a decree or order of any Court, after recording his reasons in writing. Section 11A empowered the Collector to either summarily resume possession of the property in relation to which an order of the Court had been passed on receipt of his certificate under Section 10, or on his own declaration under Section 11, and the said property shall thenceforward revert to the *Watan*.

16. Much controversy was generated in the context of the proceeding filed before the Additional Commissioner, Poona Division, Poona,

that resulted in the order dated 12.06.1962. The appellants would contend that this 'proceeding' must be construed to be a revision filed under Section 79 of the 1874 Act and the State Government could not have entertained another revision thereafter, as the statutory scheme speaks of only one revision being maintainable under that provision. However, perusal of the order dated 12.06.1962 passed by the Additional Commissioner, Poona Division, Poona, reflects that the same was dealt with as an 'appeal' and not as a 'revision'. Trite to state, appellate jurisdiction is vastly different from revisional jurisdiction, in terms of its scope and extent of review, and when the authority dealing with matter proceeded under the impression that it was exercising appellate jurisdiction the same cannot be construed to be revisional jurisdiction, contrary to what has been stated in the order itself. The entertainment of this 'appeal' has been explained by pointing out that Section 203 of the Bombay Land Revenue Code, 1879, titled 'Appeals and Revision', states to the effect that, in the absence of any express provision or any law to the contrary, an appeal shall lie from any decision or order passed by a Revenue Officer under the Code or any other law for the time being in force to that Officer's immediate superior. However, as pointed out by the appellants, the scheme of the 1874 Act did not permit a 'second' appeal being maintained under Section 77 thereof. In effect, the proceeding before the Additional Commissioner, Poona Division, Poona, was utterly misconceived and was not maintainable. However, once such a misconceived 'appeal' was entertained and resulted in the order dated 12.06.1962, which was bereft of jurisdiction, a statutory revision came to be filed before the State Government under Section 79 of the 1874 Act. Significantly, this revision called in question the appellate order dated 27.03.1962 also and upon being heard afresh, pursuant to the 'consent order' of the High Court in Special Civil Application No. 61 of 1965, it culminated in the order dated 03.05.1982. Having consented to the remand of the revision for hearing afresh, the appellants cannot, in any event, raise this issue now. Therefore, the contention of the appellants in this regard is without merit and is rejected accordingly.

17. Before we proceed to take a look at the provisions of the Tenancy Act, it may be noted that the precursor thereof was the Bombay Tenancy Act, 1939. It was applicable to the whole of the Province of Bombay, except Bombay City, and was intended to protect tenants

of agricultural lands. This statute stood repealed upon the Tenancy Act coming into force in December, 1948. The Tenancy Act was enacted to amend the law relating to tenancy of agricultural lands and to make certain other provisions in regard to those lands. It was placed in the Ninth Schedule to the Constitution and stood protected under Article 31(b) thereof. Section 88 of the Tenancy Act exempted Government lands and certain other lands from the provisions thereof.

18. Agrarian reforms were undertaken to alleviate the plight of agricultural tenants and resulted in beneficial measures being introduced for them from 01.04.1957. This day came to be known as 'Tillers' Day'. Amendments were made to the Tenancy Act in this context and a separate Chapter enabling purchase of tenanted lands by the tenants was inserted therein. Sections 32 to 32-R were introduced thereby in the Tenancy Act. Section 32 is titled 'Tenants deemed to have purchased land on Tillers' day' and Section 32(1) stated that, on the first day of April, 1957, every tenant shall, subject to the other provisions of that section and of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as a tenant. Sections 32-A to 32-R gave effect to the tenant's right to purchase the tenanted agricultural land.

19. The issue presently is whether the Tenancy Act had application to the subject *Watan* lands. The appellants would contend that it had no application, be it on Tillers' Day or in February/March, 1958, when Balaji Chimnaji More, the original *Watandar*, died and an application was made by his legal heirs under Sections 5 of the1874 Act. It is their case that the exemption under Section 88 of the Tenancy Act was applicable to these lands. To the extent relevant, the said provision, after its amendment with effect from 01.08.1956, reads as under:

'88. Exemption to Government lands and certain other lands.-

(1) [Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act] shall apply,-

[a] to lands belonging to or held on lease from, the Government;

……'

An 'Explanation' was inserted in relation to the above clause (a) in July, 1958. It reads as under:

> '[*Explanation*.- For the purposes of clause (a) of sub-section (1) of this section land held as inam or watan for service useful to Government and assigned as remuneration to the person actually performing such service for the time being, under Section 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force, shall be deemed to be land belonging to the Government.]'

