DIGITAL SUPREME COURT REPORTS

The Official Law Report
Fortnightly

2024 | Volume 3 | Part 3

Citation Style: [Year] Volume No. S.C.R. Page no.

Digitally Published by
Supreme Court of India

DIGITAL SUPREME COURT REPORTS

The Official Law Report
Fortnightly

2024 I Volume 3 I Part 3

Digitally Published by
Supreme Court of India

Editorial Board

Digitally Published by
Supreme Court of India

Tilak Marg, New Delhi-110001
E-mail: digiscr@sci.nic.in
Web.: digiscr.sci.gov.in/, www.sci.gov.in/

Contents

[2024] 3 S.C.R. 614 : 2024 INSC 197

Dablu Kujur
v.
The State of Jharkhand

(Criminal Appeal No. 1511 of 2024)

12 March 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ]

Issue for Consideration

The issue for consideration was the compliance of the requirements of a Police Report under Section 173(2) of the Code of Criminal Procedure, 1973.

Headnotes

Criminal Law – Police Report – Section 173 of the Code of Criminal Procedure, 1973 – Section 2 (r) of the Code of Criminal Procedure, 1973:

Held: The Police Report under Section 173(2) Cr.P.C. being a very important piece of document from the view point of the prosecution, the defence and the court, it is incumbent upon the Investigating Officer to strictly comply with the requirements of the said provisions, as non-compliance thereof gives rise to many legal issues in the court of law. [Para 7]

Code of Criminal Procedure, 1973 – s.173(2) – Report under Section 173(2) forms basis for cognizance – Charge Sheet is an opinion of the investigating officer to the concerned court:

Held : Only a report forwarded by the Police Officer to the Magistrate under Section 173(2) of the Code of Criminal Procedure can form the basis for the competent court to take cognizance thereupon – A Charge Sheet under Section 173(2) of the Code of Criminal Procedure is an opinion or intimation of the investigating officer to the concerned court that on the material collected during investigation, an offence appears to have been committed by the particular person/s. [Paras 12 and 13]

Criminal Law – Magistrate has three options where Police Report concludes offence is made out; and where Police Report concludes that no offence is made out.

---

* Author

Held : When a Police Report concludes that an offence appears to have been committed, the Magistrate has three options : (i) he may accept the report and take cognizance and issue process; (ii) he may direct further investigation under Section 156(3); (iii) he may disagree with the report, and discharge the accused – When the Police Report concludes that no offence appears to have been committed, the Magistrate has three options : (i) he may accept the report and drop the proceedings; (ii) he may disagree with the report and conclude that there is sufficient ground to proceed further, and take cognizance and issue process; (iii) he may direct further investigation under Section 156(3) of the Code of Criminal Procedure. Reliance placed on the Judgment in *Bhagwant Singh v. Commissioner of Police & Anr., [1985] 3 SCR 942* :1985 INSC 103 : (1985) 2 SCC 537. [Para 14]

Code of Criminal Procedure, 1973 – s.173(2) & (5) – Whether Final Report keeping investigation open qua other accused, or without all documents under Section 173(5) is in compliance with Section 173(2) – Would not vitiate the charge sheet:

Held : Reliance placed on the Judgment in *Satya Narian Musadi & Ors.* v. *State of Bihar* (1980) 3 SCC 152, wherein it was held that the statutory requirement of Section 173(2) Cr.P.C. would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all documents and statements of witnesses as required by Section 173(5) Cr.P.C. Reliance is also placed on the Judgment in *Dinesh Dalmia v. CBI, [2007] 9 SCR 1124* : 2007 INSC 941 : (2007) 8 SCC 770, wherein it was held that even if all the documents are not filed, by reason thereof, the charge-sheet itself would not be vitiated in law. Relied upon the Judgment in *CBI v. Kapil Wadhwan, [2024] 1 SCR 677* : 2024 INSC 58, holding that pendency of further investigation qua other accused or non-availability of documents at the time of filing of charge sheet would not vitiate the charge sheet. [Para 15]

Code of Criminal Procedure, 1973 – Investigation – Procedure for investigation under Section 157 to Section 172 of the Code of Criminal Procedure, 1973 – Reports by the Police:

Held: Under Section 157 of the Code of Criminal Procedure, 1973, if an officer-in-charge of a Police Station has reason to suspect the commission of an offence, which he is empowered to investigate under Section 156 of the Code of Criminal Procedure, 1973, he shall

forthwith send a report of the same to the Magistrate – Such report would be in the nature of preliminary report – Under Section 169, upon completion of investigation, if it appears to the Officer-in-charge of the Police Station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, release such person, and direct him to appear as and when required before the Magistrate empowered to take cognizance of the offence – Section 170 of the Code of Criminal Procedure deals with cases when evidence is sufficient – Section 172 pertains to Diary of proceedings in investigation – Every Police Officer making an investigation under Chapter XII of the Code of Criminal Procedure is required to enter his proceedings in the investigation in a diary day-by-day – Section 172(1A) requires statements of witnesses to be inserted in the case diary; and Section 172(1B) requires such diary to be in a volume and duly paginated. [Para 10 and 11]

Code of Criminal Procedure, 1973 – s.173(2) – Mandatory requirements under Section 173(2) of the Code of Criminal Procedure – Directions for compliance issued to Police Officers:

Held : The Report of a Police Officer on the completion of investigation shall contain : (i) A report in the form prescribed by the State Government stating-(a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom;(e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; (g) whether he has been forwarded in custody under section 170. (h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860); (ii) If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr.PC.; (iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes

to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses; (iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub para (i) to (iii). [Para 17]

Case Law Cited

Bhagwant Singh v. Commissioner of Police & Anr. [1985] 3 SCR 942 **: 1985 INSC 103 : (1985) 2 SCC 537**; *Satya Narain Musadi & Ors. v. State of Bihar* **(1980) 3 SCC 152***; Dinesh Dalmia* v. *CBI*, [2007] 9 SCR 1124 **: 2007 INSC 941 : (2007) 8 SCC 770;** *CBI* v. *Kapil Wadhwan* [2024] 1 SCR 677 **: 2024 INSC 58 – relied on.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Police Report; Charge Sheet; Compliance of Section 173 Cr.P.C.; Directions for Final Report.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1511 of 2024

From the Judgment and Order dated 17.01.2023 of the High Court of Jharkhand at Ranchi in BA No.11895 of 2022

Appearances for Parties

Sudhanshu Chaudhari, Sr. Adv., Vatsalya Vigya, Advs. for the Appellant.

Sharan Dev Singh Thakur, A.A.G., Vishnu Sharma, Shantanu Sagar, Puneet Singh Bindra, Anil Kumar, Gunjesh Ranjan, Vaibhav Jain, Rajesh Ranjan, Attin Shankar Rastogi, A. Vasudeva, Prateek Yadav, Azmat Hayat Amanullah, Ms. Ruchira Goel, Siddharth Thakur, Sharanya Sinha, Mustafa Sajad, Ms. Keerti Jaya, Adit Jayeshbhai Shah, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. The appellant-accused, by way of the present appeal has challenged the impugned judgment and order dated 17.01.2023 passed by the High Court of Jharkhand at Ranchi in B.A. No.11895 of 2022, whereby the High Court has dismissed the said application seeking his release on bail in respect of the FIR being Sukhdeonagar P.S. Case No.-238/2022 dated 30.05.2022 registered for the offences under Sections 302, 120-B/34 of IPC and Section 25(1-B) A/26/27/35 of the Arms Act.

3. During the course of arguments, it was apprised to the Court that the trial is at the fag end and almost all the witnesses have been examined by the prosecution except one witness.

4. In view of the above, we are not inclined to release the appellant on bail, more particularly, when the trial is at the fag end.

5. Before parting, it may be noted that on 17.07.2023, this Court (Coram- Mr. Justice Sanjiv Khanna and Ms. Justice Bela M. Trivedi) had passed the following order: -

> "The learned counsel for the State of Jharkhand states that Sections 34 and 120B of the Indian Penal Code, 1860 have been SLP(Crl.) No. 2874/2023 invoked against the petitioner - Dablu Kujur.
>
> Having gone through the chargesheet, we must observe that it is bereft of any details and particulars. The Director General of Police (DGP), State of Jharkhand will examine whether the said chargesheet is in accordance with law, and if such chargesheets are being filed, appropriate steps should be taken in compliance with the relevant provisions of the Code of Criminal Procedure, 1973. The DGP, State of Jharkhand will file an action report within a period of four weeks from today.
>
> We are told that similar chargesheets bereft of details and particulars are being filed in the States of Bihar and

> Uttar Pradesh. A copy of this order will also be sent to the relevant DGPs for the States of Bihar and Uttar Pradesh, who will submit their respective reports on the steps taken by them within four weeks from today.
>
> Keeping in view the facts of the present case, we are inclined to direct the trial court to examine the public witnesses within a period of four months from today, without fail. Status report along with copy of the order sheets will be filed immediately upon completion of four months.
>
> List for consideration and orders in the first half of December 2023".

6. In compliance with the said order, the affidavits are filed on behalf of the State of Jharkhand, Uttar Pradesh and Bihar with regard to the steps taken/being taken by them for submitting the Chargesheets/ Police Reports in accordance with law.

7. The Police Report submitted by the police under Section 173(2) being very important piece of document from the view point of the prosecution, the defence and the court, we deem it necessary to elaborately deal with the various aspects involved in the said provision. For the reasons stated hereinafter, we are of the opinion that it is incumbent on the part of the Investigating Officer to strictly comply with the requirements of the said provisions, as non-compliance thereof gives rise to many legal issues in the court of law.

8. As per Section 2(r) of Cr.P.C, "Police Report" means a report forwarded by a Police Officer to a Magistrate under sub-section (2) of Section 173.

9. Section 173 reads as under: -

> "**173**. Report of police officer on completion of investigation. —
>
> (1) Every investigation under this Chapter shall be completed without unnecessary delay.
>
> [(1A) The investigation in relation to [an offence under sections 376,376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under 2 [sections 376,376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)".

10. The procedure for investigation has been laid down in Section 157 of Cr.P.C. which states *inter alia* that if from the information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report

of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. Such report would be in the nature of preliminary report. As per Section 169, upon the completion of the investigation, if it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before the Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. Section 170 deals with the cases to be sent to Magistrate when evidence is sufficient. The relevant part of Section 170(1) reads as under: -

> **"170.** Cases to be sent to Magistrate, when evidence is sufficient.—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."

11. Section 172 pertains to the Diary of proceedings in investigation, which requires every police officer making an investigation under Chapter XII Cr.P.C. to enter his proceedings in the investigation in a diary day by day. Sub-section (IA) of Section 172 requires that the statements of the witnesses recorded during the course of investigation under section 161 have to be inserted in the case diary; and sub-section (1B) of Section 172 requires that such diary shall be a volume and duly paginated.

12. We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the chargesheet/Police

Report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the Police Report/Chargesheet are laid down in Section 173, more particularly sub-section (2) thereof.

13. It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII of Cr.P.C., it is only the report forwarded by the police officer to the Magistrate under sub-section (2) of Section 173 Cr.P.C. that can form the basis for the competent court for taking cognizance thereupon. A chargesheet is nothing but a final report of the police officer under Section 173(2) of Cr.P.C. It is an opinion or intimation of the investigating officer to the concerned court that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.

14. When such a Police Report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options: **(i)** he may accept the report and take cognizance of the offence and issue process, **(ii)** he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report, or **(iii)** he may disagree with the report and discharge the accused or drop the proceedings. If such Police Report concludes that no offence appears to have been committed, the Magistrate again has three options: **(i)** he may accept the report and drop the proceedings, or **(ii)** he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or **(iii)** he may direct further investigation to be made by the police under sub-section (3) of Section 156[1]**.**

15. The issues with regard to the compliance of Section 173(2) Cr.P.C., may also arise, when the investigating officer submits Police Report

1 Bhagwant Singh vs. Commissioner of Police & Anr.; [1985] 3 SCR 942 : (1985) 2 SCC 537

only *qua* some of the persons-accused named in the FIR, keeping open the investigation *qua* the other persons-accused, or when all the documents as required under Section 173(5) are not submitted. In such a situation, the question that is often posed before the court is whether such a Police Report could be said to have been submitted in compliance with sub-section (2) of Section 173 Cr.P.C. In this regard, it may be noted that in ***Satya Narain Musadi & Ors. vs. State of Bihar***[2]***,*** this Court has observed that statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). In ***Dinesh Dalmia vs. CBI***[3]***,*** however, it has been held that even if all the documents are not filed, by reason thereof the submission of the chargesheet itself would not be vitiated in law. Such issues often arise when the accused would make his claim for default bail under Section 167(2) of Cr.P.C. and contend that all the documents having not been submitted as required under Section 173(5), or the investigation *qua* some of the persons having been kept open while submitting Police Report under Section 173(2), the requirements under Section 173(2) could not be said to have been complied with. In this regard, this Court recently held in case of ***CBI vs. Kapil Wadhwan & Anr.***[4] that: -

> "Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C."

---

2 (1980) 3 SCC 152

3 [2007] 9 SCR 1124 : (2007) 8 SCC 770

4 [2024] 1 SCR 677 : Criminal Appeal No. 391 of 2024 (@ SLP (Crl) No. 11775 of 2023)

16. The above referred discussion has been necessitated for highlighting the significance of the compliance of requirements of the provisions contained in Section 173(2) of Cr.P.C.

17. Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following: -

(i) A report in the form prescribed by the State Government stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)"

(ii) If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr.PC.

(iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub para (i) to (iii).

18. It is further directed that the officer in charge of the police stations in every State shall strictly comply with the afore-stated directions, and the non-compliance thereof shall be strictly viewed by the concerned courts in which the Police Reports are submitted.

19. Copy of this order be sent to all the Chief Secretaries of the States/ UTs as also to Registrar Generals of the High Courts for perusal and compliance. The appeal stands disposed of accordingly.

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

Result of the case:
Appeal disposed of

[2024] 3 S.C.R. 627 : 2024 INSC 199

Mahanadi Coalfields Ltd.
v.
Brajrajnagar Coal Mines Workers' Union

(Civil Appeal No. 4092-4093 of 2024)

12 March 2024

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

Issue for Consideration

Whether the Tribunal was justified in entertaining the reference of an industrial dispute when a binding settlement under Section 18 (1) read with Section 19(2) and Section 36 of the Industrial Dispute Act, 1947 was arrived at between the parties.

Headnotes

Industrial Dispute Act, 1947-Section 10 - Reference of disputes; Section 18 (1) read with Section 19(2) - Settlement binding on all parties.

32 workers, working continuously for 10 years, sought regularisation on the basis of Clause 11.5.1 and Clause 11.5.2 of the National Wage Agreement IV - Settlement arrived between the labour union and management under Rule 58 of the Industrial Disputes (Central) Rules, 1957 - 19 workers regularised - 13 workers' job described as 'purely casual' – Central Government invoked power of reference to Tribunal - Tribunal found that the (1) 13 workers were on same footing as regularised workers, granted regularisation (2) job was perennial in nature (3) management could not establish distinction - Concurrent findings by High Court in Writ Petition and Review Petition.

Held: 13 workers entitled to regularisation on parity basis – Workers entitled to back wages on grounds of wrongful denial of employment and regularisation – Back wages to be calculated from the date Tribunal's decision in reference – Under Article 136 only substantial questions of law can be entertained [Paras 16, 18, 20, 22, 23, 24].

Case Law Cited

J.K. Synthetics Ltd. v. K.P. Agarwal **[2007] 2 SCR 60 : (2007) 2 SCC 433 – referred to.**

* Author

List of Acts

Industrial Dispute Act, 1947; Industrial Disputes (Central) Rules, 1957.

List of Keywords

Settlement; Back Wages; Artificial Distinction; Nature of Job; Same footing; Reference; Conciliation; Regularisation; Wrongful Denial of employment.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4092-4093 of 2024

From the Judgment and Order dated 11.01.2017 in WPC No.2002 of 2002 and dated 11.11.2021 in RVWPET No.77 of 2017 of the High Court of Orissa at Cuttack

Appearances for Parties

Aman Lekhi, Sr. Adv., Soumyajit Pani, Aishwary Bajpai, Siddharth Jain, Advs. for the Appellant.

Ashok Kumar Panda, Sr. Adv., Tejaswi Kumar Pradhan, Mohan Prasad Gupta, Manoranjan Paikaray, Shashwat Panda, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Delay condoned. Leave granted.

2. The Appellant, Mahanadi Coalfields Ltd., a subsidiary of Coal India Ltd. floated a tender for the transportation of crushed coal and selected a successful contractor for performance of the agreement for the period 1984 to 1994. The contractor employed workmen for execution of this contract.

3. The respondent-union espoused the cause of the workmen who were engaged by the contractor and sought permanent status for them. It relied on clauses 11.5.1 and 11.5.2 of the National Coal Wage Agreement-IV dated 27.07.1989. Under these clauses, it was agreed that the employer shall not engage contract labour with respect to

jobs which are permanent and perennial in nature. They also provide that such jobs shall be executed through regular employees.

4. Following the representation of the respondent-union, the Assistant Labour Commissioner sent a notice to the appellant for conciliation. The conciliation process eventually culminated in a settlement dated 05.04.1997 under Rule 58 of the Industrial Disputes (Central) Rules, 1957. The relevant portion of the settlement is as follows:

> "*The Union has submitted a list of 32 persons said to have been engaged by the contractors and demanded for their regularisation. Alter verification, it was observed, that the following persons are engaged in Bunker for operating Chutes.*

Sl No.	**Name of the Person**	**Father's Name**
01.	Sri Sadanand Bhoi	Keshab
02.	Sri Purusottam Dau	Govardhan
03.	Sri Anta Barik	Gadadhar
04.	Sri Aditya Nikhandia	Cheru
05.	Sri Bhabagrahi Pradhan	D. Pradhan
06.	Sri Sudarshan Khandit	Masru
07.	Sri Ashok Kumar Rout	Sitaram
08.	Sri Krishna Dau	Goverdhan
09,	Sri Abhimanyu Kisan	Chhala
10.	Sri Lakhan Bhoi	Keshab
11.	Sri Jay Narayan Bhoi	Chaitan
12.	Sri Sanatan Kisan	Ugresan
13.	Sri Giridhari Raudia	Goverdhan
14.	Sri Daitari Pradhan	Nira
15.	Sri Subram Bag	Buchhu
16.	Sri Madhu Marai	Dasa
17.	Sri Fakir Khamari	Kartik
18.	Sri Sanatan Naik	Ram Krishna
19.	Sri Sanatan Bhoi	Tiharu

> *Since this operation is of permanent and perennial nature, it was agreed to regularise the above 19 (nineteen) persons as General*

Mazdoor, Category-I, in the NCWA-V Pay Scale of Rs. 65.40-1.08-85.52.

In respect of other persons, it was contended, that they are engaged in purely casual nature of jobs, which are not prohibited under Contract Labour (R&A) Act, 1970, and accordingly, they are not eligible for regularisation."

5. In view of the fact that the settlement is confined to only 19 workmen, the Central Government referred the entire dispute to the Industrial Tribunal under Section 10 (2A)(1)(d) of the Industrial Disputes Act, 1947, on 20.05.1997 registered as Dispute Case no. 27/2001 before the Industrial Tribunal, Rourkela, Odisha. Before the Tribunal, the workmen examined 3 witnesses in support of their case and the management examined 4 witnesses.

6. By its judgment dated 23.05.2002, the Tribunal allowed the industrial dispute and directed the regularization of the remaining 13 workmen. The important findings of the Tribunal are as follows. At the outset, the Tribunal rejected the preliminary objection that it had no jurisdiction under the Contract Labour (Regulation and Abolition Act), 1970 and proceeded to consider the nature of the work that the 13 workmen were performing. Having considered the matter in detail, the Tribunal held that the work of removing spillages in the railway siding, below the bunker and operation of chutes (in the bunker) are regular and perennial in nature. Having considered the evidence of the management witnesses, the Tribunal concluded that the nature of the work is perennial. Accordingly, the remaining 13 workers were directed to be regularized in the following terms:

"The evidence is straight and clear that all the 32 persons were attending the same of. The rest 13 persons whose cases have not been regularized were attending the same job, which was being attended by 19 persons whose services has been regularized. So standing on the same footing the cases of the rest 13 persons should not have been ignored on the ground that, they did not deserve to be regularized as reflected in the settlement. In my opinion when 19 persons have been regularized the case of rest 13 persons who were attending the same type of work should have been regularized without any cause. The ground stated in the

settlement that they do not deserve, in my opinion does not appears to be a genuine ground to discard the cases of the rest 13 persons. I am not inclined to burden the award by placing all the submissions made on behalf of the parties. It is necessary to refer the evidence of the Witness No. 2 examined on behalf of the 1st Party Management. As per clause 11.5.0 of N.C.W.A. IV the Contract Labourers cannot be engaged for permanent and perennial nature of job. He has further stated that, they had entered to a settlement regarding those 19 persons. His further evidence is that the persons out of 13 were also working in Coal Handling Plant, which is a permanent and perennial in nature. The evidence of the Witness No. 3 of the 1st Party Management is that, the work of railway siding is also a regular and perennial in nature for which the 19 persons have been regularized. All the 32 persons were attending the job of removing spillages for railway Biding below the bunker and also the operation of the chutes in the bunker. So in view of such evidence it cannot be said that the rest 13 persons were not attending the job which were being attended by the 19 persons whose services has been regularized. So in my opinion, even if there has been a settlement between the parties regularizing 19 persons the rest of 13 persons has got cause of action to raise the Industrial separate and their case should not have been ignored. In the other words the action of the 1st Party Management in not regularizing the services of the rest 13 persons in accordance was N.C.W.A. IV is illegal and unjustified. Hence, this Issue is answered accordingly."

7. Questioning the legality and validity of the Tribunal's judgment, the appellant filed a Writ Petition (C) numbered 2002/2002 before the Orissa High Court.

8. The Division Bench of the High Court heard the matter, and by its judgment, impugned before us, dismissed the writ petition. The High Court referred to the nature of work performed by the workmen and affirmed the findings of the Tribunal based on the evidence of witnesses such as MW3, the personal manager in the appellant company. The High Court took note of his evidence that the work on railway sidings was regular and perennial in nature. He also admitted that it is with respect to that work for which the 19 workers were

regularized. The High Court also observed that there was no evidence to dispute that all 32 workers were engaged in removing spillages from railway sidings and below the bunker, which is in addition to operating chutes. The High Court, therefore, upheld the view taken by the Tribunal. The Review Petition bearing No. 77/2017 filed by the management was also dismissed by the order dated 11.11.2021.

9. We have heard Mr. Aman Lekhi, learned Senior Counsel appearing on behalf of the appellant, assisted by Mr. Siddharth Jain, Mr. Soumyajit Pani and Ms. Aishwary Bajpai, Advocates and also Mr. Ashok Kumar Panda, learned Senior Counsel for the respondent-union, assisted by Mr. Tejaswi Kumar Pradhan, Mr. Mohan Prasad Gupta, Mr. Manoranjan Paikaray and Mr. Shashwat Panda, Advocates.

10. ***Submissions of the appellant:*** Before this court, the appellant company contends that the Award dated 23.05.2002 is bad in law. It argues that the settlement was binding on the parties due to Section 18(1) read with Section 36, Industrial Disputes Act and it continues to be so by virtue of Section 19(2) of the Act, since the settlement was never terminated.

10.1 The settlement was reached after verification of the nature of works performed. It was found that 19 workers were performing perennial and permanent work and the work of the remaining 13 workers was 'casual' in nature.

10.2 There was no provision to regularize such workers under the NCWA-IV. The only provision under which regularization could be claimed would be Section 25F of the Industrial Disputes Act, but the said provision applies only to workers who worked under the direct supervision of the company for a certain period and wrongfully stopped thereafter. In the present case, as the workmen worked under the supervision of a contractor and not the appellant, Section 25F will have no application.

10.3 Lastly, it is contended that the Tribunal had wrongly directed the appellant to disburse backwages to the 13 workers. This is contrary to the settled principle that grant of backwages can never be automatic or a natural consequence of regularization. The workers seeking regularization and backwages have an onus to show that they are not gainfully employed. For this, the appellant relied on ***J.K. Synthetics Ltd. v. K.P. Agrawal & anr.*** **reported as (2007) 2 SCC 433** to support this contention.

11. ***Submissions of the respondent-union:*** The respondent-union submitted that all 32 workers were engaged in works of a similar nature. They assert that the list in the industrial reference dated 20.05.1997 shows that workers were arbitrarily deprived of regularization, wherein certain workers from the bunker and the plant were left out of the settlement without any reason. It is also argued that the work in the railway siding was perennial and regular in nature, similar to the works in the bunker.

    11.1 To support its contentions, the respondent-union relies on the evidence of MW3 and MW4, who were the personal manager and the project officer in the appellant company, respectively. While MW3 categorically admitted that the removal of spilled coal from the railway siding, the bunker and the Coal Handling Plant is regular and perennial in nature, MW4 stated that all 32 workers were engaged similarly. It is therefore submitted that their evidence proves that the 13 workers actively participated in tasks deemed regular and perennial.

    11.2 Since there was no resolution of the claim of regularization of similarly placed workers, they have the right to pursue the remedy under the Industrial Disputes Act, 1947. It is submitted that Rule 58 of the Industrial Dispute (Central) Rules, 1957 under which the settlement occurred, nowhere poses a legal obstruction to the remedy.

    11.3 It is finally submitted that the 13 workmen suffered for no fault of theirs and an order of regularization must naturally lead to grant of consequential backwages.

12. ***Analysis and findings:*** Having heard the parties in detail, we are of the opinion that the present appeals can be disposed of for the following reasons.

13. At the outset, the appellant objected to the Tribunal entertaining the industrial dispute passing of the award on the ground that a settlement under S. 18(1) read with S. 36 of the Industrial Disputes Act is binding on all the parties under S. 19(2) of the Act. This is the substantive part of the submission on behalf of the appellant. The facts of this case, as they unfold, leading to the arrival of the settlement, followed by the reference to the Industrial Tribunal, and then the award, are necessary for our consideration.

14. At the first place, all the 32 workmen commenced their work through the contractor from 1984 and continued till 1994. In 1994, the respondent-union espoused the cause of all the 32 workers and the Asst. Labour Commissioner took up the entire cause. This culminated in the settlement dated 05.04.1997, relied upon by the appellant.

15. To appreciate the submission that the settlement is the last word and that the Tribunal could not have entertained the reference or passed the Award, the following facts become crucial.

16. The settlement itself talks about the claim of the 32 workers raised by the respondent-union. It then talks about the contention of the management that others are engaged in 'purely casual' nature of jobs. In the very next sentence, it agreed to regularize 19 contractors. It is important to note that, being conscious of the fact that the settlement provides for the regularization of 19 out of the 32 workmen, the Government invoked the power of reference to refer the matter to the Tribunal to adjudicate the interest of all the 32 workers. The Tribunal was naturally bound by the reference to consider the claim of all the 32 workers.

17. Despite the fact that there was a settlement with respect to some of the workmen, the Tribunal was tasked to examine the entire reference and give independent findings on the issue. Thus, the Tribunal was justified in giving its award on the reference made by the central government. This answers the objection raised by the appellant about the jurisdiction of the Tribunal.

18. We are also conscious of the fact that the jurisdiction that we exercise is under Article 136 of the Constitution. The findings of fact arrived at by the Tribunal are unassailable. We are also of the opinion that the High Court has correctly rejected the writ petition filed against the award. Apart from the concurrent findings of fact, we see no substantial question of law in these appeals.

19. Even otherwise, the present case is not one where this court would exercise its discretion. What appeals to us is that the 32 workers who entered the service of the appellant in 1984, continued uninterruptedly till 1994, when the respondent-union sought their permanence. In the settlement arrived in 1997, the stand of the appellant with respect to the 13 workers is as follows:

> *"In respect of other persons, it was contended that they are engaged in purely casual nature of jobs which are not prohibited under Contract Labour (R&A) Act, 1970 and accordingly, they are not eligible for regularisation."*

20. It is proved that the remaining workers stand on the same footing as the regularized employees, and they were wrongly not made part of the settlement. This is established by the Tribunal, by examining the nature of work undertaken by the first set of 19 workmen and that of the other 13 workmen. It also examined Shri Arun Ch. Hota (WW3), the Deputy General Manager (MW2), Mr. Udayshankar Gonelal, the Personal Manager (MW3) and Shri S. Agarwal, the Project Officer (MW4). The Tribunal finally came to the conclusion that the nature of the duties performed by the 13 workmen are perennial in nature. The appellant has failed to establish any distinction between the two sets of workers. The Tribunal was, therefore, justified in answering the reference and returning the finding that they hold the same status as the regularized employees.

21. We are also not impressed with the artificial distinction which the appellant sought to bring about between the 19 workers who were regularized and the 13 workers who were left out. The evidence on record discloses that, of the total 32 workmen, 19 workers worked in the bunker, 6 worked in the Coal Handling Plant, and 7 worked on the railway siding. However, of the 19 workers who were regularized, 16 worked in the bunker, and 3 worked in the Coal Handling Plant. However, 3 workers from the same bunker, 3 workers from the same Coal Handling Plant and again 7 workers from the same railway siding were not regularized. A tabulated representation of the above description is as follows:

Site of work	**No. of workers who executed works**	**No. of workers who were regularized**	**No. of workers not regularized**
Bunker	19	16	3
Coal Handling Plant	6	3	3
Railway Siding	7	-	7
Total:	**32**	**19**	**13**

22. The above-referred facts speak for themselves, and that is the reason why the Tribunal has come to a conclusion that the denial of regularization of the 13 workmen is wholly unjustified. As stated previously, we do not find any grounds in the artificial distinction asserted by the appellant. However, as the case was argued at length we thought it appropriate to give reasons for rejecting the appeals. What we have referred to hereinabove are all findings of fact by the Tribunal as affirmed by the High Court. In view of the concurrent findings of fact on the issue of nature of work, the continuing nature of work, continuous working of the workmen, we are of the opinion that there is no merit in the appeals filed by the appellant.

23. This is a case of wrongful denial of employment and regularization, for no fault of the workmen and therefore, there will be no order restricting their wages.

24. With respect to payment of backwages, we are of the opinion that the workmen will be entitled to backwages as observed by the Industrial Tribunal. However, taking into account, the long-drawn litigation affecting the workmen as well as the appellant in equal measure and taking into account the public interest, we confine the backwages to be calculated from the decision of the Tribunal dated 23.05.2002. This is the only modification in the order of the Tribunal, and as was affirmed by the judgment of the High Court.

25. For the reasons stated above, the appeals arising out of the final judgment and order of the High Court in W.P. (C) No. 2002/2002 and order in Review Petition No. 77/2017 are dismissed with the direction that the concerned workmen shall be entitled to backwages with effect from 23.05.2002. There shall be no order as to costs.

Headnotes prepared by:
Aishani Narain, Hony. Associate Editor
(*Verified by:* Madhavi Divan, Sr. Advocate)

Result of the case:
Appeals dismissed with directions

[2024] 3 S.C.R. 637 : 2024 INSC 195

State Bank of India
v.
Association for Democratic Reforms and Others

(Miscellaneous Application No 486 of 2024
In
Writ Petition (Civil) No 880 of 2017)
WITH
(Contempt Petition (Civil) No 138 of 2024
In
Writ Petition (Civil) No 880 of 2017)
&
(Contempt Petition (Civil) No 140 of 2024
In
Writ Petition (Civil) No 59 of 2018)

11 March 2024

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

Issue for Consideration

This case pertains to a Miscellaneous Application filed by the State Bank of India (**SBI**) seeking an extension of time until 30 June 2024 - two days before the expiry of the stipulated deadline - for complying with the directions given by the Supreme Court in its judgment dated 15 February 2024. *Vide* the aforesaid judgment, the Court had directed the SBI, which was the authorized Bank to deal with Electoral Bonds under the Electoral Bond Scheme, to, *inter alia*, submit to the Election Commission of India (ECI), details of the Electoral Bonds purchased by the contributors and redeemed by political parties between 12 April 2019 till the date of the judgment, by 6 March 2024. The Petitioners in this case - Association for Democratic Reforms (**ADR**) and the Communist Party of India (Marxist) - instituted a petition invoking the contempt jurisdiction of this Court against SBI for wilful disobedience of the order of this Court; Whether the directions issued by the Court required the SBI to disclose information which is readily available with it; as also, Whether the SBI is justified in seeking an extension of time.

Headnotes

Electoral Bonds – Directions to SBI in judgment dated 15 February 2024 – submission of the following details to the ECI by 6 March 2024: (a) Details of each Electoral Bond purchased including the date of purchase, the name of the purchaser and the denomination of the Electoral Bond; (b) Details of each Electoral Bond redeemed by political parties including the date of encashment and the denomination of the Electoral Bond – ECI to collate the information to be submitted by the SBI and publish it on its website by 13 March 2024 [Paras 1-4]

Electoral Bonds – Extension of Time for Compliance with Court Directions – SBI prayed for extension of time until 30 June 2024 for complying with the directions because: information received by SBI maintained in two separate silos – Per SBI, direction of this Court require a matching exercise – of the details of donor and recipient political parties with respect to a particular bond – Clause 7(4), Electoral Bond Scheme – Electoral Bond information shall be disclosed when called upon to do so by a competent court [Para 6-7]

Electoral Bonds – Matching of information – SBI submitted information is not available in a digital format centrally – Donor details and the recipient details are available in two separate silos – At the end of each phase, details of the purchasers of Electoral Bonds and information on the redemption of Electoral Bonds (stored in a sealed cover and sent to the SBI, Mumbai Branch – Matching of information in the two silos is a time-consuming process – Large number of data sets to decipher: total of 22,217 bonds were purchased between 12 April 2019 to 15 February 2024 – Total 44,434 data sets [Para 8]

Electoral Bonds – SBI MA dismissed – FAQs on Electoral Bonds-Details of Purchasers readily available – Information about a political party's encashment readily available – Court not inclined to exercise the contempt jurisdiction at this stage in the Petitioners' contempt petition

Held: Operative directions of this Court directed the SBI to disclose the transactions as set out in direction (b) and direction (c) of para 219 of the Judgment – SBI submits that donor details and redemption details are available in separate silos – The directions which have been issued by this Court require the SBI to disclose

the information which is readily available with it – FAQs on Electoral Bonds published by the SBI – 'Know Your Customer' documents must be submitted by the purchaser each time the Electoral Bond is purchased, irrespective of whether the purchaser has a KYC verified SBI account – One set of documents can only be used to purchase one Electoral Bond – Contributors who have an SBI account as well as those who do not have to submit the Electoral Bond application, KYC documentation and proof of payment – Details of the Electoral Bonds which have been purchased and which have been directed to be disclosed by this Court are readily available – FAQs states that each political party can open only one current account for Electoral Bond redemption – Information about a political party's encashment of Electoral Bonds would only be stored in these branches which would be clearly accessible – ADR submits that the information which was directed to be disclosed by this Court can easily be disclosed by the SBI because of the unique number which is printed on the Electoral Bond – SBI application sufficiently indicate that the information which has been directed to be disclosed by this Court is readily available – Miscellaneous Application filed by the SBI seeking an extension of time for disclosure of details of the purchase and redemption of Electoral Bonds until 30 June 2024 dismissed – SBI directed to disclose the details by the close of business hours on 12 March 2024 – ECI to compile the information and publish the details on its official website no later than by 5 pm on 15 March 2024 – ECI to forthwith publish details of the information supplied to the Court in pursuance of the interim orders on its official website – Affidavit of SBI Chairman and Managing Director upon compliance to be filed – Court not inclined to exercise the contempt jurisdiction at this stage bearing in mind the application which was submitted for extension of time – SBI placed on notice – Court will be inclined to proceed against it for wilful disobedience of the judgment if SBI does not comply with the directions of this Court as set out in its judgment dated 15 February 2024 by the timelines indicated. [Paras 9-18]

Case Law Cited

Association for Democratic Reforms & Anr. v. Union of India & Ors. **[2024] 2 SCR 420 : 2024 INSC 113**

List of Keywords

Electoral Bond Scheme, 2018; State Bank of India; Election Commission of India; Matching; KYC; Disclosure; Extension; Donor; Redemption; Contempt

Case Arising From

CIVIL ORIGINAL JURISDICTION : Miscellaneous Application No.486 of 2024

In

Writ Petition (Civil) No.880 of 2017

From the Judgment and Order dated 15.02.2024 in W.P. (C) No.880 of 2017 of the Supreme Court of India

With

Contempt Petition (Civil) No.138 of 2024 in Writ Petition (Civil) No.880 of 2017 and Contempt Petition (Civil) No.140 of 2024 in Writ Petition (Civil) No.59 of 2018

Appearances for Parties

Tushar Mehta, SG, Harish Salve, R. Balasubramanium, Kapil Sibal, Sr. Advs., Sanjay Kapur, Ms. Divya Singh Pundir, Devesh Dubey, Ms. Mahima Kapur, Ms. Mansi Kapur, Mrs. Shubhra Kapur, Arjun Bhatia, Surya Prakash, Ms. Isha Virmani, Prashant Bhushan, Ms. Neha Rathi, Pranav Sachdeva, Ms. Kajal Giri, Ms. Shivani Kapoor, Kamal Kishore, Shadan Farasat, Harshit Anand, Abhishek Babbar, Ms. Hrishika Jain, Ms. Natasha Maheshwari, Ms. Mreganka Kukreja, Aman Naqvi, Ms. Seema Bengani, Shyam Gopal, Ms. Shradha Deshmukh, Chinmayee Chandra, Kanu Agrawal, Rajat Nair, Raman Yadav, Chitvan Singhal, Abhishek Kr. Pandey, Kartikay Aggarwal, Kukesh Kr. Singh, Ameyakirama Thanvi, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Order

1. By a judgment dated 15 February 2024[1], this Court declared the Electoral Bond Scheme and the provisions of the Finance Act 2017 which amended the provisions of the Representation of People Act 1951 and the Income Tax Act 1961, unconstitutional on the ground that the non-disclosure of information regarding the funding of political parties is violative of the right to information of citizens

1 2024 INSC 113

under Article 19(1)(a) of the Constitution. The amendments which were introduced by the Finance Act 2017 to the provisions of the Companies Act 2013, permitting unlimited funding of political parties by corporate entities were held to be arbitrary and violative of Article 14 of the Constitution.

2. In order to give full effect to the judgment which was rendered by the Constitution Bench, this Court directed the State Bank of India[2], which was the authorized Bank to deal with Electoral Bonds under the Electoral Bond Scheme to submit details of the Electoral Bonds purchased by the contributors and redeemed by political parties between 12 April 2019 (the date on which an interim order was passed by this Court directing the Election Commission of India[3] to collect details of the contributions) till 15 February 2024 (the date of the judgment).

3. This Court directed the SBI to submit the following details by 6 March 2024 to the ECI:

   (a) Details of each Electoral Bond purchased including the date of purchase, the name of the purchaser and the denomination of the Electoral Bond; and

   (b) Details of each Electoral Bond redeemed by political parties including the date of encashment and the denomination of the Electoral Bond.

4. The ECI was directed to collate the information to be submitted by the SBI and publish it on its website by 13 March 2024. The directions of this Court are extracted below:

> "219. In view of our discussion above, the following directions are issued:
>
> a. The issuing bank shall herewith stop the issuance of Electoral Bonds;
>
> b. SBI shall submit details of the Electoral Bonds purchased since the Interim order of this Court dated 12 April 2019 till date to the ECI. The details shall include the date of

2 "SBI"

3 "ECI"

purchase of each Electoral Bond, the name of the purchaser of the bond and the denomination of the Electoral Bond purchased;

c. SBI shall submit the details of political parties which have received contributions through Electoral Bonds since the interim order of this Court dated 12 April 2019 till date to the ECI. SBI must disclose details of each Electoral Bond encashed by political parties which shall Include the date of encashment and the denomination of the Electoral Bond;

d. SBI shall submit the above information to the ECI within three weeks from the date of this judgment, that is, by 6 March 2024;

e. The ECI shall publish the information shared by the SBI on Its official website within one week of the receipt of the Information, that is, by 13 March 2024; and

f. Electoral Bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The Issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account."

5. The SBI filed a Miscellaneous Application before this Court two days before the expiry of the deadline seeking an extension of time until 30 June 2024 for complying with the directions. The petitioners before this Court – Association for Democratic Reforms[4] and the Communist Party of India (Marxist) – instituted a petition invoking the contempt jurisdiction of this Court against SBI for willful disobedience of the order of this Court.

6. In support of the application by the SBI, we have heard Mr Harish N Salve, senior counsel. Mr Salve submitted that the information which was received by the SBI was maintained in two separate silos and was maintained with the utmost secrecy to fulfill the core purpose of the Electoral Bond Scheme. The learned Senior counsel submitted

4 "ADR"

that there is no difficulty in the disclosure of information available in two separate silos which are referred to in (b) and (c) of the operative directions. The counsel submitted that this exercise can be completed within three weeks. However, it is submitted that the difficulty of SBI arose since it construed the direction of this Court as requiring it to carry out a matching exercise of the donor and bond details with the corresponding details pertaining to encashment by political parties.

7. While evaluating the submission made on behalf of the SBI, a reference to some of the key aspects of the Scheme would be in order at this stage. Clause 7(4) of the Electoral Bond Scheme stipulates that the information furnished by the buyer of an Electoral Bond shall be treated as confidential by the authorized bank and shall be disclosed only when called upon to do so by a competent court or upon the registration of an offence by a law enforcement agency. Thus, in terms of the provisions of the Electoral Bond Scheme itself, SBI is mandated to disclose information when demanded by a court. What has to be analyzed is whether SBI is justified in seeking an extension of time.

8. The SBI seeks an extension of time on the ground that the process of "decoding the Electoral Bonds and matching the donor to the donations" is a complex and time-consuming exercise. To substantiate this argument, the SBI has averred that:

   (a) Information is not available in a digital format: Clause 7.1.2 of the Standard Operating Procedure regarding the sale and redemption of Electoral Bonds stipulates that "no details of bond purchaser including KYC and other details will be entered in the core banking system." Thus, the details of the purchases of bonds are not available centrally;

   (b) The donor details and the recipient details are available in two separate silos: The details of the purchasers of Electoral Bonds were kept in a sealed cover at the designated branch. These sealed covers were deposited in the main branch of the SBI in Mumbai at the end of each phase of the issuance of the Electoral Bonds. The information on the redemption of Electoral Bonds (that is, the original bond and the pay-in slip) were stored in a sealed cover and sent to the SBI, Mumbai Branch;

   (c) Matching of information in the two silos is a time-consuming process: The matching of the information on the purchase and

redemption of Electoral Bonds would be a time-consuming process since donor information and redemption information is maintained in two separate silos, independent of each other; and

(d) There is a large number of data sets to decipher: A total of 22,217 bonds were purchased between 12 April 2019 to 15 February 2024. This would cumulatively add up to 44,434 data sets since there are two silos of information. In other words, the compilation of this information would be a time-consuming process because of the large number of data-sets.

9. The crux of the submission of the SBI is that the matching of information to ascertain who contributed to which political party is a time-consuming process since the information is maintained in two separate silos. The operative directions of this Court directed the SBI to disclose the transactions as set out in direction (b) and direction (c) extracted above. The SBI submits in its application itself that the donor details and redemption details are available, *albeit* in separate silos. In other words, the directions which have been issued by this Court require the SBI to disclose the information which is readily available with it.

10. At this stage, it would be material to refer to the FAQs on Electoral Bonds published by the SBI which states that the 'Know Your Customer'[5] documents must be submitted by the purchaser each time the Electoral Bond is purchased, irrespective of whether the purchaser has a KYC verified SBI account[6]. That is, one set of documents (the Electoral Bond application form, KYC documents and pay-in slip) can only be used to purchase one Electoral Bond[7]. Contributors who have an SBI account as well as those who do not have to submit the Electoral Bond application, KYC documentation and proof of payment through NEFT, cheque or demand draft.[8] Thus,

---

5 "KYC"

6 FAQ Question No. 16. I have an SBI Bank Account, Do I still need to Re-submit the KYC Documents? Yes. KYC norms will be applicable regardless of whether the applicant is an SBI account holder or a non-SBI account holder.

7 FAQ Question No. 45. Can I use more than one Instrument with one Electoral Bond Application Form? No. On single set Documents i.e. Electoral Bond Application Form, KYC Documents, Citizenship Documents and Pay-in slip for purchase of Electoral Bonds, Donor can use only one Instrument. In case Donor desires to use another Instrument, he/she has to submit another set of documents i.e. Electoral Bond Application Form, KYC Documents, Citizenship Documents and Pay-in slip to the Authorized SBI Branch.

8 FAQ Question No. 19: I am not maintaining account with any Branch of State Bank of India. How can

the details of the Electoral Bonds which have been purchased and which have been directed to be disclosed by this Court are readily available.

11. Similarly, the FAQs on Electoral Bonds published by the SBI with respect to redemption of Bonds states that each political party can open only one current account for Electoral Bond redemption.[9] The current account could be opened by the political party only in twenty-nine designated branches all over the country. Thus, information about a political party's encashment of Electoral Bonds would only be stored in these branches which would be clearly accessible. The authorized branches must submit the pay-in-slip and other details to the main branch. There is no dispute about the fact that this process was duly followed.

12. Together with the application which has been filed by the SBI for the extension of time, ADR has filed a contempt petition in which it submits that the information which was directed to be disclosed by this Court can easily be disclosed by the SBI because of the unique number which is printed on the Electoral Bond. Irrespective of whether the unique identification number which is not discernible to the naked eye will enable the disclosure of details, the submissions of SBI in

---

I purchase Electoral Bond? Purchaser not maintaining account with State Bank of India can purchase Electoral Bond through a. Cheque / DD drawn in favour of the Authorized SBI Branch and payable at the local Clearing House.

Steps involved:

i. Purchaser submits the Electoral Bond Application Form alongwith pay-in-slip, Citizenship & KYC documents and Cheque/ DD at Authorized SBI Branch. The same need to be submitted at least three working days before the closure of the scheme, so that clear funds for issuance of Electoral Bonds, are available with the Authorized SBI Branch. In case of payment through DD, a confirmation letter from the DD issuance Branch on the prescribed format should also be provided.

ii. The Cheque/ DD should be in favour of "State Bank of India A/c Electoral Bond Scheme -2018"

iii. Once the Citizenship and KYC documents are verified the instrument will be sent in clearing. Tear off portion of pay-in-slip will be handed over to the Applicant. On the third working day the Purchaser/ Authorised Representative need to visit the Branch with the tear off portion of pay-in-slip and collect the EB from the Branch against acknowledgment.

9 FAQ Question No. 4. For redemption of Electoral Bond, can a Political Party open Current Account with any Bank? No. The Current Account will be opened only in the presently 4 Authorized SBI

Branches as under:

(i) Chennai Main Branch (00800) : 84, Rajaji Salai, Chennai – 600001

(ii) Kolkata Main Branch (00001) : Samriddhi Bhawan, 1, Strand Road, Kolkata –700001

(iii) Mumbai Main Branch (00300) : Horniman Circle, Fort, Mumbai – 400001

(iv) New Delhi Main Branch (00691) : 11, Parliament Street, New Delhi – 110 001.

This was updated to 29 Branches later.

the application sufficiently indicate that the information which has been directed to be disclosed by this Court is readily available.

13. In view of the discussion, the Miscellaneous Application filed by the SBI seeking an extension of time for the disclosure of details of the purchase and redemption of Electoral Bonds until 30 June 2024 is dismissed. SBI is directed to disclose the details by the close of business hours on 12 March 2024.

14. ECI shall compile the information and publish the details on its official website no later than by 5 pm on 15 March 2024.

15. During the pendency of the proceedings before the Constitution Bench, ECI had, in compliance with the interim order passed by this Court, filed its statements which have been maintained in the custody of the Court. Copies of the statements which were filed by the ECI before this Court would be maintained in the Office of the ECI. ECI shall forthwith publish the details of the information which was supplied to this Court in pursuance of the interim orders on its official website.

16. The SBI shall file an affidavit of its Chairman and Managing Director upon compliance with the directions which have been issued above. We are not inclined to exercise the contempt jurisdiction at this stage bearing in mind the application which was submitted for extension of time. However, we place SBI on notice that this Court will be inclined to proceed against it for willful disobedience of the judgment if SBI does not comply with the directions of this Court as set out in its judgment dated 15 February 2024 by the timelines indicated in this order.

17. The Miscellaneous Application for extension of time shall accordingly stand dismissed. The Contempt Petitions shall stand disposed of at this stage in the above terms.

18. Pending applications, if any, stand disposed of.

Headnotes prepared by:
Harshit Anand, Hony. Associate Editor
(*Verified by:* Shadan Farasat, Adv.)

Result of the case:
Miscellaneous Application by the SBI dismissed.
Contempt Petitions disposed of.

[2024] 3 S.C.R. 647 : 2024 INSC 206

Susela Padmavathy Amma
v.
M/S Bharti Airtel Limited

(Criminal Appeal Nos. 1577-1578 of 2024)

15 March 2024

[B.R. Gavai* and Sandeep Mehta, JJ.]

Issue for Consideration

The High Court rejected the prayer for quashing of criminal complaints qua the appellant in connection with the offence punishable u/s. 138 r/w. s.142 of the Negotiable Instruments Act, 1881.

Headnotes

Negotiable Instruments Act, 1881 – s.138 r/w. s.142 – The grievance of the complainant-respondent is that in-spite of regular follow-ups and reminders, the company-accused no.1 failed and neglected to clear the respondent's dues – On repeated demands, the company furnished respondent five cheques – When complainant deposited the cheques, they were returned unpaid with reason "payment stopped by drawer" – Accordingly, the respondent filed two complaints u/s. 190(i)(a) of the Cr.P.C. for offences punishable u/ss. 138 & 142 of the N.I. Act – Both the complaints were filed against three accused persons including appellant herein (accused no.3) – Appellant sought to quash criminal proceedings against her u/s. 482 Cr.P.C, however the same was dismissed by the High Court – Propriety:

Held: On perusal of the complaint, it is clear that the only allegation against the present appellant is that she and the accused No.2 had no intention to pay the dues that they owe to the complainant – It is stated that the 2nd accused and the 3rd accused (appellant herein) are the Directors, promoters of the 1st accused being the Company – It is further averred that the 2nd accused is the authorized signatory, who is in-charge of and responsible for the day-to-day affairs of the Company, i.e., the 1st accused – It can be clearly seen that there is no averment to the effect that the present appellant is in-charge of and responsible for the day-to-day affairs

* Author

of the Company – It is also not the case of the respondent that the appellant is either the Managing Director or the Joint Managing Director of the Company – The averments made are not sufficient to invoke the provisions of s.141 of the N.I. Act qua the appellant – Thus, the criminal proceedings in connection with the offence punishable u/s. 138 r/w. s.142 of the N.I. Act are quashed and set aside qua the present appellant. [Paras 19-22]

Negotiable Instruments Act, 1881 – s.138, s.141 – Vicarious liability of the director:

Held: Merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not *ipso facto* make the director vicariously liable. [Para 12]

Case Law Cited

State of Haryana v. Brij Lal Mittal and others [1998] 3 SCR 104 **: (1998) 5 SCC 343;** *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another* [2005] Suppl. 3 SCR 371 **: (2005) 8 SCC 89;** *Pooja Ravinder Devidasani v. State of Maharashtra and another* [2014] 14 SCR 1468 **: (2014) 16 SCC 1;** *State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana* [2010] 9 SCR 387 **: (2010) 11 SCC 469;** *Ashoke Mal Bafna v. Upper India Steel Manufacturing and Engineering Company Limited* **(2018) 14 SCC 202 – relied on.**

N.K. Wahi v. Shekhar Singh and others [2007] 3 SCR 883 **: (2007) 9 SCC 481;** *Krishi Utpadan Mandi Samiti and others v. Pilibhit Pantnagar Beej Ltd. and another* [2003] Suppl. 6 SCR 344 **: (2004) 1 SCC 391;** *Laxmi Dyechem v. State of Gujarat and others* [2012] 11 SCR 466 **: (2012) 13 SCC 375;** *K.K. Ahuja v. V.K. Vora and another* [2009] 9 SCR 1144 **: (2009) 10 SCC 48;** *Lalankumar Singh and others v. State of Maharashtra* [2022] 14 SCR 573 **: 2022 SCC OnLine SC 1383 – referred to.**

List of Acts

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

List of Keywords

Failure to pay dues; Dishonour of cheque for insufficiency, etc., of funds in the account; In-charge of company; Authorized signatory; Responsible to company; Conduct of company; Criminal proceedings; Quashing.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.1577-1578 of 2024

From the Judgment and Order dated 26.04.2022 in CRLOP Nos.3470 and 5767 of 2019 of the High Court of Judicature at Madras

Appearances for Parties

Manoj V George, Ms. Shilpa Liza George, Km Vignesh Ram, Nasib Masih, Ms. Akshita Agrawal, Ms. Chaahat Khanna, Advs. for the Appellant.

Lakshmeesh S. Kamath, Ms. Samriti Ahuja, Karan Singh Dalal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeals challenge the common judgment and order dated 26th April, 2022 passed by the High Court of Judicature at Madras (hereinafter referred to as "High Court"), in Crl. O.P. Nos. 3470 & 5767 of 2019 and Crl. M.P. Nos. 2224, 2225 & 3255 of 2019, whereby the High Court rejected the prayer for quashing of C.C. Nos. 3151 & 3150 of 2017, on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai (now transferred to the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai), in connection with the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act").

3. The facts, in brief, giving rise to the present appeals are as follows:

3.1 M/s. Bharti Airtel Limited (hereinafter referred to as, "complainant" or "respondent"), is a company engaged in the business of providing telecommunication services, under a license issued by the Government of India, in various telecom circles in India.

3.2 One M/s. Fibtel Telecom Solutions (India) Private Limited (hereinafter referred to as, "Fibtel Telecom Solutions" or "Company"), a company registered with the Telecom Regulatory Authority of India (TRAI) as a *telemarketer,* had approached the respondent intending to obtain telecom resources for the purpose of transactional communication and requested the complainant for allotment of telecom resources for the said purpose. One Manju Sukumaran Lalitha is the Director & Authorized Signatory of Fibtel Telecom Solutions and one Susela Padmavathy Amma, the appellant herein, is the Director of Fibtel Telecom Solutions.

3.3 Based on the representation made by Fibtel Telecom Solutions, the respondent had agreed to provide the required services, whereupon the parties entered into a Service Agreement, vide which Fibtel Telecom Solutions had to pay Rs. 14,00,000/- as fixed monthly recurring charges to the respondent. It is the thus the case of the respondent that Fibtel Telecom Solutions owes a sum of Rs. 2,55,08,309/-, in lieu of the service provided to it by the respondent.

