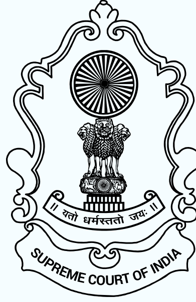

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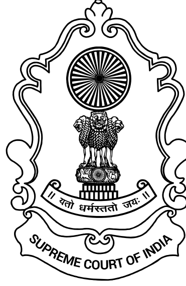

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Contents

1. PHR Invent Educational Society *v.* UCO Bank and Others...... 541

2. Ravishankar Tandon *v.* State of Chhattisgarh 558

3. The VVF Ltd. Employees Union *v.*
M/S. VVF India Limited & Anr.. 576

4. Yash Tuteja & Anr. *v.* Union of India & Ors.. 591

5. The State of Madhya Pradesh *v.*
Satish Jain (Dead) by Lrs & Ors. 598

6. Khengarbhai Lakhabhai Dambhala *v.* The State of Gujarat 606

7. K.B. Lal (Krishna Bahadur Lal) *v.* Gyanendra Pratap & Ors. 616

8. The State of Arunachal Pradesh *v.* Kamal Agarwal & Ors. Etc. . . 624

9. Govind Kumar Sharma & Anr. *v.* Bank of Baroda & Ors. 633

10. The State of West Bengal *v.* Jayeeta Das 640

11. Mukhtar Zaidi *v.* The State of Uttar Pradesh & Anr. 655

12. Pernod Ricard India (P) Ltd. *v.*
The State of Madhya Pradesh & Ors. 664

13. Ramayan Singh *v.* State of Uttar Pradesh & Anr. 686

14. Rehan Ahmed (D) Thr. Lrs. *v.* Akhtar Un Nisa (D) Thr. Lrs. 694

15. Kirpal Singh *v.* State of Punjab 707

16. Mahakali Sujatha *v.* The Branch Manager, Future Generali
India Life InsuranceCompany Limited & Another. 724

17. Jyoti Devi *v.* Suket Hospital & Ors. 757

[2024] 4 S.C.R. 541 : 2024 INSC 297

PHR Invent Educational Society
v.
UCO Bank and Others

(Civil Appeal No. 4845 of 2024)

10 April 2024

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

Issue for Consideration

Matter pertains to the High Courts entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy.

Headnotes

Constitution of India – Art. 226 – Cases related to recovery of dues of banks and auction sale – Exercise of power u/Art 226 by filing writ petition, in spite of availability of an alternative remedy – Maintainability of the writ petition:

Held: Ordinarily the High Court would not entertain a petition u/Art. 226 if an effective remedy is available to the aggrieved person – This rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions – While dealing with such petitions, the High Court must keep in mind that the statutes enacted for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance – Though the powers of the High Court u/Art. 226 are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed restraint – On facts, the High Courts entertained petitions arising out of the DRT and the SARFAESI Act in spite of availability of an effective alternative remedy – High Court interfered with the writ petition only on the ground that the matter was pending for sometime before it and if the petition not entertained, the Borrower would be left remediless – However the High Court failed to take into consideration the conduct of the Borrower – Though the High Court was specifically informed that, on account of confirmation of sale and registration thereof, the position had reached an irreversible stage, the High Court failed to consider that aspect – High Court ought to have

* Author

taken into consideration that the confirmed auction sale could have been interfered with only when there was a fraud or collusion, which was not a case – Effect of the order of the High Court would be again reopening the issues which attained finality – Also instant case would not come under any of the exceptions – Thus, the High Court grossly erred in entertaining the petition – Impugned order passed by the High Court quashed and set aside – Costs of Rs.1,00,000/- imposed upon the Borrower – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. [Paras 15, 24, 26, 32, 34]

Constitution of India – Art. 226 – Power of High Courts to issue certain writs – Exceptions, when a petition u/Art. 226 could be entertained in spite of availability of an alternative remedy:

Held: It is when the statutory authority has not acted in accordance with the provisions of the enactment in question; it has acted in defiance of the fundamental principles of judicial procedure; it has resorted to invoke the provisions which are repealed; and when an order has been passed in total violation of the principles of natural justice [Para 29]

Case Law Cited

United Bank of India v. Satyawati Tondon and Others [2010] 9 SCR 1 **: (2010) 8 SCC 110 : 2010 INSC 428;** *Celir LLP v. Bafna Motors (Mumbai) Private Limited and Others* [2023] 13 SCR 53 **: (2024) 2 SCC 1 : 2023 INSC 838;** *South Indian Bank Limited and Others v. Naveen Mathew Philip and Another* [2023] 4 SCR 18 **: (2023) SCC OnLine SC 435 : 2023 INSC 379;** *State of U.P. v. Mohammad Nooh* [1958] 1 SCR 595 **: AIR 1958 SC 86 : 1957 INSC 81;** *Agarwal Tracom Private Limited v Punjab National Bank and Others* [2017] 11 SCR 164 **: (2018) 1 SCC 626 : 2017 INSC 1146;** *Authorized Officer, State Bank of Travancore and Another v Mathew K.C* [2018] 1 SCR 233 **: (2018) 3 SCC 85 : 2018 INSC 71;** *Phoenix ARC Private Limited v Vishwa Bharati Vidya Mandir and Others* [2022] 1 SCR 950 **: (2022) 5 SCC 345 : 2022 INSC 44;** *Varimadugu OBI Reddy v B Sreenivasulu and Others* [2022] 16 SCR 1108 **: (2023) 2 SCC 168:2022 INSC 1205;** *Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others* [2008] 12 SCR 1 **: (2008)**

9 SCC 299 : 2008 INSC 925; *Dwarika Prasad v. State of Uttar Pradesh and Others* [2018] 3 SCR 29 **: (2018) 5 SCC 491 : 2018 INSC 210;** *Commissioner of Income Tax and Others v. Chhabil Dass Agarwal* **(2014) 1 SCC 603 – referred to.**

List of Acts

Constitution of India; Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

List of Keywords

Alternative remedy; Effective remedy; Recovery of taxes, cess, fees, other types of public money; Dues of banks and other financial institutions; Quasi-judicial bodies; Rule of exhaustion of alternative remedy; Rules of self-imposed restraint; Deprecation; Alternative statutory remedy; Debts Recovery Tribunal; Securitization application; Sale of his mortgaged properties; Rule of self-restraint; Redressal of grievance; Costs; Principles of judicial procedure; Principles of natural justice.

Case Arising From

CIVIL APPELLATEJURISDICTION: Civil Appeal No.4845 of 2024

From the Judgment and Order dated 04.02.2022 of the High Court for the State of Telangana at Hyderabad in WP No. 5275 of 2021

Appearances for Parties

R. Basant, Sr. Adv., Khalid M.S, A. Karthik, Manu Krishnan, Ms. Gunjan Rathore, Kavinesh R M, Advs. for the Appellant.

Jayant Bhushan, Sr. Adv., Partha Sil, Sanjiv Kr. Saxena, Chirag Joshi, Ms. Sayani Bhattacharya, Abhiraj Chaudhary, Venkateswara Rao Anumolu, Sunny Kumar, Puneet Aggarwal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. This appeal challenges the order dated 4th February 2022, passed by the Division Bench of the High Court for the State of Telangana

at Hyderabad in Writ Petition No. 5275 of 2021, whereby the High Court disposed of the writ petition filed by Dr. M.V. Ramana Rao, respondent No. 3 herein (hereinafter referred to as 'the Borrower'). The High Court set aside the order dated 2nd February 2021, passed by the Debts Recovery Tribunal-II at Hyderabad (hereinafter referred to as 'DRT') and allowed Miscellaneous Application (M.A.) No. 97 of 2020 in Securitization Application (S.A.) No. 1476 of 2017 filed by the Borrower for the restoration of the said S.A. No. 1476 of 2017 filed by him under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). The Borrower had filed S.A. No. 1476 of 2017 against the Notice dated 2nd September 2017 issued by the UCO Bank (hereinafter referred to as the 'Respondent-Bank') for the sale of his mortgaged properties which was to be conducted by the Authorized Officer (Respondent No.2) of the Respondent-Bank in light of the default in repayment of loan by the Borrower. The DRT, in its aforementioned order dated 2nd February 2021, had dismissed the M.A. No. 97 of 2020 for the restoration of S.A. No. 1476 of 2017, which had been previously dismissed as withdrawn vide DRT vide order dated 21st September 2020. The Division Bench of the High Court, in the impugned order, while setting aside the order of DRT dated 2nd February 2021, further directed DRT to proceed with S.A. No. 1476 of 2017 in accordance with law.

3. The facts, in brief, giving rise to the present appeal are as under:

3.1 The Borrower had availed a loan from the Respondent-Bank and in order to secure the said loan, the Borrower had mortgaged four properties (hereinafter referred to as 'scheduled properties') situated at Vijayawada, Andhra Pradesh as collateral security. However, the Borrower defaulted in the repayment of the loan amount, which led the Respondent-Bank to initiate proceedings against the borrower under the SARFAESI Act.

3.2 Thereafter, the Respondent-Bank issued an Auction Sale Notice on 2nd September 2017 for auctioning off the scheduled properties and published information about the same in the Times of India and one other vernacular newspaper. According to the said Auction Sale Notice, the auction was to be conducted on 14th December 2017.

3.3 Aggrieved by the Auction Sale Notice, the Borrower preferred a securitization application being S.A. No.1476 of 2017 before DRT under Section 17 of the SARFAESI Act, thereby *inter alia* praying for setting aside of the same.

3.4 In the meanwhile, the auction was conducted on 14th December 2017 by the Respondent-Bank through Respondent No.2. The PHR Invent Educational Society, (hereinafter referred to as the 'auction purchaser'), i.e., the appellant herein participated in the said auction and emerged as the highest bidder for a bid of Rs.5,72,22,200/-. The appellant deposited 25% of the bid amount i.e. Rs. 1,38,05,550/- including the Earnest Money Deposit of the said amount. The fact remains that the Borrower did not deposit the amount.

3.5 On the same day i.e., 14th December 2017, DRT passed an interim order in S.A. No. 1476 of 2017, thereby refusing to interfere with the sale of the scheduled properties which was to be conducted on that very day. The Borrower had also filed an interlocutory application being I.A. No. 3446 of 2017, thereby praying for stay of further proceedings qua the auction of the scheduled properties, wherein DRT directed the Respondent-Bank not to confirm the sale of the scheduled properties subject to the Borrower depositing 30% of the outstanding dues as claimed for in the Auction Sale Notice in two equal installments. The first installment of 15% amount was to be deposited within a week from the date of the said order, and the second installment of 15% amount was to be deposited within two weeks thereafter. The DRT further directed that, in the event that the Borrower failed to make the aforesaid deposits, the interim stay would stand vacated and the Respondent-Bank would be at liberty to confirm the sale in favor of the highest bidder, although the sale itself was made subject to the final outcome in S.A. No. 1476 of 2017.

3.6 Subsequently, the appellant deposited Rs.4,29,16,650/- towards the payment of the balance auction price on 28th December 2017.

3.7 In the meanwhile, the Borrower proposed One Time Settlement ('OTS' for short) for all the outstanding loan accounts. However, the Respondent-Bank refused to accept the same and requested the Borrower to settle all the outstanding loan accounts with

interest payable at the contractual rate, as applicable thereon vide letter dated 12th May 2020.

3.8 Following which, DRT passed an order dated 21st September 2020, whereby S.A. No. 1476 of 2017 was dismissed as withdrawn at the behest of the Borrower who submitted that the matter had been settled out of court. On the other hand, the Respondent-Bank filed a Memo of Non-Settlement before DRT thereby informing that no such out-of-court settlement had been reached.

3.9 Upon S.A. No. 1476 of 2017 being dismissed as withdrawn, the Respondent-Bank confirmed the sale of the scheduled properties in favor of the appellant herein. A Sale Certificate was issued by the Respondent-Bank on 2nd November 2020 and the possession of the scheduled properties was accordingly delivered to the appellant. Subsequently, on 11th November 2020, the Sale Certificate came to be registered in favor of the appellant herein.

3.10 In the meantime, the Borrower preferred M.A. No. 97 of 2020 in S.A. No. 1476 of 2017 before DRT, praying for the restoration of S.A. No. 1476 of 2017 to the file and setting aside the aforesaid order of DRT dated 21st September 2020. However, on 2nd February 2021, DRT passed an order thereby dismissing the said M.A. filed by the Borrower.

3.11 Aggrieved thereby, the Borrower filed writ petition before the High Court. The High Court, by the impugned order, disposed of the said writ petition, thereby setting aside the order of DRT, and further directing it to proceed with S.A. No. 1476 of 2017 in accordance with law. The M.A. No. 97 of 2020 in S.A. No. 1476 of 2017 was thus allowed restoring S.A. No. 1476 of 2017.

4. Being aggrieved thus, the auction purchaser has preferred the present appeal.

5. We have heard Shri R. Basant, learned Senior Counsel appearing on behalf of the appellant-auction purchaser, Shri Partha Sil, learned counsel appearing on behalf of the UCO Bank and Shri Jayant Bhushan, learned Senior Counsel appearing on behalf of the respondent No.3-Borrower.

6. Shri Basant, learned Senior Counsel appearing for the appellant-auction purchaser submitted that the High Court has grossly erred in entertaining the writ petition filed by the Borrower when an efficacious alternative remedy of statutory appeal was available to the Borrower under the SARFAESI Act. He relies on the judgments of this Court in the cases of ***United Bank of India v. Satyawati Tondon and Others***[1], ***Celir LLP v. Bafna Motors (Mumbai) Private Limited and Others***[2] and ***South Indian Bank Limited and Others v. Naveen Mathew Philip and Another***[3].

7. Shri Basant further submitted that the conduct of the Borrower also disentitled him to an equitable relief. It is submitted that the Borrower had filed the writ petition after the entire payment was made by the appellant-auction purchaser and a Sale Certificate was also issued in its favour. The learned Senior Counsel therefore submitted that the writ petition filed by the Borrower deserves to be dismissed and the present appeal deserves to be allowed.

8. Shri Partha Sil, learned counsel appearing on behalf of the UCO Bank, also advanced similar arguments and prayed for dismissal of the writ petition filed by the Borrower.

9. Shri Bhushan, learned Senior Counsel, appearing on behalf of the Borrower, on the contrary, submitted that non-exercising of the jurisdiction under Article 226/227 of the Constitution of India on the ground of availability of an alternative remedy is a rule of self-restraint. It is submitted that, in deserving cases, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution in order to do justice to the parties. The learned Senior Counsel relies on the judgment of this Court in the case of ***State of U.P. v. Mohammad Nooh***[4].

10. The facts in the present case are not disputed. It is not in dispute that in the auction held on 14th December 2017, the appellant-auction purchaser was the highest bidder having offered a bid for an amount of Rs.5,72,22,200/- and that the appellant-auction purchaser deposited 25% of the bid amount i.e. Rs.1,38,05,550/- immediately.

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1 [2010] 9 SCR 1 : (2010) 8 SCC 110 : 2010 INSC 428

2 [2023] 13 SCR 53 : (2024) 2 SCC 1 : 2023 INSC 838

3 [2023] 4 SCR 18 : 2023 SCC OnLine SC 435 : 2023 INSC 379

4 [1958] 1 SCR 595 : AIR 1958 SC 86 : 1957 INSC 81

It is also not in dispute that on 14th December 2017, the learned DRT, though refused to interfere with the sale but directed the Respondent-Bank not to confirm the sale of the scheduled properties subject to the Borrower depositing 30% of the outstanding dues in two equal installments within one week and two weeks thereafter respectively. The learned DRT had also directed that, in case of failure of compliance, the interim stay would stand automatically vacated and the Respondent-Bank would be entitled to confirm the sale. It is also not in dispute that the Borrower did not comply with the said order of the learned DRT. It is thus clear that, on non-deposit of the amount as directed by the learned DRT vide order dated 14th December 2017, the interim direction passed on the said date stood automatically vacated. After the aforesaid period was over, the appellant-auction purchaser deposited the balance amount of Rs.4,29,16,650/-.

11. It appears that, during the pendency of the proceedings before the learned DRT, the Borrower submitted an OTS proposal to the Respondent-Bank on 29th March 2019, thereby offering to settle the accounts for an amount of Rs.3,75,00,000/-. It further appears that the Borrower also deposited 10% upfront amount i.e. Rs.37,50,000/. On 12th May 2020, the Respondent-Bank, in reply to the OTS application, asked the Borrower to settle all the four loan accounts with interest at the contractual rate.

12. On 20th August 2020, the Borrower filed an application being I.A. No. 1691 of 2020 in the proceedings pending before DRT requesting for advancing the date of hearing stating that there was urgency in the matter and also that the appellant-auction purchaser had withdrawn from the auction. Thereafter, vide order dated 21st September 2020, the said S.A. No. 1476 of 2017 came to be withdrawn on a statement made by the counsel for the Borrower that the matter had been settled out of court. It is also relevant to mention that on 5th October 2020, the Respondent-Bank had filed a memo before DRT informing that there was no settlement.

13. After the disposal of the S.A. No. 1476 of 2017 as withdrawn, the Respondent-Bank confirmed the sale in favour of the appellant-auction purchaser on 2nd November 2020. Thereafter, on 4th November 2020, the Borrower filed a miscellaneous application being M.A. No. 97 of 2010 for restoration of the said S.A. No. 1476 of 2017 on the ground

that the said S.A. No. 1476 of 2017 had been withdrawn because the Chief Manager and AGM of the Respondent-Bank had orally told the Borrower that unless the S.A. No. 1476 of 2017 was withdrawn, they could not process the OTS proposal. It is further relevant to note that on 11th November 2020, the Sale Certificate was registered. Vide order dated 2nd February 2021, DRT dismissed the said M.A. No. 97 of 2010. Thereafter, the writ petition being No. 5275 of 2021 came to be filed by the Borrower on 25th February 2021 before the High Court. Vide the impugned order, the High Court set aside the order passed by DRT and directed it to proceed with S.A. No. 1476 of 2017.

14. The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In the case of ***Satyawati Tondon*** (supra), this Court observed thus:

> "**43.** Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
>
> **44.** While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases,

> any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.
>
> **45.** It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

15. It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.

16. The view taken by this Court has been followed in the case of ***Agarwal Tracom Private Limited v. Punjab National Bank and Others***[5].

17. In the case of ***Authorized Officer, State Bank of Travancore and Another v. Mathew K.C.***[6], this Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution staying further proceedings at the stage of Section 13(4) of the SARFAESI Act. After considering various judgments rendered by this Court, the Court observed thus:

> "**16.** The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."

18. The same position was again reiterated by this Court in the case of ***Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir and Others***[7].

19. Again, in the case of ***Varimadugu OBI Reddy v. B. Sreenivasulu and Others***[8]***,*** after referring to earlier judgments, this Court observed thus:

> **"34.** The order of the Tribunal dated 1-8-2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002. In the absence of efficacious alternative remedy being availed, there was

5 [2017] 11 SCR 164 : (2018) 1 SCC 626 : 2017 INSC 1146

6 [2018] 1 SCR 233 : (2018) 3 SCC 85 : 2018 INSC 71

7 [2022] 1 SCR 950 : (2022) 5 SCC 345 : 2022 INSC 44

8 [2022] 16 SCR 1108 : (2023) 2 SCC 168 : 2022 INSC 1205

no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1-8-2019 under its jurisdiction under Article 226 of the Constitution without exhausting the statutory right of appeal available at its command."

20. It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.

21. Recently, in the case of ***Celir LLP*** (supra), after surveying various judgments of this Court, the Court observed thus:

> "**101.** More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in *Satyawati Tondon* [*United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."

22. It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.

23. The only reasoning that could be seen from the impugned order given by the learned Division Bench of the High Court is as under:

> "**11.** It is true that under Section 18 of the SARFAESI Act, petitioner has the alternative remedy against the impugned order by filing appeal before the appellate Tribunal. However, having regard to the fact that the writ petition is pending before this Court for quite some time and also considering the fact that if the impugned order is allowed to stand, petitioner would be left without a remedy to ventilate his grievance, we deem it fit and proper not to non-suit the petitioner on the ground of not availing the alternative remedy.

> **12.** Section 17 of the SARFAESI Act provides that any person including a borrower who is aggrieved by the action of secured creditor under Section 13 (4) of the SARFAESI Act may file an application thereunder. Supreme Court has held time and again that the Tribunal exercises wide jurisdiction under Section 17 of the SARFAESI Act, even to the extent of setting aside an auction sale. In the instant case, we are consciously not referring to the merit of the case. All that we are concerned is whether for whatever reason a person who is aggrieved in law should be left remediless. In the instant case, petitioner had invoked his remedy by filing securitization application under sub-section (1) of Section 17 of the SARFAESI Act. The application was pending for three years before the Tribunal. From the docket order dated 21.09.2020, we find that a junior counsel appearing on behalf of the petitioner had reported that the matter was settled out of Court and therefore, leave was sought for withdrawing the securitization application which was accordingly granted.
>
> **13.** When the settlement did not materialize, petitioner went back to the Tribunal for revival of the securitization application which was however dismissed on the ground that version of the petition did not deserve acceptance.
>
> **14.** On thorough consideration of the matter we are of the view that dismissal of the miscellaneous application of the petitioner by the Tribunal dies not appear to be justified.
>
> **15.** Though subsequent developments may have a bearing on the grant of ultimate relief to a litigant but the same by itself cannot denude the adjudicating authority of its power to adjudicate the grievance raised by the aggrieved person which it otherwise possess."

24. It can thus clearly be seen that though it was specifically contended on behalf of the appellant herein that the writ petition was not maintainable on account of availability of alternative remedy, the High Court has interfered with the writ petition only on the ground that the matter was pending for sometime before it and if the petition was not entertained, the Borrower would be left remediless. We however find that the High Court has failed to take into consideration the conduct

of the Borrower. It is further to be noted that, though the High Court had been specifically informed that, on account of subsequent developments, that is confirmation of sale and registration thereof, the position had reached an irreversible stage, the High Court has failed to take into consideration those aspects of the matter.

25. This Court, in the case of ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others***[9], has observed thus:

> "**30.** In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.
>
> **31.** In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

26. In our view, the High Court ought to have taken into consideration that the confirmed auction sale could have been interfered with only when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality.

27. It is further to be noted that this Court, in the case of ***Dwarika Prasad v. State of Uttar Pradesh and Others***[10], has clearly held that the right of redemption stands extinguished on the execution of the registered sale deed. In the present case, the sale was confirmed on 2nd November 2020 and registered on 11th November 2020.

9 [2008] 12 SCR 1 : (2008) 9 SCC 299 : 2008 INSC 925

10 [2018] 3 SCR 29 : (2018) 5 SCC 491 : 2018 INSC 210

28. Insofar as the contention of the Borrower and its reliance on the judgment of this Court in the case of ***Mohammad Nooh*** (supra) is concerned, no doubt that non-exercise of jurisdiction under Article 226 of the Constitution on the ground of availability of an alternative remedy is a rule of self-restraint. There cannot be any doubt with that proposition. In this respect, it will be relevant to refer to the following observations of this Court in the case of ***Commissioner of Income Tax and Others v. Chhabil Dass Agarwal***[11]:

> "**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

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11 (2014) 1 SCC 603

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of ***Chhabil Dass Agarwal*** (supra).

32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of ***Satyawati Tondon*** (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

> "**55.** It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

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

(i) The appeal is allowed;

(ii) The impugned order dated 4th February 2022 passed by the High Court in Writ Petition No. 5275 of 2021 is quashed and set aside; and

(iii) Writ Petition No. 5275 of 2021 is dismissed with costs quantified at Rs.1,00,000/- imposed upon the Borrower.

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

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 558 : 2024 INSC 299

Ravishankar Tandon
v.
State of Chhattisgarh

(Criminal Appeal No. 3869 of 2023)

10 April 2024

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

Issue for Consideration

In a case based on circumstantial evidence wherein the appellants-accused persons were convicted u/s.302 r/w s.34, ss.120B and 201, s.302 r/w ss.34 and 120B, IPC and sentenced to imprisonment for life, whether the prosecution was able to prove beyond reasonable doubt that the recovery of the dead body of the deceased from the pond was on the basis of the information given by the appellants in the statement recorded u/s.27, Evidence Act, 1872.

Headnotes

Evidence Act, 1872 – s.27 – Prosecution relied on the memorandum of the appellants-accused u/s.27 and the subsequent recovery of the dead body of the deceased from the pond at Bhatgaon – Correctness:

Held: For bringing the case u/s.27, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement – It will have to establish that before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered – Insofar as the memorandum u/s.27 is concerned, the prosecution relied on the depositions of PW-5 (brother-in-law of the deceased) and PW-18 (another witness of the memorandum) – Evidence of PW-2 (brother of the deceased) read with that of PW-5 revealed that the police as well as these witnesses knew about the death of the deceased occurring and the dead body being found at village Bhatgaon prior to the statements of the accused persons being recorded u/s.27 – All the statements were recorded after 10:00 am whereas PW-2 stated that at around 08:00 am, police informed him about the accused persons killing

* Author

the deceased and thereafter they going to Bhatgaon – PW-5 admitted that he arrived at village Kunda and on his arrival, he was informed by his brother-in-law and nephew (PW-2) about the murder of the deceased – His evidence showed that though his statement was taken at Kunda police station, it was signed at Bhatgaon – As such, the possibility of these documents being created to rope in the accused persons cannot be ruled out – PW-18 also admitted that he had signed the papers without reading them and that too on the instructions of the police – Furthermore, insofar as the statement of accused No.3 is concerned, even the statement recorded u/s.27 was not at all related to the discovery of the dead body of the deceased – Prosecution failed to prove that the discovery of the dead body of the deceased from the pond at Bhatgaon was only on the basis of the disclosure statement made by the accused persons u/s.27 and that nobody knew about the same before that – It utterly failed to prove any of the incriminating circumstances against the appellants – Chain of circumstances not so complete leading to no other conclusion than the guilt of the accused persons – Impugned judgment as well as the judgment of the trial court, quashed and set aside – Appellants acquitted. [Paras13-15, 21-23, 26, 27]

Evidence – Circumstantial evidence – Law as regards conviction on the basis of circumstantial evidence – Discussed.

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra [1985] 1 SCR 88 **: (1984) 4 SCC 116 : 1984 INSC 121;** *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* [2003] Supp. 1 SCR 130 **: (2005) 11 SCC 600 : 2005 INSC 333;** *Asar Mohammad and Others v. State of Uttar Pradesh* [2018] 13 SCR 248 **: (2019) 12 SCC 253 : 2018 INSC 985;** *Boby v. State of Kerala* [2023] 1 SCR 335 **: 2023 SCC OnLine SC 50 : 2023 INSC 23.**

List of Acts

Evidence Act, 1872; Penal Code, 1860.

List of Keywords

Circumstantial evidence; Beyond reasonable doubt; Disclosure statement made by accused persons; Subsequent recovery of dead body; Information given by accused while in police custody;

Discovery of fact distinctly within the knowledge of the maker of the statement; Documents created to rope in accused persons; Incriminating circumstances not proved; Chain of circumstances not complete.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3869 of 2023

From the Judgment and Order dated 02.01.2023 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 194 of 2013

With

Criminal Appeal No. 2740 of 2023 and Criminal Appeal Nos. 2046 And 2047 of 2024

Appearances for Parties

Manish Kumar Saran, Ms. Ananya Tyagi, Chandrika Prasad Mishra, Ms. Nishi Prabha Singh, Ms. Prashasti Singh, Ms. Swati Surbhi, Upendra Narayan Mishra, Ms. Aswathi M.K., Prashant Kumar Umrao, V. Ramasubbu, Rishesh Sikarwar, Advs. for the Appellant.

Praneet Pranav, Dy. A.G., Prashant Singh, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted in SLP (Criminal) Nos. 837 and 1174 of 2024.

2. These appeals challenge the judgment and order dated 2nd January, 2023 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal Nos. 194, 232 and 277 of 2013 wherein the Division Bench dismissed the criminal appeals preferred by the appellants, namely Ravishankar Tandon (accused No.1), Umend Prasad Dhrutlahre (accused No.2), Dinesh Chandrakar (accused No.3) and Satyendra Kumar Patre (accused No.4) and upheld the order of conviction and sentence dated 5th February, 2013 as recorded by the learned Additional Sessions Judge, Mungeli (hereinafter referred to as the 'trial court') in Sessions Trial No. 10 of 2012.

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

3.1 On 2nd December 2011, Ramavtar (PW-1) lodged a missing person report being Missing Person Serial No. 10/11 at Police Station Kunda after his son Dharmendra Satnami (deceased) went missing. While an extensive search was being conducted, on the basis of suspicion, the police interrogated the appellants. During the interrogation, the appellants disclosed that they had strangulated the deceased to death on the Bhatgaon Canal Road and had thereafter thrown his body into a pond at Village Bhatgaon. Thereafter, on 3rd December 2011, the police recorded the memorandum statements of accused Nos.1 to 3 at about 10:00 am, 10:30 am and 11:00 am, respectively, whereas the memorandum statement of accused No.4 came to be recorded on 6th December 2011 at 07:00 pm. On the basis of the aforesaid memorandum statements, the police recovered the dead body of the deceased from the pond at Bhatgaon on 3rd December 2011 at about 04:05 pm and the dead body was identified. Thereafter, on the very same day, a First Information Report ('FIR' for short) being No. 402 of 2011 was registered at Police Station Mungeli, District Bilaspur wherein it is recorded that the aforesaid offences were committed between the days of 30th November 2011 and 3rd December 2011. According to the Post-Mortem Report (Ext. P-22), the cause of death of the deceased was asphyxia due to strangulation and the nature of death was homicidal.

3.2 The prosecution case stems from the memorandum statements of the appellants wherein the appellants had admitted that Dinesh Chandrakar (accused No.3) had instructed Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) to murder the deceased in exchange for Rs.90,000/-, which was to be paid upon the execution of the said murder. Upon receiving the aforesaid instruction, Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) along with Umend Prasad Dhritalhare (accused No.2) hatched a criminal conspiracy to kill the deceased and worked out a plan to execute the same. Accordingly, the aforesaid three accused persons called the deceased to Mungeli on 30th November 2011 under the ruse of purchasing silver. While Umend Prasad Dhritalhare (accused No. 2) and Satyendra Kumar Patre (accused No.4) reached Datgaon which fell

within the ambit of Police Station Mungeli, on a motorcycle belonging to a relative of Satyendra Kumar Patre (accused No.4), Ravishankar Tandon (accused No.1) and the deceased reached Datgaon by a bus. Thereafter, the three accused persons along with the deceased went to visit the house of the brother-in-law of Satyendra Kumar Patre (accused No.4), namely, Sunil. On that same night, after taking the dinner, they left Sunil's house on the pretext of returning to their homes. However, when they reached near Bhatgaon, Ravishankar Tandon (accused No.1), Umend Prasad Dhritalhare (accused No.2) and Satyendra Kumar Patre (accused No.4) strangulated the deceased to death and in order to screen themselves from the said act of murder, the accused persons tied the dead body of the deceased with his own clothes and stuffed it into a jute sack which had been procured from Sunil's house. Thereafter, the appellants transported the dead body of the deceased to a pond at Village Bhatgaon, on the motorcycle of Satyendra Kumar Patre (accused No.4), and threw the dead body into the said pond, wherefrom it was subsequently recovered.

3.3 Upon the conclusion of the investigation, a charge-sheet came to be filed before the Court of the Chief Judicial Magistrate, Mungeli, Chhattisgarh, wherein accused Nos. 1, 2 and 4 had been charged for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the Indian Penal Code, 1860 ('IPC' for short) whereas accused No.3 had been charged for the offences punishable under Sections 302 read with 34 and 120B of the IPC. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the Sessions Court.

3.4 Charges came to be framed by the trial court for the aforesaid offences. The accused/appellants pleaded not guilty and claimed to be tried.

3.5 The prosecution examined 18 witnesses and exhibited 37 documents to bring home the guilt of the accused/appellants. The defence, on the other hand, did not examine any witness or exhibit any document.

3.6 At the conclusion of the trial, the trial Court found that the prosecution had proved the case against the appellants beyond

reasonable doubt and accordingly convicted accused Nos. 1, 2 and 3 for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the IPC and convicted accused No. 4 for the offences punishable under Sections 302 read with 34 and 120B of the IPC and sentenced all of them to undergo imprisonment for life along with fine.

3.7 Being aggrieved thereby, the appellants preferred three Criminal Appeals before the High Court. The High Court vide the impugned judgment dismissed the Criminal Appeals and affirmed the order of conviction and sentence awarded by the trial Court.

4. Being aggrieved thereby, the present appeals.

5. We have heard Shri Manish Kumar Saran, learned counsel appearing on behalf of the appellant in Criminal Appeal No. 3869 of 2023, Shri Chandrika Prasad Mishra, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 2740 of 2023, appeals arising out of SLP (Criminal) Nos. 837 and 1174 of 2024, and Shri Praneet Pranav, learned Deputy Advocate General ('Dy. AG' for short) appearing on behalf of the respondent-State at length.

6. Shri Saran and Shri Mishra, learned counsel appearing on behalf of the appellants, submitted that the present case rests on circumstantial evidence. It is submitted that the prosecution has failed to prove any of the incriminating circumstances beyond reasonable doubt. It is submitted that, in any case, the prosecution has failed to establish the chain of proven circumstances which leads to no other conclusion than the guilt of the accused persons. They therefore submitted that the appeals deserve to be allowed and the judgments and orders of conviction need to be quashed and set aside.

7. Shri Pranav, learned Dy. AG appearing on behalf of the respondent-State, on the contrary, submitted that both the High Court and the trial court have concurrently held that the prosecution has proved the case beyond reasonable doubt. He submitted that the findings of the trial court and the High Court are based upon cogent appreciation of evidence and as such, no interference is warranted.

8. Undoubtedly, the prosecution case 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, 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."

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

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 held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except 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 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 these guiding principles, we will have to examine the present case.

12. The prosecution case basically relies on the circumstance of the memorandum of the accused under Section 27 of the Indian Evidence Act, 1872 (for short "Evidence Act") and the subsequent recovery of the dead body from the pond at Bhatgaon. The learned Judges of the High Court have relied on the judgment of this Court in the case of ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***[2]. The High Court has relied on the following observations of the said judgment:

> "**121.** The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery

2 [2003] Supp. 1 SCR 130 : (2005) 11 SCC 600 : 2005 INSC 333

of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates *distinctly to the fact thereby discovered* that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] : (AIR p. 70, para 10)

> "clearly the extent of the information admissible must depend on the exact nature of the fact discovered"

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10)

> "*Normally* the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused."
>
> (emphasis supplied)

We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10)

> "If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect."

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10)

> "In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as

> to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. *It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge*, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed *A*' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."
>
> (emphasis supplied)

128. So also in *Udai Bhan* v. *State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251] J.L. Kapur, J. after referring to *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] stated the legal position as follows: (SCR p. 837)

> "A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

The above statement of law does not run counter to the contention of Mr. Ram Jethmalani, that the factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical object was not recovered at the instance of the accused was not discussed in any of these cases."

13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered

would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.

14. We will have to therefore examine as to whether the prosecution has proved beyond reasonable doubt that the recovery of the dead body was on the basis of the information given by the accused persons in the statement recorded under Section 27 of the Evidence Act. The prosecution will have to establish that, before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered.

15. The prosecution, insofar as the memorandum under Section 27 of the Evidence Act is concerned, has relied on the depositions of Ramkumar (PW-5) and Ajab Singh (PW-18). According to the prosecution, the statement of Ravishankar Tandon (accused No. 1) was recorded on 3rd December 2011 at 10:00 am. On the same day, the statement of Umend Prasad Dhritalhare (accused No. 2) was recorded at 10:30 am, and that of Dinesh Chandrakar (accused No. 3) at 11:00 am. Whereas the statement of Satyendra Kumar Patre (accused No. 4) was recorded on 6th December 2011 at 07:00 pm. It will be relevant to refer to the relevant part of the evidence of Ramkumar (PW-5), which reads thus:

> "**2.** In front of me, accused Ravishankar have told to the police that at the behest of accused Dinesh, they have killed Dharmender for Rs. 90,000 and made a plan and Ravishankar called Dharmender called him to buy silver and killed him in Bhatgaon stuffed his dead body in a sack and threw it in the pond. On being shown the memorandum statement of Exhibit P- l0 have told to be his signature on Part A to A.
>
> **3.** Umed had also told the police in front of me that Sattu along with Ravi Shankar had killed Dharmendra and threw him in Bhatagaon's lake on the advice of Dinesh. Witness Memo statement is Exhibit P-11 and accepts his signature on part A to A.

4. Dinesh had told in front of me that 6 months back he had made a deal with Ravishankar and sattu to kill Dharmender for 90 thousand rupees. Dinesh also told that Shankar had said that the work is done, give him the money. On being shown Exhibit P-12, accepted to have his signature on Part A to A. Witness states that it was seized from the pond in front of me.

5. Village Kunda is 16 km away from my village. It is correct that Dharmendra had come to know about the murder on 3rd. Witness states that it was informed by the police. On that other morning, at about 7 -8 o'clock in the morning, it is correct that on my arrival in village Kunda, my brother-in-law and nephew Narendra had told me about the murder which was done by the accused. By that time we did not reach the spot that's why whether it was Dharmender's body or not I cannot."

6. I went from Kunda to Bhatgaon on 2nd with the police, then he says that at that time it was about two and a half o'clock in the evening. It is correct that when I reached Bhatgaon there were many people of the village. It is correct that because of dead body there were many people there. It is correct to say that police have brought the dead body to Mungeli police station where PM was done.

7. It is correct that accused were brought to Mungeli police station. It is incorrect that I had taken the signature of accused at Mungeli police station. Accused have given the statement at Kunda police station, in front of me. Apart from the accused we were 5-6 other family members in the Police station Kunda. The police took the statement at around 12 o'clock.

…………..

14. We have reached Bhatgaon at 4.30-5. And reached Mungeli before sunset. It is incorrect to· say that the police have taken my signature Witness itself states that I have signed in Bhatgaon. It is incorrect to say that I did not read the papers before signing them. Witness says that the I have read the main part. It is incorrect to say that I

> am seeing accused for the first time today. It is incorrect to say that I know accused by name only, witness states that I know him by face also. It is incorrect to say that the name of the accused was revealed by my brother-in-:law and Narendra it was told by the police."

16. It is to be noted that Ramkumar (PW-5) is the brother-in-law of the deceased. A perusal of his evidence would reveal that he has admitted that, on his arrival in village Kunda, he was informed by his brother-in-law and nephew Narendra Kumar (PW-2) about the murder of the deceased which was done by the accused persons. He stated that, by that time they had not reached the spot and that is why they were not aware as to whether it was the body of Dharmendra or not. He further admitted that when they reached Bhatgaon, many people of the village were there. He has also admitted that because of the dead body, many people were there. He has further admitted that the accused persons had given their statements at Kunda police station. He has further admitted that they had reached Bhatgaon at around 04:30 pm to 05:00 pm and had reached Mungeli before sunset. He has also stated that he had signed the panchnama at Bhatgaon.

17. It could thus be seen that, according to this witness (PW-5), though the statement was taken at Kunda, it was signed at Bhatgaon.

18. Ajab Singh (PW-18) is another witness on the memorandum recorded under Section 27 of the Evidence Act and the subsequent recovery of the dead body. He states that Ravishankar informed the police that Dharmendra had been killed and thrown into the pond. However, he states in examination-in-chief that Umend and Dinesh did not tell anything to the police in front of him. It will be relevant to refer to his cross-examination, which reads thus:

> "**4.** It is true that I used to work as Kotwari. It is true that I did not have read the paper. It is true that I had signed 3-4 papers on the instructions of the police. It is true that due to being Kotwar had to visit police station regularly. It is true that I signed on documents on the instructions of the police. It is wrong to say that I signed in police station, Kunda. Witnesses say that it was signed in Dandaon."

19. It could thus be seen that Ajab Singh (PW-18) has clearly admitted that he did not read the papers before putting his signature on them.

He has admitted that he had signed 3-4 papers on the instructions of the police. He has also stated that he had signed the statement at Dandaon.

20. Narendra Kumar (PW-2) is the brother of the deceased. He has stated that, after his brother went missing; on the next day at around 08:00 o'clock in the morning, the police came to his place and informed that his brother Dharmendra had been killed by Ravishankar, Satnami, Umend and Satyendra. After that, they went to Bhatgaon with the police. The extract of the evidence of Narendra Kumar (PW-2) is as under:

> "**3.** At around 8 in morning the police came to my place and informed that my brother Dharmendra was killed by Ravishankar, Satnami, Umend and Satyendra. After that we went to Bhatgaon with the police. Ramkumar, Krishna, Banshee had gone with me."

21. A perusal of the evidence of Narendra Kumar (PW-2) read with that of Ramkumar (PW-5) would clearly reveal that the police as well as these witnesses knew about the death of Dharmendra Satnami occurring and the dead body being found at Bhatgaon prior to the statements of the accused persons being recorded under Section 27 of the Evidence Act. All the statements are recorded after 10:00 am whereas Ramkumar (PW-2) stated that at around 08:00 am, police informed him about the accused persons killing the deceased and thereafter they going to Bhatgaon. Ramkumar (PW-5) also admitted that he arrived at village Kunda and on his arrival, he was informed by his brother-in-law and nephew about the murder which was done by the accused persons.

22. We therefore find that the prosecution has utterly failed to prove that the discovery of the dead body of the deceased from the pond at Bhatgaon was only on the basis of the disclosure statement made by the accused persons under Section 27 of the Evidence Act and that nobody knew about the same before that. It is further to be noted that Ajab Singh (PW-18) has clearly admitted that he had signed the papers without reading them and that too on the instructions of the police.

23. The evidence of Ramkumar (PW-5) would show that though his statement was taken at Kunda police station, it was signed at Bhatgaon. As such, the possibility of these documents being created

to rope in the accused persons cannot be ruled out. In any case, insofar as the statement of Dinesh Chandrakar (accused No. 3) is concerned, even the statement recorded under Section 27 of the Evidence Act is not at all related to the discovery of the dead body of the deceased. As a matter of fact, nothing in his statement recorded under Section 27 of the Evidence Act has led to discovery of any incriminating fact.