Insertion of this 'Explanation' was not an amendment of the provision, which would have prospective effect and, thereby, not apply to the application filed on 14.06.1958 under Section 5 of the 1874 Act. The 'Explanation' merely explained the position and was not substantive in nature. It is, therefore, deemed to have come into operation from the date on which Section 88(1) was amended in August, 1956. Thereby, the limited applicability of the provision to certain *Watan* lands was clearly delineated.

In turn, Section 23 of the 1874 Act reads as follows:

> '23. Subject to the provisions of this Act and or any other law for the time being in force regarding Service Inams, Cash allowances and Pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.
>
> It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof, towards the emoluments of officiators. The existing assignments shall, until altered by competent authority, be taken to have been made under this section. With the sanction of the State Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan.'

Thereafter, Section 88CA was inserted in the Tenancy Act by Amendment Act No.63 of 1958 with effect from 11.07.1958. It reads thus:

> '88CA. Sections 32 to 32R not to apply to certain service lands.- Nothing in sections 32 to 32-R (both inclusive),

33-A, 33-B, 33-C shall apply to land held as inam or watan for service useful to Government but not assigned as remuneration to the person actually performing such service for the time being under section 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force.'

20. A conjoint reading of the above provisions indicates that all *Watan* lands were not to be treated as Government lands. The 'Explanation' to Section 88 clarified the position with regard to *Watan* lands, other than those covered by Section 23 of the 1874 Act, as it manifests that only *Watan* land assigned as remuneration to an officiator performing service under Section 23 of the 1874 Act etc. shall be deemed to be land belonging to the Government. Thus, only *Watan* lands covered by Section 23 of the 1874 Act were to be treated as Government lands as per Section 88(1)(a). This is further clarified by Section 88CA inserted in the year 1958, which stated that Sections 32 to 32-R, 33-A, 33-B and 33-C would not apply to land held as *Inam* or *Watan* for service useful to the Government, excepting land assigned as remuneration under Section 23 of the 1874 Act etc. It is, therefore, clear that only *Watan* lands assigned as remuneration for service under Section 23 of the 1874 Act were to be treated as Government lands and stood excluded from the provisions of the Tenancy Act. Admittedly, Balaji Chimnaji More was not an 'officiator' covered by Section 23 of the 1874 Act. This is also demonstrated by the fact that his legal heirs paid only six times the assessment for regrant of the *Watan* lands under Section 5 of the Abolition Act and not twelve times, as would be applicable to an officiator. *Ergo*, the subject *Watan* lands were not covered by Section 88(1)(a) of the Tenancy Act and could not be treated as Government lands.

21. By virtue of the 'Explanation' to Section 88(1)(a) of the Tenancy Act, all other *Watan* lands, including the subject *Watan* lands, were covered by all the provisions of the Tenancy Act. However, Section 88CA thereof, introduced in the statute book in July, 1958, granted such *Watan* lands exemption from Sections 32 to 32-R, 33-A, 33-B and 33-C. Therefore, Sections 29 and 31 of the Tenancy Act were very much applicable to such *Watan* lands all through. Section 29, titled 'Procedure of taking possession', states to the effect that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the *Mamlatdar* and for obtaining

such an order, he should make an application in the prescribed form within the prescribed time. Section 31 is titled 'Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose' and provided the mode and method in which a landlord could terminate the tenancy of any land, except a permanent tenancy. Thereunder, the landlord had to file an application for possession before the *Mamlatdar* before Tillers' Day. This being the position, the heirs of the original *Watandar* could not have aspired to secure possession without reference to this procedure.

22. The limited exemption from certain provisions of the Tenancy Act, afforded by Section 88CA thereof, continued until the Abolition Act came into force on 01.01.1963. Thereafter, as the very institution of *Patel Watan* stood abolished, the limited exemption extended to such *Watan* lands under Section 88CA of the Tenancy Act also ceased. This is made clear by Section 8 of the Abolition Act, which reads as under:

> '8. Application of existing tenancy law- if any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this Part, be governed by the provisions of that law:
>
> Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under section 5 or 6 or 9, as the case may be.
>
> Explanation- For the purposes of this section, the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law.'