3.4 However, the grievance of the respondent is that in-spite of regular follow-ups and reminders, Fibtel Telecom Solutions failed and neglected to clear the respondent's dues. Only thereafter, upon repeated demands made by the respondent, Fibtel Telecom Solutions furnished five post-dated cheques to the complainant, on 17 th June 2016, details of which are as given below:

Sr. No.	Cheque No.	Cheque Dated	Cheque Amount
1	414199	25.06.2016	Rs. 25,00,000/-
2	414196	31.08.2016	Rs. 50,00,000/-
3	414204	31.08.2016	Rs. 80,00,000/-
4	414195	31.07.2016	Rs. 45,00,000/-
5	414205	30.09.2016	Rs. 80,00,000/-

3.5 On deposit of the cheque mentioned at Sr. No. 1 in the table, bearing cheque no. 414199 and dated 25th June 2016, by the respondent, the said cheque was returned to it unpaid with reason "payment stopped by drawer". Aggrieved thereby, the respondent issued a legal notice to Fibtel Telecom Solutions, on receipt of which & following an oral agreement between them, a payment schedule was agreed to and a cheque for an amount of Rs. 25,00,000/- drawn by Fibtel Telecom Solutions was honoured by it. However, when the complainant deposited the remaining four cheques as mentioned at Sr. No. 2 to 5 in the table, the same were returned to it unpaid with reason "payment stopped by drawer". Details of deposit & return of cheques are as given below:

Cheque No.	Cheque Presented On	Cheque Returned On	Legal Notice	Reply
414196	23.09.2016	26.09.2016	13.10.2016	12.11.2016
414204	23.09.2016	26.09.2016	13.10.2016	12.11.2016
414195	25.10.2016	26.10.2016	09.11.2016	No reply
414205	17.10.2016	18.10.2016	10.11.2016	29.11.2016

3.6 Accordingly, the respondent filed two complaints under Section 190(i)(a) of the Code of Criminal Procedure, 1973 ("CrPC" for short) for offences punishable under Section 138 & 142 of the N.I. Act, being C.C. No. 3151 of 2017 dated 30th November, 2016 and C.C. No. 3150 of 2017 dated 23rd December, 2016, before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

3.7 Both the complaints have been filed against three accused persons namely, Fibtel Telecom Solutions, arrayed as Accused No. 1; Manju Sukumaran Lalitha, arrayed as Accused No. 2 & Susela Padmavathy Amma, the appellant herein, arrayed as Accused No. 3.

3.8 Accused No. 3, who is a female senior citizen and the Director of Fibtel Telecom Solutions, filed Crl. O.P. No. 3470 of 2019 against C.C. No. 3151 of 2017 & Crl. O.P. No. 5767 of 2019 against C.C. No. 3150 of 2017, before the High Court under

Section 482 of the CrPC for quashing of the criminal complaints qua her.

3.9 Vide impugned judgment and order, dated 26th April, 2022, the High Court dismissed Crl. O.P. Nos. 3470 & 5767 of 2019 and Crl. M.P. Nos. 2224, 2225 & 3255 of 2019, but directed the concerned trial court to dispose of the case within a period of three months.

3.10 Aggrieved by the rejection of the petition for quashing of criminal complaints, the appellant herein filed the present appeal.

3.11 Vide order dated 12 th December 2022, this Court had issued notice and stay of further proceedings qua the appellant was granted.

4. We have heard Shri Manoj V. George, learned counsel for the appellant and Shri Lakshmeesh S. Kamath, learned counsel appearing for the respondent.

5. Shri Manoj V. George, learned counsel for the appellant submitted that the appellant is an aged-lady and was not involved in the day-to-day affairs of the Company. It is submitted that even in the complaint there are no averments that the appellant was in-charge of day-to-day affairs of the Company. It is further submitted that the appellant was also not a signatory to the cheque in question. It was only the accused No.2 who was the signatory to the cheque. It is, therefore, submitted that the High Court has grossly erred in not allowing the petition for quashing of criminal complaints qua the appellant. Learned counsel relied on the judgments of this Court in the cases of ***N.K. Wahi vs. Shekhar Singh and others***[1], ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another***[2] ***Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited***[3], ***Krishi Utpadan Mandi Samiti and others vs Pilibhit Pantnagar Beej Ltd. and another***[4] and ***Laxmi Dyechem vs. State of Gujarat and others***[5] in support of his submissions.

1 [2007] 3 SCR 883 : (2007) 9 SCC 481

2 [2005] Suppl. 3 SCR 371 : (2005) 8 SCC 89

3 (2018) 14 SCC 202

4 [2003] Suppl. 6 SCR 344 : (2004) 1 SCC 391

5 [2012] 11 SCR 466 : (2012) 13 SCC 375

6. Shri Lakshmeesh S. Kamath, learned counsel for the respondent, on the contrary, submitted that the learned judge of the High Court has rightly, after considering the material on record, dismissed the petition for quashing of criminal complaints qua the appellant. It is submitted that the grounds raised are the defense of the accused and it can only be raised at the stage of the trial. It is, therefore, submitted that no interference is warranted in the present appeal.

7. In the case of ***State of Haryana vs. Brij Lal Mittal and others***[6], this Court observed thus:

> "**8.** Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:
>
> > "34. *Offences by companies*.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
> >
> > > Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."
>
> It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that

6 [1998] 3 SCR 104 : (1998) 5 SCC 343

> he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business."

8. It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in-charge of and was also responsible to the company for the conduct of its business.

9. In the case of ***S.M.S. Pharmaceuticals Ltd.*** (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word "director as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

> "**8.** ..... There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of

> a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. ....."

10. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

11. In the case of ***Pooja Ravinder Devidasani vs. State of Maharashtra and another***[7] this Court observed thus:

> "**17. .....** Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2

7 [2014] 14 SCR 1468 : (2014) 16 SCC 1

SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

(emphasis in original)

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences

committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

21. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] , it was held by this Court that: (SCC pp. 584-85, para 7)

"7. ... it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company."

(emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

12. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not *ipso facto* make the director vicariously liable.

13. A similar view has previously been taken by this Court in the case of ***K.K. Ahuja vs. V.K. Vora and another***[8]***.***

8 [2009] 9 SCR 1144 : (2009) 10 SCC 48

14. In the case of ***State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana***[9]**,** this Court reiterated the position thus:

> "**17.** The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable."

15. In the case of ***Ashoke Mal Bafna*** (supra)**,** this Court observed thus:

> "**9**. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675].)
>
> **10**. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the

9 [2010] 9 SCR 387 : (2010) 11 SCC 469

> Director was responsible for the conduct of the business of the Company."

16. A similar view has been taken by this Court in the case of ***Lalankumar Singh and others vs. State of Maharashtra***[10] to which one of us (B.R. Gavai, J.) was a party.

17. In the light of this settled legal position, let us examine the averments made in the complaints.

18. It will be relevant to refer to para 16 of the complaint bearing No. CC 3151/2017 filed by the respondent before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai dated 30th November 2016, which reads thus:

> "16. The Complainant states that the Accused has an intention of cheating the Complainant. The 2nd and 3rd Accused herein has no intention to pay the dues that they owe to the Complainant. Instead, making the complainant believe that the same would be paid and through which trying to push the liability to future. It is also pertinent to note that the 2nd and 3rd of the Accused herein are the Directors, promoters of the 1st Accused being the Company. The 2nd of the Accused herein is the authorized signatory, who is in-charge of and responsible for the day to day affairs of the Company, the 1st Accused."

19. It can thus be seen that the only allegation against the present appellant is that the present appellant and the accused No.2 had no intention to pay the dues that they owe to the complainant. It is stated that the 2 nd accused and the 3rd accused (appellant herein) are the Directors, promoters of the 1st accused being the Company. It is further averred that the 2 nd accused is the authorized signatory, who is in-charge of and responsible for the day-to-day affairs of the Company, i.e., the 1st accused.

20. It can thus be clearly seen that there is no averment to the effect that the present appellant is in-charge of and responsible for the day-to-day affairs of the Company. It is also not the case of the

10 [2022] 14 SCR 573 : 2022 SCC OnLine SC 1383

respondent that the appellant is either the Managing Director or the Joint Managing Director of the Company.

21. It can thus clearly be seen that the averments made are not sufficient to invoke the provisions of Section 141 of the N.I. Act qua the appellant.

22. In the result, we find that the present appeals deserve to be allowed. It is ordered accordingly. The judgment and order passed by the High Court dated 26th April, 2022 is quashed and set aside. The proceedings in CC Nos. 3151 and 3150 of 2017 on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai (now transferred to the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai) in connection with the offence punishable under Section 138 read with Section 142 of the N.I. Act are quashed and set aside qua the present appellant.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals allowed.

[2024] 3 S.C.R. 661 : 2024 INSC 208

The Executive Engineer, KNNL
v.
Subhashchandra & Ors.

(Civil Appeal No. 4053 of 2024)

12 March 2024

[Surya Kant* and K.V. Viswanathan, JJ.]

Issue for Consideration

Huge chunk of land measuring 13000 acres was acquired by the State of Karnataka for the appellant-Corporation for different projects. High Court while passing the impugned orders enhancing the compensation for the acquired land, relied upon its own decisions which judgments did not find favour with this Court in earlier litigation as regards the same chunk of land and were remanded to High Court for reconsideration.

Headnotes

Land Acquisition Act, 1894 – Award of compensation – Big chunk of land acquired for different projects at different points in time – Enhancement in compensation granted by the High Court varied from project to project – Supreme Court found that the High Court did not analyze each case independently, matters remanded to High Court – High Court while passing the impugned orders enhancing the compensation for the acquired land, relied upon said decisions which were set aside and were remanded to High Court for reconsideration – Plea of the appellant-Corporation that after the remand, the matter was heard in part by the High Court – Respondents-land owners contended that there were numerous cases in which similarly placed land owners have already been paid compensation at enhanced rate granted by the High Court and those judgments of the High Court attained finality and are not subject matter of these appeals:

Held: It is not in dispute that a batch of cases was remanded by this Court for reconsideration by the High Court – It is also an admitted fact that those matters pertained to the same broader acquisition, though they possibly pertain to different projects – In a peculiar situation where some of the judgments of the High Court attained finality as the compensation amount, as enhanced, stands paid whereas the others are still subject matter of adjudication,

* Author

these cases also remanded to the High Court so that a holistic view pertaining to the subject acquisition, at least project wise, can be taken by the High Court – High Court to make an endeavour to infuse uniformity in the matter of award of compensation, to the extent possible, in accordance with law. [Para 14]

List of Acts

Land Acquisition Act, 1894.

List of Keywords

Land Acquisition; Drinking water and irrigation projects/schemes; Award of compensation; Compensation enhanced.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4053 of 2024

From the Judgment and Order dated 22.03.2018 of the High Court of Karnataka at Kalaburagi in MSA No.200214 of 2017

With

Civil Appeal Nos.4076, 4070, 4064, 4056, 4068, 4054, 4055, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4065, 4066, 4067, 4069, 4071, 4072, 4073, 4074, 4075, 4077, 4078, 4079, 4080, 4081, 4082, 4083, 4084, 4085, 4086, 4087, 4088 And 4089-4090 Of 2024

Appearances for Parties

Naveen R. Nath, Sr. Adv., Ms. Hetu Arora Sethi, Abhimanyu Verma, Ms. Lalit Mohini Bhat, Ms. Disha Gupta, Advs. for the Appellant.

Anand Sanjay M Nuli, Mrs. Kiran Suri, Sr. Advs., Suraj Kaushik, Agam Sharma, Nanda Kumar, Dharm Singh, M/s. Nuli & Nuli, Sharanagouda Patil, Harshvardhan Malipatil, Jyotish Pandey, Ms. Supreeta Sharanagouda, S. J. Amith, Mrs. S. Anuradha Bhat, Harisha S.R., Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

1. Permission to file special leave petition is granted in Diary No.12213/2023.

2. Delay condoned.

3. Leave granted.

4. These civil appeals impugn the judgements dated 28.02.2017, 28.11.2017, 15.02.2018, 20.02.2018, 21.02.2018, 02.03.2018, 22.03.2018, 06.04.2018, 13.04.2018, 26.04.2018, 07.12.2018, 12.12.2018, 14.01.2020, 24.01.2020 and 03.03.2021, passed by the High Court of Karnataka at Kalaburagi Bench, whereby compensation for the acquired land was enhanced. The appellant-Karnataka Neeravari Nigam Limited (in short, "Corporation") claims to be the beneficiary of the subject-acquisition.

5. The Corporation has been entrusted with the assignment to plan, execute and operate drinking water and irrigation projects and schemes in the State of Karnataka. About 13000 acres of land was acquired by the State of Karnataka for the appellant-Corporation for various projects like (1) Bennethora Project (2) Gandori Nala Project (3) Lower Mullamari Project and (4) Amarja Project. Certain civil appeals also refer to a fifth project, namely, the Upper Tunga Project. This huge chunk of land measuring 13000 acres also included the parcels of lands owned by the respondent-land owners of different villages. The acquisition was carried under the Land Acquisition Act, 1894 (in short, "Act"). The present civil appeals pertain to the Bennethora Project, Lower Mullamari Project and Amarja Project situated in Kalaburagi, Karnataka.

6. The acquisition proceedings in these appeals, as per the project-wise classification, progressed as follows-

(i) <u>Bennethora Project</u>

a) Civil Appeal Nos.4053, 4054, 4055, 4956, 4061, 4064, 4065, 4066, 4067, 4068, 4069, 4070, 4071, 4072, 4073, 4074, 4075, 4076, 4077, 4078, 4079, 4080, 4081, 4082, 4083, 4085, 4086, 4087 of 2024 pertain to this project. In this batch of civil appeals coming under the Bennethora Project, land measuring a consolidated total of **131 acres and 451 guntas (Approx. 142 acres)** was acquired through different notifications issued under Section 4 of the Act followed by declarations under Section 6 of the Act. The Section 4 notifications and the Section 6 declarations were issued on the following dates-

Date of Section 4 Notification	Date of Section 6 Notification
18.02.1982	10.05.1984
17.03.1983	23.02.1984
05.04.1990	22.11.1990
05.07.1990	09.05.1991
23.08.1990	04.04.1991
07.02.1991	28.11.1991
16.05.1991	26.03.1992
13.06.1991	20.12.1991
19.06.1991	17.12.1992
11.07.1991	27.08.1997
06.08.1992	13.01.1994

b) The Special Land Acquisition Officer (in short, "SLAO") passed the awards for the acquired lands on different dates, whereby compensations were granted at the following rates-

Date of SLAO award	Compensation granted by SLAO (Rupees/acre)
23.01.1985	3,167
28.02.1985	3,500
08.01.1991	5,400
20.05.1991	6,000 for wet lands
15.06.1992	9,800
30.01.1993	28,000 for dry lands & 42,000 for wet lands
03.02.1993	15,000
22.11.1993	15,000
27.11.1993	15,000
24.12.1993	15,000
31.05.1994	9,000

c) The rates of compensation awarded by the SLAO were enhanced by the Reference Court, keeping in view the year when the acquisition process commenced. The enhanced compensation amounts granted by the Reference Court was further enhanced, upon appeal, by the District Court.

d) The dissatisfied landowners further approached the High Court for a higher compensation, which was subsequently granted vide the impugned judgements. The original rates of compensation awarded by the SLAO, the enhanced compensation amounts granted by the Reference Court, the compensation amounts as further enhanced by the District Court and impugned compensation amounts granted by the High Court, vide the impugned judgements, can be understood as follows-

Amount granted by SLAO (Rupees/ acre)	**Amount granted by Reference Court (Rupees/ acre)**	**Amount granted by District Court (Rupees/ acre)**	**Amount granted by the High Court (Rupees/ acre)**
3,167	11,000	19,000	1,09,034
3,500	11,000	26,100	83,500
5,400	25,500	50,500	1,52,059
15,000	28,500	74,000	1,64,223
15,000	32,000	74,000	1,64,223
9,000	32,000	67,000	1,76,388
15,000	32,000	81,400	1,76,388
6,000	36,000	Rs.90,200	2,28,088 for wet lands
28,000 for dry lands & 42,000 for wet lands	42,000 for limited extent of land instead of 28,000	55,888 for dry lands 83,832 for wet lands	1,52,059 for dry lands 2,28,088 for wet lands
9,800	42,000	75,750	1,64,223 for dry lands 2,46,334 for wet lands

(ii) Amarja Project

a) Civil Appeal Nos.4057, 4058, 4059, 4060 & 4062, 4084 of 2024 pertain to this Project. In the batch of civil appeals coming under the Amarja Project, land measuring a

consolidated total of **15 acres 83 guntas (Approx. 17 acres)** was acquired through a notification issued under Section 4 of the Act followed by a declaration under Section 6 of the Act. The Section 4 notification and the Section 6 declaration were issued on the following dates-

Date of Section 4 Notification	Date of Section 6 Notification
07.04.1988	06.07.1989

b) Thereafter, the SLAO passed the award for the acquired lands whereby compensations was granted at the following rate-

Date of SLAO award	Compensation granted by SLAO (Rupees/acre)
06.03.1990	7,000

c) The rate of compensation awarded by the SLAO was enhanced by the Reference Court, keeping in view the year when the acquisition process commenced. The enhanced compensation amount granted by the Reference Court was further enhanced, upon appeal, by the District Court.

d) The dissatisfied landowners further approached the High Court for a higher compensation, which was subsequently granted vide the impugned judgements. The original rate of compensation awarded by the SLAO, the enhanced compensation amount granted by the Reference Court, the compensation amount as further enhanced by the District Court and impugned compensation amount granted by the High Court, vide the impugned judgements, can be understood as follows-

Amount granted by SLAO (Rupees/ acre)	Amount granted by Reference Court (Rupees/ acre)	Amount granted by District Court (Rupees/ acre)	Amount granted by the High Court (Rupees/ acre)
7,000	30,000	79,200	1,78,429

(iii) Lower Mullamari Project

a) Civil Appeal Nos. 4063, 4088, 4089 of 2024 pertain to this Project. In the batch of civil appeals coming under the Lower Mullamari Project, land measuring a consolidated total of **19 acres 59 guntas (Approx. 20 acres)** was acquired through notifications under Section 4 of the Act followed by declarations under Section 6 of the Act, which were issued on different dates. The Section 4 notifications and the Section 6 declarations were issued on the following dates-

Date of Section 4 Notification	Date of Section 6 Notification
30.05.1991	11.05.1992 / 03.09.1992
14.01.1993	07.04.1994
04.03.1993	07.04.1994

b) Thereafter, the SLAO passed the awards for the acquired lands on different dates, whereby compensations were granted at the following rates-

Date of SLAO award	Compensation granted by SLAO (Rupees/acre)
04.05.1983	8,000 for dry lands & 10,000 for wet lands
18.11.1995	10,000 for dry lands & 15,000 for wet lands
01.01.1996	8,000

c) The rates of compensation awarded by the SLAO were enhanced by the Reference Court, keeping in view the year when the acquisition process commenced. The enhanced compensation amounts granted by the Reference Court was further enhanced, upon appeal, by the District Court.

d) The dissatisfied landowners further approached the High Court for a higher compensation, which was subsequently granted vide the impugned judgements. The original rates of compensation awarded by the SLAO, the enhanced compensation amounts granted by the Reference Court,

the compensation amounts as further enhanced by the District Court and impugned compensation amounts granted by the High Court, vide the impugned judgements, can be understood as follows-

Amount granted by SLAO (Rupees/ acre)	**Amount granted by Reference Court (Rupees/ acre)**	**Amount granted by District Court (Rupees/ acre)**	**Amount granted by the High Court (Rupees/ acre)**
8,000 for dry lands & 10,000 for wet lands	70,000	-	1,15,086
10,000 for dry lands & 15,000 for wet lands	50,000 for dry lands 75,000 for wet lands	-	1,24,992 for dry lands 1,86,440 for wet lands
8,000	33,000	74,750/75,543	1,33,500

7. It may thus be seen that the enhancement in the compensation granted by the High Court varies from project to project and while the minimum amount is Rs.83,500/- per acre, the maximum amount is seen to have gone up to Rs.1,78,429/- per acre for dry lands and Rs. 2,46,334/- for wet lands.

8. Having regard to the big chunk of land acquired for different projects referred to above, at different points in time, the enhancement made by the High Court in a few cases, where the compensation of Rs.1,20,814/- per acre for dry lands and Rs.1,81,221/- per acre for wet lands was awarded, came to be challenged before this Court in a batch of appeals, including C.A. No.2591/2022 (The Executive Engineer, KNNL Vs. Annarao @ Anveerappa & Anr.), in which this Court, *vide* Judgment dated 10.05.2022, having found that the High Court has not analyzed each case independently, much less notification wise, concerning particular village or area and that the parameters delineated in various decisions of this Court were not adverted to, held as follows:

"In the impugned judgment(s) and order (s), the High court has made no effort to analyze the concerned case(s) either notification-wise or for that matter, village-wise, including the other parameters required to be observed for arriving at a just compensation amount.

Further, in most of the appeals, the appellant (Karnataka Neeravari Nigam Limited} was not made party in the appeal proceeding before the High Court.

It is also the grievance of the appellant that most of the cases, entertained at the instance of land owners, were grossly delayed and yet they have been granted enhancement, and in some cases along with interest.

The fact remains that the High Court in the impugned judgment(s) and order(s) has not analyzed each case independently much less notification-wise concerning particular village or area and keeping in mind the parameters delineated in the reported decision, adverted to earlier.

In our opinion, it is appropriate that the parties are relegated before the High Court for reconsideration of the entire matter afresh and in accordance with law.

Learned counsel appearing for the land owners were at pains to point out that some matters pertaining to some of the notifications, referred to in the present appeal proceedings, have reached upto this Court and decided in favour of the land owners, including in some cases the appellants have acted upon the decision by paying compensation amount. Even the effect of such orders passed by this Court can be examined by the High Court on its own merits and in accordance with law.

Accordingly, we keep all contentions available to both sides open, to be considered by the High Court on its own merits and in accordance with law.

The impugned judgment(s) and order(s) are set aside and the concerned appeals/petitions are remanded to the High Court for reconsideration in the above terms.

> The parties to appear before the High Court on 11.07.2022, when the High Court may assign suitable date for hearing of the concerned batch of cases which, as aforesaid, must proceed notification-wise pertaining to concerned village as a separate group.
>
> Needless to observe that some of the notifications pertain to the year 1983, therefore, it would be appropriate that the High Court disposes of the appeal(s) expeditiously. The appeals are disposed of in the above terms."

9. The High Court judgments, which were set aside and the cases remanded back for fresh consideration, also included the judgments rendered by the High Court in MSA No.200020/2018 (LAC) titled Rajshekhar s/o Sangappa deceased by Lrs. vs. The Special Land Acquisition Officer, MSA No.200014/2018 (LAC) titled Kalappa S/o Paudapppa v. The Special Land Acquisition Officer and MSA No.200147/2017 (LAC) titled Motibee W/o Mashak Patel v. The Spl. Land Acquisition Officer & Anr. decided on 19.02.2018, 21.02.2018 and 09.01.2018 respectively, awarding compensation of Rs.1,64,223/acre, Rs.1,64,223/acre and Rs.1,52,059/acre respectively for the dry lands. Consequently, *Rajshekhar's case* (supra) has also been remanded to the High Court for fresh adjudication. The abovementioned judgements of the High Court had in turn placed reliance on MSA No. 200055/2016 (LAC) titled Malkajappa @ Mallikarjun vs. The Special Land Acquisition Officer & Anr, decided by the High Court on 13.03.2017, which has also been remanded to the High Court vide this Court's order dated 10.05.2022 in *Annarao @ Anveerappa case* (supra).

10. We find that in the present batch of appeals, the brief impugned order passed by the High Court in CA No.4053/2024, has solely relied upon its own decision in *Rajshekhar's case* (supra). In some of the other appeals, namely CA Nos. 4954, 4055, 4056, 4064, 4065, 4066, 4067, 4068, 4079, 4080, 4081, 4082, 4083, 4087 and 4088 of 2024, the High Court has relied upon its decision in *Malkajappa @ Mallikarjun* (supra), *Kalappa* (supra) *(which placed reliance on Malkajappa @ Mallikarjun (supra))* and Motibee (supra) *(which placed reliance on Malkajappa @ Mallikarjun (supra))*. These judgments did not find favour with this Court in *Annarao @ Anveerappa case* (supra), whereby the matters have been remanded to the High Court for reconsideration.

11. Learned senior counsel for the appellant-Corporation, submits that after the remand, the matter has been heard in part by the High Court.

12. On the other hand, learned senior counsel for the respondents-land owners submits that there are numerous cases in which similarly placed land owners have already been paid compensation at enhanced rate granted by the High Court. Those judgments of the High Court have attained finality and are not subject matter of these appeals.

13. Learned senior counsel for the appellant(s), however, counters this submission, as according to him, those matters pertain to different villages and the respondents cannot claim parity with those cases.

14. We have considered the rival submissions made by learned senior counsel for the parties. It is not in dispute that a batch of cases has been remanded by this Court for reconsideration by the High Court, as seen above. It is also an admitted fact that those matters pertain to the same broader acquisition, though they possibly pertain to different projects. In a peculiar situation where some of the judgments of the High Court attained finality as the compensation amount, as enhanced, stands paid whereas the others are still subject matter of adjudication, we deem it appropriate to remand these cases also to the High Court so that a holistic view pertaining to the subject acquisition, at least project wise, can be taken by the High Court. The High Court will make an endeavour to infuse uniformity in the matter of award of compensation, to the extent it is possible, in accordance with law.

15. It goes without saying that the High Court, while undertaking this exercise, will not reduce the compensation to a rate which has already been paid to some of the land owners and which has attained finality. The rest of the contentions from both sides are kept open to be gone into by the High Court.

16. It is clarified that we have not expressed any opinion on the merits of the case.

17. The parties are directed to appear before the High Court of Karnataka at Kalaburagi Bench on 18.03.2024. We request the High Court to take up these matters also, along with the *Rajshekhar's case* (supra) and other cases, which are already part heard before the High Court. Since the acquisition is more than three decades old, we request

the High Court to decide the matters expeditiously and preferably within three months from the date of this judgement.

18. The instant civil appeals are disposed of in the above terms.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeals disposed of.

[2024] 3 S.C.R. 673 : 2024 INSC 227

Dr Sonia Verma & Anr.
v.
The State of Haryana & Anr.

(Criminal Appeal No. 1433 of 2024)

07 March 2024

[Vikram Nath and Satish Chandra Sharma, JJ]

Issue for Consideration

The issue for consideration was a challenge to a decision of the High Court of Punjab & Haryana, refusing to quash the F.I.R. registered u/s. 506, 420, 34, 120-B and 467 of the Penal Code, 1860, against the Appellants/Accused, on the ground that the dispute between the parties was essentially civil in nature.

Headnotes

Criminal Law – Code of Criminal Procedure, 1973 – s. 482 – Inherent powers – Scope of exercise of power for quashing the criminal proceedings:

Held: The High Court ought to have quashed the criminal proceedings when it was apprised of the fact that the substance of the Criminal Complaint served only a cast of doubt on the validity of a commercial transaction and an appropriate civil remedy was already being pursued. [Para 17]

Abuse of Law – Dispute essentially civil in nature, given a cloak of criminality – Circumstances:

Held: Circumstances such as the Complainant/ Respondent No. 2 registering the FIR after the filing of the Civil Suit by the Accused/Appellants, the Complainant selectively implicating the Appellants in a Criminal case, the Complainant's failure to contest the matter before this Hon'ble Court, and the bonafides of the Accused/Appellants in paying the rent before their alleged purchase of the Suit property, can be concluded as an attempt on the part of the Complainant to shroud a civil dispute with a cloak of criminality. [Para 15]

Case Law Cited

Paramjeet Batra v. State of Uttarakhand **(2013) 11 SCC 673– relied on.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Criminal proceedings; Quashing; Inherent Powers.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1433 of 2024

From the Judgment and Order dated 19.07.2023 of the High Court of Punjab & Haryana at Chandigarh in CRMM No.34512 of 2023.

Appearances for Parties

A.Sirajuddin, Sr. Adv., Chand Qureshi, Mrs. Arpana Soni, Ms. Preeti Chauhan, Mohit Yadav, Mrs. Aarti Pal, Surendra Ramgopal Agarwal, Waseem Akhtar Khan, Advs. for the Appellants.

Abhinav Bajaj, A.A.G., Saksham Ojha, Samar Vijay Singh, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The Appellants before us are aggrieved by the order dated 19.07.2023 passed in CRM-M-34512-2023 (the '**Impugned Order**') whereby the High Court of Punjab and Haryana at Chandigarh refused to quash FIR No. 375/2022 dated 31.10.2022 (the '**Subject FIR**'), registered against the Appellants for offences under Section(s) 506, 420, 34, 120-B and 467 of the Indian Penal Code, 1860 (the '**IPC**').

Brief Facts:

3. The uncontested facts are as follows: (i) the Appellants are doctors who are running the Surendra Maternity and Trauma Hospital (the '**Hospital**'), located in village Suthani, Tehsil Bawal, Rewari, Haryana; (ii) the Appellants were paying rent to Respondent No. 2's son at the rate of Rs. 25,000/- per month for the Hospital property until August 2022; (iii) the original owner of the land upon which the Hospital stands was Kaptan Singh i.e., husband of Respondent No. 2.

4. Thereafter, as per the Appellants version, *vide* registered sale deed No. 1485 dated 23.08.2022 (the '**RSD**'), the Appellants purchased the land on which the Hospital stood i.e., Khewat No. 1, Khatauni No. 1, Mustkil No. 33, ***Killa No. 26***, village Suthani, Tehsil Bawal, Rewari, Haryana (the '**Suit Property**'), for a sale consideration of Rs. 43,00,000/-, from one Sher Singh. Pursuant to this purchase, the Appellants discontinued the payment of rent to Respondent No. 2's son.

5. Fearing dispossession from the Suit Property, the Appellants filed Civil Suit No. 294/2022 on 27.09.2022, before the Court of Addl. Civil Judge, Bawal, seeking a decree of permanent injunction against Respondent No. 2, her husband and one Babu Lal (the '**Civil Suit**'). In the Civil Suit, an order granting ad-interim injunction was passed in favour of the Appellants on 18.11.2022. While granting this protection, the Court found that the Appellants had a *prima facie* case as they had produced three registered sale deeds carrying similar description of the Suit Property in order to establish the chain of transfer leading to their ownership. As per the Appellants, the Suit Property was first transferred by Kaptan Singh to Babu Lal *vide* Sale Deed dated 20.07.2020 and thereafter from Babu Lal to Sher Singh *vide* Sale Deed dated 22.08.2022.

6. On 29.10.2022, FIR No. 372/2022 was registered by the Appellants against three persons, including Kaptan Singh and son of Respondent No. 2 for offences under Section(s) 506, 120-B of the IPC. The Appellants alleged that the accused persons had fraudulently collected rent from them for a prolonged period, despite lacking ownership over the Suit Property and were continuously threatening the Appellants to vacate the Suit Property.

7. Two days later, the Subject FIR was registered against the Appellants and Sher Singh by Respondent No. 2, who claimed that she was the owner in possession of the land upon which the Hospital stood, citing it as Killa No. 8, instead of Killa No. 26. Respondent No. 2 stated that the property was transferred in her favour by Kaptan Singh *vide* Transfer Deed dated 22.08.2017 and that she has never alienated the property. She alleged that the Appellants, in collusion with Sher Singh forged the RSD and wrongly entered the area of the property in the RSD with the intention of usurping her property.

8. A charge-sheet was filed in respect of the Subject FIR on 17.03.2023 and as on date, the Appellants have been granted anticipatory bail by the High Court.

9. The Appellants then approached the High Court under Section 482 CrPC seeking quashing of the Subject FIR. *Vide* the Impugned Order, the High Court held that the allegations relate to Killa No. 8 in Mustkil No. 33, which the Appellants never claimed to have purchased. On this basis, the Court held that the ingredients of the offences alleged were made out against the Appellants and consequently, the application for quashing was dismissed.

Contentions & Analysis:

10. Learned Counsel for the Appellants forcefully contends that the dispute between the parties is essentially civil in nature and as the appropriate civil remedy is already being pursued by the Appellants, the criminal proceedings arising out of the Subject FIR amount to an abuse of the process of law. In this context, it is also urged that the High Court erred in failing to consider the litigation history between the parties i.e., the pending Civil Suit and the FIR filed by the Appellants against the family of Respondent No. 2.

11. *Per Contra*, Learned Counsel for the State of Haryana submits that there exists sufficient *prima facie* evidence for the Trial Court to proceed against the Appellants and that the mere existence of a civil profile does not justify quashing of criminal proceedings.

12. It is pertinent to note that despite being served, Respondent No. 2 has not contested the matter before us.

13. We have heard the learned counsel for the parties and perused the record.

14. In the considered opinion of this Court, the dispute herein, which forms the genesis of the criminal proceedings initiated by Respondent No. 2 is entirely civil in nature i.e., whether the Appellants are in lawful possession of the Suit Property or, in essence, whether the RSD is valid. To that extent, the Appellants have already taken recourse to the appropriate civil remedy to establish their claim before the Civil Court. The grievance of Respondent No. 2 i.e., whether the RSD is forged and fabricated is an issue that will be considered by the Civil Court while making its determination.

15. A closer examination of the surrounding facts and circumstances fortifies the conclusion that an attempt has been made by the Respondent No. 2 to shroud a civil dispute with a cloak of criminality. The following aspects of the case are pertinent to note: (i) Respondent No. 2 registered the Subject FIR subsequent to the filing of the Civil Suit and the filing of FIR No. 372/2022 by the Appellants; (ii) the chain of sale deeds produced by the Appellants contain identical descriptions of the Suit Property and yet Respondent No. 2 has pursued criminal action only against the Appellants and Sher Singh and not against Babu Lal and her husband; (iii) Respondent No. 2 has failed to contest the present matter before this Court; (iv) the admitted position that the Appellants were bonafide in their payment of rent before their alleged purchase of the Suit Property.

16. This Court in ***Paramjeet Batra v. State of Uttarakhand & Ors***.[1] has expounded on the scope of exercise of power under Section 482 CrPC whilst dealing with similar matters:

> *"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."*

17. Therefore, when the High Court was apprised of such a matter wherein the substance of the criminal complaint served only to cast doubt on the validity of a commercial transaction (in this case, a sale deed for the transfer of property), and the appropriate civil remedy

1 Criminal Appeal No. 2069 of 2012

was already being pursued, the High Court ought to have quashed the criminal proceedings.

18. For the reasons stated above, the Impugned Order is set aside and the entire criminal proceedings arising out of the Subject FIR are quashed and set aside. Needless to say, this order shall not have any effect on the Civil Suit pending between the parties and the same shall be decided in accordance with law.

19. Resultantly, the appeal stands allowed.

20. Pending applications, if any, shall also stand disposed of.

Headnotes prepared by:
Prastut Mahesh Dalvi, Hony. Associate Editor
(*Verified by:* Liz Mathew, Sr. Adv.)

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 679 : 2024 INSC 221

Puneet Sabharwal
v.
CBI

(Criminal Appeal No. 1682 of 2024)

19 March 2024

[Vikram Nath and K.V. Viswanathan,* JJ.]

Issue for Consideration

The charges were framed against the appellants. While the charge against the appellant-P was u/s. 109 IPC r/w. s.13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, the charge against appellant-R was u/s. 13(1)(e) r/w. s.13(2) of the Prevention of Corruption Act, 1988. In substance, the charge was that appellant-R owned assets disproportionate to known sources of income and the appellant-P son of R has abetted him in the commission of the said offence. The High Court, by the impugned order, dismissed the petitions for quashing criminal proceedings. The question that arises for consideration is whether the courts below were justified in refusing to quash and set aside the order on charge dated 21.02.2006 and the charges as framed on 28.02.2006.

Headnotes

Prevention of Corruption Act, 1988 – s. 13(1)(e) r/w. s. 13(2) – Penal Code, 1860 – s. 109 – Income Tax Act, 1961 – The appellant-R was exonerated by the Income Tax Appellate Tribunal by order dated 31.08.2007 – It was contended that in view of the orders made by the Income Tax Appellate Tribunal in the reopening proceedings, which were based on the search conducted by the CBI, there is absolutely no ground to proceed with the criminal trial – It was further argued, with respect to the appellant-P, that he was a minor for a large portion of the check period and therefore could not be made an accused – Propriety:

Held: In the instant case, the probative value of the Orders of the Income Tax Authorities, including the Order of the Income Tax Appellate Tribunal and the subsequent Assessment Orders, are not conclusive proof which can be relied upon for discharge of the

* Author

accused persons – These orders, their findings, and their probative value, are a matter for a full-fledged trial – In view of the same, the High Court has rightly not discharged the appellants based on the Orders of the Income Tax Authorities – The appellants herein are being prosecuted under the provisions of the Prevention of Corruption Act while they seek to rely on an exoneration under the Income Tax Act – The scope of adjudication in both of these proceedings are vastly different – The authority which conducted the income tax proceedings and the authority conducting the prosecution is completely different (CBI) – The CBI was not and could not have been a party to the income tax proceeding – The charges were framed under the Prevention of Corruption Act, while the appellants seek to rely upon findings recorded by authorities under the Income Tax Act – The scope of adjudication in both the proceedings are markedly different and therefore the findings in the latter cannot be a ground for discharge of the Accused Persons in the former – The proceedings under the Income Tax Act and its evidentiary value remains a matter of trial and they cannot be considered as conclusive proof for discharge of an accused person – As far as the contention about the minority of the appellant-P is concerned, it need not detain the Court since for the last seven years of the check period admittedly he was not minor –Thus, the appellants have not made out a case for interference with the order on charge dated 21.02.2006 and the order of framing charge dated 28.02.2006. [Paras 32, 37, 40, 23, 44]

Case Law Cited

State of Karnataka v. Selvi J. Jayalalitha & Ors. [2017] 5 SCR 525 **: (2017) 6 SCC 263 – relied on.**

Radheshyam Kejriwal v. State of West Bengal & Anr. [2011] 4 SCR 889 **: (2011) 3 SCC 581;** *Ashoo Surendranath Tewari v. CBI & Anr.* **(2020) 9 SCC 636;** *J. Sekar v. Directorate of Enforcement* [2022] 3 SCR 698 **: (2022) 7 SCC 370 – held inapplicable.**

P. Nallamal v. State **(1996) 6 SCC 559;** *Vishwanath Chaturvedi (3) v. Union of India & Ors.* [2007] 3 SCR 448 **: (2007) 4 SCC 380;** *Sheoraj Singh Ahlawat & Ors. v. State of U.P. & Anr.* [2012] 10 SCR 1034 **: (2013) 11 SCC 476;** *State of T.N. v. N. Suresh Rajan*

& Ors. [2014] 1 SCR 135 **: (2014) 11 SCC 709;** *CBI & Anr. v. Thommandru Hannah Vijayalakshmi & Anr.* [2021] 13 SCR 364 **: (2021) 18 SCC 135;** *Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & Anr.* [2007] 13 SCR 716 **: (2008) 2 SCC 561;** *State of Karnataka v. L. Muniswamy & Ors.* [1977] 3 SCR 113 **: (1977) 2 SCC 699 – referred to.**

List of Acts

Prevention of Corruption Act, 1988; Penal Code, 1860; Income Tax Act, 1961.

List of Keywords

Disproportionate Assets; Known source of income; Income tax return; Income tax proceeding; Evidentiary value; Conclusive proof; Quashing; Criminal Proceedings; Framing of charge; Discharge; Exoneration in civil adjudication; Criminal Prosecution; Criminal trial.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1682 of 2024

From the Judgment and Order dated 01.12.2020 of the High Court of Delhi at New Delhi in WPCRL No.200 of 2010

With

Criminal Appeal No.1683 of 2024

Appearances for Parties

Mukul Rohatgi, Siddharth Agarwal, Ardhendu Mauli Prasad, Sr. Advs., Ninad Laud, Ms. Ranjeeta Rohatgi, Ms. Shrika Gautam, Karan Mathur, Ms. Rashika Narain, Sangramsingh R. Bhonsle, Zubin Dash, Ms. Samridhi S Jain, Nrupal A Dingankar, Ms. Pushkara A Bhonsle, Naman Sherstra, Mahesh Jadhav, Advs. for the Appellant.

K.M. Natraj, A.S.G., Mukesh Kumar Maroria, Sanjay Kumar Tyagi, Rajan Kumar Chaurasia, Padmesh Mishra, Navanjay Mahapatra, Shantanu Sharma, B.K. Satija, Manoj K. Mishra, Abhinav S. Raghuvanshi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeals call in question the correctness of the judgment of the High Court of Delhi at New Delhi dated 01.12.2020 in Writ Petition (Criminal) No. 200 of 2010 and Writ Petition (Criminal) No. 339 of 2010. These proceedings in the High Court, in turn, challenged the Order on charge dated 21.02.2006, as well as the charges framed on 28.02.2006, by the Special Judge, Delhi. While the charge against the appellant Puneet Sabharwal was under Section 109 IPC read with Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, the charge against appellant R.C. Sabharwal was under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988. In substance, the charge was that appellant R.C. Sabharwal owned assets disproportionate to known sources of income and the appellant Puneet Sabharwal, son of R.C. Sabharwal, has abetted him in the commission of the said offence. The High Court, by the impugned order, dismissed the petitions. Aggrieved, the appellants are before us.

Brief Facts:

3. On 23.08.1995, based on source information, the Anti-Corruption Bureau, New Delhi, District New Delhi registered a First Information Report in Crime No.RC-74(A)/95-DLI.

4. On 28.08.1995, a charge-sheet was filed against both the appellants. In substance, the allegations, as set out in the charge-sheet, were as follows:

(i) That the appellant R.C. Sabharwal was Additional Chief Architect in New Delhi Municipal Corporation;

(ii) That while being posted in various capacities from the year 1968 onwards, he had amassed huge assets which are disproportionate to his known sources of income;

(iii) That the assets were acquired by R.C. Sabharwal either in his name or in the name of his family members. Details of the assets were set out.

(iv) The check period was taken from the date when the appellant R.C. Sabharwal joined as an Assistant Architect in NDMC i.e. 20.08.1968 to the date of the search i.e. 23.08.1995.

(v) That the total income of the appellant R.C. Sabharwal from salary was Rs. 10,00,042/-. Detailed breakup of salary for the years was given. The income from the salary of his spouse was Rs. 8,72,249.42

(vi) Apart from the above salaried income, income accruing to the accused R.C. Sabharwal from several enterprises, companies and trusts was also set out. Rental income was also mentioned as well as income from insurance policies and income arising out of interest. After computing all the income, it was mentioned that the total income was of Rs. 1,23,18,091/-

(vii) Expenditure was provided to the extent of Rs. 18,23,108/-. Movable assets to the tune of Rs. 4,25,450/- was mentioned. It was also alleged that there were bank balances in the name of appellant R.C. Sabharwal and in the name of his family members to the tune of Rs. 82,63,417/-.

(viii) As far as the immovable assets are concerned, a set of twenty-four properties were set out which were in all valued at Rs. 2,27,94,907/-.

(ix) That the appellant R.C. Sabharwal could not satisfactorily account for the assets disproportionate to his known sources of income.

(x) That the appellant R.C. Sabharwal was a party to the criminal conspiracy with his son, being appellant Puneet Sabharwal, who had received Rs. 79 lakhs through encashment of Special Bearer Bonds and he facilitated commission of the offence as a conspirator.

(xi) That in furtherance of the said criminal conspiracy, assets were acquired by R.C. Sabharwal in the name of M/s Morni Devi Brij Lal Trust, M/s Morni Merchants and other firms in which the sole beneficiary was appellant Puneet Sabharwal, his son. It was further alleged that appellant R.C. Sabharwal dealt with all the financial matters of the said trusts/firms.

(xii) It was concluded that a criminal case was made out against appellant R.C. Sabharwal and Puneet Sabharwal for offence punishable under 120-B IPC r/w 5(2) r/w 5(1)(e) of PC Act, 1947 corresponding to 13(2) r/w 13(1)(e) of PC Act, 1988.

(xiii) Further, it was concluded that against R.C. Sabharwal a case under Section 5(2) r/w 5(1)(e) of PC Act, 1947 corresponding to 13(2) r/w 13(1)(e) of PC Act, 1988 was made out for possession of assets worth Rs. 2,05,63,341/- disproportionate to his known sources of income.

Order on Charge:

5. On 21.02.2006, the Special Judge pronounced an order on charge after elaborately discussing the principles governing discharge. The learned Judge rendered the following findings in the order on charge:

(i) The expression "known sources of income" can only have reference to the sources known to the prosecution;

(ii) The prosecution cannot be expected to know the firms of the accused persons;

(iii) The income from firms of the accused persons would be within the special knowledge of the accused, under Section 106 of the Evidence Act and it was for the accused to 'satisfactorily account' for the charge of owing disproportionate assets, which can only be discharged at trial;

(iv) Insofar as the appellant Puneet Sabharwal is concerned, reliance was placed on the statement of Chartered Accountant Anil Mehta to the effect that the properties were purchased benami by appellant R.C. Sabharwal in the name of his son and sister;

(v) The learned judge relied upon ***P. Nallamal v. State, (1996) 6 SCC 559,*** wherein this Court held that a non-public servant can be tried in the same trial along with the public servant for abetment of offence under Section 13(1)(e) r/w 13(2) of the PC Act.

(vi) There was sufficient material to show the existence of grave suspicion arising out of the material placed before the Court regarding involvement of both the appellants for commission of offences under Section 109 IPC read with Section 13(1)(e) r/w

13(2) of the PC Act as far as the appellant Puneet Sabharwal was concerned and under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 as far as R.C. Sabharwal was concerned.

Charges:

6. Thereafter, by order dated 28.2.2006, charges were also framed. For the sake of convenience, the charges against both the appellants are set out hereinbelow:

"**CHARGE NO. 1**

That you being a public servant employed as Additional Chief Architect, NDMC, New Delhi, during the period 20.8.1968 to 23.08.1995 were found in possession of assets to the tune of Rs. 3,10,58,324/- as against your income and that of your family members Income, to the tune of Rs. 1,23,18,091/- and expenditure of Rs. 18,23,108/- and you were found in possession of total assets to the tune of Rs. 2,05,63,341/- which were disproportionate to your known sources of income and which you could not satisfactorily account for and thereby you committed an offence U/s. 13(1)(e) punishable U/s. 13(2) of the PC Act, 1988 and within my cognizance.

And I hereby direct you to be tried by this court for the said offence.

CHARGE NO. 2

That while your father Shri R.C. Sabharwal being a public servant employed as Additional Chief Architect, NDMC, New Delhi during the period 20.08.1968 to 23.08.1995 you intentionally aided him in commission of the offence U/s 13(1)(e) read with 13(2) of the PC Act as he was found in possession of assets to the tune of Rs. 3,10,58,324/- as against his income and that of his family members income, to the tune of Rs. 1,23,18,091/- and expenditure of Rs. 18,23,108/- and he was found in possession of total assets of the tune of Rs. 2,05,63,341/, which were disproportionate to his known sources of income and which he could not satisfactorily account for and thereby you committed an

offence, of abetment U/s 109 IPC read with 13(1)(e) and Sec. 13(2) of the PC Act, 1988 and within my cognizance.

And hereby direct you to be tried by this court for the said offence."

[emphasis supplied]

Orders on the income tax front:

7. After the order of the Trial Court, both with regard to the order on charge and the framing of charges, and before the High Court disposed of the Petitions before it, leading up to the impugned order, certain developments took place on the income tax front.

8. The Income Tax Appellate Tribunal pronounced its judgment on 31.08.2007 in appeals and cross appeals filed by the assessees [which included the Appellants herein] and the department, with regard to the reopening of the assessments for the years 1989-1990 to 1995-1996 and 1997-1998 to 2001-2002.

9. Earlier, the Assessing Officer had reopened the assessment for Assessment Year 1996-1997 and made certain additions and deletions in the hands of the Appellants herein and other assessees. Thereafter, the CIT (Appeals) had upheld the validity of the reopening while approving or disapproving some of the additions and deletions made by the Assessing Officer. However, the Tribunal had, on 07.03.2005, held that the reopening of the assessment for the Assessment Year 1996-1997 was not justified since the conditions precedent for reopening the assessment were not fulfilled. Consequently, the issues regarding the merits of additions or deletions were not adjudicated by the Tribunal in the said Order.

10. However, the Tribunal in its order dated 31.08.2007, while hearing appeals and cross-appeals concerning the reopening of assessment for the years 1989-1990 to 1995-1996 and 1997-1998 to 2001-2002, found that materials did exist for reopening the assessment for the said assessment years. Thereafter, it examined the merits of the additions made on substantive basis and additions denied, in the years under consideration in the hands of appellant R.C. Sabharwal. It noted that the Tribunal was required to examine the additions and deletions carried out by the Assessing Officer and the CIT (Appeals) in the assessment year 1996-1997 because, in the view

of the Tribunal, the issue of additions in all the other years under consideration flowed from the base assessment year of 1996-1997.

11. While considering the various additions and deletions, the Tribunal *inter alia* considered the addition carried out by the Assessing Officer [which was thereafter deleted by the CIT (Appeals)] in the hands of the appellant R.C. Sabharwal herein with respect to income of M/s Morni Devi Brij Lal Trust. The Assessing Officer had justified these additions on the grounds that:

(i) The source of investment made by the founders of the said trust being Smt. Morni Devi and Sh. Brij Lal was not explained.

(ii) The special bearer bonds which were encashed in the account of the said Trust were not out of investments from the Trust since the said bonds were purchased prior to the formation of the Trust itself. Some other person had invested the amount and encashed it in the hands of the trust.

(iii) The founder of the trust was not shown to have the income necessary to purchase the said bonds.

12. The CIT (Appeals) had deleted these additions. In examining this issue and approving the said deletion, the Tribunal rendered the following findings:

(i) The Appellant R.C. Sabharwal had no obligation to explain the source of investment of the founders of the trust being Smt. Morni Devi and Sh. Brij Lal.

(ii) The Trust itself had been filing its return of income since it came into existence and had been assessed separately. No evidence was produced to show that the assessee was the benami owner of the trust.

(iii) As regards the credits representing deposits of Special Bearer Bonds, relying upon Section 3 of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 it was held that no person who has subscribed to or has otherwise acquired Special Bearer Bonds shall be required to disclose, for any purpose whatsoever, the nature and source of acquisition of such bonds and that complete immunity has been granted to the bond holders. The presumption of the Assessing Officer that the bearer bonds were acquired by the trust was held to be not correct;

(iv) Reference is made by the Tribunal to the findings of the CIT (Appeals) that the special bearer bonds were tendered for encashment by the trust and that Assessing Officer exceeded his jurisdiction in making an enquiry and calling upon the trust to explain the nature and source of acquisition of such bonds.

(v) Reference is made by the Tribunal to the findings of the CIT (Appeals) that the trust would be a person within the meaning of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981.

(vi) The Tribunal then quotes the findings of the CIT (Appeals) whereunder it was held that once the assessment has been made and the department has accepted the existence of the trust it could not be reversed without bringing on record any adverse material. The onus was on the department to show that the trust was benami and there was no evidence in that regard.

(vii) The Tribunal then quotes the findings of the CIT (Appeals) whereunder it was concluded that the Assessing Officer had not been able to prove that the Trust was benami and that the income of the trust belonged to R.C. Sabharwal. Holding so, the additions to the tune of Rs. 8,14,230/- was deleted. No further comments were given by the Tribunal in regard to this addition/deletion.

13. Thereafter, on the issue of appellant Puneet Sabharwal having received funds from the Morni Devi Brij Lal Trust which was held to belong to appellant R.C. Sabharwal, it was found that since Morni Devi Brij Lal Trust was a separate entity and since the appellant Puneet Sabharwal was running its business, its income could not be added in the hands of the appellant R.C. Sabharwal. The Tribunal also considered the additions/deletions with regard to various other firms and assessees which we do not seek to set out herein for the purposes of brevity.

14. Ultimately, only on the aspect of deposits in the joint bank accounts of minors, so far as it fell within the limitation period, the Tribunal restored the matter back to the Assessing Officer for deciding the issue afresh and the appeal of the revenue was allowed to that limited extent. Holding so, the appeals were disposed of. Consequently, on 30.12.2009, the Assessing Officer passed an assessment order

accepting the explanation of the assessee on the aspect remitted and the income of the assessee Puneet Sabharwal was fixed at Rs. 67,550/-.

Proceedings in the High Court:

15. These orders which came subsequent to the orders of the Trial Court were placed before the High Court. It was contended that in view of the orders made by the Income Tax Appellate Tribunal in the reopening proceedings, which reopening was based on the search conducted by the CBI, there is absolutely no ground to proceed with the criminal trial. It was further argued, with respect to the appellant Puneet Sabharwal, that he was a minor for a large portion of the check period and therefore could not be made an accused.

16. Repelling the contentions, the High Court held as follows:

(i) Simply because for a large part of the period of investigation, the appellant Puneet Sabharwal was a minor, would not by itself be a reason to disregard the fact that at least for the seven years of the investigation period he was a major;

(ii) Under Section 3(2) of Special Bearer Bonds (Immunities and Exemptions) Act, 1981, the immunities under the Act are inapplicable to offences committed under the Prevention of Corruption Act or similar offences;

(iii) Prosecution has sought to rely upon statements of several witnesses;

(iv) In ***State of Karnataka v. Selvi J. Jayalalitha & Ors.*** ***(2017) 6 SCC 263,*** this Court had held that income tax assessment orders are apropos tax liability on income and they do not necessarily attest to the lawfulness of the sources of income;

(v) That what was relevant was whether there was a strong suspicion that the accused has committed the offence and that in the view of the High Court there was indeed a case for trial. Holding so, the Writ Petitions were dismissed.

Contentions:

17. Before us Mr. Mukul Rohatgi and Mr. Siddharth Agarwal, learned senior counsel for the appellants reiterated the contentions raised before the High Court.

18. Insofar as the appellant Puneet Sabharwal was concerned, it was contended as follows:

(i) That the High Court erred in holding that merely because for a large part of the period of investigation, the appellant was a minor, it would not be by itself a reason to disregard the fact that for at least seven years of the investigation period he was a major;

(ii) That the courts below erred in, without more, endorsing the allegations against the appellant(s) solely on account of being named as a beneficiary in the trust deed of M/s Morni Devi Brij Lal Trust. Further, the Court erred in endorsing the allegation that the trust was holding benami properties of which appellant R.C. Sabharwal was a beneficial owner;

(iii) That since out of the twenty years of the check period except 7 years of the said period the appellant Puneet Sabharwal was a minor, it belied logic as to how the said appellant could have conspired with his father. This indicated gross abuse of process of law.

(iv) That the charge as framed indicates that criminal proceedings have been saddled against appellant Puneet Sabharwal merely by virtue of being his father's son and none of the ingredients under Section 109 of the Indian Penal Code were attracted;

(v) That the High Court erred in not taking into account the exoneration of the appellant's father by the Income Tax Appellate Tribunal; that the Income Tax Appellate Tribunal, by its order of 31.08.2007, rendered a categorical finding that the father did not hold the properties of the said trust as benami and even the limited issue on which the Income Tax Appellate Tribunal remanded the matter, by the order of 30.12.2009, the assessment officer found the deposits to be income of the son.

19. Insofar as the appellant R.C. Sabharwal is concerned, the argument was substantially on the basis of the Income Tax Appellate Tribunal order of 31.08.2007. The contentions were as follows:

(i) The order of Income Tax Appellate Tribunal categorically held that income arising from properties of various entities were wrongly added to the income of the appellant;

(ii) The appellant was not the owner of those entities and consequently the properties and money held by those entities could not be held to be under the ownership of the appellant R.C. Sabharwal;

(iii) The reassessment for thirteen years was carried out on the complaint of CBI itself;

(iv) The courts below misapplied the judgment of this Court in ***Selvi J. Jayalalitha*** ***(supra)*** and failed to notice the distinguishing feature namely that, in the present case, it was not a case of reliance on income tax return but the returns which were subjected to an inquisition.

(v) The High Court exercising power under Article 226, 227 of the Constitution of India and Section 482 of Cr.P.C. has power to look into material placed by the accused in arriving at its conclusion for discharge.