24. Another aspect that needs to be noted is that, the only evidence with regard to recording of the memorandum of accused persons under Section 27 of the Evidence Act is concerned, is that of B.R. Singh, the then Investigating Officer (IO) (PW-16). The relevant part thereof reads thus:

> "**1.** ….I wrote the statement of accused Ravi Shankar as per memorandum Ex. P-10 after taking him into custody in which my signature is on part B to B. I wrote the statement of accused· Um end as per his memorandum Ex. P-11 and accused Dinesh as per his memorandum Ex. P-12 in which my signature is on part B to B."

25. It could thus be seen that the IO (PW-16) has failed to state as to what information was given by the accused persons which led to the discovery of the dead body. The evidence is also totally silent as to how the dead body was discovered and subsequently recovered. We find that therefore, the evidence of the IO (PW-16) would also not bring the case at hand under the purview of Section 27 of the Evidence Act. Reliance in this respect could be placed on the judgments of this Court in the cases of ***Asar Mohammad and Others v. State of Uttar Pradesh***[3] and ***Boby v. State of Kerala***[4].

26. We therefore find that the prosecution has utterly failed to prove any of the incriminating circumstances against the appellants herein. In any case, the chain of circumstances must be so complete that it leads to no other conclusion than the guilt of the accused persons, which is not so in the present case.

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

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3 [2018] 13 SCR 248 : (2019) 12 SCC 253 : 2018 INSC 985

4 [2023] 1 SCR 335 : 2023 SCC OnLine SC 50 : 2023 INSC 23

(i) The appeals are allowed;

(ii) The judgment dated 2nd January 2023 passed by the High Court and the judgment dated 5th February 2013 passed by the trial court are quashed and set aside; and

(iii) The appellants are directed to be acquitted of all the charges charged with and are directed to be released forthwith, if not required in any other case.

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

Headnotes prepared by: Divya Pandey

Result of the case: Appeals allowed.

[2024] 4 S.C.R. 576 : 2024 INSC 293

The VVF Ltd. Employees Union
v.
M/S. VVF India Limited & Anr.

(Civil Appeal Nos. 2744-2745 of 2023)

09 April 2024

[Aniruddha Bose* and Sanjay Kumar, JJ.]

Issue for Consideration

The two appeals arise out of a judgment delivered by a Single Judge of the High Court of Bombay on 25.07.2019 directing, *inter alia*, wage revisions pertaining to the workmen of employer-VVF Ltd. working in two units at Sewree and Sion. Whether the High Court had travelled beyond its jurisdiction in appreciating facts and in that process substituted the finding of the Tribunal with its own finding on facts.

Headnotes

Constitution of India – Writ – Scope of jurisdiction of High Court – Wages – Revision – The demands of the Union would appear from the charter of demand and they primarily relate to prayers for revision in pay scale/wages/salaries along with certain allowances such as leave facilities and gratuity – The Tribunal, in its award passed, granted relief to the employees – Writ petitions filed – The High Court entered into the fact-finding exercise while testing legality of an award – The High Court allowed the workmen's writ petition by setting aside the award of the Tribunal so far as the first four demands as per the charter are concerned and upheld the Tribunal's verdict regarding Demand No. 5-11 – Correctness:

Held: Analysis of the various judgments of the Supreme Court reflect the position of law that though the High Court ought not to re-appreciate evidence and substitute its own finding for that of the Tribunal, it would not be beyond the jurisdiction of the High Court in its power of judicial review to altogether eschew such a process – The High Court, in the impugned judgment, however, re-appreciated the evidence led before the Tribunal in identifying comparable concerns for applying the industry-cum-region test – In particular, the employer has emphasised that the High Court ignored the negative financial status of the company on the ground that

* Author

the losses made by it was miniscule – The financial capacity of an employer is an important factor which could not be ignored in fixing wage structure – In the given facts where the employer seriously contested the use of the concerned units as comparable ones, and highlighted its difficult financial position, the proper course would have been to remit the matter to the Industrial Tribunal rather than entering into these factual question independently in exercise of the writ jurisdiction – This exercise would have required leading of evidence before the primary forum, the Industrial Tribunal in this case. [Para 15]

Case Law Cited

Surya Dev Rai v. Ram Chander Rai and Others [2003] Supp. 2 SCR 290 **: (2003) 6 SCC 675;** *General Management, Electrical Rengali Hydro Electric Project, Orrisa and Others v. Giridhari Sahu and Others* [2019] 12 SCR 293 **: (2019) 10 SCC 695;** *M/S Unichem Laboratories Ltd. v. Workmen* [1972] 3 SCR 567 **: (1972) 3 SCC 552,** *Shail (SMT) v. Manoj Kumar and Others* [2004] 3 SCR 649 **: (2004) 4 SCC 785;** *IEL Supervisors' Association and Others v. Duncans Industries Ltd. and Another* **(2018) 4 SCC 505;** *Gujarat Steel Tubes Ltd. and Others v. Gujarat Steel Tubes Mazdoor Sabha and Others* *[1980] 2 SCR 146* **: (1980) 2 SCC 593;** *The Silk and Art Silk Mills Association Ltd. v. Mill Mazdoor Sabha* [1973] 1 SCR 277 **: (1972) 2 SCC 253;** *Shivraj Fine Arts Litho Works v. State Industrial Court, Nagpur & Ors.* [1978] 3 SCR 411 **: (1978) 2 SCC 601;** *A.K. Bindal v. Union of India & Ors.* [2003] 3 SCR 928 **: (2003) 5 SCC 163;** *Mukand Ltd. v. Mukand Staff & Officers Association* [2004] 2 SCR 951 **: (2004) 10 SCC 460 – referred to.**

Workmen v. New Egerton Woollen Mills **(1969) 2 LLJ 782;** *French Motor Car Co. Ltd. v. Workmen* **(1962) 2 LLJ 744 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Wages; Revision; Writ; Jurisdiction of High Court; Re-appreciation of facts; Legality of award

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2744-2745 of 2023

From the Judgment and Order dated 22.06.2021 and 25.07.2019 of the High Court of Judicature at Bombay in RPL No. 82 of 2019 and WP No. 1920 of 2014 respectively

With

Civil Appeal No. 2754 of 2023

Appearances for Parties

Jamshed P. Cama, Sanjay Singhvi, Sr. Advs., Anil Kumar Mishra-i, Prashant Pavaskar, Supantha Sinha, Anand Amrit Raj, Bennet D' Costa, Ms. Jignasha Pandya, Nitin S. Tambwekar, Seshatalpa Sai Bandaru,, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

The two appeals (i.e. Civil Appeal Nos.2745 and 2754 of 2023) arise out of a judgment delivered by a learned Single Judge of the High Court of Bombay on 25.07.2019 directing, inter alia, wage revisions pertaining to the workmen of VVF India Limited ("the employer") working in two units at Sewree and Sion. Civil Appeal No.2744 of 2023 has been instituted by the employees union ("the union") against a judgment of the High Court delivered on 22.06.2021 dismissing the union's petition for review of the judgment passed on 25.07.2019. Argument of the union in the review petition was that their submissions relating to certain allowances were not considered in the main judgment. The employer is the appellant in Civil Appeal No.2754 of 2023 and the union is the appellant in Civil Appeal No.2744 of 2023 as also Civil Appeal No.2745 of 2023.

2. The present proceedings have their origin in a charter of demand raised by the union on 04.03.2008. The demand was in respect of altogether 146 workmen, out of which 80 were engaged at the employer's establishment at Sewree and 66 of them employed at Sion, both being situated within Mumbai. We find from the judgment delivered on 24.07.2019 (which we shall henceforth refer to as the

judgment under appeal) that the original corporate entity VVF Ltd., underwent a demerger process and the units of the company at Sion and Taloja went to VVF India Ltd., the resulting company, during pendency of the reference, arising from the charter of demand.

3. The demands of the Union would appear from the charter of demand and they primarily relate to prayers for revision in pay scale/wages/ salaries along with certain allowances such as leave facilities and gratuity. The charter of demand for the year 2008 to 2011 were under the following heads:-

> *"The Charter of Demand for the corresponding year 2008 to 2011 is as follows-*
>
> *1. Revision in the Pay Scale / Salary: The Old Pay Scale / Salary grade should be replaced by the New or Revised Pay Scale to the Categories of Workmen and Staff, which is annexed hereto as Annexure I & II.*
>
> *2. Adjustment :*
>
> *a) The present basic of employees/staff as in annexure I & II should brought up to the level of minimum of wage-scales wherever they are below.*
>
> *b) 'Those whose present wages of basic do not fit in any stages of their respective revised wage-scales and fall in between two stages, they should be stepped up to nearest highest stages in the scales.*
>
> *c) On doing so (a) & (b) above every employees/ staff should be granted additional increment in their respective wage-scales as indicated below :-*
>
> *i) Those who have put service of up to 5 years - 1 increment*
>
> *ii) Those who have put service of more than 5 years but less than 10 years - 2 increment*
>
> *iii) Those who have put service of more than 10 year but less than 15 years - 3 increment*

iv) Those who have put service of more than 15 years but less than 20 years - 4 increment

v) those who have put service of more than 20 years but less than 25 years – 5 increment

vi) Those who have put service of more than 25 years - 6 increment

3. Fixed Dearness Allowance (FDA): The Fixed Dearness Allowance should be revised from Rs. 225/- per month to Rs.2225/- per month, which shall stand reduced oil pro-rata on loss of pay.

4. Variable Dearness Allowance: Tbc Variable Dearness Allowance should be revised and increased to 50% respective grade wise of the present Variable Dearness Allowance.

5. House Remuneration Allowance: The House Remuneration Allowance to be increased to 20% of the basic wages and Dearness Allowance or to Rs 2000/- per month, whichever is higher

6. Shift Allowance: The Shift Allowances should be increased in all categories irrespective of any shift he worked, which is as follows–

1st Shift Allowance - Rs.20/-

2nd Shift Allowance - Rs.30/-

3rd Shift Allowance - Rs.50/-

7. Travelling Conveyance Allowance: Tite Travelling Conveyance allowances should be given to all Employees amounting to Rs. 1000 per month.

8. Medical Allowance: The Medical Allowance shall be raised to Rs. 15,000 per annum to all categories of Workmen, which falls out of the purview of ESI Act.

9. Education Allowance: An Education Allowance should be introduced to all the Workmen whose Children are studying in School or College. The Education Allowance should also be provided to those Workmen

who are studying to an amount of Rs. 15,000 per annum for their higher Studies.

10. *Leave Travel Allowance: The old Leave Travel Allowance should be revised from 1,200/- per year to Rs.6000/- per year.*

11. *Leave Facilities:*

    a) *Sick Leave to be increased from 7 days per year to 15 days per year.*

    b) *Casual Leave to be increased from 10 days per year to 12 days per year.*

    c) *Privilege Leave to be increased from 15 days per year to 33 days per year.*

    d) *Paternity Leave to be introduced to 7 days per year.*

12. *Mediclaim Policy to the Family Members: The family of the Employees who falls out of purview of ESI Act shall be provided with a General Insurance Mediclaim Policy to the family members amounting to Rs.3 lacs only.*

13. *Gratuity: The Gratuity of the Employees should be increased to 30 days per year instead of 15 days per year.*

14. *Housing Loan facility: The. Employees who have completed his 5 years of service or more should be entitled to Housing Loan @ 5% per annum or a rebate of @.5 % per annum on the loan availed in any Bank or Society.*

15. *Personal Loan Facility: The Employees who have completed his 2 years of service or more should be entitled to Personal Loan @9% per annum or a rebate of @ 5% per annum on the loan availed from any Bank or Society."*

4. The Tribunal, in its award passed on 29.03.2014, granted relief to the employees represented by the union under the following heads and in the following manner:-

"i) Reference is answered partly in affirmative.

ii) The following demands raised by the Second Party Workmen are granted as follows:-

1) Demand No. 5:- House Rent(Remuneration) Allowance- The First Party Company is directed to increase the HRA to 20% of the basic wages and dearness allowance or to Rs.2000/- per month whichever is higher.

2) Demand No.6:- Shift Allowance- The First Party Company is directed to pay the shift allowance to all the workers irrespective of any shift they worked, as follows:-

1st Shift Allowance - Rs.20/-

2nd Shift Allowance - Rs.30/-

3rd Shift Allowance - Rs.50/-

This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

3) Demand No. 7:- Travelling Conveyance Allowance- This demand is allowed partly. The First Party Company is directed to increase this allowance from Rs. 600 to Rs.800 per month. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

4) Demand No.8:- Medical Allowance This demand is allowed partly. The First Party Company is directed to pay the medical allowance @ Rs.1000/- per month to all categories of workmen, who fall out of the purview of the ESI Act. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

5) Demand No. 9:- Education Allowance- This demand is allowed partly. The First Party Company is directed to pay the education

allowance @ Rs.1000/- per month to all the workmen whose children are studying in school or college or even doing higher studies. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

6) *Demand No.10:- Leave Travel Allowance- The First Party Company is directed to grant Leave Travel Allowances to all the employees concerned in this Reference at par with that given to Taloja factory workmen on the same terms and conditions. This demand is allowed partly. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.*

7) *Demand No.11:- Mediclaim Policy to the Family Member~:-This demand is partly allowed. The First Party Company is directed to provide to the family of the concerned workmen who fall out of the purview of the ESI Act with the Mediclaim Policy amounting to Rs.1 lac only, at par with that being given to the Taloja factory workmen on the same terms and conditions.*

iii) *The following demands of the Second Party Workmen are rejected:-*

1) *Demand No.1 :- Revision in the Pay Scale/ Salary.*

2) *Demand No.2:- Adjustment.*

3) *Demand No.3:- Fixed Dearness Allowance.*

4) *Demand No.4:-Variable Dearness Allowance.*

iv) *The First Party Company is directed to extend the benefits arising out of the grant of the aforementioned demands in clause (ii) herein to the workmen concerned in this Reference w.e.f 13.11.2009.Arrears of these allowances upto 31-03-2014 be paid the*

workmen concerned within 60 days from the date of publication of this award by the appropriate Authority.

v) The First Party Company is at liberty to adjust the interim amount paid to the concerned employees from their arrears.

vi) In the circumstances, no order as to cost."

5. Both the employer and the union challenged the said award by instituting separate writ petitions before the High Court of Bombay and these writ petitions were disposed of by a common judgment by a learned Single Judge of the High Court, being the judgment under appeal before us. The Union's writ petition was registered as Writ Petition No. 1920 of 2014 whereas the writ petition of the company was registered as Writ Petition No.3152 of 2014. The High Court allowed the workmen's writ petition by setting aside the award of the Tribunal so far as the first four demands as per the charter are concerned and upheld the Tribunal's verdict regarding Demand No. 5-11. The particulars thereof would appear from the following passages of the judgment: -

"25. The Petitioner union is demanding increase in basic wages from 1 January 2010. The proposed revised pay scale is as follows :

GRADE											
USK	10	1	13	2	19	3	28	4	40	5	55
SSK	20	2	26	3	35	5	50	7	71	9	98
SK	30	3	39	5	54	7	75	10	105	14	147
HSK	1000	100	1300	150	1750	225	24258	325	3400	450	4750
I" CLASS BOILER ATTENDANT	1100	110	1430	165	1925	250	2675	375	3800	525	5375
WATCHMAN	500	50	650	75	875	115	1220	165	1715	250	2465
PEON	400	40	520	60	700	90	970	130	1360	180	1900
HEAD WATCHMAN	750	75	975	125	1350	200	1950	300	2850	425	4125
DRIVER	750	75	975	125	1350	200	1950	300	2850	425	4125
JR. SUPERVISOR	1200	120	1560	180	2100	270	2910	400	4110	550	5760
SR. SUPERVISOR	2500	250	3250	350	4300	550	5950	825	8425	1175	11950
OFFICER SUPERVISOR	3000	300	3900	450	5250	675	7275	1000	10275	1450	14625

The following adjustments are proposed so as to rationalize the transition from the present basic wage structure to the revised scale proposed as above:

A. The present basic of employees I staff as in annexure I & II should brought up to the level of minimum of wage scales wherever they are below.

B. Those whose present wages of basic do not fit in any stages of their respective revised wage scales and fall in between two stages, they should be stepped up to earnest highest stages in the scales.

C. On doing so (a) and (b) above every employee / staff should be granted additional increment in their respective wage scales as indicated below:-

i) Those who have put service up to 5 years -1 increment

ii) Those who have put service more than 5 years but less than 10 years increment -2

iii) Those who have put service more than 10 years but less than 15 years increment -3

(iv) Those who have put service more than 15 years but less than 20 years increment -4

(v) Those who have put service more than 20 years but less than 25 years increment -5

vi) Those who have put service more than 25 years increment -6"

"29. To arrive at the proposed revision, the existing fixed dearness allowance of Rs.225/- for daily rated unskilled (USK), Semi skilled (SSK) and skilled workmen (SK) as also monthly rated Highly Skilled workmen (HSK), 1st class boiler attendants, watchmen, head watchman, drivers, peons (i.e. all employees other than supervisors and officers) can be appropriately raised by Rs.1000/- per month so as to make it Rs.1225/- per month. Fixed dearness allowance for monthly rated junior supervisors, supervisors and senior supervisors and officers

may not be increased. So far as variable dearness allowance is concerned, no increase may be in order till 2011. Increase, if any, deserves to be considered from 2011 onwards, which demand, anyway, is the subject matter of a separate reference (for the period 2011-2014)."

So far as the employer's writ petition is concerned the same was dismissed. The High Court held that there was no serious anomaly in the demands of the union allowed by the Tribunal.

6. The union, in its writ petition, argued that the Tribunal had failed to consider the plea of the workmen for parity with similarly situated units in the vicinity as well as its claim for overtime allowances. The test applied by the High Court as regards comparison with the similar units would appear from paragraph 26 of the impugned judgment, which reads:-

"26 In Justification, what was submitted was that this, along with the applicable allowances (as revised), would bring the Mumbai workmen on par with their counterparts in the Taloja unit. To assess this submission, I called upon both parties to submit their respective charts of Mumbai and Taloja salaries for all classes of workers and the impact of revision in pay scales proposed by the union. According to the union, the revision proposed would bring up the salaries of skilled grade workmen having 15 years of service (taken as a representative case) to Rs.16,250/- per month as against the salaries of Rs.16,248/- of their Taloja counterparts (as of October 2010). (Comparative chart of Godrej Industries, Deepak Fertilizers and Hikal Ltd. shows their comparable salaries, as of October 2010, of Rs.28,621/-, Rs.20,492/- and Rs.21,419/- respectively.) The monthly and annual burdens on the Respondent employer occasioned by the increase work out to between Rs.6.58 lacs to Rs.14.01 lacs per month, and Rs.78.94 lacs to Rs.1.68 crores, for the particular wage fixation period, namely, from 2008 to 2011."

7. The employer has assailed the judgment questioning the jurisdiction of the Writ Court in entering into fact-finding exercise while testing legality of an award. The employer's case argued by Mr. Cama,

learned Senior Advocate, sought to fault the approach of the High Court mainly on this ground. He has also argued that the units with which the High Court had made comparison to arrive at its finding were not similarly situated, having regard to their industrial output and financial position. He submits further that the High Court in any event would not sit in appeal over the Tribunal's award in exercising its jurisdiction of judicial review, primarily applying the scope of the writ of certiorari. He has relied on judgments of this Court in the cases of **Surya Dev Rai v. Ram Chander Rai and Others** [(2003) 6 SCC 675], **General Management, Electrical Rengali Hydro Electric Project, Orrisa and Others -vs- Giridhari Sahu and Others** [(2019) 10 SCC 695]. In the former judgment, it has been held:-

> *"12. In the exercise of certiorari jurisdiction, the High Court proceeds on an assumption that a court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an appellate court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court."*

Broadly the same principle has been laid down in the case of **Giridhari Sahu** (supra). Mr. Cama has also submitted that in the event the High Court found flaw in the reasoning of the Tribunal on factual basis, instead of undertaking the exercise of revision of pay scale and wages as also other facilities itself in substituting its view in place of the Tribunal's, the High Court ought to have remanded the matter to the Tribunal itself.

8. The union was represented by Mr. Sanjay Singhvi, learned senior counsel. His submission is that it would be well within the jurisdiction of the High Court to undertake some form of exercise of appreciation of facts and on judgments he has relied on the judgment of this Court in the cases of **M/S Unichem Laboratories Ltd. -vs- Workmen** [(1972) 3 SCC 552], **Workmen -vs- New Egerton Woollen Mills** [(1969) 2 LLJ 782], **Shail (SMT) -vs- Manoj Kumar and Others** [(2004) 4 SCC 785], **IEL Supervisors' Association and Others -vs- Duncans Industries Ltd. and Another** [(2018) 4 SCC 505].

9. Relying on this line of authorities, and also a judgment of this Court in the case of **Gujarat Steel Tubes Ltd. and Others -vs- Gujarat Steel Tubes Mazdoor Sabha and Others** [(1980) 2 SCC 593], he has argued that the jurisdiction of the High Court under Article 226 of the Constitution of India is wide enough and can decide factual issues instead of remanding a matter. In the latter authority, it was held, inter-alia, that in appropriate cases, the High Court's jurisdiction could be coordinate to that of the Tribunal.

10. On behalf of both the parties, a large body of authorities has been relied upon but in this judgment, we shall deal with those decisions only which we find relevant for effective adjudication of the present appeal.

11. As we have already indicated, the main question which has been argued by the learned counsel appearing for the employer is on the issue as to whether the High Court had travelled beyond its jurisdiction in appreciating facts and in that process substituted the finding of the Tribunal with its own finding on facts. To substantiate the point, as we have already discussed, the cases of **Giridhari** (supra) and **Surya Dev Rai** (supra) have been relied on by Mr. Cama.

12. There are authorities, to which we have referred to earlier in this judgment that lay down the scope of jurisdiction of the High Court. In the cases of **Unichem Laboratories Ltd.** (supra), **Shail (SMT)** (supra), **IEL Supervisors' Assn.** (supra) as also the case of **Gujarat Steel Tubes Ltd.** (supra), it has been held that the High Court in appropriate cases can go into facts while examining an award of a Tribunal.

13. For revision of wages and other facilities, the standard criteria which is followed by the industrial adjudicator is to apply industry-cum-region test, which in substance implies that the prevailing pay and other allowances should be compared with equally placed or similarly situated industrial units in the same region. To determine comparability of units applying the industry-cum-region test, inter alia, the financial capacity of the employer would be a strong factor. Reliance on this point has been placed on the cases of **French Motor Car Co. Ltd. -vs- Workmen** [(1962) 2 LLJ 744], **The Silk and Art Silk Mills Association Ltd. -vs- Mill Mazdoor Sabha** [(1972) 2 SCC 253] and **Shivraj Fine Arts Litho Works -vs- State Industrial Court, Nagpur & Ors.** [(1978) 2 SCC 601].

14. Substantial argument of Mr. Cama was on selection of comparable units. His submission is that the High erred in identifying the matching units and also calling for fresh charts in course of hearing of the writ petition with respect to Taloja unit of the original employer. It is the stand of the employer that such evidence gathering exercise ought not to have been undertaken by the High Court. It was also pointed out on behalf of the employer that it was making losses barring in three financial years between 2008-09 and 2021-22. Further submission of Mr. Cama is that the workmen of the Taloja unit were not of the same employer after the demerger had taken place and that they were involved in a separate set of activities when compared to the other units in question.

15. Analysis of the authorities relied on by the learned counsel for parties reflect the position of law on this point to be that, though the High Court ought not to reappreciate evidence and substitute its own finding for that of the Tribunal, it would not be beyond the jurisdiction of the High Court in its power of judicial review to altogether eschew such a process. The High Court, in the impugned judgment, however, reappreciated the evidence led before the Tribunal in identifying comparable concerns for applying the industry-cum-region test. In particular, the employer has emphasised that the High Court ignored the negative financial status of the company on the ground that the losses made by it was miniscule. In this regard, the judgments of this Court in the case of **A.K. Bindal -vs- Union of India & Ors.** [(2003) 5 SCC 163] **Mukand Ltd. -vs- Mukand Staff & Officers Association** [(2004) 10 SCC 460] have been relied upon. Both these authorities lay down the financial capacity of an employer is an important factor which could not be ignored in fixing wage structure. In the given facts where the employer seriously contested the use of the concerned units as comparable ones, and highlighted its difficult financial position, the proper course would have been to remit the matter to the Industrial Tribunal rather than entering into these factual question independently in exercise of the writ jurisdiction. This exercise would have required leading of evidence before the primary forum, the Industrial Tribunal in this case.

16. On behalf of the employer, it was also specifically argued that various allowances like house rent, shift allowance, travelling, medical, education and leave travel were granted without any evidence. The employer's witness no.2 had given his deposition in detail, particularly

on financial position of the company. From the judgment impugned, we do not find proper analysis of the employer's evidence in that regard. So far as the union's appeal is concerned, their point is confined to treatment of overtime wages in computing allowances admissible to them. That question also ought to be re-examined.

17. We, accordingly, set aside the judgment of the High Court delivered on 25.07.2019 as also the Tribunal's award. Let the Tribunal re-examine the cases of the respective parties afresh. We are conscious of the fact that these proceedings arise from a charter of demand made in 2008. We direct the Tribunal to conclude the reference within a period of six months. The Civil Appeal No.2744 of 2023 against the review order dated 22.06.2021 also stands disposed of.

18. Thus, all the three appeals stand disposed of in the above terms.

19. There shall be no order as to costs.

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

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals disposed of.

[2024] 4 S.C.R. 591 : 2024 INSC 301

Yash Tuteja & Anr.
v.
Union of India & Ors.

(Writ Petition (Criminal) No. 153 of 2023)

08 April 2024

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

Issue for Consideration

The issue for consideration was a challenge to the Complaint filed by the Directorate of Enforcement under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002, mainly on the ground that apart from s. 120B of the Indian Penal Code, no other offences were scheduled offences, within the meaning of clause (y) of sub-section (1) of s. 2 of PMLA.`

Headnotes

Prevention of Money Laundering Act, 2002 – Clause (y) of sub-Section (1) of s. 2 – Scheduled Offence – Penal Code, 1860 – s. 120B – Complaint filed by the Directorate of Enforcement on the basis of the offences which were not scheduled offences, except s. 120-B of IPC – Challenge to:

Held: Offence punishable under Section 120B of the IPC could become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule to the PMLA – Admittedly, the offences alleged in the complaint except Section 120-B of IPC are not the scheduled offences – Conspiracy to commit any of the offences included in the Schedule has not been alleged in the complaint – ECIR/RPZO/11/2022, which is the subject matter of the complaint, is based on the offences relied upon in the complaint – As the conspiracy alleged is of the commission of offences which are not the scheduled offences, the offences mentioned in the complaint are not scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA – Complaint arising out of ECIR filed by Directorate of Enforecement accordingly quashed. [Paras 3, 9]

Prevention of Money Laundering Act, 2002 – Special Court – Cognizance – Code of Criminal Procedure, 1973 – s. 200 to s. 204 – Procedure thereof:

* Author

Held: The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf – Section 46 of PMLA provides that the provisions of the Cr.PC shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of Sessions – However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act" – Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Cr.PC shall apply to the proceedings before a Special Court – Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint – There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC – Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA – If the Special Court is of the view that no prima facie case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr.PC to dismiss the complaint – If a prima facie case is made out, the Special Court can take recourse to Section 204 of the Cr.PC. [Para 6]

Case Law Cited

Pavana Dibbur v. Directorate of Enforcement [2023] 13 SCR 1049 **: 2023 INSC 1029 – relied on.**

List of Acts

Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Proceeds of Crime; Scheduled Offence.

Case Arising From

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 153 of 2023

(Under Article 32 of The Constitution of India)

With

Writ Petition (Criminal) Nos. 208, 216 and 217 of 2023

Yash Tuteja & Anr. v. Union of India & Ors

Appearances for Parties

Mukul Rohatgi, Siddharth Aggarwal, Sr. Advs., Arshdeep Singh Khurana, Malak Manish Bhatt, Ms. Neeha Nagpal, Harsh Srivastava, Mandeep Singh, Sidak Anand, Gharote Anurag A, Mrs. Kalyani Bhide, Aljo K. Joseph, Advs. for the Petitioners.

Suryaprakash V Raju, K.M. Nataraj, A.S.Gs., Avdhesh Kumar Singh, A.A.G., Mukesh Kumar Maroria, Zoheb Hussain, Annam Venkatesh, Mrs. Sairica Raju, Kanu Agarwal, Arkaj Kumar, Apoorv Kurup, Ravi Sharma, Ms. Prerna Dhall, Piyush Yadav, Prashant Singh, Nikhilesh Kumar, Srinivasan M Bogisam,M/S. VMZ CHAMBERS, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Taken up for final hearing as notice has already been issued on the petitions. In substance, in these Writ Petitions, the only challenge that survives is to the complaint filed by the Directorate of Enforcement under Section 44(1)(b) of the Prevention of Money-Laundering Act, 2002 (for short, "the PMLA") concerning ECIR/RPZO/11/2022.

2. It is not in dispute that the alleged scheduled offences on which the complaint is based are under various sections of the Income-tax Act, 1961, read with Sections 120B, 191, 199, 200 and 204 of the Indian Penal Code, 1860 (for short, "the IPC"). It is also not in dispute that except for Section 120B of the IPC, none of the offences are scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA. This Court, in the decision in the case of ***Pavana Dibbur v. Directorate of Enforcement***[1], recorded its conclusions in paragraph 31, which reads thus:

"CONCLUSIONS

31. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

1 [2023] 13 SCR 1049 : 2023 SCC OnLine SC 1586

a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;

b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and

e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule."

(underline supplied)

3. Hence, the offence punishable under Section 120B of the IPC could become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule to the PMLA. In this case, admittedly, the offences alleged in the complaint except Section 120-B of IPC are not the scheduled offences. Conspiracy to commit any of the offences included in the Schedule has not been alleged in the complaint. ECIR/RPZO/11/2022, which is the subject matter of the complaint, is based on the offences relied upon in the complaint. As the conspiracy alleged is of the commission of offences which are not the scheduled offences, the offences mentioned in the complaint are not scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA.

Yash Tuteja & Anr. v. Union of India & Ors

4. In paragraph 15 of the decision in the case of ***Pavana Dibbur***[1], this Court held that:

> "The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence."

Therefore, in the absence of the scheduled offence, as held in the decision mentioned above of this Court, there cannot be any proceeds of crime within the meaning of clause (u) of sub-Section (1) of Section 2 of the PMLA. If there are no proceeds of crime, the offence under Section 3 of the PMLA is not made out. The reason is that existence of the proceeds of crime is a condition precedent for the applicability of Section 3 of the PMLA.

5. There is some controversy about whether the Special Court has taken cognizance on the basis of the complaint. The learned ASG, on instructions, states that cognizance has not been taken. The learned ASG submits that as the cognizance is not taken, this Court should not entertain the prayer for quashing the complaint.

6. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf. Section 46 of PMLA provides that the provisions of the Cr.PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC. Hence, the Special Court will have to apply its mind to the question of whether a *prima facie* case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA. If the Special Court is of the view that no *prima facie* case of an offence under Section 3 of the PMLA is made out, it must

exercise the power under Section 203 of the Cr.PC to dismiss the complaint. If a *prima facie* case is made out, the Special Court can take recourse to Section 204 of the Cr. PC.

7. In this case, no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime. Hence, there cannot be an offence under Section 3 of the PMLA. Therefore, no purpose will be served by directing the Special Court to apply its mind in accordance with Section 203 read with Section 204 of the Cr.PC. That will only be an empty formality.

8. We may note that the petitioners in Writ Petition (Crl.) No.153/2023 and the petitioner in Writ Petition (Crl.) No.217/2023 have not been shown as accused in the complaint. Only the second petitioner in Writ Petition (Crl.) No.208/2023 and the petitioner in Writ Petition No.216/2023 have been shown as accused in the complaint. In the case of those petitioners who are not shown as accused in the complaint, it is unnecessary to entertain the Writ Petitions since the complaint itself is being quashed.

9. Hence, we pass the following order:

(i) Writ Petition (Crl.) Nos.153/2023 and 217/2023 are disposed of;

(ii) The complaint based on ECIR/RPZO/11/2022, as far as the second petitioner (Anwar Dhebar) in Writ Petition (Crl.) No.208/2023 is concerned, is hereby quashed. The Writ Petition is, accordingly, partly allowed;

(iii) The complaint based on ECIR/RPZO/11/2022, as far as the petitioner (Arun Pati Tripathi) in Writ Petition (Crl.) No.216/2023 is concerned, is hereby quashed. The Writ Petition is, accordingly, allowed;

(iv) There will be no order as to costs; and

(v) Pending applications, including those seeking impleadment, are disposed of accordingly.

10. At this stage, the learned ASG stated that, based on another First Information Report, which, according to him, involves a scheduled offence, criminal proceedings under the PMLA are likely to be initiated against the petitioners. It is not necessary for us to go into the issue of the legality and validity of the proceedings that are likely to be

initiated at this stage. Therefore, all the contentions in that regard are left open to be decided in appropriate proceedings.

11. The learned senior counsel appearing for the petitioners in Writ Petition (Crl.) Nos.153/2023 and 208/2023 seeks continuation of the interim order dated 7th August 2023 passed by this Court in these two Writ Petitions to enable the petitioners to take recourse to appropriate proceedings before the appropriate Court.

12. By keeping the rights and contention of the parties open, we direct that the interim order dated 7th August 2023 passed in Writ Petition (Crl.) Nos.153/2023 and 208/2023 shall continue to operate for three weeks from today.

Headnotes prepared by:
Prastut Mahesh Dalvi,
Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)

Result of the case:
WP(Crl) Nos. 153/2023 and 217/2023 disposed of
WP(Crl) No. 208/2023 partly allowed
WP(Crl) No. 216/2023 allowed

[2024] 4 S.C.R. 598 : 2024 INSC 315

The State of Madhya Pradesh
v.
Satish Jain (Dead) by Lrs & Ors.

(Civil Appeal No. 6884 of 2012)

18 April 2024

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

Issue for Consideration

Issue arose that when there is an agreement based on ex-parte decree, and the ex-parte decree having been set aside, parties if could rely upon the agreement.

Headnotes

Suit – Ex-parte decree – Agreement based on ex-parte decree – Ex-parte decree having been set aside, parties if could rely upon the agreement – Suit property owned by the State, however, defendant No.1 perfected his rights by adverse possession and transferred all his rights in favour of the plaintiff as also handed over possession – Defendant No.1 allegedly likely to transfer the said land again in favour of the third party and that some officers of the State tried to remove the fencing put up by the plaintiff on the suit land – Suit for declaration, permanent injunction and mandatory injunction by plaintiff, against defendant no. 1 and the State – Suit decreed ex-parte – Appellate court set aside the same and remanded the matter to the trial court – Suit pending before the trial court – Meanwhile agreement between the State Municipal Corporation and the plaintiff that the plaintiff would vacate the suit land, allowing the Corporation to construct the bus stand, in lieu of separate plots – Plots allotted but some were cancelled later – Thereafter arbitral award passed whereby plaintiff would pay the stipulated amount to the Corporation and in turn the Corporation would fulfil its obligation of allotment of land – Objections by the State to the award, allowed by the trial court – In revision filed by the plaintiff, the High Court set aside the order of the trial court – Correctness:

Held: Ex-parte decree having been set aside, there was no occasion for the plaintiff to further act upon the agreement since

* Author

no rights had crystallized to the parties – Basis of that agreement was the ex-parte decree of declaration and injunction in favour of the plaintiff – Once the ex-parte decree has itself been set aside and the suit was to proceed further from the stage of filing of written statement by the State, the agreement would lose all its credibility assuming there was any semblance of any right to enter into the agreement – Agreement would not have any sanctity in the eye of law even inter se parties – Right created in the plaintiff under the ex-parte decree stood extinguished and, thus, the Corporation ought to have been careful enough of not placing any reliance any further on the said agreement – Application filed by the Corporation u/s 89 CPC was also not maintainable based on the agreement – There appears to be some kind of collusion between the Corporation and the plaintiff – Whether or not there was any condition in the agreement for appointment of Arbitrator, the very basis of entering into the agreement having been set aside, the agreement itself could not have been relied upon by any of the parties – Suit land admittedly was owned by the State – Even if the State had allotted it to the Corporation for constructing a bus stand, the Corporation could not have dealt with it and treated it to be in the ownership or possession of the plaintiff by entering into the agreement – Corporation would be bound as an allottee of the State to utilise the said land for the purpose for which it was given – It ought to have taken appropriate steps for removal of possession of the plaintiff – Thus, the trial court justified in allowing the application by setting aside the award – High Court erred in not considering the relevant aspects and in placing reliance on the statement made by the State before the trial court that the State had no interest inasmuch as it had allotted the land to the Corporation to set up a bus stand – Impugned order passed by the High Court set aside. [Paras 4-7]

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Suit; Ex-parte decree; Agreement; Adverse possession; Suit for declaration, permanent injunction and mandatory injunction; Arbitration award; Appointment of Arbitrator.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6884 of 2012

From the Judgment and Order dated 14.11.2005 of the High Court of Madhya Pradesh at Jabalpur in Civil Revision No. 201 of 2005

Appearances for Parties

Saurabh Mishra, A.A.G., Ms. Mrinal Gopal Elker, Abhinav Shrivastava, Advs. for the Appellant.

Puneet Jani, Ms. Christi Jain, Mann Arora, Ms. Akriti Sharma, Lisha Bhati, Ms. Pratibha Jain, Ashwani Kumar, Sanjay K. Agrawal, Sarthak Nema, Ms. Ankita Khare, Yahsovardhan Jain, Ramsakha Kushwaha, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath J.

1. The Appellant-State of Madhya Pradesh[1]-Defendant in the Original Suit filed by Satish Jain (Respondent No.1), since deceased, represented by his legal heirs, is in appeal assailing the correctness of the judgment and order dated 14.11.2005 passed by the Madhya Pradesh High Court allowing Civil Revision No. 201 of 2005, titled "Satish Jain versus Rama & Ors.", whereby the High Court set aside the order of the Trial Court dated 22.12.2004, and further directed the Trial Court to proceed in accordance with law to implement the award of the Arbitrator. It also rejected the objections of the appellant dated 09.11.2004, and further the order rejecting the report of the Arbitrator was also set aside. The operative part of the impugned order as contained in the paragraph 27 thereof is reproduced hereunder:

> "27. Therefore, the order under revision is set aside. The objection dated 09.11.2004 filed by respondent no.2 stands dismissed. The order rejecting the report of the arbitrator is also set aside. The Trial Court shall proceed further according to law for implementing the award."

1 Hereinafter referred to as the, "State-Appellant"

2. The relevant facts giving rise to the filing of the present appeal are briefly stated hereunder:

   (i). Satish Jain s/o Dayanand Jain instituted a civil suit impleading one Rama s/o Parasram as defendant No.1 and State of Madhya Pradesh through Collector, Bhopal as defendant No.2 praying for a decree of declaration, permanent injunction and mandatory injunction. It was registered as C.S. No. 65A of 1990. The basis of the claim was that the property in dispute being Khasra Nos. 48 & 49 area 3.53 acres situated in Village Halalpur, Tehsil Huzur, District Bhopal was owned by the State of Madhya Pradesh. However, defendant No.1 was enjoying continuous and peaceful adverse possession over the suit land for the last 50-60 years and as such has perfected his rights by adverse possession and had become the owner of the land.

   (ii). It was further alleged that defendant No.1 has transferred all his rights, title, and interest over the suit land in favour of the plaintiff and had also handed over possession of the suit land on 05.09.1988.

   (iii). Thereafter the plaintiff had erected wired fencing on 06.09.1988, and had been enjoying possession of the suit land.

   (iv). It is further alleged in the plaint that defendant No.1 was likely to transfer the said land again in favour of the 3rd party and he also came to know that some officers and employees of the State (defendant No.2) had visited the suit land and tried to remove the fencing. In such circumstances, the plaintiff was compelled to institute the suit for declaration, permanent injunction and mandatory injunction.

   (v). According to the plaintiff, the cause of action arose on 07.10.1988, and again on 11.10.1988 when the officers/ employees of the State tried to remove the fencing.

   (vi). The Trial Court decreed the suit ex-parte vide judgement and order dated 22.06.1990.

   (vii). The State preferred an appeal under Section 96 of the Code of Civil Procedure, 1908[2] which was dismissed on the ground

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2 In short, "CPC"

of delay of 8 days only by the IVth Additional District Judge, Bhopal.

(viii). The State preferred a civil revision before the High Court which was registered as Civil Revision No. 300 of 2002. The said revision was allowed by the High Court vide order dated 13.08.2003. It set aside the order of the Appellate Court dated 11.05.1991, rejecting the application under Section 5 of the Limitation Act. It also condoned the delay of 8 days after allowing the application for condonation of delay, and further directed the Appellate Court to hear the parties on merits and decide the appeal in accordance with law.

(ix). The said appeal was allowed vide order dated 09.01.2004 and the case was remanded to the Trial Court for deciding the same on merits after providing reasonable time to the State to file its written statement. The said suit is still pending before the Trial Court.

(x). It would be worthwhile to mention that the State has filed its written statement after remand by the Appellate Court.

(xi). In the meantime, it appears that the suit land was allotted to the Bhopal Municipal Corporation[3] for constructing a bus stand. There is an agreement dated 30.07.1991 entered between BMC and the plaintiff that the plaintiff would vacate the suit land, allowing the BMC to construct the bus stand, and in lieu, separate plots would be allotted to the plaintiff.

(xii). It is also alleged that some allotments were made by BMC in favour of the plaintiff but they were later on cancelled.

(xiii). After remand, written statement was filed by the State. Further, BMC was impleaded as defendant No.3 by order of Trial Court dated 13.03.2004.

(xiv). The appellant filed an application under Order VII Rule 11 CPC and also under Order VI Rule 17 CPC on 17.08.2004.

(xv). Further BMC filed an application under Section 89 of the CPC stating that under the agreement of 30.07.1991 plaintiff

3 In short, "BMC"

be directed to pay Rs. 30,00,000/- (Rupees Thirty lacs only) against the value of the allotted land. It was further stated that in case the full amount is deposited, BMC is ready to fulfil its obligations. It therefore prayed that the parties may be relegated to a Mediator/Arbitrator for settlement of the dispute under Section 89 CPC. This application is dated 27.08.2004.

(xvi). The Trial Court, by order dated 17.09.2004, referred the matter to Shri Hemant Kumar. The said Arbitrator/Mediator in less than a month gave an award/report dated 14.10.2004. In brief, the said award was to the effect that the plaintiff would pay Rs. 30,00,000/- to BMC and such lease rent as maybe determined, and in turn the BMC would fulfil its obligation of allotment of land, as per the agreement dated 30.07.1991.