23. Therefore, after the advent of the Abolition Act, *Patel Watan* land which was lawfully leased, and the lease of which was subsisting as on 01.01.1963, stood covered by the Tenancy Act in its entirety and the tenant of such *Watan* land was entitled to all the benefits under the provisions thereof, including the right to purchase such land. The *proviso* to Section 8 indicates that, for the purpose of fixing the purchase price under the provisions of the Tenancy Act so as to

enable the purchase of such land by the tenant, the lease shall be deemed to have commenced from the date of regrant of the land under Sections 5, 6 or 9, as the case may be.

24. Earlier, this Court had occasion to consider this *proviso* in ***Sadashiv Dada Patil vs. Purushottam Onkar Patil (Dead) by LRs.***[1]. The respondent therein was a tenant of *Watan* land and the appellant was the landlord. The issue was whether Section 32-O of the Tenancy Act had application in view of the *proviso* to Section 8 of the Abolition Act. Section 32-O is titled 'Right of Tenant whose tenancy is created after Tillers' Day to purchase land'. It stated that in respect of any tenancy created after Tillers' Day and if the landlord is not a serving member of the Armed Forces, a tenant cultivating such land personally shall be entitled, within one year from the commencement of such tenancy, to purchase the land held by him from the landlord. The issue before this Court was whether a tenant of *Watan* land was required to exercise his right to purchase the land within one year of the regrant, in view of the *proviso* to Section 8 of the Abolition Act stating that the lease is deemed to have commenced from the date of such regrant of the land. In effect, the question was whether the tenancy is to be treated as a fresh lease commencing on the date of the regrant. At the outset, this Court opined that, indisputably, the rights and obligations of the parties were governed by the Tenancy Act. Section 31 thereof was taken note of and as no termination of the tenancy had been effected thereunder, this Court held that the tenancy continued till the declaration of Tillers' Day on 01.04.1957. Thereafter, by virtue of Section 32 of the Tenancy Act, the tenant was deemed to have purchased the tenanted agricultural land from his landlord. Noting that the provisions of the Abolition Act and the Tenancy Act were required to be construed harmoniously, keeping in view the purport and object that they seek to achieve, this Court observed that Section 32 of the Tenancy Act conferred an absolute right upon the tenant. Therefore, the *proviso* to Section 8 of the Abolition Act could not be read in such a manner as to divest the tenant of the vested right of purchase created under Section 32 of the Tenancy Act. The *proviso* was held to have merely fixed the date of the lease for reckoning the purchase price to be paid to the landlord. Thereby, no new tenancy was created and Section 32-O of

1 [2006] Supp. 6 SCR 843 : (2006) 11 SCC 161

the Tenancy Act did not stand attracted. It was held that the *proviso* to Section 8 had a limited role to play and it merely postponed the operation of the statute. It was held that it had to be read in the light of Section 32G and Section 32O of the Tenancy Act and be interpreted accordingly, i.e., it did not create any right in favour of the landlord nor did it take away the right of the tenant.

25. It would be apposite at this stage to take note of the decisions of the Bombay High Court on various issues arising under these three legislations. In its Full Bench decision in ***Dattatraya Keshav Deshpande vs. Tukaram Raghu Chorage***[2], the Court held that Sections 9, 10 and 11 of the 1874 Act were framed to protect *Watan* property from unauthorized alienations and the Collector is empowered under Section 11 to declare any such unauthorized alienation to be null and void after recording his reasons in writing. This judgment, having been rendered long before the other two legislations came into existence, has to be understood keeping in mind the later developments in the context of the Tenancy Act and the Abolition Act. The 1874 Act, therefore, cannot be treated as an independent, self-contained and complete code in itself.