20. For both the appellants, reliance was placed on ***Radheshyam Kejriwal v. State of West Bengal & Anr., (2011) 3 SCC 581, Ashoo Surendranath Tewari v. CBI & Anr. (2020) 9 SCC 636 and J. Sekar v. Directorate of Enforcement, (2022) 7 SCC 370*** to contend that where there is exoneration on merits in a civil adjudication, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue since the underlying principle is that the standard of proof in criminal cases is higher.

21. The submissions of the appellants were strongly refuted by Mr. K.M. Nataraj, learned Additional Solicitor General. Learned ASG contended as follows:

(i) That at the stage of framing of charges what is relevant is material as is available on the date of framing of the charge;

(ii) That a court of law is not required to appreciate evidence at the stage of framing of charges to conclude whether the materials produced are sufficient or not for convicting the accused;

(iii) That it was settled law that probative value of material on record cannot be gone into at the stage of framing of charges since the court was not conducting a mini trial;

(iv) Relying on ***Sheoraj Singh Ahlawat & Ors. v. State of U.P. & Anr., (2013) 11 SCC 476***, it was contended that all that has

to be seen is whether there is a ground for presuming that the offence has been committed and not whether there was ground for convicting the accused;

(v) That even a strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence would justify the framing of the charge.

(vi) Reliance placed on the order of the Income Tax Appellate Tribunal dated 21.08.2007 is subsequent to the framing of charges and even otherwise cannot be the basis for the discharge of the accused;

(vii) That the criminal prosecution does not depend upon the order passed by the Income Tax Appellate Tribunal and, most importantly, the prosecution was not and could not have been a party before the Income Tax Authorities and the ITAT;

(viii) That the Income Tax Appellate Tribunal order can be at best, if permissible in law, used as a piece of evidence and the Income Tax Appellate Tribunal order will not have the effect of nullifying the order framing charges by a criminal court. Reliance has been placed on ***Selvi J. Jayalalitha* (supra), *Vishwanath Chaturvedi (3) v. Union of India & Ors.*, (2007) 4 SCC 380** and ***State of T.N. v. N. Suresh Rajan & Ors.*, (2014) 11 SCC 709** to contend that the findings of the Income Tax Authorities are not binding on a criminal court to readily accept the legality or lawfulness of the source of income.

(ix) The power to quash a proceeding and nip the same in the bud has to be exercised with great caution and circumspection.

So contending, the learned ASG prayed that no case has been made out to set aside the order on charge and the charges and the appeals deserve to be dismissed.

Question:

22. Under the above circumstances, the question that arises for consideration is: Whether the courts below were justified in refusing to quash and set aside the order on charge dated 21.02.2006 and the charges as framed on 28.02.2006?

Analysis:

23. Having heard learned counsels for the parties and perused the records, we are of the opinion that the appellants have not made out a case for interference with the order on charge dated 21.02.2006 and the order of framing charge dated 28.02.2006. We say so for the following reasons.

24. The case of the prosecution is that the appellant R.C. Sabharwal, the father of appellant Puneet Sabharwal, owned assets to the tune of Rs. 2,05,63,341/- and that this was disproportionate to his known sources of income which was computed at Rs. 1,23,18,091/-. The allegation against the son Puneet Sabharwal was that he had received Rs. 79 lakhs through encashment of Special Bearer Bonds and he facilitated commission of offence inasmuch as assets were acquired by appellant R.C. Sabharwal in the name of M/s Morni Devi Brij Lal Trust, M/s Morni Merchants and other firms in which the sole beneficiary was appellant Puneet Sabharwal. The order framing charge invokes Section 109 IPC to be read with Section 13(1)(e) read with Section 13(2) of the PC Act against Puneet Sabharwal.

25. The main plank of the arguments of the appellants is that the Income Tax Appellate Tribunal order dated 31.08.2007, has, while allowing the appeals of the assessees and dismissing the cross appeals of the department (except to a small extent which too got settled with the assessment order of 30.12.2009), held that no case was made out to justify that the income and assets of the entities such as the Morni Lal Brij Trust were to be added to the income of R.C. Sabharwal. In view of the same, it is argued that there is no case for prosecuting them for owning disproportionate assets.

26. It is argued that *per se* the Income Tax Appellate Tribunal order should result in quashment of proceedings and the discharge of the accused. Additionally, it is argued that on the ground that analogous tax proceedings have ended in favour of the appellants, a criminal prosecution on identical facts cannot continue. For this, reliance is placed on the judgments mentioned hereinabove.

27. We have already discussed the substance of the Income Tax Appellate Tribunal order of 31.08.2007. In law, the submissions of the appellants ought to fail on both the counts as there is no basis to nip the criminal prosecution in this case in its bud.

28. As far as the first argument about the criminal proceedings losing its efficacy in view of the Income Tax Appellate Tribunal order of 31.08.2007 is concerned, we accept the submission of the respondent CBI that the prior rulings of the court ending with the judgment in ***Selvi J. Jayalalitha*** ***(supra)*** have clearly concluded the issue against the appellants.

29. This Court, in ***Selvi J. Jayalalitha*** ***(supra)***, was concerned with an appeal against an order of acquittal passed in a case of disproportionate assets under Section 13 of the Prevention of Corruption Act. The accused persons therein had sought to place reliance on income tax returns and income tax assessment orders. In that context the Court had concluded that income tax returns and orders are not by themselves conclusive proof that they are lawful sources of income under Section 13 of the Prevention of Corruption Act and that independent evidence to corroborate the same would be required. The Court held:

> "**188.** In *Anantharam Veerasinghaiah & Co.* v. *CIT*, 1980 Supp SCC 13 : 1980 SCC (Tax) 274] , the return filed by the petitioner assessee, who was an Abkari contractor, was not accepted by the ITO as amongst others, excess expenditure over the disclosed available cash was noticeable and further several deposits had been made in the names of others. The assessee's explanation that the excess expenditure was met from the amounts deposited with him by other shopkeepers but were not entered in his book, was not accepted and penalty proceedings were taken out against him holding that the items of cash deficit and cash deposit represented concealed income resulting from suppressed yield and low selling rates mentioned in the books. The Appellate Tribunal, however, allowed the appeal of the assessee and set aside the penalty order. The High Court reversed [*CIT* v. *Anantharam Veerasingaiah & Co.*, 1971 SCC OnLine AP 262 : (1975) 99 ITR 544] the decision of the Appellate Tribunal and the matter reached the Supreme Court.
>
> **189.** It was held that as per Section 271(1)(*c*) of the Income Tax Act, 1961, penalty can be imposed in case where any person has concealed the particulars of his income or has deliberately furnished inaccurate particulars of

such income. The related proceeding was quasi-criminal in nature and the burden lay on the Revenue to establish that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. *The burden of proof in penalty proceedings varied from that involved in assessment proceedings and a finding in assessment proceedings that a particular receipt was income cannot automatically be adopted as a finding to that effect in the penalty proceedings*. In the penalty proceedings, the taxing authority was bound to consider the matter afresh on the materials before it, to ascertain that whether a particular amount is a revenue receipt. *It was observed that no doubt the fact that the assessment year contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceedings, but the finding in the assessment proceedings cannot be regarded as conclusive for the purpose of penalty proceedings*. Before a penalty can be imposed, the entirety of the circumstances must be taken into account and must lead to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

190. The decision is to convey that though the IT returns and the orders passed in the IT proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section 13(1)(*e*) of the PC Act, 1988 and that independent evidence would be required to account for the same.

191. Though considerable exchanges had been made in course of the arguments, centring around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to

state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(*e*) of the Act.

199. The import of this decision is that in the tax regime, the legality or illegality of the transactions generating profit or loss is inconsequential qua the issue whether the income is from a lawful source or not. The scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not

certify or authenticate that the source(s) thereof to be lawful and are thus of no significance vis-à-vis a charge under Section 13(1)(*e*) of the Act.

200. In *Vishwanath Chaturvedi (3) v. Union of India*, (2007) 4 SCC 380 : (2007) 2 SCC (Cri) 302], a writ petition was filed under Article 32 of the Constitution of India seeking an appropriate writ for directing the Union of India to take appropriate action to prosecute R-2 to R-5 under the 1988 Act for having amassed assets disproportionate to the known sources of income by misusing their power and authority. The respondents were the then sitting Chief Minister of U.P. and his relatives. Having noticed that the basic issue was with regard to alleged investments and sources of such investments, Respondents 2 to 5 were ordered by this Court to file copies of income tax and wealth tax returns of the relevant assessment years which was done. It was pointed out on behalf of the petitioner that the net assets of the family though were Rs 9,22,72,000, as per the calculation made by the official valuer, the then value of the net assets came to be Rs 24 crores. It was pleaded on behalf of the respondents that income tax returns had already been filed and the matters were pending before the authorities concerned and all the payments were made by cheques, and thus the allegation levelled against them were baseless. It was observed that the minuteness of the details furnished by the parties and the income tax returns and assessment orders, sale deeds, etc. were necessary to be carefully looked into and analysed only by an independent agency with the assistance of chartered accountants and other accredited engineers and valuers of the property.*It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could, on court direction, determine the question of disproportionate assets*. CBI was thus directed to conduct a preliminary enquiry into the assets of all the respondents and to take further action in the matter after scrutinising as to whether a case was made out or not.

> **201.** This decision is to emphasise that submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not."
>
> **[Emphasis Supplied]**

30. The appellants herein have contended that the decision in ***J. Jayalalitha*** **(supra)** would not be applicable to the present case since, according to them, that decision involved only an assessment order, while the present case involves the findings by an Appellate Tribunal after an inquisition into the issues involved. The Appellants herein seek to rely on Paragraph 309 of the decision in ***J. Jayalalitha*** **(supra)** in support of the same. Paragraph 309 is set-out hereunder:

> "**309.** In contradistinction, the High Court quantified the amount of gifts to be Rs 1.5 crores principally referring to the income tax returns and the orders of the authorities passed thereon. It did notice that there had been a delay in the submission of the income tax returns but accepted the plea of the defence acting on the orders of the Income Tax Authorities. It seems to have been convinced as well by the contention that there was a practice of offering gifts to political leaders on their birthdays in the State. Not only is the ultimate conclusion of the High Court, dehors any independent assessment of the evidence to overturn the categorical finding of the trial court to the contrary, no convincing or persuasive reason is also forthcoming. This assumes significance also in view of the state of law that the findings of the Income Tax Authorities/forums are not binding on a criminal court to readily accept the legality or lawfulness of the source of income as mentioned in the income tax returns by an assessee without any semblance of inquisition into the inherent merit of the materials on record relatable thereto. Not only this aspect was totally missed by the High Court, no attempt seems to have been made by it to appraise the evidence adduced by

the parties in this regard, to come to a self-contained and consummate determination."

31. These submissions do not appeal to us for the following reasons:

(i) First of all, the inquisition mentioned in Paragraph 309 of the said decision, is the inquisition to be made by the criminal court. That is clear from a complete reading of the above-said paragraph. In that case, the High Court, while acquitting the accused, had merely gone by the income tax records which were produced by the accused persons. However, the Trial Court had independently examined the issue and had not mechanically gone by the income tax records. It was while commenting on this that this Court said an inquisition ought to have been made on the material.

(ii) *Secondly*, this Court in ***J. Jayalalitha*** **(supra)**, before arriving at a conclusion regarding the probative value of the income tax returns, has examined in detail the previous decisions of this Court where there were not only assessment orders but also decisions of the Appellate Tribunal and the High Court. It is only after considering this aspect that the Court laid down that the Income Tax Returns and Orders passed in IT Proceedings are not conclusive proof.

(iii) *Thirdly*, this Court has categorically held that while income tax returns/*orders* may be admissible as evidence, the probative value of the same would depend on the nature of the information furnished and findings recorded in the order, and would not ipso facto either *conclusively prove or disprove a charge*.

(iv) *Fourthly*, it is important to note that the decision in ***J. Jayalalitha*** **(supra)** was in a matter involving a full-fledged trial and the Court was hearing an appeal against an Order of acquittal passed by the High Court. The Court also noted that income tax returns or orders could at best be evidences which have to be *evaluated* along with the other materials on record.

(v) This Court, in cases involving either discharge [***State of Tamil Nadu v. N. Suresh Rajan & Ors.*** **(2014) 11 SCC 709** Paragraph 32.3] or quash [***CBI & Anr. v. Thommandru Hannah Vijayalakshmi & Anr.*** **(2021) 18 SCC 135** Paragraph 63-64] has noted that Income Tax Returns are not conclusive proof which

can be relied upon either to quash the criminal proceeding or to discharge the accused persons.

32. Therefore, in the present case, the probative value of the Orders of the Income Tax Authorities, including the Order of the Income Tax Appellate Tribunal and the subsequent Assessment Orders, are not conclusive proof which can be relied upon for discharge of the accused persons. These orders, their findings, and their probative value, are a matter for a full-fledged trial. In view of the same, the High Court, in the present case, has rightly not discharged the appellants based on the Orders of the Income Tax Authorities.

33. Insofar as the submission that where there is exoneration in a civil adjudication, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue is concerned, the same is also without merit as far as the present case is concerned.

34. The appellants herein have placed reliance on the decisions of this Court in ***Radheyshyam Kejriwal*** **(supra)**, ***Ashoo Surendranath Tewari*** **(supra)** and ***J. Sekar*** **(supra)** to argue that once there is an exoneration on merits in a civil adjudication, a criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. In our opinion, none of the above-referred decisions are applicable to the facts of the present case.

35. In ***Radheshyam Kejriwal*** **(supra)**, this Court was concerned with a fact situation where the Petitioner therein was being prosecuted under the Foreign Exchange Regulation Act, 1973 for payments made by him in Indian currency in exchange for foreign currency without any general or specific exemption from the Reserve Bank of India. The Enforcement Directorate had commenced both an adjudication proceeding and a prosecution under the provisions of the Foreign Exchange Regulation Act, 1973. It so transpired that the Adjudicating Officer found that no documentary evidence was available to prove the foundational factum of the Petitioner therein entering into the alleged transactions which fell foul of the Act and thereafter directed that the proceedings be dropped. The question which fell for the consideration before this Court was whether the result of this adjudication proceeding would lead to exoneration of the Petitioner in the criminal prosecution.

36. In this background, this Court noticed that the adjudication proceedings under the Foreign Exchange Regulation Act, 1973 involved an

adjudication on whether a person had committed a contravention of any provisions of the Act. It is in this context, that the Court went on to hold that where the allegation in an adjudication proceeding and proceeding for prosecution is identical and the exoneration in the former is on merits i.e. that there is no contravention of the provisions of the Act, then the trial of person concerned would be an abuse of process of the Court.

37. The decision in ***Radheyshyam*** **(supra)** was in a fact situation where the adjudicatory and criminal proceedings were being commenced by the same authority in exercise of powers under the same Act. Further, as this Court had noted, the civil adjudication proceedings related to an adjudication as to whether there was contravention of provisions of the Act and the Rules thereunder, which had an impact on the prosecution under the Act. However, in the present case, the appellants herein are being prosecuted under the provisions of the Prevention of Corruption Act while they seek to rely on an exoneration under the Income Tax Act. The scope of adjudication in both of these proceedings are vastly different. The authority which conducted the income tax proceedings and the authority conducting the prosecution is completely different (CBI). The CBI was not and could not have been a party to the income tax proceeding. Given the said factual background, the decision in ***Radheyshyam*** **(supra)** is not applicable to the present case.

38. In ***Ashoo Surendranath*** **(supra)**, the Petitioner therein was working as a DGM at the Small Industries Development Bank of India while there was diversion of funds from the Bank. The allegation against the Petitioner therein was that he had shared the RTGS details for the account to which the amount was diverted, to another official who was the purported kingpin of the crime. The competent authority of the Bank had refused to provide a sanction for prosecution of the Petitioner therein, which was supported by the report of the Central Vigilance Commission. The question therefore posed before the Court was whether the report of the Central Vigilance Commission should lead to discharge of the Petitioner therein.

39. In the above-mentioned factual background, this Court set-out the findings of the Central Vigilance Commission which had recorded that the e-mail sent by the Petitioner therein had clearly been sent to the principal accused for the purpose of verification since the latter was the officer for verification and that this showed that

there was no role that the Petitioner played in perpetrating the offence. Thereafter, relying upon the decision in ***Radheyshyam*** **(supra)**, the Court concluded that since the allegation has been found to be "not sustainable at all", the criminal prosecution could not be continued.

40. The decision in ***Ashoo Surendranath*** **(supra)** is not applicable to the present case because the decision in ***Ashoo Surendranath*** **(supra)** concerned a singular prosecution under the provisions of the Indian Penal Code where the sanctioning authority had, while denying sanction, recorded on merits that there was no evidence to support the prosecution case. In that context, the Court was of the opinion that a criminal proceeding could not be continued. However, in the present case, the charges were framed under the Prevention of Corruption Act, while the appellants seek to rely upon findings recorded by authorities under the Income Tax Act. The scope of adjudication in both the proceedings are markedly different and therefore the findings in the latter cannot be a ground for discharge of the Accused Persons in the former. The proceedings under the Income Tax Act and its evidentiary value remains a matter of trial and they cannot be considered as conclusive proof for discharge of an accused person.

41. The appellants herein have further sought to place reliance on ***J. Sekar*** **(supra)** to argue that the letter of the Income-Tax Department was relied upon to quash prosecution under the Prevention of Money Laundering Act, 2002. In our opinion, this decision is again inapplicable to the present case. In ***J. Sekar*** **(supra)**, the criminal proceedings had arisen based upon the information furnished by the Income Tax Department regarding recovery of unauthorized cash and other items during their search. It so transpired that the Income Tax Department accepted the explanation of the accused regarding the recovered cash which led to closure of the Income Tax proceedings. Thereafter, even the criminal proceedings led to filing of a closure report on the ground that no sufficient evidence was found for continuation of prosecution. The proceedings under the Prevention of Money Laundering Act, being based on the Income Tax Department's information after their search and the registration of FIR, were found to be unsustainable in view of no violation being found either by the Department or in the criminal proceeding.

42. The decision in ***J. Sekar*** **(supra)** is therefore distinguishable on facts. In the abovementioned case, there was an exoneration by not only the Income Tax Department, to the effect that no case was made, there was also an exoneration in the criminal proceedings which involved the Scheduled Offence. In the present case, the proceedings under the Income Tax Act which are sought to be relied upon relate to the assessment of income of the assessee and not to the source of income and the allegation of disproportionate assets under the Prevention of Corruption Act. The said Orders cannot be the basis to abort the criminal proceeding in the present case.

43. We are not to conduct a dress rehearsal of the trial at this stage. The tests applicable for a discharge are well settled by a catena of judgments passed by this Court. Even a strong suspicion founded on material on record which is ground for presuming the existence of factual ingredients of an offence would justify the framing of charge against an accused person [***Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & Anr.*** **(2008) 2 SCC 561** Paragraph 11]. The Court is only required to consider judicially whether the material warrants the framing of charge without blindly accepting the decision of the prosecution [***State of Karnataka v. L. Muniswamy & Ors.*** **(1977) 2 SCC 699** Paragraph 10]. Applying these principles to the present case, we accept the submission of the learned ASG that the appellants have not made out the case to say that the charge is groundless.

44. The other argument about the minority of the appellant Puneet Sabharwal also need not detain the Court since for the last seven years of the check period admittedly he was not a minor. All the defences are available for the appellants to be placed before the Trial Court.

45. In view of what we have held hereinabove, we are not called upon to answer the argument raised by the learned ASG that the Income Tax Appellate Tribunal order being a document which has emerged subsequent to the framing of the charge, it cannot be taken into consideration at all.

46. For all the above reasons, we find no merit in these appeals and the appeals are dismissed. The interim orders stand vacated. All pending applications stand closed. The trial has been pending for

nearly 25 years. We direct that the trial be expeditiously concluded and, in any case, on or before 31.12.2024. Needless to mention that the observations made herein are only in the context of the discharge proceedings.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals dismissed.

[2024] 3 S.C.R. 705: 2024 INSC 235

Vansh S/o Prakash Dolas
v.
The Ministry of Education & The Ministry of Health & Family Welfare & Ors.

(Civil Appeal No(s). 4427-4428 of 2024)

20 March 2024

[B.R. Gavai, Rajesh Bindal and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter pertains to MBBS admission to a Maharashtra State domicile in Maharashtra despite his father's deployment outside Maharashtra as a paramilitary personnel.

Headnotes

Education/Educational Institutions – Medical admission – Cancellation – Appellant-domicile of Maharashtra and son of Constable in BSF, passed his SSC and HSC exams from an institution outside the State of Maharashtra – Applied for admission to an MBBS course under the Other Backward Class/Non-Creamy Layer category – Despite being issued a provisional selection letter, his admission was cancelled – Writ petition challenging the cancellation on the ground that he was entitled to the exception under clause 4.8 of the NEET UG-2023 Information Brochure pertaining to the 'Children of employees of Government of India or its Undertaking' – High Court dismissed the petition holding that the appellant did not satisfy the requirements of clauses 4.8 and 9.4.4 of the Brochure since he did not select specified reservation, in the category of Children of Defence personnel while submitting the online application form – Correctness:

Held: As per clause 4.8.1 of Information Brochure, the children of employees of the Government of India or its Undertaking have been made eligible for admission even though they might have passed SSC and/or HSC or equivalent exam from a recognised institution situated outside the State of Maharashtra – However, while making such relaxation, a condition has been imposed that the employee of Government of India or its Undertaking being the parent of the candidate should have been transferred back to the State of Maharashtra and also have reported for duty and must

* Author

be working as on the last date of the document verification at a place located in Maharashtra – This condition creates a stipulation which would be impossible for the candidate or his parent to fulfill – Place of posting is not within the control of the employee or the candidate – Candidate born in Maharashtra and whose parents are also domicile of the State of Maharashtra and are employees of the Government of India or its Undertaking, such candidate would be entitled to a seat under the Maharashtra State quota irrespective of the place of posting of the parent because the place of deployment would not be under the control of the candidate or his parents – Impugned judgment is unsustainable in facts as well as in law – Furthermore, letter/communication cancelling the admission without giving opportunity to show cause also illegal and arbitrary – More than six months have passed by since the session started and no seat is lying vacant in any college in Maharashtra State quota as on date – Appellant has been illegally deprived from his rightful admission in the first year of the MBBS course owing to the insensitive, unjust, illegal and arbitrary approach of the respondents and so also on account of the delay occasioned in the judicial process – As regards the restitutive relief, it would neither be desirable nor justifiable to grant admission to the appellant in the on-going session of the MBBS(UG) course – However, the appellant entitled to restoration of his seat in the first year of MBBS(UG) course in the same college in the next session-NEET UG-2024 – Impugned orders set aside – Respondents-college and the State to pay compensation to the tune of Rs. 1 lakh (Rs. 50,000/-) each to the appellant for the deprivation of one year and harassment on the account of illegal and arbitrary cancellation of admission. [Paras 21-23, 26, 28, 31, 32]

Case Law Cited

Archana Sudhakar Mandulkar v. Dean, Govt. Medical College, Nagpur and others **(1986) SCC OnLine Bom 262;** *Rajiv Purshottam Wadhwa v. State of Maharashtra (through it's Dept of Medical Education and Drugs & Others)* **(2000) SCC Online Bom 359;** *Manoj Kumar v. Union of India and Others* **[2024] 2 SCR 409 : (2024) SCC OnLine SC 163;** *S. Krishna Sradha v. State of Andhra Pradesh and Others* **[2017] 2 SCR 466 : (2017) 4 SCC 516 – referred to.**

Vansh S/o Prakash Dolas v. The Ministry of Education & The Ministry of Health & Family Welfare & Ors.

List of Keywords

Admission to MBBS course; Other Backward Class/Non-Creamy Layer category; Children of employees of Government of India or its Undertaking; Specified reservation in the category of Children of Defence personnel; Place of posting; Domicile of State; Cancelling the admission; Compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.4427-4428 of 2024

From the Judgment and Order dated 05.09.2023 in WP No.5141 of 2023 and dated 26.10.2023 in MCAR No.980 of 2023 of the High Court of Judicature at Bombay at Nagpur

Appearances for Parties

Kshitij Kothale, Satyajit A Desai, Siddharth Gautam, Abhinav K. Mutyalwar, Gajanan N Tirthkar, Vijay Raj Singh Chouhan, Ananya Thapliyal, Ms. Anagha S. Desai, Advs. for the Appellant.

Sarad Kumar Singhania, Mrs Rashmi Singhania, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. The appellant has approached this Court for assailing orders dated 5th September, 2023 and 26th October, 2023 passed by the Division Bench of the Bombay High Court Bench at Nagpur in Writ Petition No. 5141 of 2023 and Misc. Civil Application (Review) No. 980 of 2023 in Writ Petition No. 5141 of 2023, respectively.

3. The appellant is a domicile of the State of Maharashtra and his father is employed in the Border Security Force (BSF) as a Head Constable (General Duty) [HC(GD)]. Owing to the deployment of his father outside the State of Maharashtra, the appellant was compelled

to complete his Secondary School Certificate (Standard X)(SSC) and Higher School Certificate (Standard XII)(HSC) education from a school outside the State of Maharashtra.

4. The appellant appeared in NEET-UG, 2023 craving admission in the undergraduate MBBS course against the State quota and upon being found meritorious, he was issued a provisional selection letter (CAP1) by the State Common Entrance Cell, Maharashtra on 4th August, 2023 and was allotted a seat in respondent No.6-College. The appellant completed the requisite formalities and paid an amount of Rs.13,500/-by way of admission fees. It may be noted that the appellant had applied for admission under the Other Backward Class/Non-Creamy Layer (OBC/NCL) category as being domicile of the State of Maharashtra.

5. However, without issuing notice and without providing any opportunity of being heard to the appellant, respondent No.6-College issued a letter/communication dated 9th August, 2023 cancelling the admission of the appellant.

6. The letter/communication cancelling the admission was challenged by the appellant by filing Writ Petition No. 5141 of 2023 before the Bombay High Court, Nagpur Bench raising a pertinent ground that the appellant was entitled to the exception as provided under clause 4.8 of the NEET UG-2023 Information Brochure (hereinafter referred to as 'Information Brochure') which pertains to the 'Children of employees of Government of India or its Undertaking' and that cancellation of his admission was totally illegal and arbitrary.

7. The High Court, after considering the entirety of facts and circumstances dismissed the Writ Petition No. 5141 of 2023 vide order dated 5th September, 2023 holding that the appellant did not satisfy the requirements of clauses 4.8 and 9.4.4 of the Information Brochure. It was held that since the appellant did not select specified reservation i.e., in the category of Children of Defence personnel(DEF), while submitting the online application form, he was precluded from raising such a claim at a belated stage, as being impermissible in view of the rider contained in clause 9.4.4 of the Information Brochure.

8. Being aggrieved and dissatisfied with the order dated 5th September, 2023, the appellant filed Misc. Civil Application (Review) No. 980 of 2023 which too was rejected vide order dated 26th October, 2023. These two orders are assailed in the present appeals.

9. Mr. Kshitij Kothale, learned counsel representing the appellant urged that the High Court misconstrued the appellant's claim to be one under Children of Defence personnel(DEF) category because the appellant had sought admission under the OBC/NCL category as being domicile of the State of Maharashtra.

10. He contended that the appellant and his parents are domicile of the State of Maharashtra. The appellant fulfils the requisite criteria for being admitted in the State quota and stood in merit and was allotted a seat in the OBC/NCL category as a domicile of the State of Maharashtra and, thus, cancellation of appellant's admission by the order dated 9th August 2023 is absolutely unjust and arbitrary in addition to being in gross violation of principles of natural justice.

11. Learned counsel urged that two Division Benches of the Bombay High Court, one at Nagpur Bench in ***Archana Sudhakar Mandulkar v. Dean, Govt. Medical College, Nagpur and others***[1] and the other at Principal Seat at Bombay in ***Rajiv Purshottam Wadhwa v. State of Maharashtra(through it's Dept of Medical Education and Drugs & Others***[2] examined a similar set of rules/guidelines as prevailing in the present case and while reading down the rules, provided relief to the candidates therein who were similarly circumstanced as the appellant. He placed reliance on the following excerpts(*infra*) from the judgment in the case of ***Archana Sudhakar Mandulkar****(supra)* and contended that the impugned orders are bad in the eyes of law and the appellant herein deserves the relief sought for by directing the respondents to create an additional seat and thereby protecting admission of the appellant in the ongoing session of MBBS (UG) course:-

> "3. Shri Kherdekar, the learned counsel for the petitioner, contended that having regard to the object of the Rules, its background, the language used in Clause B(5) and the ratio of various Supreme Court decisions on the validity of various reservations on region/residence basis, the requirement of passing Indian School Certificate Examination "from an institution located in Maharashtra State" is not intended to be applied to the candidates

1 1986 SCC OnLine Bom 262

2 2000 SCC Online Bom 359

covered by Rule B(3). It seems to us that the contention is well-founded. Course and the examination of the Indian School Certificate Examination is common all over India. Serviceman has no control on his posting which can be anywhere. Rule of denial of admission to a meritorious son/ daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th Standard within the State of Maharashtra cannot have any nexus to the object of the Rule. Mere chance cannot be the valid disqualifying factor. Such a Rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile lactually posted at material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved. Supreme Court has repeatedly held against denial of admissions only on the basis of residence and/or region. Canons of interpretation mandates that interpretation which leads to unconstitutionality has to be avoided, and harmonious construction to be preferred, if possible. Thus the Rule will have to be interpreted keeping the above principles in view. The Rule is not clearly worded and does present some difficulty in construing it. It is not as if that Clause C applies universally and without exception to all admissions under the Rule. Take for example cases covered by Rule B(4)(iii) — reservation for son or daughter of Non-resident Indians of Maharashtra origin. Even 20 per cent seats out of category B(3) are reserved for Defence Personnel transferred to the Maharashtra Region. It is in this light and background that Rule B(5) has to be read. The terminology "after excluding validly reserved seats" used in Rule B(5) is significant. It means that all parts of Clause C do not universally apply to validly reserved seats under Clause B. This is not to suggest that no part of Clause C applies to any varieties of reservations mentioned in Clause B. All will depend upon a specie of reservation and its intendment. Construed in that light it seems to us that the last part of Rule C(3)(ii) reading as "from an

institution located in Maharashtra State" is not intended to be applied to candidate covered by Clause B(3)."

12. *Per contra*, learned counsel representing the respondents controverted the submissions advanced by the appellant's counsel. He submitted that the appellant could not have been considered for admission under OBC/NCL category under the State quota because he is not covered under clauses 4.5, 4.6 & 4.8 of the Information Brochure. The appellant did not stake a claim for admission in defence personnel quota and hence, he could not have been given a seat under the said category by virtue of the stipulations contained in clause 9.4.4 of the guidelines. On these grounds, he sought dismissal of the appeals.

13. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned orders.

14. There is no dispute that the appellant and his parents are domicile of the State of Maharashtra. The appellant's father is serving in the Border Security Force(BSF). Owing to deployment of his father outside the State of Maharashtra, the appellant passed his SSC and HSC exams from an institution outside the State of Maharashtra.

15. Clause 4.8 of the Information Brochure provides an exception/ relaxation for claiming seat in the Maharashtra State quota to Children of employees of Government of India or its Undertaking who have passed SSC and/or HSC or equivalent examination from the recognized institutions situated outside the State of Maharashtra. However, this clause imposes a rider that such employee of Government of India or its Undertaking being the parent of the candidate seeking admission in the course under the State quota "***must have been transferred from outside the State of Maharashtra at a place of work, located in the State of Maharashtra and also must have reported for duty and must be working as on the last date of document verification at a place located in the State of Maharashtra***". The appellant's father was deployed outside the State of Maharashtra in connection with service of the nation and thus, proviso to Clause 4.8 was relied upon by the respondents while cancelling the admission granted to the appellant in CAP1.

(emphasis supplied)

16. Undisputably, but for the above rider in the guidelines, the appellant is qualified to seek admission in the State Domicile (OBC/NCL) category by virtue of clause 4.8 of the Information Brochure and also stands in merit. However, the proviso creates a situation which would be impossible for the appellant to surmount. The appellant who is a domicile of the State of Maharashtra, cannot control the place of deployment of his father who is serving in the paramilitary force i.e., Border Security Force(BSF). Needless to state that the place of deployment cannot be the choice of the employee serving in the armed forces or a paramilitary force. Being the child of a soldier serving on the country's frontiers, the discriminatory and arbitrary treatment meted out to the appellant under the guidelines cannot be countenanced. The High Court, while denying relief to the appellant held that he had not selected any specified reservation under the head of Children of Defence personnel(DEF) as provided in Clause 9.4.4 of the Information Brochure. However, the fact remains that the appellant had submitted his OBC/NCL credentials/certificates along with the application form and, his claim for admission was clearly against the Maharashtra State quota as being a domicile of the State of Maharashtra whose father was deployed as a Head Constable(General Duty)[HC(GD)] in BSF.

17. The appellant's application was considered favourably and vide communication dated 4th August, 2023, he was granted admission in respondent No.6-College. He also paid the admission fees etc. However, without issuing any notice and without providing opportunity of being heard to the appellant, respondent No.6-College issued the letter/communication dated 9th August, 2023 cancelling his admission in the course. The said letter/communication was promptly challenged by the appellant by filing the captioned writ petition before the Nagpur Bench of the Bombay High Court on the very next day i.e. 10th August, 2023 and he was also provided interim protection by the Court.

18. Before the High Court, the appellant had placed reliance on the Division Bench judgment in the case of ***Archana Sudhakar Mandulkar***(*supra*). The relevant guidelines/rules of admission as extracted in the judgment of ***Archana Sudhakar Mandulkar***(*supra*) are quoted hereinbelow for the sake of ready reference: -

> "**Relevant Clauses of Rules for admission (M.B.B.S.) 1986–87**:
>
> **Clause B deals with "Reservations".**

Sub clause (1) of Clause B refers to Backward Class etc., sub-clause (2) to Central Government, sub-clause (3) to sons and daughters of servicemen and ex-servicemen, sub-clause (4) to miscellaneous other reservations including son/daughter of Nonresident Indians of Maharashtra origin and sub-clause (5) to Regional Reservation.

Clause B(3) reads thus:—

"(3) Reservation for sons and daughters of servicemen and ex-servicemen— 5 percent seats of the intake capacity of the college limited to five shall be reserved for the children of servicemen as well as ex-servicemen who are domiciles of Maharashtra. The seats so reserved are inclusive of merit;

Clause B(5) reads thus:-

"(5) Regional Reservation— Subject to the exception mentioned in Rule C(6)(iv) below, 70 percent of open seats, after excluding validly reserved seats, available in Government Medical Colleges situated within the jurisdiction of any University in Maharashtra, shall be reserved for the candidates who are eligible as per Rule C below and have passed the requisite qualifying examination from the School/College situated within the jurisdiction of the same University**.**"

19. The relevant extract from guidelines/rules of admission prevailing in NEET-UG, 2023 germane to the controversy at hand is quoted hereinbelow for sake of ready reference: -

"4.8 Exception for SSC (10th) and HSC (12th) or equivalent examinations:

Children of employees of Government of India or its Undertakings:-

4.8.1 The children of the employees of Government of India or its Undertaking shall be eligible for admission even though they might have passed the S.S.C. (Std.X) and/or H.S.C. (Std. XII) or equivalent exam from the recognized Institutions situated outside the State of Maharashtra, provided that such an employee of Government of India or

its Undertaking must have been transferred from outside State of Maharashtra at a place of work, located in the State of Maharashtra and also must have reported for duty and must be working as on the last date of Document verification at a place located in Maharashtra.

4.8.2…."

20. On going through the extracted portion of the Division Bench judgment in the case of **Archana Sudhakar Mandulkar**(*supra*), we find that in an almost identical situation which prevails in the case at hand, the Division Bench read down the rule/guideline which provided that the ward of servicemen should have passed his/her 12th standard from an institution located in the State of Maharashtra. The Division Bench held that the servicemen or his ward desiring admission under the State quota could not have had any control over his posting which can be anywhere. The Division Bench held that the rule of denial of admission to a meritorious son/daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th standard within the State of Maharashtra cannot have any nexus to the object of the rule. Mere chance cannot be a valid disqualifying factor. Such rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile actually posted at the material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved.

21. In the extant admission process, a slight modification has been made in the guidelines inasmuch as, now as per clause 4.8.1 of Information Brochure, the children of employees of the Government of India or its Undertaking have been made eligible for admission even though they might have passed SSC and/or HSC or equivalent exam from a recognised institution situated outside the State of Maharashtra. However, while making such relaxation, a condition has been imposed that the employee of Government of India or its Undertaking being the parent of the candidate should have been transferred back to the State of Maharashtra and also have reported for duty and must be working as on the last date of the document verification at a place located in Maharashtra. We feel that this condition as imposed by the guidelines, creates a stipulation which would be impossible for the

candidate or his parent to fulfill. It may be reiterated that the place of posting is not within the control of the employee or the candidate. Thus, the distinction drawn by the clause between two categories of employees in the Government of India services (i) those posted in Maharashtra and (ii) those posted outside Maharashtra has no nexus with the intent and purpose of the guidelines/rules and hence the same deserves to be read down to such extent. Thus, this Court has no hesitation in providing that the candidate(s) who are born in Maharashtra and whose parents are also domicile of the State of Maharashtra and are employees of the Government of India or its Undertaking, such candidate(s) would be entitled to a seat under the Maharashtra State quota irrespective of the place of posting of the parent(s) because the place of deployment would not be under the control of the candidate or his parents.

22. The Division Bench of Bombay High Court at Nagpur while rejecting the writ petition filed by the appellant, fell into manifest error in not considering case of the appellant in the correct perspective. For that reason, the impugned judgment is unsustainable in facts as well as in law. *A fortiori*, the letter/communication dated 9th August, 2023 issued by respondent No. 6 cancelling the admission granted to the appellant against the Maharashtra State quota in CAP1 without giving opportunity to show cause is also illegal and arbitrary and deserves to be quashed and set aside.

23. However, there is a practical hurdle which comes in the way of the appellant for being provided admission in the MBBS course in the current session which has progressed significantly from August, 2023. More than six months have passed by since the session started. As per the reply of the respondents, no seat is lying vacant in any college in Maharashtra State quota as on date.

24. Undisputably, the appellant has been illegally deprived from his rightful admission in the first year of the MBBS course owing to the insensitive, unjust, illegal and arbitrary approach of the respondents and so also on account of the delay occasioned in the judicial process.

25. This Court in the case of ***Manoj Kumar v. Union of India and Others***[3] considered the concept of restitutive relief. Hon'ble P.S.

3 2024 SCC OnLine SC 163

Narasimha, J. speaking for the Bench, observed that concomitant duty of the Constitutional Court is to take reasonable measures to restitute the injured which is the overarching Constitutional purpose. The relevant paras from the aforesaid judgment are extracted below:-

"19. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to restitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice.

20. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

21. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures poses a significant challenge to constitutional courts, largely attributable to the dual variables of time and limited resources.

22. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted.

23. The inherent difficulty in bridging the time gap between the illegal impugned action and restitution is certainly not rooted in deficiencies within the law or legal jurisprudence but rather in systemic issues inherent in the adversarial judicial process. The protracted timeline spanning from the filing of a writ petition, service of notice, filing of counter affidavits, final hearing, and then the eventual delivery of judgment, coupled with subsequent appellate procedures, exacerbates delays. Take for example this very case, the writ petition was filed against the action of the respondent denying appointment on 22.05.2017. The writ petition came to be decided by the Single Judge on 24.01.2018, the Division Bench on 16.10.2018, and then the case was carried to this Court in the year 2019 and we are deciding it in 2024. The delay in this case is not unusual, we see several such cases when our final hearing board moves. Appeals of more than two decades are awaiting consideration. It is distressing but certainly not beyond us. We must and we will find a solution to this problem."

26. Seen in the light of the above judgment, it is now to be considered as to the measures of restitutive relief which can be provided to the appellant in the present case.

27. This Court in the case of ***S. Krishna Sradha v. State of Andhra Pradesh and Others***[4] examined the issue of wrongful denial of admission in a medical course, and propounded the theory of 'restitutive justice' by holding as below:-

"13. In light of the discussion/observations made hereinabove, a meritorious candidate/ student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

4 (2017) 4 SCC 516

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more

meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to

lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to Admission in MBBS Course only and we have not dealt with post graduate medical course."

(emphasis supplied)

28. In the light of the above judgment, it would neither be desirable nor justifiable to grant admission to the appellant in the on-going session of the MBBS(UG) course. However, considering the fact that the order cancelling the admission of the appellant herein was issued on 9th August, 2023 and the writ petition came to be filed before the High Court promptly i.e. on 10th August, 2023, without any delay whatsoever, the appellant is entitled to restoration of his seat in the first year of MBBS(UG) course in the same college in the next session, i.e., NEET UG-2024.

29. We further direct that until a suitable rectification is made in the guidelines/rules, candidate(s) domicile of the State of Maharashtra having acquired SSC and/or HSC qualification from any recognized institution: -

    (i) Whose parent(s) are domiciles of Maharashtra and employed in the Central Government or its Undertaking, defence services and/or in paramilitary forces viz. CRPF, BSF, etc. and;

    (ii) Such parent(s) are posted at any place in the country as on the last date of document verification, shall be entitled for a seat in MBBS Course in the Maharashtra State quota.

30. It is further directed that the appellant shall be provided admission in the 'OBC category domicile of State of Maharashtra child of person serving the Government of India' in the first year of the MBBS(UG) course commencing from the year 2024 by creating an additional seat so as to ensure that there is no reduction in the quota of seats to the candidates who succeed in the NEET UG-2024.

31. The impugned orders are set aside. The appeals are accordingly allowed.

32. We also direct respondent No.6-College and respondent No.5-State of Maharashtra to pay compensation to the tune of Rs.1 lakh(Rs. 50,000/- each) to the appellant for the deprivation of one year and harassment on the account of illegal and arbitrary cancellation of his admission.

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

Headnotes prepared by: Nidhi Jain

Result of the case: Appeals allowed.

[2024] 3 S.C.R. 722 : 2024 INSC 233

A.M. Mohan
v.
The State Represented by SHO and Another

(Criminal Appeal No. 1716 of 2024)

20 March 2024

[B.R. Gavai,* Rajesh Bindal and Sandeep Mehta, JJ.]

Issue for Consideration

FIR registered against accused Nos.1, 2 and 3 (appellant) for offences punishable u/s.420 r/w s.34, Penal Code, 1860. High Court whether justified in rejecting the petition filed by the appellant u/s.482, Code of Criminal Procedure, 1973. Section 420, IPC, if attracted *qua* the appellant.

Headnotes

Penal Code, 1860 – s.420 – Ingredients – s.420 when not attracted:

Held: For attracting the provision of s.420, IPC, the FIR/complaint must show that the ingredients of s.415, IPC are made out – It must be shown that the FIR/complaint discloses the deception of any person; fraudulently or dishonestly inducing that person to deliver any property to any person; and dishonest intention of the accused at the time of making the inducement – In the present case, no role of inducement at all has been attributed to the appellant – Allegations w.r.t inducement are only against accused Nos.1 and 2 – Rather, from the perusal of the FIR and the charge-sheet, it would reveal that there was no transaction of any nature directly between the appellant and the complainant – FIR or the charge-sheet, even if taken at its face value, does not disclose the ingredients to attract the provision of s.420, IPC *qua* the appellant – Dishonest inducement is the *sine qua non* to attract the provisions of ss.415 and 420 of IPC and the same is totally lacking *qua* the appellant – In that view of the matter, continuation of the criminal proceedings against the appellant would be nothing else but amount to abuse of process of law resulting in miscarriage of justice – Impugned orders and the FIR alongwith the charge-sheet filed against the appellant, quashed and set aside. [Paras 13, 15, 19, 20 and 24]

* Author

A.M. Mohan v. The State Represented by SHO and Another

Code of Criminal Procedure, 1973 – s.482 – Exercise of jurisdiction under – Discussed.

Code of Criminal Procedure, 1973 – s.482 – FIR registered against appellant u/s.420 r/w s.34, Penal Code, 1860 – High Court rejected the petition filed by the appellant u/s.482 – Present appeal filed – Contention of the respondents that since the charge-sheet has been filed, the present appeal is liable to be dismissed:

Held: Said contention has no merit – As rightly held in Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another, [2018] 13 SCR 1028, there is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR – High Court can exercise jurisdiction u/s.482 CrPC even when the discharge application is pending with the trial court – Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet – On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation – The power is undoubtedly conferred to prevent abuse of process of power of any court. [Paras 21, 23]

Case Law Cited

Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another **[2019] 2 SCR 185 : (2019) 16 SCC 739;** *Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another* **[2018] 13 SCR 1028 : (2019) 11 SCC 706;** *Haji Iqbal alias Bala through S.P.O.A. v. State of U.P. and Others* **(2023) SCC OnLine SC 946 – relied on.**

Indian Oil Corporation v. NEPC India Limited and Others **[2006] Suppl. 3 SCR 704 : (2006) 6 SCC 736;** *G. Sagar Suri and Another v. State of U.P. and Others* **[2000] 1 SCR 417 : (2000) 2 SCC 636;** *Archana Rana v. State of Uttar Pradesh and Another* **(2021) 3 SCC 751;** *Deepak Gaba and Others v. State of Uttar Pradesh and Another*

(2023) 3 SCC 423; *Mariam Fasihuddin and Another v. State by Adugodi Police Station and Another* **[2024] 1 SCR 623 : (2024) SCC OnLine SC 58 – referred to.**

List of Acts

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

List of Keywords

Quashing; Cheating; Deception; Dishonest intention; Dishonest inducement; Abuse of process of law; Miscarriage of justice.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1716 of 2024

From the Judgment and Order dated 15.07.2022 of the High Court of Judicature at Madras in CRLOP No.20716 of 2020

Appearances for Parties

S. Nagamuthu, Sr. Adv., S. Hariharan, S. Sathiaseelan, Amaan Shreyas, Ms. Mannat Tipnis, Anshul Syal, Ms. Bhavana Duhoon, Advs. for the Appellant.

V. Krishnamurthy, Sr. A.A.G., D. Kumanan, Sheikh F. Kalia, Mrs. Deepa. S, G. Ananda Selvam, Ms. Lakshmi Ramamurthy, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeal challenges the order dated 15th July 2022 passed by the learned Single Judge of the High Court of Judicature at Madras in Criminal O.P. No. 20716 of 2020 and Crl. M.P. No. 8763 of 2020, whereby the High Court rejected the petition filed by the present appellant under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), to call for the records and to quash the First Information Report ("FIR" for short) registered as Crime No. 21 of 2020, on the file of SHO, District Crime Branch, Kancheepuram,

in connection with the offence punishable under Section 420 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

FACTS

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

3.1 The case of the prosecution is that, during the year 2016, accused No. 2-Suresh Prathaban, being a college friend, approached the complainant Karthick Krishnamurthy for some help to clear his hand loan. The accused No. 2 further told that he had business with accused No. 1-Lakshmanan, who is running a hotel and also doing real estate business. Upon the insistence of accused No. 2, the complainant had agreed to extend financial help to accused No. 1 to the tune of Rs.1,60,00,000/- for the business project(s) at Oragadam and around Kancheepuram District with condition to repay the same within 20 months with 100% profit.

3.2 Accordingly, the complainant transferred a sum of Rs.49,25,000/- on 18th March 2016, Rs.20,01,000/- on 31st May 2016, Rs.36,25,000/- on 13th June 2016, Rs.30,24,166/- on 8th July 2016 through RTGS and Rs. 24,25,834/- in cash to accused Nos. 1 and 2, totalling to the tune of Rs.1,60,01,000/- (though mentioned in complaint as Rs.1,60,00,000/-). To secure the same, accused No. 1 had executed a registered simple mortgage deed dated 18th March 2016 in favour of the complainant relating to 100 plots at Sumangali Village, Thiruvannamalai District, registered vide document No.768 of 2016 for Rs.1,00,00,000/-.

3.3 Thereafter, at the insistence of accused Nos. 1 and 2, the complainant entered into an unregistered memorandum of understanding and paid a sum of Rs.1,50,00,000/- and a further sum of Rs.50,00,000/- by RTGS and cheque to accused No. 1's bank. In the said amount, the complainant directly transferred a sum of Rs.20,00,000/- in favour of the present appellant-A.M. Mohan (accused No.3). Further, accused No.1 also transferred a sum of Rs.1,80,00,000/- to the present appellant for the purchase of the land admeasuring 9.80 acres situated at Chittoor Village, Sriperumbudur Taluk. To secure the said payment of Rs.2,00,00,000/- with returns of Rs.10,00,00,000/-, accused No. 1 executed a registered deed of General Power of

Attorney ("GPA" for short) dated 3rd February 2017, in favour of the complainant, vide document No. 3733/2017, in respect of the above said land and also executed a registered sale deed relating to the land admeasuring 2.52 acres situated at Vellarai Village, Kancheepuram District vide document No.386/2017 dated 9th February 2017 in favour of the complainant.

3.4 The accused No. 1 also executed a mortgage deed for land admeasuring 2.14 acres at Sunguvarchatram Village (though mentioned in the complaint as 'a registered Agreement to Sell land admeasuring 1.64½ acres') in favour of the complainant registered vide document No.373/2017 dated 27th February 2017. Thereafter, accused Nos. 1 and 2 had received an amount of Rs.49,85,500/- and executed unregistered loan agreement dated 5th March 2017, in favour of the complainant and agreed to repay with interest quantified at Rs.60,000/- per month. For repayment of the said amount along with interest, accused No. 1 had given a cheque for Rs.58,50,000/- and the same was returned dishonoured due to insufficient funds.

3.5 Apart from all these transactions, on insistence of accused Nos. 1 and 2, the complainant joined in the "gold chit business" conducted by accused No. 1 and paid a sum of Rs.1,20,000/- per month, from March 2016 to August 2017, totalling to the tune of Rs.21,60,000/-. The accused persons swindled all the amounts and cheated the complainant. The accused No. 1 had disposed of about 58 plots on his own and failed to return the mortgaged amount of Rs.1,00,00,000/- with interest. He also cancelled the power of attorney standing in favour of the complainant relating to 9.80 acres of land at Chittoor Village and without notice to the complainant, he sold out the same to third parties. Accordingly, the appellant and other accused persons cheated the complainant to the tune of Rs.16,01,00,000/- (though mentioned in complaint as Rs.16,06,00,000/-) by their willful and intentional action of fraud, cheating and criminal breach of trust. Hence the complaint.

3.6 On the strength of the complaint filed before the Judicial Magistrate, a FIR being Crime No. 21 of 2020 came to be registered on 7th November 2020, at District Crime Branch, Kancheepuram District, against accused Nos. 1, 2 and 3, for

the offences punishable under Section 420 read with 34 of the IPC.

3.7 Aggrieved thereby, the appellant herein filed a Criminal O.P. No. 20716 of 2020 before the High Court, under Section 482 of the Cr.P.C., to call for the records and to quash the said FIR.

3.8 Vide impugned order dated 15th July 2022, the learned Single Judge of the High Court, observed that it is clear that the intention of the appellant and other accused persons was only to cheat the complainant and that it can be seen from the FIR that there are specific allegations against the appellant to attract the offence, which has to be investigated in depth.

3.9 The Single Judge held that the FIR discloses *prima facie* commission of a cognizable offence and as such, the High Court cannot interfere with the investigation. As a result, the High Court rejected the petition under Section 482 of Cr.P.C. for quashing of the FIR, but directed the investigating agency to complete the investigation and file a final report within a period of twelve weeks.

3.10 Aggrieved thereby, the appellant filed the present appeal, in which notice came to be issued vide order dated 21st October 2022.

3.11 As per the additional documents filed in this Court, the charge-sheet in relation to the subject FIR, came to be filed on 4th January 2023.

4. We have heard Shri S. Nagamuthu, learned Senior Counsel appearing for the appellant, Shri V. Krishnamurthy, learned Senior Additional Advocate General (AAG) for respondent No. 1 and Shri G. Ananda Selvam, learned counsel appearing for respondent No. 2.

SUBMISSIONS

5. Shri Nagamuthu, learned Senior Counsel appearing on behalf of the appellant submits that even if the averments made in the FIR are taken at their face value, no case is made out for the offence punishable under Section 420 of IPC against the present appellant. It is further submitted that a reading of the charge-sheet would reveal that none of the ingredients to attract the provision of Section 420 of IPC could be found therein.

6. Shri Nagamuthu, relying on various judgments of this Court, submits that, for attracting the offence of 'cheating' as defined under Section 415 of IPC and punishable under Section 420 of IPC, it is necessary that the FIR should make out a case of "intentional inducement", "dishonesty" or "fraudulence". It is submitted that for the offence of 'cheating', there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly induced the person deceived to deliver any property to a person. It is submitted that neither the FIR nor the charge-sheet contain a whisper with respect to any inducement, fraud or dishonesty qua the appellant that caused the complainant to deliver the sum of Rs.20,00,000/- to his bank account on 2nd February 2017.

7. Shri Nagamuthu further submitted that the complainant has deliberately suppressed the fact that the appellant had transferred the land in favour of accused No. 1 by way of a Sale Deed dated 3rd February 2017 i.e., on the very next day of receiving the sum of Rs.20,00,000/- from the complainant. It is further submitted that, on the very same day i.e. 3rd February 2017, accused No. 1 had executed a GPA in favour of the complainant vide Document No. 3733 of 2017. The GPA specifically states that the complainant had received the GPA in respect of the land purchased by accused No. 1 from the appellant. It is therefore submitted that the appellant has no role to play after 3rd February 2017 and almost all the allegations are with regard to cancellation of GPA etc., and execution of subsequent sale deed in favour of accused No. 4-Seeralan and accused No. 5-Kavitha by accused No. 1, are not related to the appellant.

8. As against this, Shri G. Ananda Selvam, learned counsel appearing for respondent No. 2 submits that since the charge-sheet has already been filed, the appeal is rendered infructuous. It is submitted that the appellant can very well file an application for discharge. It is further submitted that the averments in the FIR would clearly show that the present appellant along with other accused persons has cheated the complainant and defrauded with the huge amount. It is therefore submitted that no interference is warranted in the present appeal.

CONSIDERATION

9. The law with regard to exercise of jurisdiction under Section 482 of Cr.P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of ***Indian Oil***

Corporation v. NEPC India Limited and Others[1] after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

> "**12.** The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:
>
> *(i)* A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint,

1 [2006] Suppl. 3 SCR 704 : (2006) 6 SCC 736 : 2006 INSC 452

is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

> "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their

power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

10. The Court has also noted the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that this is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. The Court, relying on the law laid down by it in the case of ***G. Sagar Suri and Another v. State of U.P. and Others***[2] held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

11. This Court, in the case of ***Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another***[3] has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:

"**15.** Section 415 of the Penal Code reads thus:

"**415.** ***Cheating***.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes

2 [2000] 1 SCR 417 : (2000) 2 SCC 636 : 2000 INSC 34

3 [2019] 2 SCR 185 : (2019) 16 SCC 739 : 2019 INSC 216

> or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

> "**420. *Cheating and dishonestly inducing delivery of property*.**—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

12. A similar view has been taken by this Court in the cases of ***Archana Rana v. State of Uttar Pradesh and Another***[4]***, Deepak Gaba and Others v. State of Uttar Pradesh and Another***[5] and ***Mariam Fasihuddin and Another v. State by Adugodi Police Station and Another***[6]***.***

13. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

(i) the deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and

(iii) dishonest intention of the accused at the time of making the inducement.