(xvii). The Appellant-State of Madhya Pradesh filed objections dated 09.11.2004 to the award of the Arbitrator dated 14.10.2004 praying for setting aside the same on various grounds. It was specifically stated in the objections that the ownership of the land still remains with the State of Madhya Pradesh and that BMC had no business or right to deal with such land without the written consent or approval of the State.

(xviii). The Trial Court, after inviting objections to the application of the State dated 09.11.2004, allowed the same by order dated 22.12.2004. Aggrieved by the same, the plaintiff preferred a civil revision, which has since been allowed by the impugned order, giving rise to the present appeal.

3. We have heard learned counsels for the parties and perused the material on record.

4. It is an admitted position that the suit is still pending before the Trial Court. The plaintiff has not been granted any declaration as such till date. The ex-parte decree having been set aside, there was no occasion for the plaintiff to further act upon the agreement dated 30.07.1991 since no rights had crystallized to the parties. The basis of that agreement was the ex-parte decree of declaration and injunction in favour of the plaintiff. Once the ex-parte decree has itself been set aside and the suit was to proceed further from the stage of filing of written statement by the Appellant- State, the agreement dated

30.07.1991 would lose all its credibility assuming there was any semblance of any right to enter into the agreement. The application filed by BMC under Section 89 CPC was also not maintainable based on the agreement of 30.07.1991. There appears to be some kind of collusion between BMC and the plaintiff. Whether or not there was any condition in the agreement dated 30.07.1991 for appointment of Arbitrator, the very basis of entering into the agreement having been set aside, the agreement itself could not have been relied upon by any of the parties.

5. The suit land admittedly was owned by the Appellant-State. Even if the State had allotted it to BMC for constructing a bus stand, BMC could not have dealt with it and treated it to be in the ownership or possession of the plaintiff by entering into the agreement dated 30.07.1991. BMC would be bound as an allottee of the State to utilise the said land for the purpose for which it was given. It ought to have taken appropriate steps for removal of possession of the plaintiff which under law was totally unauthorised and illegal.

6. A perusal of the agreement dated 30.07.1991 clearly mentions that the plaintiff was claiming right under the ex-parte decree dated 22.06.1990 and the dismissal of the First Appeal on 11.05.1991. Later on when both the orders had been set aside and the suit itself was to proceed from the stage of the Appellant-State filing its written statement, the agreement itself would not have any sanctity in the eye of law even *inter se parties*. The right created in the plaintiff under the *ex-parte* decree stood extinguished and, therefore, BMC ought to have been careful enough of not placing any reliance any further on the said agreement. The Trial Court was justified in allowing the application by setting aside the award. The High Court committed a grave error in not considering the relevant aspects and in placing reliance on the statement made by the Appellant- State before the Trial Court that the State had no interest inasmuch as it had allotted the land to BMC to set up a bus stand and therefore, it should be deleted from the array of parties as defendant no.2. In any case, all the applications are still pending before the Trial Court if not already disposed off or withdrawn by the State.

7. In view of the above, the appeal deserves to be allowed and is accordingly allowed. The impugned order passed by the High Court is set aside.

8. The Trial Court will proceed with the suit and decide the same on merits on the basis of evidence which may be led before it.

9. There shall be no order as to costs.

10. Pending applications, if any, also stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 606 : 2024 INSC 285

Khengarbhai Lakhabhai Dambhala
v.
The State of Gujarat

(Criminal Appeal No. 1547 of 2024)

08 April 2024

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

Issue for Consideration

Appellant's vehicle was seized under the Gujarat Prohibition Act, 1949 as the driver of the vehicle was found carrying liquor beyond permissible limit. Appellant approached the High Court by filing Special Criminal Application under Articles 226/227 of the Constitution seeking release of the seized vehicle, without first approaching concerned court under Section 451 CrPC. Whether High Court was justified in dismissing the Special Criminal Application filed by the Appellant under Article 226/227 of the Constitution of India.

Headnotes

Directly invoking writ jurisdiction of High Court for release of seized property – Propriety of:

Held: The criminal court, before whom the property in question is sought to be produced, would have the jurisdiction and the power to pass appropriate orders for the proper custody of such property or for selling or disposing of such property, having regard to the nature of the property in question, after recording the evidence in that regard – In the instant case, the appellant without approaching the concerned court under Section 451, Cr.P.C, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which could not be said to be the proper course of action for getting the custody of the property – When there is a specific statutory provision contained in the Cr.P.C. empowering the criminal court to pass appropriate order for the proper custody and disposal of the property pending the inquiry or trial, the appellant could not have invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India

* Author

seeking release of his vehicle – There is nothing on record to suggest as to whether the said vehicle was sought to be produced before the concerned court so as to invoke Section 451 of Cr.P.C or whether such vehicle was forwarded by the police officer to the concerned Magistrate as contemplated in Clause (a) of Section 132 of the said Act – In absence of any such factual material placed on record, it is difficult to release the vehicle in question in favour of the appellant. [Paras 5,6,15 and 16]

Use of conjunction "but" in a provision – Implication of:

Held: When the conjunction "but" is used in a provision, after the punctuation mark "comma", it is deemed that such conjunction is used to carve out an exception or proviso to the main provision – Meaning thereby, when the entire provision is divided into two parts by using the punctuation mark "comma" followed by the conjunctive word "but", the second part is required to be construed as an exception or proviso to the first part. [Para 9]

"Confiscation" and "seizure" – Meaning of:

Held: As per the Black's Law Dictionary in the 11th Edition, the word "confiscation" means seizure of property for the public treasury or seizure of property by actual or supposed authority, and the word "seizure" means an act or an instance of taking possession of a person or property by legal right or process – Having regard to the said meanings, it is clear that "seizure" would be a preliminary step that would lead to confiscation of an article seized – The power to seize an article may be exercised by the statutory authorities like police personnel, prohibition officers, revenue authorities etc. in accordance with the concerned Statutes, whereas the power of confiscation is normally exercised by the jurisdictional Courts in accordance with the provisions of the concerned Statutes. [Para 10]

Sections 98 and 132 of the Gujarat Prohibition Act, 1949 and Section 451 of CrPC operate in different fields:

Held: On the conjoint reading of the provisions contained in Section 98 and 132 of the Gujarat Prohibition Act, 1949 and of Section 451 Cr.PC, it is discernible that all these provisions operate in different fields – Section 98 deals with the Confiscation of the Articles whenever any offence punishable under the Act

has been committed – The second part of sub-section (2) thereof would come into play when the Prohibition Officer or Police Officer sends the seized article liable to be confiscated but not required as an evidence, to the Collector as per Clause (b) of Section 132 – However, Section 451 of the Cr.P.C. would come into play when the article property seized during the course of inquiry or investigation is produced before the jurisdictional Court as per Clause (a) of Section 132 and the Court is called upon to pass appropriate orders for the proper custody of such article/property pending the conclusion of the inquiry or the trial. [Paras 9 and 14]

Case Law Cited

Sunderbhai Ambalal Desai v. State of Gujarat **[2002] Supp. 3 SCR 39 : (2002) 10 SCC 283 – referred to.**

List of Acts

Constitution of India; Code of Criminal Procedure,1973; Gujarat Prohibition Act, 1949, Indian Penal Code, 1860.

List of Keywords

Articles 226/227 of Constitution of India; Section 451 of Cr.P.C; Gujarat Prohibition Act, 1949; Specific statutory provision; Seizure and confiscation of property; Mudammal article; Implication of the word “but”; Harmonious construction.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1547 of 2024

From the Judgment and Order dated 08.06.2023 of the High Court of Gujarat at Ahmedabad in SCRA No. 6465 of 2023

Appearances for Parties

Ms. Disha Singh, Shivendu Gaur, Mrs. Nidhi Sharma, Mohit, Madhusudan Singh, Advs. for the Appellant.

Parshant Bhagwati, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Neha Singh, Advs. for the Respondent.

Khengarbhai Lakhabhai Dambhala v. The State of Gujarat

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. The appellant, claiming to be the owner of the vehicle being Eicher 10.80 (Blue) bearing no. GJ 05-BT-0899, seized as Muddamal Article in connection with the FIR bearing Criminal No.11200038231465/2023, for the offence Under Section 65-(a) (e),81,98(2),116(2) of Gujarat Prohibition Act and U/s 465, 468, 471, 114 of IPC registered with the Pardi Police Station, District Valasad, had filed the Special Criminal Application No.6465 of 2023 before the High Court of Gujarat at Ahmedabad seeking release of the said vehicle. The said Application having been dismissed by the High Court vide the impugned order dated 08.06.2023, the present Appeal has been filed.

2. In the instant case, it appears that the police personnel when they were on patrolling duty had intercepted the vehicle in question on the basis of a secret information received by them. It was alleged that the driver of the said vehicle was carrying English Liquor (1240.200 litres) worth of rupees 7 lakhs in the said vehicle without any pass or permit. The said vehicle along with the liquor was seized and the aforestated FIR was registered against the accused Lakhabhai Khengarbhai (the son of the present appellant), and others on 29.04.2023 at the Police Station Pardi, Valasad.

3. The respondent – State of Gujarat by filing the counter-affidavit has contented *inter alia* that Section 98 (2) of the Gujarat Prohibition Act 1949 (hereinafter referred to as the said 'Act') forbids the release of such vehicle till the final judgment of the Court, where the quantity of seized liquor is exceeding the quantity prescribed by the Rules. In the instant case, the seized quantity of liquor was 1240 litres as against the prescribed quantity of 20 litres as per the Notification dated 02.07.2019, and hence the said vehicle was liable for the confiscation and could not be released on bond or surety till the final judgment of the court.

4. At the outset, it may be noted that Chapter XXXIV of Cr.P.C deals with the disposal of the property. Section 451 thereof pertains to the order to be passed by the Criminal Court for custody and disposal of the property produced before the court pending an inquiry or

trial, whereas Section 452 pertains to the order to be passed for the disposal or confiscation of the property at the conclusion of the trial. Section 451 reads as under: -

> "**451. Order for custody and disposal of property pending trial in certain cases.** —
>
> When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.
>
> Explanation. —For the purposes of this section, "property" includes—
>
> (a) property of any kind or document which is produced before the Court or which is in its custody;
>
> (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

5. From the bare reading of the aforesaid provision, it clearly transpires that when any property is produced before any criminal court during the course of inquiry or trial, the Court is required to make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or the trial. If the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Thus, it is the criminal court, before whom the property in question is sought to be produced, would have the jurisdiction and the power to pass appropriate orders for the proper custody of such property or for selling or disposing of such property, having regard to the nature of the property in question, after recording the evidence in that regard.

6. In the instant case, the appellant without approaching the concerned court under Section 451, Cr.P.C, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which could not be said to be the proper course

of action for getting the custody of the property i.e. the vehicle in question in this case. When there is a specific statutory provision contained in the Cr.P.C. empowering the criminal court to pass appropriate order for the proper custody and disposal of the property pending the inquiry or trial, the appellant could not have invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India seeking release of his vehicle.

7. The respondent State has also raised the contention that Section 98(2) of the said Act puts an embargo against release of the vehicle till the final judgment of the court if the quantity of seized liquor is more than the prescribed quantity. Since, such contention is often raised, we deem it necessary to deal with the provisions contained in Section 98 of the Act also. Section 98 reads as under: -

> "**98. Things liable to confiscation-** (1) Whenever any offence punishable under this Act has been committed,
>
> (a) any intoxicant, hemp, mhowra flowers, molasses, materials, still, utensil, implement or apparatus in respect of which the offence has been committed,
>
> (b) where, in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers, or molasses,
>
> (c) where, in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of a licence, permit, pass or authorization, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export or transport,
>
> (d) where, in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed,

> the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be confiscated by the order of the Court.
>
> (2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in, carrying any such article shall likewise be liable to confiscation by the order of the Court. [but it shall not be released on bond or surety till the final judgement of the Court where the quantity of the seized liquor is exceeding the quantity as may be prescribed by the rules.]"

8. Sub-section (1) of Section 98 deals with the articles liable to confiscation, whenever any offence punishable under the Act has been committed. However, sub-section (2) of Section 98 is in two parts. The first part upto the conjunctive word "but", states about the confiscation of the articles like receptacle, package or covering and about the confiscation of the animals, carts, vessels or any other conveyances used in carrying any such article, and the second part starting with the conjunctive word "but" is perceived to be an embargo against release of the conveyance used for carrying the article liable to be confiscated if the quantity of the seized liquor carried in such conveyance is more than the prescribed quantity, till the final judgment of the court. It may be noted that the second part of sub-section (2) of Section 98 was incorporated by the Gujarat Act 29 of 2011. However, in our opinion, this incorporation of the second part by amendment in 2011 is not very happily worded, and therefore, it is seen as an embargo.

9. When the conjunction "but" is used in a provision, after the punctuation mark "comma", it is deemed that such conjunction is used to carve out an exception or proviso to the main provision. Meaning thereby, when the entire provision is divided into two parts by using the punctuation mark "comma" followed by the conjunctive word "but", the second part is required to be construed as an exception or proviso to the first part. However, so far as sub-section (2) of Section 98 is concerned though it is in two parts connected with the conjunctive word "but", there is hardly any co-relation between the first part and

the second part thereof. It is difficult to comprehend the second part of sub-section (2) as an exception or proviso to the first part thereof. Since it is not happily worded, applying the doctrine of harmonious construction, we will have to harmonise the provisions contained therein with the other provisions of the Act and with the provisions contained in the Cr.P.C.

10. It is pertinent to note that the words "confiscation" or "seizure" are not defined either in the said Act or in the Cr.P.C. As per the Black's Law Dictionary in the 11th Edition, the word "confiscation" means seizure of property for the public treasury or seizure of property by actual or supposed authority, and the word "seizure" means an act or an instance of taking possession of a person or property by legal right or process. Having regard to the said meanings, it is clear that "seizure" would be a preliminary step that would lead to confiscation of an article seized. The power to seize an article may be exercised by the statutory authorities like police personnel, prohibition officers, revenue authorities etc. in accordance with the concerned Statutes, whereas the power of confiscation is normally exercised by the jurisdictional Courts in accordance with the provisions of the concerned Statutes.

11. Coming back to the Gujarat Prohibition Act, provisions with regard to the articles liable to be confiscated and the powers of the court to confiscate such articles have been incorporated in Section 98, whereas the powers of the authorised Prohibition Officer or police officer to arrest the offender and seize the contraband articles are contained in Section 123, followed by other provisions with regard to the procedure to be followed after the seizure of the articles as contained in Section 132 of the said act.

12. Section 132 reads as under: -

> "**132. Article seized** - [When anything has been seized, under the provisions of this Act by a Prohibition Officer exercising powers under section 129 or by an Officer in-charge of a Police Station], or has been sent to him in accordance with the provisions of this Act, such officer, after such inquiry as may be deemed necessary, —
>
> (a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to

the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of seizure to the Collector,

(c) if no offence appears to have been committed shall return it to the person from whose possession it was taken."

13. As could be seen from the bare reading of Section 132, the authorised Prohibition Officer or the officer in charge of Police Station may after such inquiry as may be necessary either (a) forward the article seized to the jurisdictional Magistrate where the person arrested is forwarded, if it appears to him that such seized article is required as an evidence; or (b) send the seized article to the collector with the full report, if it appears to him that such seized article is liable to confiscation but is not required as an evidence; or (c) return such seized article to the person from whose possession it was taken, if no offence appears to have been committed.

14. Thus, on the conjoint reading of the provisions contained in Section 98 and 132 of the said Act and of Section 451 Cr.PC, it is discernible that all these provisions operate in different fields. Section 98 deals with the Confiscation of the Articles whenever any offence punishable under the Act has been committed. The second part of sub-section (2) thereof would come into play when the Prohibition Officer or Police Officer sends the seized article liable to be confiscated but not required as an evidence, to the Collector as per Clause (b) of Section 132. However, Section 451 of the Cr.P.C. would come into play when the article property seized during the course of inquiry or investigation is produced before the jurisdictional Court as per Clause (a) of Section 132 and the Court is called upon to pass appropriate orders for the proper custody of such article/property pending the conclusion of the inquiry or the trial.

15. So far as the facts of this case are concerned, the vehicle in question appears to have been seized as it was allegedly carrying huge quantity of liquor exceeding the prescribed quantity. However, there is nothing on record to suggest as to whether the said vehicle was

sought to be produced before the concerned court so as to invoke Section 451 of Cr.P.C or whether such vehicle was forwarded by the police officer to the concerned Magistrate as contemplated in Clause (a) of Section 132 of the said Act. In absence of any such factual material placed on record, it is difficult to release the vehicle in question in favour of the appellant.

16. It is true that when the property/vehicle is seized during the course of investigation and the same is produced before the concerned Criminal Court, it is incumbent on the part of the concerned Court to pass appropriate orders for keeping the vehicle in proper custody pending the trial. It is also true that as held by this Court in case of ***Sunderbhai Ambalal Desai vs. State of Gujarat***[1]***,*** it is of no use to keep the seized vehicles at the police stations for a long period and it is for the magistrate to pass appropriate orders for the proper custody of the said such vehicles during the pendency of the trial. However, as observed earlier, the appellant without approaching the concerned criminal court under Section 451 of the Cr.P.C seeking custody of the vehicle in question, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which was not the proper course as adopted by the appellant.

17. In that view of the matter, the present Appeal deserves to be dismissed and is hereby dismissed. It is however clarified that it shall be open for the Appellant to approach the concerned Court where the property/vehicle in question is sought to be produced during the course of inquiry or trial.

18. The Appeal stands dismissed accordingly.

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

Result of the case:
Appeal dismissed.

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1 [2002] Supp. 3 SCR 39 : (2002) 10 SCC 283

[2024] 4 S.C.R. 616 : 2024 INSC 281

K.B. Lal (Krishna Bahadur Lal)
v.
Gyanendra Pratap & Ors.

(Civil Appeal No. 4785 of 2024)

08 April 2024

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

Issue for Consideration

Whether there was sufficient cause for delay of fourteen years in filing an application under Order IX, Rule 7 of the Code of Civil Procedure.

Headnotes

Code of Civil Procedure, 1908 – Order IX Rule 7 – Application filed after delay of 14 years – Limitation Act, 1963, s. 5 – Condonation of delay is discretionary power of the court – Power to be exercised judiciously – Not in cases of gross negligence on part of litigant – 14 years delay cannot be condoned – 'Sufficient cause' not shown – Gross negligence on part of appellant in pursuing the matter.

Held: Appellant took 14 years to challenge an order of Trial Court to proceed ex parte against him – No satisfactory explanation for delay in filing application under Order IX Rule 7, CPC – Appellant grossly negligent in pursuing the matter before the Trial Court – Trial Court, revisional court and the High Court correct in dismissing claim – 'Sufficient cause' not defined in s. 5, Limitation Act – Has to be construed liberally and in order to meet ends of justice – Deserving and meritorious cases should not be dismissed solely on the ground of delay – Discretionary power of a court to condone delay must be exercised judiciously – Delay due to gross negligence and/or want of due diligence on the part of the litigant not to be condoned – 'Sufficient cause' can be given liberal construction when no negligence, nor inaction, nor want of bona fide is imputable to the litigant [Paras 9, 10]

Case Law Cited

Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. **[2021] 9 SCR 476 : (2021) 18 SCC 384**; *P.K. Ramachandran v. State of Kerala and Anr.* **[1997] Supp.**

* Author

4 SCR 204 **: (1997) 7 SCC 556;** *Basawaraj and Anr. v. Special Land Acquisition Officer.* [2013] 8 SCR 227 **: (2013) 14 SCC 81;** *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.* [2013] 9 SCR 782 **: (2013) 12 SCC 649 – relied on.**

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Sufficient cause; Condonation of delay; Inordinate delay; Good cause; Discretionary power; Negligence.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4785 of 2024

From the Judgment and Order dated 19.05.2022 of the High Court of Judicature at Allahabad, Lucknow Bench in MUA227 No. 1575 of 2022

Appearances for Parties

Sunil Kumar Jain, Ms. Rashika Swarup, Advs. for the Appellant.

Mukesh Kumar Sharma, Kartikey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

1. Leave granted.

2. The appellant before this court has challenged the order dated 19.05.2022 passed by the High Court of Judicature at Allahabad, by which the petition filed by the appellant under Article 227 of the Constitution of India was dismissed. The appellant had invoked the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, against the order dated 28.03.2022 of the Additional District Judge, Barabanki, who had upheld the order dated 07.10.2021 of the Civil Judge (Jr. Division), Barabanki.

3. The dispute between the parties to this appeal relates to a piece of land situated in village Gharsaniya, Pargana Dewa, Tehsil-Nawabganj, District - Barabanki, which was sold by one Kalawati (Respondent

No. 4 herein) to one Mansa Ram (Respondent No. 5 herein), vide sale deed dated 30.03.2006. Thereafter, the property was sold by Respondent No. 5 to the appellant herein vide a registered sale deed dt. 13.04.2006.

4. On 22.04.2006, Civil Suit for permanent injunction and cancellation of the sale deed dated 30.03.2006, was filed by the Respondent Nos. 1, 2 & 3 herein before the Civil Judge (Jr. Division), Barabanki. The appellant was impleaded as Defendant No. 3 in the suit. It was contended before the Trial Court by Respondent Nos. 1, 2 & 3 that Respondent No. 4 had no transferrable right or title over the property when the sale deed dated 30.03.2006 was executed in favour of Respondent No. 5 and thus, the property could not have been sold to Respondent No. 5. Respondent Nos. 1, 2 & 3 asserted their claim over the property before the Trial Court stating that they were the bhumidhar & joint owners of the suit property and were also in possession of the same because the predecessor-in-interest of the property was their uncle and he had executed a will deed dated 20.05.1997 in their favour.

5. After service of notice, vakalatnama of the appellant's counsel was filed on 22.04.2006. During the course of the hearing, an order dated 06.09.2006 was passed by the trial court, by which the suit was to proceed ex-parte against the appellant. In the order dated 06.09.2006, it was recorded by the Trial Court that a perusal of the record would indicate that the appellant was duly served, but he did not file any written statements, and thus, it would be appropriate to proceed ex-parte against him. It is this order of the trial court, which was sought to be recalled by the appellant by filing an application under Order IX, Rule 7 of the Code of Civil Procedure, 1908 (hereinafter "CPC"). However, this application was filed by the appellant on 01.09.2017, i.e. after an inordinate delay of almost 11 years. To explain the delay, the appellant argued that the summons and notice of the case were not received by him and that the advocate appointed by him belonged to another city, who did not pursue the case diligently, and it was only in the year 2011, when he inspected the case file that he came to know about the order dated 06.09.2006. Even here as to why it took him another 6 years to file the application, as he had the knowledge in any case in the year 2011, has not been explained. But this is not enough. Even this application, filed in the year 2017, was admittedly not pressed before the Trial Court by the appellant, for

the reason that correct facts were not mentioned in the application. Finally, another application under Order IX, Rule 7 of the CPC came to be filed yet again by the appellant on 23.11.2020.

6. This second application filed by the appellant was dismissed by the trial court vide order dated 07.10.2021. What weighed in with the trial court, while dismissing the appellant's application under Order IX, Rule 7 of the CPC, was the fact that the appellant was duly served and had filed vakalatnama of his counsel in April 2006 but did not file written statements in time and on 12.07.2011 an application was filed by the appellant, seeking permission to file the written statements. It was noted by the Trial Court that the explanation tendered by the appellant for the delay in filing the application under Order IX, Rule 7 of the CPC was that the advocate appointed by him at the time of receiving summons, i.e., April 2006, did not pursue the matter diligently and had defrauded the appellant. Thus, the appellant appointed another advocate, namely Shri R.D. Rastogi in May 2006. This explanation, as noted by the trial court, was based on contradictory statements and wrong facts, and no reasonable cause was given for the delay caused. Hence, it was dismissed.

7. Aggrieved by order dated 07.10.2021 by which his application under Order IX, Rule 7 of the CPC for setting aside the order dated 06.09.2006 was dismissed by the trial court, the appellant preferred a Revision, which came before Additional District Judge, Barabanki (hereinafter referred to as "Revisional Court"). Vide order dated 28.03.2022, the revisional court dismissed the Civil Revision filed by the appellant. The revisional court, upon examination of the material on record, found that the first application under Order IX, Rule 7 of the CPC which was filed by the appellant on 01.09.2017, was not pressed, owing to the fact that initially he had appointed an advocate who did not attend the case, and wrong facts were mentioned by a 'junior advocate' in the first application. Hence, another advocate filed the second application on 23.11.2020, mentioning the correct facts. Yet, the signature on the first application filed in the year 2017 and on that of the second application filed in the year 2020 were of the same advocate, namely, Shri R.D. Rastogi. It was also observed by the revisional court that although it was averred by the appellant that he was put in dark by the counsel earlier engaged by him, there is no reference to his name. Thus, upon consideration of the entire material on the record, it was held by the revisional court

that the application under Order IX, Rule 7 of the CPC for recalling order dated 06.09.2006 was filed by the appellant not only after a long delay of 14 years, but also without assigning any satisfactory reasons for the delay, hence, the revisional court found no error in the order dated 07.10.2021 of the trial court and accordingly, the Civil Revision preferred by the appellant was dismissed.

8. Assailing the order of the revisional court, the appellant filed a petition under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of the High Court of Judicature at Allahabad. The High Court, vide impugned order dated 19.05.2022, affirmed the orders of both the courts below and dismissed the petition filed by the appellant. The High Court, while dismissing the said petition, took note of the fact that the suit was filed before the trial court in the 2006, by the respondent-plaintiffs and the appellant-defendant appeared and filed the vakalatnama of his counsel on 22.04.2006 and in the year 2011, moved an application seeking permission to file written statements. Upon consideration of the fact that the appellant's counsel remained the same throughout, the High Court was of the opinion that while filing the application in the year 2011, the appellant's counsel would definitely have come to know about the order dated 06.09.2006, by which the trial court had decided to proceed ex-parte against the appellant. Despite this, the first application under Order IX, Rule 7 of the CPC was moved only on 01.09.2017, which was also not pressed for 3 years, and then the second application was moved on 23.11.2020 without showing any "good cause", as required under Order IX, Rule 7 of the CPC. Thus, no perversity was found by the High Court in the orders of both the courts below. The High Court hence refused to exercise its supervisory jurisdiction under Article 227 of the Constitution, and in our opinion, rightly so.

In this case the main question is of delay. Should an inordinate delay, which has no reasonable explanation be condoned?

9. Whether an application filed by the appellant, under Order IX, Rule 7 of the CPC can be allowed, after a delay of almost 14 years, is the only question before us. Was there a sufficient cause for filing such a belated application?

Although the term 'sufficient cause' has not been defined in the Limitation Act, it is now well-settled through a catena of decisions that

the term has to be construed liberally and in order to meet the ends of justice. The reason for giving the term a wide and comprehensive meaning is quite simple. It is to ensure that deserving and meritorious cases are not dismissed solely on the ground of delay.

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (*See* ***Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors.*** **(2021) 18 SCC 384**). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (*See* ***P.K. Ramachandran v. State of Kerala and Anr.,*** **(1997) 7 SCC 556**). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (*See* ***Basawaraj and Anr. v. Special Land Acquisition Officer.,*** **(2013) 14 SCC 81**). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.,*** **(2013) 12 SCC 649**, and are reproduced as under:

> "21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
>
> 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
>
> 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
>
> **21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.**

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (***viii***) **There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.**

21.9. (*ix*) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10.(*x*) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

…………………………"

(emphasis supplied)

Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years,

we find there was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed.

Headnotes prepared by:
Mukund P Unny, Hony. Associate Editor
(*Verified by:* Shibani Ghosh, Adv.)

Result of the case:
Appeal dismissed.

[2024] 4 S.C.R. 624 : 2024 INSC 317

The State of Arunachal Pradesh
v.
Kamal Agarwal & Ors. Etc.

(Criminal Appeal No. 2136 of 2024)

18 April 2024

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

Issue for Consideration

Matter pertains to correctness of the order passed by the Rajasthan High Court quashing the FIR registered in Arunachal Pradesh.

Headnotes

Code of Criminal Procedure, 1973 – s. 482 – Quashing of FIR – Territorial jurisdiction for registration of FIR – FIR registered at Arunachal Pradesh for offences u/ss. 420/120B/34 IPC by the complainant against accused persons – Complainant's case that accused refused to hand over the property despite full payment for the sale of the land/building made by complainant – Said property situated in Rajasthan as also the address of accused is that of Rajasthan whereas address of the complainant was address of the company in Arunachal Pradesh – Three of the accused filed petition for quashing the FIR before the Gauhati High Court and the same was dismissed – Five others filed writ petitions for quashing of the same FIR before the Rajasthan High Court and the same was allowed – Correctness:

Held: Matter was purely civil in nature – It could not be said to be a case of cheating – Simple reading of the FIR itself does not disclose any cognizable offence for which the FIR should be registered and maintained – Complaint lodged was not worth being registered as a complaint and that too in the State of Arunachal Pradesh – High Court of Rajasthan rightly found considering all aspects of the matter that the offence, if any, although no offence is made out, would be within the territorial jurisdiction of Rajasthan and not Arunachal Pradesh – Normally, in a given case where issue is of territorial jurisdiction, direction could have been issued to transfer the investigation or the trial to

* Author

the State where the cause of action would lie but in the instant case, no offence as such is made out – Entire FIR is quashed and the consequential proceedings thereto – Rajasthan High Court, in the subsequent petition moved by the respondent has after noticing the proceedings initiated in Gauhati High Court has given relief to the respondent and other respondents on the ground that no cause of action arose in Arunachal Pradesh – Hence, in exercise of the power under Art. 136, no inclination to disturb the findings in favour of the respondent in the writ petition by Rajasthan High Court – Order of the Gauhati High Court set aside and the entire proceedings arising out of the FIR quashed. [Paras 12-17]

Case Law Cited

State of Haryana v. Bhajan Lal [1992] Supp. 3 SCR 735 **: (1992) Suppl. 1 SCC 335 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1980.

List of Keywords

Quashing of FIR; Territorial jurisdiction for registration of FIR; Dispute civil in nature; Cheating; Cognizable offence; Transfer the investigation or the trial; Cause of action.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2136-2138 of 2024

From the Judgment and Order dated 23.05.2023 of the High Court of Judicature for Rajasthan at Jaipur in SBCRWP No. 987, 988 and 989 of 2022

Appearances for Parties

Siddharth Dave, Ms. Liz Mathew, Sr. Advs., Navneet R., P. Dalvi, Ms. Mallika Aggarwal, N. Bhardwaj, Abhimanyu Tewari, Ms. Eliza Bar, Shree Pal Singh, Ms. Sanya Kaushal I, Ms. A Kaul, Vishal Meghwal, Milind Kumar, Mrs. Padhmalakshmi Iyengar, Ms. Yashika Bum, Ms. Neha Kapoor, Jagdish Chandra Solanki, Anuj Bhandari, Yuvraj Singh R., Rajat Gupta, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

Leave granted.

2. Both the above appeals arise out of the First Information Report[1] registered as FIR Case No.227 of 2017 at Police Station Pasi Ghat, District Siang East, Arunachal Pradesh for offences under section 420/120B/34 Indian Penal Code, 1860[2] lodged by Mr. Anil Agarwal attorney holder for Mr. Okep Tayeng, the proprietor of M/s Shiv Bhandar. This FIR was registered against several named accused, details of which will be dealt with at a later stage and additional names surfaced during investigation.

3. Three of the accused namely Chandra Mohan Badaya and Respondent Nos.3 and 4 namely Shashi Natani and Rajesh Natani filed a petition for quashing the FIR before the Gauhati High Court registered as Criminal Petition No.91 of 2021. The said petition was dismissed by Gauhati High Court by judgment and order dated 24.06.2022. Aggrieved by the same, SLP (Crl.) No.7301 of 2022 has been filed by Chandra Mohan Badaya. Five other co-accused filed writ petitions before the Rajasthan High Court also praying for quashing of the same FIR No.227 of 2017. The details of three petitions filed before the Rajasthan High Court are as follows:

Accused	Writ Petition No.
1. Kamal Agrawal	**Writ Petition No.987 of 2022**
2. Hemani Agrawal	Pg. No.227 of SLP(Crl.) No.8663-8665 of 2023
3. Manish Kumar Tambi	**Writ Petition No.988 of 2022**
4. Alpana Tambi	Pg. no.246 of SLP (Crl.) No. 8663-8665 of 2023
5. Pawan Agrawal	**Writ Petition No.989 of 2022** Pg. no.265 of SLP (Crl.) No. 8663-8665 of 2023

1 FIR

2 IPC

4. These three petitions were allowed by the Rajasthan High Court vide judgment dated 23.05.2023. Aggrieved by the same, the State of Arunachal Pradesh has filed three Special Leave Petition Nos.8663-8665 of 2023. Interestingly the complainant did not come forward to challenge the order of the Rajasthan High Court quashing the proceedings. Since both the set of matters relate to same FIR, the same have been taken up together and are being decided by this common order.

5. Brief facts giving rise to the present appeals are as follows:

   5.1. M/s Shiv Bhandar, the proprietorship concerned transferred an amount of Rs.1 Crore in the year 2016 in the account of Chandra Mohan Badaya, two of his proprietorships concerned and Rajesh Natani in four equal transactions of 25 lakhs each. According to the appellant Chandra Mohan Badaya, the amount was transferred as a loan, however, according to the complainant the said payments were made for purchase of land/building situate between plot No.A-47 to A-55, Sikar House, near Chandpole, Jaipur, Rajasthan. Relevant to mention here that there is no written agreement with respect to the purpose of the transfer of said amount, whether it was a loan or an advance towards purchase of land/building referred to above.

   5.2. According to Chandra Mohan Badaya, out of Rs.75 lakhs received by him and his two concerns, he repaid Rs.37 lakhs to the complainant from his personal and proprietorship accounts by way of bank transfer. This amount was repaid in 2016-2017. Further, according to Chandra Mohan Badaya, he executed two sale deeds with respect to two properties situate in Chaksu, Jaipur in favour of wife (Smt. Shalini Agarwal) and sister-in-law (Smt. Jaya Agarwal) , Shri Anil Agarwal, Power of Attorney holder of the complainant proprietor. Although the total sale consideration for both the sale deeds was Rs.1.08 Crores, out of which an amount of Rs.27 lakhs each i.e. total Rs.54 lakhs only was received by the petitioner. These sale deeds are dated 10.10.2016. It was much after all these transactions that the FIR in question was lodged on 23.11.2017 against the following persons:

i) Sh. Chandra Mohan Badaya

ii) Sh. Rajesh Natani

iii) Smt. Shashi natani

iv) Sh. Kishan Badaya

v) Smt. Tina Badaya

vi) Smt. Sushila Devi Badaya

5.3. During investigation, some of the names mentioned in the FIR were dropped and others were added. Finally, chargesheet was submitted against eight persons:

i) Sh. Chandra Mohan Badaya

ii) Smt. Tina Badaya

iii) Sh. Rajesh Natani

iv) Sh. Pawan Agrawal

v) Sh. Kamal Agrawal

vi) Smt. Hemani Agrawal

vii) Sh. Manish Kumar tambi

viii) Ms. Alpana Tambi

5.4. On the basis of the said chargesheet, cognizance was taken by the Chief Judicial Magistrate, Senior Division, Pasighat, East Siang district, Arunachal Pradesh, and a case bearing GR No.225 of 2017 was registered.

5.5. As already noted above, two sets of petitions were filed before two different High Courts namely Gauhati High Court and Rajasthan High Court. The challenge before the High Court was primarily on two grounds, firstly, that no part of offence had been committed in Arunachal Pradesh as such there was lack of complete territorial jurisdiction for registration of FIR in Arunachal Pradesh. The Police ought not to have investigated the said matter for the reason that all the accused persons were residents of Rajasthan, the properties were situated in Rajasthan, the transfer by the sale deed with respect to the

property was also in Rajasthan, even the power of attorney holder and the complainant were residents of Rajasthan and therefore, the FIR ought to be quashed on this ground alone.

5.6. The second ground taken was that even if it is assumed that the State of Arunachal Pradesh would have jurisdiction to entertain the FIR and investigate, it was purely a civil dispute relating to transaction of funds and transfer of properties and being purely a civil/commercial dispute, the lodging of the FIR was just a misuse of the process of law and the same ought to be quashed, in view of the law laid down in case of **State of Haryana vs. Bhajan Lal**[3]**.** The Gauhati High Court dismissed the petition for quashing which has given rise to the appeal filed by Chandra Mohan Badaya whereas Rajasthan High Court quashed the proceedings which has given rise to the appeals filed by the State of Arunachal Pradesh.

6. Before entering into the arguments advanced by the parties, we may briefly refer to the contents of the complaint being FIR No.227 of 2017. According to the complaint, Rajesh Natani and Chandra Mohan Badaya contacted the complainant firm requesting for amount of Rs.1 Crore for consideration /exchange of land/building situated between Plot No.A-47 to A55, Sikar House, near Chandpole, Jaipur, Rajasthan. The said amount was deposited in four instalments on 19.07.2016, 20.07.2016, 22.07.2016 and 25.07.2016 in the accounts of Shri Ram Enterprises, A.R. Properties and Colonisers, Shashi Natani w/o Rajesh Natani and Chandra Mohan Badaya, as full payment for the sale of the aforesaid land/building. Thereafter, when the complainant visited the place of land/building, the accused persons refused to hand over the same. As such, it was clear that the accused persons had cheated resulting into suffering, mental agony, and financial loss. The accused persons failed to fulfil the above conditions of transferring the land. All the accused persons have conspired to cheat/commit fraud with the applicant. All the accused persons have earned huge amount through unlawful means and instead of fulfilling their promises, they threatened the complainant with consequences. Finding no other alternative, the FIR had been lodged for taking appropriate action against the accused persons.

3 [1992] Supp. 3 SCR 735 : (1992) Suppl. 1 SCC 335

7. The FIR mentions the address of the complainant Mr. Anil Agrawal to be the address of the firm M/s Shiv Bhandar in Pasighat, East Siang District, Arunachal Pradesh. The residential address of the complainant Anil Agrawal is not given in the FIR. The address of all the six accused named in the FIR is that of Jaipur City, Rajasthan. The property for which the alleged payment of Rs.1 Crore is said to have been made is also situate in Jaipur, Rajasthan. The transaction of bank details is not mentioned in the FIR.

8. Apart from the fact that the complainant is said to be placed at Arunachal Pradesh, no other fact relevant to the alleged offence is said to be in or within the State of Arunachal Pradesh but still the FIR had been registered there. Clearly, the reason for lodging the FIR was that the accused persons were not willing to execute the sale deed for which they had taken the sale consideration of Rs.1 Crore.

9. The Gauhati High Court dismissed the petitions for quashing on the finding that no exceptional circumstances exist calling for quashing of the proceedings. Whereas, the Rajasthan High Court proceeded to quash the proceedings on the ground that no part of the cause of action had arisen in the State of Arunachal Pradesh rather entire cause of action was in the state of Rajasthan, hence, the Police/ Court in Arunachal Pradesh lacked territorial jurisdiction to entertain the FIR and all subsequent proceedings.

10. Surprisingly, the complainant M/s Shiv Bhandar has not come forward to challenge the order of the Rajasthan High Court. It is the State of Arunachal Pradesh which has challenged the order of the Rajasthan High Court.

11. We have heard learned counsel for the parties and perused the material on record in both the cases.

12. We are of the view that the matter was purely civil in nature. It was a case of money advancing for which no written document was executed to indicate its purpose or import as such whether it was a loan advance or an advance payment for transfer of property being land/building situate in Jaipur, is not borne out from any records. Such claim of the complainant that it was for transfer of property for land/building prescribed above, would be a matter of evidence to be led and established in the Court of law rather than the police investigating the same and finding out. It is not the case of complainant

as stated in FIR that the plot/land as alleged by them which was to be transferred to them did not exist or had been sold or transferred to somebody else and therefore, there was an element of cheating by the accused persons. If the accused persons were not transferring the land and if the complainant could establish an agreement/contract with respect to the same in a Court of law, it ought to have filed a civil suit for appropriate relief. Appellant Chandra Mohan Badaya had already explained as to how he had already repaid Rs.37 lacs through bank transaction and also transferred two properties worth more than Rupees One Crore. All these aspects could be thrashed out before a competent Civil Court. It could not be said to be a case of cheating.

13. A simple reading of the FIR itself does not disclose any cognizable offence for which the FIR should be registered and maintained. Although Chandra Mohan Badaya appellant has sought to explain that he had already returned Rs.37 lakhs by bank transfer to the complainant and had further executed two transfer deeds in favour of the wife and sister-in-law of Anil Agrawal, the power of attorney holder which valued at total amount of more than Rs.1.45 Crores. Even if we do not accept this contention as the same would be subject matter of evidence, what we find is that the complaint lodged by the respondent No.2 was not worth being registered as a complaint and that too in the State of Arunachal Pradesh.

14. The High Court of Rajasthan had rightly found as a matter of fact considering all aspects of the matter that the offence, if any, although according to us, no offence is made out, would be within the territorial jurisdiction of Rajasthan and not Arunachal Pradesh.

15. The State of Arunachal Pradesh ought to have been happy getting rid of an unnecessary Criminal Case being registered and tried in Arunachal Pradesh Why the State of Arunachal Pradesh has approached this Court is also a question to be answered by the said State when the complainant in a matter relating to civil/commercial dispute is not coming forward to defend its FIR which has been quashed by the Rajasthan High Court. Normally, in a given case where issue is of territorial jurisdiction we could have directed to transfer the investigation or the trial to the State where the cause of action would lie but in the present case, we find that no offence as such is made out.