26. In ***Govind Ramchandra Patil vs. Bapusaheb Krishnarao Patil and others***[3], a Division Bench dealt with the question as to whether a lease granted by a *Watandar* would continue to operate to the benefit of the tenants by virtue of the provisions of the Tenancy Act despite the Abolition Act. The Bench opined that the intention of the legislature was clear that the tenants on the land, who were lessees before the Tenancy Act came into force, should continue to be on the land unless the landlord himself required the land for his personal cultivation or the tenant was guilty of any defaults mentioned in Section 14 of the Tenancy Act. The Bench, therefore, concluded that it was not open to the *Watandar* to ask for a declaration under Section 11 of the 1874 Act that the lease became null and void and pray for restoration of possession of the land. Though it was argued that the *Watandar* was only asking for a declaration under Section 5 of the 1874 Act that the tenancy had become null and void on account of the death of the original *Watandar*, the Bench opined

2 AIR 1921 Bom 17

3 Special Civil Application No.1741 of 1961, decided on 13.12.1962

that Section 14(1) of the Tenancy Act provided that the tenancy of a land held by a tenant shall not be terminated unless the tenant is guilty of the defaults mentioned therein. Further, as Section 29(2) of the Tenancy Act provided that a landlord shall not be entitled to claim possession of the land leased out to a tenant otherwise than by way of an application to the *Mamlatdar* under the Tenancy Act, the Bench concluded that the landlord could recover possession of the land from the tenant only on the grounds provided in the Tenancy Act and in no other way could the landlord obtain possession from the tenant.

27. In ***Kallawwa Shattu Patil and others vs. Yallappa Parashram Patil and another***[4], a learned Judge noted that s*uo motu* proceedings initiated by the Revenue authorities under Section 32G of the Tenancy Act had to be dropped in view of the fact that the land was found to be *Watan* land and no purchase price in respect thereof could be fixed till the date of regrant of the land in favour of the landlord. On facts, the learned Judge found that the *Watan* land was lawfully leased in favour of the tenant long before 01.04.1957 and the said lease was subsisting on the appointed day. The provisions of the Tenancy Act, therefore, became applicable to the lease forthwith and only the compulsory purchase of the land, as per Section 32G of the Tenancy Act, could not be availed of by the tenant until the regrant of the said land to the landlord under the Abolition Act. The learned Judge held that the landlord did not create a fresh tenancy in favour of the tenant on 01.04.1957 and Section 32O of the Tenancy Act had no application, as it would not be attracted to a case where the land was already leased out to the tenant prior to 01.04.1957. The *proviso* to Section 8 of the Abolition Act was stated to create a legal fiction for an extremely limited purpose, i.e., for the purpose of fixing the price in respect of the statutory purchase of the land. For that limited purpose, the land is deemed to have been leased out from the date of regrant but it did not follow therefrom that the landlord created a fresh lease in respect of the said land on the date of the regrant as the old lease had never come to an end.

28. In ***Pradeeprao @ Virgonda Shivgonda Patil vs. Sidappa Girappa Hemgire since deceased through his heirs and LRs. Ginnappa***

4 (1992) 1Mah.LJ 34

Sidappa Hemgire and others[5], a learned Judge again affirmed the aforestated legal position and held that merely because there was a regrant of the *Watan* land in favour of the *Watandar*, it did not mean that a new lease was created on that day in favour of the tenant. The learned Judge found that after the *Watan* was abolished, the landlord paid the amount towards the occupancy price within the prescribed time and the land stood regranted to him. As the land stood regranted, the tenant acquired the right to purchase the said land by virtue of the provisions of the Tenancy Act.

29. In ***Kondabai Ganu Barkale (since deceased) through her Legal Heirs Smt. Housabai P Bhongale and others vs. Pandit @ Shankar D. Patil (since deceased) through his Legal Heirs Waman S.Patil and others***[6], a learned Judge noted that the Tribunal had erred in holding that the tenancy in that case was created long after Tillers' Day. The learned judge found that there was no dispute as to the fact that the tenancy in respect of the said land was created long before Tillers' Day and by virtue of Section 88CA of the Tenancy Act, Section 32 to Section 32–R of the Tenancy Act were inapplicable thereto at that time. However, after the Abolition Act and regrant of the *Watan* land to the landlord thereunder, the provisions of the Tenancy Act became applicable to the subject land with full vigour. Such application, by operation of law, was not to be treated as the creation of a new tenancy by the landlord after Tillers' Day. The Tribunal was, therefore, held to be in clear error in applying the provisions of Section 32O of the Tenancy Act to the case.