14. The averments with regard to the present appellant as have been found in the FIR is as under:

4 (2021) 3 SCC 751 : 2021 INSC 135

5 (2023) 3 SCC 423 : 2023 INSC 1

6 [2024] 1 SCR 623 : 2024 SCC OnLine SC 58 : 2024 INSC 49

> "At the instance of the said Lakshmanan (accused No.1), I (complainant) paid directly Rs. 20,00,000/- to one Mohan (appellant-accused No. 3) and the said Lakshmanan (accused No.1) transferred the remaining sale consideration of over 18 odd crores to Mohan for the purchase of his lands at Sunguvarchatram. But suppressed the execution of sale deed dated 03.02.2017 by the appellant/accused No.3."

15. *A* perusal thereof would reveal that even in the said averments, the allegation with regard to inducement is only qua accused No. 1. We have perused the entire FIR. Except the aforesaid allegations, there are no other allegation with regard to the present appellant-accused No. 3. The rest of the allegations are against accused No. 1 (Lakshmanan). Even the allegations with regard to inducement are only against accused Nos. 1 and 2.

16. Not only that, even in the charge-sheet, the only role attributed to the present appellant could be found as follows:

> "Thereafter, A2 had lured the complainant once again saying that A1 is going to layout the 9.80 acre land in Chittoor Village, Thiruperumbudur Taluk, which is under A3's general power of attorney and that the complainant would gain huge profits if he invests Rs. 2 crores in this project as well. A1 too, as he had already done, lured the complainant that he would pay him a share out of the profit, and executed a General Power of Attorney Deed in favour of the complainant in respect of the 9.80 acre land in Chittoor Village in Thiruperumbudur Taluk which he purchased from A3 and registered it as Doc. No. 3733/2017 in Sunguvarchattiram Sub Registrar Office on 03.02.2017, in a manner instilling confidence in the complainant.
>
> ……..
>
> Moreover, upon instructions from A1 to transfer Rs. 20,00,000/- to A3's Tamil Nadu Mercantile Bank Account towards sale of the land made by A3 to A1, the complainant had transferred online a sum of Rs.20,00,000/- to A3's Tamil Nadu Mercantile Bank Account from his Yes Bank Account on 02.02.2017."

17. It could thus be seen that the only allegation against the present appellant is that accused No. 1 executed the GPA in favour of the complainant in respect of the land which is purchased from the present appellant-accused No.3. The other allegation is that upon instructions of accused No. 1 to transfer Rs. 20,00,000/- to accused No. 3's Tamil Nadu Mercantile Bank Account towards sale of the land made by the appellant-accused No.3 to accused No.1, the complainant had transferred online a sum of Rs.20,00,000/-.

18. It is an undisputed position that upon receipt of the said amount of Rs.20,00,000/-, the present appellant had transferred the land in question by sale deed in favour of accused No.1. It is also undisputed that thereafter accused No. 1 executed the GPA in favour of the complainant on the same day. After the sale deed was executed in favour of accused No.1 by the appellant-accused No.3, though the complaint narrates various instances thereafter, no role is attributed to the present appellant.

19. At the cost of repetition, it has to be noted that no role of inducement at all has been attributed to the present appellant. Rather, from the perusal of the FIR and the charge-sheet, it would reveal that there was no transaction of any nature directly between the appellant and the complainant. The version, if accepted at its face value, would reveal that, at the instance of accused No. 1, the complainant transferred the amount of Rs.20,00,000/- in the account of the appellant. On receipt of the said amount, the appellant immediately executed the sale deed in favour of accused No.1, who thereafter executed the GPA in favour of the complainant. After that, no role is attributed to the present appellant and whatever happened thereafter, has happened between accused No. 1, the complainant and the other accused persons. In that view of the matter, we find that the FIR or the charge-sheet, even if taken at its face value, does not disclose the ingredients to attract the provision of Section 420 of IPC qua the appellant.

20. The dishonest inducement is the sine qua non to attract the provisions of Sections 415 and 420 of IPC. In our considered view, the same is totally lacking qua the present appellant. In that view of the matter, we find that continuation of the criminal proceedings against the present appellant would be nothing else but amount to abuse of process of law resulting in miscarriage of justice.

21. Insofar as the contention of the respondents that since the charge-sheet has been filed, the present appeal is liable to be dismissed, is concerned, it will be relevant to refer to the following observations of this Court, in the case of ***Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another***[7]:

> "**14.** First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] . In *Joseph Salvaraj A.* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] , this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)
>
> > "*16*. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge [*Joesph Saivaraj A. v. State of Gujarat*, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."
>
> **15.** Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 CrPC and that this Court is hearing an appeal from an order under Section 482 CrPC. Section 482 CrPC reads as follows:

7 [2018] 13 SCR 1028 : (2019) 11 SCC 706 : 2018 INSC 1060

> "**482.** ***Saving of inherent powers of the High Court.***—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."
>
> **16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court** [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. *Umesh Kumar v. State of A.P.,* (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237] . **Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court**."
>
> [emphasis supplied]

22. A similar view has been taken by this Court in the case of ***Haji Iqbal alias Bala through S.P.O.A. v. State of U.P. and Others***[8]***.***

23. In that view of the matter, contention in this regard has no merit.

CONCLUSION

24. In the result, we are inclined to allow the appeal. The order of the High Court dated 15th July 2022 in Criminal O.P. No.20716 of 2020 and Criminal M.P. No. 8763 of 2020 is quashed and set aside. The

8 2023 SCC OnLine SC 946 : 2023 INSC 688

FIR in Crime No.21 of 2020 and the consequential charge-sheet filed against the present appellant shall stand quashed and set aside.

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

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 740 : 2024 INSC 196

Naresh Kumar & Anr.

v.

The State of Karnataka & Anr.

(Criminal Appeal No. 1510 of 2024)

12 March 2024

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

Issue for Consideration

Refusal by High Court to quash criminal proceedings against Appellants/Accused arising out of a civil transaction between Appellants and Respondent No.2, if justified.

Headnotes

Code of Criminal Procedure, 1973 – s.482 – Powers of the High Court under – Quashing of FIR filed by Respondent No.2 against Appellants – Appellants, employees of a bicycle manufacturing company engaged Respondent No.2 for assembling, transporting and delivering bicycles – Respondent No.2 aggrieved by the fact of payment not being commensurate with the service rendered - FIR filed under Sections 406, 420, 506, Indian Penal Code – Subsequently, settlement arrived at between the parties – Appellants paid an additional amount of INR 26,00,000/- to Respondent No.2 as full and final settlement, duly accepted by Respondent No.2 – Payment and receipt of settlement amount not disputed by parties – Chargesheet filed against Appellants – Appellants sought quashing of the FIR and proceedings arising therefrom under Section 482, CrPC on the ground of the dispute being civil in nature – Respondent No.2 objected to settlement on the ground of it being vitiated by coercion – High Court's refusal to exercise powers under Section 482, CrPC on the ground of a *prima facie* case being made out – Challenged:

Held: Section 482 empowers High Court to prevent abuse of process and secure ends of justice – Though the power under Section 482 should be exercised sparingly, the High Court must not hesitate in quashing criminal proceedings which are essentially of a civil nature – Judgement in ***Paramjeet Batra***

* Author

v. State of Uttarakhand (2013) 11 SCC 673 relied upon – Reference to observations in ***Randheer Singh v. State of U.P. (2021) 14 SCC 626*** regarding misuse of criminal proceedings as a weapon of harassment and also ***Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90*** for exercise of the inherent powers of the High Court under Section 482 to quash civil disputes cloaked in criminal offence – High Court erred in holding that a *prima facie* case was made out based on the ground that Appellants' intention to cheat Respondent No.2 from the beginning was evident from the fact that the Appellants had cumulatively paid Respondent No.2 an amount much higher than what the latter was entitled to receive for the services rendered by him – Additional amount paid in light of the settlement, cannot be presumed as an act of cheating – Nature of dispute in present case is civil and allegation of a coerced settlement is unlikely – No FIR or Complaint by Respondent No.2 alleging coercion, amount also duly accepted by him – Mere breach of contract would not attract criminal prosecution in every case, ***Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360*** relied upon – Every breach of contract would not amount to cheating and it must be proved that fraudulent or dishonest intention to cheat existed while making the promise, as held in ***Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293*** – Present dispute was not only civil in nature but also stood settled subsequently – In the instant case, no criminal element present, only an abuse of process – Impugned Order of the High Court set aside – FIR and criminal proceedings quashed – Appeal allowed. [Para 4-8]

Case Law Cited

Paramjeet Batra v. State of Uttarakhand **(2013) 11 SCC 673;** *Sarabjit Kaur v. State of Punjab and Anr.* **(2023) 5 SCC 360;** *Vesa Holdings (P) Ltd. v. State of Kerala* [2015] 4 SCR 27 **: (2015) 8 SCC 293 - relied on.**

Randheer Singh v. State of U.P. **(2021) 14 SCC 626,** *Usha Chakraborty & Anr. v. State of West Bengal & Anr.* **2023 SCC OnLine SC 90 – referred to.**

List of Acts

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

List of Keywords

Quashing of FIR; Inherent powers of the High Court; Criminal case arising from civil dispute; Inherent powers; Criminal breach of trust; Cheating; Settlement; Compromise.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1510 of 2024

From the Judgment and Order dated 02.12.2020 of the High Court of Karnataka at Bengaluru in CRLP No.8003 of 2019

Appearances for Parties

Aman Lekhi, Sr. Adv., Abhishek Gupta, Chaitanya Mahajan, Ms. Payal Kakra, Ritwiz Rishabh, Ujjwal Sinha, Aniket Seth, Ms. Snehilsonam, Snehil Sonam, Kunal K., Ms. Ishika Jain, Advs. for the Appellants.

Anand Sanjay M Nuli, Sr. Adv., D. L. Chidananda, Ravindera Kumar Verma, Dharm Singh, Shiva Swaroop, M/s. Nuli & Nuli, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

Leave granted.

2. The appellants before this Court have challenged the order dated 02.12.2020 of the Karnataka High Court by which their petition under Section 482 of Criminal Procedure Code for quashing the FIR has been dismissed. The case of the appellants before the High Court of Karnataka was that the FIR which was instituted by the complainant i.e. respondent no. 2 is primarily a civil dispute and has no criminal element and the entire criminal proceedings initiated against the appellants is nothing but an abuse of the process and consequently, they had invoked the extraordinary powers of the High Court under Section 482 of the Criminal Procedure Code. The two appellants before this Court are the Assistant Manager (Marketing) and the Manging Director of a company, which is a manufacturer of bicycles. Respondent no.2 was given a contract, as it has been stated before this Court, for the assembly of bicycles, their transport

and their delivery, at the rate of Rs.122/- for each bicycle, and since they had assembled 83,267 bicycles, they raised invoices amounting to Rs. 1,01,58,574/- and were liable to be paid the same. However, respondent no.2 contends that instead, a payment of only Rs.35,37,390/- was given by the appellants. Hence, it was a case of criminal breach of trust and cheating and the First Information Report No. 113 of 2017 against the appellant no. 1 was filed on 24.05.2017 under Sections 406, 420 and 506 of the Indian Penal Code at P.S. Doddaballapura, Bangalore Rural District. Subsequently, a Chargesheet dated 30.05.2019, was filed in the court where both the appellants were made an accused.

3. Meanwhile, an important fact occurred, of which no importance seems to have been given by the High Court. Subsequent to the filing of FIR there is an admitted settlement between the appellants and respondent No. 2 by a Compromise Deed dated 27.12.2017 by which as a full and final settlement between the two parties, an additional amount of Rs. 26 lakhs were to be paid by the appellant, which has been duly given and accepted. This amount was deposited in the account of respondent no. 2 on 29.12.2017. This was done by the appellants in order to give a quietus to the whole situation and to bring peace, according to the appellants. Therefore, as of now, a total amount of Rs.62 lakhs as against Rs. 1,01,58,574/- which was claimed by the complainant has been admittedly paid. The case of the respondent no. 2 against the settlement dated 27.12.2017 is that the respondent no. 2 was coerced in entering into this settlement and this is not a settlement arrived at by the free will of the complainant and therefore the prosecution of the appellants is necessary under the criminal law. The High Court has refused to accept the contention of the appellants that the dispute between the parties in any case is civil in nature. The High Court was of the opinion that since the appellants had claimed that the complainant assembled only 28,995 bicycles, which would make them liable to pay only an amount of Rs.35 lakhs, but instead the appellants had paid an amount of Rs.62 lakhs which shows that the actual number of bicycles which were assembled by the complainant was much more than 28,995 bicycles, as claimed by the appellants and therefore, the appellants had an intention to cheat the complainant right from the beginning. Thus, it was held by the High Court that *prima facie* a case of cheating is made out against the appellants.

4. Having heard the learned counsel for both the parties, we are of the considered view that the findings of the High Court on this aspect are not correct. We do not agree with the findings arrived at by the High Court for two reasons. Firstly, the dispute between the parties is primarily, civil in nature. It is after all a question of how many bicycles the complainant had assembled and the dispute between the parties is only regarding the figure of bicycles and consequently of the amount liable to be paid. This is a civil dispute. The complainant has not been able to establish that the intention to cheat the complainant was there with the appellants right from the beginning. Merely because the appellants admit that only 28,995 bicycles were assembled, but they have admittedly paid an amount of Rs. 62,01,746/- to the complainant, which is of a much higher number of bicycles, would not prove that the intention of the appellants right from the beginning was to cheat. This amount i.e. the additional amount of Rs. 26 lacs have been paid by the appellants pursuant to a settlement. The reasons and the logic for arriving at a settlement are quite different. In this case it seems, it is primarily to bring a quietus to the dispute and to have peace and to avoid litigation. The mere fact that the appellants have paid an additional amount pursuant to the settlement, cannot be presumed as an act of cheating. Moreover, the complainant does not deny the fact that a settlement was reached between the parties though he says he was coerced into the settlement. He does not dispute that the additional amount paid by the appellants under the terms of the compromise deed, which is an amount of Rs.25,75,442 (after deducting TDS) was received by the complainant, as this amount has been received in a bank transaction through NEFT on 29.12.2017. The allegation that the complainant was coerced into a settlement, looks unlikely for two reasons. First, there is no FIR or Complaint that the complainant was coerced into this settlement. Secondly, this amount was duly accepted by the complainant.

5. Under these circumstances, we are of the considered view that this is a case where the inherent powers should have been exercised by the High Court under Section 482 of the Criminal Procedure Code as the powers are there to stop the abuse of the process and to secure the ends of justice.

6. In the case of ***Paramjeet Batra*** *v.* ***State of Uttarakhand (2013) 11 SCC 673***, this Court recognized that although the inherent powers of

a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

> *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court.* ***A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.****"*
>
> *(emphasis supplied)*

Relying upon the decision in ***Paramjeet Batra*** (supra), this Court in ***Randheer Singh*** *v.* ***State of U.P. (2021) 14 SCC 626***, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In ***Usha Chakraborty & Anr.*** *v.* ***State of West Bengal & Anr. 2023 SCC OnLine SC 90***, relying upon ***Paramjeet Batra*** (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

7. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in ***Sarabjit Kaur*** *v.* ***State of Punjab and Anr. (2023) 5 SCC 360****.* Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in ***Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293***, has held that every breach of contract would not give rise

to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

8. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No.113 of 2017 will hereby stand quashed.

Headnotes prepared by:
Niti Richhariya, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 747 : 2024 INSC 212

Periyasamy
v.
The State Represented by the Inspector of Police

(Criminal Appeal No. 270 of 2019)

18 March 2024

[Hrishikesh Roy and Sanjay Karol,* JJ.]

Issue for Consideration

Whether the High Court justified in affirming the judgment of trial court convicting and sentencing the accused appellant, (A-1), for the offence punishable under sections 302 & 307 of Penal Code, 1860 and accused appellant (A-2) for the offence punishable under sections 302/109 & 307/109 of Penal Code, 1860.

Headnotes

Penal Code, 1860 – s. 302 and s.307 – Trial Court convicted and sentenced appellants – Relying on ocular and medical evidence – High Court confirmed the sentence and conviction – Whether the sentence and conviction falls short of standard of beyond reasonable doubt:

Held: Trial court primarily relied on testimonies of PW-1 to PW-3 – PW-1 is an injured witness and a relative of D1 – PW-2 is also an injured witness and a neighbor of D1 – The evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter – PW-2 deposed that were about 50 persons at the scene of the crime – Then, how has the non-examination of independent witness been countenanced by the prosecution is something that escapes, or rather confounds this Court – The evidence of PW-3 appears to be fraught with contradictions – His actions not to be akin to that of a prudent man – When A-1 had allegedly broken a bottle on the head of D1, PW-3 took the injured D1 not to the hospital but to an STD booth located nearby – Why a person would "hold" a person with a grievous head injury near an STD booth and not take him to the hospital – Significant delay in recording statements of PW-1 and PW-2 – Various lapses such as these cumulatively affect the overall sanctity of the prosecution

* Author

case, making it fall short of the threshold of beyond reasonable doubt – Challenge on the grounds sustained, among others that, (a) examined private persons were interested witnesses, with inconsistencies amongst them; (b) no independent witnesses were examined; (c) there was a delay in filing the FIR; (d) there were interpolations on record; (e) there were numerous lapses in the investigation; and (f) the medical and scientific evidence on record does not support the prosecution's version of events. [Paras 31, 33, 36, 39, 41, 47,48]

Penal Code, 1860 – s. 302 and s. 307– Role of an investigating officer is that of the backbone of the entire criminal proceeding in respect of the particular offence(s) he is charged with investigating – Faulty Investigation - Examined.

Held: The investigation officer of a case is the charioteer tasked with using the resources and personnel at his disposal to ensure law and order as also that a person who has committed a crime is brought to the book – Nowhere has it come on record as to how the investigating officer (PW-22) reached the bus stand from where A-2 was arrested – who informed the authorities about A-2's movement by bus – PW-22 made two visits to the scene of the crime and that he also examined several witnesses - how is there a striking lack of independent witnesses to lend credence to the prosecution's version of events – He also did not conduct any scientific investigation at the spot of crime – The wound certificate for PW-1 and PW-2 was issued by Doctor, who had not been examined in the instant proceedings – Was it that the initial investigation was being managed so as to shield the real assailants, which could have been the complainant party themselves? – Particularly when, as the record reveals, as is so admitted by PW-22 of A-2 being a practicing advocate who has been, (i) pursuing the matters against the officials of the police station (ii) has been lodging complaints against the police officials for inaction; and (iii) had nothing to do with the ownership, management or control of the wine shop – The injured witnesses and the Investigation Officer in their testimony together are not inspiring confidence – The prosecution case stands shaken beyond a point to which no conviction resting thereupon can be said to be just in the eyes of law – appeals are allowed and the convictions accordingly set aside. [Paras 43, 44, 46, 47]

Case Law Cited

Raghbir Singh & Ors. v. State of Haryana [2008] 15 SCR 1108 **: (2008) 16 SCC 33;** *James Martin v. State of Kerala* [2003] Suppl. 6 SCR 910 **: (2004) 2 SCC 203;** *Vidhya Singh v. State of M.P.* **(1971) 3 SCC 244;** *Darshan Singh v. State of Punjab & Anr.* [2010] 1 SCR 642 *:* **(2010) 2 SCC 333;** *State of Rajasthan v. Kalki* [1981] 3 SCR 504 **: (1981) 2 SCC 752;** *Sarwan Singh v. State of Punjab* **(1976) 4 SCC 369 (3J);** *Rajesh and Anr. v. State of Madhya Pradesh* **[2023] 15 SCR 1 : 2023 SCC OnLine SC 1202 – referred to.**

Books and Periodicals Cited

Russel on Crime, 11th Edition Volume I.

List of Acts

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

List of Keywords

Standard of beyond reasonable doubt; Interested witness; Right of private defence; Independent Witness; Related Witness; Police Investigation; Star prosecution witness; Faulty Investigation; Delay in filing FIR; Delay in Examination of Witness.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.270 of 2019

From the Judgment and Order dated 26.11.2014 of the High Court of Madras at Madurai in CRLA No.240 of 2014

With

Criminal Appeal No.271 of 2019

Appearances for Parties

S. Arun Prakash, B. Balaji, Vipin Kumar Jai, Mrs. Gurinder Jai, Vipul Jai, Ms. Sanjna Dua, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol J.

1. The present appeals arise from the final judgment and order dated 26th November 2014 passed by the Madurai Bench of Madras High Court, in Crl. A. (MD) No. 238 and 240 of 2014, which confirmed the judgment and order dated 31st July 2014 in Sessions Case No. 109 of 2005 passed by the Sessions Court, Tiruchirapalli, *vide* which the present appellants, Periyasamy[1] and R. Manoharan[2] were convicted in the following terms under the Indian Penal Code[3]:

S. No	Name	Crime	Punishment Awarded
1.	A1 – Periyasamy	IPC – S.302 (2 counts)	Imprisonment for life and Rs. 1,000 fine
		IPC – S.307 (2 counts)	Rigorous Imprisonment for seven years and Rs. 1,000 fine
2.	A2 - R. Manoharan	IPC – S.302 r/w S.109 (1 count)	Imprisonment for life and Rs. 1,000 fine
		IPC – S.307 r/w S.109 (2 counts)	Rigorous Imprisonment for seven years and Rs. 1,000 fine

2. The incident in question relates to the death of two persons after being stabbed, allegedly by A-1 at the instigation of A-2. The prosecution case emerging from the record, as also set out by the Courts below, is as follows:-

2.1 On 3rd March 2002, Dharmalingam[4] had after already having procured liquor in an earlier completed transaction, half an hour later demanded more brandy on credit from the owners and

1 Hereinafter 'A-1'

2 Hereinafter 'A-2'

3 Hereinafter 'IPC'

4 Hereinafter 'D1'

workers of Saravana Wine Shop located in Neithalur Colony. A quarrel arose, and a showcase of the shop was smashed, and the bottles stored therein were damaged. In this course of events, it is alleged that D-1 retrieved a knife and stabbed one Thangavel[5] (one of the owners of the shop). A-1, with a knife, caused fatal injuries to D-1. He also stabbed Sakthivel (son of Muthuveeran)[6] in his stomach repeatedly. When D-2 intervened to prevent the attack, A-1 stabbed him. While the injured persons were being taken to hospital, on the way, both D-1 and D-2 succumbed to injuries.

2.2 Sakthivel, who was injured in the incident, reported it to A. Rajasekar (PW-20), a Police Inspector at the Hospital. Upon this statement, FIR no. 87/2002 came to be registered. Upon investigation on 1st July 2004, charges were framed against A-1 and A-2, as indicated in the above table.

Trial Court Findings

3. In order to prove the charges, the prosecution examined 22 witnesses; exhibited 33 documents and nine material objects. To repel the charges, the defence produced a solitary witness and three documents.

4. The Trial Court has relied on ocular and medical evidence to establish the charges against the accused persons. PW-1 and K. Sakthivel, son of Kaathaan[7] (PW-2) both deposed that in the quarrel between the deceased and accused persons, though they tried to pacify the situation, A-2 handed a knife to A-1 with which the latter stabbed the deceased persons.

5. The Learned Trial Court found no substance in the challenge put forth by the defence attempting to shake the prosecution's case. A-1 was held guilty on two counts of Section 302, IPC, i.e., for the murder of D-1 and D-2; A-2 was held guilty on one count only, i.e., for abetting the murder of D-1.

6. The charges of attempt to murder were found to be proven against both A-1 and A-2. It relied on the evidence of PW-1, PW-2, and PW-3

5 Hereinafter 'D2'

6 Hereinafter 'PW-1

7 Hereinafter 'PW2'

to hold that A-2 instigated A-1 to attack the deceased. The learned Trial Court observed that the injuries sustained by PW-1 and K. Sakthivel (PW-2) were of such a nature that the act of the accused would be termed as an act of attempt to murder.

High Court Findings

7. The High Court, in appeal, was faced with the question of the absence of the name of A-2 in the FIR. Having referred to certain decisions of this Court, it was observed that simply because the name was not mentioned in the FIR, an accused can not be absolved of liability for having committed the offence. The next question considered by the Court with respect to A-2 was his involvement or lack thereof in the occurrence of this offence. The argument on his behalf relies on the fact that PW-1's statement did not mention him, and neither did Exhs. P-6 and P-11, was considered unworthy, keeping in view the testimonies of injured eyewitnesses PW-1 and PW-2 as also the statement of PW-3 under Section 161 (3) of the Code of Criminal Procedure, 1973; it was held that the involvement of A-2 stood proved beyond reasonable doubt.

8. For A-1, three primary arguments were put forth, i.e., Dr. Radhakrishnan[8] (PW-17) Doctor at Seahorse Hospital did not give evidence in regard to the surgical procedure undergone by PW-1; the injuries faced by A-1 were not sufficiently explained by the prosecution; and about the occurrence, the owner of the wine shop stood not examined.

9. It was observed that the genuineness of the statement made by PW-1 to the police could not be doubted as he had told PW-17 that he was a victim of an attack by A-1. Such genuineness stands buttressed by the fact that the document reached the court on the same day.

10. On A-1's injuries being unexplained, it was observed that the same would not be sufficient to dispel the entire prosecution case. Reference was made to ***Amar Malla*** v. ***State of Tripura***[9]**.** It was held that since both PW-1 and PW-2 are consistent on facts, including the place of occurrence, as also the same being an admitted fact,

8 Hereinafter 'PW-17'

9 (2002) 7 SCC 91

the contention in that regard on behalf of A-1 has to be negatived. Given that the presence of the owner of the shop has nowhere been mentioned, his non-examination cannot be termed fatal to the prosecution case.

11. In such terms, the High Court confirmed the conviction and sentence handed down by the Trial Court as regards A1 and A2.

Submissions

12. The present appeals are a challenge to the judgments of the Trial Court and High Court. We have heard Mr. S Nagamuthu, learned senior counsel, Mr. S. Arun Prakash for A-1, and Mr. Vipin Jai for A-2. Dr. Joseph Aristotle S. was heard for the State.

Contentions on behalf of A-1

13. The primary ground urged on behalf of A-1 was that nearly all witnesses were "*interested*" in the case's outcome and, therefore, unreliable; and none of the witnesses examined were independent. Further, it was canvassed that the delay in lodging the FIR stands unexplained, more so when the medical evidence does not speak of PW-1 having undergone surgery. Also, it must be noted that there was no prior animosity or reason for discord. The events as they unfolded were the result of a spur-of-the-moment quarrel in which he also sustained grievous injuries. The right of private defence has also been pleaded as an alternate argument.

Contentions on behalf of A-2

14. It was argued on behalf of A-2 that his presence at the scene of the crime was never established. Four limbs of A-1's arguments, i.e., delay in lodging the FIR; almost all witnesses qualifying as "*interested witnesses*"; there being no enmity between the involved persons; and the lack of independent witnesses, were adopted by A-2.

Submissions on behalf of the Respondent

15. The respondent has filed detailed submissions which attempt to discredit as a whole the submissions on behalf of the accused persons. In doing so, the State relied on various judgments from this Court. We have perused the written submissions filed and also examined the cases referred.

Consideration and Conclusion

16. The question that we are called upon to decide is whether, in the sum total of facts, circumstances, and the law applicable, the convictions handed down to A-1 and A-2 are based on the standard of beyond reasonable doubt having been met and, therefore, are sustainable.

17. It would be apposite for this Court to consider the law on the various facets of the penal laws of the land, involved in this case.

The Right of Private Defence

18. A-1 has contended that his actions were covered under the ambit of the right of private defence. The principle is best captured in the following words found in Russel on Crime, 11th Edition Vol.I

> "... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable".

19. The right of private defence is not defined under the IPC. Whether under the circumstances of each case, such a right is available or not is determined within the said boundaries only. No test in the abstract can be laid down for determining whether a person legitimately acted in private defence. The law only provides that the person claiming such a right bears the onus[10] to prove the legitimacy of the actions done in furtherance thereof and it is not for the Court to presume the presence of such circumstances or the truth in such a plea being taken. (See: **Raghbir Singh & Ors. v. State of Haryana**[11].) The burden on the person pleading the right of private defence has been succinctly explained in ***James Martin v. State of Kerala***[12]**.** This right has been held to be "*very valuable, serving a social purpose*"

10 Section 105 Indian Evidence Act 1872

11 [2008] 15 SCR 1108 : (2008) 16 SCC 33

12 [2003] Suppl. 6 SCR 910 : (2004) 2 SCC 203

and, therefore, it should not be construed narrowly. (See: ***Vidhya Singh* v. *State of M.P.***[13])

20. This Court has summarised the principles in regard to the exercise of right of private defence in ***Darshan Singh v State of Punjab & Anr.***[14] as referred to in ***Sukumaran v State***[15]

> *"(i)* Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.
>
> *(ii)* The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
>
> *(iii)* A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
>
> *(iv)* The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.
>
> *(v)* It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
>
> *(vi)* In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
>
> *(vii)* It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

---

13 (1971) 3 SCC 244

14 (2010) 2 SCC 333

15 (2019) 15 SCC 117

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

However, this Court will only enter into the question of applicability of the right of private defence if the primary submission of complete acquittal fails, for it has been submitted by Mr. Nagamuthu, learned senior counsel that this submission is an alternate to the arguments advanced by Mr. S. Arun Prakash, learned counsel for A-1.

Independent and Related or Interested Witnesses

21. It is a well-recognised principle in law that the non-examination of independent witnesses would not be fatal to a case set up by the prosecution. The difference between a witness who is "*interested*" and one who is "*related*" stand explained by a Bench of three learned Judges in ***State of Rajasthan v. Kalki***[16]

> "**7.** …"Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested."

We may refer to the observation in ***Sarwan Singh* v. *State of Punjab***[17] as under to appreciate the evidentiary value of such testimonies: –

> "...Moreover, it is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of

16 [1981] 3 SCR 504 : (1981) 2 SCC 752

17 (1976) 4 SCC 369 (3J)

> an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness…"

In other words, if witnesses examined are found to be '*interested*' then, the examination of independent witnesses would assume importance.

Faulty Police Investigation

22. Recently, this Court in ***Rajesh and Anr.* v. *State of Madhya Pradesh*** (**3-Judge Bench**)[18], while setting aside the conviction of the three Appellants therein, remarked:

> "**39**. Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S. Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus:
>
> > 'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which

18 2023 SCC OnLine SC 1202

> is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. ……The standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that "during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation". Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases…..'
>
> **40.** Echoing the same sentiment in its Report No. 239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day. This is a case in point…."

23. A perusal of the judgment of the Trial Court shows that for both counts before it, reliance primarily has been placed on PW-1 to PW-3. Apart from these three-star prosecution witnesses, the Investigating Officer (PW-22), by virtue of having been "*in the driver's seat*" of the case, acquires importance. The salient points that can be appreciated from an assay of their respective testimonies may be referred to as follows:-

23.1 PW-1 is Sakthivel, S/o Muthuveeran. It was stated that upon information that D-1 and Senthilkumar were quarreling with the owner of the wine shop, he and Sakthivel, S/o Kathan rushed to the shop. It is there that upon the instigation of A-2, who handed A-1 a knife he stabbed the witness thrice in the stomach of PW-1 and PW-2, D-1, and D-2 as well. SI, Kulithalai, interrogated him at 4.30 a.m. on 4th March 2002, and the statement made thereunder is Exh.P-1. In his cross-examination, it has come forth that upon his arrival at Seahorse Hospital by 10:00 p.m., he was conscious, and it is upon administration of anesthesia for surgery that he became unconscious. Regarding the location of a wine shop, it has been deposed that the same is located in a crowded area and has a regular stream of visitors in and around the area.

23.2 With respect to A-2, it has been deposed that whether or not he was an owner of the wine shop is unclear, but he certainly was a visitor.

23.3 However, he contradicts his earlier version that upon reaching the hospital, he was not in a position to speak and had not informed the doctor of the incident, and instead, it was the people who accompanied him who briefed the doctor.

24. Sakthivel, S/o Kathan (PW-2) stated that A-1 stabbed him in the stomach twice, which was at the instigation of A-2. According to this witness, A-1, A-2, and D-2, along with other persons, worked in the wine shop. His statement was recorded in the evening after the incident. He states that the showcase upon his reaching the wine shop was intact. Further, D-1 was under the influence of alcohol when PW-2 saw him, but, significantly, D-1 had not stabbed A-1, and as such, no blood was seen on the hands of A-1.

25. Senthilkumar (PW-3) states that he was interrogated the morning after the incident at 7.30 a.m. His deposition reveals him not to know as to whether D-1 (Dharmalingam) was in a state of intoxication before going to the wine shop. Nor has he seen the showcase of the shop in a broken condition.

26. The learned Trial Court found sufficient evidence to convict both A-1 and A-2 based on these three testimonies.

27. K. Raajasekar (PW-22) (the Investigating Officer) at the relevant time Inspector of Police, Kulithalai, took charge of the investigation

of the incident on 4th March 2002. In his examination-in-chief, he has described how the investigation proceeded. It was deposed that on 5th March 2002 at about 12 noon, he arrested A-2 from the Pettavaithalai bus stand. He also deposed, having visited the scene of the crime twice and interrogated several witnesses. On 9th April 2002, he examined the witnesses (medical evidence) who had allegedly furnished wound certificates for A-1 and A-2. Further witnesses were examined on 10th July 2002, and a chargesheet was filed on 15th July 2002.

28. It is undisputed that PWs 1 and 2 are injured witnesses. It is a well-established principle of law, not requiring any underscoring or reiteration, that the evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter.

29. The learned Trial Court observed that for the reasons, ***(a)*** that the witnesses had nothing to gain from deposing against the accused persons; ***(b)*** there is no suggestion that any rival business interest was to be benefitted by Sarvana Wines being embroiled in the controversy; ***(c)*** A-2 was in fact a "*good Samaritan*" ; ***(d)*** that the witnesses were deposing the accused persons at the behest of the police being an unsubstantiated claim; and ***(e)*** that the witnesses cannot be said to be "*interested*". The concept of interested witness, as referred to hereinabove, shows that for a person to be such, he ought to have an interest in seeing the accused persons punished.

30. There is a direct statement by PW-1 that D-1 was his relative, i.e., son of his paternal uncle. D-2 was a relative of the owner of the wine shop, who, according to him, was A-1, but in another instance, he states that A-1 was only a worker. In respect of A-2, the only statement is that it was upon his instigation that A-1 stabbed them.

31. It is hard to conceive how the Trial Court concluded that despite being the first cousin of D-1 and himself a person injured in the incident, PW-1 was not an interested witness. Further, we find a categorical statement that, "*the wine shop is in the main road*" and "*the wine shop would be crowded always*". In such a situation, the joining of independent witnesses ought not to have been a difficult task but, yet, it remained unachieved.

32. Further, we note that he admits variation in his statement (Exh.P-1) in different ink and hand. He further states that there wasn't much

light at the spot of the incident, but then denies it to be "*too dark*" when the occurrence has happened.

33. This Court has to strike a balance between the testimony of the injured witness and that of an interested witness. It is also not a case that PW-1 was a natural witness, as he stated that he had not been to the wine shop and was only near the STD booth where the ensuing quarrel was separated. In striking the above-stated balance, other factors must also be considered, which will be discussed subsequently.

34. PW-2 was a neighbour of D-1. Upon being informed of the quarrel between A-1 and D-1, he and PW-1 allegedly went there and separated the parties. He claims to be an eyewitness to the incident. After having undergone surgery, he regained consciousness the next day at 6.30 a.m.

35. It was that evening when the police recorded his statement. At the time of recording these statements in Court, i.e., 14th November 2005, a separate case preferred by the accused persons was under trial and PW-2 was made an accused thereunder. Now, having been made an accused in a case, as also having been injured with two stabs in the stomach and additionally being the neighbour of D-1, it is difficult to reconcile that PW-2 would be a witness of unquestionable integrity upon whose statement convictions can be based. Once again, we find that in regard to A2 the only thing stated is that upon the instigation of A-2, A-1 stabbed them. There is no other statement as to what may have been said by A-2 to enrage him enough that even after the quarrelling parties were separated and they had dispersed in their respective directions, A-1 went ahead angrily and repeatedly stabbed them.

36. He has also deposed that there were about 50 persons at the scene of the crime, then, how has the non-examination of independent witness been countenanced by the prosecution and "*approved*" by the Courts below, is something that escapes us, or rather confounds us.

37. Another essential aspect to be examined is that the statement of PW-1 was recorded at 4.30 a.m. on 4th March 2002 wherein as summarised above, he has clearly mentioned the role of PW-2, however, the latter's examination by the police was only at 5.00 p.m., that too when per his own statement he had regained consciousness from his surgery at 6.30 a.m. itself. This gap is entirely unexplained and wholly overlooked by the Courts below.

38. Coming to the version of PW-2 again, we notice him to be extremely evasive on the issue as to whether the police had visited the spot in the night intervening 3/4th March 2002 or not. He denies being interrogated by the police before 4th March 2002 till about 5.00 p.m. He admits having visited a private hospital and, yet, as discussed earlier, failed to report the matter to the police, more so the cause of injuries sustained by him or for that matter others present on the spot.

39. The evidence of PW-3, upon which the counsel has laid considerable emphasis for the respondent, appears to us to be fraught with contradictions. In his examination-in-chief, it is recorded that D-1 had asked A-2 and A-1 for a bottle of liquor on credit, which the latter two refused and scolded him, upon which he pushed down the showcase, leading A-1 to grab a beer bottle and break it on the head of D-1. When he was cross-examined he deposed as follows:

> "The police recorded what all I have stated and obtained my signature. It is not correct to state that Dharmalingam asked 1st Accused in the wine shop to provide bottle on credit; that as he has refused, Dharmalingam picked up the quarrel, pushed the show case and broken into pieces; that Thangavel appeared there to question it; that we and Dharmalingam stabbed his relatives and Thangavel;…."

40. As is apparent, he states, for one, that D-1 had indeed broken the showcase but subsequently states that to depose the same would be incorrect. Furthermore, we find his actions not to be akin to that of a prudent man. When A-1 had allegedly broken a bottle on the head of D-1, PW-3 took the injured D-1 not to the hospital but to an STD booth located nearby, where a quarrel ensued between him and A-1, which was eventually separated by PWs 1 and 2. Even more so, when A-1 was allegedly stabbing PW-2, he was still at the STD booth with D-1, yet not having gone to the hospital and also not having made any attempt to stop such stabbing. Why a person would "*hold"* a person with a grievous head injury near an STD booth and not take him to the hospital or, additionally, not try and stop others from being grievously injured is something that compromises, in our mind, the credibility of the version of PW-3.

41. Apart from the three star witnesses of the prosecution, in our considered view, failing the standard of scrutiny applied to a criminal proceeding, a perusal of the records reveals another facet,

compromising in nature to the prosecution case. It has come forth in the evidence of PW-1 that upon his arrival at the hospital, he was in a conscious state, so why the recording of the statement delayed till 4.30 a.m. is unsubstantiated. This is further so because while PW-1 speaks of being operated upon, none of the witnesses examined as medical witnesses corroborate such a statement. For emphasis, we may refer to the statement of PW-17, the medical officer in the Seahorse Hospital, at the relevant time. He stated that upon admission, PW-1 was fully conscious. The wound certificate was issued by Dr. Pon Shanthi, who has not been examined.

42. The delay therefore renders the circumstances questionable. Also, as we have alluded to earlier, there is a significant gap in the examination of PW-2 as well. For all the aforesaid reasons, it cannot be said that the prosecution had succeeded in establishing its case against the two accused persons beyond reasonable doubt warranting a conviction under Section 302 IPC.

43. We further examine the role of the I.O. The investigation officer of a case is the charioteer tasked with using the resources and personnel at his disposal to ensure law and order as also that a person who has committed a crime is brought to the book. In other words, the role of an investigating officer is that of the backbone of the entire criminal proceeding in respect of the particular offence(s) he is charged with investigating. A perusal of his testimony reveals certain problematic statements. Nowhere has it come on record as to how the investigation reached the bus stand from where A-2 was arrested – who informed the authorities about A-2's movement by bus? Further, he has deposed that he made two visits to the scene of the crime and that he also examined several witnesses. Then how is there a striking lack of independent witnesses to lend credence to the prosecution's version of events? He does not know where D-1 had expired. How? He also did not conduct any scientific investigation at the spot of crime. Such an investigation carried out most casually and callously is sought to be made the basis by the police in seeking the conviction of the accused.

44. Another direct contradiction concerns his examination of the doctors who allegedly gave wound certificates for PWs 1 and 2. In the testimony of PW-17, it is clear that he was not the one who gave the wound certificate as he was only on duty from 9 a.m. to 9 p.m., and

PW-1 was brought to the hospital at 10 p.m. The wound certificate was issued by Dr. Pon Shanthi, who had not been examined in the instant proceedings.

45. For the charges under Section 307 IPC, the learned Trial Court also considered the evidence of PWs 1, 2, and 3. We have considered the evidence of these three witnesses in detail and are of the opinion that for the reasons afore-stated, the said witnesses cannot be relied upon.

46. In addition to the person who led the investigation, we must consider the testimonies of the people who aided in it.

46.1. PW-20 was the Sub-Inspector, Kulithalai Police Station, at the relevant time. His testimony appears to be evasive and full of improvements, needing to explain the material interpolations on the medical record. He admits not having recorded any information received from the Seahorse Hospital on the night of 3rd of March, 2022 at 11.00 hours. He admits not to have added a version in the sentence - Exhs. P-1 and P-24, which, as we notice, record the name of the assailant. He admits the jurisdictional police station to carry out the investigation, was not his (Tirupathur Town Police Station) but only Kulithalai. He admits that neither he nor any one of the police officers from any of the police stations visited the spot till the morning after the date of the incident, despite the travel distance being less than half an hour. No explanation is forthcoming as to why one of the most essential aspects of the criminal investigation was ignored or delayed. We notice the witness to have admitted having informed the details of the incident both to the Deputy Superintendent of Police and K. Rajasekar (PW-22). Was it that the initial investigation was being managed so as to shield the real assailants, which could have been the complainant party themselves? Or was it that the police were trying to frame the accused? Particularly when, as the record reveals, as is so admitted by PW-22 of A-2 being a practicing advocate who has been, ***(i)*** pursuing the matters against the officials of the police station; ***(ii)*** has been lodging complaints against the police officials for inaction; and ***(iii)*** had nothing to do with the ownership, management or control of the wine shop.

46.2. There is yet another disturbing feature emanating from his statement. Why is it that the police used a private vehicle for carrying out the investigation, as was admitted by this witness in any case, whose owner and driver in any event not examined during trial or investigation? The prosecution doesn't contend that at the relevant time, no government vehicle was available at the police station or that the said private vehicle was hired by them. It is also significant that PW-21 admits that PW-1 had not named A-2 in his statement, and, PW-22 when speaking about A-2, only states, "*On 5.3.2002 at 12.00 noon, I arrested the accused Manoharan at Pettavaithalai Bus Stand after enquired sent him to the Court Custody on the same day*."

46.3. In respect of PW-21, we find him to have not denied but feigned ignorance of the fact that Sundaravadivel had held Paramasivam S/o Kaalimoopan against whom a false case stood fastened by Inspector Sundaravadivel, under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982[19] . He only states that "*being an Advocate the 2nd accused came to the area police stations*." This in no way discloses what led either PW-22 or him to suspect and thence, act on the complicity of A-2 in the crime.

47. Various lapses such as these cumulatively affect the overall sanctity of the prosecution case, making it fall short of the threshold of beyond reasonable doubt. It is in such circumstances, on analysis of the record, that we are unable to sustain the conviction handed down by the Courts below to A-1 and A-2. The injured witnesses and the Investigation Officer in their testimony together are not inspiring confidence, and in our own estimation the prosecution case stands shaken beyond a point to which no conviction resting thereupon can be said to be just in the eyes of law.

48. We sustain the challenge on the grounds, among others that, ***(a)*** examined private persons were interested witnesses, with inconsistencies amongst them; ***(b)*** no independent witnesses were examined; ***(c)*** there was a delay in filing the FIR; ***(d)*** there were interpolations on record; ***(e)*** there were numerous lapses in the

19 Hereinafter referred to as 'Goondas Act'

investigation; and ***(f)*** the medical and scientific evidence on record does not support the prosecution's version of events.

49. During the course of submissions on behalf of A-1, the learned senior counsel appearing on his behalf had urged the right of private defence as a secondary submission, in the event of the arguments in favour of complete acquittal on finding favour with the court. Given that, upon consideration and analysis of the submissions made and the material on record, we have found that the convictions cannot stand in the eyes of law, we need not delineate on that submission.

50. In that view of the matter, the appeals are allowed and the convictions subject matter thereof, are accordingly set aside. Both appellants are directed to be released forthwith, if not required in any other case. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by:
Gaurav Upadhyay, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)

Result of the case:
Appeals allowed.

[2024] 3 S.C.R. 767 : 2024 INSC 211

Ravinder Kumar
v.
State of NCT of Delhi

(Criminal Appeal No. 918 of 2024)

06 March 2024

[B.R. Gavai* and Sandeep Mehta, JJ.]

Issue for Consideration

1) Whether circumstantial evidence is sufficient to convict the accused; 2) Whether burden of proof u/s. 106 Evidence Act can be on accused before the prosecution proves its case; 3) Whether recovery pursuant to statement made u/s. 27 Evidence Act can be admissible, when recovery was from a place known to all and not exclusively within knowledge of maker.

Headnotes

Penal Code, 1860 – s. 302 - Conviction based on circumstantial evidence – Evidence Act, 1872 – ss. 106, 27 – Appellant's wife found dead with throat slit – Appellant convicted by trial court for offences punishable under ss. 302, 304B/34, 498A/34 IPC – High Court set aside conviction under ss. 304B/34 but sustained under ss. 302, 498A/34 IPC – Prosecution relying on circumstantial evidence to sustain conviction under s. 302 – Courts below found: (i) plea of alibi without substance (ii) bloodstained clothes recovered at Appellant's parental home (iii) English calendar with Appellant's name found in the house (iv) Appellant created a scene in the house so as to make it seem like robbery.

Held: (1) When prosecution case relies on circumstantial evidence, circumstances from which conclusion of guilt is to be drawn should be fully established – Accused 'must be' and not merely 'may be' guilty – Facts so established should be consistent only with guilt of accused, not explainable on any another hypothesis – Chain of evidence must be so complete to show beyond reasonable doubt that act was committed by accused – (2) Before burden shifts on accused under s. 106 Evidence Act, prosecution has to establish before death occurred, deceased and accused were seen in the house- more so when accused raises specific plea of alibi – (3) For recovery to be admissible on statement made under S. 27

* Author

Evidence Act, recovery must be from place exclusively within knowledge of maker – In present case, recovery was from place accessible to all [Paras 8, 9, 10 11, 13, 17].

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra [1985] 1 SCR 88 **: (1984) 4 SCC 116 : 1984 INSC 121 – relied on.**

Trimukh Maroti Kirkan v. State of Maharashtra [2006] Suppl. 7 SCR 156 **: (2006) 10 SCC 681 : 2006 INSC 691 – relied on.**

List of Acts

Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Principles of Circumstantial evidence; S. 106 Evidence Act; Burden of proof – Alibi; Recovery under S. 27 Evidence Act, when admissible.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 918 of 2024

From the Judgment and Order dated 12.10.2015 of the High Court of Delhi at New Delhi in CRLA No.287 of 2015

Appearances for Parties

Ms. Neha Kapoor, Kaushal Mehta, Pulkit Srivastava, Ankit Bhutani, Advs. for the Appellant.

Rajan Kumar Chourasia, Mukesh Kumar Maroria, Nachiketa Joshi, P V Yogeshvaran, Udai Khanna, Vishnu Shankar Jain, Sachin Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. This appeal arises against the judgment and order passed by the Division Bench of the High Court of Delhi at New Delhi on 12th

October, 2015 in Criminal Appeal No.287 of 2015, thereby dismissing the appeal filed by the appellant herein.

2. The facts in brief leading to the filing of the present appeal are as under:

2.1 Deceased-Meena, daughter of Mani Ram (PW.3) and Gyanwati (PW.6), got married to the appellant-Ravinder Kumar (accused No.1) on 20.06.1999. A male child named Harry was born out of the said wedlock on 26.08.2000. On 27.04.2001, at 0055 hours, a First Information Report ("FIR" for short) bearing No.129/2001 (Ext. PW-9/A) was registered at the instance of deceased-Meena in the Police Station Civil Lines, Delhi for investigation into the offence under Section 498-A of the Indian Penal Code, 1860 (for short. 'IPC'). In the said FIR, deceased-Meena made allegations with regard to cruelty made by her husband-Ravinder Kumar (accused No.1) and his two brothers, namely, Pushpender Singh (accused No.2) and R. Harshinder (accused No.4) during her stay at the matrimonial home at H.No.252, Old Chandrawal, Civil Line, Delhi. In the said FIR, after completion of the investigation a Report under Section 173 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') was submitted. However, it appears that there was a compromise between the parties and she made a statement before the Metropolitan Magistrate (Mahila Court), Delhi that she does not want to proceed with the case any further. She further stated that she has no grievance against the accused persons and that the complaint had been made by her out of frustration and anger. She had also stated that she was living separately with her husband and child happily, as such criminal proceedings were terminated and the accused were discharged vide judgment dated 21.10.2003.

2.2 On the morning of 29.05.2004, dead body of Meena was discovered at about 0820 hours lying in a pool of blood on the floor of the room on the ground floor, her throat slit with a sharp edged weapon and her son Harry aged about three and a half years was found sitting nearby.

2.3 The FIR No.211/04 (Ext. PW-1/A) came to be registered for the offence punishable under Section 302 IPC on the basis of *rukka* (Ex.PW-15/B) sent by Sub Inspector Ram Chander (PW.15). The FIR was later converted into a case involving for offence punishable under Section 304-B/498-A/34 of the IPC

on the basis of the statements made by Mani Ram (PW.3), Shiv Kumar (PW.4) and Gyanwati (PW.6), father, brother and mother of deceased Meena respectively.

2.4 On conclusion of the investigation, charges were framed against Ravinder Kumar (accused No.1), the husband of the deceased, Babu Lal (accused No.4), who is the father-in-law of the deceased, Phoolwati (accused No.3), who is the mother-in-law of the deceased and Pushpender (accused No.2) and R. Harshinder (accused No.5), who are the brothers-in-law of the deceased. At the conclusion of the trial, by judgment and order dated 25.11.2014/08.01.2015, the Addl. Sessions Judge-02, North District, Rohini Courts, Delhi (hereinafter referred to as "trial court") convicted the appellant herein for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment with a fine of Rs.25,000/-. All the accused were sentenced to undergo rigorous imprisonment for ten years with fine of Rs.20,000/- for the offences punishable under Section 304B/34 IPC and rigorous imprisonment for three years with fine of Rs.25,000/- each for offence under Section 498A/34 IPC with further direction that in case of default in payment of fine they would undergo rigorous imprisonment for six months and three months respectively.

2.5 Being aggrieved thereby, two criminal appeals came to be preferred by the convicted persons. Mani Ram (PW.3), the father of the deceased also filed an independent appeal being Criminal Appeal No.569 of 2015, being aggrieved by the acquittal of accused Nos.2 to 5 for the offences punishable under Section 302/34 IPC. The appeals were heard together. The High Court, vide impugned judgment and order dated 12th October 2015, held the appellant herein and Pushpender (accused No.2) guilty for the offence punishable under Section 302 read with Section 34 IPC. The conviction and sentence of the appellant herein and Pushpender (accused No.2) was set aside for the offence punishable under Section 304B read with Section 34 IPC while maintaining the sentence awarded by the trial court to the appellant for the offence punishable under Section 302/34 IPC. The High Court also sentenced Pushpinder (accused No.2) to undergo life imprisonment with fine of Rs.25,000/- for the offence punishable under Section 302/34 IPC. In case of

default in payment of fine, he was directed to undergo rigorous imprisonment for three months. The conviction of Phoolwati (accused No.3), Babu Lal (accused No.4) and R. Harshinder (accused No.5) for the offence punishable under Section 304-B read with Section 34 IPC and conviction of all accused for offence under Section 498-A read with Section 34 IPC and sentences awarded thereagainst were maintained.

2.6 Babu Lal (accused No.4), who is the father-in-law of the deceased had preferred Criminal Appeal No.2025 of 2017 before this Court. Since Phoolwati (accused No.3), who is the mother-in-law of the deceased died during the pendency of the appeal, the appeal came to be abated against her. In the said appeal, insofar as Babu Lal (accused No.4) is concerned, though this Court did not find any ground to interfere with the conviction passed by the trial court and the High Court, it reduced the sentence for the period already undergone by accused No.4-Babu Lal.

2.7 Pushpender (accused No.2) had preferred Criminal Appeal Nos.938-939 of 2016. This Court, vide order dated 15th February 2022 partly allowed the appeals and set aside the conviction and sentence recorded against Pushpender (accused No.2) for offence punishable under Section 302 IPC, however it restored the conviction and sentence in respect of offences under Sections 304B and 498A read with Section 34 IPC.

2.8 Insofar as R. Harshinder (accused No.5) is concerned, he had preferred Criminal Appeal No.244 of 2022. His appeal was also partly allowed by reducing the sentence to the period already undergone by him, vide order dated 15th February 2022.

2.9 After the aforesaid appeals were decided, the appellant herein has preferred the present appeal in October, 2023. Leave was granted in this matter on 13.02.2024.

3. We have heard Ms. Neha Kapoor, learned counsel for the appellant and Mr. Rajan Kumar Chourasia, learned counsel for the respondent.

4. Ms. Kapoor submits that the conviction is based on circumstantial evidence. She further submits that no incriminating circumstances have been proved against the appellant beyond reasonable doubt. She submits that insofar as recovery of the bloodstained clothes is

concerned, it is found at a place accessible to one and all and she further submits that the recovery panchnama also does not mention the date of recovery. She therefore submits that, the conviction under Section 302 IPC is not at all tenable.

5. Ms. Kapoor further submits that even the conviction under Section 304B and 498A would not be tenable. She submits that the matter was compromised between the deceased and the accused. It is submitted that taking into consideration the above aspect, the amended charge came to be framed on 14.03.2007, restricting the claim with regard to cruelty only for the period between 21.10.2003 and 29.05.2004 i.e. from the date of the discharge by the learned Magistrate in the earlier proceedings till the date on which Meena was found dead. Ms. Kapoor further submits that during this period there is no allegation against the appellant herein, which would attract the provisions of Section 498A IPC. It is submitted that the prosecution fails to prove the guilt. The conviction under Section 304B IPC would also not be tenable.

6. Shri Rajan Kumar Chourasia, learned counsel appearing for the respondent, on the contrary, submits that both the Courts, upon correct appreciation of evidence, have concurrently found the appellant herein guilty for the offence punishable under Section 302 IPC. It is, therefore, submitted that no interference is warranted with the conviction recorded under Section 302 IPC. It is submitted that insofar as conviction under Section 498A and 304B IPC are concerned, the same has been affirmed by this Court in the case of three co-accused persons, as such the said finding has attained finality.