16. We are conscious of the fact that Pawan Agarwal, one of the Respondents herein in Criminal Appeal arising out of SLP No. 8663-8665/2023, had earlier filed Criminal Petition No. 110/2021 under section 482 of Code of Criminal Procedure, 1973. before the Gauhati High Court and the said petition was dismissed vide order dated 26.11.2021. We are also conscious of the fact that SLP (Crl.) No. 999/2022 filed by him was dismissed as not pressed before this Court. However, today we are quashing the entire FIR Case No. 227/2017 registered at Police Station Pasi Ghat, District Siang East, Arunachal Pradesh and the consequential proceedings thereto. Rajasthan High Court, in the subsequent petition moved by Pawan Agarwal, has after noticing the proceedings initiated in Gauhati High Court has given relief to Pawan Agarwal and other respondents on the ground that no cause of action arose in Arunachal Pradesh. It is also important to note that after the Gauhati High Court had dismissed the Criminal Petition No. 110/2021 chargesheet was filed and we have considered the same. We have found the dispute to be of a civil nature and have quashed the FIR Case No. 227/2017. Hence, in exercise of the power under Article 136 of the Constitution of India we are not inclined to disturb the findings in favour of Pawan Agarwal in SB Criminal Writ Petition No. 989/2022 by Rajasthan High Court. Once proceedings are being quashed against all the other accused named in the FIR and in the chargesheet and considering the nature of findings we have recorded, proceedings against Pawan Agarwal cannot alone continue.

17. We accordingly set aside the order of the Gauhati High Court and allow the appeal of Chandra Mohan Badaya and quash the entire proceedings arising out of FIR No.227 of 2017. We further dismiss the three appeals filed by the State of Arunachal Pradesh.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals disposed of.

[2024] 4 S.C.R. 633 : 2024 INSC 326

Govind Kumar Sharma & Anr.
v.
Bank of Baroda & Ors.

(SLP (C) No. 24155 of 2018)

18 April 2024

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

Issue for Consideration

Whether an auction/ sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act) carried out without issuing the mandatory 30-day notice to the borrower under Rules 8(6) and 8 (7) of the Security Interest (Enforcement) Rules, 2002 is liable to be set aside. If so, can the *bona fide* purchaser, who was originally the tenant, be forced to hand over the physical possession of the premises in order get the refund. Whether the *bona fide* purchaser would be entitled to refund of the auction money and interest, and compensation for improvement/ investments made by him.

Headnotes

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Security Interest (Enforcement) Rules, 2002 – Appellants/ Original tenants in physical possession of premises – Appellants were issued sale certificate after auction- Bank admitted to procedural lapse – DRT set aside sale and directed Bank to refund auction money with interest as applicable to fixed deposit only after receiving the possession of the premises – DRT found no proof of improvements/investments – DRAT and High Court confirmed.

Held: Supreme Court upheld the setting aside of the auction/sale in view of concurrent findings and Bank's admission- Supreme Court modified DRT's directions – Appellants were allowed to retain physical possession in the capacity of tenants and borrower/ landlord could to evict as per law and Bank was directed to return the auction money with 12% per annum compound interest. [Paras 12-15]

* Author

List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Security Interest (Enforcement) Rules, 2002.

List of Keywords

Rule 8(6), Rule 8 (7) of Security Interest (Enforcement) Rules, 2002; Mandatory notice; Default; Non-compliance of statutory provisions; Setting aside of auction/ sale; Refund; Physical possession.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5028 of 2024

From the Judgment and Order dated 02.07.2018 of the High Court of Judicature at Allahabad in WC No. 20266 of 2018

Appearances for Parties

R. P. Shukla, Dhruv Shukla, Ms. Upasena Shukla, Ms. Aeishwarya Sharma, Gaurav Chauhan, Ms. Megha Gaur, Piyush Kumarendra, Vibhav Mishra, Vijay K. Jain, Advs. for the Appellants.

Arun Aggarwal, Ms. Anshika Agarwal, Deepti Jain, Shivam Saini, Praful Rawat, Pramod Kumar Singh, Vijay Pal, Shiv Dutt Sharma, Ms. Rekha Agarwal, Rajvir Singh, Bikash Chandra, Rameshwar Prasad Goyal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

Leave granted.

2. The appellants herein have assailed the correctness of the judgment and order dated 02.07.2018 passed by the Allahabad High Court dismissing the Writ Petition of the appellants, confirming the orders passed by the Debt Recovery Tribunal[1] as also the

1 DRT

Debt Recovery Appellate Tribunal[2], whereby the auction sale held in favour of the appellants had been set aside and the appeal was dismissed.

Brief facts in nutshell are as follows:

3. The firm-respondent no.3, had taken a loan from the respondent no.1-Bank. However, as it went into default, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[3]. In the said recovery proceedings, the Recovery Officer conducted an open auction. The appellants were the highest bidder. Their bid was accepted and they made good the deposits as per the terms of this auction. Accordingly, a sale certificate was issued in their favour on 30.03.2009. It may be noted here that the appellants were tenants of the borrower in the premises in question which had been put to auction. As such the status of the appellants changed from that of tenants to that of owners after the sale was confirmed and sale certificate was issued.

4. The borrower-respondent nos.3 and 4 filed a securitization application under Section 17 of the SARFAESI Act for setting aside the sale on the ground that the Bank had not followed the statutory procedure prescribed under the Security Interest (Enforcement) Rules, 2002[4], in particular, the notice as required under Rules 8(6) and 8(7) which required a mandatory notice of 30 days to the borrower, had neither been issued nor served upon the borrower.

5. The DRT, after examining the matter, came to the conclusion that the Bank itself had admitted that the statutory compliance under the above rules had not been made and as such proceeded to set aside the sale vide order dated 21.04.2015. The operative portion of the order passed by the DRT is reproduced hereunder:

> "…The sale as pointed out earlier is liable to be quashed for the non-compliance of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002. The auction purchaser set up his case that he has spent huge money on improvement of property in question. The auction

2 DRAT

3 SARFAESI Act

4 2002 Rules

> purchaser has not place on record any material to prove the alleged improvements in the property. The auction purchaser is enjoying this property since 2009 as such auction purchaser is not entitled to any extra compensation. However, Bank will be under obligation to refund the auction money with interest as applicable to fixed deposit. The sale is accordingly set aside and it is made clear that Bank will refund the auction money only after receiving possession of property from auction purchaser within 15 days from the delivery of auction purchaser to the Bank. The applicant is directed to pay the dues of the *sic* within 15 days with upto date interest, failing which Bank will be at liberty to proceed further under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 to recover its dues.
>
> xxx xxx xxx"

6. In effect the DRT, after setting aside the sale, further proceeded to direct the Bank to refund the auction money with interest as applicable to fixed deposits only after receiving possession of the property from the auction purchaser within 15 days thereof. The borrower was directed to pay the dues of the Bank within 15 days with up to date interest, failing which the Bank would be at liberty to proceed further under the SARFAESI Act for recovery of its dues.

7. The appellants preferred an appeal before the DRAT registered as Appeal No. R-57 of 2015, which came to be dismissed, vide order dated 19.04.2018. Thereafter the appellants approached the High Court by way of a Writ Petition registered as Writ Petition (C) No.20266 of 2018, which has since been dismissed by the impugned judgment and order, giving rise to the present appeal.

8. The submission advanced by learned counsel for the appellants is two-fold: firstly, that they were bonafide purchasers for value and, therefore, the DRT, the DRAT and the High Court erred in setting aside the sale and confirming it. The second submission advanced is that after the sale certificate was issued, the appellants have developed the suit property and have invested approximately Rs.60 lacs and in case the sale is to be set aside, the appellants should be suitably compensated not only by refund of the auction money

along with interest but also for the improvements made by them in developing the property and investment made therein.

9. On the other hand, learned counsel for the respondent-Bank submitted that although it had followed the procedure prescribed but could not substantiate with any material to rebut the findings recorded by the DRT, DRAT and the High Court that the Bank had failed to follow the statutory provisions of notice under Rules 8(6) and 8(7) of the 2002 Rules. It was further submitted that as the appellants have enjoyed the property as it was already in their possession, they cannot claim any additional compensation for the improvements made by them as they were well aware of the litigation initiated by the borrower by filing an application under Section 17 of the SARFAESI Act and whatever improvements have been made were at their own risk.

10. Further, learned counsel for the borrower (respondent nos.3 and 4) submitted that they have already paid the entire outstanding dues of the Bank without adjusting the auction money received by the Bank which is lying separately in an escrow account because of the litigation. It was also submitted that the Bank admits that the entire dues have been paid but at the same time it has declined to issue the No Dues Certificate because of pendency of the litigation. It was also submitted that the Bank, without following due procedure, had conducted the auction and, therefore, the DRT rightly set aside the sale which has been confirmed by the DRAT and the High Court.

11. From the facts, as narrated above and the arguments advanced, the following is the admitted position:

    (i). The appellants were tenants in the premises in question which had been put up for auction. Their possession and status as tenants were converted into that of owners after the sale was confirmed and the sale certificate issued;

    (ii). The borrowers have admitted that they were in default and that the Bank had a right to recover its dues in accordance to law;

    (iii). After the auction sale, the borrowers have deposited the entire outstanding amount independent of the auction money which is additionally lying with the Bank;

(iv). The Bank has admitted that there was non-compliance of the statutory provisions in conducting the sale and as such had conceded before the DRT that the sale in question may be set aside and the Bank be granted liberty to proceed afresh;

(v). The Bank has admitted that the auction money of Rs.12.40 lacs is lying in a separate fixed deposit and this amount is in addition to the outstanding amount deposited by the borrower after the auction sale.

12. Considering the above facts and circumstances and the arguments advanced, we proceed to deal with the same:

(i). In view of the concurrent finding based on the admission by the Bank that mandatory notice of 30 days was not given to the Borrower before holding the auction/sale, the setting aside of the auction/sale cannot be faulted with. The same has to be approved.

(ii). Once the sale is set aside, the status of the appellants as owners would automatically revert to that of tenants. The status of possession at best could have been altered from that of an owner to that of tenants but Bank would not have any right to claim actual physical possession from the appellants nor would the appellants be under any obligation to handover physical possession to the Bank. The DRT fell in error on the said issue. Therefore, the direction issued by the DRT that the Bank will first take possession and thereafter refund the auction money with interest applicable to fixed deposits, is not a correct direction;

(iii). The entire controversy has arisen because of the Bank not following the prescribed mandatory procedure for conducting the auction sale and, therefore, the Bank must suffer and should be put to terms for unnecessarily creating litigation. As of date the dues of the Bank have been fully discharged and an additional amount of the auction money is lying with the Bank since 2009. This amount is to be returned to the appellants. In such facts and circumstances of the case, we are of the view that the award of interest on the auction money at the rate applicable to fixed deposits is not a correct view. The rate of interest deserves to be enhanced.

(iv). We could have considered awarding 24 per cent per annum compound interest on the auction money to be refunded to the

appellants in view of serious illegality committed by the Bank in conducting the auction and driving the parties to litigation. Considering the fact that the money of the Bank is also public money, we feel that interest of justice would be best served if the auction money with 12 per cent per annum compound interest is returned to the appellants. Such interest be calculated from the date of deposit till the date it is actually paid.

(v). There was some dispute between the Bank and the borrower that there could be minor adjustments still left. We are of the view that if any additional amount is lying with the Bank, the same would be returned to the borrower and if any amount is still due to be paid, the borrower would pay the said amount to the Bank. The Bank and the borrower have both agreed for making the said adjustments.

13. In view of the above discussion and analysis, the following directions are issued:

a) setting aside of the auction sale is affirmed.

b) The status of the appellants as tenants shall stand restored leaving it open for the borrower as owner of the property to evict the appellants in accordance to law.

c) The entire auction/sale money lying with the Bank (R-1 & 2) shall be returned to the appellants along with compound interest @12 per cent per annum to be calculated from the date of deposit till the date of payment.

d) The Borrower Respondent nos.3 and 4 and the Bank–Respondent nos.1 and 2, would streamline their accounts and the Bank upon settlement of the same will issue a No Dues Certificate to the Borrower.

14. The impugned order shall stand modified as above. The appeal stands disposed of accordingly.

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

Headnotes prepared by:
Aishani Narain, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)

Result of the case:
Appeal disposed of.

[2024] 4 S.C.R. 640 : 2024 INSC 313

The State of West Bengal
v.
Jayeeta Das

(Criminal Appeal No. 2128 of 2024)

18 April 2024

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

Issue for Consideration

Whether the order dated 07.04.2022, whereby the Chief Judge cum City Sessions Court permitted the addition of the offences under Unlawful Activities (Prevention) Act, 1967 to the case suffer from any illegality or infirmity; whether the extension of remand by the Chief Metropolitan Magistrate beyond the period of 90 days was illegal.

Headnotes

Unlawful Activities (Prevention) Act, 1967 – National Investigation Agency Act, 2008 – FIR registered u/ss. 121A, 122, 123, 124A, 120B of IPC – I.O. filed an application for addition of charges u/ss. 16, 18, 18B, 20, 38 and 39 of UAPA – CMM forwarded the matter to Chief Judge, City Sessions Court – The Chief Judge by order dated 07.04.2022 permitted addition of offences under the provisions of UAPA – Legality:

Held: A bare perusal of sub-section (3) of Section 22 of NIA Act would make it clear that until a Special Court is constituted by the State Government under sub-Section (1) of Section 22, in case of registration of any offence punishable under UAPA, the Court of Sessions of the division, in which the offence has been committed, would have the jurisdiction as conferred by the Act on a Special Court and a fortiori, it would have all the powers to follow the procedure provided under Chapter IV of the NIA Act – Admittedly, the present case involves investigation by the State police, and therefore, the provisions of Section 22 would be applicable insofar as the issue of jurisdiction of the Court to try the offences is concerned – Further, it is not in dispute that the State of West Bengal had not exercised the power conferred upon it by Section 22 of the NIA Act for constituting a Special Court for trial of offences set out in the Schedule to the NIA Act and hence, the Sessions Court within whose jurisdiction, the offence took place

* Author

which would be the Chief Judge cum City Sessions Court in the case at hand, had the power and jurisdiction to deal with the case by virtue of the sub-section (3) of Section 22 of the NIA Act – Hence, the order dated 07.04.2022, whereby the Chief Judge cum City Sessions Court permitted the addition of the offences under UAPA to the case does not suffer from any illegality or infirmity. [Paras 24, 25, 29, 30]

Unlawful Activities (Prevention) Act, 1967 – Extension of remand by Chief Metropolitan Magistrate beyond the period of 90 days – Legality:

Held: Under the proviso to Section 43D(2), the Court has been given the power to extend and authorise detention of the accused beyond a period of 90 days as provided u/s. 167(2) CrPC – A plain reading of Section 2(1)(d) of UAPA would clearly indicate that the same admits to the jurisdiction of a normal criminal Court and also includes a Special Court constituted under Section 11 or Section 22 of the NIA Act –In view of the definition of the 'Court' provided under Section 2(1)(d) of UAPA, the jurisdictional Magistrate would also be clothed with the jurisdiction to deal with the remand of the accused albeit for a period of 90 days only because an express order of the Sessions Court or the Special Court, as the case may be, authorising remand beyond such period would be required by virtue of Section 43D(2) of UAPA – Hence, to the extent the Chief Metropolitan Magistrate extended the remand of the accused beyond the period of 90 days, the proceedings were grossly illegal. [Paras 33-36]

List of Acts

Unlawful Activities (Prevention) Act, 1967; National Investigation Agency Act, 2008; Code of Criminal Procedure, 1973.

List of Keywords

Offences; Addition of offences; Jurisdiction; Remand; Extension of remand.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2128 of 2024

From the Judgment and Order dated 11.05.2023 of the High Court at Calcutta in CRR No. 3180 of 2022

Appearances for Parties

Siddhartha Dave, Sr. Adv., Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Sohhom Sau, Advs. for the Appellant.

R. Mahadevan, V. Balaji, C. Kannan, Nishant Sharma, Ms. Adviteeya, Rakesh K. Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. Heard learned counsel for the parties and perused the material available on record.

3. The State of West Bengal has approached this Court by way of this appeal for assailing the legality and validity of the judgment dated 11th May, 2023 passed by the High Court of Calcutta in C.R.R. No. 3180 of 2022.

Brief Facts:-

4. Based on written complaint dated 1st January, 2022 filed by the SI Raju Debnath, STF Police Station, Kolkata on 28th December, 2021 informing about recovery of an unclaimed black coloured bagpack lying abandoned at Sahid Minar containing some written posters of CPI(Maoist) and some incriminating articles about the activities of CPI(Maoist), FIR No. 01 of 2022 came to be registered at STF Police Station, Kolkata for the offences punishable under Sections 121A, 122, 123, 124A, 120B of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC').

5. The respondent herein was apprehended on 29th March, 2022 and was produced before the learned Chief Metropolitan Magistrate, Calcutta on 30th March, 2022. The Investigating Officer conducted preliminary investigation and thereafter filed an application in the Court of learned Chief Metropolitan Magistrate praying for addition of offences punishable under Sections 16, 18, 18B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter being referred to as 'UAPA').

6. Learned Chief Metropolitan Magistrate, in turn, forwarded the matter to learned Chief Judge, City Sessions Court, Calcutta(hereinafter being referred to as the 'Chief Judge') for considering the said application, vide order dated 5th April, 2022.

7. Learned Chief Judge, vide order dated 7th April, 2022 permitted addition of offences under Sections 16, 18, 18B, 20, 38, 39 of UAPA in the case and allowed the same to be investigated along with the existing offences for which the FIR had been registered. The Investigating Officer was directed to take the necessary steps before the learned Chief Metropolitan Magistrate.

8. The respondent filed a petition under Section 482 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') before the High Court of Calcutta on 25th August, 2022 with a prayer to quash the order dated 7th April, 2022 passed by learned Chief Judge, Calcutta and all subsequent orders passed by the learned Chief Metropolitan Magistrate, Calcutta. While the aforesaid petition was pending, the learned Chief Judge, Calcutta passed an order dated 22nd September, 2022 extending the period of detention of accused upto 180 days under Section 43D(2)(b) of UAPA and permitted the investigating agency to file charge sheet beyond the period of 90 days but within 180 days.

9. The High Court proceeded to accept the petition vide order dated 11th May, 2023 and quashed the proceedings of the case registered against the respondent to the extent of the offences punishable under the provisions of UAPA, holding that only a Special Court constituted by the Central Government or the State Government as per the National Investigation Agency Act, 2008(hereinafter being referred to as 'NIA Act') had the exclusive jurisdiction to try the offences under UAPA. It was further held that as per Section 16 of the NIA Act, the Sessions Court was precluded from taking cognizance of the offences under UAPA and thus the order dated 7th April, 2022 and all subsequent proceedings taken thereunder were without jurisdiction.

10. The aforesaid order dated 11th May, 2023 allowing the petition filed by the respondent is under challenge at the instance of the State of West Bengal in this appeal by special leave.

Submissions on behalf of appellant:-

11. Shri Siddhartha Dave, learned senior counsel appearing for the appellant contended that the instant case involves investigation and prosecution by the state police and not by the Central Agency, i.e., National Investigation Agency. He urged that the proceedings would be governed by Section 22 of NIA Act and hence the High Court fell in grave error of law in quashing the proceedings by relying upon the provisions contained under Section 16 of NIA Act.

12. Learned senior counsel further urged that as the case was investigated by the State police and since no Special Court had been constituted by the State Government under Section 22(1) of NIA Act, the Sessions Court having jurisdiction over the division in which the offence was committed, was seized of the exclusive jurisdiction to try the offences as per Section 22(3) of NIA Act.

13. He further urged that since no Special Court was constituted, the jurisdictional Magistrate, who would be the Chief Metropolitan Magistrate in this case, has the jurisdiction to deal with the remand of the accused. Nonetheless, Shri Dave candidly conceded that the power to extend the period of detention beyond 90 days is exclusively vested with the 'Court' as defined under Section 2(1)(d) of UAPA which would be the jurisdictional Sessions Court in the present set of facts and circumstances.

14. Without prejudice to the above, the contention of the learned senior counsel was that since the accused never filed an application seeking default bail, after the expiry of 90 days and before filing of the charge sheet, the irregularity, if any, in the matter of granting remand stood cured and hence, the accused has lost the right to claim release on default bail. He thus implored the Court to accept the appeal and set aside the impugned judgment and permit the Sessions Court to proceed with the trial of the accused for the offences charged including those under UAPA.

Submission on behalf of Respondent:-

15. *Per contra*, learned counsel appearing for the respondent, vehemently and fervently urged that the view taken by the High Court while interfering with the order dated 7th April, 2022 is the only permissible and legal view in the extant facts and circumstances. He referred to the Gazette Notification dated 29th April, 2011 and urged that a Special

Court has already been notified by the Central Government for the State of West Bengal and as such, all orders passed and actions taken by the Chief Judge and the Chief Metropolitan Magistrate pertaining to the offences under the UAPA are illegal and without jurisdiction.

16. As a consequence, the High Court was justified in exercising jurisdiction under Section 482 CrPC in quashing the patently illegal order dated 7th April, 2022 and all subsequent proceedings sought to be taken in furtherance thereof. He urged that the impugned order dated 11th May, 2023 is just and legal and does not warrant any interference. However, on the aspect of the grant of default bail to the accused, learned counsel candidly conceded that no prayer was ever made on behalf of the accused either in the Sessions Court or the High Court seeking default bail. The plank contention advanced on behalf of the respondent was that the proceedings before the Chief Judge and the Chief Metropolitan Magistrate are vitiated because both the Courts did not have the jurisdiction to proceed under the provisions of NIA Act and UAPA in light of the fact that Special Court had already been constituted for the State of West Bengal by the Central Government vide Gazette Notification dated 29th April, 2011 which was functioning.

17. Learned counsel implored the Court to reject the instant appeal.

Discussion and Conclusion:

18. For the sake of convenience, we would like to advert to the issues for determination formulated by the learned Single Judge of the High Court in the quashing petition:-

> "i. Whether the court of sessions was entitled to entertain an application for extension of the period of remand in terms of the proviso to Section 43D (5) of the UAPA when no special court had been notified by the State of West Bengal under Section 22(1) of the National Investigating Agency Act, 2008.
>
> ii. Whether the petitioner could have been remanded by the learned Magistrate after offences under UAPA had been added."

19. Since the validity of the order dated 7th April, 2022 is the main issue requiring adjudication in the case, we would like to reproduce the said order for ready reference:-

"IN THE COURT OF CHIEF JUDGE, CITY SESSIONS COURT, CALCUTTA

STF PS Case No. 01 dt. 01.01.2022

GR(S) 08 of 2022

Present: Siddhartha Kanjilal

Chief Judge, City Sessions Court, Calcutta. JO Code WB01057

Order No. 02 dated 07.04.2022

Today is fixed for production of the accused person and passing order with regard to adding sections 16/18/18B/20/38/39 of the UA(P) Act to the initial charges u/s 120B/121/121A/122/123/ 124A of IPC.

Ld. PP in charge is present

Ld. Advocate for the accused files a fresh vakalatnama.

Seen the same. Let it be kept with the record.

IO is present along with CD.

Accused person namely, Joyeeta Das is produced from police custody.

Today one remand application was filed by the Assistant Commissioner of Police. STF, Kolkata and prayed for further police custody for further development of the investigation.

This Court finds that for effective investigation, the accused be remanded to police custody till 11.04.2022.

The investigation Agency is directed to maintain all the formalities as per guidelines of Supreme Court while keeping the accused in the custody in remand.

The accused is at liberty to report before the Ld. Court of CMM, Calcutta on the next date whether she has been physically or mentally tortured by the Investigation Agency while she was in custody.

Now the application for adding the sections 16/18/18B/20/38/39 of the UA(P) Act is taken up for hearing.

Perused the record and application as well as case diary.

It is revealed from the CD that several incriminating documents, literatures, posters etc. related to the organizational agenda of the banned organization, CPI (Maoist) propagating for armed revolution in India to overawe the established democratically elected Government in the Country were recovered from the accused person relating to Terrorists Act against the Government.

As per the judgment passed by Hon'ble Justice Dr. Dhananjaya Y Chandrachud (Supreme Court) in connection with Criminal Appeal No. 1165 of 2021 the CJM Court of Sessions Court is the trial Court for the offences punishable under section UA(P) Act when no special Court has been notified by the State Government as per Section 27 of the NIA Act.

If that be the so then, any offence where UA(P) Act is involved, the CMM, Calcutta, herein is the remand Court and the Chief Judge, City Sessions Court, Calcutta is the Trial Court as no special court has been notified by the State Government for the jurisdiction of Calcutta as per Section 27 of the NIA Act.

Any accused being arrested by the State Police, having UA(P) Act be produced before the Court of Ld. CMM, Calcutta unless and until charge sheet is submitted and once the charge sheet is submitted, the Ld. CMM. Calcutta is duty bound to place the case record along with the accused person before this Court.

If an accused is arrested in other sections and during investigation if the Investigation Agency wants to add the sections of UA(P) Act, only permission is required from the Sessions Court and after obtaining

permission, the CMM, Calcutta or the CJM of any district has the power to allow the Investigation Agency for adding sections of UA(P) Act.

If the Investigation Agency prays for extension of time for filing charge sheet beyond statutory period of 90 days, where UA(P) Act has either been added or initiated, permission is required from the Sessions Court.

In case of taking the accused in remand, the remand Court i.e. the Ld. Court of CMM, Calcutta or CJM of any district has enough jurisdiction to pass such order.

In the present case. Investigation Agency prays for adding sections 16/18/18B/20/38/39 of the UA(P) Act.

This Court finds that (here is sufficient ground for allowing the Investigation Agency to add the sections of the UA(P) Act in this particular Case.

Thus, the petition filed by the Investigation Agency dt. 05.04.2022 seeking permission for adding sections 16/18/18B/20/38/39 of the UA(P) Act is allowed.

Investigation agency is directed to take necessary steps before the Ld. Court of CMM, Calcutta for the same.

To 11.04.2022 for production of the accused before the Ld. CMM, Calcutta.

CD be returned.

Let a copy of this order be given to the IO of this Case.

Office is directed to send the case record to the Ld. CMM, Calcutta along with copy of order sheet after keeping the skeleton record."

20. After considering the entirety of the material available on record, the learned Single Judge proceeded to hold as below:-

 (i) That the special Court constituted by the Central Government or the State Government, as the case may be, under the NIA Act has the exclusive jurisdiction to try offences under UAPA.

(ii) In view of Section 16 of the said Act, the special Court cannot take cognizance of the offence under the UAPA directly without the case being committed to it.

(iii) In terms of the proviso to sub-Section(2) of Section 43(D) of the UAPA, the Court is empowered to extend the period of detention pending investigation. On a report of the Public Prosecutor indicating progress of investigation and specific reason for detention of the accused beyond 90 days but not more than 180 days.

(iv) Sub-Section (3) of Section 22 of the NIA Act states that until a special Court is designated by the State Government under sub-Section (1), the jurisdiction conferred by the Act on a special Court notwithstanding anything contained in the Code, shall be exercised by the Court of Sessions in which the scheduled offence is committed and it shall have powers to follow the procedure provided under Chapter IV of the Act.

(v) Reliance was also placed on the judgment of this Court in the case of ***Bikramjit Singh v. State of Punjab*** (2020) 10 SCC 616 wherein it has been held that for all offences under the UAPA, the special Court alone has the exclusive jurisdiction to try such offences.

21. After making the aforesaid discussion, the learned Single Judge proceeded to refer to the Division Bench judgment of the Calcutta High Court in CRM(DB) No. 3590 of 2022 dated 1st December, 2022 wherein it was held that once the offences under UAPA are added to a case, the Magistrate is denuded of the power to remand in terms of Section 167 CrPC (as amended in UAPA) beyond a period of 30 days. Observing so, the learned Single Judge proceeded to hold that the order dated 7th April, 2022 passed by the learned Chief Judge, City Sessions Court, Calcutta and all subsequent orders passed by the learned Chief Metropolitan Magistrate were illegal and inoperative and hence the same were quashed.

22. The frontal issue which falls for our consideration is as to whether the Chief Judge, City Sessions Court, Calcutta had the jurisdiction to pass the order dated 7th April, 2022.

23. We would like to refer to sub-section (1) and sub-section (3) of Section 22 of the NIA Act which is germane to the controversy and is being reproduced hereinbelow:-

    "22. Power of State Government to designate Court of Session as Special Courts-

    (1) The State Government may [designate one or more Courts of Session as] Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

    (2) ….

    (3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is [designated] by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

    (4) …."

24. A bare perusal of sub-section (3) of Section 22 of NIA Act would make it clear that until a Special Court is constituted by the State Government under sub-Section (1) of Section 22, in case of registration of any offence punishable under UAPA, the Court of Sessions of the division, in which the offence has been committed, would have the jurisdiction as conferred by the Act on a Special Court and *a fortiori*, it would have all the powers to follow the procedure provided under Chapter IV of the NIA Act.

25. Admittedly, the present case involves investigation by the State police, and therefore, the provisions of Section 22 would be applicable insofar as the issue of jurisdiction of the Court to try the offences is concerned.

26. Learned counsel for the respondent relied upon Gazette Notification dated 29th April, 2011 in order to canvass that the Special Court had already been constituted for trial of UAPA offences within the State of West Bengal.

27. A bare perusal of the said notification would make it clear that the Special Court was constituted by the "Central Government" in exercise of the power conferred by sub-section (1) of Section 11 of the NIA Act.

28. The State Government has been given exclusive power delegated by virtue of Section 22(1) of the Act (reproduced *supra*) to constitute one or more Special Courts for trial of offences under any or all the enactments specified in the Schedule.

29. It is not in dispute that the State of West Bengal has so far not exercised the power conferred upon it by Section 22 of the NIA Act for constituting a Special Court for trial of offences set out in the Schedule to the NIA Act and hence, the Sessions Court within whose jurisdiction, the offence took place which would be the Chief Judge cum City Sessions Court in the case at hand, had the power and jurisdiction to deal with the case by virtue of the sub-section (3) of Section 22 of the NIA Act.

30. Hence, the order dated 7th April, 2022, whereby the learned Chief Judge cum City Sessions Court permitted the addition of the offences under UAPA to the case does not suffer from any illegality or infirmity.

31. Now, coming to the second argument advanced by learned counsel representing the parties.

32. Section 43D of UAPA provides a modified scheme for the application of Section 167 CrPC which reads as below:-

> "**43-D. Modified application of certain provisions of the Code**.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (*c*) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.
>
> (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—
>
> (a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be *inserted*, namely:—

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:
>
> Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
>
> (6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
>
> (7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

33. Under the proviso to Section 43D(2), the Court has been given the power to extend and authorise detention of the accused beyond a period of 90 days as provided under Section 167(2) CrPC.

34. Section 2(1)(d) of UAPA provides the definition of 'Court' under the Act and it reads as below:-

> "**2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
>
> > (*d*) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a Special Court constituted under Section 11 or under [Section 22] of the National Investigation Agency Act, 2008."

35. A plain reading of the provision would clearly indicate that the same admits to the jurisdiction of a normal criminal Court and also includes a Special Court constituted under Section 11 or Section 22 of the NIA Act.

36. Hence, the Chief Judge cum City Sessions Court had the jurisdiction to pass the order dated 7th April, 2022. In view of the definition of the 'Court' provided under Section 2(1)(d) of UAPA, the jurisdictional Magistrate would also be clothed with the jurisdiction to deal with the remand of the accused albeit for a period of 90 days only because an express order of the Sessions Court or the Special Court, as the case may be, authorising remand beyond such period would be required by virtue of Section 43D(2) of UAPA(reproduced *supra*).

37. Hence, to the extent the learned Chief Metropolitan Magistrate extended the remand of the accused beyond the period of 90 days, the proceedings were grossly illegal. Nonetheless, the fact remains that the charge sheet came to be filed beyond the period of 90 days and as a matter of fact, even beyond a period of 180 days, but the accused never claimed default bail on the ground that the charge sheet had not been filed within the extended period as per Section 43D of the UAPA. Hence, the only academic question left for the Court to examine in such circumstances would be the effect of evidence collected, if any, during this period of so called illegal remand, after 90 days had lapsed from the date of initial remand of the accused and the right of the accused to seek any other legal remedy against such illegal remand. Such issues would have to be raised in appropriate proceedings, i.e. before the trial court at the proper stage.

38. As a consequence of the above discussion, the impugned judgment dated 11th May, 2023 passed by learned Single Judge of the Calcutta High Court cannot be sustained and is hereby reversed and set aside.

39. The appeal is allowed accordingly.

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

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 655 : 2024 INSC 316

Mukhtar Zaidi
v.
The State of Uttar Pradesh & Anr.

(Criminal Appeal No. 2134 of 2024)

18 April 2024

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

Issue for Consideration

Whether CJM as also the High Court fell in error in taking cognizance u/s. 190(1)(b) Cr.P.C. inasmuch as the CJM had relied upon not only the Protest Petition which was supported by affidavit of the complainant but also on the affidavits of witnesses which were filed along with the Protest Petition to support the contents of the complaint.

Headnotes

Code of Criminal Procedure, 1973 – s.190(1)(b), s.200 – FIR lodged – Police report filed u/s. 173(2) Cr.P.C. – I.O. found that no evidence could be collected which could substantiate the allegations made in the FIR – Protest Petition filed along with affidavit – The CJM rejected the police report u/s. 173(2) Cr.P.C., however, proceeded to take cognizance for offences u/ ss. 147, 342, 323, 307, 506 of the IPC and u/s. 190 (1)(b) of the Cr.P.C. – Appellant contended that once the CJM was relying upon additional material in the form of evidence produced by the complainant along with the Protest Petition then the only option for the CJM was to treat it as a complaint u/s. 200 Cr.P.C. and proceed accordingly following the due procedure in Chapter XV of the Cr.P.C. – Correctness:

Held: The CJM had actually taken into consideration not only the Protest Petition but also the affidavit filed in support of the Protest Petition as well as the four affidavits of witnesses filed along with the Protest Petition – It was based on consideration of such affidavits that the CJM was of the view that the investigation was not a fair investigation and these affidavits made out a prima facie case for taking cognizance and summoning the accused – In the instant case as the Magistrate had already recorded his satisfaction that

* Author

it was a case worth taking cognizance and fit for summoning the accused, this Court is of the view that the Magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr.P.C. – Accordingly, impugned orders passed by the High Court and also the CJM are set aside. [Paras 7 and 11]

Case Law Cited

Vishnu Kumar Tiwari v. State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow & Anr. **[2019] 8 SCR 1114 : (2019) 8 SCC 27 – relied on.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

FIR; Report of police officer on completion of investigation; Protest Petition; Witness; Additional materials; Cognizance; Summoning of accused; Complaints to magistrate.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2134 of 2024

From the Judgment and Order dated 24.08.2021 of the High Court of Judicature at Allahabad in A482 No.15273 of 2021

Appearances for Parties

Vinod Prasad, Sr. Adv., Ajay Kumar Srivastava, Ms. Jyoti Tiwary, Rajesh Pandey, Advs. for the Appellant.

Shashank Shekhar Singh, Shantanu Singh, Shekhar Prit Jha, S.S. Haider, Ms. Preeti Kumari, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

Leave granted.

2. This appeal assails the correctness of the order dated 24.08.2021 passed by the Allahabad High Court dismissing the application under

Section 482 of the Code of Criminal Procedure, 1973[1] filed by the appellant wherein a prayer was made to quash the Summoning Order dated 08.03.2021 by the Chief Judicial Magistrate[2], Aligarh in Case No.129/2020 under Sections 147, 342, 323, 307, 506 of the Indian Penal Code, 1860[3] Police Station, Civil Lines, District Aligarh. There is an order dated 01.11.2021 passed by the High Court wherein the Case Number mentioned in the order dated 24.08.2021 was corrected as Case No.5727/2021.

3. Respondent no.2 lodged a First Information Report[4] bearing the aforesaid details whereupon the same was investigated and after investigation the police report under Section 173(2) Cr.P.C. was submitted according to which the Investigating Officer found that no evidence could be collected which could substantiate the allegations made in the FIR. The said report was submitted to the Court concerned whereupon notices were issued to the informant. The informant filed a Protest Petition along with affidavits to show that the investigation carried out by the Investigating Officer was not a fair investigation. He had completed the case diary sitting at the Police Station without actually recording the statements of the witnesses.

4. The CJM, by order dated 08.03.2021 rejected the police report under Section 173(2) Cr.P.C. and further proceeded to take cognizance for offences under Sections 147, 342, 323, 307, 506 of the IPC and under Section 190 (1) (b) of the Cr.P.C. and also directed that the matter would continue as a State case. Accordingly, it summoned the accused, fixed 30th April, 2021. This order of cognizance and summoning the present appellant was assailed before the High Court by way of a petition under Section 482 Cr.P.C. registered as Application u/s.482 No.15273 of 2021. The said application has sine been dismissed by the High Court giving rise to the present appeal.

5. Shri Vinod Prasad, learned senior counsel appearing for the appellant submitted that the CJM as also the High Court fell in error in taking cognizance under Section 190(1)(b) Cr.P.C. inasmuch as the CJM had relied upon not only the Protest Petition which was supported

1 Cr.P.C.

2 CJM

3 IPC

4 FIR

by affidavit of the complainant but also on the affidavits of witnesses which were filed along with the Protest Petition to support the contents of the complaint. The submission was that once the CJM was relying upon additional material in the form of evidence produced by the complainant along with the Protest Petition then the only option for the CJM was to treat it as a complaint under Section 200 Cr.P.C. and proceed accordingly. The said case could not have been continued as a State case and should have been treated as a private complaint. It was also submitted that it was open for the CJM to have rejected the police report submitted under Section 173(2) Cr.P.C. for closure and relying upon the material in the case diary, (in effect, the material collected during investigation) could have taken cognizance but once additional evidence was being relied upon which had been filed along with the Protest Petition then the only option open was to treat it as a private complaint and after following the due procedure in Chapter XV of the Cr.P.C. proceeded to take cognizance under Section 190(1)(a) Cr.P.C.

6. On the other hand, the submission advanced by the learned counsel for the State as also the Complainant – respondent no.2 was that the CJM did not take into consideration any additional evidence filed in the form of affidavits along with the Protest Petition and had only relied upon the material collected during the investigation as contained in the case diary and based upon the same the satisfaction recorded by the CJM to reject the police report and take cognizance was well within his domain and such cognizance would fall within Section 190(1)(b) Cr.P.C. It was thus submitted that the impugned order does not suffer from any infirmity.

7. We have carefully examined the order dated 24.08.2021 passed by the CJM taking cognizance and summoning the police and we find that the CJM had actually taken into consideration not only the Protest Petition but also the affidavit filed in support of the Protest Petition as well as the four affidavits of witnesses filed along with the Protest Petition. It was based on consideration of such affidavits that the CJM was of the view that the investigation was not a fair investigation and these affidavits made out a prima facie case for taking cognizance and summoning the accused.

8. Once we have held as above without going into many judgments of this Court on the point as to how the Magistrate would proceed under

Section 190 Cr.P.C. once the Investigating Officer had submitted a closure report under Section 173(2) Cr.P.C., we may briefly deal with the legal issue and refer to relevant paragraphs of a recent decision. In this connection, Section 190(1) (a) and (b) of Cr.P.C. is extracted hereunder:

> **190. Cognizance of offences by Magistrates.**
>
> (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section
>
> (2), may take cognizance of any offence –
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;…."

9. In the case of **Vishnu Kumar Tiwari vs. State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow & Anr.**,[5] Justice K.M.Joseph, speaking for the Bench laid down the legal position relying upon previous judgments of this Court. In the said case the facts were quite similar to that of the present case where affidavits were filed along with the Protest Petition. The net result is that the Magistrate in the present case ought to have treated the Protest Petition as a complaint and proceeded according to Chapter XV of the Cr.P.C.. The relevant paragraphs dealing with the above aspect in the case of **Vishnu Kumar Tiwari** (supra), being paragraphs 42 to 46 are reproduced hereunder:

> "**42.** In the facts of this case, having regard to the nature of the allegations contained in the Protest Petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the Protest Petition as a complaint. The fact that he may have jurisdiction in a case to treat the Protest Petition as a complaint, is a different matter. Undoubtedly,

5 (2019) 8 SCC 27

if he treats the Protest Petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the Protest Petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section 190(1)(*b*) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the Protest Petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the Protest Petition. In *Mahabir Prasad Agarwala* v. *State* [*Mahabir Prasad Agarwala* v. *State*, 1957 SCC OnLine Ori 5 : AIR 1958 Ori 11] , a learned Judge of the High Court of Orissa, took the view that a Protest Petition is in the nature of a complaint and should be examined in accordance with the provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in *Qasim* v. *State* [*Qasim* v. *State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows: (*Qasim case* [*Qasim* v. *State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , SCC OnLine All para 6)

"*6.* … In *Abhinandan Jha* [*Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] also what was observed was "it is not very clear as to whether the Magistrate has chosen to treat the Protest Petition as complaint". This observation would not mean that every Protest Petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. *A private complaint is to contain a complete list of witnesses to be examined*. A further examination of complainant is made under Section 200 CrPC. If the Magistrate did not treat the Protest Petition as a complaint, the Protest Petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. *In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The Protest Petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a Protest Petition the case is to become a complaint case*."

(emphasis supplied)

44. We may also notice that in *Veerappa* v. *Bhimareddappa* [*Veerappa* v. *Bhimareddappa*, 2001 SCC OnLine Kar 447 : 2002 Cri LJ 2150] , the High Court of Karnataka observed as follows: (SCC OnLine Kar para 9)

"*9.* From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 CrPC, but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(*a*) CrPC on a complaint. If it were to be so, the Protest Petition that he files shall have to satisfy the requirements of a complaint as defined

in Section 2(*d*) CrPC, and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(*a*) CrPC. Instead, if it is to be simply styled as a Protest Petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 CrPC."

45. "Complaint" is defined in Section 2(*d*) of the Code as follows:

"**2. (*d*)** "**complaint**" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

46. If a Protest Petition fulfils the requirements of a complaint, the Magistrate may treat the Protest Petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the Protest Petition. The prayer in the Protest Petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the Protest Petition in this case, is summing up of the objections of the second respondent against the final report."

10. From a perusal of the above opinion of this Court, it is also reflected that the Magistrate also had the liberty to reject the Protest Petition along with all other material which may have been filed in support of the same. In that event the Complainant would be at liberty to file a fresh complaint. The right of the Complainant to file a petition

under Section 200 Cr.P.C. is not taken away even if the Magistrate concerned does not direct that such a Protest Petition be treated as a complaint.

11. In the present case as the Magistrate had already recorded his satisfaction that it was a case worth taking cognizance and fit for summoning the accused, we are of the view that the Magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr.P.C. Accordingly, we allow this appeal, set aside the impugned orders passed by the High Court as also the CJM, Aligarh.