30. We find ourselves in respectful and complete agreement with the views expressed by the Bombay High Court in the above decisions. In the case on hand, it is the contention of the appellants that there was no lease subsisting as on 01.01.1963, owing to the order dated 18.04.1961 passed upon the application made by the legal heirs under Section 5 of the 1874 Act after the death of the original *Watandar*. They would further contend that as the possession of the *Watan* lands was actually restored to the legal heirs on 22.04.1962, the tenants were not even in possession on the appointed date, *viz.,* 01.01.1963. In effect, their argument is that neither a lawful lease was in existence nor were

5 (2004) 3 Mah. L.J. 75

6 (2016) 2 Mah. LJ 282

the tenants in physical possession on the said date. However, this argument loses sight of the fact that the order dated 18.04.1961 had not attained finality inasmuch as the tenants subjected it to challenge before the higher authorities and their challenge was still pending. No doubt, the High Court erroneously referred to the 'misconceived appeal' filed by them as 'revisional proceedings' but notwithstanding the nomenclature, the inescapable fact remains that the challenge to the initial order dated 18.04.1961 was subsisting as on 22.04.1962, the date of delivery of possession, and such proceedings of challenge concluded in favour of the tenants when their revision was allowed, *vide* the order dated 03.05.1982. Merely because no stay was granted in such proceedings and, in consequence, the tenants stood divested of actual physical possession, it did not lend any finality to the order impugned in those proceedings and, therefore, the purported termination of the lease still hung in balance.

31. Further, in the light of the aforestated discussion, the argument of the appellants that the tenants ought to have challenged the regrant order dated 27.11.1964 is without merit. In fact, the tenants were benefited by the said regrant order as the exercise of their right to purchase the land hinged upon the passing of that regrant order, in terms of the *proviso* to Section 8 of the Abolition Act. The argument to the contrary is, therefore, rejected.

32. It appears that during the pendency of this litigation, the subject agricultural *Watan* lands became part of the extended city limits of Pimpari Chinchwad Municipal Corporation and are presently reserved for Defence purposes (Red Zone) in the development plans sanctioned by the Government of Maharashtra. In consequence, these lands cannot be alienated without the prior approval of the Government of India and the Government of Maharashtra. While so, we find that both sides have been merrily entering into transactions with third parties to alienate/transfer the subject lands. However, our decision in this case relates back to a time when the subject lands were still agricultural in nature and use and it would have no impact on the present position and the consequences flowing therefrom. Further, *inter se* disputes, be it betwixt the appellants or betwixt the tenants, are not the subject matter of this appeal and have not been dealt with. All such disputes would have to be addressed independently before the appropriate forum in accordance with law, if still permissible.

33. On the above analysis, we hold that it was not open to the appellants to proceed against the tenants under the provisions of Sections 5, 11 and 11A of the 1874 Act after the death of Balaji Chimnaji More, the original *Watandar,* in February/March, 1958. This is because the provisions of the Tenancy Act were very much applicable to the subject lands by then and more so, Sections 29 and 31 thereof. Therefore, the legal heirs of the original *Watandar* could not have taken lawful possession of these lands from the tenants pursuant to the order dated 18.04.1961 passed under Sections 5, 11 and 11A of the 1874 Act. The same was rightly held to be invalid in the revisionary order dated 03.05.1982 and that finding was correctly held to be justified by the Bombay High Court. We also hold that the tenancy was lawfully subsisting on 01.04.1957, i.e., Tillers' Day, and the tenants were entitled to exercise their right of statutory purchase of these tenanted agricultural *Watan* lands under Section 32 of the Tenancy Act in terms of Section 8 of the Abolition Act, after the exemption afforded by Section 88CA ceased to exist. That right became operational on 27.11.1964, when these *Watan* lands were regranted to the heirs of the original *Watandar*.

Viewed thus, we find no grounds made out, either on facts or in law, to interfere with the impugned judgment dated 01.02.2005 passed by the Bombay High Court.

The appeal is devoid of merit and is accordingly dismissed.

Pending I.A.s shall also stand dismissed.

In the circumstances, parties shall bear their own costs.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal dismissed.