7. With the assistance of the learned counsel for the parties, we have scrutinized the evidence.

8. Undoubtedly, the case of the prosecution rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1], wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature,

1 (1984) 4 SCC 116 : 1984 INSC 121

character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a

legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (*3*) the circumstances should be of a conclusive nature and tendency,
>
> (*4*) they should exclude every possible hypothesis except the one to be proved, and
>
> (*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

9. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been

held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

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

11. In the light of the aforesaid judgment, we have examined the present case. In the present case, the trial court and the High Court have basically convicted and affirmed the conviction under Section 302 IPC, finding the plea of the alibi to be without substance. It is a settled proposition of law that before the burden shifts on the accused under Section 106 of the Evidence Act, the prosecution will have to prove its case. No doubt that in view of the law laid down by this Court in the case of ***Trimukh Maroti Kirkan v. State of Maharashtra***[2], which is a case like the present one, where husband and wife reside together in a house and the crime is committed inside the house, it will be for the husband to explain how the death occurred in the house where they cohabited together. However, even in such a case, the prosecution will have to first establish that before the death occurred, the deceased and the accused were seen in the said house. In the present case, the incident had occurred on the intervening night of 28th/29th May, 2004. It was necessary for the prosecution to lead some evidence to establish that on the night of 28th/29th May 2004, deceased and accused were together in the house. This will be more necessary in view of the specific plea of the defence of alibi.

12. We will have to consider as to whether the prosecution has established other circumstances beyond reasonable doubts, which led to no other conclusion than the guilt of the accused.

2 (2006) 10 SCC 681 : 2006 INSC 691

13. The prosecution has relied upon the CDRs with regard to mobile phone of the Saroj, Pushpender (accused No.2) and Ravinder Kumar (accused No.1). However, both the Courts found the said evidence to be inadmissible as it was not proved in terms of Section 65A of the Evidence Act. The circumstances relied upon by the prosecution is with regard to the seizure of the bloodstained clothes allegedly used by the appellant at the time of commission of the crime beneath the double bed from his parental home at Chandrawal. We find that the said recovery cannot be relied for more than one reasons. For a recovery to be admissible on the statement made under Section 27 of the Evidence Act, it has to be from such a place which is exclusively within the knowledge of the maker thereof. Indisputably, the recovery is from a place accessible to one and all and the recovery panchnama also does not mention the date regarding such a recovery. Apart from that, there is no entry in malkhana register with regard to the deposit of the said articles and sending them to the FSL for chemical examination. We, therefore, find that the said circumstances cannot be said to be proved beyond reasonable doubt.

14. Apart from that, the prosecution has not been in a position to prove any other circumstance beyond reasonable doubt. The trial court and the High Court have heavily relied on the circumstance that an English calendar (Ex. PX) was found to be hanged in the room. On one side, two sheets of paper both similar computer print outs has been pasted. On one of the sheets, on the left top corner, the name Ravinder followed by mobile telephone number 9818419048 preceded by a drawing of mobile phone with arrow sign, all written in hand can be noticed. On the other sheet pasted on the top, above the calendar, it was printed thus:-

> "In-Laws: 2791 3334
>
> Self: 9818419048
>
> My Home: 55153285"

15. It has been held that the appellant had hung calendar (Ex.PX) on the wall of the house, where he was residing and the calendar (Ex. PX) would catch the attention of anybody entering the house. It was held that it was deliberate and had an objective. It was also held that Chandrawal house was qualified by the expression "my home"

and the house where the other phone was functional as that of his "in-laws". The High Court observed thus:-

> "...The phone number of Chandrawal house was qualified by the expression "my home" and the house where the other phone (27913334) was functional as that of his "In-laws"

16. With this finding and coupled with the finding that in the house the appellant has created a scene so as to make it seem like a robbery, it was held that it was only the appellant who was guilty for commission of murder of his wife.

17. We are of the considered view that the High Court has failed to draw a distinction between the "may have committed the crime" or "must have committed the crime", as held by this Court in the case of ***Sharad Birdhichand Sarda*** (supra). As held by this Court, the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. We, therefore, find that the prosecution has failed to prove any incrimination circumstance beyond reasonable doubt and in any case failed to establish a chain of events intertwined with each other, which leads to no other conclusion than the guilt of the accused.

18. Considering the facts and circumstances, the appeal is partly allowed and the conviction and sentence imposed upon the appellant herein for the offence punishable under Section 302 IPC is set aside. However, the conviction and sentence in respect of the offences punishable under Sections 304B, 498A read with Section 34 IPC are restored.

19. In the present case, the appellant has undergone incarceration for a period of more than fifteen years. In that view of the matter, we direct that it will not be necessary for the appellant to deposit the fine amount. The appellant is directed to be set at liberty forthwith, if not required in any other case.

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

Headnotes prepared by:
Aandrita Deb, Hony. Associate Editor
(*Verified by:* Madhavi Divan, Sr. Adv.)

Result of the case:
Appeal partly allowed.

[2024] 3 S.C.R. 778 : 2024 INSC 217

Satyendar Kumar Jain
v.
Directorate of Enforcement

(Criminal Appeal No. 1638 of 2024)

18 March 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

Whether the appellants have been able to satisfy the twin conditions laid down in s. 45 of the Prevention of Money Laundering Act, 2002, that there are reasonable grounds for believing that the persons accused of the offence under the PMLA is not guilty of such offence; and that he is not likely to commit any offence while on bail.

Headnotes

Prevention of Money Laundering Act, 2002 – s. 45 – Offence of money laundering – Conditions to be satified for grant of bail – Appellant-Minister in the Govt. of NCT of Delhi was the conceptualizer, initiator, fund provider and supervisor for the entire operation of the accommodation entries against cash totalling to around Rs. 4.81 crores received through entry operators in the bank accounts of the four companies, by paying cash and the said companies controlled and owned by him and his family – Other two appellants assisted the Minister by making false declarations under the IDS each of them declaring alleged undisclosed income of Rs.8.26 crores in order to protect the Minister – Prosecution complaint filed by the Enforcement Directorate against the appellants for the commission of the offence of Money laundering – Prosecution complaint fixed for framing of charge against the appellants – Bail applications – Denial of, by the High Court – Correctness:

Held: Though a company is a separate legal entity from its shareholders and directors, the lifting of corporate veil is permissible when such corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out illegal activities – Declarations made by the other two appellants under the IDS though were held to be void, the observations and proceedings recorded in the said orders passed

* Author

by the Authorities and by the High Court cannot be brushed aside merely because of the said declarations – Said proceedings clearly substantiates the case of the ED as alleged in the prosecution complaint – Appellants could not be permitted to take advantage of their own wrongdoing of filing the false declarations to mislead the Income Tax authorities, and now to submit that the said declarations under the IDS were void – Having regard to the totality of the facts and circumstances of the case, the appellants miserably failed to satisfy that there are reasonable grounds for believing that they are not guilty of the alleged offences – On the contrary, there is sufficient material collected by the ED to show that they are prima facie guilty of the alleged offences – Thus, it is not possible to hold that appellants complied with the twin mandatory conditions laid down in s. 45 – High Court also prima facie found the appellants guilty of the alleged offences under the PMLA, and the judgment does not suffer from any illegality or infirmity – Appellants were released on bail for temporary period after their arrest and the appellant-Minister was released on bail on medical ground which continued till date – Appellant to surrender forthwith before the Special Court. [Paras 28-33]

Prevention of Money Laundering Act, 2002 – ss. 3 and 2(1)(u) – Offence of money laundering u/s. 3 – Words "proceeds of Crime" in s. 2(1)(u) – Definition:

Held: Offence of money laundering captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering – Authority of the Authorised Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exists proceeds of crime within the meaning of s. 2(1)(u) and further it is involved in any process or activity – Property must qualify the definition of "proceeds of crime" u/s. 2(1)(u) – In all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" u/s. 2(1)(u) will necessarily be the crime properties. [Para 21]

Case Law Cited

Vijay Madanlal Choudhary and Others v. Union of India and Others [2022] 6 SCR 382 **: (2022) SCC OnLine SC 929;** *Karnail Singh v. State of Haryana and Another*

(1995) Supp (3) SCC 376; *Neelu Chopra and Another v. Bharti* [2009] 14 SCR 1074 **: (2009) 10 SCC 184;** *Myakala Dharmarajam & Ors. v. State of Telangana & Anr.* **(2020) 2 SCC 743;** *Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India* [2015] 15 SCR 499 **: (2015) 16 SCC 1;** *Rohit Tandon v. Directorate of Enforcement* [2017] 13 SCR 156 **: (2018) 11 SCC 46 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Prohibition of Benami Property Transactions Act, 1988; Finance Act, 2016.

List of Keywords

Prevention of Money Laundering; Bail; Money laundering; Accommodation entries; Undisclosed income; Company, separate legal entity from its shareholders and directors; Lifting of corporate veil; False declarations; Surrender; Proceeds of Crime; Property; Beneficial owner.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1638 of 2024

From the Judgment and Order dated 06.04.2023 of the High Court of Delhi at New Delhi in BA No.3590 of 2022

With

Criminal Appeal Nos.1639 and 1640 of 2024

Appearances for Parties

Dr. Abhishek Manu Singhvi, N. Hari Haran, Mrs. Meenakshi Arora, Sr. Advs., Vivek Jain, Abhinav Jain, Amit Bhandari, Rajat Jain, Sharian Mukherji, Mueed Shah, Siddhant Sahay, Dr. Sushil Kumar Gupta, Mrs. Sunita Gupta, Dr. Sushil Satrawala, Chandratanay Chaube, Ankit Shah, Manan Verma, Advs. for the Appellant.

S.V. Raju, A.S.G., Mukesh Kumar Maroria, Zoheb Hussain, Rajat Nair, Annam Venkatesh, Padmesh Mishra, Ms. Sairica S Raju, Vinayak Sharma, Kshitiz Agarwal, Vivek Gurnani, Vivek Gaurav, Kartik Sabharwal, Ms. Abhipriya, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. All the three appeals arise out of the common impugned judgment and order dated 06.04.2023 passed by the High Court of Delhi at New Delhi, in the Bail Application Nos. 3590 of 2022, 3705 of 2022 and 3710 of 2022, whereby the High Court has rejected all the bail applications of the appellants.

3. Earlier the Special Judge (PC Act) (CBI) -23 (MPs/MLAs cases) vide the separate detailed orders dated 17.11.2022 had rejected the bail applications of all the appellants – accused.

FACTUAL MATRIX

4. An FIR being case No.RC-AC-1-2017-A-0005 dated 24th August, 2017 came to be registered at the CBI AC-1, New Delhi against Shri Satyendar Kumar Jain, Minister in the Government of National Capital Territory of Delhi & Others, for the offences under Section 109 IPC and 13(2) read with Section 13(1)(e) of the PC Act, 1988 at the instance of the Dy. Superintendent of Police, CBI who had conducted a Preliminary Enquiry, being PE AC-1-2017-A0003 dated 10.04.2017 registered at the said office of the CBI. After the investigation, a Charge-sheet came to be filed by the CBI in respect of the said FIR on 03.12.2018 in the Court of Special Judge, CBI, Patiala House Courts, New Delhi against the six accused viz. Sh. Satyendar Kumar Jain, Smt. Poonam Jain, Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain.

5. Since Section 13(2) read with Section 13(1)(e) of the PC Act in the said FIR dated 24th August, 2017 were scheduled offences under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "PMLA") and since it was alleged *inter alia* that Sh. Satyendar Jain with the help of his family members and other persons had acquired disproportionate assets during the period from 14.02.2015 to 31.05.2017, while he was functioning as Minister of Govt. NCT of Delhi, and had laundered tainted cash amounts through Kolkata based shell companies, the Directorate of Enforcement had registered an ECIR bearing No. ECIR/HQ/14/2017 dated 30th August, 2017 against

Satyendar Jain, Vaibhav Jain, Ankush Jain and others for investigation into the commission of the offence of Money laundering as defined under Section 3 and punishable under Section 4 of the PMLA. On the completion of the said investigation, the Prosecution Complaint came to be filed on 27.07.2022 by the Directorate of Enforcement in the Court of District and Sessions Judge, Rouse Avenue District Court, New Delhi, against the accused Sh. Satyendar Jain and others with a prayer to take cognizance of the offences of money laundering under Section 3 punishable under Section 4 of PMLA. The said Prosecution Complaint being CC No.23/2022 is now pending at the stage of framing of charge against the appellants – accused.

6. During the course of investigation, the appellant- Satyendar Kumar Jain was arrested on 30th May, 2022 and the appellants-Vaibhav Jain and Ankush Jain were arrested on 30th June, 2022. The gist of the allegations made against the appellants-accused as mentioned in the said Prosecution Complaint is as under: -

S.No.	Name of the Accused	Role in the case (in brief)
1.	Satyendar Kumar Jain	Based on the discussion and material herein above, it is clear that Satyendar Kumar Jain hatched the criminal conspiracy and conceptualized the idea of accommodation entries against cash. To get his idea implemented, he recommended appointing his old friend Sh. Jagdish Prasad Mohta, Chartered Accountant as the auditor of Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. He (Satyendar Kumar Jain) first approached Sh. Jagdish Prasad Mohta for taking accommodation entries in lieu of cash in his aforesaid four companies. Shri Mohta arranged a meeting between Satyendar Kumar Jain and Rajendra Bansal, Kolkata based accommodation entry provider. In this meeting all the nitty gritties of these entries was finalized like percentage of commission, process of cash transfer, documents to be maintained etc.

		In this way Satyendar Kumar Jain was the conceptualizer, initiator, and supervisor for the entire operation of these accommodation entries. By taking the accommodation entries in various companies, Satyendar Kumar Jain was hiding behind the Corporate Veil. Investigation into the transactions and facts prove that Satyendar Kumar Jain initiated, managed and controlled the companies in which these accommodations entries were received. Accordingly, the accommodation entries totalling to Rs.4.81 Crore (Rs.4.75 crores as entries + Rs.5.32 lakhs as commission) were received during the period 2015-16 from Kolkata based entry operators in the bank accounts of the aforesaid companies and cash totalling to Rs.4,65,99,635/- i.e. (sum of Rs.4,60,83,500/- + Rs.5,16,135/- commission paid to entry operators), for this purpose, was paid to them. He also received accommodation entry of Rs.15,00,000/- in his company J.J. Ideal Estate Pvt. Ltd. during the year 2015-16 from Kolkata based entry operators by paying cash amounts of Rs. 15,00,000 + commission of Rs.16,800/-. By this criminal activity, he while holding the public office of and functioning as a Minister of Government of National Capital Territory of Delhi, during the period 14.02.2015 to 31.05.2017, acquired assets to the tune of Rs.4,81,16,435/- i.e. (sum of Rs.4,60,83,500/- + Rs.15,00,000/- received in J.J. Ideal Estate Pvt. Ltd. + Rs.5,16,135/- & Rs.16,800/- commission paid to entry operators) - , as discussed in above paragraphs, in his name and in the name of his family member/ friends, with the help of his business associates, which are disproportionate to his known sources of income for which he has not satisfactorily accounted for and laundered the proceeds of crime through a complex web of companies controlled by him.

		Satyendar Kumar Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by actually acquiring, possessing, concealing and using the proceeds of crime to the tune of Rs.4,81,16,435/- and projecting and claiming the same as untainted in the mode and manner as provided in the preceding paragraphs in the present complaint.
2.	Ankush Jain	Ankush Jain has knowingly assisted Satyendar Kumar Jain by making declaration under IDS, 2016 for declaring undisclosed income of Rs.8.6 crore (including Rs.1,53,61,166/- during check period) for the period from 2010-11 to 2015-16 in order to save and shield Sh. Satyendar Kumar Jain. He also prepared back dated documents with the help of Vaibhav Jain, Sunil Kumar Jain and Jagdish Prasad Mohta with regard to his directorship in Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd. and Indo Metalimpex Pvt. Ltd. by becoming directors of aforesaid companies from back date for showing his IDS declaration as genuine. Ankush Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as described in the preceding paragraphs in the present complaint and is therefore, liable for punishment under Section 4 of PMLA.
3.	Vaibhav Jain	Vaibhav Jain is involved in knowingly assisting Satyendar Kumar Jain by making declaration under IDS, 2016 for declaring undisclosed income of Rs.8.6 crore (including Rs.1,53,61,166/- during check period) for the period from 2010-11 to 2015-16 in order to save Sh. Satyendar Kumar Jain.

		He also prepared back dated documents with the help of Sunil Kumar Jain, Ankush Jain and Sh. Jagdish Prasad Mohta with regard to his directorship in Akinchan Developers Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. by becoming directors of aforesaid companies from back date for showing his IDS declaration as genuine. Vaibhav Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as aforesaid in the complaint and is therefore, liable for punishment under Section 4 of PMLA.

SUBMISSIONS

7. The learned counsels for the parties made their respective submissions at length. The learned senior advocate Mr. Abhishek Manu Singhvi broadly made following submissions on behalf of the appellant Satyendar Kumar Jain:

(i) The appellant was already granted bail in the predicate offence registered by the CBI, and the arrest of the appellant was made by the ED almost five years after the registration of the ECIR, though the appellant was cooperating the ED by remaining present in response to the summons issued under Section 50 of the PMLA. The appellant was in custody from 30.05.2022 to 26.05.2023 and since then has been granted interim bail on the medical ground.

(ii) No shares of companies as alleged by the ED were acquired by the appellant within the check period and even otherwise the assets held by the company could not be attributed to its shareholders.

(iii) Even if the accommodation entries amounting to Rs. 4.61 crores are attributed to the appellant through his wife's shareholdings, it would come only to Rs. 59,32,122/- which is less than 1 crore,

and therefore the appellant is entitled to bail under the proviso to Section 45 of the PMLA.

(iv) There is gross discrepancy in the amount of proceeds of crime calculated by the ED and the amount mentioned in the Chargesheet of the CBI in as much as the alleged disproportionate amount is Rs.1,62,50,294/- as per the FIR whereas as per the ED the amount is Rs. 4,81,16,435/-.

(v) The appellant had neither served as a Director nor had signed any financial document during the check period, and the appellant had already resigned from the directorship of the allegedly involved Companies two years before the commission of the alleged offence. It was Vaibhav Jain and Ankush Jain and their family members who had a significant influence and control over the said companies.

(vi) The appellant's role in the companies has been delineated in the MOU seized from Vaibhav Jain's locker, which underscores the business relations and shows that the appellant's architectural expertise was to be employed for the investment to be financed by the families of Vaibhav Jain and Ankush Jain. Through the quashing of the provisional attachment order by the Delhi High Court, the allegation against the appellant being the beneficial owner had stood refuted.

(vii) The alleged proceeds of crime through accommodation entries were directed to the families of Vaibhav Jain and Ankush Jain, and the fresh shares issued to the Kolkata based Shell Companies were promptly transferred to Vaibhav Jain and Ankush Jain during the check period. The appellant therefore was not in possession of any proceeds of crime.

(viii) The appellant could not be held to be in constructive possession of the property, if there was no dominion or control of the appellant over the said property. As per the ED's complaint also the appellant was not in possession of the proceeds of crime and therefore also the appellant could not be said to be in constructive possession of the same.

(ix) There was no shred of evidence collected by the ED to show that the appellant had provided cash to Kolkata companies during the check period. It was Vaibhav Jain and Ankush Jain

who had explained on their Fragrance business as the legitimate source of the cash during their recording of statements under Section 50 of the PMLA.

(x) The Kolkata companies and the persons allegedly providing accommodation entries were not made the accused by the ED.

(xi) The allegation of the ED in its complaint that the appellant had committed a predicate offence of hatching a criminal conspiracy and by committing criminal activity had acquired assets to the tune of Rs. 4.81 crore in his name and in the name of his family members while holding the public office, was not the allegation made by the CBI in the FIR registered against the appellant and others with regard to the disproportionate assets charged under Section 13(1)(e) of the Prevention of Corruption Act.

(xii) The assumptions of proceeds of crime on the sole basis of accommodation entries is completely contrary to the concept of proceeds of crime as explained in the judgment of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***[1]. Such allegation could be a tax violation but could not be considered as proceeds of crime.

(xiii) The Prosecution Complaint is silent as to when the scheduled offence was committed and as to how and in what manner the proceeds of crime was laundered within the meaning of Section 3 of the PMLA.

(xiv) As regards the Income Disclosure Scheme (IDS) declaration made by Vaibhav Jain and Ankush Jain for about Rs.16 crores for the period 2010-2016, it has been submitted that the said IDS declarations were rejected by the PCIT vide the order dated 09.06.2017, on the ground of misrepresentation/suppression of facts. The said order of PCIT was challenged by Vaibhav Jain and Ankush Jain before the Delhi High Court, however the High Court had also rejected that petition vide the order dated 01.08.2019. Neither the PCIT nor the High Court had given any finding that the said amount of Rs. 16 crores belonged to the appellant.

1 [2022] 6 SCR 382 : 2022 SCC OnLine SC 929

(xv) The reliance placed by the ED on the appellant's letter dated 27.06.2018 was misleading and incorrect, in as much as the appellant vide the said letter had explicitly denied the appellant being the beneficial owner. Since Vaibhav Jain and Ankush Jain had already deposited the tax on the said income, the appellant in the said letter had only requested the authorities to adjust the said tax and not to make a demand again for the same amount from the appellant, however from the said letter it could not be assumed that the appellant had accepted the additions made in the assessment order.

(xvi) As held in ***Vijay Madanlal Choudhary*** (supra), the courts ought not to conduct mini trial and should consider only the broad probability of the matter. The appellant is not a flight risk, there is no risk of tampering of documents or witnesses. The jail violation as alleged by the ED has not been accepted by the concerned Jail visiting Judge and the Jail authorities. The appellant being sick and infirm, having undergone a spine surgery, is entitled to bail as per the proviso to Section 45 of PMLA.

8. The learned ASG Mr. SV Raju made the following submissions in the appeal preferred by the appellant Shri Satyendar Kumar Jain:

(i) It was revealed during the course of investigation that the appellant Satyendar Kumar Jain while posted and functioning as the Minister in the Government of National Capital Territory of Delhi, during the period from 2015 to 2017 had acquired assets in the form of movable and immovable properties in his name and in the name of his family members, which were disproportionate to his known source of income.

(ii) During the check period, the accommodation entries against cash of about 4.81 crores was received in the companies – M/s Akinchan Developers Pvt. Ltd., M/s Paryas Infosolutions Pvt. Ltd., M/s. Manglayatan Projects Pvt. Ltd., and M/s JJ Ideal Estate Pvt. Ltd., beneficially owned/ controlled by the appellant from Kolkata based entry operators through Shell Companies.

(iii) From the statements of Rajendra Bansal, Jivendra Mishra, both residents of Kolkata, and from Shri J.P. Mohta, the Chartered Accountant, it was revealed that Shri Rajendra Bansal had arranged accommodation entries in the companies of the

appellant. Shri Vaibhav Jain in his statement under Section 50 had also stated that the cash was provided by the appellant himself and had also explained about the modus operandi of transferring the cash from Delhi to Kolkata through Hawala operators and as to how in lieu of cash, accommodation entries were layered and received from Kolkata based shell companies into the companies owned by the appellant, and agricultural lands were purchased from the said funds.

(iv) From the documents obtained from the Income Tax Department it was revealed that the appellant had submitted the application before the income tax authorities requesting that the income tax paid by Vaibhav Jain and Ankush Jain under IDS, 2016 be adjusted against the demands raised in his individual assessments by the IT authorities, which established that the IDS declaration made by Vaibhav Jain and Ankush Jain were made for the appellant and that the amount paid in IDS as well as the tax paid thereon belonged to the appellant Satyendar Kumar Jain.

(v) The Special Court having taken the cognizance of the PMLA case vide the order dated 29.07.2022 and having held that there was *prima facie* evidence incriminating about the involvement of the appellant Satyendar Kumar Jain was sufficient to show the existence of the scheduled offence and also the existence of proceeds of crime.

(vi) The appellant Satyendar Kumar Jain was the main person behind the bogus shell companies based in Kolkata, which never did any real business. He had either incorporated them or was having majority shareholdings alongwith his wife. The accommodation entries of Rs. 16.50 crores (approx.) were received in the said companies during the financial years 2010-11, 2011-12 and 2015-16 with the modus operandi as revealed from the statements of the Auditor/Chartered Accountant Shri J.P. Mohta as well as the accommodation entry provider Shri Rajendra Bansal and also from the statement of Vaibhav Jain.

(vii) Though the principle of company being a separate legal entity from its shareholders is an established principle of Company law, the lifting of corporate veil has been upheld in the cases where the corporate structures have been used for committing

fraud, economic offences or have been used as a facade or a sham for carrying out illegal activities.

(viii) The bogus nature of IDS declarations was substantiated by the fact that the entire amount of Rs.16.50 Crores received as accommodation entry was split between Vaibhav Jain and Ankush Jain. The said declarations showed their modus operandi to shield Satyendar Jain and his family members, and assume the entire liability upon themselves to give it a colour of a tax evasion simplicitor, rather than a criminal activity relating to disproportionate assets. This modus operandi also showed that the appellants themselves had disregarded the corporate entities of these companies.

(ix) The disproportionate pecuniary resources earned by the appellant by the commission of scheduled offence, were used as accommodation entries for concealing and layering the tainted origins of the money, and therefore would qualify to be the proceeds of crime as defined under Section 2(1)(u) of the PMLA.

(x) The two entry operators namely Rajendra Bansal and Jivendra Mishra had expressed a fear that Shri Satyendar Kumar Jain being an influential politician will create danger to them.

(xi) The mandatory twin conditions of Section 45 of PMLA having not been satisfied, the appellant should not be released on bail.

9. So far as the appellants Ankush Jain and Vaibhav Jain are concerned, the Learned Senior Advocate Ms. Menakshi Arora with Learned Advocate Mr. Sushil Kumar Gupta made the following submissions: -

(i) The Scheduled offence in the present case i.e. the disproportionate assets case under Section 13(1)(e) of the PC Act is a period specific offence and gets accomplished only at the end of the check period (14.02.2015 to 31.05.2017). As stated in ***Vijay Madanlal Choudhary*** (supra), the proceeds of crime is indicative of criminal activity related to a scheduled offence already accomplished, and therefore the offence of money laundering can be initiated only after the Scheduled Offence is accomplished. However, in the instant case, the appellants have been roped in for benami transactions from 2015-2016 which was well before the end of check period i.e 31.05.2017.

(ii) The offence of money laundering against the appellants is attributed to their act of filing IDS on 27.09.2016 much before the end of check period i.e. 31.05.2017. Hence, the same cannot be considered as an act of assisting someone in the offence of money laundering as the proceeds of crime could have been generated after the end of the check period and not before that.

(iii) The act of declaring IDS by the appellants in respect of undisclosed income for the period from 2010-2011 to 2015-2016 cannot be considered as an act of assisting Satyendar Jain in committing the offence of money laundering, in as much as the possession of unaccounted property acquired by legal means may be actionable for tax violation, but cannot be regarded as the proceeds of crime unless the concerned tax legislation prescribes such violations as an offence and such an offence is included in the Schedule of the PML Act. In the instant case, the total amount of 16 crores has not been considered as the proceeds of crime as the ED is relying on the accommodation entries received during the check period.

(iv) The IDS filed u/s 183 of the Finance Act, 2013 was declared void u/s 193 of the said Act by the Income Tax authorities. Hence, the said act of the appellants filing the IDS cannot be construed as basis for levelling charges under Section 3 of PMLA. Reliance is placed on ***Karnail Singh vs. State of Haryana and Another***[2] for understanding the meaning of "void."

(v) It is not made clear by the ED as to the declaration of which IDS, whether the one filed by Vaibhav Jain or that filed by Ankush Jain has led to the assistance of Satyendar Jain for making out the offence under PMLA. Since the allegations are vague, the benefit of the same should go to the accused. In this regard, reliance is placed on ***Neelu Chopra and Another vs. Bharti***[3] and ***Myakala Dharmarajam & Ors. Vs. State of Telangana & Anr.***[4]

(vi) Since, the generation of proceeds of crime is not an offence under Section 3 of PMLA and the said offence could be

2 (1995) Supp (3) SCC 376

3 [2009] 14 SCR 1074 : (2009) 10 SCC 184

4 (2020) 2 SCC 743

committed only after the accomplishment of the Scheduled Offence, the alleged act could not be said to be an offence under Section 3 of PMLA. The act of the appellants assisting Satyendar Jain for accumulating assets as alleged by the CBI, cannot be said to be an offence under the PMLA.

(vii) The control of the entire records of the companies was with the appellants, including the bank accounts. They were the main decision- makers being the Directors, in respect of the acts performed on behalf of the Companies, and Mr. Satyendar Jain had nothing to do with the said Companies after 2013. The prosecution has unnecessarily tried to link the appellants with Satyendar Jain from the statements of witnesses recorded under Section 50 of the PMLA.

(viii) The Scheduled Offence does not allege conspiracy. The day Mr. Satyendar Jain decided to enter into politics, all the relations with him whether in respect of the Companies or any business transactions were severed, and since July 2013 he was neither a Director nor a shareholder nor had any relation with the Companies which were the Companies of the appellants.

(ix) The appellants are in custody since 30.06.2022 except for the period when they were released on the interim bail (Vaibhav Jain on 18.08.2023 to 27.12.2023 and Ankush Jain on 12.09.2023 to 27.12.2023).

(x) The appellants have not violated any conditions imposed by the Court when on interim bail, and have also not tried to delay the proceedings before the trial court in any manner.

10. The learned ASG Mr. S.V. Raju appearing on behalf of the respondent-Directorate of Enforcement made his submissions in the appeals preferred by the appellants- Ankush Jain and Vaibhav Jain as under: -

(i) The appellants-Ankush Jain and Vaibhav Jain were actively involved in the commission of the offence of money laundering by assisting the accused-Satyendar Kumar Jain. The appellant Ankush Jain was the Director of M/s. Mangalayatan Projects Pvt. Ltd. during the check period. The said company is one of the accused in the Prosecution Complaint filed on 27.07.2022. The said company had received the proceeds of crime amounting to Rs.1,90,00,000/- during the check period in the form of

accommodation entries from Kolkata based shell companies. The said appellant-Ankush Jain transferred the land possessed by M/s. Mangalayatan Projects Pvt. Ltd. in the name of his mother Indu Jain to frustrate the proceeds of crime.

(ii) Similarly, the appellant-Vaibhav Jain was the Director of M/s. Paryas Infosolution Pvt. Ltd. during the check period. The said company is also one of the accused in the Prosecution Complaint filed on 27.07.2022. The said company had received proceeds of crime amounting to Rs.69,00,300/- during the check period in the form of accommodation entries from the Kolkata based shell companies. The said appellant-Vaibhav Jain had transferred the land possessed by M/s. Mangalayatan Projects Pvt. Ltd. in the name of his mother Sushila Jain and wife-Swati Jain to frustrate the proceeds of crime. He also took back the shares without consideration from shell companies and thus both the appellants helped Satyendar Kumar Jain in projecting the tainted money as untainted in the process of money laundering.

(iii) Both the appellants had made declarations in their individual capacity under the IDS, 2016 for declaring undisclosed income of Rs.8.6 Crores during check period i.e. from 2010-11 to 2015-16, in order to shield Satyendar Kumar Jain for concealing the true nature of proceeds of crime.

(iv) Both the appellants prepared back dated documents with the help of each other and with the help of Sunil Kumar Jain and Jagdish Prasad Mohta for becoming directors in their respective companies i.e. Mr. Ankush Jain in M/s. Akinchan Developers Pvt. Ltd., and M/s. Indo Metalimpex Pvt. Ltd., and Mr. Vaibhav Jain in M/s. Akinchan Developers Pvt. Ltd., M/s. Mangalayatan Projects Pvt. Ltd. and M/s. Indo Metalimpex Pvt. Ltd. for showing the IDS declarations as genuine.

(v) The income sought to be disclosed by the appellants under the IDS declarations belonged to the appellant- Satyendar Jain, and the said IDS declarations were rejected by the Income Tax authorities under Section 193 of the Finance Act, 2016 on the ground of misrepresentation and suppression of facts. The said order was upheld by the High Court and the Supreme Court.

(vi) The declarations of the appellants were held void under Section 193 of the Finance Act, 2016, which applied only for the purpose of the said scheme, however, if the making of such declarations was an offence under a separate Act, namely, PMLA, then such an act would not be effaced merely because of Section 193.

(vii) The very fact that such declarations were made by the said appellants, was the relevant fact for the purposes of the alleged offence under the PMLA, as both the appellants are being prosecuted in their individual capacities for allegedly actively assisting the appellant- Satyendar Jain in concealing the proceeds of crime and projecting the proceeds of crime as untainted.

(viii) Section 13(1)(e) and Section 13(2) are both scheduled offences under the PMLA, and Section 3 of PMLA ropes in any person who may or may not have any role to play in the scheduled offence but has directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party involved in any process or activity connected with the proceeds of crime.

(ix) The money laundering need not commence only after the check period, inasmuch as the offence under Section 13(1) (e) of the PC Act contemplates that at any time the assets of the public servant could be disproportionate to his income, which could have been acquired by the public servant either at the beginning or in the middle of the check period also.

(x) From the statements of bank accounts of the four companies and various other Kolkata based shell companies controlled by Kolkata based entry operators revealed that the amount totalling to Rs. 4,60,83,500/- was received in M/s. Akinchan Developers Pvt. Ltd., M/s. Mangalayatan Projects Pvt. Ltd. and M/s. Paryas Infosolution Pvt. Ltd. from Kolkata based shell companies during the period 01.04.2015 to 31.03.2016 (during the check period) despite no business activities were carried out by the said companies and the shares were purchased at a very high premium.

(xi) The investigation revealed that the cash acquired by Satyendar Jain was given to the Kolkata entry operators for the purpose of accommodation entries contemporaneously during the check

period as and when they were acquired and thereafter the same were concealed and projected as untainted and sought to be laundered in the form of share application money. The said amount was also used for repayment of loan and purchase of agricultural lands by the said companies.

(xii) Though the CBI in their chargesheet dated 03.12.2018 filed in FIR No. RC-AC-I-2017-A 0005 (dated 24.08.2017) had quantified the proceeds of crime to be Rs.1,47,60,497.67, in view of the investigation conducted under PMLA it was established that all the companies were beneficially owned and controlled by Satyendar Jain, and the amount of Rs.4,81,16,435/- received during the check period was the proceeds of crime in the hands of Satyendar Jain. The said conclusion along with the facts underlying the same, have also been conveyed to the CBI under Section 66(2) of PMLA vide the letter dated 31.03.2022.

(xiii) Though the accommodation entries *per se* may not be the proceeds of crime in a given case, since in the instant case, it has been specifically alleged that the shares in the three companies during the check period which were held by the bogus share companies, were purchased by the Kolkata based bogus companies as entries in lieu of cash, the source of which cash was the public servant, namely, Saytendar Jain, he was the beneficial owner of the shares which was a vehicle to introduce the unaccounted cash or disproportionate pecuniary resources which squarely fell within the meaning of proceeds of crime as defined under Section 2(1)(u) of the PMLA.

11. During the course of arguments, the Court had sought clarification from the learned ASG Mr. Raju with regard to the role of the appellants-Ankush Jain and Vaibhav Jain, as also the quantum of proceeds of crime with which they were allegedly involved, specifically in respect of the figures mentioned in the Prosecution Complaint against them. Pursuant to the same, the Deputy Director, Directorate of Enforcement has filed his affidavit clarifying the role of the appellants – Ankush Jain and Vaibhav Jain and further stating *inter alia* that the figure of Rs.1,53,61,166/- was inadvertently mentioned at page no.-248, as it was the amount attributed by the CBI in its Chargesheet to Satyendar Jain, Ankush Jain and Vaibhav Jain individually for the purpose of receiving total accommodation entries in lieu of cash of

Rs.4.61 Crores, however respondent's investigation has revealed that the entire Rs.4.81 Crores (Rs.4.61 Crores plus commission plus Rs.15 lakhs in J.J. Ideal Estates Pvt. Ltd.) was entirely the property of Satyendar Jain received in his companies as accommodation entries in lieu of cash and this entire sum was sought to be declared by the appellants Ankush Jain and Vaibhav Jain in the IDS as their own income.

12. In the light of the said clarification, the Learned Senior Advocate Ms. Arora had further submitted that the so-called inadvertent error was not pointed out before the trial court and the High Court and it was only during the course of arguments before this Court, the said clarification/rectification was sought to be made, which is not permissible. According to her, ED attains jurisdiction to investigate only after the proceeds of crime is generated and when the same is subjected to any process or activity as mentioned in Section 3 of PMLA. Therefore, ED could not have increased the proceeds of crime beyond what was taken as disproportionate assets by the CBI i.e. 1,47,60,497/-. She further submitted that as per the FIR, the figure mentioned was Rs. 1,53,61,166/-, during the arguments and as per the written submissions the figure mentioned was Rs. 4,81,16,435/-, and the figure mentioned as per the affidavit is Rs.4,65,99,635/- which does not find mention in the complaint. Thus, the allegations made against the appellants being vague in nature, the benefit should go to the appellants.

ANALYSIS

13. We are well conscious of the fact that the chargesheet has already been filed in the predicate offence on 03.12.2018 for the offences under the Prevention of Corruption Act allegedly committed by the present appellants alongwith others, and the cognizance thereof has already been taken by the concerned Court. The Prosecution Complaint has also been filed by the respondent – ED against the present appellants alongwith others for the commission of the offence of Money laundering as defined under Section 3 read with Section 70 punishable under Section 4 of PMLA 2002. We have also been apprised that the Special Court has fixed the Prosecution Complaint for framing of charge against the appellants alongwith others. Under the circumstances any observation made by us may influence the process of trial. We, therefore would refrain ourselves from dealing

with the elaborate submissions made by the learned counsels for the parties on the merits of the case, we would rather confine ourselves to deal with the bare minimum facts necessary for the purpose of deciding whether the appellants have been able to satisfy the twin conditions laid down in Section 45 of the PMLA, that is (i) there are reasonable grounds for believing that the persons accused of the offence under the PMLA is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail.

14. In ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India***[5], while holding that the conditions specified under Section 45 of PMLA are mandatory, it was observed as under: -

> **"30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

15. In ***Vijay Madanlal Choudhary*** (supra), a three-judge bench while upholding the validity of Section 45 had observed as under: -

> **"387.** Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of

5 [2015] 15 SCR 499 : (2015) 16 SCC 1

2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right

of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.

404. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis.

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigors of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money-laundering is one wherein a person, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such

proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

16. In the light of the aforestated position of law propounded by the three Judge Bench, we have *prima facie* examined the case alleged against the appellants and the *prima facie* defense put forth by the appellants, to satisfy ourselves whether there are reasonable grounds for believing that the appellants are not guilty of the alleged offences under the Act and that they are not likely to commit any offence while on bail. Though it was urged on behalf of the respondent – ED that the appellant Satyendar Kumar Jain is a very influential political leader and is likely to influence the witnesses if released on bail, we would rather objectively decide the appeals on merits.

17. The case in nutshell put forth by the respondent – ED is that the appellant Satyendar Kumar Jain had conceptualized the idea of accommodation entries against cash and at this instance, his close associate Shri Jagdish Prasad Mohta had arranged a meeting between Satyendar Kumar Jain and Rajendra Bansal, a Kolkata based accommodation entry provider in July/ August, 2010. In the said meeting the modalities of carrying out accommodation entries, percentage of commission, process of cash transfer and documents to be maintained etc. were finalized. Thus, according to the ED, Satyendar Kumar Jain was the conceptualizer, initiator and supervisor for the entire operation of the accommodation entries. It has been alleged that the accommodation entries totalling to Rs.4.81 crores were received during the period 2015-16 from Kolkata based entry operators in the bank accounts of the four companies – Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd., Mangalayatan Projects Pvt. Ltd. and Akinchan Developers Pvt. Ltd., which companies were owned/controlled by him and his family members, and the cash totalling Rs.4,65,99,635/- approximately was paid to the said entry operators. It has been also alleged that the appellant Satyendar Kumar Jain received accommodation entries of Rs.15 lakhs in his company J.J. Ideal Estate Pvt. Ltd. during the year 2015-16 from the said Kolkata based entry operators by paying cash amounts of Rs.15 lakhs and commission of Rs.16,800/-. Thus, it has been alleged that Satyendar Kumar Jain committed offence of money laundering under Section 3 of PMLA by actually acquiring, possessing, concealing and using the process of bank to tune of Rs.4,81,16,435/- and projecting and claiming the same as untainted.

18. The ED has also alleged against the appellants Ankush Jain and Vaibhav Jain *inter alia* that they had assisted Satyendar Kumar Jain in the commission of the alleged offence by making separate independent declarations under IDS 2016 for declaring undisclosed income of Rs.8.26 crores for period from 2010-11 to 2015-16 in order to protect Satyendar Kumar Jain. As per the case of ED, the appellants Ankush Jain and Vaibhav Jain had prepared ante dated documents with the help of Sunil Kumar Jain and Jagdish Prasad Mohta with regard to the Directorship in Akinchan Developers Pvt. Ltd. Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd., and Mangalayatan Projects Pvt. Ltd. by becoming the Directors of the said companies from the back date for showing their IDS declarations as genuine. Thus, the said appellants have also committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner stated in the Prosecution Complaint.

19. It was vehemently argued by the Learned Senior Advocate Mr. Singhvi, for the appellant Satyendar Jain that there was gross discrepancy in the amount of proceeds of crime calculated by the ED in the Prosecution Complaint and in the amount with regard to disproportionate assets mentioned by the CBI in the chargesheet filed in the predicate offence. According to him, the amount with regard to disproportionate assets mentioned by the CBI is Rs. 1,47,60,497/- whereas as per the ED the proceeds of crime is Rs.4,81,16,435/-. Even if the accommodation entries amounting to about Rs.4.6 crores are attributed to the appellant-Satyendar Kumar Jain through his wife's share holdings, it would come to only Rs.59,32,122/- which is less than one crore. He has further submitted that the appellant-Satyendar Kumar Jain neither served as a Director nor had signed any financial document during the check period and that he had already resigned from the Directorship of the companies two years before the commission of the alleged offence. According to him, it was the appellants- Vaibhav Jain and Ankush Jain, and their family members who had the significant influence over the control of the companies involved in the case.

20. In order to appreciate the submissions of Mr. Singhvi, let us have a cursory glance over the definitions of the words "beneficial owner" as contained in Section 2(1)(fa), "Money laundering" as defined in

Section 2(1)(p), "Proceeds of Crime" in section 2(1)(u) and "Property" in Section 2(1)(v), and the offence under Section 3 of the PMLA. The said definitions read as under:

> **"Section 2 (1) (fa)**
>
> (fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;
>
> **Section 2 (1) (p)**
>
> (p) "money-laundering" has the meaning assigned to it in section 3;
>
> **Section 2 (1)(u)**
>
> (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;
>
> Explanation. --For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;
>
> **Section 2 (1)(v)**
>
> (v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
>
> *Explanation*. --For the removal of doubts, it is hereby clarified that the term property includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

Section 3

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation. --For the removal of doubts, it is hereby clarified that, --

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely: --

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

21. The offence of money laundering as contemplated in Section 3 of the PMLA has been elaborately dealt with by the three Judge Bench in ***Vijay Madanlal Choudhary*** (supra), in which it has been observed that Section 3 has a wider reach. The offence as defined captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is not limited to the happening of the final act of integration of tainted property in the formal economy

to constitute an act of money laundering. Of course, the authority of the Authorised Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the Act and further it is involved in any process or activity. Not even in case of existence of undisclosed income and irrespective of its volume, the definition of "Proceeds of Crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of "Proceeds of Crime" under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "Proceeds of Crime" under Section 2(1)(u) will necessarily be the crime properties.

22. So far as the facts of the present case are concerned, the respondent ED has placed heavy reliance on the statements of witnesses recorded and the documents produced by them under Section 50 of the said Act, to *prima facie* show the involvement of all the three appellants in the alleged offence of money laundering under Section 3 thereof. In ***Rohit Tandon vs. Directorate of Enforcement***[6], a three Judge Bench has held that the statements of witnesses recorded by Prosecution – ED are admissible in evidence in view of Section 50. Such statements may make out a formidable case about the involvement of the accused in the commission of the offence of money laundering.

23. Again, the three Judge Bench in ***Vijay Madanlal Choudhary*** (supra) while examining the validity of the provisions contained in Section 50 held as under: -

> **431.** In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not

6 [2017] 13 SCR 156 : (2018) 11 SCC 46

necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

24. In the instant case, it has been found during the course of investigation from the statements of witnesses recorded under Section 50 that the appellant Satyendar Jain and his family directly or indirectly were owning/controlling the companies - M/s. Akinchan Developers Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd. and M/s. Mangalayatan Projects Pvt. Ltd. He was the conceptualizer, initiator and supervisor of the accommodation entries totalling to Rs.4.81 Crores approximately, which were received from the Kolkata based entry operators in the Bank accounts of the said four companies. Shri J.P. Mohta in his statement had stated *inter alia* that Mr. Satyendar Jain had informed him in June/July, 2010 that he wanted to get investment/ accommodation entries in his companies against cash payment and therefore he introduced Mr. Jain with his friend Mr. Rajendra Bansal who was in the business of providing accommodation entries against cash. Mr. Rajendra Bansal in his statement under Section 50 had stated in detail as to how his companies provided accommodation entries to the four companies owned/controlled by Satyendar Jain from 2010-11 to 2015-16 against cash. Mr. Rajender Bansal had also stated that the cash was being received from Satyendar Kumar Jain/Jagdish Prasad Mohta at Kolkata through Hawala operators, and he used to pass on the address of Hawala operators to the other entry operators namely Jivendra Mishra and Abhishek Chokhani for collecting cash after taking token from them. He used to arrange entries for the companies of Satyendar Kumar Jain as per the details provided by Jagdish Prasad Mohta through his companies and other entry operators. He (Mr. Bansal) used to issue cheque/RTGS to subscribe the shares of the four companies of Satyendar Kumar Jain receiving the amounts in cash. He had further stated that the accommodation entries were reflected in the books of accounts of his companies as investments in shares. He used to give signed share applications along with signed blank transfer deeds to Jagdish Prasad Mohta. He had further stated that he had received cash through Hawala operators of Kolkata 40-50 times during 2010-2016 totaling to approximately 17 crores on the instructions of Satyendar Jain/Jagdish Prasad Mohta and he had provided accommodation entries for Satyendar Jain's Companies of about 17 crores, for which he had earned commission of Rs 12,40,000/- for providing/arranging such accommodation entries to the companies of Satyendar Jain.

25. Mr. Pankul Agarwal had stated in his statement that though he was appointed as a Director in M/s. J.J. Ideal Estate Pvt. Ltd., he did nothing except signing of the documents and that the said company was controlled by Satyendar Kumar Jain and Poonam Jain, and that he was never informed about any business activity of the said company by them. The appellant-Vaibhav Jain himself in his statement recorded on 27.02.2018, had stated that the cash amount of Rs.16.50 crores (approx.) was paid by him, Sunil Kumar Jain, Ankush Jain and Satyendar Kumar Jain for taking accommodation entries in M/s. Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. through Kolkata based entry operators, and that the entire idea was mooted by Satyendar Kumar Jain to use it for purchasing agricultural lands and to develop the township. The said witnesses had clearly stated that Satyendar Kumar Jain was the conceptualizer, initiator, fund provider and supervisor for the entire operation to procure the accommodation, share capital/premium entries. Though, the shareholding patterns of the said four companies are quite intricate, they do show that Mr. Satyendar Kumar Jain through his family was controlling the said companies directly or indirectly and that Mr. Satyendar Kumar Jain was the "beneficial owner" within the definition of Section 2(1) (fa) of PMLA.

26. At this juncture, it is extremely pertinent to note that the appellants-Vaibhav Jain and Ankush Jain had sought to avail of the Income Declaration Scheme, 2016 (IDS) by filing separate declarations under Section 183 of the Finance Act, 2016 in Form-I on 27.09.2016, in which both of the said appellants had individually declared an income of Rs.8,26,91,750/- as investments in shares of various companies in the assessment years 2011-12, 2012-13 and 2016-17. The Principal Commissioner, Income Tax (IV), New Delhi vide the order dated 09.06.2017 passed under Section 183 of the Finance Act, 2016 held that the said declaration of income of Rs.8,26,91,750/- by each of the appellants- Vaibhav Jain and Ankush Jain was made "by suppression and misrepresentation of facts", and therefore they were "void". It is further pertinent to note that the said order of PCIT was based on the report submitted by the ACIT, Special Range (IV) dated 07.06.2017 with regard to the assessment proceedings in case of M/s. Akinchan Developers Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd. ,and Mr. Satyendar Kumar

Jain. It was noted in the said report *inter alia* that the said companies had taken accommodation entries in the form of share capital from Kolkata based shell companies. On the basis of the said report, the notices under Section 148 of the Income Tax Act for the year 2011-12 an 2012-13 were issued to Mr. Satyendar Kumar Jain. The information regarding accommodation entries was also received by the Initiating officer for further examination and necessary action under the Prohibition of Benami Property Transactions Act, 1988 (for short "the PBPT Act). The Initiating officer had issued provisional attachment orders under Section 24(4) of the PBPT Act on 24.05.2017 holding that Mr. Satyendar Kumar Jain was the beneficial owner of the bogus share capital introduced in the companies. The said order of PCIT dated 09.06.2017 passed under Section 183 of the FA, 2016 was challenged before the High Court of Delhi at New Delhi by the appellants-Ankush Jain and Vaibhav Jain by filing Writ Petition (C) Nos. 6541 of 2017 and 6543 of 2017 which came to be dismissed by the High Court vide the order dated 21.08.2019. The High Court in the said judgment had elaborately dealt with all these issues and while dismissing the said writ petitions held as under:

> **"30.** There are eight companies whose shares were purchased by the two petitioners, whose names have been included in the list. Admittedly, in respect of the shares in ADPL, proceedings under section 24(4) of the Prohibition of Benami Property Transaction Act, 1988 have been initiated. The petitioners have themselves enclosed a copy of the order dated May 24, 2017 passed in respect of the "Benamidar", i.e., ADPL, which inter-alia notes that the cash that was routed through accommodation entries in the garb of share capital/premium in fact belonged to Mr. Satyender Kumar Jain and that it was at his direction that the entire transaction was orchestrated. It was noted that neither of these two petitioners was either a director or shareholder in the said company. It was noted that the declarants had not provided the name of the "Benamidar" through whom the investment had been routed and that these facts were all completely within the knowledge of the two petitioners. These conclusions of the Principal Commissioner of Income-tax have not been convincingly countered by either of the petitioners. In the circumstances,

> the Principal Commissioner of Income-tax was right in concluding that neither of the petitioners had made a full and true disclosure of all material facts."

27. The said order of the High Court was challenged by the appellants-Ankush Jain and Vaibhav Jain before the Supreme Court by filing Special Leave Petitions being SLP(C)Nos. 27522 of 2019 and 27610 of 2019, however they came to be dismissed vide the order dated 29.11.2019.

28. From the above stated facts there remains no shadow of doubt that the appellant- Satyendar Kumar Jain had conceptualized idea of accommodation entries against cash and was responsible for the accommodation entries totalling to Rs. 4.81 crores (approx.) received through the Kolkata based entry operators in the bank accounts of the four companies i.e. M/s. Akinchan Developers Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd. and M/s. Mangalayatan Projects Pvt. Ltd., by paying cash and the said companies were controlled and owned by him and his family. Though it is true that a company is a separate legal entity from its shareholders and directors, the lifting of corporate veil is permissible when such corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out illegal activities.

29. It has also been found that the appellants - Ankush Jain and Vaibhav Jain had assisted the appellant-Satyendar Kumar Jain by making false declarations under the IDS each of them declaring alleged undisclosed income of Rs.8.26 crores in order to protect Satyendar Kumar Jain. Though it was sought to be submitted by the learned counsel for the appellants that the said declarations under IDS having been held to be "void" in terms of Section 193 of FA, 2016 by the income tax authorities, the same could not be looked into in the present proceedings, the said submission cannot be accepted. The declarations made by the appellants-Ankush Jain and Vaibhav Jain under IDS have not been accepted by the Income Tax authorities on the ground that they had misrepresented the fact that the investments in the said companies belonged to the said appellants, which in fact belonged to Mr. Satyendar Kumar Jain. The appellants could not be permitted to take advantage of their own wrongdoing of filing the false declarations to mislead the Income Tax authorities, and

now to submit in the present proceedings under PMLA that the said declarations under the IDS were void. The declarations made by them under the IDS though were held to be void, the observations and proceedings recorded in the said orders passed by the Authorities and by the High Court cannot be brushed aside merely because the said declarations were deemed to be void under Section 193 of the Finance Act, 2016. The said proceedings clearly substantiates the case of the respondent ED as alleged in the Prosecution Complaint under the PMLA.

30. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that the appellants have miserably failed to satisfy us that there are reasonable grounds for believing that they are not guilty of the alleged offences. On the contrary, there is sufficient material collected by the respondent-ED to show that they are *prima facie* guilty of the alleged offences.

31. Though Ms. Arora had faintly sought to submit that the so-called inadvertent mistake committed by the ED with regard to the figures mentioned in the Prosecution Complaint in respect of the role of the appellants Ankush Jain and Vaibhav Jain should not be permitted to be corrected, which otherwise show that the allegations against the appellants were vague in nature, we are not impressed by the said submission. We are satisfied from the explanation put forth in the affidavit filed on behalf of the respondent-ED that it was only an inadvertent mistake in mentioning the figure Rs.1,53,61,166/- in the bracketed portion, which figure was shown by the CBI in its chargesheet. The said inadvertent mistake has no significance in the case alleged against the appellants in the proceedings under the PMLA.

32. From the totality of facts and circumstances of the case, it is not possible to hold that appellants had complied with the twin mandatory conditions laid down in Section 45 of PMLA. The High Court also in the impugned judgment after discussing the material on record had *prima facie* found the appellants guilty of the alleged offences under the PMLA, which judgment does not suffer from any illegality or infirmity.

33. The appellants were released on bail for temporary period after their arrest and the appellant-Satyendar Kumar Jain was released on bail on medical ground on 30.05.2022, which has continued till this

day. He shall now surrender forthwith before the Special Court. It is needless to say that right to speedy trial and access to justice is a valuable right enshrined in the Constitution of India, and provisions of Section 436A of the Cr.P.C. would apply with full force to the cases of money laundering falling under Section 3 of the PMLA, subject to the Provisos and the Explanation contained therein.

34. In that view of the matter, all the appeals are dismissed.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals dismissed.

[2024] 3 S.C.R. 812 : 2024 INSC 218

NBCC (India) Limited
v.
Zillion Infraprojects Pvt. Ltd.

(Civil Appeal Nos. 4417-4418 of 2024)

19 March 2024

[B.R. Gavai* and Sandeep Mehta, JJ.]

Issue for Consideration

When there is a general reference in the second contract to the terms and conditions of the first contract, whether the arbitration clause in the first contract would *ipso facto* be applicable to the second contract.

Headnotes

Arbitration & Conciliation Act, 1996 – The appellant issued an invitation for tender – Respondent submitted its techno bid- vide L.O.I. appellant awarded the contract to Respondent – Respondent approached High Court under Sec. 11(6) – High Court appointed sole arbitrator – Order of the High Court set aside

Held: General reference will not lead to incorporation of the arbitration clause – Reference to arbitration clause in another contract ought to be specific. [Paras 3 and 21-23]

Arbitration – When will an arbitration clause from a second contract be incorporated in the first contract

Held: Conscious acceptance of arbitration clause – Reference and incorporation are different – Reference does not *ipso fact* lead to incorporation. [Paras 12-13 and 21-23]

Arbitration & Conciliation Act, 1996 – Sec. 7(5) – Arbitration clause will not be incorporated by a general reference – Conscious Acceptance – In absence of specific reference, only execution/performance terms will apply – If no specific reference, arbitration clause will not apply – Reference not incorporation in the present case- General reference does not lead to incorporation.