12. However, we leave it open for the Magistrate to treat the Protest Petition as a complaint and proceed in accordance to law as laid down under Chapter XV of the Cr.P.C. We make it clear that we have not made any comments on the merits of the matter and any observations made would not influence the CJM in taking an appropriate decision as required above.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 664 : 2024 INSC 327

Pernod Ricard India (P) Ltd.
v.
The State of Madhya Pradesh & Ors.

(Civil Appeal Nos. 5062-5099 of 2024)

19 April 2024

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

Issue for Consideration

Issue as regards the applicability of the relevant rule for imposition of penalty. Whether it was the rule that existed when the violation occurred during the license period of 2009-10 (rule 19 of Madhya Pradesh Foreign Liquor Rules, 1996, before the amendment) or the rule 19 that was substituted by an amendment in 2011 when proceedings for penalty were initiated.

Headnotes

Madhya Pradesh Foreign Liquor Rules, 1996 – r.19 – Penalties – Permissible limits of loss of liquor in transit due to leakage, evaporation, wastage etc. – During the relevant license period of 2009-2010 when the violation occurred, r.19 provided that if permissible limits of loss of liquor exceeded, imposition of penalty was to be about four times the maximum duty payable on foreign liquor – However, no action was initiated against the appellant during the relevant license period– r.19 was substituted by an amendment in 2011 reducing penalty to an amount not exceeding the duty payable on foreign liquor – Demand notice issued in 2011 – Payment of penalty, if to be as per the repealed r.19 or the substituted r.19:

Held: Penalty to be imposed on the appellants will be on the basis of r.19 as substituted on 29.03.2011 – A repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution, subject to specific statutory prescription – The operation of a subordinate legislation is determined by the empowerment of the parent act – The legislative authorization enabling the executive to make rules prospectively or retrospectively is crucial – Without a statutory empowerment, subordinate legislation will always commence to operate only from the date of its issuance and at the same time, cease to exist from the date of its deletion or withdrawal – Even

* Author

Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.

s.63 of the M.P. Excise Act, 1915 does not provide continuation of a repealed provision to rights and liabilities accrued during its subsistence – Further, r.19 which was substituted on 29.03.2011 was not notified to operate from any other date by the Government – If the amendment by way of a substitution in 2011 was intended to reduce the quantum of penalty for better administration and regulation of foreign liquor, there is no justification to ignore the subject and context of the amendment and permit the State to recover the penalty as per the unamended Rule – Purpose of the amendment was to achieve a proper balance between crime and punishment or the offence and penalty – Classifying offenders into before or after the amendment for imposing higher and lower penalties does not serve any public interest – The substituted Rule alone will apply to pending proceedings – Impugned order of the Division Bench of the High Court set aside. [Paras 2.1, 13, 14, 17, 32, 35]

Administrative Law – Subordinate legislation – Operation of – Prospective/retrospective – Principles governing - Discussed.

Madhya Pradesh General Clauses Act, 1957 – s.10 – Effect of Repeal – M.P. Excise Act, 1915 – Madhya Pradesh Foreign Liquor Rules, 1996 – r.19 – General Clauses Act, 1897 – s.6 – Violation occurred during the license period of 2009-10 – r.19 substituted in 2011 imposed lesser penalty than the repealed r.19 if permissible limits of loss of liquor exceeded – Demand notice issued in 2011 – Payment of penalty, if to be as per the repealed r.19 or the substituted r.19 – Plea of the respondent that as s.10 states that where any Madhya Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; State of M.P. can continue to apply the repealed Rule for the transaction of 2009-2010 by virtue of specific provisions under the 1957 Act:

Held: s.10 of the MP General Clauses Act by itself would not make any difference as the Section is applicable only to enactments, i.e. when any M.P. Act repeals any enactment and not a subordinate legislation – Interpreting s.6, an identical provision of the General Clauses Act, 1897, this Court has consistently held that s.6 of the 1897 Act, has no application to subordinate legislation – Further, the subject of administration of liquor requires close monitoring and the amendment must be seen in this context of bringing about good governance and effective management – Seen in this context, the principle of s.10 of

1957 Act, relating continuation of a repealed provision to rights and liabilities that accrued during the subsistence of the Rule does not subserve the purpose and object of the amendment. [Paras 31, 32]

Administrative law – Subordinate legislation – Rule making and its enforcement – Madhya Pradesh Foreign Liquor Rules, 1996 – r.19:

Held: The process of identifying a crime and prescribing an appropriate punishment is a complex and delicate subject that the State has to handle while making rules and enforcing them – The gravity of the offence, its impact on society and human vulnerability are taken into account to provide the required measure of deterrence and reform – Day to day working of the Rules, reposing their effectiveness, ineffectiveness, deficiency of deterrence, disproportionate penalty having a chilling effect on genuine businesses, are some routine factors which require the executive to make necessary amendments to the rules – In this context, depending on the nature of offence, the proportionate penalty is required to be modulated from time to time – In the present case, the regulatory process required the Government to deal with the problem of diversion and unlawful sale of foreign liquor and also provide an appropriate penalty and punishment – In light of this, the felt need of the State to amend and substitute r.19 which provided a higher penalty at four times the duty, with a simple penalty not exceeding the duty payable can be appreciated. [Para 31]

Madhya Pradesh General Clauses Act, 1957 – s.31 – Application of Act to Ordinances and Regulations - *"unless there is anything repugnant in the subject and context"* – Madhya Pradesh Foreign Liquor Rules, 1996 – r.19 – By virtue of s.31, the provisions of the 1957 Act were made applicable to the construction of rules – By such application, the principle of a repeal of a provision not affecting any liability incurred thereunder was also extended to the operation of the subordinate legislations under the Act – Therefore, the respondent-State submitted that having incurred the liability of exceeding the prescribed limits of losses of liquor for the license period 2009-10, the liability is not affected by the subsequent substitution of r.19:

Held: Conscious of the big leap to extend the 1957 Act, for construction of subordinate legislations, s.31 took care to provide that it may be done only when it is not repugnant to the subject and context – If the amendment of r.19 by way of a substitution in 2011

Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.

intended to reduce the quantum of penalty for better administration and regulation of foreign liquor, there is no justification to ignore the subject and context of the amendment and permit the State to recover the penalty as per the unamended Rule. [Paras 23, 32]

Interpretation of Statutes – Interpretation statutes like the General Clauses Act, 1897 - Purpose:

Held: Are enactments intended to set standards in construction of statutes – The expression *construction* is of seminal importance as it is oriented towards enabling a seeker of the text of a statute to understand the true meaning of the words and their intendment – Apart from setting coherent and consistent methods of understanding enactments, the interpretation statutes also subserve the purpose of reducing prolixity of legislations – Therefore, the standard principles formulated in the interpretation statutes must be read into any and every enactment falling for consideration – Interpretation statutes or definitions in interpretation clauses are only internal aids of construction of a statute – Subordinate legislation, by its very nature, rests upon the executive's understanding of the primary legislation – When a Court is of the opinion that such an understanding is not in consonance with the statute, it sets it aside for being ultra-vires to the primary statute. [Paras 24, 27, 28]

Madhya Pradesh Foreign Liquor Rules, 1996 – r.19 – Retroactive operation – Substituted Rule imposed lesser penalty than the repealed rule if permissible limits of loss of liquor exceeded – Plea of the respondent-State that the substituted Rule cannot be given retrospective effect:

Held: Submission rejected – It is wrong to assume that the substituted Rule is given retrospective effect if its benefits are made available to pending proceedings or to those that have commenced after the substitution – r.19 which was substituted on 29.03.2011 was made applicable to proceedings that commenced with the issuance of the demand notice in November, 2011 – The Rule operates retroactively and thus saves it from arbitrarily classifying the offenders into two categories with no purpose to subserve. [Para 33]

Madhya Pradesh Foreign Liquor Rules, 1996 – r.19 – Constitution of India – Article 20(1) – Substituted Rule imposed lesser penalty than the repealed rule if permissible limits of loss of liquor exceeded – Bar of Article 20(1) imposing a penalty greater than the one in force at the time of the commission of the offence, if applicable:

Held: No – The substituted penalty only mollifies the rigour of the law by reducing the penalty from four times the duty to value of the duty – Therefore, the bar of Article 20(1) of imposing a penalty greater than the one in force at the time of the commission of the offence has no application – Single Judge was of the view that the amendment by way of substitution had the effect of repealing the law which existed as on the date of repeal – Division Bench on the other hand, held that levy of penalty was substantive law, and as such, it cannot operate retrospectively – Reasoning of both, rejected. [Para 35]

Case Law Cited

Pushpa Devi v. Milkhi Ram [1990] 1 SCR 278 **: (1990) 2 SCC 134;** *Vanguard Fire and General Insurance Co. Ltd. v. Fraser and Ross* [1960] 3 SCR 857 **– relied on.**

State of Rajasthan v. Mangilal Pindwal [1996] Supp. 3 SCR 98 **: (1996) 5 SCC 60;** *West U.P. Sugar Mills Association v. State of U.P.* [2002] 1 SCR 897 **: (2002) 2 SCC 645;** *Zile Singh, Government of India v. Indian Tobacco Association* [2005] Supp. 2 SCR 859 **: (2005) 7 SCC 396;** *Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.* [1969] 3 SCR 40 **: (1969) 1 SCC 255;** *Zile Singh v. State of Haryana* [2004] Supp. 5 SCR 272 **: (2004) 8 SCC 1;** *Gottumukkala Venkata Krishamraju v. Union of India* [2018] 11 SCR 39 **: (2019) 17 SCC 590;** *Rayala Corp. v. Director of Enforcement* [1970] 1 SCR 639 **: (1969) 2 SCC 412;** *Kolhapur Canesugar Works Ltd. v. Union of India* [2000] 1 SCR 518 **: (2000) 2 SCC 536;** *Keshavji Ravji & Co. v. Commissioner of Income Tax* [1990] 1 SCR 243 **: (1990) 2 SCC 231;** *Dr. Major Meeta Sahai v. State of Bihar* [2019] 15 SCR 273 **: (2019) 20 SCC 17;** *Rattan Lal v. State of Punjab* [1964] 7 SCR 676 **: 1964 SCC OnLine SC 40;** *Basheer v. State of Kerala* [2004] 2 SCR 224 **: (2004) 3 SCC 609;** *Nemi Chand v. State of Rajasthan* **(2018) 17 SCC 448;** *Trilok Chand v. State of Himachal Pradesh* **(2020) 10 SCC 763;** *M/s. A.K. Sarkar & Co. & Anr. v. The State of West Bengal & Ors.* [2024] 3 SCR 356 **: (2024) SCC OnLine SC 248 – referred to.**

Books and Periodicals Cited

Halsbury's Laws, (5th edn, 2018), vol 96, para 694

Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.

List of Acts

Madhya Pradesh Foreign Liquor Rules, 1996; M.P. Excise Act, 1915; Madhya Pradesh General Clauses Act, 1957; General Clauses Act, 1897; Constitution of India.

List of Keywords

Loss of liquor; Foreign liquor; Penalty; Imposition of penalty; Quantum of penalty reduced; Lesser penalty; Substitution by an amendment; Repealed rule; Substituted rule; Subordinate legislation; Prospective/retrospective/retroactive; Appropriate punishment; Balance between crime and punishment/offence and penalty; Interpretation statutes; Construction of statutes; Definitions in interpretation clauses; Internal aids of construction.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5062-5099 of 2024

From the Judgment and Order dated 29.06.2017 of the High Court of M.P. at Gwalior in WA Nos.42, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32, 31, 30, 29, 28, 27, 26, 25, 24, 23, 22, 21, 20, 19, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7, 6 and 100 of 2017 and 425 of 2016

Appearances for Parties

Pratap Venugopal, Sr. Adv., Ms. Surekha Raman, Amarjit Singh Bedi, Abhishek Anand, Ms. Unnimaya S, Shreyash Kumar, Advs. for the Appellant.

Saurabh Mishra, A.A.G., Sunny Choudhary, Ajay Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave Granted.

2. The short question for our consideration is the applicability of the relevant rule for imposition of penalty; whether it is the rule that existed when the violation occurred during the license period of 2009-10 or the rule that was substituted in 2011 when proceedings for

penalty were initiated. As the substituted rule reduced the quantum of penalty, the appellant insists on its application but the statutory authorities as well as the Division Bench of the High Court rejected his case and imposed higher penalty under the old rule.

2.1 For the reasons to follow, we have accepted the contention of the appellant and, in allowing the appeal, determined that the purpose of the amendment is to achieve a proper balance between crime and punishment or the offence and penalty. In light of this, and recognizing that classifying offenders into before or after the amendment for imposing higher and lower penalties does not serve any public interest, we have directed that the substituted Rule alone will apply to pending proceedings.

3. **Facts:-** The appellant is a sub-licensee under the M.P. Excise Act, 1915[1] for manufacture, import and sale of Foreign Liquor, regulated under the Madhya Pradesh Foreign Liquor Rules, 1996[2].

3.1 Sub-licensees importing Foreign Liquor are granted transit permits in which the origin, quality, quantity and point of delivery of the imported liquor are recorded. At the point of destination, the consignment is verified for quality and quantity, and a certificate under Rule 13 is granted. Rule 16 prescribes the permissible limits of loss of liquor in transit due to leakage, evaporation, wastage etc. The purpose and object of this Rule is to prevent illegal diversion of liquor for unlawful sale and also to prevent evasion of excise duty. Relevant portion of Rule 16 is as follows:-

"Rule 16. ***Permissible limits of losses****.-*

(1) An allowance shall be made for the actual loss of spirit by leakage, evaporation etc., and of bottled foreign liquor by breakage caused by loading, unloading, handling etc. in transit, at the rate mentioned hereinafter. The total quantity of bottled foreign liquor transported or exported shall be the basis for computation of permissible losses.

1 Hereinafter referred to as "the Act".

2 Hereinafter referred to as "the 1996 Rules".

**Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.**

(2) Wastage allowances on the spirit transported to the premises of FL 9 or FL 9-A licensee shall be the same as given in sub-rule (4) of Rule 6 of the Distillery Rules, 1995.

(3) Maximum wastage allowance for all exports of bottled foreign liquor shall be 0.25% irrespective of distance.

(4) Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licensee and the purchasing licensee belong to the same district. It shall be 0.25% if they belong to different districts.

(5) If wastages/losses during the export or transport of bottled foreign liquor exceed the permissible limit prescribed in sub-rule (3) or (4), the prescribed duty on such excess wastage of bottled foreign liquor shall be recovered from the licensee."

3.2 If the permissible limits of loss of liquor are exceeded, the 1996 Rules prescribe imposition of penalty. Rule 19 providing for penalty that could be imposed during the relevant license period of 2009-2010 was about four times the maximum duty payable on foreign liquor. The relevant portion of Rule 19 is as follows: -

*"Rule 19. **Penalties**[3]. –*

(1) Without prejudice to the provisions of the Act, or condition No. 4 of license in Form F.L. 1, condition No. 7 of license in Form F.L 2, condition No. 4 of license in Form F.L 3, the Excise Commissioner or the Collector may impose a penalty not exceeding Rs. 50,000 for contravention of any of these rules or the provisions of the Act or any other rules made under the Act or the order issued by the Excise Commissioner.

(2) On all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L. 9 or FL 9-A,

3 Hereinafter "the old Rule".

F.L. 10-A or F.L. 10-B licensee shall be liable to pay penalty at a rate exceeding three times but not exceeding four times the maximum duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorized by him:

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorized officer that such excess deficiency or loss was due to some unavoidable cause, like fire or accident and its first information report was lodged in Police Station, he may waive the penalty imposable under this sub-rule.

(3) The Excise Commissioner or the Collector may suspend or cancel the license under Section 31 of the Act upon a contravention of any of these rules or provisions of the Act, or any other rules made under the Act, or the orders issued by the Excise Commissioner."

4. Facts reveal that no action was initiated during the license year of 2009-2010.

5. On 29.03.2011, Rule 19 was substituted by an amendment. The relevant portion of substituted provision is as follows:

"Rule 19. ***Penalties***[4]

(1) …

(2) On all deficiencies in excess of the limits allowed under rule 16 and rule 17, the F.L.-9, F.L-9-A, F.L.-10-B Licensee shall be liable to pay penalty ***at a rate not exceeding the duty payable on foreign liquor at that time****, as may be imposed by the Excise Commissioner or any officer authorized by him:*

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorized officer that such excess deficiency or loss was due to some unavoidable causes like fire or accident and its First Information Report was lodged in concerned Police

4 Hereinafter, "the substituted Rule".

Station, he may waive the penalty imposable under this sub-rule."

(emphasis supplied)

6. As is evident, the above referred substituted Rule 19 reduces penalty from *four times the maximum duty payable* to an amount *not exceeding the duty payable* on foreign liquor.

7. Eight months after the amendment, a demand notice dated 22.11.2011 was issued directing payment of penalty for exceeding the permissible limits during the license year 2009-2010. The notice demanded penalty of four times the duty as per the old Rule 19. The appellant replied, *inter alia* contending that penalty, if any, can only be under the substituted Rule 19 as the old rule stood repealed, and in fact, the demand is raised after the substituted Rule came into force.

8. The Deputy Commissioner[5] rejected the objections raised by the appellant and confirmed the demand for payment of penalty at four times the duty payable. The Deputy Commissioner's order was upheld by the Excise Commissioner[6], and thereafter by the Revenue Board Gwalior[7].

9. Questioning the decisions of the statutory authorities, the appellant filed a writ petition before the High Court which was heard and disposed of with 40 other petitions raising a similar issue. The Single Judge of the High Court was of the view that the new Rule was introduced by way of a substitution and following the principles in *State of Rajasthan* v. *Mangilal Pindwal*[8], *West U.P. Sugar Mills Association* v. *State of U.P.*[9], *Zile Singh, Government of India* v. *Indian Tobacco Association*[10], he held that the old Rule stood repealed from the statute book and only the substituted Rule applies to all pending and future proceedings. He, therefore, set aside the orders of the statutory authorities and remanded the matter back to them for determining the penalty as per the substituted Rule.

5 By order dated 18.04.2012

6 By order dated 02.05.2013

7 By order dated 10.12.2013

8 [1996] Supp. 3 SCR 98 : (1996) 5 SCC 60

9 [2002] 1 SCR 897 : (2002) 2 SCC 645

10 [2005] Supp. 2 SCR 859 : (2005) 7 SCC 396

10. The Division Bench of the High Court, by the order impugned herein, reversed the decision of the Single Judge on the simple ground that as the license was granted for one year, the Rule that existed during that license year must apply. The reason for not applying the substituted Rule according to the Division Bench is also that determination of penalty being substantive law, cannot operate retrospectively.

11. Questioning the legality and validity of the decision of the Division Bench of the High Court, the present appeals are filed. Mr. Pratap Venugopal, Ld. Senior Advocate, appearing on behalf of the appellant argued that the effect of substitution is to repeal the existing provision from the statute book in its entirety and to enforce the newly substituted provision. He would further submit that even for incidents which took place when the old Rule was in force, it is the substituted Rule that would be applicable, and therefore, the demand notice dated 22.11.2011 seeking payment of penalties under old Rule is illegal.

12. There is no difficulty in accepting the argument of Mr. Pratap Venugopal on principle. In *Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.*[11], this Court brought out the distinction between *supersession* of a rule and *substitution* of a rule, and held that the process of substitution consists of two steps – first, the old rule is repealed, and next, a new rule is brought into existence in its place:

> *"**8.** On that analogy, it was argued that, if we hold that the Prohibition Order of 1950, was invalid, the previous Prohibition Order of 1119, cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of Firm A.T.B. Mehtab Majid & Co., the new Rule 16 was substituted for the old Rule 16. The process of substitution consists of two steps. First, the old rule it made to cease to exist and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect, and it was for this reason that the court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived."*

11 [1969] 3 SCR 40 : (1969) 1 SCC 255

Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.

12.1 In *Zile Singh v. State of Haryana*[12], this Court referred to the legislative practice of an amendment by substitution and held that substitution would have the effect of amending the operation of law during the period in which it was in force.

*"**24.** The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.*

***25.** Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P[13]., State of Rajasthan v. Mangilal Pindwal[14] , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.[15] and A.L.V.R.S.T. Veerappa Chettiar v. I.S. Michael[16] . In West U.P. Sugar Mills Assn.[17] case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal[18] case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case[19] a three-Judge Bench of this Court emphasised the distinction between*

12 [2004] Supp. 5 SCR 272 : (2004) 8 SCC 1
13 [2002] 1 SCR 897 : (2002) 2 SCC 645
14 [1996] Supp. 3 SCR 98 : (1996) 5 SCC 60
15 [1969] 3 SCR 40 : (1969) 1 SCC 255
16 1963 Supp (2) SCR 244
17 [2002] 1 SCR 897 : (2002) 2 SCC 645
18 (1996) 5 SCC 60
19 (1969) 1 SCC 255

"supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

12.2 A slight variation is noticed in a recent decision in *Gottumukkala Venkata Krishamraju* v. *Union of India*,[20] where this Court held that:

*"**18.** Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016."*

13. The operation of repeal or substitution of a statutory provision is thus clear, a repealed provision will cease to operate from the date

20 [2018] 11 SCR 39 : (2019) 17 SCC 590

of repeal and the substituted provision will commence to operate from the date of its substitution. This principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, a substituted provision which operates prospectively, if it affects vested rights, subject to statutory prescriptions, can also operate retrospectively.

14. The principle governing subordinate legislation is slightly different in as much as the operation of a subordinate legislation is determined by the empowerment of the parent act. The legislative authorization enabling the executive to make rules prospectively or retrospectively is crucial. Without a statutory empowerment, subordinate legislation will always commence to operate only from the date of its issuance and at the same time, cease to exist from the date of its deletion or withdrawal. The reason for this distinction is in the supremacy of the Parliament and its control of executive action, being an important subject of administrative law.

15. We will now refer to the rule making power under the M.P. Excise Act, 1915. Section 62 of the Act empowers the State to make rules. Relevant portion of Section 62 is as follows: –

> *"**62. Power to make rules**.— (1) The State Government may make rules for the purpose of carrying out the provisions of this Act.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing provision, the State Government may make rules—*
>
> *(a) prescribing the powers and duties of Excise Officers;*
>
> *(b) to (n) …*
>
> *(3) The power conferred by this section of making rules is subject to the condition that the rules made under sub-section (2) (a), (b), (c), (e), (f), (i), (l) and (m) shall be made after previous publication :*
>
> *Provided that any such rules may be made without previous publication if the State Government considers that they should be brought into force at once."*

16. Section 62 does not enable the executive to continue the application of a repealed rule to events that have commenced during the subsistence of the Rule. However, Section 63 is of some importance. It enables the executive to operate the Rule from a date as may be specified in that behalf. Section 63 is reproduced as below:-

> *"**63. Publication of rules and notifications**.— All rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf."*

17. It is clear that even Section 63 of the Act does not provide continuation of a repealed provision to rights and liabilities accrued during its subsistence. At the most, Section 63 of the M.P. Excise Act, 1915, only enables the government to issue subordinate legislation with effect from such a date as may be specified. We may mention at this very stage that Rule 19 which has been substituted on 29.03.2011 has not been notified to operate from any other date by the Government.

18. Faced with this situation, Mr. Saurabh Mishra, learned A.A.G. for the State, came up with an attractive argument that the State of M.P. can continue to apply the repealed Rule for the transaction of 2009-2010 by virtue of specific provisions under the Madhya Pradesh General Clauses Act, 1957. He brought to our notice Section 10 of the Act which is as follows:-

> *"10. **Effect of Repeal**. Where any Madhya Pradesh Act repeals **any enactment** then, unless a different intention appears, the repeal shall not-*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
>
> *(c) affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or*
>
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*

**Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.**

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Madhya Pradesh Act had not been passed."

19. The above-referred Section of the MP General Clauses Act by itself would not make any difference as the Section is applicable only to enactments, i.e. when any M.P. Act repeals any *enactment* and not a subordinate legislation. Interpreting an identical provision of the General Clauses Act, 1897, i.e. Section 6, this Court has consistently held that Section 6 of the General Clauses Act, 1897, has no application to subordinate legislation.[21]

20. Mr. Saurabh Mishra then referred to Section 31 of Madhya Pradesh General Clauses Act, 1957, which is as under:

"31. ***Application of Act to Ordinances and Regulations****.-*

The provisions of this Act shall apply, unless there is anything repugnant in the subject or context-

(a) to any Ordinance or Regulation as they apply in relation to Madhya Pradesh Acts:

Provided that sub-section (1) of section 3 of this Act shall apply to any Ordinance or Regulation as if for the reference in the said sub-section (1) to the day of the first publication of the assent to an Act in the Official Gazette there were substituted a reference to the day of the first publication of the Ordinance or the Regulation, as the case may be, in that Gazette;

(b) to the construction of rules, regulations, bye-laws, orders, notifications, schemes or forms made or issued under a Madhya Pradesh Act."

21 *Rayala Corp. v. Director of Enforcement* [1970] 1 SCR 639 : (1969) 2 SCC 412; *Kolhapur Canesugar Works Ltd. v. Union of India* [2000] 1 SCR 518 : (2000) 2 SCC 536

21. By virtue of Section 31, the provisions of the Madhya Pradesh General Clauses Act, 1957 are made applicable *to the construction of rules*. By such application, the principle of a repeal of a provision not affecting any liability incurred thereunder is also extended to the operation of the subordinate legislations under the Act. It is, therefore, submitted that having incurred the liability of exceeding the prescribed limits of losses of liquor for the license period 2009-10, the liability is not affected by the subsequent substitution of Rule 19.

22. This submission was not raised before the Single Judge or the Division Bench. However, as law operates irrespective of the choices of parties or their counsels in raising and referring to it in a court of law, we have permitted him to argue this question of law. We will now examine the application of Section 31 and its operation.

23. Section 31 of the M.P. General Clauses Act, 1957, relating to extension of its provisions to subordinate legislation is thus, distinct and more ambitious than that of its big sister, the General Clauses Act, 1897, the Central Legislation which extends its provisions to Ordinances and Regulations which are in the nature of legislation.[22] Conscious of the big leap to extend the M.P. General Clauses Act, 1957, for construction of subordinate legislations, Section 31 takes care to provide that it may be done only when it is not repugnant to the subject and context. In its own words – *unless there is anything g repugnant in the subject and context*.

24. Interpretation statutes such as the General Clauses Act, 1897, are enactments intended to set standards in *construction* of statutes. The expression construction is of seminal importance as it is oriented towards enabling a seeker of the text of a statute to understand the true meaning of the words and their intendment. Apart from setting coherent and consistent methods of understanding enactments, the interpretation statutes also subserve the purpose of reducing prolixity of legislations. The standard principles formulated in the interpretation statutes must, therefore, be read into any and every enactment falling for consideration.

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22 Thus, this Court has held in a number of cases that the General Clauses Act, 1897 is only applicable to statutes.

Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.

25. In *Pushpa Devi* v. *Milkhi Ram*[23] while explaining the purpose and object of prefacing a definition or an interpretation with the phrase- "unless there is anything repugnant in the subject or context"- this court held :-

> "***19.*** *The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature. Reference may be made to the observations of Wanchoo, J. in Vanguard Fire and General Insurance Co. Ltd. v. M/s Fraser and Ross [(1960) 3 SCR 857, 863: AIR 1960 SC 971: (1960) 30 Com Cas 13] where the learned Judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context…*
>
> ***20.*** *Great artistry on the bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in Seaford Court Estate Ltd. v. Asher [(1949) 2 KB 481, 498]."*

26. In *Vanguard Fire and General Insurance Co. Ltd.* v. *Fraser and Ross*[24] this Court held that:

23 [1990] 1 SCR 278 : (1990) 2 SCC 134

24 [1960] 3 SCR 857 : (1960) 3 SCR 857

> *"6. …That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word 'insurer' in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances…"*

27. In the ultimate analysis, interpretation statutes or definitions in interpretation clauses are only internal aids of construction of a statute. Who do they aid? Interpretation is the exclusive domain of the Court.[25] A Constitutional Court is tasked with the sacred duty of interpreting the Constitution, Acts of Parliament or States, subordinate legislations, regulations, instructions and even to practices having force of law. Whichever or wherever the instrument, interpretation is the exclusive province of the Court.[26] The principle is aptly enunciated as:

> *"The Court has the function of authoritatively construing legislation, that is, determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the Court, and a meaning found by any other person, for example an authorising agency, an investigating agency, an executing agency, a prosecuting agency, or even the legislature itself, except when intending to declare or amend the law, is always subject to the determination of the court.*

25 *Keshavji Ravji & Co.* v. *Commissioner of Income Tax*, [1990] 1 SCR 243 : (1990) 2 SCC 231

26 *Dr. Major Meeta Sahai v. State of Bihar* [2019] 15 SCR 273 : (2019) 20 SCC 17

It is usually said that the making of law, as opposed to its interpretation, is a matter for the legislature, and not for the courts, but, in so far as that legislature does not convey its intention clearly, expressly and completely, it is taken to require the court to spell out that intention where necessary. This may be done either by finding and declaring implications in the words used by the legislator, or by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation. Whichever course is adopted, in accordance with the doctrine of precedent the court's operation influences the future legal meaning of the enactment by producing what may be called sub-rules, which are implied or expressed in the court's judgment."[27]

28. Subordinate legislation, by its very nature, rests upon the executive's understanding of the primary legislation. When a Court is of the opinion that such an understanding is not in consonance with the statute, it sets it aside for being *ultra-vires* to the primary statute.

29. We will now examine if there is anything repugnant to the subject or context to disapply the mandate of Section 31 of M.P. General Clauses Act, 1957, to the construction of the 1996 Rules. If the subject and context guide us in coming to that conclusion, we will not extend the effect of repeal in Section 10 of the MP General Clauses Act, 1957 to the repealed Rule 19. On the other hand, if the subject and context have no bearing on the construction of the Rule, then we will give effect to Section 10 and apply the repealed Rule to the liability incurred by the appellant during the license year 2009-10 and allow the imposition of four times the duty as penalty.

30. The 1996 Rules regulate the grant of license for manufacture and bottling of foreign liquor, procurement of spirit, storage, quality and control, sale, export, verification etc. Rule 19 provides for penalties for contravention of any of the Rules or provision of the Act. There are different penalties for violation of different rules.

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27 *Halsbury's Laws*, (5th edn, 2018), vol 96, para 694

31. The regulatory process requires the Government to deal with the problem of diversion and unlawful sale of foreign liquor and also provide an appropriate penalty and punishment. The process of identifying a crime and prescribing an appropriate punishment is a complex and delicate subject that the State has to handle while making rules and enforcing them. The gravity of the offence, its impact on society and human vulnerability are taken into account to provide the required measure of deterrence and reform. Day to day working of the Rules, reposing their effectiveness, ineffectiveness, deficiency of deterrence, disproportionate penalty having a chilling effect on genuine businesses, are some routine factors which require the executive to make necessary amendments to the rules. In this context, depending on the nature of offence, the proportionate penalty is required to be modulated from time to time. In light of this, we can appreciate that the felt need of the State to amend and substitute Rule 19 which provided a higher penalty at four times the duty, with a simple penalty not exceeding the duty payable.

32. If the amendment by way of a substitution in 2011 is intended to reduce the quantum of penalty for better administration and regulation of foreign liquor, there is no justification to ignore the subject and context of the amendment and permit the State to recover the penalty as per the unamended Rule. The subject of administration of liquor requires close monitoring and the amendment must be seen in this context of bringing about good governance and effective management. Seen in this context, the principle of Section 10 of MP General Clauses Act, 1957, relating continuation of a repealed provision to rights and liabilities that accrued during the subsistence of the Rule does not subserve the purpose and object of the amendment.

33. It is also submitted on behalf of the State that the substituted Rule cannot be given retrospective effect. We are not in agreement with this submission either. It is wrong to assume that the substituted Rule is given retrospective effect if its benefits are made available to pending proceedings or to those that have commenced after the substitution. Rule 19 which was substituted on 29.03.2011 is made applicable to proceedings that have commenced with the issuance of the demand notice in November, 2011. The Rule operates retroactively and thus saves it from arbitrarily classifying the offenders into two categories with no purpose to subserve.

**Pernod Ricard India (P) Ltd. v.
The State of Madhya Pradesh & Ors.**

34. The single Judge as well as the Division Bench have adopted two different approaches and we have not agreed with either of them. The single Judge was of the view that the amendment by way of substitution has the effect of repealing the law which existed as on the date of repeal. We have already explained the limitation in this approach. The Division Bench on the other hand, held that levy of penalty is substantive law, and as such, it cannot operate retrospectively. This again is a wrong approach. The substituted penalty only mollifies the rigour of the law by reducing the penalty from four times the duty to value of the duty. Therefore, the bar of Article 20(1)[28] of imposing a penalty greater than the one in force at the time of the commission of the offence has no application. While rejecting the reasoning of the single Judge as well as the Division Bench, we seek to underscore the importance of a simple and plain understanding of laws and its processes, keeping in mind the purpose and object for which they seek to govern and regulate us.

35. For the reasons stated above, we allow the appeals and set aside the judgment of the Division Bench of the High Court in Writ Appeals Nos. 425/2016, 6/2017, 7/2017, 8/2017, 9/2017, 10/2017, 11/2017, 12/2017, 13/2017, 14/2017, 15/2017, 16/2017, 17/2017, 19/2017, 20/2017, 21/2017, 22/2017, 23/2017, 24/2017, 25/2017, 26/2017, 27/2017, 28/2017, 29/2017, 30/2017, 31/2017, 32/2017, 33/2017, 34/2017, 35/2017, 36/2017, 37/2017, 38/2017, 39/2017, 40/2017, 41/2017, 42/2017 and 100/2017 dated 29.06.2017. We further hold that the penalty to be imposed on the appellants will be on the basis of Rule 19 as substituted on 29.03.2011. There shall be no order as to costs.

Headnotes prepared by: Divya Pandey

Result of the case: Appeals allowed.

28 *Rattan Lal v. State of Punjab* [1964] 7 SCR 676 : 1964 SCC OnLine SC 40**;** *Basheer v. State of Kerala*, [2004] 2 SCR 224 : (2004) 3 SCC 609**;** *Nemi Chand* v. *State of Rajasthan,* (2018) 17 SCC 448**;** *Trilok Chand* v. *State of Himachal Pradesh,* (2020) 10 SCC 763**;** *M/s. A.K. Sarkar & Co. & Anr. v. The State of West Bengal & Ors.* [2024] 3 SCR 356 : 2024 SCC OnLine SC 248

[2024] 4 S.C.R. 686 : 2024 INSC 323

Ramayan Singh
v.
State of Uttar Pradesh & Anr.

(Criminal Appeal No. 2168 of 2024)

19 April 2024

[Sanjay Karol and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the High Court appropriately exercised its discretion under Section 439 of the CrPC while granting bail to the accused persons.

Headnotes

Code of Criminal Procedure, 1973 – s. 439 – Discretion to grant bail ought not to be used arbitrarily, capriciously, and injudiciously – Appeal allowed – High Court ought not to have been granted bail on account of (i) seriousness of the crime; (ii) conduct of accused persons; and (iii) overall impact of crime on the society.

Held: Accused persons charged under s. 147, 148, 149, 323, 504, 506, 427, 394, 411, 302 and 120-B, Indian Penal Code along with s. 7 of the Criminal Law Amendment Act 2013 – In relation to FIR lodged by Appellant stating that persons including Respondent No. 2 and a co-accused attacked him, his uncle (the deceased) and another person – Bail applications of both accused persons rejected by trial court – Appeals against trial court orders allowed – Bail granted by High Court – Appellant challenged correctness of High Court's orders – Appeal allowed – Grant of bail involves exercise of discretionary power which ought not to be used arbitrarily, capriciously; and injudiciously – Bail ought not to have been granted on account of (i) seriousness of the crime; (ii) conduct of accused person(s); and (iii) overall impact of the crime on society at large as the accused persons had overwhelming influence in the area. [Paras 15, 19]

Case Law Cited

Neeru Yadav v. State of U.P. **[2014] 12 SCR 453 : (2014) 16 SCC 508;** *Prasanta Kumar Sarkar v. Ashis Chatterjee* **[2010] 12 SCR 1165 : (2010) 14 SCC 496;** *Mahipal v. Rajesh Kumar* **[2019] 14 SCR 529 : (2020) 2 SCC 118 – relied on.**

* Author

Ramayan Singh v. State of Uttar Pradesh & Anr.

List of Acts

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

List of Keywords

Grant of bail; Exercise of discretion under Section 439 CrPC; Parameters for granting bail.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2168 of 2024

From the Judgment and Order dated 24.04.2023 of the High Court of Judicature at Allahabad in CRMBA No. 11828 of 2023

With

Criminal Appeal No. 2169 of 2024

Appearances for Parties

Devvrat, Sanjay Kumar Yadav, Prithvi Pal, Manoj Jain, Advs. for the Appellant.

Sudhir Kumar Saxena, Sr. Adv., Lokesh Kumar Choudhary, Ms. Tulika Mukherjee, Ajay Singh, Ms. Sneh Suman, Beenu Sharma, Venkat Narayan, Subodh S. Patil, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. The present appeal i.e., arising out of SLP(Crl.) No 14988 of 2023, seeks to assail the correctness of a judgment of the Learned Single Judge of the High Court of Judicature at Allahabad (the "**High Court**") dated 24.04.2023 wherein, the High Court allowed Vivek Pal @ Vikki Pal's / Respondent No. 2's bail application under Section 439 of the Code of Criminal Procedure, 1973 ("**CrPC**") and accordingly enlarged Respondent No. 2 on bail subject to certain conditions contained therein (the "**Impugned Order**").

3. By an order dated 31.10.2023, a co-accused i.e., Punit Pal was enlarged on bail by a coordinate bench of the High Court. The appeal

filed by the Appellant against that order has been tagged with the present appeal *vide* an order dated 02.01.2024 in SLP (Crl) No. 355 of 2024. Moreover, as the facts and the questions involved in the present appeal(s) are similar, they have been heard together and are being disposed of by this common judgment.

4. The facts of the case reveal that a First Information Report (the "**FIR**") was lodged by the Appellant i.e., the Original Complainant, on 03.01.2022 stating that on 02.01.2022 at around 3:30 PM, the Appellant along with his uncle i.e., Jitendra Singh (the "**Deceased**") and his driver i.e., Rahul were returning from *Bankati Bazar* when their vehicle was stopped by the accused person(s) including *inter alia* (i) Respondent No. 2; and (ii) Punit Pal. The accused persons verbally abused the Deceased and proceeded to shatter the windows of the vehicle with iron rods. Subsequently they dragged the Deceased out of the vehicle – and physically assaulted the Deceased with iron rods, hockey sticks and bats with an intention to kill him. It was also alleged that although the Appellant and Rahul i.e., the Driver attempted to intervene, they were injured by the accused persons. The accused persons snatched the mobile phones of the Deceased and the driver; as well as a gold chain belonging to the Deceased and ran away from the spot of the incident. The Deceased was initially rushed to the Primary Health Centre, Bankati, however, due to the serious nature of the injuries he was referred to the District Hospital, Basti and thereafter to Sahara Hospital in Lucknow where he eventually succumbed to his injuries on 10.02.2022.

5. On the same day i.e., 10.02.2022, (i) an inquest report of the person of the Deceased was prepared wherein injuries were recorded on the head, hand and knee; and (ii) a post-mortem was conducted which revealed 4 (four) major *ante mortem* head injuries on the person of the Deceased. Pertinently, the cause of death was identified as coma due to *ante mortem* head injuries.

6. Notably, Respondent No. 2 came to be apprehended in relation to the FIR on 05.01.2022 and the murder weapon i.e., a bat used in the assault of the Deceased was also recovered at his instance. On the other hand, Punit Pal came to be apprehended on 07.01.2022. A chargesheet came to be filed in relation to the FIR on 14.03.2022 under Section(s) 147, 148, 149, 323, 504, 506, 427, 394, 411, 302 and 120B of the Indian Penal Code, 1872 ("**IPC**") read with Section 7 of the Criminal Law Amendment Act, 2013 (the "**Act**") (the

"**Chargesheet**"). Pursuant to the filing of the Chargesheet, committal proceedings ensued and thereafter charges were framed against the accused person(s) *vide* an order dated 19.04.2023.

7. Respondent No. 2 preferred an application seeking the grant of bail in relation to the proceeding(s) emanating from the FIR before the Learned Sessions Judge, Basti (the "**Trial Cour**t"). *Vide* an order dated 15.03.2022, the aforesaid bail application came to be rejected by the Trial Court. Thereafter, Respondent No. 2 filed an application seeking the grant of bail which came to be allowed by the High Court *vide* the Impugned Order.

8. On the other hand, Punit Pal preferred an application seeking the grant of bail in relation to the proceeding(s) emanating from the FIR before the Trial Cour. *Vide* an order dated 29.03.2022, the aforesaid bail application came to be rejected by the Trial Court. Thereafter, Punit Pal filed an application seeking the grant of bail which came to be allowed by the High Court *vide* an order dated 31.10.2023.

9. The Appellant herein i.e., the Original Complainant filed the present appeals assailing the correctness of the order(s) passed by the High Court enlarging (i) Respondent No. 2; and (ii) Punit Pal on bail in relation to the FIR.

10. The learned Counsel appearing on behalf of the Appellant, urged the following:

    (a) The High Court ought not to have exercised its jurisdiction to grant Respondent No. 2 and Punit Pal bail in light of the fact that (i) charges had been framed against the accused person(s); (ii) recovery of the weapon used in the assault of the Deceased has been effected from Respondent No. 2; (iii) well-reasoned order(s)had been passed by the Trial Court declining the grant of bail to Respondent No. 2; and Punit Pal;

    (b) That there is a real and probable threat qua the ability to influence witnesses in light of the overwhelming influence exercised in the area by the accused person(s) including *inter alia* Respondent No. 2 and Punit Pal i.e., after the incident all shops near the place of occurrence remained shut for a period of 10 (ten) days; and

    (c) That Respondent No. 2; and Punit Pal have misused their liberty i.e., an identified witness had previously sought police

protection from the Trial Court on account of threats having been extended to him during the pendency of the trial; and it was specifically contended that threats were extended to the Appellant himself by to Respondent No. 2; and Punit Pal.