The Appellant had issued an invitation for tender for "Construction of Weir with Allied Structures across river Damodar at DVC, CTPS, Chandrapura, Dist – Bokaro, Jharkhand in response whereto, the

* Author

Respondent submitted its Techno Commercial Bid. The contract for the construction of weir was awarded to the Respondent whereafter due to certain disputes, the Respondent issued a notice in terms of Clause 3.34 of Section III Volume II of the Tender Documents invoking arbitration and further seeking consent of the appellant for the appointment of a former Judge of a High Court, as Sole Arbitrator. The Respondent, while invoking the arbitration, had taken recourse to Clause 2 of the Letter of Intent (L.O.I.) issued by the Appellant while awarding the contract. Clause 2 stated thus: "All terms and conditions as contained in the tender issued by DVC to NBCC shall apply mutatis mutandis except where these have been expressly modified by NBCC." Since the Appellant did not respond to the notice, the Respondent approached the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. High Court allowed the petition preferred by the Respondent.

Held: A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that before an arbitration clause could be read as a part of the contract, there must be a conscious acceptance of the arbitration clause from another document by the parties – It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract. [Paras 12 and 13]

While setting aside the order of the High Court, the Supreme Court held that a general reference to the terms and conditions of another contract would not have the effect of incorporating the arbitration clause – It is pertinent to note that clause 7.0 of the L.O.I. specifically uses the word "Only" before the words "be through civil courts having jurisdiction of Delhi alone" – When there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not *ipso facto* be applicable to the second contract unless there is specific mention/reference thereto – The present case is not a case of 'incorporation' but a case of 'reference' – As such, a general reference would not have the effect of incorporating the arbitration clause – Clause 7.0 of the L.O.I, which is also a part of the agreement, makes it amply clear that the redressal of the dispute between NBCC and respondent has to be only through civil courts having jurisdiction of Delhi alone – Delhi High Court has erred in allowing the application of the respondent. [Paras 21 to 24]

Case Law Cited

Inox Wind Limited v. Thermocables Limited **[2018] 1 SCR 86 : (2018) 2 SCC 519- Distinguished.**

M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited **(2009) 7 SCC 696- Relied on.**

Duro Felguera, S.A. v. Gangavaram Port Limited **[2017] 10 SCR 285 : (2017) 9 SCC 729;** *Elite Engineering and Construction (Hyderabad) Private Limited represented by its Managing Director v. Techtrans Construction India Private Limited represented by its Managing Director* **[2018] 4 SCR 585 : (2018) 4 SCC 281 – Referred to.**

List of Acts

The Arbitration & Conciliation Act, 1996.

List of Keywords

Arbitration, Arbitration Agreement, *lis*, Letter of Intent (L.O.I), Invitation for tender, *Mutatis Mutandis*, *Res Integra*, *Ipso Facto*, Incorporation, Reference.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.4417-4418 of 2024

From the Judgment and Order dated 12.03.2021 and 09.04.2021 in ARBP No.44 of 2021 of the High Court of Delhi at New Delhi

Appearances for Parties

Gopal Shankarnarayan, Sr. Adv., Debarshi Bhadra, Ms. Jhanvi Dubey, Sunil Mund, Kiran Kumar Patra, Advs. for the Appellant.

Sumit Kumar, Ms. Kumari Supriya, Bharath Kumar, Ms. Sakshi Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeals challenge the interim order dated 12th March 2021 and final judgment & order dated 9th April 2021, passed by the

learned Single Judge of the High Court of Delhi (hereinafter, "High Court"), in Arbitration Petition (Arb. P.) No. 44 of 2021, whereby the High Court *allowed* the application under Section 11(6) of the Arbitration & Conciliation Act 1996 (hereinafter referred to as, "the Arbitration Act") and appointed the Sole Arbitrator to adjudicate the dispute between the parties to the present *lis,* arising from the Letter of Intent dated 4th December 2006.

3. Facts, *in brief*, giving rise to the present appeals are as follows:

3.1 The appellant, NBCC (India) Limited (Formerly known as National Buildings Construction Corporation Ltd.), is a Public Limited Company and Government of India undertaking, engaged in construction of power plants and other infrastructure projects on EPC and/or PMC basis.

3.2 The respondent, M/s Zillion Infraprojects Pvt. Ltd. (Formerly known as Durha Constructions Pvt. Ltd.), is a Private Limited Company, engaged in the construction and infrastructure sector.

3.3 The appellant issued an invitation for tender, being NIT No. 01-WEIR/06 dated 3rd November 2006, for "Construction of Weir with Allied Structures across river Damodar at DVC, CTPS, Chandrapura, Dist – Bokaro, Jharkhand – Package "A" (hereinafter referred to as, "Construction of the Weir"), containing *inter-alia*, the General Conditions of Contract, Special Conditions of Contract, Bill of Quantity, etc. (collectively referred to as, "Tender Documents").

3.4 In response to the aforementioned tender, the Respondent submitted its Techno Commercial Bid on 16th November 2006.

3.5 On fulfilment of the tender criteria, vide Letter of Intent No. AGM/RAN/CTPS-AWARD/06/1660 dated 4th December 2006, the appellant awarded the contract for Construction of the Weir to the respondent for a total value of Rs. 19,08,46,612/-.

3.6 With the passage of time, certain disputes arose between the parties to the present *lis* & as a result, the respondent issued a notice dated 6th March 2020, in terms of Clause 3.34 of Section III Volume II of the Tender Documents (GCC),

thereby invoking arbitration and further seeking consent of the appellant for the appointment of a former Judge of a High Court, as Sole Arbitrator.

3.7 The appellant did not respond to the aforementioned notice invoking arbitration, so the respondent filed an application at the High Court under Section 11(6) of the Arbitration Act.

3.8 Vide interim order dated 12th March 2021, the High Court *allowed* the Arbitration Petition and proposed the appointment of a former Judge of the High Court, as the Sole Arbitrator, to adjudicate the dispute between the parties.

3.9 Vide final judgment & order dated 9th April 2021, the High Court confirmed the proposed appointment of the former Judge of the Delhi High Court, as the Sole Arbitrator.

3.10 Aggrieved by the orders of the learned single judge of the High Court, the appellant filed the present appeals thereby challenging both the interim order and the final judgement & order.

3.11 This Court vide order dated 23rd July, 2021, issued notice and stay of further proceedings of the arbitration was granted.

4. We have heard Shri Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the appellant & Shri Sumit Kumar, learned counsel appearing on behalf of the respondent.

5. Shri Gopal Sankaranarayanan, learned Senior Counsel appearing for the appellant submits that the High Court has grossly erred in invoking its power under Section 11(6) of the Arbitration Act. It is submitted that Clause 2.0 of the Letter of Intent dated 4th December 2006 ("L.O.I." for short) though states that all terms and conditions as contained in the tender issued by the Damodar Valley Corporation ("DVC" for short) to the NBCC shall apply *mutatis mutandis,* it also makes it clear that where the terms and conditions have been expressly modified by the NBCC, the same would not be applicable. It is submitted that Clause 1.0 of the L.O.I. specifically states that various conditions, i.e., contractual, financial and technical mentioned in the documents contained therein shall be binding on the respondent for execution of works and they shall form part of the agreement. Clause 10.0 also states that the L.O.I. shall also form a part of the agreement.

It is submitted that the intention is amply clear from Clause 7.0 of the L.O.I., which states that the redressal of dispute between the NBCC and the respondent shall only be through civil courts having jurisdiction of Delhi alone. It further states that the laws applicable to the contract between the parties shall be the laws enforceable in India. It is submitted that merely on account of reference in the L.O.I. to the terms and conditions as contained in the tender issued by the DVC to the NBCC, Clause 3.34 of the Additional Terms & Conditions of Contract would not apply in view of specific modification as stated in Clause 2.0 of the L.O.I.

6. Learned Senior Counsel submits that a mere reference to the terms and conditions without there being an incorporation in the L.O.I. would not make the *lis* between the parties amenable to the arbitration proceedings. Relying on the judgment of this Court in the case of ***M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited***[1], he submits that unless the L.O.I. specifically provides for incorporation of the arbitration clause, a reference to the arbitration proceedings would not be permitted in view of the provisions of sub-section (5) of Section 7 of the Arbitration Act.

7. Shri Sumit Kumar, learned counsel appearing for the respondent, on the contrary, submits that there is a specific reference in Clause 2.0 of the L.O.I. to the terms and conditions in the tender issued by the DVC to the NBCC. He submits that the only modification is that under Clause 3.34 of the Additional Terms & Conditions of Contract, the jurisdiction is vested with the Court in the City of Kolkata only, whereas in the L.O.I. the jurisdiction would be vested in the civil courts having jurisdiction of Delhi alone. It is submitted that the learned single judge of the Delhi High Court has rightly considered this aspect and as such, no interference would be warranted in the impugned order.

8. Sub-section (5) of Section 7 of the Arbitration Act reads thus:

> "7. **Arbitration Agreement**.-1)…….
>
> xxx xxx xxx

1 (2009) 7 SCC 696

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

9. The issue is no more *res integra*. The provisions of sub-section (5) of Section 7 of the Arbitration Act have been considered by this Court in the case of ***M.R. Engineers and Contractors Private Limited*** (supra). After considering the relevant passages from *Russell on Arbitration* and various English judgments, this Court held thus:

"**24.** The scope and intent of Section 7(5) of the Act may therefore be summarised thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a

provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties."

10. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract

in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

11. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

12. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

13. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.

14. The law laid down in the case of ***M.R. Engineers and Contractors Private Limited*** (supra) has been followed by this Court in the cases of ***Duro Felguera, S.A. vs Gangavaram Port Limited***[2] and ***Elite Engineering and Construction (Hyderabad) Private Limited represented by its Managing Director vs Techtrans Construction India Private Limited represented by its Managing Director***[3].

15. No doubt that this Court in the case of ***Inox Wind Limited vs Thermocables Limited***[4] has distinguished the law laid down in the

2 [2017] 10 SCR 285 : (2017) 9 SCC 729

3 [2018] 4 SCR 585 : (2018) 4 SCC 281

4 [2018] 1 SCR 86 : (2018) 2 SCC 519

case of ***M.R. Engineers and Contractors Private Limited*** (supra). In the said case (i.e. ***Inox Wind Limited***), this Court has held that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in the case of ***Inox Wind Limited*** (supra) agrees with the judgment in the case of ***M.R. Engineers and Contractors Private Limited*** (supra), it holds that general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause. In the said case (i.e. ***Inox Wind Limited***), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single-contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.

16. The present case is a 'two-contract' case and not a 'single-contract' case.

17. It will be relevant to refer to Clause 3.34 of the Additional Terms & Conditions of Contract as contained in the tender issued by the DVC to the NBCC. Clause 3.34 reads thus:

> "3.34 SETTLEMENT OF DISPUTES & ARBITRATION
>
> Any dispute(s) or difference(s) arising out of or in connection with the contract shall to the extent possible be settled amicably between the owner and supplier/contractor.
>
> In the event of any dispute or difference whatsoever arising under the contract or in connection therewith including any question relating to existence meaning and interpretation of the contract or any alleged breach thereof the same shall be referred to the sole arbitration of the Secretary, CEO of Damodar Valley Corporation, Kolkata-54 or to a person appointed by him for that purpose. The arbitration shall be conducted in accordance with the provisions of arbitration and conciliation law 1996 and the decision/judgment of Arbitrator shall be final and binding on both the parties.

All suits arising out of this enquiry and subsequent purchase order, if any, are subject jurisdiction of court in the City of Kolkata only and no other door when resolution/settlement through mutual discussion and arbitration fails."

18. No doubt that Clause 3.34 provides for a reference of the dispute to the sole arbitration of the Secretary, CEO of Damodar Valley Corporation, Kolkata-54 or to a person appointed by him for that purpose.

19. It will also be apposite to refer to Clauses 1.0, 2.0, 7.0 and 10.0 of the L.O.I., which read thus:

"1.0 The work shall be executed you on contractual, financial and technical conditions of contract as contained in the following documents which shall be applicable and binding on you for execution of works and shall form part of agreement with you as also mentioned in the above mentioned NIT-01/WEIR/06 dated November 3, 2006.

(a) Notice Inviting Tender

(b) General Conditions of Contract

(c) Special Conditions of Contract

(d) Bill of Quantity

2.0 All terms and conditions as contained in the tender issued by DVC to NBCC shall apply mutatis mutandis except where these have been expressly modified by NBCC.

7.0 The redressal of dispute between NBCC and you shall only be through civil courts having jurisdiction of Delhi alone. The laws applicable to this contract shall be the laws enforceable in India.

10.0 This letter of intent shall also form a part of the agreement.

20. In view of Clause 1.0, the documents stated therein shall also form part of the agreement. In view of Clause 2.0, all terms and conditions as contained in the tender issued by the DVC to the NBCC shall apply *mutatis mutandis* except where these have been expressly modified

by the NBCC. Clause 7.0 specifically provides that the redressal of dispute between the NBCC and the respondent shall only be through civil courts having jurisdiction of Delhi alone. Clause 10.0 further provides that the L.O.I. shall also form a part of the agreement.

21. It is thus clear that the intention between the parties is very clear. Clause 7.0 of the L.O.I. which also forms part of the agreement specifically provides that the redressal of the dispute between the NBCC and the respondent shall only be through civil courts having jurisdiction of Delhi alone. It is pertinent to note that Clause 7.0 of the L.O.I. specifically uses the word "only" before the words "be through civil courts having jurisdiction of Delhi alone".

22. As already discussed herein above, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not *ipso facto* be applicable to the second contract unless there is a specific mention/reference thereto.

23. We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be ***only through civil courts having jurisdiction of Delhi alone.***

24. In that view of the matter, we find that the learned single judge of the Delhi High Court has erred in allowing the application of the respondent. The appeals are accordingly allowed. The impugned orders are quashed and set aside. There shall be no order as to costs.

25. Pending applications, if any, shall stand disposed of.

Headnotes prepared by:
Himanshu Rai, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)

Result of the case:
Appeals allowed.

[2024] 3 S.C.R. 824 : 2024 INSC 225

Tapas Kumar Das
v.
Hindustan Petroleum Corporation Limited & Ors.

(Civil Appeal No. 4420 of 2024)

19 March 2024

[Dipankar Datta* and Sanjay Kumar, JJ.]

Issue for Consideration

Whether Division Bench of High Court was justified in reversing the judgment and order of the Single Judge vide which the writ petition of the Appellant was allowed and the Respondent was directed to proceed with his candidature for LPG Distributorship.

Headnotes

Appellant's candidature for LPG distributorships was cancelled by Respondent on the ground that the land offered by him for the showroom, was beyond the advertised location. Appellant challenged the Cancellation Letter by filing a writ petition before the High Court. Single Judge allowed the writ petition and directed HPCL to proceed with the evaluation of the appellant's candidature and decide the same within four weeks. HPCL challenged the order of Ld. Single Judge by filing writ appeal, which was allowed by way of the impugned order by the Division Bench of High Court.

Following questions were framed by this Court:

(i) Whether the land offered by the appellant for the showroom is covered by the extent of "Location" stipulated in the Advertisement and is compliant with the Unified Guidelines?

(ii) Whether the Division Bench was justified in its interference with the order under challenge before it?

LPG Distributorship – Meaning of the term "Location" in the Advertisement issued by the Respondent:

Held: There is no reference to any Gram/Village Panchayat in Part 2 of the Advertisement although such reference is available under Part 1 because HPCL did not intend the distributor to cater to any rural area but a 'Rurban' area, which has to be given the meaning attributed to 'Rurban Vitrak' in the Unified Guidelines, which comprises of both rural and urban – If indeed an LPG

* Author

distributor were intended to be appointed in village Haripal, the 'Type of Market/Distributorship' would have been shown as 'Rural' and included in Part 1 and not Part 2 of the Advertisement – Since there was no specific column for "Gram Panchayat" in Part 2 of the Advertisement, which was present in Part 1, and the 'Type of Market/Distributorship' was not 'Rural', complemented by the lack of any detail – Apart from Haripal in the "Location" without any detailed particulars of the place, it is implied that the location of the concerned showroom was required to be in Haripal block and any showroom on land located in Haripal block would fall within the requirements of the Advertisement. [Paras 19 to 24]

LPG Distributorship – Candidature under Advertisement – Scope of interference by the Court:

Held: It is not for the Court to adjudge the nature of the Advertisement or the intention of those who were responsible for drawing it up, but whether the appellant's candidature fell within the scope of the 'Location' as indicated in the Advertisement.[Para 23]

Advertisement – Binding on issuing Authority:

Held: Law is well settled that when an advertisement is made inviting applications from the general public for appointment to a post or for admission to any course or appointment of the present nature, the advertisement constitutes a representation to the public and the authority issuing it is bound by such representation – It cannot act contrary to it. [Para 24]

LPG Distributorship – Cancellation of Candidature of an applicant – Challenge to – Defence – Reference to pleadings:

Held: The specific words 'mouza' and 'village' are not mentioned in the Advertisement and they cannot be defined by reference to the definitions of the same in the West Bengal Panchayat Act, 1973 – An order of cancellation of the candidature of an applicant, which is the subject matter of challenge in a court of law, has to be defended with reference to the Advertisement and the pleadings and not with reference to what was in contemplation of the authority issuing the Advertisement – A court cannot be swayed by the version of a party, which is not its pleaded case, and it should confine its decision to the points of assail/defence raised in the pleadings. [Para 25]

LPG Distributorship – Clause/Qualification in the Advertisement cannot be modified/rewritten by the Court:

Held: It is not open to a writ court, much less an appeal court, to direct the modification of any clause/qualification in the Advertisement to suit the interest of any particular candidate or the issuing authority – Any such direction would amount to re-writing the clause/qualification mentioned in the Advertisement, which would be plainly impermissible. [Para 26]

List of Acts

Constitution of India; West Bengal Panchayat Act, 1973.

List of Keywords

Advertisement; Interpretation of clauses; LPG distributorship; Candidature; Location; Unified Guidelines for Selection of LPG Distributorships; Binding nature; Defence; Reference to pleadings; Modification/rewriting of clause impermissible.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4420 of 2024

From the Judgment and Order dated 28.03.2019 of the High Court at Calcutta in MAT No.255 of 2019

Appearances for Parties

Sudipta Kumar Bose, Bharat Sood, P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Ms. Miranda Solaman, Advs. for the Appellant.

Parijat Sinha, Ms. Divyam Dhyani, Ms. Reshmi Rea Sinha, Ms. Pallak Bhagat, Zoheb Hossain, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

THE APPEAL

1. An intra-court appellate judgment and order[1] ("impugned judgment", hereafter) of an Hon'ble Division Bench of the High Court at Calcutta ("High Court", hereafter), reversing the judgment and order[2] ("order",

1 dated 28th March, 2019

2 dated 25th January, 2019

hereafter) of a learned Single Judge, is called in question in the instant civil appeal. *Vide* the impugned judgment, the Division Bench of the High Court allowed the writ appeal[3] carried by Hindustan Petroleum Corporation Limited ("HPCL", hereafter) from the order and set aside the same. The Single Judge had, while allowing a writ petition[4] of Mr. Tapas Kumar Das ("appellant", hereafter), directed HPCL to proceed with his candidature for LPG[5] distributorship.

BRIEF RESUME OF FACTS

2. The facts, giving rise to this appeal, lie in a narrow compass.

3. HPCL, Indian Oil Corporation Limited ("IOCL", hereafter) and Bharat Petroleum Corporation Limited issued a joint advertisement for LPG distributorships at several locations in the 31st August, 2017 editions of the Bangla dailies *Bartaman* and *Anandabazar Patrika* ("the Advertisement", hereafter). Entries bearing Sl. Nos. 1 to 607 in the Advertisement had 10 (ten) columns ("Part 1", hereafter) and those from Sl. No. 608 onwards had 9 (nine) columns ("Part 2", hereafter)[6]. The header "Gram Panchayat" did not feature in Part 2 and, hence, had 1 (one) column less than Part 1.

4. Parts 1 and 2 of the Advertisement with the headers and to the extent relevant for a decision on this appeal, as per the English translation placed before us, are set out hereunder:

Part 1

Sl. No.	Oil company	Location (detail particulars of the place where applicable)	Gram Panchayat	Block	District	Class	Nature of market / LPG distributorship / City / Urban / Rural / Inaccessible area distributorship	Amount of security deposit (in lakh)	Marketing plan
1 - 607	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**

3 M.A.T. No. 255 of 2019 with C.A.N. No. 1818 of 2019.

4 W.P. 1595 (W) of 2019.

5 Liquified Petroleum Gas.

6 The Advertisement, by itself, has not been split into Parts 1 and 2; the same has been done here for ease of reference.

Part 2

Sl. No.	Oil company	Location (detail particulars of the place where applicable)	Block	District	Class	Nature of market / LPG distributorship / City / Urban / Rural / Inaccessible area distributorship	Amount of security deposit (in lakh)	Marketing plan
608 - 623	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**
624	**HPC**	**Haripal**	**Haripal**	**Hooghly**	**SC**	**Rurban**	**3**	**2017-18**
625 - 631	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**

5. Interested in obtaining an LPG distributorship *qua* Sl. No.624 reserved for a member of the Scheduled Caste community, i.e., 'Location' and 'Block' Haripal in the district of Hooghly, the appellant submitted an online application for the same under the 'SC' category on 16th October, 2017. The appellant's application was found to be in order, whereupon he was called upon to participate in the ensuing computerised draw of lots for selection for the distributorship for Haripal. Fortune smiled on the appellant and he emerged as winner in the draw of lots. HPCL informed the appellant *vide* a letter dated 4th November, 2018 that he had been declared successful and also that he was required to comply with the instructions contained therein. Diligently, the appellant deposited a demand draft of Rs. 30,000/- with HPCL and submitted relevant land documents in compliance with the letter dated 4th November, 2018.

6. One Sujoy Kumar Das ("added respondent", hereafter) lodged a complaint dated 9th November, 2018 with HPCL questioning the appellant's candidature on the basis that the land offered by him for the showroom was in *mouza*[7] Gopinagar and not in *mouza* Haripal. Incidentally, the added respondent had participated in a previous round of selection conducted by HPCL for the same location, i.e., Haripal, and his candidature was rejected by HPCL on the ground

7 As per Wilson's Glossary of Judicial and Revenue Terms of British India, 'Mauza' or Mauja in Hindi and Mauji in Bengali is a village, understanding by that term one or more clusters of habitations, and all the lands belonging to their proprietary inhabitants : a Mauza is defined by authority to be 'a parcel or parcels of lands having a separate name in the revenue records, and of known limits'.

that the land for the showroom offered by him was not located in village Haripal. Upon cancellation of the appellant's candidature, the Chief Regional Manager of HPCL ("fourth respondent", hereafter) intimated the same to the added respondent vide letter dated 2nd January, 2019 and assured to him refund of Rs. 5,000/- which he had deposited as complaint fee, shortly.

7. Close on the heels thereof, the fourth respondent addressed a letter dated 2nd January, 2019 cancelling the appellant's candidature for the LPG distributorship ("Cancellation Letter", hereafter). Therein, it was stated that the land offered by the appellant for the showroom at *"Plot No. LR-1220, Khatian No. LR-311, Mouza-Gopinagar, Gram Panchayat-Haripal Ashuthsh (sic, Ashutosh), Block Haripal, District Hooghly"* pursuant to a registered lease dated 16th October, 2018[8] for a period of 16 (sixteen) years was beyond the advertised location; hence, the appellant's proposed showroom had failed to meet the eligibility criteria as per clause 8 A(n) of the Brochure for Unified Guidelines for Selection of LPG Distributorships ("Unified Guidelines", hereafter), and the deposit of Rs. 30,000/- would stand forfeited.

8. It was then that the appellant invoked the writ jurisdiction of the High Court under Article 226 of the Constitution challenging the Cancellation Letter. The Single Judge, noticing that the Advertisement showed the location of the distributorship as Block Haripal, observed that *"there was no specific requirement of Gram Panchayat or mouza to disqualify"* the appellant's candidature. Upon being satisfied that the land offered by the appellant for the showroom was within the limits of the advertised location, the learned Single Judge allowed the writ petition, set aside the Cancellation Letter, and directed HPCL to proceed with the evaluation of the appellant's candidature and decide the same within four weeks upon the appellant completing all required formalities.

9. Aggrieved by the order, HPCL invoked the appellate jurisdiction of the High Court and laid a challenge thereto. The Division Bench referred to the definitions of *'Gram Panchayat'* and *'mouza' in the West Bengal Panchayat Act, 1973* ("Panchayat Act", hereafter) and while allowing the appeal by the impugned judgment, held that "*mouza Haripal has a separate and distinct existence"*, the *"offered land at*

8 the date was subsequently corrected vide letter dated 10th January, 2019 to read 16th October, 2017.

mouza Gopinagar is not what is contemplated in the advertisement for appointment of LPG distributors at Haripal" and in such view of the matter HPCL *"was justified in coming to the conclusion that the writ petitioner failed to fulfil the eligibility criteria"*.

RIVAL CONTENTIONS

10. Mr. Sudipta Kumar Bose, learned counsel appearing on behalf of the appellant, seeking our interference with the impugned judgment submitted *inter alia* that:

a. The Division Bench fell into error by reading into the Advertisement, conditions which had not been categorically laid down by HPCL. The Advertisement did not state that the showroom was to be located in any particular *mouza*, and that the Advertisement did not refer to any *Gram Panchayat* as the specific location either.

b. The appellant had been declared as the successful candidate after due verification of his eligibility and there could have been no occasion for HPCL to disqualify him on the complaint of the added respondent, and that too without putting the appellant on notice.

c. HPCL, having issued the Advertisement, could not have altered the rules and guidelines after the appellant was declared eligible and successful.

d. The entries from serial no. 608 onwards in the Advertisement did not bear any column for *Gram* Panchayat as the locations therein were urban or semi-urban; implying that there was no error in the Advertisement and such an omission was conscious.

e. The Single Judge had rightly observed that the advertised location for the concerned showroom was Haripal with reference to specification of Block Haripal; and since the appellant had offered land for the showroom at a location within the jurisdictional limits of Haripal Police Station and within geographical limits of Haripal Block, consequently, the same should have been considered to be covered by the advertised location.

11. Mr. Parijat Sinha, learned counsel appearing for HPCL, in support of upholding the impugned judgment submitted *inter alia* that:

a. The Unified Guidelines are comprehensive in nature and left no room for ambiguity as to the location requirements to obtain an LPG distributorship from *inter alia* HPCL.

b. In the State of West Bengal, villages were not identified as units of revenue, but they were in fact identified as *mouzas*. Therefore, the boundary of any village could only be defined in terms of *mouzas*. Hence, the Advertisement had not been issued for Block Haripal, but only for the *mouza*/village Haripal as per the third column of Part 2 of the Advertisement. Hence, the intention of mentioning Haripal in the third column was to indicate Haripal *mouza*/village, and not the cluster of villages/ towns/cities.

c. Clause 8 A(n) of the Unified Guidelines provided for the requirements of the showroom to be owned/leased by the concerned applicant desirous of obtaining an LPG distributorship. A reading of the Unified Guidelines, along with the fact that the fifth column of Part 2 of the Advertisement was for the District, the fourth column was for the Block, and the third column was for the Location, meant that the third column specified the uniqueness of the location intending it to be for the concerned village; it would be incorrect to read the third and fourth columns as being synonymous. Hence, a mention of Haripal in the third column meant *mouza*/village Haripal and not Block Haripal.

d. In this vein, since the appellant's showroom fell within *mouza* Gopinagar, the same made his candidature ineligible; though located in Block Haripal, it was not within *mouza* Haripal.

12. Appearing for the added respondent and seeking dismissal of the appeal, Mr. Zoheb Hossain, learned counsel submitted *inter alia* that:

a. The added respondent was a proper and necessary party in W.P. 1595 (W) of 2019 before the High Court since the Cancellation Letter had been issued as a consequence of acceptance of the complaint dated 9th November 2018. Further, the added respondent's appeal challenging the order was also decided *vide* the impugned common judgment.

b. The added respondent was also an applicant for the LPG distributorship as per the Advertisement, and that it would be

prejudicial for him if the impugned judgment were set aside or modified.

c. HPCL had, on an earlier occasion, rejected the added respondent's candidature for LPG distributorship on grounds similar to the reasons for cancellation of the appellant's distributorship and, therefore, was justified in taking a consistent and uniform stand.

d. Extending any relief to the appellant, on facts and in the circumstances, could be inappropriate.

Analysis

13. We have heard learned counsel for the parties and perused the impugned judgment of the Division Bench, the order of the Single Judge as well as the other materials on record.

14. The limited issues that we are tasked to decide in this appeal are:

(i) Whether the land offered by the appellant for the showroom is covered by the extent of "Location" stipulated in the Advertisement and is compliant with the Unified Guidelines?

(ii) Whether the Division Bench was justified in its interference with the order under challenge before it?

15. A cursory look at the Advertisement informs us that it contemplated the location of the relevant distributorships in the manner such that the fifth column of Part 2 of the Advertisement indicated the 'District', the fourth column the 'Block', and the third column the "Location" with the words "particulars of the place wherever applicable" following it in brackets. Also, in Part 1 of the Advertisement, as noted above, there was an additional column for "Gram Panchayat". This is conspicuously missing from Part 2.

16. Viewed thus, what we find is that HPCL intended to appoint an LPG distributor at a location named Haripal, situate within Haripal block in the district of Hooghly, reserved for SC, with 'Rurban' shown as the Type of Market/Distributorship. Much would, in our opinion, turn on 'Rurban' which was not noticed either by the Single Judge or the Division Bench, as the discussion follows.

17. In course of arguments, we heard Mr. Sinha submitting that there was an error in not mentioning the "Gram Panchayat" in the Advertisement

for the subject location. In other words, there was a mistake in the Advertisement insofar as Sl. No.624 is concerned. However, a course correction measure was sought to be adopted in the written notes of arguments filed on behalf of HPCL which, as would unfold hereafter, does more harm than good to its cause. It is stated in the written notes that *"from Sl. No.608 onwards, all of the locations advertised … were either urban or semi-urban with regard to the nature of the market/LPG distributorship; hence, the relevant Gram Panchayat was not mentioned in the said Advertisement"*. It is also stated therein that in terms of the Advertisement, the appellant *"ought to have offered land located within (sic) in village/mouza location – **Haripal (column 3)**, which is the advertised location"* (bold in original).

18. HPCL having advertised Haripal as the location within Haripal block for the LPG distributorship and without there being anything more in the Advertisement with specifics as to the 'locality', the candidature of the appellant and the land offered by him for the showroom had to be considered bearing in mind the relevant clauses of the Unified Guidelines, viz. clauses 1 c. i. and 1 y. defining 'Rurban Vitrak'[9] and 'Location'[10], respectively, and 8 A (n) regarding 'Showroom'[11].

19. It would be convenient at this stage to look at Sl. Nos. 608 to 631 of the Advertisement, comprised in Part 2 (supra). In all but one of the locations, LPG distributorships were on offer at the instance of

---

9 Rurban Vitrak: In this document, the word Rural Urban means LPG distributor located in 'Urban Area' and also providing service to the LPG Customers in specified 'Rural Area', generally covering all villages falling within 15 Kms. From the municipal limits of the LPG distributorship location and or the area specified by the respective OMCs. LPG distributors servicing this area will be called Rurban Vitrak.

10 Location – In this document, word location means the area identified for setting up of new LPG Distributor. It can be a locality/village/cluster of villages/town or city which is mentioned in the Notice for Appointment of LPG Distributors.

11 Showroom: (Applicable only for … Rurban Vitrak … locations and not for …)
The applicant should 'Own' a suitable shop for Showroom of minimum size … as on the last date for submission of application as specified either in the advertisement or corrigendum (if any) at the advertised location i.e. within the municipal/town/village limits of the place which is mentioned under the column of 'location' in the advertisement.
In case locality is also specified under the column of 'location' in the advertisement, the candidate should own … in the said locality.
In case an applicant has more than one shop … at the advertised location or locality as specified under the column of 'location' in the advertisement, the details of the same can also be provided in the application.
The applicant should have ownership as defined under the term 'Own' …
Applicants having registered lease deed commencing on any date prior to the date of advertisement will also be considered provided the lease is valid for a minimum period of 15 years from the date of advertisement.
…

IOCL. Majorly, the locations have 'Type of Market/Distributorship' as 'Urban' while the rest are 'Rurban'. In several of the locations advertised ranging between Sl. Nos. 608 and 631, except Sl. No.624 being the subject location, the locations within brackets indicate the locality[12] where the concerned OMC[13] intended to appoint an LPG distributor. As and by way of example, one may profitably refer to Sl. Nos. 613 and 619. While both indicate Kolkata as locations, the former within brackets has Salt Lake within Bidhannagar Municipality and the latter China Town within Kolkata Municipal Corporation areas. We read Salt Lake and China Town as the 'locality' in the location Kolkata to sync locality with 'Location'. It is also significant to note another advertised location in the district of Hooghly. Sl. No. 610 indicates that in Nabagram (Konnagar), being the 'Location' within Shrirampur block, IOCL intended to appoint an LPG distributor. We take judicial notice of the fact that Konnagar is a town and also a municipality in the district of Hooghly with Nabagram as the locality[14]. However, significantly, Sl. No. 624 does not go beyond indicating Haripal as the location.

20. Judicial notice is also taken of the fact that Haripal is a community development block being part of Chandannagore sub-division, in the district of Hooghly, West Bengal. It is true that as per the Census 2011 Report downloaded from www.census2011.co.in, [being Annexure R-1/1 of the counter affidavit of HPCL filed in this proceeding], Haripal and Gopinagar are villages within Haripal block but, for reasons more than one, we are not persuaded to accept the claim of HPCL that it intended to appoint an LPG distributor at Haripal village.

21. First, the stand taken in the written notes entirely demolishes the plinth on which the impugned judgment rests. Reference to any village or *mouza*, be it Haripal or Gopinagar, is rendered irrelevant in the circumstances in the light of the 'Type of Market/Distributorship' being shown as 'Rurban' in the Advertisement under Column 7, which has to be given the meaning attributed to 'Rurban Vitrak' in the Unified Guidelines. If appointment of a distributor were intended for a village/

12 In terms of the definition of 'Location', a locality could also be a location.

13 Oil Marketing Company.

14 'gram' in Nabagram is not to be mistaken for a village.

mouza, i.e., Haripal, it defies logic why instead of 'Gramin Vitrak'[15], 'Rurban Vitrak' was shown as the 'Type of Market/Distributorship'. It is also significant to note that if HPCL meant Haripal village as the intended location for appointment of an LPG distributor, it has not explained why there is no reference to any Gram/Village Panchayat in Part 2 (supra) although such reference is available under Part 1 (supra). This, we feel, is obvious because HPCL did not intend the distributor to cater to any rural area but a 'Rurban' area which comprises of both rural and urban.

22. Secondly, the contention of HPCL that Haripal as shown both under the columns 'Block' and 'Location' are not synonymous and that Haripal should be read and understood as Haripal village appears to be one advanced in desperation. The appellant, or for that matter any other individual interested in the distributorship, could not have possibly projected his own imagination and discover all the facts and circumstances that were in the contemplation of the officers of HPCL to be fulfilled by him. At the cost of repetition, Haripal under the column 'Location' appears to be unqualified. In the present case, Haripal being the advertised location and without mention of locality but with the 'Type of Market/Distributorship' being shown as 'Rurban', it is quite but natural for an individual to perceive that land offered for the showroom, if not located anywhere in the entire Haripal block, must at least be located within certain identifiable limits having relation with Haripal, such as the jurisdictional limits of Haripal Police Station. If indeed an LPG distributor were intended to be appointed in village Haripal, the 'Type of Market/Distributorship' would undoubtedly have been shown as 'Rural' and included in Part 1 (supra) and not Part 2 (supra) of the Advertisement. Unless the relevant Part and the columns thereunder of the Advertisement are interpreted in the manner as above, the same would lead to utter absurdity.

23. The problem can be viewed from another perspective. While completing our task, it is not for us to adjudge the nature of the Advertisement or the intention of those who were responsible for

15 Gramin Vitrak: In this document, the word 'Rural Area' will have the definition of 'Rural' as per census 2011. LPG distributorship located in 'Rural Area' will be called as Gramin Vitrak and will service the LPG Customers of the specified rural area. Generally it will cover all villages falling within 15 KMs from the boundary limits of the LPG distributorship location and or the area specified by the respective OMCs.

drawing it up, but whether the appellant's candidature fell within the scope of the 'Location' as indicated in the Advertisement.

24. Law is well settled that when an advertisement is made inviting applications from the general public for appointment to a post or for admission to any course or appointment of the present nature, the advertisement constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. What bears heavy upon us is that, any person of reasonable prudence could assume that since there was no specific column for *"Gram Panchayat"* in Part 2 (supra) of the Advertisement, which was present in Part 1, and the 'Type of Market/Distributorship' was not 'Rural', complemented by the lack of any detail – apart from Haripal in the "Location" without any detailed particulars of the place, would imply that the location of the concerned showroom was required to be in Haripal block and any showroom on land located in Haripal block would fall within the requirements of the Advertisement.

25. We have also kept in mind that the specific words '*mouza'* and 'village' do not find any mention in the Advertisement and reference to the definitions of the same in the Panchayat Act by the Division Bench as well as by Mr. Sinha in course of his submissions is misconceived. An order of cancellation of the candidature of an applicant, which is the subject matter of challenge in a court of law, has to be defended with reference to the Advertisement and the pleadings and not with reference to what was in contemplation of the authority issuing the Advertisement. It is the norm that a court cannot be swayed by the version of a party, which is not its pleaded case, and that it should confine its decision to the points of assail/defence raised in the pleadings. Any such argument ought to have been traceable in the pleadings, and could not simply have been put before this Court as an afterthought.

26. In a situation akin to this, had the appellant, or any intending candidate, known in advance of such a narrower requirement, then they would likely have been more vigilant in fulfilling such criteria for the location of the distributorship. *In arguendo*, unfortunately, it is HPCL's cross to bear that the Advertisement, if not incorrectly, is inadequately worded. It is not open to a writ court, much less an appeal court, to direct the modification of any clause/qualification in the Advertisement to suit the interest of any particular candidate

or the issuing authority even. Any such direction would amount to re-writing the clause/qualification mentioned in the Advertisement, which would be plainly impermissible.

27. Turning to the added respondent, we can only sympathize with him. If at all the added respondent had earlier been the victim of an arbitrary rejection of his candidature by HPCL, he ought to have challenged such action by instituting an appropriate proceeding. Not having so instituted, the present appeal is not an appropriate proceeding where this Court can look into his grievance and address it.

Conclusion

28. For the reasons aforementioned, the first issue is answered in the affirmative while the second in the negative.

29. The impugned judgment of the Division Bench is set aside and the order of the Single Judge restored. The present appeal is, accordingly, allowed leaving the parties to bear their own costs.

30. It is, however, made clear that apart from the questions that we have decided, no part of our observations shall be treated as expression of opinion on the further requirements/compliances, if any, with regard to HPCL proceeding with the appellant's candidature for the LPG distributorship. The same may be decided as per the applicable laws and guidelines by the competent authority of HPCL.

31. Since the Advertisement is more than half a decade old, we hope and trust that HPCL would henceforth proceed with expedition to cater to the needs of its future customers.

32. Pending applications, if any, also stand disposed of accordingly.

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. 838 : 2024 INSC 224

Jugal Kishore Khanna (D) Thr. Lrs. & Anr.
v.
Sudhir Khanna & Ors.

(Civil Appeal No. 1591-1592 of 2020)

19 March 2024

[Vikram Nath and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Whether the High Court erred in finding without any evidence that the amount alleged to have been paid as the value of share in Joint Hindu Family property is not so but for some other purpose.

Headnotes

Partition Suit – Predecessors of Appellants and Respondents - the elder ("RKK") and younger ("ACK") brother respectively – two properties purchased by RKK – (i) Kamla Nagar property in the name of his father (ii) Malcha Marg property in the name of ACK's wife and constructed house out of Joint Hindu Family Business, Regal Cinema - After RKK's death ACK raised claim in Kamla Nagar property – Oral Settlement between Appellants and ACK and value of latter's share fixed at Rs. 55,000/- (Fifty-five thousand only) – The same was paid – Suit filed by Respondents to partition properties in Kamla Nagar and Shimla- Appellants raised partial partition in respect of Malcha Marg property – Trial Court partly decreed the suit by only allowing the respondents' claim in Malcha Marg property – Both parties approached High Court with separate Appeals – Both Appeals decided in favour of respondents – Thus, the two instant Appeals.

Held: With respect to the Malcha Marg property, the concurrent findings of the Trial Court and High Court that it belonged exclusively to the Respondents was upheld, for lack of evidence to prove that the same was purchased out of joint family funds – Whereas, in regard to the Kamla Nagar property, both Trial Court and High Court, from the evidence on record, found that there was a payment of Rs. 55,000/- (Rupees fifty-five thousand only) by appellants to the predecessor of respondents – It can

* Author

also be seen from the evidence that the appellants exclusively enjoyed the property from the date of its purchase, It is also true that the property was let out and rent was collected entirely by appellants – Wealth Tax Returns of ACK from 1964-1967 shows valuation of Kamla Nagar property to be Rs. 38,000/- (Thirty-eight thousand only) – In year 1979, the value ought to have increased to Rs.1,10,000/- (One lakh ten thousand only) – As contended by the appellants, there was nothing on record to indicate that the payment of a hefty sum of Rs. 55,000/- in the year 1979, was for the upkeep of the HUF or on some other account or to fulfil some other purpose but towards value of the half right held by ACK in the property. [Paras 18, 19-21]

List of Acts

The Registration Act, 1908.

List of Keywords

Partial partition; Oral settlement.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1591 of 2020

From the Judgment and Order dated 06.12.2013 of the High Court of Delhi at New Delhi in R.F.A. No.439 of 2008

With

Civil Appeal No.1592 of 2020

Appearances for Parties

Akshay Makhija, Sr. Adv., Arjav Jain, Adarsh Chamoli, Shashank Shekhar, Ronak Baid, Chander Shekhar Ashri, Advs. for the Appellants.

S. C. Singhal, Vibhav Mishra, Ms. Megha Gaur, Parmanand Gaur, Tushar Bakshi, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

2. The challenge in the present appeals is to the common Judgment and Order dated 06.12.2013 (hereinafter referred to as the "Impugned Judgment")[1] passed by a learned Single Judge of the High Court of Delhi (hereinafter referred to as the "High Court"), wherein the appeal filed by the respondent no.1 in respect of the Kamla Nagar property[2], i.e., RFA No.439 of 2008, has been allowed and the appeal filed by the appellants in respect of the Malcha Marg property[3], i.e., RFA No.483 of 2008, has been dismissed.

FACTS IN BRIEF:

3. The parties are common descendants of Late Shri Tek Chand Khanna (hereinafter referred to as "TCK"), who had two sons, Shri Roop Kishore Khanna (hereinafter referred to as "RKK") and Shri Attar Chand Khanna (hereinafter referred to as "ACK"). The appellants are descendants of RKK whereas the respondents are the successors of ACK. In the year 1941, RKK purchased a piece of land admeasuring 344 square yards and bearing No.15-D, Kamla Nagar, Delhi - 110007 (hereinafter referred to as the "Kamla Nagar property") in the name of his father TCK and a residential house was constructed thereupon in 1950. Another property admeasuring 375 square yards bearing No.D-56, Malcha Marg, Chanakyapuri, New Delhi - 110021 (hereinafter referred to as the "Malcha Marg property") was also acquired by RKK and constructed by the family in the name of Smt. Shyama Khanna, wife of ACK. The claim of the appellants is that the purchase and construction of the Malcha Marg property was out of the funds provided by RKK and the income of the family generated from Regal Cinema Business. RKK died in the year 1978 and after that ACK claimed share in the Kamla Nagar property claiming it to be joint family property. The appellants claim that in 1979, in terms of an oral settlement between the parties a sum of Rs.55,000/- (Rupees Fifty-Five Thousand) was paid through cheques by the LRs of RKK in favour of ACK for the purchase of the share of ACK in the Kamla Nagar property. In 1983, upon ACK having expired, his LRs filed two suits. One claiming partition of the properties at Shimla and another claiming partition of the Kamla Nagar

1 2013 : DHC : 6299 I 2013 SCC OnLine Del 4916.

2 Defined *infra*.

3 Defined *infra*.

property. The Trial Court by order dated 28.07.2008 dismissed the suit of the Respondent No.1 with regard to the claim over the Kamla Nagar property. However, insofar as the Malcha Marg property is concerned, the Trial Court decided the issue of the suit being bad on account of partial partition against the appellants, on the ground that circumstances given by the appellants are not sufficient to prove that the Malcha Marg property was purchased out of joint family funds. The Respondent No.1 challenged the Trial Court order, so far as the same pertained to the Kamla Nagar property, by filing RFA No.439 of 2008 before the High Court whereas the appellants challenged the decision of the Trial Court pertaining to the Malcha Marg property by preferring RFA No.483 of 2008.

4. By the common Impugned Judgement dated 06.12.2013, the High Court allowed the appeal filed by the Respondent No.1 [RFA No.439 of 2008] and dismissed the appeal filed by the appellants [RFA No.483 of 2008]. The instant Civil Appeals emanate therefrom.

SUBMISSIONS BY THE APPELLANTS:

Re Kamla Nagar:

5. Learned senior counsel for the appellants submitted that the judgment of the Trial Court [the Additional District Judge, Karkardooma Courts, Delhi] dated 28.07.2008 held that Kamla Nagar property belongs solely to the appellants on very cogent grounds i.e., the same was originally joint/ancestral property between RKK and ACK having been bought in the name of TCK and later the 50% share of ACK being bought by the appellants in a family settlement. It was pointed out that when suggestion was put to DW1 and DW2 being Defendant No.2 and LRs of deceased Defendant No.1 respectively, in cross-examination, payment of Rs. 55,000/- (Rupees Fifty-Five Thousand) for betterment of Hindu Undivided Family (hereinafter referred to as "HUF") was admitted. Further, the Trial Court had noted in its judgment that the plaintiff (Respondent No.1) in his cross-examination had admitted that the Kamla Nagar property was the only joint family property.

6. Learned counsel submitted that the appellants, who were defendants in the suit pertaining to the Kamla Nagar property, had proved that there was an oral settlement in the year 1979 after the demise of RKK and in terms thereof, the LRs of RKK being Defendants No.1, 2 and 3, being sons of RKK, as also Ms. Lakshmi Khanna, wife of late RKK,

had by 6 cheques paid an amount of Rs. 55,000/- (Rupees Fifty-Five Thousand) towards the share of ACK in the Kamla Nagar property.

7. Thus, it was contended that rightly the Trial Court had held in favour of the appellants that the the Kamla Nagar property no more remained joint family property, as the 50% share of the ACK branch was already bought by paying Rs. 55,000/- (Rupees Fifty-Five Thousand) to the LRs. In support of his contention, learned counsel further submitted that ACK in his Wealth Tax Return of the year 1965-1967 had shown the value of the Kamla Nagar property at around Rs.38,000/- (Rupees Thirty-Eight Thousand) and thus, in the year 1979, the value being Rs.1,10,000/- (Rupees One Lakh and Ten Thousand) was most reasonable and 50% of their share being Rs.55,000/- (Rupees Fifty-Five Thousand) having been paid, the entire property belonged to the share of the LRs of RKK.

8. However, it was contended that even the Trial Court has held that in family settlements, it is normal for the value to be slightly on the upper or the lower side.

9. Learned counsel submitted that though ACK has filed his Wealth Tax Returns for the years 1964-1965, 1965-66 and 1966-67, his Wealth Tax Returns from 1979 till his demise in 1983 were not brought before any forum or Court nor any witness was called from the Income-Tax Department to show the same, which is another indicator that ACK had not claimed any part of the Kamla Nagar property to be his so as to require disclosure in his Wealth Tax Returns from 1979 till his death in 1983, which also proves the fact with regard to the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) as per the family settlement for buying the 50% share of ACK in the Kamla Nagar property by the appellants, who were LRs of RKK.

10. Learned counsel submitted that the High Court in the Impugned Judgment in RFA No.439 of 2008 has taken a view that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was "*on some other account*" and not towards any claim against the Kamla Nagar property. It was held by the High Court that the LRs of ACK had 50% share in the same and further the aspect of *benami* was specifically not pressed at the time the RFA was heard by the High Court, as noted in Paragraph 12 of the Impugned Judgment. Even the finding that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was "*on some other account*" is totally erroneous and presumptuous since

it is based only on surmises without there being any discussion to show as to what was the other purpose and in the absence of such "*other account*", there was no material to prove its authenticity and genuineness.

11. Learned counsel submitted that right from 1979 till his demise in 1983, ACK never raised any claim with respect to the Kamla Nagar property which was in the exclusive possession of the appellants.

12. Learned counsel also contended that the payment of Rs.55,000/- (Rupees Fifty-Five Thousand) was received by ACK in his personal account and not his business account, which would clearly show that it was in terms of the family settlement and not for some other account/purpose.

Re Malcha Marg:

13. On the Malcha Marg property, learned counsel submitted that though both the Courts below have given concurrent findings that it was not joint family property, the appellants who were Defendants had only taken a preliminary objection in the Written Statement to the suit being bad for partial partition as the Malcha Marg property was not part of the said suit. However, no serious effort was made to claim partition/ownership of full or part of the Malcha Marg property.

SUBMISSIONS BY THE RESPONDENTS:

14. *Per contra*, learned counsel for the respondents submitted that the Trial Court had rightly decided the issue *qua* the Malcha Marg property being exclusively that of the respondents but had erred in accepting the story of family settlement and payment of Rs.55,000/- (Rupees Fifty-Five Thousand) for the share of the respondents in the Kamla Nagar property and the wrong has rightly been corrected by the High Court *vide* the Impugned Judgment. It was submitted that the Trial Court findings *re* the Malcha Marg property was rightly upheld.

15. Learned counsel drew the attention of the Court to the cross-examination of DW1, in which he has stated that no valuation was done from any valuer and there were no documents to show that Rs.55,000/- (Rupees Fifty-Five Thousand) paid to ACK was towards a full and final settlement of his share in the Kamla Nagar property. Thus, it was submitted that in the absence of there being any proof of either settlement or payment in lieu of the share of the respondents,

rightly the High Court has held that the appellants have only 50% share in the property.

16. On the legal aspect, it was submitted that Section 17 of the Registration Act, 1908[4] provides that any document or transfer or assigning any

---

4 '*17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been examined on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—*

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt, from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition-deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1-A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

(x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments of divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of

right or extinguishing any right regarding title and interest in an immovable property valued at more than Rs.100/- (One Hundred) has to be done through a document which requires registration and the same not having been done, the presumption in law would be that no such settlement existed between the appellants' side and the respondents' side.

17. On the aspect of the Malcha Marg property, it was submitted that both the Courts below have concurrently held in favour of the respondents and thus, there being absolutely no evidence whatsoever to show the same to have been bought by joint family funds, no interference was required with such finding(s).

ANALYSIS, REASONING AND CONCLUSION:

18. Having considered the matter, the Court finds that the Impugned Judgment of the High Court needs interference. As far as the Malcha Marg property is concerned, the Court has no hesitation to uphold the concurrent findings of the Trial Court and the High Court that there is nothing, even remotely, to indicate that the said property was bought out of joint family funds, and thus, rightly it has been held to be the exclusive property of the respondents. As such, it has to rightly devolve on the LRs of ACK exclusively.

19. Moving on to the Kamla Nagar property, the Court finds that the findings, unearthed during trial indicate that Rs.55,000/- (Rupees Fifty-Five Thousand) was paid by the appellants' side to the respondents' side. There is nothing on record to indicate that it was paid for the upkeep of the HUF or on some other account or to fulfil some other purpose.

20. The plea of the respondents that the said amount was for the upkeep of the HUF does not stand to reason for it is the admitted position that the respondents or their ancestors were never living

---

the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.'

in the Kamla Nagar property. Hence, there was no occasion for the appellants to contribute a heavy amount of Rs.55,000/- (Rupees Fifty-Five Thousand) in the year 1979 for the upkeep and/or maintenance of the said property to the respondents, when the same was exclusively being enjoyed by the appellants, who alone would be liable for its maintenance. Moreover, there being disclosure by ACK in his Wealth Tax Returns of the years 1964-1967 showing the valuation of the property to be around Rs.38,000/- (Rupees Thirty-Eight Thousand) and payment having been made in 1979 of Rs.55,000/-(Rupees Fifty-Five Thousand) does not indicate that it was undervalued as there has been a marked increase in the valuation from Rs.38,000/- (Rupees Thirty-Eight Thousand) to Rs.1,10,000/- (Rupees One Lakh Ten Thousand) and payment made of 50% i.e., Rs.55,000/- (Rupees Fifty Five Thousand), in 1979, that too in a family settlement between ACK and RKK cannot be labelled a totally sham consideration.

21. Further, the appellants having enjoyed possession right from the time the property was purchased and even letting out the premises to tenants and collecting/taking rent from the tenants without any claim raised at any point of time, would also support the claim that ACK had not claimed any right or title over any portion of the Kamla Nagar property during his lifetime. Had that been the case, there was no occasion for him not to take or lay a claim to a 50% share in the rent given by the tenants, which is clear from the finding recorded by the High Court that there were tenants also in the Kamla Nagar property; but the respondents never claimed any share in such proceeds/ rent from the tenants. The issue was agitated for the very first time only by filing the suit before the Trial Court in 1983.

22. Thus, on an overall circumspection of the facts and circumstances and upon going through the records and submissions with the aid of learned counsel appearing for the respective parties, the Impugned Judgment inasmuch as it relates to the Kamla Nagar property *viz*. RFA No.439 of 2008 stands set aside and the Judgment and Decree passed by the the Additional District Judge, Karkardooma Courts, Delhi in Suit No.70/06/83 dated 28.07.2008 relating to the Kamla Nagar property stands restored. It is further held that the appellants are the exclusive owners of the Kamla Nagar property described hereinbefore. The Impugned Judgment insofar as it relates to RFA No.483 of 2008 is upheld. Accordingly, Civil Appeal No.1591 of 2020

is allowed and Civil Appeal No.1592 of 2020 is dismissed. Interim order(s) of *status quo* stand vacated. Registry to draw up the Decree Sheet accordingly.

23. The parties are left to bear their own costs.

24. IA No.59678 of 2023 for Early Hearing preferred by the appellants in Civil Appeal No.1591 of 2020 does not subsist for consideration in view of the aforesaid and is dismissed as infructuous.

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

Result of the case:
Civil Appeal No.1591 of 2020 allowed and Civil Appeal No.1592 of 2020 dismissed.

[2024] 3 S.C.R. 848 : 2024 INSC 219

Union of India, Ministry of Law & Justice
v.
Justice (Retd) Raj Rahul Garg (Raj Rani Jain) and Others

(Civil Appeal No. 4272 of 2024)

15 March 2024

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

Issue for Consideration

Whether gap between the retirement of a District Judge and her subsequent appointment as the Judge of the High Court would constitute 'break in service' adversely affecting her pensionary and other retirement benefits.

Headnotes

The High Court Judges (Salaries and Conditions of Service) Act, 1954 – s. 14, 15, Para 2, Part III of the First Schedule – Entitlement of High Court Judge promoted from District Judiciary to pension and retirement benefits despite break in service – Break in service has no adverse implications in computing pension since service upon appointment of a High Court Judge is in pursuance a recommendation which was made during her tenure as a Judge of the District Judiciary

The Respondent retired from District Judiciary on 31 July 2014 – Subsequently, she was promoted as High Court Judge and appointed in the Punjab & Haryana High Court on 25 September 2014 – The Respondent retired on 4 July 2016 on attaining the age of superannuation – The Appellant-Union of India contended that her service as the High Court Judge ought not be taken to calculate pensionary and retirement benefits as the break in service before assuming the role of High Court Judge cannot be condoned – The Appellant-Union of India contended that the Respondent has not completed twelve years of pensionable service as a Judge of the High Court to be eligible for the pension for High Court Judges under s.14 of the High Court Judges (Salaries and Conditions of Service) Act 1954 (hereinafter referred to as "the Act")

Held: s.15(1)(b) of the Act indicates that a person who has held a pensionable post under the Union or a State may elect to

* Author

receive the pension payable either under Part I or Part III of the First Schedule of the Act – Service which is rendered as a High Court Judge has to be cumulated with the service rendered as a member of the District Judiciary by treating it as service therein for computing the pension – s.14 not applicable as contended by the Appellant-Union of India – Explanation to s. 14 is exhaustive and it applies to a Judge who has not held any pensionable post either in the Union or the State or a person who having held a pensionable post has opted to receive the benefits of pension under Part I of the First Schedule – The Respondent who has not opted to receive the benefits of pension under Part I of the First Schedule would fall outside the purview of Explanation to s. 14 – Post-retiral pension to such a Judge would be governed by s.15 r/w Para 2 of the Part III of the First Schedule – Contention of the Appellant-Union of India that the Respondent has not completed twelve years as High Court Judge does not apply in view of s.14A which entitles a member of the Bar elevated as High Court Judge to the addition of ten years of service – A similar principle, as applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the District Judiciary, who is appointed to the High Court – Any other interpretation would result in plain discrimination between Judges of the High Court based on the source from which they have been drawn – Break in service must necessarily have no adverse implications in computing the pension of the Respondent for the reason that her service upon appointment as a High Court Judge was in pursuance of a recommendation which was made during her tenure as a judge of the District Judiciary. [Paras 22, 26, 27 & 30]

Judiciary – Retirement Benefits – Pensionary payments to Judges constitute a vital element in the independence of the judiciary

Held: As a consequence of long years of judicial office, Judges on demitting office do not necessarily have the options which are open to members from other services – The reason why the State assumes the obligation to pay pension to the Judges is to ensure that the protection of the benefits which are available after retirement would ensure their ability to discharge their duties without "fear or favour" – The purpose of creating dignified conditions of existence for Judges both during their tenure as the Judges are vital components of the rule of law – Independence of the judiciary

is hence a vital doctrine which is recognized in the constitutional scheme – Payment of salaries and dignified pensions serves independence of judiciary. [Para 25]

Case Law Cited

Kuldip Singh v. Union of India [2002] 3 SCR 620 : **(2002) 9 SCC 218;** *Government of NCT of Delhi v. All India Young Lawyers Association (Registered)* [2009] 3 SCR 555 **: (2009) 14 SCC 49;** *P Ramakrishnam Raju v. Union of India* [2014] 4 SCR 562 **: (2014) 12 SCC 1;** *M L Jain v. Union of India* [1985] 3 SCR 608 **: 1985 2 SCC 355, 357 – referred to.**

List of Acts

The High Court Judges (Salaries and Conditions of Service) Act, 1954; Constitution of India.

List of Keywords

High Court Judges; Pensionary and retiral benefits; Independence of judiciary; Break in service

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4272 of 2024

From the Judgment and Order dated 14.08.2018 of the High Court of Punjab and Haryana at Chandigarh in CWP No.6380 of 2018 (O&M)

Appearances for Parties

K.M. Nataraj, ASG, Gaurav Dhama, AAG, Ajay Kumar Misra, Adv. Gen./Sr. Adv., Sanjay Parikh, Shailesh Madiyal, P.S. Patwalia, Ajay Tiwari, Arijit Prasad, Manoj Goel, Sanjay R. Hegde, S.S. Kulshrestha, Sr. Advs., B. Balaji, S. Arun Prakash, Ms. Aparna Bhat, Ms. Karishma Maria, Shuvodeep Roy, Kabir Shankar Bose, Saurabh Tripathi, Ms. Anisha Upadhyay, Arvind Kumar Sharma, Nitin Singh, Ankur Yadav, Kuldeep Yadav, Shashank Shekhar, Ms. Jannat, Vikrant Singh Bais, Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Akanksha Rathore, Noor Rampal, Rajan Kumar Chourasia, Anmol Chandan, Sarad Kumar Singhania, T.S. Sabarish, Divyakant Lahoti, Ms. Madhur Jhavar, Ms. Praveena Bisht, Ms. Vindhya Mehra, Kartik Lahoti, Ms. Dilmrig Nayani, Kumar Vinayakam Gupta, Ms. Mallika Luthra, Saksham Barsaiyan,

Mukesh Kumar Maroria, Vatsal Joshi, Anirudh Sharma, Sarthak Karol, Ms. Indira Bhakar, Harish Pandey, Shashwat Parihar, Rajesh Singh Chauhan, Kanu Agarwal, Varun Chugh, Tanmay Mehta, Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Vinayak Mohan, Ms. K. Enatoli Sema, Abhinav Bajaj, Ms. Geetashi Chandna, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Chang, Prang Newmai, Mrs. Anil Katiyar, Raj Bahadur Yadav, Mrs. Gargi Khanna, Shailesh Mandiyal, Sabrish Subramanium, Prashant Singh Ii, Abhimanyu Tewari, Ms. Eliza Bar, P.I. Jose, Chirag M. Shroff, Dhananjay Kataria, Ms. Diksha Rai, Arijit Dey, Ishan Kapoor, Ms. Apurva Sachdev, Anandh Kannan N., Ms. Sujata Kurdukar, Pratap Venugopal, Samar Vijay Singh, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, Manoj Gautam, Ms. Ankita Sharma, Arjun Singh, Apoorv Kurup, Ratan Kumar Choudhuri, Barun Kumar Sinha, Ms. Pallavi Langar, Kumar Anurag Singh, Abhay Anil Anturkar, Dhruv Tank, Aniruddha Awalgaonkar, Ms. Vibha Kapoor, Akshay Kapoor, M/s. Dr. R.R. Deshpande & Associates, Ms. Mukti Chaudhry, Sandeep Sudhakar Deshmukh, Nishant Sharma, G. Prakash, Ms. Deepanwita Priyanka, Ashutosh Dubey, Malak Manish Bhatt, Siddhant Sharma, Nishant Ramakantrao Katneshwarkar, Ms. Mrinal Gopal Elker, Gurmeet Singh Makker, Avijit Mani Tripathi, Ms. Aakanksha Kaul, Ms. Garima Bajaj, Ms. Radhika Gautam, Anando Mukherjee, Shwetank Singh, Ms. Ekta Bharati, Raghvendra Kumar, Anand Kumar Dubey, Maneesh Pathak, Devvrat Singh, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Vishwa Pal Singh, Adesh Kr. Gill, Ashutosh Bhardwaj, Dr. Nitin Sharma, Abhinav Kumar Garg, Anurag Pandey, Satyam Pehal, Ms. Anvita Dwivedi, Ms. Astha Sharma, T.G. Narayanan Nair, Ms. Swathi H Prasad, Ms. Samyuktha H Nair, Shreekant Neelappa Terdal, Arjun Garg, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Kriti Gupta, Gopal Singh, Aravindh S., Ms. Ekta Muyal, Bharat Bagla, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Anupam Ngangom, Ms. Rajkumari Divyasana, R. Rajaselvan, Ahantham Henry, Ahantham Rohen Singh, Mohan Singh, Kumar Mihir, Sanjai Kumar Pathak, Arvind Kumar Tripathi, Mrs. Shashi Pathak, Purvish Jitendra Malkan, Ms. Dharita Purvish Malkan, Alok Kumar, Kush Goel, Ms. Deepa Gorasia, Nirnimesh Dube, Shibashish Misra, Niranjan Sahu, Ketan Paul, Mukul Kumar, Sameer Abhyankar,

Aakash Thakur, Mrs. Nishi Sangtani, Ms. Zinnea Mehta, Anurag Kaushik, Shreya Kumar, Rahul Kumar, Ashok Mathur, Sabarish Subramanian, V Balachandran, Siddharth Naidu, M/s. KSN & Co., Sravan Kumar Karanam, Pusa Mallesh, Ms. Shireesh Tyagi, Ms. Tayade Pranali Gowardhan, P. Santhosh Kumar, Abhishek Vedika Jain, Vinayak Goel, Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Sanjay Kumar Tyagi, Prabhat Kumar Rai, Abhishek Tyagi, Ms. Shivi Bhatnagar, Sunil Kumar Tomar, Ms. Preetika Dwivedi, Abhisek Mohanty, Ms. Madhumita Bhattacharjee, Ms. Srija Choudhury, Ms. Osheen Bhat, Ms. Nitipriya Kar, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Gautam Narayan, Ms. Asmita Singh, Harshit Goel, Sujay Jain, K.V. Vibu Prasad, Anupam Raina, Sunando Raha, Nishant Kumar, Ms. Sampriti Baksi, Ms. Hemantika Wahi, P.S. Sudheer, Rohit K. Singh, Farrukh Rasheed, T.V. Ratnam, Krishnanand Pandeya, Yash Kirti Kumar Bharti, V.N. Raghupathy, Manendra Pal Gupta, Shovan Mishra, Ms. Bipasa Tripathy, M/s. Arputham Aruna & Co., Vinay Arora, D. Kumanan, Mrs. Deepa. S, Sheikh F. Kalia, Veshal Tyagi, Danish Zubair Khan, Aviral Saxena, Ms. Enakshi Mukhopadhyay Siddhanta, Sovon Siddhanta, K.G. Kannan, Vedhagiri Chalka. A, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. Leave granted.

2. This appeal arises from a judgment dated 14 August 2018 of a Division Bench of the High Court of Punjab and Haryana.

3. The first respondent was appointed as a Judicial Magistrate in the State of Haryana on 11 May 1981. She was appointed as an Additional District Judge on 26 August 1997 and later, as a District Judge on 19 July 2010. In December 2013, she was recommended for appointment as a Judge of the High Court. Sometime before her appointment as a Judge of the High Court, she retired as a District Judge on 31 July 2014. On 25 September 2014, the first respondent assumed office as a Judge of the Punjab and Haryana High Court. She attained the age of superannuation and retired from service on 4 July 2016.

4. As a former Judge of the High Court, the first respondent instituted proceedings under Article 226 of the Constitution, aggrieved by the determination of her pensionary benefits. She sought that notwithstanding the gap between her superannuation as a District judge and appointment as a Judge of the High Court, the entire period of service as from 11 May 1981 to 31 July 2014 as well as service rendered from 25 September 2014 to 04 July 2016, be reckoned for pensionary and other retirement benefits. The Union of India contested the petition on the ground that the gap ought to be considered as a break in service.

5. By its judgment dated 14 August 2018, the Division Bench of the High Court held that the entire period of service rendered by the first respondent from 25 September 2014 to 4 July 2016 as a Judge of the High Court shall be blended with the years of her service from 11 May 1981 till 31 July 2014 as a Judge of the district judiciary for the purpose of computing her pension as a Judge of the High Court. The Union of India is in appeal against the judgment of the High Court.

Constitutional and Statutory Framework

6. Article 217 of the Constitution provides for the appointment and conditions of the office of a Judge of a High Court. Clause (2) of Article 217 stipulates that a person shall not be qualified for appointment as a Judge of a High Court unless such a person has:

   (a) held a judicial office for a period of ten years in the territory of India; and

   (b) been an Advocate of a High Court or of two or more such Courts in succession for at least ten years.

7. Sub-clause (a) of clause (2) of Article 217 deals with persons who have held judicial office before appointment as a Judge of the High Court, while clause (b) essentially sets out conditions of eligibility for the appointment of Advocates to the Bench of the High Court.

8. Article 221 of the Constitution provides for salaries, allowances and pensions to be paid to the Judges of the High Courts. Clause 2 of Article 221 states that

> "(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may be from time to time be determined by or under

> law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule."

9. The High Court Judges (Salaries and Conditions of Service) Act 1954[1] has been enacted by Parliament "to regulate salaries and certain conditions of service of the Judges of the High Court". Section 2(1)(g) of the Act defines the expression 'Judge' to mean a Judge of a High Court and to include the Chief Justice, an acting Chief Justice, an Additional Judge and an acting Judge of the High Court. Chapter III of the statute deals with salaries and pensions. Section 14 stipulates that subject to the provisions of the Act, every Judge would, on retirement be paid a pension in accordance with the scale and provisions in Part I of the Schedule. The proviso, however, qualifies the entitlement to pension by stipulating that "no such pension shall be payable to a Judge unless":

   (a) he has completed not less than twelve years of service for pension; or

   (b) he has attained the age of superannuation; or

   (c) his retirement is medically certified to be necessitated by ill health.

10. The proviso to Section 14 stipulates that if a Judge is in receipt of a pension at the time of their appointment in respect of any previous service in the Union or a State, other than a disability or wound pension, the pension payable under the Act shall be in lieu of and not in addition to that pension. The Explanation to Section 14, however, is in the following terms:

> "*Explanation*.— In this section "Judge" means a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who having held any other pensionable post under the Union or a State has elected to receive the pension payable under Part I of the First Schedule."

11. In terms of the Explanation, an artificial meaning is ascribed to the expression 'Judge' for the purpose of Section 14. The meaning

1 'The Act'

ascribed to the expression, for the purposes of Section 14, is a Judge who has not held any other pensionable post under the Union or a State and includes a Judge who, having held any other pensionable post under the Union or a State, elects to receive the pension payable under Part I of the First Schedule. At this stage, it would be, therefore, material to emphasize that while Section 2(1)(g) contains a broad and all-encompassing definition of the expression 'Judge', the same expression for the purposes of Section 14 has a more restricted meaning as described in the Explanation.

12. Section 15 contains a special provision for the payment of pension to Judges who are members of the service. Section 15 is in the following terms:

> **"15. Special provision for pension in respect of Judges who are members of service**.—[(1)] Every Judge—
>
> (a) * * * *
>
> (b) who * * * has held any other pensionable post under the Union or a State, shall, on his retirement, be paid a pension in accordance with the scale and provisions in Part III of the First Schedule:
>
> Provided that every such Judge shall elect to receive the pension payable to him either under Part I of the First Schedule or, * * * Part III of the First Schedule, and the pension payable to him shall be calculated accordingly.
>
> [(2) Notwithstanding anything contained in sub-section (1), any Judge to whom that sub-section applies and who is in service on or after the 1st day of October, 1974, may, if he has elected under the proviso to that sub-section to receive the pension payable to him under * * * Part III of the First Schedule before the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President, cancel such election and elect afresh to receive the pension payable to him under Part I of the First Schedule and any such Judge who dies before the date of such assent shall be deemed to have elected afresh to be governed by the

provisions of the said Part I if the provisions of that Part are more favourable in his case.]"

13. Clause (b) of sub-section (1) of Section 15 indicates that every Judge who has held any other pensionable post under the Union or a State would be paid a pension in terms of Part III of the First Schedule, subject to the condition (set out in the proviso) that the Judge elects to receive the pension payable either under Part I or, as the case may be, Part III of the First Schedule. Under Section 15(1)(b), upon electing for the payment of a pension under Part III of the First Schedule, the Judge would be entitled to pensionary benefits in the terms set out in Part III. Part III of the First Schedule is in the following terms:

"Part III

1. The provisions of this Part apply to a Judge who has held any pensionable post under the Union or a State (but is not a member of the Indian Civil Service) and who has not elected to receive the pension payable under Part I.

2. The pension payable to such a Judge shall be—

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of [Rs.45,016] per annum in respect of each completed year of service for pension, * * *

[Provided that the pension under clause (*a*) and the additional pension under (*b*) together shall in no case exceed [Rs. 15,00,000] per annum in the case of a Chief Justice and [Rs. 13,50,000] per annum in the case of any other Judge.]"

Decision of the High Court

14. In the present case a communication dated 04 May 2016 addressed by the Under Secretary to the Government of India to the Deputy Accountant General (Pension) stated that since there was a break

in the service of the first respondent, and the same could not be condoned and the period of her service as a Judge of the High Court could not be considered for calculating her pension.

15. The High Court noted that paragraph 2 of Part III was applicable to the first respondent. The High Court held that reading paragraph 2 harmoniously would entail a 'blending of the period of both the services'; and that if the services were not so blended, the service of the first respondent as a Judge of the High Court would slip into oblivion. Hence, it was held that in accordance with the definition of 'service' in Section 2(1)(h) of the 1954 Act, the first respondent's service as a Judge of the High Court was 'actual service':. The High Court observed:

> "To conclude, it is manifestly clear that what is to be blended is the 'actual service' rendered as a Judge of the High Court to the service rendered by the petitioner from 1981 till 31 July 2014 as service, for pension and accordingly, the pension will have to be calculated as judge of High Court"

16. The High Court directed that the service of the first respondent as a Judge of the High Court had to be blended with her services as a Judge of the District Judiciary and pension was to be calculated as for a Judge of the High Court.

Submissions

17. The Union of India has adopted the position that:

    (i) The computation of the retiral benefits has been done correctly, taking into account the thirty-three years of her service as a member of the District Judiciary and the special additional pension. The High Court has erred in including her service as a Judge of the High Court, condoning the break in service of 54 days;

    (ii) The first respondent had not completed twelve years of pensionable service as a Judge of the High Court within the meaning of Section 14;

    (iii) There was a break in service between the date on which the first respondent retired as a District Judge (31 July 2014) and assumed the office of a Judge of the High Court (25 September

2014). This break could not be condoned under the 1954 Act by the High Court or by this Court;

(iv) The first respondent having opted to receive her pensionary payments under Part III of the First Schedule, the years of service which were rendered by her as a Judge of the High Court would be cumulated with her service as a member of the district judiciary;

(v) The pension payable to the first respondent would then be computed on the basis of last drawn salary as a District Judge; and

(vi) Since paragraph 2(b) of Part III of the First Schedule provides for a special additional pension in respect of each completed year of service, the first respondent would be entitled to that as well.

18. The essence of the contest in these proceedings relates to the correctness of the interpretation which has been placed by the Union of India.

19. Mr Shailesh Madiyal, senior counsel appearing on behalf of the Union of India has adopted the above submissions. It has been urged that though the first respondent had not completed twelve years as a Judge of the High Court for the eligibility for pension in terms of Section 14, in view of the provisions of Section 15, she would be entitled to the computation of pension in terms of Part III of the First Schedule. Mr Madiyal urged that in terms of paragraph 2(a) of Part III, the total length of service rendered as a Judge of the High Court would have to be added to the length of service as a Judge of the district judiciary, to which a special additional pension would be added. Hence, it is urged that the Union was correct in computing the pensionary payment on the basis of the salary last drawn by the first respondent as a Judge of the High Court.

20. Mr P S Patwalia, senior counsel appearing on behalf of the respondent, has, on the other hand, urged that the Division Bench of the High Court was justified in holding that the years of service as a member of the district judiciary would have to be blended with the years of service as a Judge of the High Court. Adverting to the provisions of Section 14A of the Act, which were introduced to provide an addition of ten years of service to a member of the Bar who is

appointed as a Judge of the High Court, it was urged that it would be entirely discriminatory if a similar principle were not applied to the members of district judiciary appointed as a Judge of the High Court.

Analysis

21. Section 14(1) of the Act provides that the pension payable to a Judge shall be computed in accordance with Part I of the First Schedule. Among the three conditions prescribed for eligibility to receive pension, is the requirement of completing twelve years of service for pension. At the same time, the Explanation to Section 14 which was inserted by Act 13 of 2016, provides meaning to the expression 'Judge' for the purposes of Section 14. In its first part, the Explanation indicates that the expression means a Judge who has not held any other pensionable post either under the Union or a State. In the second part, the expression includes a Judge who has held a pensionable post under the Union or a State and has elected to receive pension under Part I of the First Schedule. The first part of the Explanation would encompass members of the Bar who would not have held any other pensionable post under the Union or a State. The latter part encompasses Judges falling within the description contained in Article 217(2)(a) of the Constitution, who have held a pensionable post under the Union or the State and who have opted to receive pension under Part I of the Schedule. The latter part thus covers only a person who has opted for pension under Part I of the First Schedule.

22. Section 15, on the other hand, is a special provision as its marginal note indicates, for Judges who are members of the service meaning the judicial service. Clause (b) of Section 15(1) indicates that a person who has held a pensionable post under the Union or a State may elect to receive the pension payable either under Part I or Part III. In the case of a Judge, such as the first respondent, who elects to receive pension under Part III of the First Schedule, the pension payable has to be computed in terms of the provisions contained in paragraph 2 of Part III. . For the purpose of clause (a), the pension which is payable to the Judge is the pension to which they are entitled under the ordinary rules of service if they had not been appointed as a Judge and their service as a Judge is treated "as service therein for the purpose of calculating that pension". In other words, the service which is rendered as a Judge of the High

Court has to be cumulated with the service rendered as a member of the district judiciary by treating it as service therein for computing the pension. To this, would be added a special additional pension in terms of clause (b) of paragraph 2.

23. As a result of Section 14A, a period of ten years is added and is deemed to have been added from 1 April 2004 for the purpose of pension to the service of a Judge who is appointed under clause (2) (b) of Article 217. Section 14A, is in other words, a special provision which was introduced for Judges of the High Court who have been appointed from the Bar. The introduction of Section 14A in 2016 was preceded by three judgments of this Court. The first of them in ***Kuldip Singh vs Union of India***,[2] dealt with the appointment of a Judge of the Supreme Court from the Bar. This Court held that a member of the Bar who was appointed as a Judge of the Supreme Court would be entitled to the addition of ten years of service for the purpose of computing pension. This principle was similarly applied in ***Government of NCT of Delhi vs All India Young Lawyers Association (Registered)***[3] in the case of the district judges. Eventually, the same principle was extended by this Court in ***P Ramakrishnam Raju vs Union of India***[4] in dealing with the pension payable to High Court Judges who are appointed from the Bar under Article 217(2)(b) of the Constitution. A three-Judge Bench of this Court, speaking through Sathasivam, CJ noted that Judges who are appointed under Article 217(2)(a) being members of the judicial service obtain full pensionary benefits even if they serve as a Judge of the High Court for a bare period of a year or two because of their earlier entry into judicial service, but such a benefit is not extended to members of the Bar who become Judges of the High Court. This Court while laying down the principle of non-discrimination between High Court judges elevated from the bar on the one hand and from the district judiciary on the other, observed:

> "19. **When persons who occupied the constitutional office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where**

2 [2002] 3 SCR 620 : (2002) 9 SCC 218

3 [2009] 3 SCR 555 : (2009) 14 SCC 49

4 [2014] 4 SCR 562 : (2014) 12 SCC 1

> **the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges.** Only practising advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer.
>
> Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-à-vis the experience gained by a judicial officer. **If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.**
>
> 20. The fixation of higher pension to the Judges drawn from the subordinate judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved."
>
> (emphasis supplied)

24. The principles which have been laid down by the three-Judge Bench decision in ***P Ramakrishnam Raju*** *(supra)* provide guidance to this Court in resolving the controversy in the present case.

25. Pensionary payments to Judges constitute a vital element in the independence of the judiciary. As a consequence of long years of judicial office, Judges on demitting office do not necessarily have the options which are open to members from other services. The reason why the State assumes the obligation to pay pension to Judges is to ensure that the protection of the benefits which are available after retirement would ensure their ability to discharge their duties without

"fear or favour" during the years of judgeship. The purpose of creating dignified conditions of existence for Judges both during their tenure as Judges and thereafter has, therefore, a vital element of public interest. Courts and the Judges are vital components of the rule of law. Independence of the judiciary is hence a vital doctrine which is recognized in the constitutional scheme. The payment of salaries and dignified pensions serves precisely that purpose. Hence, any interpretation which is placed on the provisions of the Act must comport with the object and purpose underlying the enactment of the provision.

26. The contention of the Union of India is that the first respondent did not fulfill the requirement of twelve years of service and was, therefore, not entitled to the benefit of Section 14. This submission clearly misses the plain consequence of the Explanation to Section 14. The Explanation is exhaustive in terms of the categories of Judges to which it applies since it uses both the expression 'means' and 'includes'. In other words, Section 14 applies to a Judge who has not held any pensionable post either in the Union or the State or a person who having held a pensionable post has opted to receive pension under Part I of the Schedule. A Judge such as the first respondent who has not opted to receive the benefits of pension under Part I of the First Schedule would fall outside the purview of the Explanation and, hence Section 14 would have no application.

27. The post-retiral pension to such a Judge would, therefore, be governed by Section 15 read with paragraph 2 of Part III of the Act. Upon electing to receive pension under Part III of the First Schedule, the first respondent was entitled to have the years of service which were rendered by her as a Judge of the High Court cumulated with the years of service rendered as a member of the district judiciary. This is in accordance with clause (a) which stipulates that the pension payable to a Judge shall be ***first,*** the pension they would be entitled to under the ordinary rules of 'service' if they had not been appointed as a Judge of the High Court, that is if they continued their service as a District Judge; ***second,*** their service as a Judge of the High Court would be treated as service therein for the purpose of calculating their pension. Paragraph 2 (a) or any other provision of the Act does not indicate that a break in service such as the one in the service of the first respondent would make paragraph 2 inapplicable and disentitle such a Judge from adding their service as a High Court Judge to their service as a District Judge for the purpose of

calculating their pension. The Union of India has failed to establish such a disentitlement. Further, the break in service was attributable to the time taken in processing the recommendation made in her favor. In any case, it was not attributable to anything that the first respondent had done, and it could not be used to prejudice her by rendering her service as a Judge of the High Court inconsequential to the calculation of pension.

28. The Union has sought to urge that the pension was correctly calculated on the basis of the last drawn salary as a District Judge. To accept this position would be contrary to established precedent and would result in a clear discrimination between a member of the Bar who becomes a Judge of the High Court and a member of the district judiciary who is appointed as a Judge of the High Court.

29. In ***M L Jain vs Union of India***,[5] this Court was deciding upon the validity of a letter issued by Ministry of Law and Justice which stated that the pension under para 2(a) of Schedule I of the 1954 Act would be in accordance with the pay that they drew in the parent department, *preceding* their elevation to the High Court. Quashing the said letter as contrary to the para 2(a) of Schedule I of the Act, a three-judge bench of this Court, speaking through Justice O Chinnappa Reddy, observed as follows:

> "We are of the opinion that para 2(ii) of the letter dated September 19, 1984 is a clear departure from para 2 clause (a) of Schedule I to the High Courts Judges (Conditions of Service) Act. **Under clause (a) of para 2 of the Schedule I to the High Courts Judges' (Conditions of Service) Act the retiring Judge's entire service as a Judge has to be reckoned for the purpose of calculating his pension and for that purpose the last pay drawn by him has to be the pay drawn by him as a Judge of the High Court and not the pay that would have been drawn by him as a District Judge** , had he not been appointed a High Court Judge."

30. Acceptance of the submission of the Union of India would discriminate against Judges of the High Court based on the source from which they

5 [1985] 3 SCR 608 : 1985 2 SCC 355, 357

are drawn. A member of the Bar is entitled to the addition of ten years of service by virtue of the provisions of Section 14A. On the addition of the years of service, their pensionary benefits would be computed on the basis of the last drawn salary as a Judge of the High Court. However, if the argument of the Union of India is accepted, the pension of a Judge who was a former District Judge would be computed on the basis of their salary as a District Judge. A similar principle, as applicable to Judges appointed from the Bar, must be applied for computing the pension of a member of the district judiciary who is appointed to the High Court. Any other interpretation would result in a plain discrimination between the Judges of the High Court based on the source from which they have been drawn. Such an interpretation would do disservice to the importance of the district judiciary in contributing to the judiciary of the nation, and would be contrary to the overall scheme and intendment of Chapter III of the statute. It would go against the anti-discriminatory principles stipulated by this Court in so far as Judges drawn from various sources are concerned.

Conclusion

31. We are, therefore, clearly of the view that the first respondent was entitled to the addition of the period during which she served as a Judge of the High Court to be added to the length of her service as a member of the district judiciary from 11 May 1981 to 31 July 2014. The break in her service must necessarily have no adverse implications in computing her pension for the simple reason that her service upon appointment as a High Court Judge was in pursuance of a recommendation which was made during her tenure as a Judge of the district judiciary.

32. The pensionary payments shall be computed on the basis of her last drawn salary as a Judge of the High Court. The arrears of pension shall be payable to the first respondent on or before **31 March 2024** together with interest at the rate of 6% per annum.

33. The appeal is accordingly disposed of.

34. Pending applications, if any, stand disposed of.

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

Result of the case:
Appeal disposed of.

[2024] 3 S.C.R. 865 : 2024 INSC 236

Satyanand Singh
v.
Union of India & Ors.

(Civil Appeal No. 1666 of 2015)

20 March 2024

[Sanjiv Khanna & Dipankar Datta,* JJ.]

Issue for Consideration

The issue for consideration before this Hon'ble Court was a challenge to a judgment of the Armed Forces Tribunal, which rejected the Appellant's prayer for a reference of his diagnosis of AIDS, to a fresh Medical Board.

The matter arose out of the Appellant's discharge from service from the Indian Army under Rule 13(3), Item III (iii) of the Army Rules, 1954 on the ground that he was suffering from AIDS. The Appellant approached the Madhya Pradesh High Court challenging the Order of discharge from service. A Single Judge of the High Court allowed the Appellant's writ petition, which was reversed by the Division Bench. On a challenge made to the Supreme Court, the Appellant was permitted to withdraw his appeal, and avail statutory remedies. Accordingly, the Appellant approached the Armed Forces Tribunal, which passed the Impugned Order.

Headnotes

Service Law – Armed Forces – Discharge from service on the ground of the Appellant suffering from AIDS – Application of the Appellant for a reference to a fresh Medical Board rejected by Armed Forces Tribunal – Challenge to:

Held: The Armed Forces Tribunal referred to extensive medical literature regarding hazards of HIV – However, the Armed Forces Tribunal failed to observe that the Appellant was not diagnosed with any such symptoms – Nothing was brought on record to indicate that the Appellant was unfit to continue in service – This is a case of wrong diagnosis and false alarm with imperilling consequences for the Appellant – The contention of the Union of India that the doctors in 2001 [relevant time of the medical test] used their best professional judgment to conclude that the Appellant was HIV+ve was rejected on the ground that there were no test results to

* Author

justify the diagnosis that the Appellant was suffering from AIDS. [Paras 6 and 7]

Service Law – Armed Forces – Extreme caution and care to ensure correct diagnosis required where Officer serving in the army is prematurely discharged from service:

Held: The Appellant was diagnosed with neuro-tuberculosis, without examination by a neurologist, whose opinion was elementary – The Appellant, while serving in the army, was prematurely discharged; thus, extreme caution and care in ensuring correct diagnoses was required – The Union of India tried to cover up the wrong diagnosis, in spite of the test reports of the Appellant, and the Guidelines for Management and Prevention of HIV/AIDS Infection in the Armed Forces, 2003 [which prescribed that for condition for invalidment of an officer on the ground of suffering from AIDS as a CD4 Cell Count below 200 cells/mm3] – The Medical Board arbitrarily rejected the Appellant's prayer for a Review Medical Board on flimsy grounds. [Para 8]

Service Law – Armed Forces – Discharge from service – Psychological trauma of displacement from service:

Held: The severance of the employer-employee relationship results not only in the employee losing his livelihood, but also affects those who depend on him for their survival – The Appellant, who was trained to live a disciplined life since the tender age of 19, was unnecessarily, and without cogent reason thrust into civilian life with little warning or preparation – Such displacement also causes psychological trauma. [Para 12]

Service Law – Armed Forces – Denial of disability status on the ground of AIDS being a self-inflicted disease is arbitrary and unreasonable – Systemic discriminatory practice – Deep-rooted bias against individuals diagnosed as HIV+ve:

Held: The Court expressed its reservation with respect to a Policy of the Army which determined AIDS as self-inflicted, and prescribed a procedure for HIV+ve service personnel to be brought before the Release Medical Board, on the ground that it reflected a systemic discriminatory practice – Reliance placed on the Judgment in ***CPL Ashish Kumar Chauhan v. Commanding Officer*** [2023] 14 S.C.R. 601 : 2023 INSC 857 to hold that AIDS is not always a self-inflicted disease. [Paras 14 to 17]

Constitution of India – Compensatory jurisprudence – Just compensation:

Held: The Constitution, through its Preamble, guarantees 'Justice' to all its people, in the deliverance of which, Courts have developed a nuanced compensatory jurisprudence – Reliance was placed on the Judgments in ***D.K. Basu v. State of West Bengal*** [1996] Supp. (10) SCR 284 : 1996 INSC 1508 : (1997) 1 SCC 416; ***P.S.R. Sadhanantham v. Arunachalam*** [1980] 2 SCR. 873 : 1980 INSC 16 : (1980) 3 SCC 141; and the judgment in ***K. Suresh v. New India Assurance Co. Ltd.*** [2012] 11 SCR 414 : 2012 INSC 490: (2012) 12 SCC 274, wherein it was held that, while determining the quantum of compensation, the adjudicating authority has to keep in view the sufferings of the injured person, which would include his ability to lead a full life – Having considered the plight of the Appellant and the social stigma attached to persons who are diagnosed as HIV+ve patients, coupled with the position that the Appellant's reinstatement in service is not an available option, the Court awarded additional monetary compensation to him. [Paras 18 to 21 and 23]

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 – Stigma and discrimination of HIV+ve diagnosis :

Held: The stigma and discrimination which accompanies an HIV+ve diagnosis is still an illness which afflicts the minds of society today – The discriminatory sentiment of deeming persons who are HIV+ve to be unfit for employment is evident from the way in which the Appellant was treated by various authorities – The Court awarded the Appellant a lumpsum compensation of Rs.50 Lacs towards compensation – In addition, the Appellant was held to be entitled to pension, as if he had continued in service – The compensation can, in no way, compensate for the ordeal faced by the Appellant, but it may act as a balm to soothe the mind and steady the future. [Paras 25, 26 and 28]

Case Law Cited

CPL Ashish Kumar Chauhan v. Commanding Officer [2023] 14 SCR 601 **: 2023 INSC 857;** *D.K. Basu v. State of West Bengal* [1996] Supp. 10 SCR 284 **: 1996 INSC 1508 : (1997) 1 SCC 416;** *P.S.R. Sadhanantham v. Arunachalam* [1980] 2 SCR 873 **: (1980) 3 SCC 141 :**

1980 INSC 16; *K. Suresh v. New India Assurance Co. Ltd.* **[2012] 11 SCR 414 : (2012) 12 SCC 274 : 2012 INSC 490 – relied on.**

List of Acts

The Constitution of India, 1950; The Army Rules, 1954; The Army Regulations 1987; The Guidelines for Prevention and Control of HIV Infections in the Armed Forces, 1992; The Guidelines for Management and Prevention of HIV/AIDS Infection in the Armed Forces, 2003; The Armed Forces Tribunal Act, 2007; The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

List of Keywords

Discharge from service; Compensation for wrongful diagnosis; Stigma against HIV.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1666 of 2015

From the Judgment and Order dated 05.09.2012 in O.A. No.89 of 2010 and dated 25.02.2013 in M.A. Nos.81-82 of 2013 of the Armed Forces Tribunal, Principal Bench at New Delhi

Appearances for Parties

Satya Mitra, Ms. Kawalpreet Kaur, Nayab Gauhar, Advs. for the Appellant.

R. Balasubramanian, Sr. Adv., Rajesh Kr. Singh, Debashish Mishra, Mohan Prasad Gupta, Sanjay Kr. Tyagi, Ms. Sweksha, Dr. N. Visakamurthy, Dr. Arun Kumar Yadav, Ishan Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

THE CHALLENGE

1. The present civil appeal lays a challenge to the judgment and order dated 05th September, 2012 ("impugned judgment", hereafter) of the Principal Bench of the Armed Forces Tribunal at New Delhi ("AFT",

hereafter), whereby the AFT rejected the appellant's prayer seeking reference of his diagnosis as AIDS inflicted, to a fresh Medical Board.

BRIEF RESUME OF FACTS

2. The factual matrix of the case, insofar as is relevant for the purpose of a decision on this appeal, is noted hereinbelow:

(i) The appellant was enrolled in the Indian Army on 30th October, 1993 as a Havaldar. He continued discharging his duties on a clerical post without impediment until the year 1999, when he began suffering from fever, headache and vomiting. For treatment he was referred to the Jabalpur Military Hospital. Here, the appellant tested positive for HIV.

(ii) On 9th January, 2000, the Army Headquarters issued a Notice ("Notice", hereafter) stating that all persons who are HIV+ve and are suffering from pulmonary or extrapulmonary tuberculosis, would be considered as AIDS cases.

(iii) Thereafter, on 20th August, 2001, the appellant developed similar symptoms yet again, for which he was referred to the Jabalpur Military Hospital. The doctors there prescribed certain medicines to the appellant, which he claims led to his developing double vision. The appellant was referred to the Command Hospital at Pune for further treatment.

(iv) In view of the appellant's ocular afflictions, the doctors, suspecting the same to be a symptom of neuro-tuberculosis, began treating him for the same. Vide Medical Report dated 14th September, 2001 ("Medical Report" hereafter), the appellant was reported to be suffering from *"AIDS defining illness in the form of neuro-tuberculosis"*, and thus was officially diagnosed with AIDS. The appellant was then recommended to be invalided out in the "P5" category. Per the medical categorisation of the Army, "P5" referred to those persons who were suffering from *"gross limitations in physical capacity and stamina".*

(v) As a consequence of the report dated 14th September, 2001, the appellant was referred to the Invaliding Medical Board ("IMB" hereafter), which confirmed his diagnosis of suffering from AIDS.

(vi) On 26th December, 2001, after 8 years and 58 days of service, at the young age of 27, the appellant was discharged from service

under Rule 13 (3), Item III(iii) of the Army Rules, 1954[1] ("Rules" hereafter) on the ground of having been found medically unfit for further service.

(vii) On 23rd May 2003, the "Guidelines for Management and Prevention of HIV/AIDS Infection in the Armed Forces" ("2003 Guidelines" hereafter) came into force. In a shift from the Notice, the said policy included into its consideration the CD4 cell count of the personnel, and that the condition for invalidment would be, *inter alia*, a CD4 cell count below 200 cells/mm3.

(viii) The appellant approached the Madhya Pradesh High Court, seeking quashing of the discharge order dated 26th December, 2001 and reinstatement with all consequential benefits. A learned Judge of the High Court, *vide* order dated 20th April, 2006, allowed the appellant's writ petition.

(ix) However, in exercise of intra-court appeal jurisdiction, an Hon'ble Division Bench of the High Court *vide* its order dated 28th March, 2007 reversed the order under appeal. The Division Bench observed that in accordance with Para 355 (f)[2] of the Regulations for the Army, 1987 ("Regulations", hereafter), the appellant was not discharged solely on the ground of having contracted a sexually transmitted disease. The appellant's discharge from service was held to be valid on the ground that AIDS would incapacitate his physical capacity, thus coming within the ambit of Rule 13 of the Rules. An application for review of the said order was also dismissed *vide* order dated 27th August, 2007.

(x) The appellant challenged both the orders before the Supreme Court. A 3-Judge Bench of this Court *vide* order dated 01st April, 2009 allowed the appellant to withdraw his appeal,

---

1 An enrolled person under the Army Act who has been attested on the ground of being found medically unfit for further service could be discharged by the Commanding Officer, to be carried out only on the recommendation of an invaliding Board.

2 "355. Contraction of sexually transmitted disease - The following principles will be observed in dealing with OR including reservists and non - combatants, who contracts sexually transmitted disease:
f) An OR is not to be discharged from service solely on account of his having contracted sexually transmitted disease. If, however, he has been absent from duty on account of sexually transmitted disease for a total period of four months, whether continuous or not, his case may be brought to the notice of the authority empowered to order his discharge from the service, for consideration as to whether he should be discharged from the service under the table annexed to Army Rule 13 item III if attested, and under item IV if not attested.

while directing that he could avail of the available statutory remedies.

(xi) The appellant availed of his statutory remedy by making an application to the Director General Armed Forces Medical Service ("DGAFMS" hereafter) seeking a Review Medical Board. The DGAFMS, *vide* order dated 20th October, 2009, rejected the appellant's prayer on the ground that the criteria for discharge was satisfied in terms of the Army's prevailing policy at the time, i.e., the "Guidelines for Prevention and Control of HIV Infections in the Armed Forces" dated 30th November, 1992 ("1992 Guidelines" hereafter). Furthermore, the appellant was also denied disability pension, AIDS being categorised as a self-inflicted condition.

(xii) The order passed by the DGAFMS was subjected to challenge by the appellant before the AFT which, *vide* the impugned judgment, rejected his prayer on the ground that the Medical Report had concluded after sufficient investigation and detail that he was suffering from (i) CNS Tuberculosis and (ii) Immune Surveillance for HIV. The IMB, which confirmed the findings of the Medical Report, was held to have been rightly constituted with the required experts. The appellant argued that he was misdiagnosed with AIDS, his CD4 cell count being 379 cells/mm^3 till as late as 05.08.2012 as opposed to the benchmark of 200 cells/mm^3 set by the World Health Organisation. The AFT rejected this argument on the ground that such a CD4 cell count was marginal and would not entitle the appellant to be declared AIDS free, thus obviating the need for referring him to a Review Medical Board.

CONTENTIONS OF THE PARTIES

3. Learned counsel for the appellant, Ms. Kawalpreet Kaur, relied on the 1992 Guidelines to argue that in terms thereof, all personnel with HIV infection were to be retained in service, the only restriction on their employment being, *inter alia*, that they would not be posted to high altitude areas. Ms. Kaur further contended that there had been an error in diagnosis in the Medical Report itself, since the appellant never suffered from tuberculosis which was taken as a defining illness for AIDS. It was urged that the appellant was merely suffering from double vision, which cleared up by 15th November, 2001. However, the doctors misdiagnosed the appellant's double

vision for a tuberculosis related symptom of blindness. Consequently, in view of the Notice, the appellant having been found to be both HIV+ve and suffering from tuberculosis, was invalided from service. Ms. Kaul further argued that as per the Army's 2003 Guidelines, the appellant was fit for service since his CD4 cell count remained above 200/mm^3 till as late as 2012. This defining indicator for AIDS was argued to have been erroneously disregarded by both, the IMB and the AFT. In support of the same, it was further argued that the appellant was asymptomatic till date, without undergoing any anti-retro viral therapy as would have been prescribed for a person suffering from AIDS; thus, establishing without a doubt, that the appellant never developed AIDS to begin with. Ms. Kaur concluded by arguing that the appellant's case was one of wrongful discharge, based on a wrong diagnosis.

4. *Per contra*, Mr. Balasubramanian, learned senior counsel for the respondents contended that the appellant had never been discharged solely on the basis of his HIV+ve status, the same being evident from his uninterrupted service from 1999 till April 2001. The doctors at the time, on the basis of their best professional judgment and giving due regard to the medical knowledge prevalent in 2001, diagnosed the appellant with neuro-tuberculosis, which led to a change in status of the appellant from HIV+ve to "AIDS related complex". It was further argued that the appellant responded well to anti-tuberculosis treatment, thus confirming the diagnosis of the time. It was further contended that his survival ought to be attributed to be a natural variation in the course of the disease rather than a misdiagnosis on the part of the medical professionals. With respect to the appellant's allegation that his double vision was mistaken for blindness, Mr. Balasubramanian further argued that the appellant had placed no documents on record to prove such a claim, and that the tuberculosis diagnosis was made only after detailed investigations. It was also argued that AIDS would expectedly lead to a deterioration in the health of the appellant, which is why he was discharged under the P5 category, having been found grossly unfit for medical service.

ANALYSIS

5. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

6. The AFT, in the impugned judgment, has referred to extensive medical literature citing the hazards of HIV and how it can lead to a deterioration in the physical condition of those who get detected as HIV+ve. However, while the medical literature contemplates myriad infirmities which accompany such a disease and consequently render an individual unfit for military service, the AFT failed to observe that the appellant in the present case was not diagnosed with any such symptoms. The appellant was treated by the Command Hospital at Pune in 2001, and by the respondents' admission, successfully responded to the treatment administered. Nothing has been brought on record to indicate that the appellant was thereafter unfit to continue in service as a Clerk.

7. We have no doubt in our mind that this is a case of wrong diagnosis and false alarm with imperilling consequences for the appellant. The respondents' contention that doctors in 2001 have used their best professional judgment to opine that the appellant was HIV+ve, in our opinion, should be rejected, in the absence of any medical literature to show that the test results as per then prevailing medical standards justify the diagnosis that the appellant was suffering from AIDS defining illness. On the other hand, there are lapses galore on the part of the respondents. They were, in spite of being aware of the adverse and pernicious impact on the appellant, grossly careless and negligent.

8. The appellant was diagnosed with neuro tuberculosis, which diagnosis was without examination by a neurologist whose opinion, according to us, would seem to be elementary. The AFT's opinion that the need of the medical specialist was fulfilled by placing an oncologist on Board is something with which we cannot agree. The appellant while serving in the army was being prematurely discharged; thus extreme caution and care in ensuring correct diagnoses was required. The respondents have deliberately tried to cover up the wrong diagnosis in spite of the 2003 Guidelines and the test reports of the appellant. The respondents had the opportunity from 2007 onwards to rectify and correct themselves after the order of the single Judge of the High Court dated 20th April, 2006. The Medical Board, which was constituted upon the appellant availing the statutory remedy, arbitrarily, wrongly and in our opinion deliberately vide order dated 20th October, 2009 rejected the appellant's prayer on flimsy and wrong grounds by applying the 1992 Guidelines. Even disability pension

was denied by categorising the appellant as suffering from AIDS, a self-inflicted condition.

9. Significantly, the appellant had submitted between the period of 2007 and 2012, as many as four diagnostic reports, showing that his CD4 cell count was above 300 cells/mm^3, as opposed to the respondents' 2003 Guidelines defining an AIDS illness to be one where the CD4 cell count is below 200 cells/mm^3.

10. The apathetic attitude of the respondents to the appellant's plight is evident in the repeated submission that has been made before all fora, i.e., the appellant's case had been re-examined several times and thus did not merit another look. It is borne out from the record that other than the Medical Report, which the appellant alleges was made by a doctor who did not treat him, and the review of such report by the IMB, his case was never again considered on its merits. The dismissal of the appellant's application by the DGAFMS *vide* order dated 20th October, 2009 can only be called perfunctory at best, since it did not take into account any of the material subsequently produced by the appellant.

11. The respondents' submissions, as elaborate as they may be, in defence of the AIDS diagnosis which was used to discharge the appellant from service, are rendered unworthy of acceptance on the face of his existence today, as an asymptomatic HIV+ve individual without the intervention of any anti-retroviral therapy.

12. The severance of the employer – employee relationship can never be said to be an easy choice, for it not only results in the employee losing his livelihood, but also affects those who depend on him for their survival. And if the employer happens to be the Indian Army, the loss is even greater, since it has the effect of suddenly displacing a soldier from the regimented lifestyle of the military. The appellant, who was trained to live a disciplined life since the tender age of 19, was unnecessarily and without cogent reason thrust into civilian life with little warning or preparation. The psychological trauma that such displacement can bring about needs no elaboration. However, the cruel passage of time has unfortunately rendered the appellant's original hopes of reinstatement an unrealised dream.

13. The appellant, as an alternative relief, has consistently prayed for disability pension but was denied the same on the ground that the disease is self-inflicted.

14. At this juncture, we consider it apposite to refer to certain provisions of the Notice published by the Army:

> "4. Pulmonary Tuberculosis and HIV infection will not be assessed separately for attributability / aggravation. HIV aggravation is a 'STD' and hence AIDS is self-inflicted, neither attributable nor aggravated.
>
> 5. The policy on awarding longevity and percentage of disability for HIV+ve service personnel brought before release medical Board is as follows :-
>
> > 'As per existing instructions, JCOs/ORs or their equivalent in the Navy/Air Force placed in permanent low Medical category are permitted to continue in service only in case the Unit COs render a certificate to the effect that sheltered appointment shall be provided. Otherwise such individuals are brought before Release Medical Board for releasing from service. It is unlikely that HIV positive cases in perm low Medical Category would be given sheltered appointment and recommended for retention in service by unit cos'.
>
> 6. Following procedure will be followed in HIV+ve service personnel brought before Release Medical Board.
>
> a) Longevity: By the time HIV+ve case is brought before Release Medical Board, it is likely that he had acquired the infection about 1-2 years earlier. Therefore, it is likely that he would develop AIDS within next 6-8 years. After development of AIDS the average life span is only 1-2 years. Therefore loading of age by 2 years at the time of Release Medical Board is considered appropriate.
>
> b) Percentage of disability: In fact viral multiplication during this period is average and the immune system being systematically destroyed. Apart from infection, HIV+ve cases will suffer emotionally, psychologically and socially. Taking all these factors in consideration, 40% disability for *asymptomatic cases and upto 100% for symptomatic cases will be awarded."*

15. A perusal of the Notice reveals that in terms of Para 6A, a person who has been diagnosed as HIV+ve was expected to develop AIDS within 6-8 years, and thereafter, have a limited lifespan of only 1-2 years. We cannot help but record reservation as the policy reflects the systemic discriminatory practice and predisposition treating HIV as aggravation of STD and AIDS is self-inflicted. *In arguendo*, even going by the respondents' own policy, the appellant could not be said to be suffering from AIDS since, in flagrant defiance of the policy assessment, the appellant is reportedly still alive and suffering from no serious ailment.

16. A further examination of the respondents' policy reveals that though AIDS was always deemed to be a self-inflicted disease, there was still a provision for conferring disability status to those afflicted with the same. Yet, time and again, we find the respondents here have mechanically denied the appellant's request for disability status in a most arbitrary and unreasonable manner. It is pertinent to note that in yet another instance of the deep-rooted bias against individuals diagnosed as HIV+ve, the Notice allows for sheltered appointments to those diagnosed with such a condition, while in the same breath stating that the provision of such sheltered appointments is an unlikely possibility.

17. We may note here that in ***CPL Ashish Kumar Chauhan v. Commanding Officer***[3], the concerned member of the Air Force was diagnosed as HIV+ve because of a blood transfusion that did not proceed along laid down protocol and went awfully wrong for which this Court had to award appropriate quantum of compensation. Reference is made to the said decision at this stage only to highlight that AIDS is not always a self-inflicted disease and there appears to have been no worthy attempt on the part of the respondents to ascertain the root cause of the appellant's physical distress.

18. The Constitution, through its Preamble, guarantees to all its people 'Justice', in the deliverance of which, the Courts of the land have developed a nuanced compensatory jurisprudence through a catena of judgments, for a wide compass of situations.

19. This Court, towards the end of the last century held in ***D.K. Basu v. State of West Bengal***[4] that:

3 [2023] 14 SCR 601 : 2023 SCC OnLine SC 1220

4 [1996] Supp. 10 SCR 284 : (1997) 1 SCC 416

> "54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts."

20. In ***P.S.R. Sadhanantham v. Arunachalam***[5], this Court while emphasising its power to do full and complete justice, ruminated:

> "6. The jural reach and plural range of that judicial process to remove injustice in a given society is a sure index of the versatile genius of law-inaction as a delivery system of social justice. By this standard, our constitutional order vests in the summit Court of jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which master-minds the broad observance throughout the Republic of justice according to law, is Article 136."

21. While discussing award of 'just compensation' in a personal injury case, this Court in ***K. Suresh v. New India Assurance Co. Ltd.***[6] had the occasion to observe that:

> "10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the

5 [1980] 2 SCR 873 : (1980) 3 SCC 141

6 [2012] 11 SCR 414 : (2012) 12 SCC 274

fundamental criterion of "just compensation" should be inhered."

22. Not too long ago, in ***CPL Ashish Kumar Chauhan*** (supra), this Court while awarding compensation to a person discharged from the Indian Air Force, ruled:

> "103. ***People sign up to join the armed forces with considerable enthusiasm and a sense of patriotic duty. This entails a conscious decision to put their lives on the line and be prepared for the ultimate sacrifice of their lives. A corresponding duty is cast upon all state functionaries, including echelons of power *within* the armed forces to ensure that the highest standards of safety (physical/mental wellbeing, medical fitness as well as wellness) are maintained. This is absolutely the minimum required of the military/air force employer for not only assuring the *morale* of the forces but also showing the sense of how such personnel matter and their lives count, which reinforces their commitment and confidence. Any flagging from these standards - as the multiple instances in the present case have established, only entails a loss of confidence in the personnel, undermines their morale and injects a sense of bitterness and despair not only to the individual concerned but to the entire force, leaving a sense of injustice. When a young person, from either sex (as is now a days the case) enrols or joins any armed forces, at all times, their expectation is to be treated with dignity and honour. The present case has demonstrated again and again how dignity, honour and compassion towards the appellant were completely lacking in behaviour by the respondent employer. Repeatedly the record displays a sense of disdain, and discrimination, even a hint of stigma, attached to the appellant, in the attitude of the respondent employer. Although this court has attempted to give tangible relief, at the end of the day it realizes that no amount of compensation in monetary terms can undo the harm caused by such behaviour which has shaken the foundation of the appellant›s dignity, robbed him of honour and rendered him not only desperate even cynical."

23. It has been submitted by the counsel for the appellant that he is presently aged 50 years and is into a small business of his own. Having considered the plight of the appellant, which his employer failed to address, as well as the social stigma attached to persons who are diagnosed as HIV+ve patients, coupled with the position that the appellant's reinstatement in service is not an available option now and also that direction for grant of pension, which we propose to make, cannot be considered an equitable restitution of what the appellant has suffered by reason of psychological, financial and physical trauma, we deem it fit to additionally award him monetary compensation.

24. Having been discharged from the services of the Indian Army at the prime age of 27, the appellant was robbed of the opportunity of further serving the nation for many more years on account of a most unfortunate turn of events, the responsibility for which can lie on no shoulders other than the respondents 2 to 4. It is also borne from the record that the appellant neither received his leave encashment, nor received reimbursement for the expenses incurred by him in medical tests.

25. We would be remiss in not recognising the particular circumstances of the appellant's discharge from service which compounded the agony of the process, i.e., a wrongful diagnosis of AIDS and subsequent termination of services on the same ground. It is no secret that despite the enactment of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, and the slew of awareness measures taken by Governments in recent times, the stigma and discrimination which lamentably accompanies an HIV+ve diagnosis is still an illness that afflicts the minds of society today. The discriminatory sentiment of deeming persons who are HIV+ve to be unfit for employment, is starkly evident from the way in which the appellant has been responded to and treated by the various authorities. By misdiagnosing the appellant with AIDS, the respondents indubitably subjected the appellant to further misery in not only combating social stigma against a disease which the appellant never suffered from but also from the dreadful thought of an imminent death resulting from an incurable disease.

26. In view of the extreme mental agony thus undergone by the appellant, in not only facing the apathetic attitude of the respondents 2 to 4 but

in facing the concomitant social stigma and the looming large death scare that accompanied such a discharge from the armed forces, we deem it fit to award a lumpsum compensation of Rs.50,00,000/- (Rupees fifty lakh only) towards compensation on account of wrongful termination of services, leave encashment dues, non-reimbursement of medical expenses and the social stigma faced, to be paid by the respondents 2 – 4 to the appellant within eight weeks from the date of this judgment without fail. In addition to the above, the appellant shall be entitled to pension in accordance with law as if he had continued in service as Havaldar and on completion of the required years of service retired as such, without being invalided. We make it clear that since the appellant had not continued in service beyond 26th December, 2001 and there was no occasion to assess his performance for securing a promotion, he shall not be entitled to raise any plea in relation thereto. However, in computing the quantum of pension payable to the appellant, the respondents shall take into account allowances / increments that the appellant would have been entitled to, had he continued in service till the date of his retirement as Havaldar.