11. The learned Counsel appearing on behalf of the Respondent State of Uttar Pradesh supported the stand of the Appellant. Moreover, it was brought to our attention that both Respondent No. 2; and Punit Pal were also being prosecuted under the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

12. On the other hand, Mr. Sudhir Kumar Saxena, learned Senior Counsel appearing on behalf of the Respondent No. 2; and Punit Pal has vehemently contended as under:

    (a) That Respondent No. 2; and Punit Pal have been cooperating with the trial, however, the Appellant has stalled proceedings before the Trial Court; and

    (b) That the allegation levelled against Respondent No. 2; and Punit Pal vis-à-vis extension of threats to the Appellant was wholly erroneous and is in fact, a part of a calculated effort to paint Respondent No. 2; and Punit Pal in bad light; and

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

14. The fulcrum of the dispute before this Court is whether the High Court appropriately exercised its discretion under Section 439 of the CrPC to grant Respondent No. 2; and Punit Pal bail in relation to the proceeding(s) emanating out of the FIR?

15. It is well settled that the grant of bail involves the exercise of a discretionary power which ought not to be used arbitrarily, capriciously; and injudiciously.[1] In the aforesaid prism we must assess the correctness of the order(s) of the High Court granting Respondent No. 2; and Punit Pal bail in relation to the proceeding(s) emanating out of the FIR.

16. This Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496, enunciated certain parameters on which the correctness of

1 ***Neeru Yadav v. State of U.P.*** [2014] 12 SCR 453 : (2014) 16 SCC 508

an order granting bail must be evaluated. The relevant paragraph(s) are reproduced as under:

> *"9. …It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*
>
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
>
> *(ii) nature and gravity of the accusation;*
>
> *(iii) severity of the punishment in the event of conviction;*
>
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
>
> *(v) character, behaviour, means, position and standing of the accused;*
>
> *(vi) likelihood of the offence being repeated;*
>
> *(vii) reasonable apprehension of the witnesses being influenced; and*
>
> *(viii) danger, of course, of justice being thwarted by grant of bail.*
>
> ***
>
> *10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal."*

17. Furthermore, this Court in ***Mahipal v. Rajesh Kumar***, (2020) 2 SCC 118, followed ***Prasanta Kumar Sarkar*** ***(Supra)*** and succinctly summarised the position qua interference by this Court *vis-à-vis* an order granting bail. The relevant paragraph is reproduced as under:

> *"14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."*

18. Turning to the issue at hand, we note that Respondent No. 2; and Punit Pal have been charged under *inter alia* Section(s) 147, 148, 149, 323, 504, 506, 427, 394, 411, 302 and 120B IPC on the basis of the materials on record including but not limited to the post-mortem report; and statements of witnesses. Furthermore, on 2 (two) occasions there have been allegations levelled against Respondent No. 2; and Punit Pal alleging *inter alia* that the accused persons have attempted to intimidate the Appellant i.e., the Original Complainant and another identified witnesses in an effort to de-rail the trial in the present case.

19. Accordingly, in our considered opinion, the High Court ought not to have granted Respondent No. 2; and Punit Pal bail in relation to the proceedings emanating from the FIR on account of (i) the

seriousness of the crime; (ii) the conduct of the accused person(s); and (iii) the overall impact of the crime on society at large i.e., the accused person(s) were involved in a broad day-light murder which led to the closure of a market for a prolonged period of 10 (ten) days due to their overwhelming influence in the area.

20. In the aforementioned context, the impugned orders dated 24.04.2023 and 31.10.2023 granting bail to accused Vivek Pal @ Vikki Pal and Punit Pal, respectively, cannot be sustained and are, accordingly, set aside.

21. The appeals are allowed in the aforesaid terms. The bail bond(s) of accused Vivek Pal @ Vikki Pal and Punit Pal shall stand cancelled. The aforenoted person(s) shall be taken into custody forthwith. A copy of this judgment shall be forwarded to the Trial Court and PS Lalganj, Basti, Uttar Pradesh for onward action and necessary compliance. The Trial Court is directed to conclude the trial expeditiously preferably within a period of one year from the date of receipt of copy of this judgment.

22. It is clarified that any observations made in this judgment shall not be treated as an expression of opinion on the merits of the case at trial.

Headnotes prepared by:
Gaurav Upadhyay, Hony. Associate Editor
(*Verified by:* Shibani Ghosh, Adv.)

Result of the case:
Appeals allowed.

[2024] 4 S.C.R. 694 : 2024 INSC 329

Rehan Ahmed (D) Thr. Lrs.
v.
Akhtar Un Nisa (D) Thr. Lrs.

(Civil Appeal No. 5218 of 2024)

22 April 2024

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

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court allowing the objections u/s. 47 CPC filed by the respondent no. 1, setting aside the order passed by the Executing Court and holding that the decree passed by the trial court in the suit was inexecutable and a nullity.

Headnotes

Code of Civil Procedure, 1908 – s. 47 – Questions to be determined by the Court executing decree – Objections u/s. 47 – Property originally owned by defendant No.1 – Execution of agreement to sell the property by the brother of defendant No.1-defendant No.2 and also the power of attorney of defendant No.1, for himself and for the principal defendant No.1 with the plaintiff – Pursuant thereto, the vendor not executing the sale deed – Suit for specific performance by the plaintiff against defendant no.1 and no.2 – During pendency, the parties entered into a compromise and the suit was decreed – Execution petition by the plaintiff – Objections by the defendant no. 1 – Objections dismissed and in the meantime the defendant no. 1 died – Thereafter, order dismissing the objections challenged by the son of defendant no. 2, and legal heir of defendant No. 1 claiming rights under a sale executed by defendant no 1, which was dismissed – Special Leave Petition thereagainst also dismissed – However, new round of objections u/s. 47 initiated by respondent no. 1-wife of defendant no. 2 – Dismissed by the executing court – In revision petition, the High Court set aside the order passed by the Executing Court and held that the decree passed by the trial court was inexecutable and a nullity – Correctness:

Held: High Court erred in setting aside the Executing Court's order and in declaring the trial court's decree void – High Court's

* Author

reasoning rests on the erroneous assumption that the property was jointly owned by defendants No. 1 and No. 2, and that the absence of defendant No. 2's signature on the compromise invalidated the decree – However, defendant No. 2 consistently acknowledged that he had no ownership rights over the property – Compromise, signed by defendant No. 1 and the plaintiff and later verified by defendant No. 2 through an application, substantiates that defendant No. 1 was the sole owner – These facts were upheld by the High Court and this Court in previous proceedings – Defendant no. 2 had limited rights of being in possession of the third floor of suit property – Due to the said reasons, the plaintiff and defendant no. 1 were the only necessary parties needed for the compromise – High Court also incorrectly held that the provisions of Ord. XXIII, r. 3 were not adhered to, whereas the trial court correctly recorded and verified the compromise, fulfilling the requirements of Ord. XXIII, r. 3 – Recording of the compromise and the consequent decree, although appearing procedurally delayed, adhered to the process required under CPC – Furthermore, the High Court overlooked the fact that legal heir of defendant No 2, had previously objected to the execution proceedings, which was dismissed – Subsequent appeals before the High Court, including a Special Leave Petition were also dismissed – Thus, similar objections by respondent No. 1, in her capacity as one of the legal heirs of defendant No. 2 would not be maintainable and would amount to abuse of process of law – Executing Court rightly rejected the objections u/s. 47 filed by the respondent no. 1 – Impugned judgment of the High Court is set aside and that of the executing court is restored – Ord. XXIII, r. 3.

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Objections; Execution of agreement to sell; Sale deed; Suit for specific performance; Compromise.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5218 of 2024

From the Judgment and Order dated 21.03.2014 of the High Court of Judicature for Rajasthan at Jaipur in SBCRP No. 95 of 2007

Appearances for Parties

Puneet Jain, Ms. Christi Jain, Ms. Pratibha Jain, Advs. for the Appellants.

Anuj Bhandari, Gaurav Jain, Rajat Gupta, Mrs. Disha Bhandari, Mrs. Anjali Doshi, Ms. Preetika Dwivedi, Abhisek Mohanty, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

Leave granted.

2. This appeal, by the Decree Holder, assails the correctness of the judgment and order dated 21.03.2014 passed by the Rajasthan High Court, Jaipur Bench at Jaipur in S.B. Civil Revision Petition No.95/2007, Smt. Akhtar Un Nisa vs. Rehan Ahmed, whereby the revision filed under Section 115 of the Code of Civil Procedure, 1908[1] challenging the order of the Executing Court dated 03.05.2007 rejecting the objections under Section 47 CPC, has been allowed. The order impugned therein passed by the Executing Court was set aside and it was held that the decree dated 09.05.1979 passed by the Trial Court in Suit No.13/72 was inexecutable and a nullity and accordingly, the objections under Section 47 CPC, were allowed.

3. The factual matrix giving rise to the present appeal is as follows:

3.1 The dispute relates to property being Municipal Nos.52-57, *Maniharon Ka Rasta*, Jaipur which was originally owned by Ghulam Mohiuddin (Defendant No.1). An agreement to Sell dated 04.10.1967 was executed for sale of the suit property by Saeeduddin – Defendant No.2 (brother of Defendant No.1) and also the power of attorney of Defendant No.1, for himself and for the principal Defendant No.1.

3.2 Pursuant to the aforesaid agreement to sell, as the vendor was not executing the sale deed, the appellant (plaintiff) instituted a Civil Suit for specific performance registered as Suit

1 CPC

No.13/72 impleading Ghulam Mohiuddin as Defendant no.1 and Saeeduddin as Defendant No.2. During the pendency of the Suit, the parties entered into a compromise dated 11.05.1978 and presented the same before the Trial Court, a copy of which is filed as Annexure P-4. The terms of the Compromise Deed are briefly set out below:

> "ANNEXURE P-4
>
> IN THE COURT OF ADDL. DIST. JUDGE, CLASS-1, JAIPUR CITY, JAIPUR
>
> IN THE MATTER OF:
>
> Rehan Ahmad S/o. Sh. Sultan Ahmad, aged about 22 years, Caste Muslim, R/o. Chaukadi Modikhana, Rasta, Maniharan, H. No. 57, Jaipur-3
>
> ... Plaintiff
>
> VERSUS
>
> 1. Gulam Mohiuddin Khan, aged about 58 years S/o. Sh. Badiuddin Khan, Caste Muslimn, R/o. Mohalla Kamnagran, Badayun (U.P)
>
> 2. Saiduddin Khan aged about 52 years S/o. Sh. Badiuddin Khan, Caste Muslim, R/o. House of Abdulramham Khan, Gali Aatishbazi Rampur (U.P)
>
> ...Defendants
>
> 3. Ahsan Ahmad S/o. Sh. Sultan Ahmad aged about 32 years, Caste Muslim, R/o. Chaukadi Modikhana, Rasta Maniharan, H.No. 57, Jaipur-3
>
> ...Pro forma Defendant
>
> Suit for specific performance of the contract regarding house and shop situated at Modikhana, Rasta Maniharan, Jaipur
> 000
>
> Most respectfully showeth:
>
> In the above civil suit, a compromise has been arrived at between the parties on under mentioned

conditions, therefore, the suit may be decreed as per the compromise.

1. That, plaintiff and defendant No.3 executed an agreement for sale with the real brother and general power of attorney of Def. No.2 named Saiduddin Khan on 4.10.1967 in writing in respect to houses and shops No. 52 to 57, situated at Circle No.1, Chaukadi Modikhana, Jaipur, whose full description is given under, for a sale consideration of Rs.40,000/- in his own capacity and in the capacity of general power of attorney of Def. No.1, which was not accepted earlier by the defendant No.1 and 2, but now the Def. No.1 admits that agreement for sale was executed on 4.10.1967 on behalf of Def. No.2 in his own capacity and on behalf and consent of Def. No.1.

2. That, Def. No.1 also admits that a sum of Rs. 10,000/- out of entire agreed sale consideration was received in respect to the disputed property on 4.10.1967 and a sum of Rs.1,000/- was received on 1.1.69 and Rs.500/- on 22.1.69 i.e. a total of Rs.11,500/- was received by def. No. 2 on behalf of Def No. 1 which is liable to be adjusted from the total consideration of the property, but the plaintiff and defendant No.3 have alleged to spent Rs.6,500/- in the repairing of house etc, which amount shall not be adjusted from the sale consideration because all these repairing and construction was done after the above agreement by the plaintiff and Def. No.3. besides this, the Def. No.1 has received Rs. 1500/- on 17.10.88, and Rs.1000/- on 24.10.77 and Rs.1000/- on 11.11.77 from the plaintiff towards the cost of this property.

3. That, the Def. No.1 shall get executed and registered sale-deed of the above described houses and shops in favor of plaintiff Rehan Ahmad till 1.7.1978 and shall receive remaining

sale consideration amount of Rs.25,000/ -. If the Def. No. 1 fails to execute sale deed in this period then the plaintiff Rehan Ahmad shall be entitled to get the sale-deed executed and registered in his favor through the Court. Entire cost of registry would be borne equally by the plaintiff Rehan Ahmad and Def. No.1 Gulam Mohiuddin. In this respect when the Def. No.1 will ask for half cost for this from the plaintiff Rehan Ahmed then the plaintiff Rehan Ahmad shall pay the same taking receipt from him and because of this the Def. No.1 shall not be entitled to get the period agreed for registry extended. The def. No.1 has received today the half cost of registry i.e. Rs.1,000/- from the plaintiff Rehan Ahmad. Complete responsibility to receive N.O.C. shall be of the Def. No.1.

4. That, Def. No.2 is residing in the third floor of disputed property which would be got vacated by defendant No.1 and the physical possession will be given to the plaintiff Rehan Ahmed prior to registration, and shall get the rent notes executed by the tenants who are presently occupying the disputed property in favour of Rehan Ahmed.

5. That, pro forma defendant No.3 has relinquished his entire right in respect to the disputed property in favor of plaintiff Rehan Ahmad on 28.6.1977 through a deed of Relinquishment, which was. ordered by the court on 28.09.1977. Therefore, pro forma defendant no.3 shall have no connection now with this sale.

6. That, the. def. No.2 Saiduddin Khan, himself has admitted that he did not have right to sell or to execute agreement for sale of the disputed property, but now, the defendant No.1, who is the real owner of this disputed property, admits this agreement, therefore, now there is no hindrance in passing decree.

7. That, cost of this suit shall be borne by the parties respectively.

DESCRIPTION OF PROPERTY

Pucca House comprising of three storeys and One chauk including entire internal houses of three storevs and five shops outside, out of which two shops are situated towards south of Sadar Darwaja and three shops are situated towards north of Sadar Darwaja along with staircase adjoining the shops towards the north on which Municipal No, written on the pole of House is 54/1 and Municipal Number of shops situated towards south are 52 and 53 and Municipal Number of shops situated towards north are 55, 56 and 57, Circle 1 and no number is assigned to the staircase i.e. entire property including house and shops having municipal number 52 to 57, Circle No.1 and boundaries of these houses and shops are as under:

In East:	Rasta Maniharan Government.
In west:	House of Sindhi in between which littered Government street is situated.
In north:	Temple of Digambar Jain
In south:	House and shops of Tirthdas Shyamiani.

Therefore, it is prayed that compromise be verified and decree be passed in accordance with the compromise.

Applicants

Rehan Ahmad, Plaintiff

Rehan (in English)

Gulam Mohiuddin Khan, Def. No.1

sd.Ghulam mohiuddin khan (in English)

Both Parties
Jaipur:
Date: 11.5.78”

4. In paragraph No.1 of the Compromise Deed, it is mentioned that Defendant No.1, although had earlier not accepted the Agreement to Sell, now admits that the Agreement to Sell dated 04.10.1967 was executed by Saeeduddin–Defendant No.2, not only in his own capacity but also on behalf of Defendant No.1 as Power of Attorney holder. Paragraph No.2 mentions the details of the amount received by the Defendant under the Agreement to Sell as advance until the time the compromise was arrived at. It would be relevant to mention that the total sale consideration was Rs.40,000/- out of which as per paragraph No.2 of the Compromise Deed, Rs.15,000/- had already been received by the Defendants. Paragraph No.3 mentions that the Defendant No.1 will get the Sale Deed executed and registered in favour of the Plaintiff till 01.07.1978 after receiving Rs.25,000/- of the remaining sale consideration. It, however, mentioned that if the Defendant No.1 does not execute the Sale Deed till 01.07.1978, the Plaintiff would be entitled to get the Sale Deed executed and registered in his favour through the Court. The cost of registration would be borne equally by the Plaintiff and Defendant No.1. It was further mentioned that Defendant No.1 had also received half of the cost of registration from the Plaintiff and furthermore, the responsibility to receive the NOC would be of Defendant No.1. Paragraph No.4 mentions that Saeeduddin–Defendant No.2 was residing on the third floor of the suit property which Defendant No.1-Ghulam Mohiuddin would get vacated and ensure that physical possession is delivered to the Plaintiff-Rehan Ahmed prior to registration. Further, the rent notes executed by the tenants who are presently occupying the suit property, would be executed by the tenants in favour of Rehan Ahmed. One Ahsan Ahmed has been impleaded as proforma defendant in respect of whom it was stated in paragraph No.5 of the Compromise Deed that he had relinquished his entire right to the property in favour of the Plaintiff–Rehan Ahmed through a Deed of Relinquishment dated 28.06.1977 which was accepted by the Court vide order dated 28.09.1977. In paragraph No.6 it was stated that Defendant No.2-Saeeduddin admitted that he did not have the right to sell or execute the Agreement to Sell but now Defendant No.1, who was the real owner of the suit property, admits this agreement. Therefore, there is no hindrance in passing the compromise decree. The property was also described in the Compromise Deed to be a *pacca* house comprising of three stories and one *chauk* including the entire internal houses of the three storeys and five shops

outside along with the staircase adjoining the shops. The house was numbered as 54/1 in the municipal records, whereas the five shops were numbered as 52, 53, 55, 56 and 57. Thus the entire property in question including the house of the five shops having municipal numbers 52 to 57 (except 54), Circle No.1.

5. The Addl.District & Sessions Judge, Court No.1, Jaipur City, Jaipur proceeded with the compromise and required the same to be duly verified for which due time was granted to the parties. On 09.05.1979, initially the suit was dismissed in the absence of the Plaintiff. However, on the same date, upon an application being filed, the case was again taken up on board. The Trial Court recorded that Rehan Ahmed and that Mohiuddin (Defendant No.1) had executed the compromise. The Plaintiff (Rehan Ahmed) further stated that he does not want to pursue any proceedings against Saeeduddin and also Ahsan Ahmed-Defendant Nos.2 and 3, as such the suit was dismissed against Saeeduddin and Ahsan Ahmed. It was decreed against Ghulam Mohiuddin as per the compromise. Accordingly, a decree was drawn. As per the decree, when the defendant did not execute the Sale Deed, the Plaintiff -Decree holder initiated the proceedings for execution. In the execution proceedings Defendant No.1 Ghulam Mohiuddin filed objections stating that the Plaintiff had not paid the balance sale consideration, and had allowed substantial time to pass for about six to seven years, during which time the value of the property had doubled and as such the decree could not be executed now on account of the default of the Plaintiff-Decree holder. These objections were dismissed by the Executing Court by a detailed order dated 09.12.1998 on the findings that before the registration of the Sale Deed, Defendant No.1 was required to fulfil his obligations which included getting the third floor vacated, getting the NOC and also getting the rent deeds transferred in the name of the Plaintiff. As such there was no default on the part of the Plaintiff. In the meantime, the Defendant No.1 Mohiuddin died. The order dated 09.12.1998 was challenged by one General Tariq, s/o. Defendant No.2- Saeeduddin and legal heir of Defendant No.1 Gulam Mohiuddin, claiming rights under a sale executed by Defendant No.1 Mohiuddin by way of S.B.Civil Revision Petition No.55 of 1999. The said revision came to be dismissed by the High Court vide order dated 02.06.2006. General Tariq preferred a Special Leave Petition before this Court registered as S.L.P.(C) No.12463 of 2006, which

came to be dismissed by this Court vide order dated 11.08.2006. With the dismissal of the Special Leave Petition the innings of the objections under Section 47 CPC filed by the Judgment-debtor – Defendant No.1 Mohiuddin came to an end. General Tariq, s/o. Defendant no.2- Saeeduddin did not carry the matter any further by way of review or otherwise before this court. However, a new round of objections under Section 47 CPC came to be initiated by respondent no.1 – Akhtar Un Nisa, wife of Defendant No.2-Saeeduddin and the mother of General Tariq. The objections by respondent No.1 Akhtar Un Nisa are to the following effect:

I. The decree dated 09.05.1979 is without jurisdiction and a nullity;

II. The property in the suit was a joint property of Ghulam Mohiuddin and Saeeduddin– Defendants No. 1 and 2 respectively;

III. The suit having been filed as against both the brothers, the compromise deed could not have been arrived at between the Plaintiff and Defendant No.1 alone;

IV. The Trial Court could not have accepted the settlement/ compromise between the Plaintiff and Defendant No.1 regarding Defendant No.2 vacating the third story of the house in question and the rent notes being transferred in favour of the plaintiff.

V. Since there was no decree against Saeeduddin, as such Decree holder could not have any right of getting possession of the portion of the property which was admittedly in possession of Saeeduddin and owner. Further, the tenants of Saeeduddin in the disputed property were tenants of the applicant-objector Akhtar Un Nisa-respondent no.1.

6. The Executing Court, vide judgment and order dated 03.05.2007, dismissed the objections under Section 47 CPC filed by Smt.Akhtar Un Nisa.

7. Aggrieved by the same, Smt.Akhtar Un Nisa preferred a revision before the High Court which has since been allowed by the impugned order giving rise to the present appeal.

8. After careful consideration of the arguments presented by both sides, this Court believes that the High Court erred in setting aside the Executing Court’s order dated 09.12.1998 and in declaring the Trial Court’s decree dated 09.05.1979 void. The High Court’s

decision appears to be based on several incorrect assumptions and observations.

9. The core of the High Court's reasoning rests on the erroneous assumption that the property was jointly owned by Defendants No. 1 and No. 2, and that the absence of Defendant No. 2's signature on the compromise dated 11.05.1978 invalidated the decree. However, Defendant No. 2 has consistently acknowledged that he had no ownership rights over the property. In his written statement to the Trial Court in Suit No. 13/72, he explicitly stated that the property belonged solely to Defendant No. 1. This was further supported by a family arrangement dated 17.09.1976 and reinforced in Paragraph 6 of the compromise deed. The compromise, signed by Defendant No. 1 and the plaintiff and later verified by Defendant No. 2 through an application dated 14.05.1979, substantiates that Defendant No. 1 was the sole owner. These facts were upheld by the High Court and this Court in previous proceedings. During the challenge to the execution proceedings filed by General Tarik before the High Court, the High Court vide order dated 11.8.2006 had also recorded the finding that Defendant no.2 did not have ownership rights over the suit property which fact was also upheld by this Court. Defendant no. 2 had limited rights of being in possession of the third floor of suit property. Due to the aforesaid reasons, the Plaintiff and Defendant no. 1 were the only necessary parties needed for the compromise dated 11.05.1978 as Defendant no.1 was the sole owner of the suit property.

10. The High Court also incorrectly held that the provisions of Order XXIII, Rule 3 of the CPC were not adhered to, claiming that the Trial Court failed to properly verify the compromise. It is essential to clarify that the compromise was indeed reached on 11.05.1978, with its verification delayed due to various adjournments caused by the absence or illness of Defendant No.1 and other procedural delays. On 09.05.1979, a fresh compromise application containing identical terms was submitted and duly signed by both parties due to the original being misplaced. The Trial Court then correctly recorded and verified this compromise, fulfilling the requirements of Order XXIII, Rule 3 of the CPC.

11. It must be made clear that the compromise between the Plaintiff and Defendant no. 1 was arrived on 11.05.1978 and it was only the procedural requirements of Order XXIII Rule 3 of verifying and the

compromise before the Court which were eventually completed on 09.05.1979. A perusal of the record of proceedings before the Trial Court reveals that verification of the terms of the compromise was attempted on 11.05.1978 but was not possible as Defendant No.1 was not present. Moreover, on subsequent dates being 11.5.1978, 24.07.1978, 31.01.1979 and 20.03.1979, either due to the illness of Defendant no.1 or due to the Presiding Officer not being present, there were various adjournments before the Trial Court. Finally, on 09.05.1979, Gulam Mohiuddin appeared before the Court and the parties submitted a fresh compromise application was filed because the earlier compromise application submitted on 11-05-1978 was not traceable on the record of the Court containing the same terms and conditions as in the compromise application earlier filed on 11.05.1978. The said application was also duly signed by both the parties. On the basis of the said compromise presented on 09.05.1979, the Trial Court took the compromise application on record, verified the fresh compromise application fulfilling all the terms and conditions of Order XXIII Rule 3 CPC. The terms and conditions of the compromise were read over to the parties and were accepted by them and the signatures of the parities were taken on the compromise application by the Court and thereafter the Court recorded its satisfaction on the compromise application, which is on the record of the Trial Court. The decree dated 09.05.1979 was passed based on this compromise.

12. As far as the terms of the compromise are concerned, which have also been questioned by the High Court, the agreement stipulated that Defendant No. 1 was to execute and register the sale deed in favor of the plaintiff by 01.07.1978, after receiving balance payment of Rs 25,000/-. The decree's execution was contingent upon Defendant No. 1 fulfilling conditions such as obtaining the NOC and ensuring Defendant No. 2 vacating the portion of the property in question in his possession. The recording of the compromise and the consequent decree on 09.05.1979, although appearing procedurally delayed, adhered to the process required under CPC.

13. Furthermore, the High Court overlooked the fact that General Tarik, legal heir of Defendant No. 2, had previously objected to the execution proceedings, which was dismissed on 09.12.1988. Subsequent appeals before the High Court, including a Special Leave Petition to this Court, were also dismissed. Therefore, similar objections by Respondent No. 1, Smt. Akhtar Un Nisa, in her capacity as one of

the legal heirs of Defendant No. 2 would not be maintainable and would amount to abuse of process of law.

14. In light of the reasons recorded above, this Court finds merit in the appellant-plaintiff's argument and holds that the Executing Court had rightly rejected the objections under Section 47 CPC filed by Smt. Akhtar Un Nisa vide order 03.05.2007.

15. Accordingly, the appeal is allowed. The impugned judgement of the High Court is set aside, and the Executing Court's order dated 03.05.2007 is restored and the objections of Respondent no.1 under Section 47 of the CPC stand rejected.

16. There shall, however, be no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 707 : 2024 INSC 312

Kirpal Singh
v.
State of Punjab

(Criminal Appeal No. 1052 of 2009)

18 April 2024

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

Issue for Consideration

The appellant was convicted u/s. 302, s.307 IPC and sentenced to undergo life imprisonment and rigorous imprisonment for 5 years respectively. Both sentences were to run concurrently. An appeal preferred by the appellant before the High Court was dismissed.

Headnotes

Penal Code, 1860 – s. 302 and s. 307 – Prosecution case was that victim went to sleep in chaubara of the house which was not having any shutter, whereas PW-5 (first informant) along with the other family members slept in a room on the ground floor – PW-5 heard a knock on the door in which she was sleeping – She opened door and she saw the accused appellant standing there armed with a knife – Appellant inflicted an injury with the weapon on the abdomen of PW-5 – Another assailant who was accompanying appellant caught hold of her arm – On raising alarm, both assailants ran away – Then, PW-5 went upstairs and found her husband-victim severly injured – Victim died on the way to hospital – Trial Court framed charges against the appellant – Another accused KS was also summoned to face trial – The Trial Court acquitted KS, however, the appellant was convicted u/ss. 302 and 307 IPC – High Court dismissed the appeal against the conviction – Correctness:

Held: The motive for the incident, as projected in the evidence of PW-5, was accused bearing jealousy on account of flourishing business of victim-deceased – Other than this bald averment, there is no corroborative material to lend credence to this theory – If the prosecution case is to be accepted, the moment victim-deceased had been belabourned, the purpose of the accused was served and then there was no reason why accused would expose himself to the other family members – Furthermore, as per

* Author

the prosecution case, two accused were involved in the incident – And when they have gone down to eliminate the other family members, there was no reason for the person accompanying the accused-appellant to be unarmed – This creates a doubt on the truthfulness of the prosecution story – Also, PW-5 had alleged that the investigation being conducted was partisan and tained, pursuant to that she had filed petitions (including to chief minister and the High Court) – However, in her cross-examination she virtually resiled from the averments made therein – Neither in the FIR nor in the application (Exhibit-DA) signed by the first informant-PW-5 and addressed to the Chief Minister, the name of the second accused KS is mentioned as one of the assailants – Both accused persons are relatives of deceased and PW-5 – In that event, if the first informant had identified the offenders at the time of the incident, there was no reason as to why she would leave out the name of KS while giving the statement to the police officer, who recorded FIR (Exhibit PG/2) – This creates a doubt on credibility of PW-5 – Further, a serious doubt is created on the credibility of the deposition made by the first informant-PW-5, that she and her husband were being taken to two hospitals – This completely destroys her credibility as there cannot be two views on the aspect that if a case of homicidal death is reported at a Government hospital the doctors would immediately inform the police and there is no chance that the dead body would be allowed to be carried away by the family members – Further, many contradictions have been elicited in the cross examination of PW-6-son of deceased with reference to his previous versions, as recorded by different investigating officers – Both the witnesses PW-5 and PW-6 are wholly unreliable – That apart, two investigating officers who conducted thorough investigation and found the entire case set up by the first informant-PW-5 to be false – Consequently, the appellant deserves to be acquitted by giving him the benefit of doubt – Therefore, the judgment of the trial Court and the High Court are set aside. [Paras 16, 18, 21, 25, 27, 28, 32]

Case Law Cited

Vadivelu Thevar v. State of Madras [1957] 1 SCR 981 : **AIR 1957 SC 614 – relied on.**

List of Acts

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

Kirpal Singh v. State of Punjab

List of Keywords

Murder; Attempt to murder; Motive; Corroborative material; Witness; Wholly unreliable witness; Deposition; Credibility of deposition; Contradictions in cross-examination; Inherent improbabilities; Benefit of doubt; Falsus in uno, falsus in omnibus.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1052 of 2009

From the Judgment and Order dated 28.02.2008 of the High Court of Punjab & Haryana at Chandigarh in CRLA No. 662 of 2003

Appearances for Parties

Vineet Jhanji, Ranbir Singh Kundu, Imran Moulaey, Ravinder Pal Singh, Ms. Jyoti Mendiratta, Advs. for the Appellant.

Siddhant Sharma, Adv. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. The instant appeal has been preferred on behalf of the appellant for assailing the judgment dated 28th February, 2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 662-DB of 2003, whereby the appeal preferred by the appellant was dismissed, thereby affirming the judgment and order dated 26th July, 2003 rendered by the learned Additional Sessions Judge (Adhoc), Hoshiarpur, vide which the appellant was convicted and sentenced as below:-

   (i) Under Section 302 of the Indian Penal Code (hereinafter being referred to as ‘IPC’) - Imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.

   (ii) Under Section 307 IPC – Rigorous imprisonment for a period of five years and a fine of Rs.1,000/-, in default of payment of fine, to undergo further rigorous imprisonment for a period of 15 days.

   Both the sentences were ordered to run concurrently.

Brief facts: -

2. Sharan Kaur, the first informant(PW-5), wife of Balwinder Singh (deceased) used to reside along with her family members in the house which was situated on the backside of the grocery and halwai shops owned by her husband Balwinder Singh (deceased) at bus stop, Khudda. In the intervening night of 12th/13th November, 1997, Balwinder Singh (deceased) went to sleep in *chaubara* of the house which was not having any shutter, whereas Sharan Kaur (PW-5) along with the other family members slept in a room on the ground floor. It is alleged that Sharan Kaur (PW-5) heard a knock on the door of the room in which she was sleeping at about 2.30 a.m. She thought that it was her husband who had knocked the door and thus she opened the door. In the illumination of light placed in the courtyard, she saw the accused appellant-Kirpal Singh standing there armed with a knife like *chura*. The appellant inflicted an injury with the weapon on the abdomen of Sharan Kaur (PW-5). Another assailant who was accompanying appellant Kirpal Singh caught hold of her arm. She raised an alarm shouting 'killed killed' ('maar ditta maar ditta'), on which her sons Goldy and Sonu woke up. None of these three persons could identify the other assailant. Both the assailants fled away by opening the main gate, in between the two shops. Sharan Kaur (PW-5) went upstairs to have a look at her husband and found him lying severely injured on the cot with blood oozing out of his mouth and head. Blood pooled on the ground below. He was unable to speak. She called her two sons and sent them to call her brother-in-law Gurnam Singh with a vehicle. Sharan Kaur (PW-5) and Balwinder Singh were taken to the Civil Hospital, Tanda but on the way to the hospital, Balwinder Singh expired. First aid was provided to Sharan Kaur (PW-5), thereafter, she as well as the dead body of Balwinder Singh (deceased) was brought back to their home in the same vehicle and by that time the police had arrived. The prosecution alleges that the motive behind the occurrence was that the appellant and his associate were bearing jealousy on account of the roaring business being done at the halwai shop of Balwinder Singh (deceased), which was doing much better as compared to the halwai shop run by the accused appellant. Swaran Dass(PW-9), SHO, Police Station Dasuya recorded the statement of Sharan Kaur (PW-5) wherein, the above allegations were incorporated and based thereupon, FIR No.126 of

1997 dated 13th November, 1997 came to be registered at Police Station, Dasuya, District Hoshiarpur for the offences punishable under Sections 302, 307 IPC read with Section 34 of IPC. The said FIR was marked as Exhibit-PG/2, during the course of trial. The Investigating Officer prepared inquest report on the dead body of Balwinder Singh(deceased) and forwarded the dead body to the Civil Hospital, Dasuya for post mortem examination; rough site plan of the crime scene was prepared; bloodstained earth was collected from the spot and was sealed into a parcel. A spade lying at the crime scene was seized, the blade whereof was bloodstained. A ladder was also seized from the crime scene.

3. The dead body of Balwinder Singh was subjected to autopsy at the hands of Dr. Naresh Kumar (PW-4), Medical Officer, Civil Hospital, Dasuya on 13th November, 1997, who examined the same and took note of the following injuries on the body of the deceased:-

> "i. Lacerated wound 1.5 cm bone deep on left side of forehead. Placed transversely 2 cm above and lateral to outer end of left eyebrow medical to this wound these was red coloured contusion with depressed surface 3 x 4 cm in size 1.5 cm above and parallel to left eye brow.
>
> On dissection there was subaponeurotic hematoma in both front regions. The frontal bone was found fractured into multiple pieces were impacted into the underlying brain tissue, semi clotted blood was present between membrane between and brain tissue and within the brain tissue.
>
> ii. Lacerated wound 1.5 cm x 1 cm bone deep on left side of head posterior to left pinna. It was transversally placed 2.5 cm below the upper end of left pinna.
>
> iii. Lacerated wound 2 cm x 1 cm on upper part of left pinna splitting the pinna into two parts. It was transversally placed in lines with injury No.2."

4. The injuries were stated to be caused by blunt weapon and the cause of death was opined to be the head injury, which was sufficient to cause death in the ordinary course of nature.

5. Dr. Didar Singh (PW-1), Medical Officer, Civil Hospital, Dasuya conducted medical examination of Sharan Kaur (PW-5), the first informant, and took note of an incised wound admeasuring 2½ x ½ cm elipitcal in shape present on the left side of the abdomen 2 cms above the umblicus and 6 cms lateral to the mid line. However, the wound was not probed for finding of the depth and the case was referred to the Surgical Specialist for opinion and treatment.

6. The case took a different turn, when the first informant Sharan Kaur (PW-5) started raising allegations against the Investigating Officer of conducting partisan and tainted investigation in order to favour the police.

7. Sharan Kaur (PW-5) filed two petitions in the High Court of Punjab and Haryana seeking transfer of investigation to the CBI or some other independent agency. In both these petitions, her allegation was that the second accused named Kulwinder Singh had been left out of the case for oblique reasons.

8. Be that as it may, two different police officials, conducted the investigation and filed closure reports alleging that the first informant-Sharan Kaur(PW-5) had falsely implicated the accused. However, the Magistrate did not agree with the opinion. The accused appellant-Kirpal Singh @ Lucky was arrested on 21st November, 1997 and charge sheet was filed against him for the offences punishable under Section 302 IPC and Section 307 IPC. Since both the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Additional Sessions Judge(Adhoc), Hoshiarpur (hereinafter being referred to as 'trial Court') for trial.

9. Learned trial Court framed charges against the accused appellant, who abjured his guilt and claimed trial. An application came to be filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') which was allowed and the accused Kulwinder Singh was summoned to face trial along with the charge sheeted accused, i.e., the appellant herein. Fresh charge for the offences punishable under Sections 302, 307 read with Section 34 IPC were framed against both the accused to which they pleaded not guilty and claimed trial. The prosecution examined ten witnesses to support its case.

10. The incriminating circumstances appearing in the prosecution evidence were put to the accused while recording their statements

under Section 313 CrPC. The accused denied those allegations and claimed to be innocent. Total four (04) witnesses were examined in defence. After hearing the arguments advanced by the learned Additional Public Prosecutor and the defence counsel, and upon appreciating the evidence available on record, the learned trial Court vide judgment dated 26th July, 2003 proceeded to convict the accused appellant-Kirpal Singh and sentenced him as noted hereinabove. However, by the very same judgment, the co-accused Kulwinder Singh was acquitted of the charges. The accused appellant-Kirpal Singh preferred Criminal Appeal No.662-DB of 2003 challenging his conviction and sentence, whereas the State preferred Criminal Appeal No.535-DBA of 2004 and the complainant preferred Criminal Revision No.2259-DB of 2003 challenging the acquittal of Kulwinder Singh before the High Court of Punjab and Haryana.

11. The learned Division Bench of the High Court of Punjab and Haryana proceeded to dismiss both the appeals, one filed by the State, and the other by the accused-appellant as well as the revision filed by the complainant by a common judgment and order dated 28.02.2008, which is assailed in this appeal filed at the instance of the accused appellant-Kirpal Singh.

Submissions on behalf of the appellant: -

12. Shri Vineet Jhanji, learned counsel appearing for the accused appellant vehemently contended that the findings recorded in the impugned judgment are perverse and self-contradictory and hence, the same are liable to be set aside. He advanced the following pertinent submissions seeking acquittal of accused appellant:

    (i) The evidence of Sharan Kaur (PW-5), the first informant, being the wife of the deceased and Daljit Singh @ Goldy(PW-6), son of the deceased, is highly self-contradictory, vacillating and unconvincing.

    (ii) That the prosecution witnesses have tried to improve upon the story put forth in the FIR at every stage of the proceedings and hence, their evidence deserves to be discarded. The trial Court as well as the High Court have found that the witnesses, Sharan Kaur (PW-5) and Daljit Singh @ Goldy(PW-6) are not wholly reliable witnesses and their allegations qua the co-accused-Kulwinder Singh have been found to be unacceptable, thereby

recording his acquittal. Thus, the accused-appellant (Kirpal Singh) also deserves the same treatment.

(iii) That the motive attributed to the accused appellant by Sharan Kaur (PW-5) is absolutely cooked up and unbelievable. Her bald allegation that the accused bore jealousy on account of the booming halwai business of Balwinder Singh (deceased), is just a figment of imagination and has not been corroborated by any independent source. Rather the prosecution did not even lead any evidence to show that the accused appellant is involved in halwai business.

(iv) The accused appellant was admittedly closely related to the deceased, but this fact was concealed in the FIR as well as in the testimony of the material prosecution witnesses.

(v) That the story put forth by Sharan Kaur (PW-5) in her evidence is totally unworthy of reliance because even as per her own assertion, the accused appellant was bearing a grudge against the deceased. In that event, once the accused had succeeded in belaboring and killing Balwinder Singh (deceased), by entering into the *chaubara* in a clandestine manner using a ladder, there was no reason as to why the accused would come down the stairs, knock the door and alarm the other family members so as to expose himself.

(vi) That the conduct of the first informant-Sharan Kaur(PW-5) and her family members in bringing back body of Balwinder Singh to their house even after the doctor at Civil Hospital, Tanda had declared him to be dead, brings the credibility of these witnesses under a grave shadow of doubt. He urged that admittedly, while coming back from Tanda, the Police Station at Dasuya falls on the way and thus, if at all, there was any truth in this version, the witnesses would have stopped at the police station to report the matter. Furthermore, the doctor at Civil Hospital would definitely have taken steps to report the matter to the police since it was a clear case of homicide.

(vii) That the defence witnesses have categorically stated that after thorough investigation, the allegations set out by the first informant-Sharan Kaur(PW-5) were found to be false and hence, closure reports were submitted by the police in the concerned Court.

(viii) That it is an admitted case as elicited in the testimony of Daljit Singh @ Goldy (PW-6), son of Balwinder Singh(deceased) and first informant-Sharan Kaur(PW-5), that four servants were sleeping with Balwinder Singh(deceased) in the *chaubara* of the house but they were not examined in evidence. Likewise, Gurmit Singh, the other son of deceased and the first informant, was also not examined by the prosecution for the reasons best known to them and hence, it is a fit case warranting/drawing of adverse inference against the prosecution.

On these grounds, learned counsel implored the Court to accept the appeal and acquit the accused appellant.

Submissions on behalf of the State: -

13. *Per contra*, Mr. Siddhant Sharma, learned counsel appearing for the State, vehemently and fervently opposed the submissions advanced by the counsel for the appellant. He conceded that the story of the prosecution qua involvement of accused-Kulwinder Singh has not found favour with the trial Court and the High Court but as per him, that by itself cannot be a valid reason so as to discard the entire prosecution case, qua the accused appellant as well who was named in the FIR and in the testimony of the material prosecution witness. He fervently contended that trivial contradictions in the evidence of the prosecution witnesses lend assurance that they are truthful witnesses and are not created witnesses. He submitted that the principle '*falsus in uno, falsus in omnibus'* does not apply to the Indian criminal jurisprudence system and thus, merely because one of the two accused named by the prosecution witnesses has been acquitted by the trial Court, the accused appellant cannot get the advantage thereof.

14. He further submitted that the trial Court as well as the High Court, after appreciation and re-appreciation of the evidence have separated the chaff from the grain and have held the accused appellant guilty of the charges and thus, this Court should be loath to interfere in such concurrent findings of facts recorded by the trial Court and the High Court. On these submissions, learned counsel appearing for the State, urged that the appeal lacks merit and is fit to be dismissed.

15. We have given our thoughtful consideration to the submissions advanced at the bar and have carefully perused the judgments

rendered by the High Court and the trial Court and analysed the evidence available on record.

Consideration of evidence and submissions: -

16. The prosecution case as unfolded, in the evidence of the first informant, Sharan Kaur (PW-5) (the star prosecution witness who herself received an injury in the same incident), is that she along with her two sons Daljit Singh @ Goldy (PW-6) and Gurmit Singh was sleeping in the room on the ground floor of the house, whereas, her husband[Balwinder Singh(deceased)] was sleeping in *chaubara*, which has no gate. The prosecution tried to canvass that the accused put up a ladder on the wall of the house, climbed into the *chaubara* with the aid thereof and hit Balwinder Singh(deceased) with a spade, which resulted into grave injuries. The motive for the incident, as is projected in the evidence of Sharan Kaur (PW.5), was that the accused was bearing a jealousy on account of flourishing halwai business of her husband whereas, the business of the accused was not thriving. However, we may state that other than this bald averment made by Sharan Kaur (PW-5) attributing motive for the incident to the accused, no corroborative material was collected by the Investigating Officers to lend credence to this theory of motive. The statement of Sharan Kaur (PW-5) on this aspect is also very vague. There is nothing in her deposition, which can satisfy the Court that merely on account of this so called jealousy, the accused would go to the painstaking length of putting up a ladder against the wall of the house, where Balwinder Singh (deceased) used to reside with his family and then climb up and murder him, that too in the presence of his family members.

17. If the prosecution case is to be accepted, it is apparent that the accused had painstakingly, planned out the murder of Balwinder Singh (deceased), inasmuch as they put up a ladder against the outer wall of the house, climbed into the house by using the said ladder and attacked the deceased by spade. Thus, the moment Balwinder Singh (deceased) had been belaboured, the purpose of the accused was served and hence, there was no rhyme or reason as to why the accused would take the risk of being exposed to the other family members. This precisely is the story portrayed in the evidence of Sharan Kaur (PW-5) who stated that while she was sleeping in the room on the ground floor with her two sons, she heard some noise

and opened the door of the flight of stairs connecting the *chaubara* and saw the accused appellant-Kirpal Singh and his companion standing therein. The accused appellant-Kirpal Singh who was armed with a knife, stabbed her on the abdomen whereas the other accused appellant caught her by the arm. As per the prosecution, the accused appellant had assaulted Balwinder Singh (deceased) with a spade which was abandoned at the spot and then the accused came down with a knife.

18. The story so set up by the prosecution, does not inspire confidence for more than one reasons. As discussed above, once the accused had achieved the objective of eliminating Balwinder Singh(deceased) without being discovered, they had all the opportunity in the world to escape from the spot by using the very same ladder, which had been used to climb up the *chaubara*. Thus, there was no reason for the accused to risk discovery by coming down and alarming the family members. Furthermore, as per the prosecution case, two accused were involved in the incident. If at all the prosecution case is to be believed, the accused after killing Balwinder Singh(deceased), must have gone down to eliminate the other family members and in that background, there was no reason as to why the person accompanying the accused appellant was unarmed. This again creates a doubt on the truthfulness of the prosecution story. The first informant-Sharan Kaur (PW-5) made a big issue regarding the conduct of the investigating agency alleging that the investigation being conducted was partisan and tainted. She filed petitions before different forums including the Chief Minister and the High Court. She was confronted with these applications extensively in her cross examination and she virtually resiled from the averments made therein. For illustration, we would like to reproduce some excerpts from the cross examination of Sharan Kaur (PW-5):-

> "...We approached the Hon'ble High Court as my statement was not being correctly recorded by the Police. On the directions of the Hon'ble High Court my statement was recorded by the Crime Branch."
>
> xxx xxx
>
> "...I have seen the carbon copy of the application Addressed to CM Punjab Chandigarh. It bears my signature and is Ex.DB. My father used to get my signature on the Blank

> papers so I can not say whether the application of Ex.DA was moved by me on 15.12.97 after the completion of investigation by DSP Ajaib Singh. The witness is not ready to answer the question whether the application EX.DA bear the name of accused Kulwinder Singh @ Neeta. In the application the name of Kulwinder Singh @ Neeta is not written but some unidentified person has been written. The witness has explained that she used to disclose the name of Kulwinder Singh @ Neeta but the police was not recording his name and the application Ex.DA might have been drafted by his counsel at his own. The witness is not ready to answer the question that the copy of the FIR was attached with the writ petition/Crl. Misc application or that the name of Kulwinder Singh @ Neeta was not mentioned in the said petition or that in the petition also the name of unidentified person was mentioned. The witness is also not ready to answer the question whether there was some ommision in the petition and that an application was moved for the correction of those ommissions. The witness is also not ready to answer the question that by way of amendment the name of Kulwinder Singh @ Neeta was not incorporated in the amended application. The witness is not ready to answer the question whether the petition was withdrawn on 6.8.98."

19. In her examination in chief, the first informant-Sharan Kaur(PW-5) categorically stated that her statement was recorded at the Civil Hospital, Dasuya on 13th November, 1997 at about 7:30 a.m. It was read over and explained to her, and she signed it admitting it to be correct.

20. If that be so, the subsequent conduct of Sharan Kaur (PW-5) in raising a hue and cry that investigation being conducted was tainted and the police had intentionally favoured the co-accused Kulwinder Singh by leaving out his name from the array of offenders creates a great doubt on her credibility.

21. Neither in the FIR (Exhibit-PG/2) nor in the application (Exhibit-DA) signed by the first informant-Sharan Kaur(PW-5) and addressed to the Chief Minister, Punjab, the name of the second accused Kulwinder Singh is mentioned as one of the assailants. There is no

dispute that the acquitted accused Kulwinder Singh and appellant Kirpal Singh, are closely related to the family of the deceased and the first informant. In that event, if the first informant had identified the offenders at the time of the incident, there was no reason as to why she would leave out the name of Kulwinder Singh while giving the statement to the police officer, who recorded FIR (Exhibit-PG/2). The witness was extensively confronted with the other applications/ petitions filed by her questioning the bonafides of investigation being carried out by the Investigating Agencies being Exhibit-DB, Exhibit-DG, etc., and she refused to stand by the versions set out in these applications/petitions filed by herself. Not only this, a statement (Exhibit-DL) of the first informant was recorded by DSP, Rajender Singh, wherein it is stated that some unknown person entered into their house and caused injuries to the witness and her husband, who expired in the incident. Though, the first informant denied having given this statement but this fact definitely creates a doubt on the truthfulness of her story. A serious doubt is created on the credibility of the deposition made by the first informant, when we consider the fact that she claimed in her examination in chief that a van was brought by her son wherein, she and her husband were taken to the Civil Hospital, Tanda, where the medical officers opined that her husband had expired and she was medically examined. However, they did not believe in this opinion and took the victim to Bhogpur where again the doctors reiterated that her husband had expired. Only after this confirmation, the dead body of Balwinder Singh was brought back to the house where police was already present. This version, as set out in the testimony of the first informant, Sharan Kaur(PW-5), completely destroys her credibility. There cannot be two views on the aspect that if a case of homicidal death is reported at a Government hospital the doctors would immediately inform the police and there is no chance that the dead body would be allowed to be carried away by the family members.

22. It may be stated that the medical records of the Civil Hospitals at Tanda and Bhogpur were not collected by the investigating agency nor were the same brought on record by the prosecution in its evidence. Dr. Didar Singh (PW-1) Medical Officer, Civil Hospital, Dasuya examined the first informant-Sharan Kaur (PW-5) on 13th January, 1997 at about 07:05 a.m. In his cross examination, the doctor (PW-1) made the following admissions:-

> "...As per the record brought by me she has not given any history of assault. It is correct that as stated by Sharan Kaur that she has not been examined medico legally by any other doctor. No opinion regarding the weapon used was sought from me till today nor has any surgical opinion been received by me till today. As per my record she was admitted in hospital immediately after the medical examination."

23. This version of Dr. Didar Singh, (PW-1) completely destroys the story put forth by Sharan Kaur (PW-5) that she and her family members had taken the victim to the Government hospitals referred to above or that the body was brought back to their home after such medical examination was conducted. Apparently, the dead body was just lying in the house till the police arrived who took both the victims to the hospital.

24. This fact is firmly cemented when we consider the deposition of Dr. Didar Singh (PW-1), who has stated that Sharan Kaur (PW-5) told him that she had not been examined medico legally by any other doctor and that she had been admitted in the hospital immediately after the medical examination. These inherent infirmities in the testimony of Sharan Kaur (PW-5) completely destroys her evidentiary worth and we have no hesitation in holding that she is a totally unreliable partisan witness.

25. Daljit Singh (PW-6), being the son of the deceased Balwinder Singh and the first informant-Sharan Kaur (PW-5), stated that he woke up on hearing the cries of his mother and saw that Kulwinder Singh had caught hold of his mother from her arm and both the assailants ran away on seeing him. He and his elder brother Gurmit Singh tried to pursue the offenders. Thereafter they climbed up the stairs and saw that their father was lying in a pool of blood. This witness (PW-6) also stated that he along with his mother took his father in a van to the Civil Hospital, Tanda where he was declared dead, however they did not believe the opinion so given and hence, they proceeded to Bhogpur and consulted Dr. Arora, who also confirmed the fact regarding the death of Balwinder Singh. Then they proceeded back to their house, where the police had reached before their arrival. This witness (PW-6) was also confronted with his previous statement (Exhibit-DB) wherein, the name of Kulwinder Singh was

not mentioned. Many contradictions have been elicited in the cross examination of this witness(PW-6) with reference to his previous versions, as recorded by different investigating officers. In his cross examination, the witness(PW-6) even admitted that he did not remember the name of her mother's brother, who met them on that day. He further stated that he and his mother took Balwinder Singh (deceased) to Civil Hospital, Dasuya. The Police Station, Dasuya falls in the way to the Civil Hospital, Dasuya but they did not go to the police station for lodging the report. This fact again indicates that the conduct of PW-5 and PW-6 was totally unnatural. Gurmeet Singh, elder brother of Daljit Singh(PW-6), was not examined by the prosecution. We find that Daljit Singh (PW-6) did not even utter a word that appellant was having a weapon with him when he saw him fleeing away from the crime scene. These inherent improbabilities and loopholes in the evidence completely destroy the fabric of the prosecution case which is full of holes and holes which are impossible to be stitched together.

26. This Court in the celebrated case of ***Vadivelu Thevar v. State of Madras***[1], has observed as follows:-

> "**11**....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) wholly reliable.
>
> (2) Wholly unreliable.
>
> (3) Neither wholly reliable nor wholly unreliable.
>
> **12.** In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in

1 [1957] 1 SCR 981 : AIR 1957 SC 614

> coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial...".

27. On going through the evidence of Sharan Kaur (PW-5) and Daljit Singh (PW-6), with reference to other evidence available on record, we are of the firm opinion that both these witnesses fall in the second category, i.e., wholly unreliable. No other tangible evidence was led by the prosecution to connect the accused appellant with the crime.

28. As we have noted above, the prosecution's story of motive is very weak and rather far fetched so as to place implicit reliance thereupon. Two investigating officers conducted thorough investigation and found the entire case set up by the first informant-Sharan Kaur(PW-5) to be false. The conduct of the first informant is unworthy of reliance, when we consider the fact that she tried to implicate Kulwinder Singh by filing various petitions while the investigation was still ongoing and even in her testimony during the trial. However, even in the FIR (Exhibit-PG/2), which was admittedly registered on the basis of her own statement, the first informant-Sharan Kaur(PW-5) did not name the said Kulwinder Singh, as co-assailant with the accused appellant herein. Even in the petition i.e. Crl. Misc. Petition No. 2053-M-1998 filed before the High Court of Punjab and Haryana, the name of the said Kulwinder Singh was not mentioned.

29. The spade allegedly used to assault the deceased was found lying at the crime scene. On going through the entire set of prosecution witnesses, we find that no weapon of crime was recovered at the instance of the accused appellant and thus, there is no corroborative evidence so as to lend credence to the wavering and unreliable testimony of Sharan Kaur (PW-5) and Daljit Singh (PW-6).

30. Lajpal Singh(DW-3), DIG (Operation), Punjab was examined by the defence, who in his cross examination stated that in his investigation, he found the accused to be innocent.

31. Having given our thoughtful consideration to the entirety of the material available on record, we are of the firm view that evidence of Sharan Kaur (PW-5) and Daljit Singh (PW-6) is wholly unreliable, does not inspire confidence in the Court so as to affirm the conviction of the appellant. It may be reiterated that no corroborative evidence was

led by the prosecution so as to lend credence to the testimony of these two witnesses.

32. Consequently, the appellant deserves to be acquitted by giving him the benefit of doubt. Resultantly, the judgments of the trial Court and the High Court dated 26th July, 2003 and 28th February, 2008 respectively are hereby quashed and set aside. The appellant is acquitted of the charges. The sentence awarded to the appellant was directed to be suspended by this Court on 12th August, 2011, during the pendency of this appeal and he is on bail. He need not surrender and the bail bonds are discharged.

33. The appeal is accordingly, allowed.

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

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 724 : 2024 INSC 296

Mahakali Sujatha
v.
The Branch Manager, Future Generali India Life Insurance Company Limited & Another

(Civil Appeal No. 3821 of 2024)

10 April 2024

[B.V. Nagarathna* and Augustine George Masih, JJ.]

Issue for Consideration

The present civil appeal has been filed by the complainant, who is the daughter of the insured-deceased, who is also the nominee under the subject life insurance policies of her late father. The controversy in the present case pertains to the factum of repudiation of the insurance claim of the complainant on the ground of the material suppression of information regarding the previous policies allegedly held by the insured-deceased, while taking the life insurance policy from the respondent insurance company. Whether, the respondent insurance company herein was correct in repudiating the claim of the appellant on the ground of suppression of material information pertaining to the existing policies with other insurers.

Headnotes

Insurance Act, 1938 – s.45, before the 2014 amendment – Evidence Act, 1872 – Burden of proof – Onus of proof – Repudiation of insurance claim of the complainant on the ground of the material suppression of information regarding the previous policies – Consumer complaint filed – The District Commission allowed the complaint on the ground that no documentary evidence was available to show that deceased-insured had taken various insurance policies from other companies – The State Commission upheld the order of the District Commission – However, the NCDRC observed that the respondent insurance company had given details of the aforesaid policies by way of affidavit and the same was not denied by the complainant in her affidavit – Therefore, NCDRC concluded that deceased insured had withheld information in respect of several insurance policies which he had taken from other insurers – Correctness:

* Author

Mahakali Sujatha v. The Branch Manager, Future Generali India Life Insurance Company Limited & another

Held: As per the language and interpretation of Section 45, the insurer cannot question the policy after the expiry of the time period and if it does, then the burden rests on the insurer to establish materiality of the fact suppressed and the knowledge of the insured about such suppression, so that the repudiation of the claim could be justified by the insurer – In the present case, the onus was on the insurer to show that the insured had fraudulently given false information and the said information was related to a material fact – The respondent insurance company has produced no documentary evidence whatsoever before the District Forum to prove its allegation that the insured had taken multiple insurance policies from different companies and had suppressed the same – Before the State Commission, the respondent had provided a tabulation of the 15 different policies taken by the insured-deceased – However, the said tabulation was not supported by any other documentary evidence, like the policy documents of these other policies, or pleadings in courts, or such other corroborative evidence – The NCDRC had accepted the averment of the respondents, without demanding corroborative documentary evidence in support of the said fact – The approach adopted by the NCDRC was not correct – The cardinal principle of burden of proof in the law of evidence is that "he who asserts must prove", which means that if the respondents herein had asserted that the insured had already taken fifteen more policies, then it was incumbent on them to prove this fact by leading necessary evidence – The onus cannot be shifted on the appellant to deal with issues that have merely been alleged by the respondents, without producing any evidence to support that allegation – The respondents have merely provided a tabulation of information about the other policies held by the insured-deceased – The table produced is incomplete and contradictory as far as the date of birth of the insured is concerned – Therefore, the NCDRC could not have relied upon the said tabulation and put the onus on the appellant to deal with that issue in her complaint and thereby considered the said averment as proved or proceeded to prove the stance of the opposite party – The repudiation of the policy was without any basis or justification – Thus, the impugned order passed by the NCDRC set aside. [Paras 16,17, 48, 49, 50]

Principle/Doctrine – *uberrimae fidei* – Insurance – Reciprocal duties:

Held: Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents – Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. [Para 22]

Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 – A fact, whether material or not – Propositions:

Held: Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case – It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied – Rules of universal application are not therefore to be expected, but the propositions as set out are well established: (a) Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against – This is referred to as the "physical hazard"; (b) Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate – This is usually referred to as the "moral hazard"; (c) The materiality of a particular fact is determined by the circumstances of each case and is a question of fact. [Para 26]

Evidence Act, 1872 – Burden of proof and onus of proof – Consumer Fora:

Held: Though the proceedings before the Consumer Fora are in the nature of a summary proceeding – Yet the elementary principles of burden of proof and onus of proof would apply – Section 101 of the Evidence Act states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist – When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person – Section 102 of the Evidence Act provides a test regarding on whom the burden of proof would lie, namely, that the burden lies

on the person who would fail if no evidence were given on either side – There are however exceptions to the general rule as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872, i.e., in the context of the burden of adducing evidence: (i) when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him (Section 106) – In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105). [Paras 41, 42]

Evidence Act, 1872 – Burden of proof and onus of proof – Distinction between:

Held: There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts – Such a shifting of onus is a continuous process in the evaluation of evidence – For instance, in a suit for possession based on the title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title. [Para 43]

Evidence – Burden of proof – Insurance contracts – Non-disclosure of a material fact:

Held: In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent – Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else. [Para 45]

Word and Phrases – *Contra proferentem* rule:

Held: In United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd., (2016) 3 SCC 49, the Supreme Court quoted Halsbury's Laws of England (5th Edn. Vol. 60, Para 105) on the contra proferentem rule – Where there is ambiguity in the policy the court will apply the *contra proferentem* rule – Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if they fail to do so, the ambiguity

will be resolved by adopting the construction favourable to the insured. [Para 40]

Case Law Cited

Manmohan Nanda v. United India Insurance Co. Ltd. [2021] 11 SCR 1138 **: (2022) 4 SCC 582 – relied on.**

Reliance Life Insurance Co Ltd v. Rekhaben Nareshbhai Rathod [2019] 6 SCR 733 **: (2019) 6 SCC 175;** *Mithoolal Nayak v. Life Insurance Corporation of India* [1962] Supp. 2 SCR 571 **: AIR 1962 SC 814;** *Venkatachala Gounder v. Arulmigu Viswesaraswami and VP Temple* [2003] Supp. 4 SCR 450 **: (2003) 8 SCC 752;** *Shobika Attire v. New India Assurance Co. Ltd.* [2006] Supp. 6 SCR 266 **: (2006) 8 SCC 35 – referred to.**

Sahara India Life Insurance Co. Ltd. v. Rayani Ramanjaneyulu **2014 SCC OnLine NCDRC 525 : (2014) 3 CPJ 582 – referred to.**

Carter v. Boehm **(1766) 3 Burr 1905;** *Reynolds v. Phoenix Assurance Co. Ltd.* **(1978) 2 Lloyd's Rep. 440 – referred to.**

Books and Periodicals cited

MacGillivray on Insurance Law, (12th Edn., Sweet & Maxwell, London, 2012 at p. 477); Halsbury's Laws of England, Fourth Edition, Para 375, Vol. 25 : Insurance; Sarkar, Law of Evidence, 20th Edition, Volume-2, LexisNexis – **referred to.**

List of Acts

Insurance Act, 1938; Evidence Act, 1872; Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002.

List of Keywords

Insurance; Evidence; Burden of proof; Onus of proof; Material suppression of information; Previous insurance policies; Repudiation of insurance claim; Corroborative evidence; Insurance policies; Insurance contracts; Uberrimae fidei; Reciprocal duties; Material fact; Consumer Fora; Contra proferentem rule; Proposal form.

Mahakali Sujatha v. The Branch Manager, Future Generali India Life Insurance Company Limited & another

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3821 of 2024

From the Judgment and Order dated 22.07.2019 of the National Consumers Disputes Redressal Commission, New Delhi in RP No. 1268 of 2019

Appearances for Parties

Venkateswara Rao Anumolu, Sunny Kumar, Advs. for the Appellant.

Praveen Mahajan, Ms. Adviteeya, Nishant Sharma, Rakesh K. Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.V. Nagarathna, J.

1. The present civil appeal has been filed by the complainant, who is the daughter of the insured-deceased Sri Siriveri Venkateswarlu, who is also the nominee under the subject life insurance policies of her late father. The appellant is assailing the order dated 22.07.2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "NCDRC") in Revision Petition No.1268 of 2019.

2. By the impugned order, the NCDRC has allowed the revision petition filed by the respondent-opposite party, thereby setting aside the orders passed by the District Consumer Forum and the State Consumer Forum and sustaining the repudiation of the complainant's claim by the opposite party insurer-company.

3. The brief facts giving rise to the present appeal are as follows:

   3.1. For the sake of convenience, the parties shall be referred to as complainant and opposite party.

   3.2. Late Sri Siriveri Venkateswarlu, father of the complainant, obtained two insurance policies from the opposite party – one on 05.05.2009, for a sum of Rs. 4,50,000/-, and the other on 22.03.2010, for a sum of Rs. 4,80,000/-. Under the said two policies, in the event of death by accident, twice the sum assured was payable by the insurer. In the application form of the policy,

the insured had been asked about the details of his existing life insurance policies with any other insurer, and the insured had answered the same in the negative. The complainant, being the daughter of the policy holder Late Sri Siriveri Venkateswarlu, was nominated to receive the proceeds under both the policies.

3.3. On 28.02.2011, the policy holder unfortunately lost his life in a train accident, leaving behind the complainant alone as his legal heir as well as nominee for death benefits. Immediately thereafter, the complainant approached the opposite party and informed about the death of her father and they advised the complainant to submit a claim form along with necessary documents which she did. However, by letter dated 31.12.2011, the complainant's claims were repudiated by the opposite party.

3.4. The claim of the complainant was repudiated on the ground that the policy holder had suppressed material facts in his application form with respect to existing life insurance policies from other insurers. Upon investigation by the opposite party, it was found that the insured had substantial life insurance cover with other insurance companies, even prior to the date of his application. After an evaluation of all facts and documents submitted and circumstances of the case, the opposite party came to the conclusion that the replies to the questions in the application form were incorrect, in as much as the opposite party held documentary proof in support of the same. They observed that had such information been disclosed, their underwriting decision would have materially changed. It was further remarked that the contract of insurance is based on the principle of utmost good faith and the company relies on the information provided by the life insured in the application for insurance. Thus, the claim was held to be not valid and the liability to pay under the policy was repudiated by the insurer.

3.5. Being aggrieved by the repudiation of the claim, the complainant approached the concerned District Forum by way of a consumer complaint, bearing CC No.8 of 2014. The District Commission at Vijaywada, Krishna District, by order dated 27.08.2014, allowed the consumer complaint, on the ground that no documentary evidence was available to show that the deceased-insured had taken various insurance policies from various other companies.

The Commission found deficiency of services on the part of the opposite party in repudiating the claim filed by the complainant and therefore directed the opposite parties to pay the insurance amount of Rs.7,50,000/- + Rs.9,60,000/- under two policies jointly and severally with interest at the rate of 6% per annum from 31.12.2011, i.e., the date of repudiation of the claim of the complainant, till realisation, along with costs of Rs. 2000/- to the complainant.

3.6. Being aggrieved, the insured/opposite party filed an appeal bearing FA No.94 of 2015 before the concerned State Consumer Forum at Vijaywada. The State Commission observed that there was absolutely no material produced by the opposite party before the Forum to prove the allegation of suppression. The documents attempted to be produced were neither original nor certified nor authenticated. However, even assuming that there were existing policies, still the non-disclosure of pre-existing policies does not amount to suppression of material facts. Reliance for the same was placed on some previous judgments of the NCDRC. Hence, the claim could not have been said to be vitiated by fraud. The opposite parties were not right in repudiating the claim. The State Commission therefore, by its order dated 11.12.2018, dismissed the appeal of the opposite party and upheld the order of the District Commission.

3.7. The opposite party thereafter approached the NCDRC through Revision Petition No.1268 of 2019, challenging the order passed by the State Commission in FA No.94 of 2015. The NCDRC, vide impugned judgment, agreed with the opposite party that the deceased-insured had withheld the information in respect of several insurance policies which he had taken from other insurers. The NCDRC observed that on the one hand, the opposite party had duly stated the details of the other policies in their affidavit, but on the other, the complainant, even in her affidavit filed by way of evidence, did not claim that the policies mentioned in the written version of the opposite party had not been taken by the deceased. Reliance was further placed by the NCDRC on the judgment of this Court in ***Reliance Life Insurance Co Ltd vs. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175**, **(“*Rekhaben*”)** wherein the repudiation of the claim

due to suppression of the fact of other existing insurance policies was upheld by the Supreme Court. The NCDRC held that the Supreme Court's judgment would prevail over the judgments of the NCDRC relied upon by the State Consumer forum and thus, the revision petition was allowed and the consumer complaint was dismissed.

4. Hence, the complainant has preferred the present Special Leave Petition against the impugned judgment of the NCDRC.

5. We have heard learned counsel for the Appellant, Sri Venkateswara Rao Anumolu and learned counsel for the Respondent, Sri Praveen Mahajan for the insurer. The controversy in the present case pertains to the factum of repudiation of the insurance claim of the Complainant on the ground of the material suppression of information regarding the previous policies allegedly held by the insured-deceased, while taking the life insurance policy from the Opposite Party.

6. Learned counsel for the appellant submitted that the insurance company has not proved that appellant's father had any other insurance policy while taking the insurance policy from the opposite party. Thus, there has been no material suppression of fact in the application form with respect to holding any previous policy by the insured-deceased or his family members.

7. It was further submitted by the appellant that the NCDRC was incorrect in upholding the repudiation of claim in the absence of an iota of documentary evidence on record to support the contention that the insured-deceased had suppressed any fact under Clause 6 of the Proposal Form about the previous policies issued by other insurers. The respondent has merely alleged the fact of multiple insurance policies of the insured-deceased through their affidavit of evidence but had not discharged their burden of proof by leading any documentary evidence to support their allegation.

8. *Per Contra*, learned counsel for the respondent has supported the judgment of the NCDRC and has further contended that the insured-deceased had taken fifteen other insurance policies worth Rs.71,27,702/- prior to the issuance of the subject policies by them. These policies were not disclosed in the proposal forms and had the respondent been aware about these other insurance policies with other insurance companies and the existing risk cover at the time

of assessment of risk under the subject policies, they would have certainly not issued the subject policies to the insured-deceased. Thus, the insured-deceased has suppressed the material fact and the claim has been rightly repudiated on this ground alone.

9. Learned counsel for the respondent further submitted that the policy of life insurance is based upon the principle of "*uberrimae fidei*", i.e., utmost good faith. When a specific fact is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within the best of his knowledge. In the present case as well, the insured-deceased was under the obligation to make complete and honest disclosure of all the facts and materials at the time of filling of the proposal form. The failure to do so shows the *mala fide* intention on the part of the insured-deceased and renders the policy invalid, void *ab-initio*, inoperative and unenforceable.

10. Learned counsel for the respondent also relied upon the judgment of this court in the case of ***Rekhaben***, which is contended to be similar in facts to the present case and where this Court allowed the repudiation of the insurance claim on the ground of material suppression of information about the previously taken insurance policies.

11. Having heard the learned counsel for the respective parties, the point that arises for consideration before this Court in the present Civil Appeal, is, whether, the respondent herein was correct in repudiating the claim of the appellant on the ground of suppression of material information pertaining to the existing policies with other insurers.

12. In order to answer the aforesaid question, it would be useful to recapitulate the relevant provisions of the law of insurance and evidence, *vis-à-vis* burden of proof and the method of discharging that burden of proof to prove an alleged fact, which is suppression of a material fact while seeking an insurance policy from an insurer.

13. The repudiation of an insurance claim is largely governed by Section 45 of the Insurance Act, 1938. Section 45 is a special provision of law, which bars the calling in question of an insurance policy beyond expiry of the stipulated period, except in a few circumstances that have to be proved by the insurer. The relevant part of the said provision, as it stood at the material time, is reproduced as under:

> "**45. Policy not be called in question on ground of mis-statement after two years.-** No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:
>
> Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

14. A three-judge bench of this court in ***Mithoolal Nayak vs. Life Insurance Corporation of India, AIR 1962 SC 814***, explained the scope of the operating part of Section 45 as under:

> "7….It would be noticed that the operating part of S. 45 states in effect (so far as is relevant for our purpose) that no policy of life insurance effected after the coming into force of the Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false; the second part of the section is in the nature of a proviso which creates an exception. It says in effect that

> if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, then the insurer can call in question the policy effected as a result of such inaccurate or false statement."

15. The scope of Section 45 was dealt with by this Court in the case of ***Rekhaben*** as follows:

> "14. Section 45 stipulates restrictions upon the insurer calling into question a policy of life insurance after the expiry of two years from the date on which it was effected. After two years have elapsed the insurer cannot call it into question on the ground that: (i) a statement made in the proposal; or (ii) a statement made in any report of a medical officer, referee or friend of the insured; or (iii) a statement made in any other document leading to the issuance of the policy was inaccurate or false, unless certain conditions are fulfilled. Those conditions are that: (a) such a statement was on a material matter; or (b) the statement suppressed facts which were material to disclose *and* that (i) they were fraudulently made by the policy holder; and (ii) the policy-holder knew at the time of making it that the statements were false or suppressed facts which were material to disclose. The cumulative effect of Section 45 is to restrict the right of the insurer to repudiate a policy of life insurance after a period of two years of the date on which the policy was effected. Beyond two years, the burden lies on the insurer to establish the inaccuracy or falsity of a statement on a material matter or the suppression of material facts. Moreover, in addition to this requirement, the insurer has to establish that this non-disclosure or, as the case may be, the submission of inaccurate or false information was fraudulently made and that the policy-holder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose."
>
> (emphasis by us)

16. Since the present case deals with a policy and its repudiation before the 2014 amendment to Section 45 of the Insurance Act, the pre-amendment time period of two years would be applicable to the case. As per the aforesaid language and interpretation of Section 45, the insurer cannot question the policy after the expiry of the time period and if it does, then the burden rests on the insurer to establish materiality of the fact suppressed and the knowledge of the insured about such suppression, so that the repudiation of the claim could be justified by the insurer.

17. In the present case, the onus was on the insurer to show that the insured had fraudulently given false information and the said information was related to a material fact. The second aspect of the controversy would be dealt with first.

18. For a better appreciation of the controversy, it would be important to analyse the maxim of *uberrimae fidei* that governs the insurance contracts. It may also be observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim *uberrimae fidei*. The plea of utmost good faith has also been taken by the respondent, for contending that the insured-deceased had a duty to disclose the details of the previous policies, as the same was sought in the application form. However, the insured failed in his duty to correctly answer the question about his previous policies. The law relating to the maxim *uberrimae fidei* was dealt with by this Court in the case of ***Manmohan Nanda vs. United India Insurance Co. Ltd., (2022) 4 SCC 582***, ***("Manmohan Nanda").*** The same could be discussed at this stage with reference to legal authorities as well as relevant provisions of law.

19. MacGillivray on Insurance Law, (12th Edn., Sweet & Maxwell, London, 2012 at p. 477) has summarised the duty of an insured to disclose as under:

> "... the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty

> by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms."

20. Lord Mansfield in ***Carter vs. Boehm, (1766) 3 Burr 1905*** has summarised the principles necessitating disclosure by the assured in the following words:

> "Insurance is a contract of speculation.
>
> The special facts upon which the contingent chance is to be computed, lie most commonly in the knowledge of the assured only; the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist …
>
> The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run, at the time of the agreement.
>
> The policy would be equally void against the under-writer if he concealed; ...
>
> Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

The aforesaid principles would apply having regard to the nature of policy under consideration, as what is necessary to be disclosed are "material facts" which phrase is not definable as such, as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms, it could be understood that any fact which has a bearing on the very foundation of the contract of insurance and the risk to be covered under the policy would be a "material fact".

21. Under the provisions of Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 the explanation to Section 2 (d) defining "proposal form" throws

light on what is the meaning and content of “material.” For an easy reference the definition of “proposal form” along with the explanation under the aforesaid Regulations has been extracted as under:

> “**2. Definitions.** In these regulations, unless the context otherwise requires-
>
> x x x
>
> (d) “Proposal Form” means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.
>
> Explanation: “Material” for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer.”
>
> Thus, the Regulation also defines the word “material” to mean and include all “important”, “essential” and “relevant” information in the context of guiding the insurer in deciding whether to undertake the risk or not.”

22. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and *vice versa*. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.

23. The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any

suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith and would render the policy voidable and consequently repudiate it at the instance of the insurer.

24. In relation to the duty of disclosure on the insured, any fact which would influence the judgment of a prudent insurer and not a particular insurer is a material fact. The test is, whether, the circumstances in question would influence the prudent insurer and not whether it might influence him *vide* ***Reynolds vs. Phoenix Assurance Co. Ltd., (1978) 2 Lloyd's Rep. 440.*** Hence, the test is to be of a prudent insurer while issuing a policy of insurance.

25. The basic test hinges on whether the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium, by knowledge of a particular fact if it had been disclosed. Therefore, the fact must be one affecting the risk. If it has no bearing on the risk it need not be disclosed and if it would do no more than cause insurers to make inquiries delaying issue of the insurance, it is not material if the result of the inquiries would have no effect on a prudent insurer.

26. Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied. Rules of universal application are not therefore to be expected, but the propositions set out in the following paragraphs are well established:

    (a) Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against. This is referred to as the "physical hazard".

    (b) Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate. This is usually referred to as the "moral hazard".

    (c) The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.

27. If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.

28. Full disclosure must be made of all relevant facts and matters that have occurred up to the time at which there is a concluded contract. It follows from this principle that the materiality of a particular fact is determined by the circumstances existing at the time when it ought to have been disclosed, and not by the events which may subsequently transpire. The duty to make full disclosure continues to apply throughout negotiations for the contract but it comes to an end when the contract is concluded; therefore, material facts which come to the proposer's knowledge subsequently need not be disclosed.

29. Thus, a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him, the proposer's duty of disclosure is not confined to his actual knowledge, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time. The second aspect of the duty of good faith arises in relation to representations made during the course of negotiations, and for this purpose all statements in relation to material facts made by the proposer during the course of negotiations for the contract constitute representations and must be made in good faith.

30. The basic rules to be observed in making a proposal for insurance may be summarized as follows:

    (a) A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance

will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.

(b) Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts 'no' when he means 'yes' it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.

(c) An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if in fact he has made more than one.

(d) Where the space for an answer is left blank, leaving the question un-answered, the reasonable inference may be that there is nothing to enter as an answer. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere non-disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state.

(e) Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent the insurers may, as reasonable men, be regarded as put on inquiry, so that if they issue a policy without any further enquiry they are assumed to have waived any further information. However, having regard to the inference mentioned in head (4) above, the mere leaving of a blank space will not normally be regarded as sufficient to put the insurers on inquiry.

(f) A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all points covered by the questions.

(g) Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, any event or circumstance supervenes to make it inaccurate or misleading.

[Source : Halsbury's Laws of England, Fourth Edition, Para 375, Vol.25 : Insurance]

31. Sometimes the standard of duty of disclosure imposed on the insured could make the insured vulnerable as the statements in the proposal form could be held against the insured. Conversely, certain clauses in the policy of insurance could be interpreted in light of the *contra proferentem* rule as against the insurer. In order to seek specific information from the insured, the proposal form must have specific questions so as to obtain clarity as to the underlying risks in the policy, which are greater than the normal risks.

32. From the aforementioned discussion, it is clear that the principle of utmost good faith puts reciprocal duties of disclosure on both parties to the contract of insurance. These reciprocal duties mandate that both the parties make complete disclosure to each other, so that the parties can take an informed decision and a fair contract of insurance exists between them. No material facts should be suppressed, which may have a bearing on the risk being insured and the decision of the party to undertake that risk. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged as per the rules stated in the aforementioned judgment.

33. Whether the information with regard to previous policies from other insurers is a material fact or not has already been dealt with by this Court in the judgment of ***Rekhaben***. The facts of the said case were that the insured therein had taken a policy of life insurance from Max New York Life Insurance Co. Ltd. on 10.07.2009 for a sum of Rs. 11 lakhs. Barely two months thereafter, on 16.09.2009, the insured submitted a proposal for a life insurance term plan policy of Reliance Life Insurance Co Ltd for an insurance cover of Rs. 10 lakhs. One of the questions that the proposer was required to answer in the proposal form was whether he was currently insured or had previously applied for life insurance cover, critical illness cover or accident benefit cover. This query was answered in the negative. In substance, the information regarding life insurance policy earlier

taken had to be mentioned. The query was answered as "NA" or "not applicable" response. The appellant company therein issued a policy of life insurance to the spouse of the respondent on 22.09.2009. The respondent spouse died on 08.02.2010. A claim for payment of Rs.10 lakhs was submitted. On coming to know that the spouse of the respondent therein had been insured with another private insurance company for a sum of Rs.11 lakhs and that the claim had been settled, the appellant company repudiated the claim stating that there was suppression of material fact inasmuch as there was glaring omission in the mentioning of details of the life insurance policy held by the life assured with other company. Being aggrieved by the repudiation, the respondent in the said case filed a consumer complaint which was dismissed on the ground that there was non-disclosure of the fact that the insured had held a previous policy in the proposal form filled up by the proposer. The appeal filed by the respondent was, however, allowed based on a decision of the NCDRC in ***Sahara India Life Insurance Co. Ltd. vs. Rayani Ramanjaneyulu, 2014 SCC OnLine NCDRC 525 : (2014) 3 CPJ 582 ("Sahara India").*** The decision of the State Consumer Disputes Redressal Commission was affirmed by NCDRC for the reason that the omission of the insured to disclose a previous policy of insurance would not influence the mind of a prudent insurer, as held in ***Sahara India.***

34. The question before this Court in the aforesaid case was, whether, the repudiation could be sustained on the grounds of suppression of information about other insurance policies. It is pertinent to note that the insured therein had admitted the non-disclosure of the earlier cover for life insurance held by him, but argued that the non-disclosure of such information was not a material fact whose suppression would allow for repudiation of the claim under Section 45. Therefore, the Court ruled in favour of the insurance company and held that such suppression was indeed a material suppression of information, as it had a bearing on the decision of the insurer to enter into the contract of insurance or not. The court thereunder held as follows:

> "32. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover

of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

33. The learned counsel appearing on behalf of the insurer submitted that where a warranty has been furnished by the proposer in terms of a declaration in the proposal form, the requirement of the information being material should not be insisted upon and the insurer would be at liberty to avoid its liability irrespective of whether the information which is sought is material or otherwise. For the purposes of the present case, it is sufficient for this Court to hold in the present facts that the information which was sought by the insurer was indeed material to its decision as to whether or not to undertake a risk. The proposer was aware of the fact, while making a declaration, that if any statements were untrue or inaccurate or if any matter material to the proposal was not disclosed, the insurer may cancel the contract and forfeit the premium. MacGillivray on Insurance Law formulates the principle thus:

> "…In more recent cases it has been held that all-important element in such a declaration is the phrase which makes the declaration the "basis of contract". These words alone show that the proposer is warranting the truth of his statements, so that in the event of a breach this warranty, the insurer can repudiate the liability on the policy irrespective of issues of materiality."

34. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and

the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy."

35. However, the aforesaid judgment is distinguishable from the present case, insofar as there is no admission by the appellant herein of any previous policies taken by the insured. In that case, after the admission by the policy holder, the Court was tasked only with the question of whether the fact about previous polices qualified to be a "material fact" that was suppressed. However, in the present case, in light of Section 45 of the Insurance Act, 1938, the burden rests on the insurer to prove before the Court that the insured had suppressed the information about the previous policies. This burden of proof has to be duly discharged by the insurer in accordance with the law of evidence.

36. In the instant case, NCDRC has extracted from the letter dated 31.12.2011, by which the claim of the appellant was repudiated, and has relied upon the reply filed by respondent company before the District Forum wherein details of as many as fifteen insurance policies taken from various insurers, other than the policy taken from the respondent company, have been given as under:

Sl. No.	Insurers	Policy No.	Issue Date	RCD	Sum assured	Date of birth declared
1.	Kotak	1839610	11.01.2010	11.01.2010	5,00,000/-	14.7.1960
2.	Bharti Axa Life	5003353827	Not known	28.3.2009	7,50,000/-	12.9.1960
3.	Aviva	ASP2610613	Not known	09.6.2009	10,00,000/-	12.7.1960
4.	Reliance Life Insurance	13231705	Not known	17.12.2008	2,00,000/-	6.7.1959
5.	Reliance Life Insurance	13741094	Not known	11.2.2009	5,00,000/-	14.7.1960
6.	HDFC Standard Life	13061074	Not known	29.8.2009	4,80,000/-	NA
7.	HDFC Standard Life	12695703	Not known	21.3.2009	4,80,000/-	NA

8.	Max New York Life	809471329	Not known	27.1.2009	5,75,289/-	14.7.1960
9.	Max New York Life	388825572	Not known	30.9.2009	4,24,711/-	14.7.1960
10.	Birla	2489174	Not known	28.1.2009	1,33,461/-	14.7.1960
11.	Birla	2490595	Not known	28.1.2009	2,60,241/-	14.7.1960
12.	Birla	3121574	Not known	3.8.2009	5,00,000/-	14.7.1960
13.	Birla	3956699	Not known	17.3.2010	3,24,000/-	14.7.1960
14.	IDBI	Not given	Not known	20.4.2010	5,00,000/-	14.7.1960
15.	IDBI	Not given	Not known	28.04…..	5,00,000/-	14.7.1960
				Total	**71,27,702/-**	
Total: Seventy-one lac twenty-seven thousand seven hundred and two only						

37. A mere perusal of the aforesaid table would indicate that the date of birth declared are different and the date of issuance has not been stated except in respect of one policy. It is also not known from the table to whom the said policies were issued. However, the NCDRC has observed that the appellant-complainant had not alleged in her complaint that no other insurance policy had been taken by the deceased. In the affidavit of the complainant, the fact that insurance policies were taken from other insurers was not denied. The respondent insurance company had given details of the aforesaid policies by way of an affidavit. Therefore, NCDRC concluded that deceased insured had withheld information in respect of several insurance policies which he had taken from other insurers.