27. For the reasons aforesaid, the impugned judgment is set aside and the civil appeal stands allowed.

28. We are conscious that whatever amount by way of compensation has been directed to be paid to the appellant, by the respondents 2 to 4, can in no manner compensate for the ordeal he had to face over the years; there could never be an appropriate substitute for such adversity but such financial compensation might act as a balm to soothe the mind and steady the future. Now that we have been informed that the appellant is active and involved in a business of his own, our prayers are with him to lead a long and healthy life.

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

Result of the case:
Appeal allowed.

[2024] 3 S.C.R. 881 : 2024 INSC 246

Dr. Jaya Thakur & Ors.
v.
Union of India & Anr.

(Writ Petition (Civil) No. 14 of 2024)

22 March 2024

[Sanjiv Khanna and Dipankar Datta, JJ.]

Issue for Consideration

Matter pertains to applications for stay of selection and appointment of the Election Commissioners.

Headnotes

Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Act, 2023 – s. 7(1) – Applications for stay of selection and appointment of the Election Commissioners in a writ petition challenging vires of s. 7(1) that substituted the Chief Justice of India with a Union Cabinet Minister nominated by the Prime Minister in the Selection Committee for the post of the Chief Election Commissioner and the ECs:

Held: Grant of stay of selection and appointment of the Election Commissioners would lead to chaos and virtual constitutional breakdown – In matters involving constitutionality of legislations, courts are cautious and show judicial restraint in granting interim orders – Unless the provision is ex facie unconstitutional or manifestly violates fundamental rights, the statutory provision cannot be stultified by granting an interim order – Stay is not ipso facto granted for mere examination or even when some cogent contention is raised – Suspension of legislation pending consideration is an exception and not the rule – Submission that this Court may by an interim order direct fresh selection with the CJI as a member of the Selection Committee, would be plainly impermissible, without declaring s. 7(1) as unconstitutional – If such submission is accepted, it would be enacting or writing a new law replacing or modifying s. 7(1), as enacted by the Parliament – Given the humongous task undertaken by the Election Commission of India, presence of two more ECs brings about a balance and check – Concept of plurality in Art. 324,

is necessary and desirable – Furthermore, keeping in view the timelines for the upcoming 18th General Elections for the Lok Sabha, it is not appropriate to pass any interim order or direction – Also, EC being a constitutional post, once a constitutional post holder is selected, they are duty bound to act in accordance with the letter and spirit of the Constitution – In view thereof, prayer for grant of stay cannot be accepted and said applications dismissed. [Paras 10-16]

Case Law Cited

Anoop Baranwal v. Union of India [2023] 9 SCR 1 : **(2023) 6 SCC 161 – explained.**

Health for Millions v. Union of India **(2014) 14 SCC 496;** *T.N. Seshan v. Union of India* [1995] Suppl. 2 SCR 106**; (1995) 4 SCC 611 – referred to.**

List of Acts

Constitution of India; Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Act, 2023.

List of Keywords

Election Commissioners; Stay of selection and appointment of the Election Commissioners; Constitutionality of legislations; Judicial restraint; Interim orders; Suspension of legislation pending consideration; Violation of Fundamental Rights; CJI as a member of the Selection Committee for the post of the Chief Election Commissioner and the ECs; Election Commission of India; Concept of plurality; 18th General Elections for the Lok Sabha; Balance of convenience; Prima facie case; Irreparable injury; Stay or injunction; Interlocutory remedy; Constitutional post; Judicial review; Principle of proportionality.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.14 of 2024

(Under Article 32 of the Constitution of India)

With

W.P.(C) Nos. 13, 11, 87 and 191 of 2024

Appearances for Parties

Gopal Sankarnarayanan, Vikas Singh, Sanjay Parikh, Sr. Advs., Prashant Bhushan, Mrs. Cheryl Dsouza, Mrs. Suroor Mander, Ms. Ria Yadav, Rahul Gupta, Pawan Reley, Gaurav Kumar, Vishal Sinha, Akshay Lodhi, Shrutanjaya Bharadwaj, Ms. Simran Singh, Sajal Awashti, Ms. Deepeika Kalia, Keshav Khandelwal, Ms. Vasudha Singh, Varun Thakur, Ramkaran, Ms. Dolly Deka, Deepak Goel, Mrs. Tanuj Bagga Sharma, Dr. M.K. Ravi, Denson Joseph, M/s. Varun Thakur & Associates, Pradeep Kumar Yadav, Vishal Thakre, Gopal Singh, Aryan P Nanda, Aditya Yadav, Sunil Kumar Srivastava, Tota Ram, Sanjeev Malhotra, Ms. Ananya Kumar, Ms. Aparna Bhat, Ms. Karishma Maria, Advs. for the Petitioners.

Tushar Mehta, SG, Aaditya Shankar Dixit, Gaurang Bhushan, Kanu Agarwal, Devashish Bharukha, Arvind Kumar Sharma, Ankit Agarwal, Atul Raj, Ashish Shukla, Mohammed Sadique T.A., Kaleeswaram Raj, Ms. Thulasi K Raj, Ms. Aparna Menon, Ms. Chinnu Maria Antony, R.P. Gupta, Prashant Padmanabhan, Advs. for the Respondents.

Petitioner-in-person

Judgment / Order of the Supreme Court

Order

1. This order records reasons and decides the applications for stay of selection and appointment of the Election Commissioners[1], in the writ petitions filed under Article 32 of the Constitution of India[2], *inter alia*, challenging the *vires* of Section 7(1) of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Act, 2023.[3]

2. The primary grounds of challenge are twofold. First, Section 7(1) of the 2023 Act dilutes, if not amends or modifies, the judgment of this Court's Constitution Bench in *Anoop Baranwal v. Union of India*[4], by substituting the Chief Justice of India[5] with a Union

1 For short, "EC".

2 For short, "Constitution".

3 For short, "2023 Act".

4 [2023] 9 SCR 1 : (2023) 6 SCC 161.

5 For short, "CJI".

Cabinet Minister nominated by the Prime Minister in the Selection Committee for the post of the Chief Election Commissioner[6] and the ECs. Secondly, the provision has a direct and potential impact on the conduct of transparent, free and fair elections, one of the foundational requirements of democracy.

3. That apart, the selection process of the ECs, as adopted in the present case, has been challenged on the ground of procedural irregularity, affecting the fairness, transparency and objectivity in the selection process in question. The Leader of Opposition in the House of the People[7] was not furnished necessary details of the six shortlisted candidates in advance to effectively participate in the selection process[8]. The names and details were statedly furnished minutes before the meeting for the selection of the ECs was held on 14.03.2024[9]. Thus, he has been denied the opportunity to choose and have his voice heard. Further, the writ petition challenging the *vires* of the 2023 Act was *sub-judice* before this Court since 02.01.2024, and therefore soon after the resignation of one of the ECs, applications for stay were filed, mentioned and directed to be listed for hearing before this Court on 15.03.2024. However, the selection and appointment of two ECs was made on 14.03.2024.[10]

4. The Union of India has filed a conjoint reply to the applications for stay *inter alia*, stating that: -

   a) The 2023 Act has been enacted as contemplated by Article 324(2) of the Constitution and was brought into effect on 02.01.2024.

   b) On 01.02.2024, the Selection Committee, under Section 7(1) of the 2023 Act, was constituted, and consists of the Prime Minister, the Home Minister and the LoP.

---

6 For short, "CEC".

7 For short, "LoP". As per Explanation to Section 7(1) of the 2023 Act the leader of the single largest party in opposition of the Government in the House of the People shall be deemed to be the LoP, in case where the LoP has not been recognized.

8 Reliance is placed on the letter dated 12.03.2024 of Mr. Adhir Ranjan Chowdhury requesting for bio-profiles of the persons short-listed by the Search Committee well before the meeting of the Selection Committee.

9 Reliance is placed on the report dated 14.03.2024 published in the Indian Express quoting Mr Adhir Ranjan Chowdhury.

10 An earlier vacancy to the post of EC was created by virtue of EC – Mr. Anup Chandra Pandey demitting office on 14.02.2024. The second vacancy to the post of EC occured by virtue of the resignation of EC – Mr. Arun Goel on 09.03.2024.

c) On 01.02.2024, the Search Committee, under Section 6 of the 2023 Act, was constituted, and is chaired by Minister of State, Law and Justice, Government of India[11] with the Home Secretary, GoI and Secretary, Department of Personnel and Training, GoI as members.

d) On 04.02.2024, notice was issued for convening meeting of the Selection Committee on 07.02.2024 for filling one vacancy to the post of EC, as an EC had demitted office.[12] However, the meeting was postponed on 07.02.2024.

e) On 09.03.2024, notice was issued for meeting of the Selection Committee to be held on 15.03.2024.

f) On 09.03.2024, Mr. Arun Goel, EC, tendered his resignation, which was accepted w.e.f. 09.03.2024, thereby resulting in the second vacancy.

g) In view of the second vacancy, a revised note dated 09.03.2024 was issued for the meeting of the Selection Committee to be held on 14.03.2024 for filling up the two vacant posts of EC.

It is highlighted by the respondent – Union of India that the meeting fixed for 15.03.2024 was preponed to 14.03.2024 on 09.03.2024, prior to the listing of the stay applications by this Court on 15.03.2024.

5. However, it is to be noted that I.A. No. 63879/2024 in Writ Petition (C) No. 87 of 2024 was filed on 12.03.2024[13] and I.A. No. 66382/2024 in W.P. (C) 11/2024 was filed on 14.03.2024[14].

6. Mr. Adhir Ranjan Chowdhury, Member of the Selection Committee[15], on 12.03.2024 had requested the Secretary, Legislative Department, GoI to share details of the shortlisted names. On 13.03.2024, the Secretary, Legislative Department, GoI, had sent a list of eligible persons, more than 200 in number, being considered by the Search

11 For short, "GoI".

12 See *supra* note 10.

13 Application filed by Association of Democratic Reforms praying, *inter alia*, for the stay of implementation of Section 7 of the 2023 Act.

14 Application filed by Naman Sherstra praying, *inter alia*, for stay of the effect of the 2023 Act. Earlier I.A. No. 4223/2024 in W.P. (C) 13/2024 was filed on 05.01.2024, I.A. No. 30286/2024 in W.P. (C) No. 87 of 2024 was filed on 05.02.2024, albeit stay was not granted by this court.

15 Being the leader of the single largest party in opposition in the House of the People.

Committee to Mr. Adhir Ranjan Chowdhury. The Search Committee had not carried out the shortlisting exercise by then.

7. The Search Committee, in its meeting on 13.03.2024, could not finalise and shortlist the names. In the meeting held on 14.03.2024, the Search Committee recommended a panel of six names for consideration of the Selection Committee, which were then circulated and forwarded to the members of the Selection Committee, including Mr. Adhir Ranjan Chowdhury.

8. On 14.03.2024 the Selection Committee met and recommended the names of Mr. Gyanesh Kumar and Dr. Sukhbir Singh Sandhu to the President of India for appointment as ECs. The President of India had thereupon approved the recommendation on 14.03.2024.

9. We would not, at this stage, go into the depth and details of the challenge to the *vires* of Section 7(1) of the 2023 Act. The judgment in *Anoop Baranwal* (supra) notices the appointments of the CEC and ECs made from the 1950s till 2023,[16] but this Court intervened in the absence of any legislation. Article 324(2) postulates the appointment of the CEC and ECs by the President of India in the absence of any law made by the Parliament. The judgment in *Anoop Baranwal* (supra) records that there was a legislative vacuum as the Parliament had not made any enactment as contemplated in Article 324(2). Given the unique nature of the provision and absence of an enactment, this Court had issued directions constituting the Selection Committee as a pro-tem measure. This is clear from the judgment, which states that the direction shall hold good till a law is made by the Parliament. It is also observed that the Court is neither invited, nor if invited, would issue a mandamus to the legislature to make a law. We would also add that the Court would not 'invite' the legislature to make a law in a particular manner. However, the Constitutional Court within the framework of the Constitution exercises the power of judicial review and can invalidate a law when it is violative of the Fundamental Rights, on application of the principle of proportionality, etc.

10. It is well-settled position of law that in matters involving constitutionality of legislations, courts are cautious and show judicial restraint in granting interim orders. Unless the provision is *ex facie* unconstitutional or

16 See paragraphs 63-72, *Anoop Baranwal* (supra).

manifestly violates fundamental rights, the statutory provision cannot be stultified by granting an interim order.[17] Stay is not *ipso facto* granted for mere examination or even when some cogent contention is raised. Suspension of legislation pending consideration is an exception and not the rule. The said principle keeps in mind the presumption regarding constitutionality of legislation as well as the fact that the constitutional challenge when made may or may not result in success. The courts do not, unless eminently necessary to deal with the crises situation and quell disquiet, keep the statutory provision in abeyance or direct that the same be not made operational. However, it would not be appropriate to pen down all situations as sometimes even gross or egregious violation of individual Fundamental Rights may on balance of convenience warrant an interim order. The Courts strike a delicate balance to step-in in rare and exceptional cases, being mindful of the immediate need, and the consequences as to not cause confusion and disarray.

11. The applicant-petitioners urge that this court may by an interim order direct fresh selection with the CJI as a member of the Selection Committee. This would be plainly impermissible, without declaring Section 7(1) as unconstitutional. Further, we would be enacting or writing a new law replacing or modifying Section 7(1) of the Act, as enacted by the Parliament, if such a contention were accepted.

12. Moreover, any interjection or stay by this Court will be highly inappropriate and improper as it would disturb the 18th General Election for the Lok Sabha which has been scheduled and is now fixed to take place from 19.04.2024 till 01.06.2024. Balance of convenience, apart from *prima facie* case and irreparable injury, is one of the considerations which the court must keep in mind while considering any application for grant of stay or injunction. Interlocutory remedy is normally intended to preserve *status quo* unless there are exceptional circumstances which tilt the scales and balance of convenience on account of any resultant injury. In our opinion, grant of stay would lead to uncertainty and confusion, if not chaos. That apart, even when the matter had come up earlier and the applications for stay were pressed, we had refused to grant stay.

17 *Health for Millions* v. *Union of India,* (2014) 14 SCC 496.

13. Given the importance and humongous task undertaken by the Election Commission of India, presence of two more ECs brings about a balance and check. The concept of plurality in Article 324 of the Constitution, which has been noticed and approved by this Court in *T.N. Seshan v. Union of India*[18], is necessary and desirable.

14. We must, however express our concern on the procedure adopted for selection of the incumbents to the two vacant posts of ECs, a significant constitutional post. Such selections should be made with full details and particulars of the candidates being circulated to all members of the Selection Committee. Section 6 of the 2023 Act postulates five prospective candidates which, *prima facie*, appears to mean that for two vacant posts ten prospective candidates should have been shortlisted. Procedural sanctity of the selection process requires fair deliberation with examination of background and merits of the candidate. The sanctity of the process should not be affected. Nevertheless, in spite of the said shortcoming, we do not deem it appropriate at this stage, keeping in view the timelines for the upcoming 18th General Elections for the Lok Sabha, to pass any interim order or direction. As indicated above, this would lead to chaos and virtual constitutional breakdown. Remand at this stage would not resolve the matter. It may also be relevant to state that the petitioners have not commented or questioned the merits of the persons selected/appointed as Ecs.

15. Further, EC being a constitutional post, it is wise to remind ourselves that once a constitutional post holder is selected, they are duty bound to act in accordance with the letter and spirit of the Constitution. The assumption is that they shall adhere to constitutional role and propriety in their functioning. To borrow from Dr. B.R. Ambedkar, Chairman, Drafting Committee of the Constituent Assembly of India:

> "However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good."

16. Having regard to the aforesaid position, we are not inclined to accept the prayer for grant of stay. Accordingly, the applications seeking stay

18 [1995] Suppl. 2 SCR 106 : (1995) 4 SCC 611.

are dismissed. We would clarify that the observations in this order are tentative and are not to be treated as final and binding, as the matter is *sub-judice*.

17. Recording the aforesaid, applications seeking stay in I.A. No. 66382/2024 in W.P. (C) 11/2024, I.A. No. 4223/2024 in W.P. (C) 13/2024, I.A. No. 62608/2024 in W.P.(C) No. 14/2024, I.A. No. 68091/2024 in W.P. (C) 87/2024, I.A. No. 30286/2024 in W.P. (C) 87/2024, I.A. No. 63879 of 2024 in W.P. (C) No. 87 of 2024 and I.A. No. 69713/2024 in W.P. (C) 191/2024 are dismissed.

18. Applications seeking intervention in I.A. No. 64017/2024 in W.P.(C) 14/2024 and I.A. No. 66282/2024 in W.P. (C) 87/2024 are dismissed.

19. Learned counsel for the intervenor in I.A. No. 71728/2024 in W.P. (C) 14/2024 prays for and is granted the permission to withdraw the intervention application. Accordingly, I.A. No. 71728/2024 in W.P. (C) 14/2024 is dismissed as withdrawn.

Headnotes prepared by: Nidhi Jain

Result of the case: IAs dismissed.

[2024] 3 S.C.R. 890 : 2024 INSC 231

M/s. Bisco Limited
v.
Commissioner of Customs and Central Excise

(Civil Appeal No. 4663 of 2009)

20 March 2024

[B. V. Nagarathna and Ujjal Bhuyan,* JJ.]

Issue for Consideration

The appellant had imported second hand steel mill machinery and parts covered by three transit bonds totalling 595 cases. The officials of the Preventive Branch of the Commissionerate searched the industrial premises of the appellant, including the notified public bonded warehouse and found that only 304 cases were stocked inside the warehouse, whereas 264 cases were found outside the warehouse but within the industrial/factory premises of the appellant. Remaining 27 cases were neither found inside the warehouse nor outside the warehouse. The Commissioner of Customs and Central Excise, *inter-alia*, confiscated 264 cases of imported goods valued at Rs.48,79,776.00 seized from within the factory premises of the appellant but outside the approved warehouse u/s. 111 of the Customs Act. However, the confiscated goods were permitted to be redeemed on payment of fine of Rs.2 lakhs. Further, the Commissioner had confirmed customs duty amounting to Rs.39,03,821.00 in terms of s.71 r/w. the proviso to s.28A of the Customs Act. That apart, appellant was directed to pay interest of Rs.18,88,425.00 on the aforesaid quantum of customs duty in respect of the 264 cases from the date of warehousing till the date of detection of the shortage in the warehouse. In appeal, CESTAT by the impugned order affirmed the aforesaid decision of the Commissioner.

Headnotes

Customs Act, 1962 – s.71 r/w. the proviso to s.28A, s.111 – The allegation of the respondent is that 264 cases were improperly or unauthorisedly removed from the notified warehouse as those were found lying outside the notified area but within the industrial/factory premises of the appellant – That apart, 27 cases were neither found inside the notified warehouse nor

* Author

outside the said warehouse but within the factory premises of the appellant – In such circumstances, the respondent has justified the order dated 28.04.2005 (passed by the Commissioner),which was affirmed by the CESTAT vide order dated 30.04.2009 – Propriety:

Held: The appellant had submitted that soil outside the notified area that become very sluggish due to heavy rains – As a result, the trailers carrying the consignment could not enter the notified warehouse and appellant had requested the concerned Superintendent of Customs and Central Excise to shift the machineries to under a shed within the factory premises – The permission was granted – The permission granted by the Superintendent to the appellant to unload a portion of the cargo outside the open space which was notified as public bonded warehouse but within the factory premises of the appellant was neither cancelled nor revoked by the Superintendent or even by the Commissioner – Infact, a view can reasonably be taken that the appellant as the owner of the goods had exercised its right u/s. 64(d) which was endorsed by the Superintendent – Therefore, it would not be correct to say that the 264 cases found outside the notified warehouse but within the factory premises of the appellant were improperly or unauthorisedly removed from the notified public bonded warehouse – Also, the period of warehousing had not expired and continued to remain operational in terms of the proviso to s.61 of the Customs Act – The decision of the respondent to invoke s.71 and thereafter levy interest on the goods covered by the 264 cases u/s. 28AB of the Customs Act was not justified – Since the imported goods covered by the 264 cases were never warehoused inside the notified public bonded warehouse but were unloaded outside the notified area but within the factory premises of the appellant and kept under a shed on permission granted by the Superintendent which permission was neither cancelled nor revoked, question of warehousing the goods covered by the 264 cases within the notified public bonded warehouse did not arise – However, there is no explanation on the part of the appellant qua the missing 27 cases – Therefore, the view taken by the respondent and affirmed by the CESTAT that those 27 cases were improperly or unauthorisedly removed from the notified public bonded warehouse is correct and requires no interference. [Paras 13, 50, 51, 53, 54]

Case Law Cited

Kesoram Rayon v. Collector of Customs, Calcutta [1996] Suppl. 5 SCR 77 **: (1996) 5 SCC 576 – held inapplicable.**

Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam **(2003) 5 SCC 528;** *Paper Products Ltd. v. Commissioner of Central Excise* **(1999) 7 SCC 84;** *SBEC Sugar Ltd v. Union of India* [2011] 2 SCR 585 **: (2011) 4 SCC 668 – referred to.**

List of Acts

Customs Act, 1962; Customs Tariff Act, 1975; Right to Information Act, 2005.

List of Keywords

Customs; Custom duty; Notified public bonded warehouse; Industrial/factory premises; Confiscation of imported goods; Improper or unauthorised removal of goods from the notified warehouse; Period of warehousing.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4663 of 2009

From the Judgment and Order No.C/155/09 dated 30.04.2009 in Appeal No.C/441/2005-CU (DB) of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi

Appearances for Parties

Aarohi Bhalla, Sanchar Anand, Devendra Singh, Aman Kumar Thakur, Arjun Rana, Ms. Sumbul Ausaf, Advs. for the Appellant.

Rupesh Kumar, Mukesh Kumar Maroria, V.C. Bharathi, H.R. Rao, Suyash Pandey, Hemant Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

Heard learned counsel for the parties.

2. This is a statutory appeal under Section 130E of the Customs Act, 1962 (briefly the 'Customs Act' hereinafter) against the final order

dated 30.04.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short 'CESTAT' hereinafter) in Customs Appeal No.441 of 2005 dismissing the appeal filed by the appellant against the order dated 28.04.2005 passed by the Commissioner of Customs and Central Excise, Indore (for short 'the Commissioner' hereinafter).

2.1. By the aforesaid order dated 28.04.2005, the Commissioner had confirmed the duty demand of Rs.3,99,255.00 in respect of 27 cases not found in the warehouse and imposed penalty of Rs.1 lakh on the appellant under Section 112 of the Customs Act. That apart, the appellant was directed to pay interest on the duty confirmed in terms of Section 28AB of the Customs Act from the date of enforcement of the said section till the date of actual payment of duty. The Commissioner had also confiscated 264 cases of imported goods valued at Rs.48,79,776.00 seized from within the factory premises of the appellant but outside the approved warehouse under Section 111 of the Customs Act. However, the confiscated goods were permitted to be redeemed on payment of fine of Rs. 2 lakhs. Thirty days' time was granted to the appellant to exercise the option for redeeming the goods. Further, the Commissioner had confirmed customs duty amounting to Rs.39,03,821.00 in terms of Section 71 read with the proviso to Section 28A of the Customs Act. The appellant was also required to pay interest amounting to Rs.18,88,425.00 on the customs duty confirmed on the 264 packages from the date of warehousing till the date of detection of the shortage in the warehouse; in addition, appellant was also required to pay interest on the duty confirmed in terms of Section 28AB of the Customs Act from the date of enforcement of the said section till the date of actual payment of duty confirmed on the 264 cases.

3. Appellant before us is M/s Bhanu Iron and Steel Company Limited, Plot No. 801, Sector III, Industrial Estate, Pithampur, District Dhar in the State of Madhya Pradesh ('BISCO' for short).

4. This appeal has a chequered history. Before finally landing in this Court, the appellant had gone through several rounds of appeal and remand. For a proper perspective, it would be apposite to briefly narrate the factual trajectory of the case.

5. Appellant had imported second hand steel mill machinery and parts thereof under Project Import Facility covered by Chapter Heading No.98.01 of the Schedule to the Customs Tariff Act, 1975.

6. A warehouse within the precincts of the industrial/factory premises of the appellant was notified as a public bonded warehouse on management basis with M/s Central Warehousing Corporation as warehouse keeper by the then Collector of Customs and Central Excise, Indore *vide* the notification dated 03.05.1989 for storage of the imported second hand steel mill machinery and parts thereof without payment of customs duty. According to the respondent, the appellant had imported in all 595 cases of machinery parts which were required to be warehoused in the notified public bonded warehouse. The breakup of the 595 cases of the machinery parts as provided by the respondent is as under:

Sl. No.	**Transit Bond No. & Date**	**No. of cases actually received in the customs bonded warehouse.**
1.	T-1592 dated 31.05.89	172
2.	T-7012 dated 04.12.89	146
3.	T-2014 dated 30.05.90	277
	Total	595

7. Acting on the basis of information received that the appellant had misused the warehousing facility, officials of the respondent had searched the industrial premises of the appellant including the notified public bonded warehouse on 07.08.1992. In the course of the search, the stock lying within the notified public bonded warehouse were verified. On such verification, only 304 cases were found lying inside the warehouse; 264 cases were found outside the warehouse but within the industrial/factory premises of the appellant; remaining 27 cases were not found either inside the warehouse or outside the warehouse within the industrial/factory premises.

8. As no documents showing clearance of the goods contained in the 264 cases from within the warehouse but lying outside the warehouse on payment of duty and interest as required under Section 71 of the Customs Act could be produced, the said goods were seized in terms of Section 110 of the Customs Act. The value of the goods seized was estimated at Rs.48,79,776.00.

9. In his statement recorded under Section 108 of the Customs Act on 07.08.1992, Sh. Yashwant Singh Bisht, Project Officer (Commercial) of the appellant stated that the 264 cases of imported goods were kept outside the bond under a shed as the trailers transporting the goods could not enter the notified warehouse in view of the soil becoming very sluggish on account of heavy rains and also because of paucity of space. The Collector, therefore, opined that the appellant had removed the 264 cases of warehoused goods valued at Rs.48,79,776.00 attracting duty of Rs.39,03,821.00 and interest of Rs.18,88,425.00 in violation of Section 71 read with Section 111(j) of the Customs Act. The seized goods were thus held liable for confiscation.

10. It was further alleged that appellant had unauthorisedly cleared 27 cases of the imported goods valued at Rs.4,99,068.00 attracting duty of Rs.3,99,255.00 with interest of Rs.2,41,326.00 which were liable to be recovered under Section 71 read with the proviso to Section 28(1) of the Customs Act.

11. That apart, it was alleged that M/s. Central Warehousing Corporation, Pithampur had abetted the appellant in clearing the warehoused goods without payment of duty and interest.

12. In the above circumstances, a show cause notice dated 22.01.1993 was issued to the appellant as well as to the warehouse keeper by the Collector (now the Commissioner) to explain and show cause as to why:

    (i) the seized quantity of 264 cases of goods valued at Rs.48,79,776.00 and attracting duty of Rs.39,03,821.00 plus Rs.18,88,425.00 due to interest should not be confiscated in terms of Section 71 read with Section 111(j) of the Customs Act.

    (ii) the amount of duty of Rs.3,99,255.00 plus interest of Rs.2,41,326.00 payable on 27 cases of goods valued at Rs.4,99,068.00 cleared and utilized by the appellant, should not be demanded from the appellant in terms of Section 71 read with the proviso to Section 28 (1) of the Customs Act.

    (iii) a penalty under Section 112 of the Customs Act should not be imposed for violation of Section 71 and Section 111(j) of the Customs Act.

13. Appellant submitted reply dated 02.04.1994. In its reply, appellant stated that there was heavy rain in the month of August 1989 and the soil outside the notified warehouse had become very sluggish. As a result, the trailers carrying the consignment could not enter the notified warehouse. The goods were downloaded in the open outside the notified warehouse but within the factory premises. To prevent the goods from getting damaged, appellant had requested the concerned Superintendent of Customs and Central Excise to shift the machineries to under a shed within the factory premises under Section 64 of the Customs Act. Permission was granted by the Superintendent. In terms of such permission of the Superintendent, who was the proper officer, appellant had shifted the goods to under the shed to prevent further damage of the goods. It was contended that the goods were still under the bonded warehouse and could not be said to have been cleared. In this connection, reference to and reliance was placed on Section 15 of the Customs Act. This position was clarified by Sh. Yashwant Singh Bisht in his statement recorded on 07.08.1992. The appellant, therefore, requested the authority to drop the proceedings.

14. It may be mentioned that the Central Warehousing Corporation (for short 'the Corporation' hereinafter) had also submitted its reply dated 19.12.1993. In the reply it was stated that an open area of 2,000 sq. meters in the premises of the appellant having fencing and a gate with locking arrangement was approved by the customs and central excise authorities as a public bonded warehouse. Appellant vide letter dated 30.08.1989 sought permission from the Superintendent, Customs and Central Excise, Range-III, Pithampur for unloading the cargo covered by Bond No.T-1592 dated 31.05.1989 outside the said warehouse on account of heavy rains, etc. It was pointed out that the trailers carrying the consignment could not enter the said warehouse because those got stuck in the soil outside the said warehouse as the soil had got sluggish due to heavy rains. The Superintendent gave permission for unloading the cargo outside the warehouse but within the factory premises on the body of the letter itself. The machinery parts had to be shifted to a shed outside the bonded warehouse but within the factory premises to protect those parts from further rusting and corrosion.

15. Commissioner by his adjudication order dated 28.08.1996 did not accept the reply of the appellant and confirmed the demand and interest. It was ordered as under:

(i) demand for duty of Rs.3,99,255.00 plus Rs.2,41,326.00 leviable on 27 cases cleared in a clandestine manner was confirmed for recovery from the appellant in terms of Section 71 read with the proviso to Section 28(1) of the Customs Act.

(ii) 264 cases of imported goods valued at Rs.48,79,776.00 seized from the premises other than the approved warehouse were confiscated under Section 111 of the Customs Act but permitted to be redeemed on payment of fine of Rs.12,00,000.00 (Rs. twelve lakhs only). Appellant would also suffer duty of Rs.39,03,821.00 plus interest at the time of their ultimate clearance.

(iii) penalty of Rs.5,00,000.00 (Rs. five lakhs only) was imposed on the appellant under Section 112 of the Customs Act.

(iv) penalty of Rs.25,000.00 (Rs. twenty five thousand only) was imposed on the Central Warehousing Corporation under Section 112 of the Customs Act.

16. Aggrieved by the aforesaid order of the Commissioner, appellant preferred an appeal before the then Central Excise and Gold Appellate Tribunal (CEGAT). By order dated 18.02.1999, CEGAT disposed of the appeal by setting aside the order of the Commissioner and remanding the matter back to the Commissioner for fresh adjudication. The Commissioner was directed to look into the new facts and documents brought on record by the appellant and thereafter decide the case *de novo* in accordance with the principles of natural justice.

17. Following the remand, a fresh adjudication order was passed by the Commissioner on 31.12.2002. In this order, the Commissioner recorded that the warehoused goods were removed to a place outside the approved warehouse without following the procedure set out under Sections 67, 68 and 69 of the Customs Act. The Commissioner, thereafter, reiterated the first adjudication order dated 28.08.1996.

18. Assailing the aforesaid order of the Commissioner dated 31.12.2002, appellant preferred appeal before the CESTAT. In its order dated 08.10.2003, CESTAT observed that the Commissioner had not looked into the additional documents which were part of the record.

CESTAT, therefore, opined that the matter should be remanded back to the adjudicating authority for fresh adjudication after taking into consideration the documents produced by the appellant, including those produced before the CESTAT. Thus, by the order dated 08.10.2003, CESTAT allowed the appeal of the appellant by remanding the matter back to the Commissioner for re-adjudication after affording an opportunity of hearing to the appellant.

19. The matter was taken up by the Commissioner afresh on remand. By a detailed order dated 28.04.2005, the Commissioner directed as under:

(i) demand of Rs.3,99,255.00 leviable on the 27 cases found not warehoused was confirmed for recovery from the appellant in terms of the conditions of transit bond.

(ii) appellant should pay interest on the duty confirmed in terms of Section 28AB of the Customs Act from the date of enforcement of the said section till the date of actual payment of duty. The interest amount was directed to be worked out and communicated to the appellant by the Assistant Commissioner, Central Excise Division, Pithampur.

(iii) 264 cases of imported goods valued at Rs.48,79,776.00 seized from the premises of the appellant outside the approved warehouse were confiscated under Section 111 of the Customs Act. As the goods were within the factory premises but outside the bonded warehouse, a lenient view was taken; the goods were permitted to be redeemed on payment of fine of Rs.2,00,000.00 (Rupees two lakhs only). The option for redeeming the goods was to be exercised by the appellant within 30 days from the date of receipt of the order.

(iv) customs duty amounting to Rs.39,03,821.00 for recovery from the appellant in terms of Section 71 read with the proviso to Section 28A of the Customs Act was confirmed.

(v) appellant was required to pay interest amounting to Rs.18,88,425.00 on the customs duty confirmed on

the 264 packages from the date of warehousing till the date of detection of the shortage in the warehouse, i.e. from 04.02.1989 to 07.08.1992, in terms of Section 71 of the Customs Act.

(vi) appellant was also required to pay interest on the duty confirmed in terms of Section 28AB of the Customs Act from the date of enforcement of the said section to till the date of actual payment of duty confirmed on the 264 packages. The interest amount was directed to be worked out and communicated to the appellant by the Assistant Commissioner, Central Excise Division, Pithampur.

(vii) penalty of Rs.1,00,000.00 (Rupees one lakh only) was imposed on the appellant under Section 112 of the Customs Act.

20. It was against this order that the related appeal was filed by the appellant before the CESTAT. By the impugned order dated 30.04.2009, CESTAT dismissed the appeal.

21. Hence the present appeal. This Court by order dated 21.08.2009 had issued notice.

22. Respondent has filed counter affidavit. It is stated that during the visit of the officials of the Preventive Branch of the Commissionerate on 07.08.1992, the impugned goods were found outside the notified warehouse. That apart, there was no explanation for the imported goods contained in the 27 cases which were neither found within the bonded warehouse nor outside the bonded warehouse within the factory premises. In such circumstances, the respondent has justified the order dated 28.04.2005 which was affirmed by the CESTAT *vide* order dated 30.04.2009.

23. It may be mentioned that appellant has brought on record two additional documents. Appellant had sought for information from the Central Warehousing Corporation under the Right to Information Act, 2005 *vide* letter dated 22.09.2009 regarding payment of custom establishment charges by the Corporation. Appellant was informed by the Central Warehousing Corporation *vide* letter dated 18.12.2009 that the Corporation had deposited a sum of Rs.56,10.294.00 under the head of 'Pithampur Warehousing (Bhanu Iron and Steel Company

Limited along with wind up Warehouse) custom establishment charges' for the financial year 1992-1993 to 2007-2008.

24. Learned counsel for the appellant submits that CESTAT had failed to consider the fact that it was on the basis of specific permission granted to the appellant by the proper officer that the impugned goods were found outside the warehouse but within the industrial/factory premises of the appellant. Therefore, in terms Section 64(d) of the Customs Act respondent could not have treated the said goods as having been removed from the warehouse. He submits that since the appellant had not cleared the warehoused goods, Section 64 of the Customs Act would come into play. Therefore, CESTAT was clearly in error in upholding the order of the respondent applying Section 15(1)(b) of the Customs Act for determining the rate of duty in respect of those goods. According to him, in the facts of the present case the only provision that would be applicable is the residuary provision i.e., Section 15 (1) (c) of the Customs Act.

    24.1 Learned counsel has also placed reliance on the circular dated 12.07.1989 of the Central Board of Excise and Customs which was fully applicable to the case of the appellant. Though this circular was subsequently superseded by circular dated 14.08.1997, it would be the former circular which would be applicable to the facts of the present case.

    24.2 Learned counsel further submits that CESTAT was not justified for upholding the order of the respondent applying Section 71 of the Customs Act read with Section 28AB of the said Act while imposing interest on the confiscated goods. Confiscation itself was not justified.

    24.3 Finally, it is contended that both the respondent as well as CESTAT had overlooked the fact that the goods in question were denied to the appellant for a long time. Therefore, a lenient view ought to have been taken.

25. Learned counsel for the respondent, on the other hand, submits that on the basis of reliable information received about suspected misuse of the warehousing facility by the appellant, officers of the Preventive Branch of the Collectorate of Central Excise and Customs, Indore had searched the premises of the appellant on 07.08.1992 and physically verified the stock. On verification, it was found that

304 cases were stocked inside the warehouse while 264 cases were found outside the warehouse but within the factory premises. Remaining 27 cases were found neither inside the warehouse nor within the factory premises. It was thereafter that action was taken under the relevant provisions of the Customs Act following which show cause notice was issued to the appellant.

25.1 Learned counsel has justified the ultimate adjudication order as well as the impugned order of the CESTAT confirming the said adjudication order.

25.2 In such circumstances, he submits that there is no merit in the appeal and, therefore, the same should be dismissed.

26. Submissions made have been duly considered.

27. We may now refer to some of the relevant provisions of the Customs Act. Section 2(43) defines a 'warehouse' to mean a public warehouse licensed under Section 57 or a private warehouse licensed under Section 58 or a special warehouse licensed under Section 58A of the Customs Act. 'Warehoused goods' has been defined under Section 2(44) to mean goods deposited in a warehouse.

28. Section 12 of the Customs Act deals with dutiable goods. Sub-Section(1) thereof says that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 on goods imported into or exported from India.

29. Date for determination of rate of duty and tariff valuation of imported goods is dealt with in Section 15. Sub-Section(1) of Section 15 says that the rate of duty and tariff valuation, if any, applicable to any imported goods shall be the rate and valuation in force-

(a) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty.

30. While Section 28 provides for recovery of duties not levied or short levied, Section 28AA deals with interest on delayed payment of duty. On the other hand, Section 28AB provided for interest on delayed payment of duty in special cases. Substance of Section 28AB (since deleted) was that where any duty was not levied or paid or short levied etc., the person who was liable to pay the duty would also be liable to pay interest in addition to duty at such rate not below 10% and not exceeding 36% per annum as may be fixed by the central government by notification in the official gazette.

31. Chapter IX of the Customs Act comprising of Sections 57 to 73A deal with warehousing. Section 57 provides for licensing of public warehouses where dutiable goods may be warehoused. As per Section 58, as it stood at the relevant time, the proper officer may license a private warehouse where dutiable goods imported by or on behalf of the licensee or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited. Sub-Section(2) provides for cancellation of license so granted by giving a month's written notice in advance if the licensee had contravened any of the provisions of the Customs Act or committed breach of any of the conditions of the license. However, before such cancellation, the licensee was required to be given a reasonable opportunity of being heard.

32. 'Warehousing bond' is provided for in Section 59. As per sub-Section(1), the importer of any goods specified in Section 61(1) which had been entered for warehousing and assessed to duty under Sections 17 or 18 shall execute a bond binding himself in a sum equal to thrice the amount of the duty assessed on such goods.

33. As per Section 60, as it stood at the relevant point of time, when the provisions of Section 59 have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of goods in a warehouse.

34. Section 61 mentions the period for which the goods may remain warehoused. Sub-Section (1) says that any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed-

    (a) in the case of capital goods intended for use in any hundred percent export-oriented undertaking, till the expiry of five years;

(aa) in the case of goods other than capital goods intended for use in any hundred percent export-oriented undertaking, till the expiry of three years; and

(b) in the case of any other goods, till the expiry of one year;

after the date on which the proper officer has made an order under Section 60 permitting the deposit of the goods in a warehouse. However, proviso (i) (B) says that in the case of any goods which are not likely to deteriorate and which are not intended for use in any hundred percent export oriented undertaking, the period specified in clauses (a), (aa) or (b) may, on sufficient cause being shown, be extended by the Principal Commissioner or Commissioner of Customs for a period not exceeding six months and by the Principal Chief Commissioner or Chief Commissioner of Customs for further period as he may deem fit.

35. Section 64 deals with owner's right to deal with warehoused goods. Section 64, as it stood at the relevant point of time, read as under:

64. *Owner's right to deal with warehoused goods.*- With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same-

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

(e) show the goods for sale; or

(f) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

35.1. Thus, this section provided that the owner of any goods with the sanction of the proper officer and on payment of the prescribed fees may either before or after warehousing the same, deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods.

36. Section 67 deals with removal of goods from one warehouse to another. It says that the owner of any warehoused goods may with the permission of the proper officer, remove them from one warehouse to another subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

37. Heading of Section 68 is 'Clearance of warehoused goods for home consumption'. This section, as it stood at the relevant point of time, provided that the importer of any warehoused goods may clear those goods from the warehouse for home consumption if –

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty leviable on such goods and all penalties rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

38. There is an embargo provided in Section 71 from taking out goods from a warehouse. As per Section 71, no warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation or for removal to another warehouse or as otherwise provided by the Customs Act.

39. Section 71 is followed by Section 72 which deals with goods improperly removed from warehouse, etc. As per sub-Section(1)(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse, the proper officer may demand and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

40. Once the goods covered by any bond executed under Section 59 have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full and deliver the same after cancellation to the person who has executed or is entitled to receive it.

41. Section 110(1) of the Customs Act empowers the proper officer to seize any goods if he has reason to believe that such goods are liable to confiscation under the Customs Act.

42. As per Section 111(j), any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission, shall be liable for confiscation.

43. In the event of such an act, the concerned person shall be liable to pay penalty under Section 112.

44. Central Board of Excise and Customs had issued Circular No.98/95-Cus. dated 12.07.1989. Subject matter of this circular was what would be the relevant date for calculation of customs duty in cases where warehoused goods were cleared after expiry of the warehousing period. Reference was made to the instructions of the Board dated 17.03.1987 where it was clarified that in cases where warehoused goods were cleared from a warehouse after expiry of the bond period, the rate of duty would be the one which was prevalent on the date of expiry of the bond. The issue was reconsidered in the tripartite meeting held between the Ministry of Law, Department of Revenue and the Comptroller and Auditor General. It was observed in the meeting that on expiry of the warehousing period, the goods kept in a warehouse ceased to be warehoused goods and, therefore, their removal from the warehouse could not be regarded as covered by the provisions of Section 15(1)(b) of the Customs Act. After noting that there was no specific legal provision to determine the rate of duty in such cases of warehoused goods where the bond period had expired, it was concluded that the residual clause of Section 15(1)(c) of the Customs Act could apply to cases where the goods were removed from the warehouse after expiry of the warehousing period and that the rate of duty in such cases would be the rate prevalent on the date of payment of duty. It was further clarified that provisions of Section 15(1)(b) of the Customs Act would continue to

apply in cases where goods were cleared from the warehouse after extension of the warehousing period but before expiry of the extended period for which applications from the importers for extension of the warehousing period should be received before expiry of the permitted period of warehousing. These conclusions reached in the tripartite meeting were accepted by the Board and by the aforesaid circular dated 12.07.1989, direction was issued for their immediate implementation superseding the instructions dated 17.03.1987.

45. The above provision continued to hold the field till the decision of this Court in *Kesoram Rayon versus Collector of Customs, Calcutta*, (1996) 5 SCC 576. The question for consideration in *Kesoram* was the rate at which customs duty was to be levied on goods that remained in a bonded warehouse beyond the permitted period. A two judge bench of this Court after referring to various provisions of the Customs Act held that Section 15(1)(b) would apply to the case of goods cleared under Section 68 from a warehouse upon presentation of a bill of entry for home consumption; payment of duty, interest, penalty, rent and other charges; and an order for home clearance. This Court clarified that provisions of Section 68 and consequently Section 15(1)(b) would apply only when goods have been cleared from the warehouse within the permitted period or its permitted extension and not when by reason of their remaining in the warehouse beyond the permitted period or its permitted extension, the goods would be deemed to have been improperly removed from the warehouse under Section 72. In the facts of that case, it was found that there was nothing on record to suggest that clearance of the goods in question under Section 68 was ordered and, therefore, Section 15(1)(b) had no application. Finally, this Court held that the consequence of non-removal of the warehoused goods within the permitted period or the permitted extension by virtue of Section 72 is certain. The date on which it comes to an end is the date relevant for determining the rate of duty; when the duty is in fact demanded is not relevant.

46. Following the decision of this Court in *Kesoram*, the Central Board of Excise and Customs issued Circular No.31/97-Cus. dated 14.08.1997. The Board held that in view of this Court's judgment, the date of payment of duty in the case of warehoused goods removed after expiry of the permissible or extended period would be the date of expiry of the warehousing period or such other extended period,

as the case may be, and not the date of payment of duty. Goods not removed from a warehouse within the permissible period or the extended period are to be treated as goods improperly removed from the warehouse.

47. In *Simplex Castings Ltd. versus Commissioner of Customs, Vishakhapatnam,* (2003) 5 SCC 528, the appellant had questioned filing of appeal by the Commissioner before the CEGAT in view of the circular dated 12.07.1989 issued by the Central Board of Excise and Customs. It was argued that it was not open to the Commissioner to take the stand that non-removal of the goods from the warehouse after the period of warehousing was over would be deemed removal from the warehouse and that the rate of duty would be leviable from the date the period of warehousing was over. The Commissioner had appealed against the decision of the Collector of Customs (Appeals) in which the circular dated 12.07.1989 was followed. The appeal filed by the Commissioner was allowed by the CEGAT by relying upon the decision of this Court in *Kesoram*. This Court referred to its earlier decision in *Paper Products Ltd. versus Commissioner of Central Excise,* (1999) 7 SCC 84, and held that the circular dated 12.07.1989 was binding on the Department and, therefore, it was not open to the Department to prefer appeal before CEGAT contrary to what was laid down in the circular dated 12.07.1989 in which it was specifically provided that the residual Section 15(1)(c) of the Customs Act would apply to cases where the goods were removed from a warehouse after expiry of the warehousing period and that the rate of duty in such cases would be the rate prevalent on the date of payment of duty. This Court noted that the aforesaid circular dated 12.07.1989 was withdrawn by the subsequent circular dated 14.08.1997. But, at the relevant point of time, the circular dated 12.07.1989 was holding the field. Thus, the appellate order passed by the Collector of Customs (Appeal) could not be said to be in anyway illegal or erroneous and, therefore, it was not open to the Department to challenge the said order before the CEGAT in contravention of the circular dated 12.07.1989.

48. The decision in *Kesoram* was approved and applied by a coordinate bench of this Court in *SBEC Sugar Ltd versus Union of India*, (2011) 4 SCC 668. This Court held that Section 15(1)(b) would be applicable only when the goods are cleared from the warehouse under Section 68 of the Customs Act i.e. within the initially permitted period or during

the permitted extended period. When the goods are cleared from the warehouse after expiry of the permitted period or its permitted extension, the goods are deemed to have been improperly removed under Section 72(1)(b) of the Customs Act with the consequence that the rate of duty has to be computed according to the rate applicable on the date of expiry of the permitted period under Section 61.

49. Let us now briefly recap the facts. Appellant had imported second hand steel mill machinery and parts covered by three transit bonds totalling 595 cases. The customs authority had notified an open area of 2000 square meters within the industrial/factory premises of the appellant as a public bonded warehouse. This open area was fenced and had gate with locking arrangement. The imported goods covered by the 595 cases were required to be warehoused in the said notified public bonded warehouse without payment of customs duty. Appellant had written a letter dated 30.08.1989 to the concerned Superintendent seeking permission to unload a portion of the cargo outside the warehouse but within the factory premises. It was pointed out that the trailers carrying the consignment could not enter the said warehouse as because those trailers had got stuck in the soil outside the warehouse but within the factory premises as the soil had become very sluggish due to heavy rain and also because of paucity of space within the notified open area. The Superintendent gave permission on the body of the letter itself for unloading the cargo outside the warehouse but within the factory premises. The machinery parts which were thus unloaded were shifted to a shed outside the bonded warehouse but within the factory premises of the appellant so that those machinery parts did not get damaged, lying in the open and getting exposed to the elements.

    49.1. Officials of the Preventive Branch of the Commissionerate searched the industrial premises of the appellant, including the notified public bonded warehouse, on 07.08.1992 and physically verified the stock in the notified public bonded warehouse as well as outside but within the industrial/factory premises of the appellant. On such verification, it was found that only 304 cases were stocked inside the warehouse, whereas 264 cases were found outside the warehouse but within the industrial/factory premises of the appellant. Remaining 27 cases were neither found inside the warehouse nor outside the warehouse but within the industrial/factory premises of the appellant.

49.2. After issuance of show cause notice and hearing, respondent passed adjudication order dated 28.08.1996 which suffered several rounds of appeals and remand. Ultimately, the Commissioner passed the final adjudication order dated 28.04.2005 whereby demand of Rs.3,99,255.00 leviable on the 27 cases found not warehoused was confirmed. Appellant was also directed to pay interest on the said duty in terms of Section 28AB of the Customs Act. The 264 cases of imported goods found outside the notified warehouse were confiscated but option of redemption was given to the appellant on payment of fine of Rs.2,00,000.00. For the goods covered by the 264 cases, customs duty amounting to Rs.39,03,821.00 was directed to be recovered from the appellant in terms of Section 71 read with the proviso to Section 28A of the Customs Act. That apart, appellant was directed to pay interest of Rs.18,88,425.00 on the aforesaid quantum of customs duty in respect of the 264 cases from the date of warehousing till the date of detection of the shortage in the warehouse. Further, appellant was directed to pay interest under Section 28AB in respect of the 264 cases from the date of enforcement of the said section to till the date of actual payment of the duty. Penalty of Rs.1,00,000.00 was also imposed on the appellant under Section 112 of the Customs Act.

49.3. In appeal, CESTAT by the impugned order affirmed the aforesaid decision of the Commissioner.

50. We may mention that the permission granted by the Superintendent to the appellant on 30.08.1989 to unload a portion of the cargo outside the open space which was notified as public bonded warehouse but within the factory premises of the appellant was neither cancelled nor revoked by the Superintendent or even by the Commissioner. Infact, a view can reasonably be taken that the appellant as the owner of the goods had exercised its right under Section 64(d) which was endorsed by the Superintendent. Therefore, it would not be correct to say that the 264 cases found outside the notified warehouse but within the factory premises of the appellant were improperly or unauthorisedly removed from the notified public bonded warehouse.

51. It has also come on record that Central Warehousing Corporation had deposited a sum of Rs.56,10,294.00 with the respondent as

custom establishment charges in respect of the aforesaid notified public bonded warehouse for the period 1992-1993 to 2007-2008. This would mean that the warehousing in the aforesaid notified public bonded warehouse continued during the said period. Thus, the period of warehousing had not expired and continued to remain operational in terms of the proviso to Section 61 of the Customs Act.

52. This would further be borne out from the fact that it is not the case of the respondent that the 304 cases found inside the notified warehouse were kept there beyond the warehousing period. In fact, the allegation of the respondent is that 264 cases were improperly or unauthorisedly removed from the notified warehouse as those were found lying outside the notified area but within the industrial/factory premises of the appellant. That apart, 27 cases were neither found inside the notified warehouse nor outside the said warehouse but within the factory premises of the appellant.

53. In such a scenario, the provisions of Sections 71 and 72 would not be applicable. Therefore, the decision of the respondent to invoke Section 71 and thereafter levy interest on the goods covered by the 264 cases under Section 28AB of the Customs Act was not justified. Since the imported goods covered by the 264 cases were never warehoused inside the notified public bonded warehouse but were unloaded outside the notified area but within the factory premises of the appellant and kept under a shed on permission granted by the Superintendent which permission was neither cancelled nor revoked, question of warehousing the goods covered by the 264 cases within the notified public bonded warehouse did not arise. As a corollary, the further question of improperly or unauthorisedly removing the 264 cases from the notified warehouse to outside the said area but within the factory premises of the appellant attracting Section 71 and the consequences following the same did not arise. Inference drawn by the respondent that the permission granted by the Superintendent was only temporary and therefore, the rigor of Section 71 would be attracted, in our view, would not be a correct understanding of the situation and the law.

54. Having said that, we find that there is no explanation on the part of the appellant *qua* the missing 27 cases. Therefore, the view taken by the respondent and affirmed by the CESTAT that those 27 cases were improperly or unauthorisedly removed from the notified public

bonded warehouse is correct and requires no interference.

55. Reverting back to the 264 cases, we are of the view that in a case of this nature, Section 15(1)(b) would have no application. Rather, Section 15(1)(c) would be attracted.

56. In so far the Board's circular dated 12.07.1989 is concerned, the subject matter of the said circular was what would be the relevant date for calculation of customs duty in cases where warehoused goods were cleared after expiry of the warehousing period. In that context, it was clarified that provisions of Section 15(1)(b) of the Customs Act would apply to cases where the goods were cleared from the warehouse after extension of the warehousing period but before expiry of such extended period. On the other hand, in respect of cases where the goods were removed after expiry of the warehousing period, the residual clause of Section 15(1)(c) of the Customs Act would apply. Evidently, this circular dated 12.7.1989 would not be applicable to the facts of the present case in as much as it is not the case of the respondent that either the warehousing period had expired or that the warehousing period was extended. As we have seen, the warehousing in the notified public bonded warehouse continued as the Corporation had deposited with the respondent a sum of Rs. 56,10,294.00 in respect of the notified warehouse as custom establishment charges for the period from 1992-1993 to 2007-2008. That apart, we can refer to the fact that respondent had not levied any customs duty on the 304 cases found within the notified area which would mean that the notified warehousing continued. Therefore, this is not a case where Section 15(1)(b) could have been invoked.

57. As regards, the decision of this Court in *Kesoram* is concerned, the question for consideration in that case was the rate at which customs duty could be levied on goods that remained in a bonded warehouse beyond the permitted period. It was in that context that this Court held that Section 68 would not be applicable since Section 68 operates in a different context. On the contrary, Section 72 would apply. Thus, this Court clarified that the date on which the warehousing period comes to an end, would be the date relevant for determining the rate of duty and when the duty is actually demanded would not be relevant. It was further clarified that Section 15(1)(b) would apply to goods cleared under Section 68. Goods which remain in the bonded

warehouse beyond the permitted period would be deemed to have been improperly removed from the warehouse under Section 72. It is quite evident that this decision would not be applicable to the facts of the present case.

58. Thus, having regard to the discussions made above, we are of the view that the demand raised by the respondent against the appellant and affirmed by the CESTAT *qua* the 264 cases including levy of customs duty and interest cannot be sustained. Those are accordingly set aside and quashed. Parties are directed to work out their remedies in respect of the 264 cases of goods under Section 15(1)(c) of the Customs Act within a period of eight weeks from the date of receipt of a copy of this order. In so far the demand of customs duty and interest on the 27 cases is concerned, the same is hereby sustained. The decision imposing penalty of rupees one lakh on the appellant under Section 112 of the Customs Act is also not disturbed in view of the conduct of the appellant in unauthorisedly removing the 27 cases of imported goods not only from the notified public bonded warehouse but also from the industrial/factory premises of the appellant.

59. Impugned order of CESTAT would stand modified accordingly.

60. Appeal is allowed in part in the above terms. No costs.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal partly allowed.