38. Placing reliance on ***Rekhaben***, the NCDRC observed that ***Sahara India*** had been overruled in ***Rekhaben*** and therefore consumer complaint was dismissed. We find that the approach of the NCDRC is erroneous for the following reasons:

    i) Firstly, the NCDRC has failed to note that the details of the policies extracted in the table above do not state as in whose name the said policies were issued. On perusal of the dates of birth declared in the policies, it is not clear as to whose dates of birth are stated therein.

    ii) Secondly, the dates of issuance of policies have not been mentioned. More significantly, by merely mentioning the details as above stated would not establish the case of the insurance company. There was no corroboration of the said fact either by producing copies of the aforesaid policies or by examining the

officers of the various insurance companies which had issued the policies so as to establish the fact that the said policies had indeed been issued to the insured in order to prove material suppression of the fact of other policies obtained by the insurer in the proposal form. In the absence of any corroboration of the aforesaid details by letting in proper evidence, the mere mentioning of the half baked details in the affidavit would not amount to proof of the said fact. The NCDRC has thus failed to take note of the fact that the aforesaid details have not been supported by other corroborative evidence. The mere mentioning of certain details in an affidavit of evidence is not proof of the facts unless that is supported either by other documentary and/or oral evidence.

iii) Further, the NCDRC was also not right in finding fault with the complainant not mentioning in her affidavit the evidence that the insured had taken policies from other insurance companies and that the details given in the version of the respondent company were not true.

39. Next, we also find that the declaration form asked the following queries which were accordingly answered in the negative. The queries are extracted as under:

> "6.1 Details of applications submitted to & existing life insurance policies with future Generali and with any insurer. (In case of housewife, major student or minor life to be Assured please give details of husbands and parents insurance also)
>
> 6.2 Whether any proposal for life cover or critical illness Rider or Accident and Disability Benefit Rider, application for revival of any Policy has been made to any life insurer, declined/postponed/dropped/accepted or revived at modified rates"

On a reading of Query 6.1, what was sought was details of applications submitted to and existing life insurance policies with Future Generali (respondent company) and with any (other) insurer. Further details sought were in case of housewife, major student or minor life to be assured and to give details of husband's and parents' insurance also. It is not clear as to whether Query 6.1 referred to details of insurance

policy of the proposer with Future Generali and with any other insurer, as what was also sought was details of wife, major student or a minor life to be assured and to give details of the husband's and parents' insurance. Therefore, it is not clear from reading of Query 6.1 as to whether details of insurance policy of the insured with Future Generali and with other insurer were sought or the query related to the details of husband and parents' insurance policy being disclosed in case the insured was a housewife, major student or a minor life when the insured was a housewife or a minor child. The insured in the instant case did not belong to either the two categories. Query 6.2 was, whether any proposal for life cover or critical illness rider or accident and disability benefit rider, application for revival of any policy had been made to any life insurer, declined/postponed/dropped/accepted or revived at modified rates. The answer to the said queries were given by the insured in the negative.

Considering Query 6.2, firstly, it is noted that the deceased proposer had stated in the negative with regard to making of any application for revival of any policy. There is no evidence whatsoever let in by the respondent insurance company that there was an application made for revival of any policy of the insured which had either been declined/postponed/dropped/accepted or revived at modified rates. Therefore, the answer in the negative given to Query 6.2 cannot be held as against the appellant herein. In the circumstances, the NCDRC could not have concluded that when the answer "NO" was written to Query 6.2, there was any suppression of material fact.

40. Insofar as the Query 6.1 is concerned, it is noted that the same is not clear and it is not known in what context the details of the insured were sought with regard to any existing life insurance policy. On a reading of Query 6.1 holistically, it is also not clear regarding the nature of information that was sought by the respondent insurance company as discussed above. The answer given by the insured to the Query 6.1 was thus in the negative. In this backdrop, can it be said that there was a suppression of material fact by the insured in the proposal form. In this context, it is necessary to place reliance on the *contra proferentem* rule. This Court in the case of ***Manmohan Nanda***, discussed the rule of *contra proferentem* as under:

> "**45.** The contra proferentem rule has an ancient genesis. When words are to be construed, resulting in two alternative

interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. This rule is often invoked while interpreting standard form contracts. Such contracts heavily comprise of forms with printed terms which are invariably used for the same kind of contracts. Also, such contracts are harshly worded against individuals and not read and understood most often, resulting in grave legal implications. When such standard form contracts ordinarily contain exception clauses, they are invariably construed contra proferentem rule against the person who has drafted the same.

46. Some of the judgments which have considered the *contra proferentem* rule are referred to as under:

46.1. In *General Assurance Society Ltd.* v. *Chandumull Jain, AIR 1966 SC 1644*, it was held that where there is an ambiguity in the contract of insurance or doubt, it has to be construed *contra proferentem* against the insurance company.

46.2. In *DDA* v. *Durga Chand Kaushish, AIR 1973 SC 2609*, it was observed:

> "In construing document one must have regard, not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of the document are possible, the one which would give effect and meaning to all its parts should be adopted and for the purpose, the words creating uncertainty in the document can be ignored."

46.3. Further, in *Central Bank of India Ltd.* v. *Hartford Fire Insurance Co. Ltd., AIR 1965 SC 1288*, it was held:

> "*11*. … what is called the contra proferentem rule should be applied and as the policy was in a standard form contract prepared by the insurer alone, it should be interpreted in a way that would be favourable to the assured."

46.4. In *Sahebzada Mohammad Kamgarh Shah* v. *Jagdish Chandra Deo Dhabal Deb, AIR 1960 SC 953*, it was observed that where there is an ambiguity it is the duty of the court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee.

46.5. In *United India Insurance Co. Ltd.* v. *Orient Treasures (P) Ltd., (2016) 3 SCC 49* , this Court quoted *Halsbury's Laws of England* (5th Edn. Vol. 60, Para 105) on the *contra proferentem* rule as under:

> "*37*. … *Contra proferentem rule*.—Where there is ambiguity in the policy the court will apply the *contra proferentem* rule. Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the insured. Similarly, as regards language which emanates from the insured, such as the language used in answer to questions in the proposal or in a slip, a construction favourable to the insurers will prevail if the insured has created any ambiguity. This rule, however, only becomes operative where the words are truly ambiguous; it is a rule for resolving ambiguity and it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application."

46.6. The learned counsel for the appellant have relied upon *Sushilaben Indravadan Gandhi v. New India Assurance Co. Ltd., (2021) 7 SCC 151,* wherein it was observed that any exemption of liability clause in an insurance contract must be construed, in case of ambiguity, *contra proferentem*

against the insurer. In the said case reliance was placed on *Export Credit Guarantee Corpn. (India) Ltd.* v. *Garg Sons International, (2014) 1 SCC 686*, wherein this Court held as under :

> "*39*. … *11*. The insured cannot claim anything more than what is covered by the insurance policy. "The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely." The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the Insurance Company must also be read strictly. The contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of *contra proferentem* does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon."

Having regard to the aforesaid discussion on *contra proferentem* rule, it is noted that the Queries 6.1 and 6.2 are not clear in themselves as we have discussed the same above. Therefore, the answer given by the deceased cannot be taken in a manner so as to negate the benefit of the policy by repudiation of the same on the demise of the insured.

41. At this stage, we may also dilate on the aspect of burden of proof. Though the proceedings before the Consumer Fora are in the nature of a summary proceeding. Yet the elementary principles of burden of proof and onus of proof would apply. This is relevant for the reason that no corroborative evidence to what has been deposed in the affidavit is let in by the insurance company in order to establish a valid repudiation of the claim in the instant case. Section 101 of the Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This Section clearly states

that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. Simply put, it is easier to prove an affirmative than a negative. In other words, the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Further, things which are admitted need not be proved. Whether the burden of proof has been discharged by a party to the *lis* or not would depend upon the facts and circumstances of the case. The party on whom the burden lies has to stand on his own and he cannot take advantage of the weakness or omissions of the opposite party. Thus, the burden of proving a claim or defence is on the party who asserts it.

42. Section 102 of the Evidence Act, 1872 provides a test regarding on whom the burden of proof would lie, namely, that the burden lies on the person who would fail if no evidence were given on either side. Whenever the law places a burden of proof upon a party, a presumption operates against it. Hence, burden of proof and presumptions have to be considered together. There are however exceptions to the general rule as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872, i.e., in the context of the burden of adducing evidence: (i) when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him (Section 106). In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105).

43. There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on the title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title *vide* ***RVE***

***Venkatachala Gounder vs. Arulmigu Viswesaraswami and VP Temple*, (2003) 8 SCC 752.**

44. In a claim against the insurance company for compensation, where the appellants in the said case had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy, it was for the insurance company to disprove such claim with evidence, if any, *vide* ***Shobika Attire vs. New India Assurance Co. Ltd.*, (2006) 8 SCC 35.**

45. Section 103 of the Evidence Act, 1872 states that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This Section enlarges the scope of the general rule in Section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. Further, Section 104 of the said Act states that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. The import of this Section is that the person who is legally entitled to give evidence has the burden to render such evidence. In other words, it is incumbent on each party to discharge the burden of proof, which rests upon him. In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent. Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else.

46. Section 106 of the Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Section applies only to parties to the suit or proceeding. It cannot apply when the fact is such as to be capable of being known also by persons other than the parties. (Source: Sarkar, Law of Evidence, 20th Edition, Volume-2, LexisNexis)

47. In light of the aforesaid discussion on burden of proof, it has to be analysed if the respondent in the present case has adequately discharged his burden of proof about the fact of suppression of previous life insurance policies of the insured.

48. The respondent insurance company has produced no documentary evidence whatsoever before the District Forum to prove its allegation

that the insured had taken multiple insurance policies from different companies and had suppressed the same. The District Forum had therefore concluded that there was no documentary evidence to show that the deceased-life insured had taken various insurance policies except an averment and on that basis the repudiation was held to be wrong. Before the State Commission, the respondent had provided a tabulation of the 15 different policies taken by the insured-deceased, amounting to Rs.71,27,702/-. The same has been extracted above. However, the said tabulation was not supported by any other documentary evidence, like the policy documents of these other policies, or pleadings in courts, or such other corroborative evidence. The respondent sought to mark a bunch of documents before the State Commission, which related to the policy papers of the insured with another insurer, i.e., Kotak Life Insurance. However, the respondent was not granted permission by the State Commission, as the said documents were neither original, nor certified, nor authenticated. Apart from this, there was no effort made by the respondent to bring any authenticated material on record. Thus, in the absence of any evidence to prove that the insured-deceased possessed some insurance policies from other insurance companies, the State Commission upheld the decision of the District Forum in setting aside the repudiation of the claim by the respondent.

49. Before the NCDRC, the respondent again provided the aforesaid tabulation of policies of the insured-deceased. The respondents in their affidavit stated that the insured-deceased had taken multiple insurance policies before taking the policy from them. The NCDRC however accepted the averment of the respondents, without demanding corroborative documentary evidence in support of the said fact. The NCDRC, on the contrary, also held that the fact about multiple policies was not dealt with by the appellant in her complaint or evidence affidavit and this therefore proved that the insured had indeed taken the policies from multiple companies as claimed by the respondents.

50. The aforesaid approach adopted by the NCDRC is, in our view, not correct. The cardinal principle of burden of proof in the law of evidence is that “he who asserts must prove”, which means that if the respondents herein had asserted that the insured had already taken fifteen more policies, then it was incumbent on them to prove this fact by leading necessary evidence. The onus cannot be shifted

on the appellant to deal with issues that have merely been alleged by the respondents, without producing any evidence to support that allegation. The respondents have merely provided a tabulation of information about the other policies held by the insured-deceased. The said tabulation also has missing information with respect to policy numbers and issuing dates and bears different dates of births. Further, this information hasn't been supported with any other documents to prove the averment in accordance with law. No officer of any other insurance company was examined to corroborate the table of policies said to have been taken by the deceased policy holder, father of the appellant herein. Moreover, the table produced is incomplete and contradictory as far as the date of birth of the insured is concerned. Therefore, in our view, the NCDRC could not have relied upon the said tabulation and put the onus on the appellant to deal with that issue in her complaint and thereby considered the said averment as proved or proceeded to prove the stance of the opposite party. A fact has to be duly proved as per the Evidence Act, 1872 and the burden to prove a fact rests upon the person asserting such a fact. Without adequate evidence to prove the fact of previous policies, it was incorrect to expect the appellant to deal with the said fact herself in the complaint or the evidence affidavit, since as per the appellant, there did not exist any previous policy and thus, the onus couldn't have been put on the appellant to prove what was non-existent according to the appellant.

51. The respondents, *vide* their counter affidavit before this court, have sought to produce some documents to substantiate their claim of other existing insurance policies of the insured-deceased, but the same cannot be permitted to be exhibited at this stage, that too, in an appeal filed by the complainant who is the beneficiary under the policies in question. Any documentary evidence sought to be relied upon by the respondent ought to have been led before the District Forum but the same was not done. It was before the District Forum that the evidence was led and examined and at that stage, the respondent did not take adequate steps to lead any oral or documentary evidence to prove their assertion. Their attempt to annex documents in support of their claim before the State Commission was also declined due to the presentation of unauthenticated documents. Therefore, it can be safely concluded that the respondents have failed to adequately prove the fact that the insured-deceased had

fraudulently suppressed the information about the existing policies with other insurance companies while entering into the insurance contracts with the respondents herein in the present case. Therefore, the repudiation of the policy was without any basis or justification.

52. Moreover, we have also held on the facts of this case having regard to the nature of queries in Query Nos.6.1 and 6.2, there was no suppression of any material fact as per our earlier discussion based on the *contra proferentem* rule.

53. In light of the above discussion, the impugned order dated 22.07.2019 passed by the NCDRC in Revision Petition No.1268 of 2019 is set aside. The respondent company is directed to make the payment of the insurance claim under both the policies to the appellant, amounting to Rs. 7,50,000/- and Rs. 9,60,000/-, with interest at the rate of 7% per annum from the date of filing the complaint, till the actual realisation.

54. The appeal stands allowed in the aforesaid terms.

55. Parties to bear their respective costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 757 : 2024 INSC 330

Jyoti Devi
v.
Suket Hospital & Ors.

(Civil Appeal No. 5256 of 2024)

23 April 2024

[Sanjay Karol* and Aravind Kumar, JJ.]

Issue for Consideration

Post surgery of appendicitis at respondent hospital, the claimant-appellant suffered continuous pains near the surgical site. Eventually upon investigation, it was found that a 2.5 cm needle was present in the abdomen and for removing it another surgery had to be performed. District Forum passed award directing Rs.5 lakhs to be paid to the appellant. However, State Commission reduced the compensation to Rs.1 lakhs. NCDRC applying the eggshell skull rule enhanced the compensation to Rs.2 lakhs. Appellant sought enhancement of compensation.

Headnotes

Consumer Protection Act, 1986 – Medical negligence – Deficiency in service – Determination of quantum of compensation – Just compensation – Eggshell skull rule – Inapplicability:

Held: The factum of negligence on the part of the respondent Hospital as well as respondent No.2 was not doubted across fora – Although the State Commission differed with the District Forum on the presence of the needle, the NCDRC found the medical record to testify the presence of a needle in the abdomen and also found that the respondent Hospital was found wanting in terms of post-operative care – In determining compensation in cases of medical negligence, a balance has to be struck between the demands of the person claiming compensation, as also the interests of those being made liable to pay – What qualifies as just compensation has to be considered in the facts of each case – Despite having made observations regarding the service rendered by the Hospital being deficient and the continuous pain and suffering on the part of the appellant, the compensation granted was paltry and unjustified – Further, eggshell skull rule holds the injurer liable for damages that exceed the amount that would normally be expected to occur – It

* Author

is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional tort – The persons to whose cases this rule can be applied, are persons who have pre-existing conditions – Therefore, for this rule to be appropriately invoked and applied, the person in whose case an adjudicatory authority applies must have a pre-existing condition falling into either of the four categories – Impugned judgment is silent as to how the Eggshell Skull Rule rule applied to the present case – Nowhere it mentioned as to what criteria had been examined, and then, upon analysis, found to be met by the appellant for it to be termed that she had an eggshell skull, or for that matter, what sort of pre-existing condition was she afflicted by, making her more susceptible to such a reaction brought on because of surgery for appendicitis – Awards of the NCDRC and State Commission set aside while that of the District Forum restored – Rs.5 lakhs with 9% simple interest to be paid by the respondents to the appellant for being medically negligent and providing services deficient in nature – Cost of litigation @ Rs.50,000/- also imposed. [Paras 11, 12.3.1, 12.3.3, 12.4.1, 16-18]

Doctrine – Common law doctrine – Rule of tort – Eggshell skull rule – Application of the rule – Jurisprudence:

Held: Jurisprudence of the application of this rule, as developed (in countries other than India) has fit into four categories – First, when a latent condition of the plaintiff has been unearthed – Second, when the negligence on the part of the wrongdoer re-activates a plaintiff's pre-existing condition that had subsided due to treatment – Third, wrongdoer's actions aggravate known, pre-existing conditions, that have not yet received medical attention – Fourth, when the wrongdoer's actions accelerate an inevitable disability or loss of life due to a condition possessed by the plaintiff, even when the eventuality would have occurred with time, in the absence of the wrongdoer's actions – The persons to whose cases this rule can be applied, are persons who have pre-existing conditions– Therefore, for this rule to be appropriately invoked and applied, the person in whose case an adjudicatory authority applies must have a pre-existing condition falling into either of the four categories. [Para 12.4.3]

Compensation – Just compensation:

Held: The idea of compensation is based on restitutio in integrum, which means, make good the loss suffered, so far as money is able to do so, or, in other words, take the receiver of such compensation,

back to a position, as if the loss/injury suffered by them hadn't occurred – Compensation doesn't acquire the quality of being just simply because the Tribunal awarding it believes it to be so – For it to be so, it must be adequate; fair; and equitable, in the facts and circumstances of each case. [Para 12.3.2]

Consumer Protection Act, 1986 – Scope of – Discussed. [Para 12.1.1]

Case Law Cited

C. Venkatachalam v. Ajitkumar C. Shah and others [2011] 13 SCR 814 **: (2011) 12 SCC 707;** *J.J. Merchant (Dr) v. Shrinath Chaturvedi* [2002] Supp. 1 SCR 469 **: (2002) 6 SCC 635;** *Common Cause v. Union of India* [1993] 1 SCR 10 **: (1997) 10 SCC 729;** *M.A Biviji v. Sunita & Ors.* [2023] 15 SCR 113 **: (2024) 2 SCC 242;** *Jacob Matthew v. State of Punjab* [2005] Supp. 2 SCR 307 **: (2005) 6 SCC 1;** *Dr. Mrs. Chanda Rani Akhouri v. Dr. M.A. Methusethupati* [2022] 5 SCR 812 **: (2022) SCC OnLine SC 481;** *Harish Kumar Khurana v. Joginder Singh* **(2021) 10 SCC 291;** *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* [2009] 9 SCR 313 **: (2009) 6 SCC 1;** *Sarla Verma v. DTC* [2009] 5 SCR 1098 **: (2009) 6 SCC 1 – relied on.**

Balram Prasad v. Kunal Saha and Ors. [2013] 12 SCR 30 **: (2014) 1 SCC 384;** *V. Krishnakumar v. State of Tamil Nadu & Ors.* [2015] 8 SCR 100 **: (2015) 9 SCC 388;** *Nand Kishore Prasad v. Mohib Hamidi and Ors.* [2019] 7 SCR 1076 **: (2019) 6 SCC 512 – referred to.**

Vasburg v. Putney 50 N.W 403 (Wis 1891)**;** *Dulieu v. While & Sons* (1901) 2 KB 669**;** *White and Others v. Chief Constable of South Yorkshire and Others; Athey v. Leonati* [1996] 3 SCR 458**;** *James E. Niehus and Denise Niehus v. Vince Liberio and Frank Vittorio* 973 F.2d 526 (7th Cir. 1992)**;** *Lancaster v. Norfolk and Western Ry. Co.* 773 F.2d 807, 820 (7th Cir. 1985) **– referred to.**

Books and Periodicals Cited

Mark A. Geistfeld, Proximate Cause Untangled, 80 Md L. Rev. 420 (2021); Steve P. Calandrillo & Dustin E. Buelher, Eggshell Economics: A Revolutionary

Approach to the Eggshell Plaintiff Rule, 74 Ohio St. L.J 375 (2013); Restatement (Third) of Torts: Liability For Physical and Emotional Harm, American Law Institute, 2010 – referred to.

List of Acts

Consumer Protection Act, 1986.

List of Keywords

Medical negligence; Deficiency in service; Needle in abdomen; Continuous pain and suffering post surgery; Post-operative care; Determination of quantum of compensation; Just compensation; Eggshell skull rule; Common law doctrine.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5256 of 2024

From the Judgment and Order dated 01.09.2015 of the National Consumers Disputes Redressal Commission, New Delhi in RP No. 57 of 2015

Appearances for Parties

Subhash Chandran K. R., Ms. Krishna L. R., Biju P Raman, Advs. for the Appellant.

Mritunjay Kumar Sinha, Mrs. Vimal Sinha, J. P. N. Shahi, Rameshwar Prasad Goyal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave granted.

2. In ordinary circumstances, a procedure concerning appendicitis is considered to be routine. It did not turn out to be so for Jyoti Devi[1]. She was admitted to Suket Hospital, Sundernagar, Mandi, Himachal Pradesh on 28th June 2005 and had her appendicitis removed by Dr. Anil Chauhan, Senior Surgeon, Suket Hospital. Post surgery, she

1 Hereafter, 'claimant-appellant'

was discharged on 30th June 2005. However, her ordeal did not end there. She suffered continuous pains near the surgical site, as such she was admitted again on 26th July 2005 but was discharged the next day with the assurance that no further pain would be suffered by her. She was further treated by one Dr. L.D. Vaidya of Mandav Hospital, Mandi, on the reference of Dr. Anil Chauhan respondent no.2 herein. Yet again, there was no end to her suffering. This process continued for a period of four years.

3. The claimant - appellant eventually landed up for treatment at the Post Graduate Institute of Medical Science, Chandigarh. Upon investigation, it was found that a 2.5 cm foreign body (*needle*) *"is present below the anterior abdominal wall in the preveside region just medial to previous abdominal scar (Appendectomy)*" for which a further surgery had to be performed for its removal.

4. Alleging negligence on the part of the respondent - Suket Hospital, a claim was brought for the "*huge pain and spent money on treatment"* totalling to Rs.19,80,000/-.

5. The District Consumer Disputes Redressal Forum, Mandi, H.P.[2], while adjudicating Complaint Case No.262 of 2011 vide award dated 18th December, 2013 under Section 12 of the Consumer Protection Act, 1986, concluded as under:-

> "15. In the case at hand, the complainant has suffered physical pain for more than five years due to negligence of opposite parties no. 1 and 2. …we feel that compensation for Rs.5,00,000/- in lump sum is just and proper to meet out the injury of the complainant. …Opposite parties no. 3 and 4 have taken plea that they are only liable for bodily injury as per the contract for death, injury, illness or disease of or any person. In the present case the complainant was operated by opposite party no.2 for appendicitis but after operation, the complainant developed pain and pus started oozing out from stitches and she was operated at PGI where needle was extracted by the doctor from her abdomen. Therefore, the case of the complainant is covered under injury and illness and opposite parties no.3

2 For short, 'District Forum'

> and 4 are liable to pay compensation awarded against opposite parties no.1 and 2 being the insurers"

6. On appeal preferred by the present respondents (First Appeal No.70 of 2014 dated 23rd September 2014) the H.P. State Consumer Disputes Redressal Commission, Shimla[3] observed that:-

> "…needle was not left at the site of surgery, at the Hospital of the appellants, when the complainant was operated for removal of appendicitis, yet from an overall reading of the pleadings and evidence on record, it can be said that surgery conducted at the clinic of the appellants, was the cause of pain, which the complainant had been having at-least upto December, 2008, when the pus was drained out."

7. The respondents herein were held liable to compensate the appellant for the physical pain, mental agony, and expenses incurred by her, to the tune of Rs.1,00,000/-, thereby partly allowing the respondent's appeal.

8. The National Consumer Disputes Redressal Commission[4], in the Revision Petition 57 of 2015 arising out of the order of the State Commission observed that the post-operative care provided by the respondents was casual and fell short of the standard of medical care. They had failed to investigate the non-healing surgical wound thereby constituting a deficiency in service. The NCDRC refused to accept the argument that since the appellant had received care at other hospitals as well it would be difficult to determine who was responsible for the needle in the abdomen.

9. The egg-skull rule was applied to hold an individual liable for all consequences of their act. The compensation awarded by the State Commission was enhanced to Rs.2,00,000/-.

10. Hence, the claimant-appellant prefers the present appeal, seeking enhancement of compensation. We may state, for ample clarity, that, the present dispute arose within the contours of the Consumer Protection Act, 1986, the predecessor legislation to the current Consumer Protection Act, 2019.

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3 For short, 'State Commission'

4 For brevity, 'NCDRC'

11. The factum of negligence on the part of the respondent Hospital as well as respondent No.2 has not been doubted, across fora. Although the State Commission had differed with the District Forum on the presence of the needle, the NCDRC, in para 5 of the impugned judgment and order, found the medical record to testify to the presence of a needle in the abdomen and also found that the respondent Hospital was found wanting in terms of post-operative care.

12. The primary ground alleged, in submitting that the finding of medical negligence is unjustified, was that there has been a recorded gap of time where the appellant did not suffer from any pain (1½ years). However, we notice the NCDRC to have observed her period of suffering to be more than 5 years, implying thereby that the gap in suffering aspect has not been accepted. No material has been placed before us to take a different view therefrom. The respondents are not the ones who have approached this Court. As such, we are only required to examine the sufficiency of compensation as awarded by way thereof. The same, though, cannot be appositely done without having appreciated pronouncements of this Court on the scope and purpose of the Consumer Protection Act; medical negligence; and compensation in such cases as also, the rule of tort law known as the '*eggshell skull*' rule.

12.1 Scope of the Consumer Protection Act

12.1.1 An examination of the decisions of this Court in ***C. Venkatachalam v. Ajitkumar C. Shah and others***[5] and ***J.J. Merchant (Dr) v. Shrinath Chaturvedi***[6] and ***Common Cause v. Union of India***[7] among a host of other pronouncements, reveals the following in this regard:-

i. It is a benevolent, socially orientated legislation, the declared aim of which is aimed at protecting the interests of consumers;

ii. Its goal is to provide inexpensive and prompt remedies for the grievances of consumers against defective goods and deficient services;

5 [2011] 13 SCR 814 : (2011) 12 SCC 707

6 [2002] Supp. 1 SCR 469 : (2002) 6 SCC 635

7 [1993] 1 SCR 10 : (1997) 10 SCC 729

iii. For the above-stated objective, keeping in view the accessibility of these grievance redressal bodies to all, to all persons, quasi-judicial bodies have been set up at the district, state, and national levels;

iv. These bodies have been formed to save the aggrieved consumer from the hassle of filing a civil suit, i.e., provide for a prompt remedy in the nature of award or where appropriate, compensation, after having duly complied with the principles of natural justice;

12.2 The Law on Medical Negligence

12.2.1 Three factors required to prove medical negligence, as recently observed by this Court in ***M.A Biviji v. Sunita & Ors.***[8]*,* following the landmark pronouncement in ***Jacob Matthew v. State of Punjab***[9], are :-

> "**36.**As can be culled out from above, the three essential ingredients in determining an act of medical negligence are : (1.) a duty of care extended to the complainant, (2.) breach of that duty of care, and (3.) resulting damage, injury or harm caused to the complainant attributable to the said breach of duty. However, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner."

12.2.2 To hold a doctor liable, this Court in ***Dr. Mrs. Chanda Rani Akhouri v. Dr. M.A. Methusethupati***[10] observed: -

> "…. a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another.

8 [2023] 15 SCR 113 : (2024) 2 SCC 242

9 [2005] Supp. 2 SCR 307 : (2005) 6 SCC 1

10 [2022] 5 SCR 812 : 2022 SCC OnLine SC 481

> In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field."
>
> (Emphasis supplied)

12.2.3 Observations in ***Harish Kumar Khurana v. Joginder Singh***[11] are also instructive. Bopanna J., writing for the Court held:

> "**...**It is necessary that the hospital and the doctors are required to exercise sufficient care in treating the patient in all circumstances. However, in unfortunate cases, though death may occur and if it is alleged to be due to medical negligence and a claim in that regard is made, it is necessary that sufficient material or medical evidence should be available before the adjudicating authority to arrive at a conclusion."
>
> *(emphasis supplied)*

These observations, although made in the context of a patient having passed away in the course of, or as a result of treatment, nonetheless are essential even in cases where the claimant has suffered an injury.

12.3 Determination of the Quantum of Compensation

12.3.1 This Court has held that in determining compensation in cases of medical negligence, a balance has to be struck between the demands of the person claiming

11 (2021) 10 SCC 291

compensation, as also the interests of those being made liable to pay. It was observed in ***Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka***[12] -

> "**88.** We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.
>
> **89.** It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualised. Life it is said is akin to a ride on a roller-coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard."

In the very same judgment, it was further observed, particularly in cases of the person being injured:-

> "**90.** At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every

12 [2009] 9 SCR 313 : (2009) 6 SCC 1

day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

12.3.1 It would also be instructive to refer to the concept of '*just compensation*'. The idea of compensation is based on *restitutio in integrum,* which means, make good the loss suffered, so far as money is able to do so, or, in other words, take the receiver of such compensation, back to a position, as if the loss/injury suffered by them hadn't occurred. In ***Sarla Verma v. DTC***[13] this Court observed that compensation doesn't acquire the quality of being just simply because the Tribunal awarding it believes it to be so. For it to be so, it must be, ***(i)*** adequate; (***ii)*** fair; and ***(iii)*** equitable, in the facts and circumstances of each case. This understanding was reiterated in ***Balram Prasad v. Kunal Saha and Ors***[14]***,*** ***V. Krishnakumar v. State of Tamil Nadu & Ors*****,**[15] and ***Nand Kishore Prasad v. Mohib Hamidi and Ors***[16]***.***

12.3.2 What qualifies as just compensation, as noticed above, has to be considered in the facts of each case. In ***Balram Prasad*** (supra) it has been observed that this court has been *'skeptical about using a straightjacket multiplier method for determining the quantum of compensation in medical negligence claims'.*

12.3 Eggshell Skull Rule

12.4.1 This rule (applied by the NCDRC) holds the injurer liable for damages that exceed the amount that would normally be expected to occur. It is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and uncommon reactions to the defendant's negligent

13 [2009] 5 SCR 1098 : (2009) 6 SCC 1

14 [2013] 12 SCR 30 : (2014) 1 SCC 384

15 [2015] 8 SCR 100 : (2015) 9 SCC 388

16 [2019] 7 SCR 1076 : (2019) 6 SCC 512

or intentional tort. In simple terms, a person who has an eggshell skull is one who would be more severely impacted by an act, which an otherwise "*normal person*" would be able to withstand. Hence the term eggshell to denote this as an eggshell is by its very nature, brittle. It is otherwise termed as "*taking the victim as one finds them*" and, therefore, a doer of an act would be liable for the otherwise more severe impact that such an act may have on the victim.

12.4.2 This rule is well recognized and has often formed the basis of which compensation has been awarded in countries such as the United States of America. So much so, that a famous treatise records as follows "*Extensive research has failed to identify a single United States case disavowing the rule*"[17] Its origins, if not by that name, have been traced back to 1891 in a decision of the Washington State Supreme Court- ***Vasburg v. Putney***[18]. In this case, arising out of a common childhood altercation, Putney, a twelve-year-old child had kicked the fourteen-year-old Vasburg, which aggravated a previous injury (of which Putney was not aware), leading to his permanent incapacitation. Putney was held liable. The Court opined *"the wrongdoer is liable for all the injuries resulting directly from the wrongful act, whether they could or could not have been foreseen by him".*

12.4.3 The jurisprudence of the application of this rule, as has developed, (*needless to add, in countries other than India*) has fit into four categories[19]- ***first***, when a latent condition of the plaintiff has been unearthed; ***second***, when the negligence on the part of the wrongdoer re-activates a plaintiff's pre-existing condition that had subsided due to treatment; ***third,*** wrongdoer's actions aggravate known, pre-existing conditions, that have not yet received medical attention; and ***fourth,*** when the

17 Mark A. Geistfeld, Proximate Cause Untangled, 80 Md L. Rev. 420 (2021)

18 50 N.W 403 (Wis 1891)

19 Steve P. Calandrillo & Dustin E. Buelher, Eggshell Economics: A Revolutionary Approach to the Eggshell Plaintiff Rule, 74 Ohio St. L.J 375 (2013)

wrongdoer's actions accelerate an inevitable disability or loss of life due to a condition possessed by the plaintiff, even when the eventuality would have occurred with time, in the absence of the wrongdoer's actions. As these categories and, the name of the rule itself suggest, the persons to whose [20]cases this rule can be applied, are persons who have pre-existing conditions.[21] Therefore, for this rule to be appropriately invoked and applied, the person in whose case an adjudicatory authority applies must have a pre-existing condition falling into either of the four categories described above.

12.4.4 It would be opportune to refer to a few judgments across jurisdictions to better discern the application of this rule.

- The King's Bench in ***Dulieu v. While & Sons***[22] while speaking in reference to American cases cited at that Bar where the New York Court had refused to pay compensation for 'fright' to a woman who while waiting for a tram, was nearly run-over by a horse-drawn cart, and as result of the same fainted, suffer a miscarriage and subsequent illness; observed:

> "It may be admitted that the plaintiff in this American case would not have suffered exactly as she did, and probably not to the same extent as she did, if she had not been pregnant at the time; and no doubt the defendants' horses could not anticipate that she was in this condition. But what does that fact matter? If a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages that he would have suffered less injury , or no injury at all, if he had not had an unusually thin skull or an unusually weak heart.

20 Restatement (Third) of Torts: Liability For Physical and Emotional Harm, American Law Institute, 2010.

21 Geistfeld, 2021 (supra)

22 (1901) 2 KB 669

- Griffiths LJ, in ***White and Others v. Chief Constable of South Yorkshire and Others*** observed in regards to this rule, as follows-

  > "…The law expects reasonable fortitude and robustness of its citizens and will not impose liability for the exceptional frailty of certain individuals. This is not to be confused with the "eggshell skull" situation, where as a result of a breach of duty the damage inflicted proves to be more serious than expected. It is a threshold test of breach of duty; before a defendant will be held in breach of duty to a bystander he must have exposed them to a situation in which it is reasonably foreseeable that a person of reasonable robustness and fortitude would be likely to suffer psychiatric injury…"

- The Supreme Court of Canada, in an appeal arising out of the Court of Appeal for British Colombia, ***Athey v. Leonati***[23] observed that this case in its own words, is one of *"straightforward application of the thin skull rule."* The application of the rule as made herein, underscores the existence of pre-existing conditions. The relevant paragraphs are as follows:-

  > 43 The findings of the trial judge indicate that it was necessary to have both the pre-existing condition and the injuries from the accidents to cause the disc herniation in this case. She made a positive finding that the accidents contributed to the injury, but that the injuries suffered in the two accidents were "not the sole cause" of the herniation. She expressly found that "the herniation was not unrelated

23 [1996] 3 SCR 458

to the accidents" and that the accidents "contributed to some degree" to the subsequent herniation. She concluded that the injuries in the accidents "played some causative role, albeit a minor one". These findings indicate that it was the combination of the pre-existing condition and the injuries sustained in the accidents which caused the herniation. Although the accidents played a lesser role than the pre-existing problems, the accidents were nevertheless a necessary ingredient in bringing about the herniation.

44 The trial judge's conclusion on the evidence was that "[i]n my view, the plaintiff has proven, on a balance of probabilities, that the injuries suffered in the two earlier accidents contributed to some degree to the subsequent disc herniation". She assessed this contribution at 25 percent. This falls outside the *de minimis* range and is therefore a material contribution: *Bonnington Castings, Ltd. v. Wardlaw*, *supra*. This finding of material contribution was sufficient to render the defendant fully liable for the damages flowing from the disc herniation.

45 The finding of material contribution was not unreasonable. Although the plaintiff had experienced back problems before the accidents, there was no evidence of herniation or insult to the disc and no history of complaints of sciatica. When a plaintiff has two accidents which both cause serious back injuries, and shortly thereafter suffers a disc herniation during a mild exercise which he frequently performed prior to the accidents, it seems reasonable to infer a causal connection.

> 46 The trial judge found that the plaintiff's condition was improving when the herniation occurred, but this also means that the plaintiff was still to some extent suffering from the back injuries from the accidents. The inference of causal link was supported by medical evidence and was reasonable.
>
> 47 This appeal involves a straightforward application of the thin skull rule. The pre-existing disposition may have aggravated the injuries, but the defendant must take the plaintiff as he finds him. If the defendant's negligence exacerbated the existing condition and caused it to manifest in a disc herniation, then the defendant is a cause of the disc herniation and is fully liable.

❖ Let us now turn to, illustratively, the application of this rule in the USA. Richard Posner J., speaking for the 7th Circuit Court of Appeals in ***James E. Niehus and Denise Niehus v. Vince Liberio and Frank Vittorio***[24]***,*** noted as hereinbelow:

> "Niehus was sufficiently drunk when his car was struck that he mightn't have felt the pain of a broken cheekbone. But at least according to the defendants' lawyer he had (though this seems improbable) sobered up a lot by the time the altercation in the station house began several hours later, yet still he said nothing about a pain in his cheek until after the fight. The doctors testified as we said that the break was consistent with a kick though it could of course have been caused by Niehus's striking his head against the door of the car in the accident. If the jury believed, as it had every right to do, that Niehus was kicked in the left side of his face by the

24 973 F.2d 526 (7th Cir. 1992)

> defendants, the fact that the cheekbone might have been broken already would not help the defendants. If you kick a person's freshly broken cheekbone you are likely to aggravate the injury substantially, and the "eggshell skull" or "thin skull" rule, would make the officers liable for the full consequences of their kicks even if, had it not been for a preexisting injury, the consequences would have been much less injurious. Oddly, the leading "eggshell skull" case also involved a kick."

❖ We may also refer to another instance, from the same Court. In ***Lancaster v. Norfolk and Western Ry. Co.***[25], this rule was applied thus:-

> "All that really matters, moreover, is that Tynan's misconduct be attributable to the railroad, as is easily done under a thoroughly conventional interpretation of respondent superior. It was he (the jury could have found) who pushed Lancaster over the edge. That Lancaster may have been made especially susceptible to such misconduct by earlier acts for which the railroad might or might not be liable would be no defense. Under the "thin skull," or more colorfully the "eggshell skull," rule, the railroad would be fully liable for the consequences of Tynan's assault. See, e.g., Vosburg v. Putney, 80 Wis. 523, 50 N.W. 403 (1891); Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983).")
>
> XXXX
>
> The fact that the railroad had weakened Lancaster by earlier misconduct for which it could not be held liable would be irrelevant

25 773 F.2d 807, 820 (7th Cir. 1985)

> to its liability for Tynan's assault and to the amount of damages it would have to pay. The tortfeasor takes his victim as he finds him (emphatically so if the victim's weakened condition is due to earlier, albeit time-barred, torts of the same tortfeasor); that is the eggshell-skull rule. The single act of Tynan made the railroad fully liable for all the damages that Lancaster sought and the jury awarded."

13. Let us now turn our attention back to the facts *in presenti.* Keeping in view the afore-noted position of law in regard to the benevolent purpose of the Consumer Protection Act, the aspects required to be established to allege medical negligence, the determination of compensation in a case where a person is injured, we find the manner in which compensation stood reduced by the State Commission as also the NCDRC, *vis-à-vis* the District Forum to be based on questionable reasoning.

14. The State Commission has recognized that the appellant herein had not been treated "*with the care expected at a medical clinic*"; she had been suffering from persistent pain right from 2005 until December, 2008; and that post-surgical care was deficient which undoubtedly constitutes a deficiency in service and yet found it appropriate to reduce the compensation to a mere Rs.1 lakh. This clearly is not in line with the balance of interests required to be borne in mind while determining compensation.

15. The NCDRC observed that the claimant-appellant's treatment at the respondent-Hospital was '*casual*'; that the excuse of having sought treatment at other hospitals was not available to the respondents and that she had suffered pain for more than 5 years apart from the case having been dragged on for more than a decade, and yet lumpsum compensation was only Rs.2 lakhs.

16. How could such compensation be justified, after observations having been made regarding the service rendered by the Hospital, being deficient, and the continuous pain and suffering on the part of the claimant-appellant, is something we fail to comprehend. Compensation by its very nature, has to be just. For suffering, no part of which was the claimant-appellant's own fault, she has been awarded a sum which can, at best, be described as '*paltry*'.

17. In regard to the application of the Eggshell-Skull Rule, we may observe that the impugned judgment is silent as to how this rule applies to the present case. Nowhere is it mentioned, as to what criteria had been examined, and then, upon analysis, found to be met by the claimant-appellant for it to be termed that she had an eggshell skull, or for that matter, what sort of pre-existing condition was she afflicted by, making her more susceptible to such a reaction brought on because of surgery for appendicitis. All that has been stated is,

> "9. Therefore, OP cannot take a plea that; patient took treatment from few other hospitals which might have caused the retention of needle in the abdominal wall. In this context we apply the "Egg Skull Rule" in this case, wherein liability exists for damages stemming from aggravation of prior injuries or conditions. It holds an individual liable for all consequences resulting from their activities leading to an injury, even if the victim suffers unusual damage due to pre-existing vulnerability or medical condition"

If we take the rule as exposited by the NCDRC, even then it stands to reason that the record ought to have been speaking of a pre-existing vulnerability or medical condition, because of which the victim may have suffered '*unusual damage*'. However, none of the orders - be it District, State Commission or the NCDRC refer to any such condition.

18. Considering the discussion as aforesaid, we deem it fit to set aside the Awards of the NCDRC as also the State Commission and restore the Award as passed by the District Forum, meaning thereby that a sum of Rs.5 lakhs ought to be paid expeditiously by the respondents to the appellant for being medically negligent and providing services deficient in nature. The sum of Rs.5 lakhs shall be accompanied by interest simple in nature @ 9% from the date of the award passed by the District Forum. The same be paid within a period of four weeks from the date of this judgment. Additionally, a cost of Rs.50,000/- be paid in terms of the cost of litigation. The appeal is accordingly allowed.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.