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Ram Balak Singh
v.
State of Bihar and Anr.

(Civil Appeal No. 1627 of 2016)

01 May 2024

[Pankaj Mithal* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

In view of the bar imposed u/s. 37 of the Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956, the order of the Consolidation Authority confirming the title of the appellant over the suit land and directing for recording his name in the record of rights, liable to be reversed or ignored by the Civil Court.

Headnotes

Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956 – s. 37 – Bar of jurisdiction of Civil Court – Order of the Consolidation Authority confirming the title of the appellant over the suit land, liable to be reversed or ignored by the Civil Court – On facts, recognition of appellant's rights over the suit land by the consolidation authorities, however, subsequently, the State started interfering with the possession of the appellant – Suit filed by the appellant for declaring his title over the suit land and to confirm his possession over it – Decreed in his favour by the trial court, however, the appellate courts discarded the order of the Consolidation Officer and dismissed the suit – Correctness:

Held: Revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to – Consolidation Officer referring to the patta by which the said land was settled in favour of the appellant's father and the adoption deed directed the name of the appellant to be recorded in the record of rights – Rights of the parties over the suit land stood crystalised with the passing of the order by the

* Author

Consolidation Officer which became final and conclusive – State never challenged the same – When the rights of the appellant have been determined and recognised by the consolidation authorities, the order of the Consolidation Officer to that effect in favour of the appellant could not have been ignored by the Civil Court – Jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act – Appellate courts below erred in holding otherwise discarding the order of the Consolidation Officer which was sacrosanct as to the rights in respect to the suit land – Civil suit for declaration of rights in respect of land where the Consolidation Court has already passed an order recognizing the rights of one of the parties is not barred by s. 37, as it does not propose to challenge any order passed by the Consolidation Court under the Act and that the Civil Court is not competent to either ignore or reverse the order passed by the Consolidation Officer once it has attained finality – Thus, the impugned judgment and orders of the appellate courts set aside and that of the trial court is restored. [Paras 17-26]

Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956 – Scheme of the Consolidation Act – Explained. [Paras 13, 14, 16]

List of Acts

Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956; Constitution of India.

List of Keywords

Bar of jurisdiction of Civil Court; Order of the Consolidation Authority; Title over suit land; Recording of name in the record of rights; Revenue entries, not documents of title; Correction of the entry; Adoption deed; Declaration of rights; Cause of action; Closure of consolidation proceedings; Recognition of rights by the consolidation authorities.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1627 of 2016

From the Judgment and Order dated 20.10.2011 of the High Court of Patna in SA No. 384 of 2008

Appearances for Parties

Lakshmi Raman Singh, Ms. Nandadevi Deka, Kwan Singhjaggi, Zain Haider, Vivek Singh, C.P. Rajwar, Rohan Chandra, Advs. for the Appellant.

Manish Kumar, Suyash Vyash, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pankaj Mithal, J.

1. This is plaintiff's appeal arising out of a suit for possession and confirmation of his possession over the suit land which was decreed in his favour by the court of first instance but the decree was set aside in First Appeal and was affirmed by the High Court.

2. The dispute in the suit is regarding 0.32 decimal of land of R.S.P. No.821 situate in village Kishanpur, district Sitamarhi, Bihar. This area of land was carved out from C.S.P. No.332 of *Khata* No.196 which belonged to Rambati Kuwer, the ex-landlord.

3. The aforesaid ex-landlord Rambati Kuwer settled the above area of the suit land in favour of Makhan Singh, son of late Ram Govind Singh vide lease deed (*patta*) of 1341 *fasli* whereupon the said Makhan Singh continued in possession of it during his lifetime. The said Makhan Singh had no issue. It is alleged that he adopted plaintiff-appellant who inherited the suit land after Makhan Singh. Accordingly, plaintiff-appellant is presently in possession of the suit land which had been in his family's possession ever since it was settled by ex-landlord Rambati Kuwer in favour of Makhan Singh.

4. It so happened that the village was brought under consolidation in accordance with the Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956[1].

5. Since the aforesaid land was incorrectly recorded in the name of the State, the plaintiff-appellant in accordance with Section 10(B) of the Consolidation Act applied for the correction of revenue/consolidation records. The Consolidation Officer, Bathnaha upon following the

1 *Hereinafter referred to as 'the Consolidation Act'*

due process of law vide its order dated 12.11.1979, directed for the correction of the record-of-rights. The name of the plaintiff-appellant was directed to be recorded in respect of 0.32 decimal area of land of R.S.P. No.821. The aforesaid order was duly implemented and the name of the plaintiff-appellant was entered into the record-of-rights. The aforesaid order is final and conclusive. It was not challenged by any party, not even by the State of Bihar in any higher forum.

6. Subsequently, the State Authorities started claiming the entire land of 4 acre 58 decimal of C.S.P. No.332 as *jalkar* (pond land) which included the suit land also and thus allegedly started interfering in the possession of the plaintiff-appellant. The plaintiff-appellant having no other option after service of notice dated 09.09.2004 as contemplated by Section 80 of Code of Civil Procedure, instituted the Suit No.103/2004 *'Ram Balak Singh, s/o late Makhan Singh vs. State of Bihar and Anr.'* for declaring his title over the suit land as described in Schedule-A to the plaint and to confirm his possession over it.

7. The aforesaid suit was instituted on the allegations as narrated above that the suit land belonged to Rambati Kuwer, the ex-landlord, who settled it in favour of Makhan Singh in 1341 *fasli*. The plaintiff-appellant is the adopted son of the said Makhan Singh and as such succeeded to the said land. During the consolidation proceedings on petitions/objections under Section 10(B) of the Consolidation Act, the Consolidation Officer vide judgment and order dated 12.11.1979 ruled in favour of the plaintiff-appellant and directed his name to be recorded in the record-of-rights which order attained finality and has been implemented. Therefore, the State has no right, title or jurisdiction over the suit land which is in possession of the plaintiff-appellant.

8. The summons of the suit were received by the officers of the State but on their behalf no written statement was filed to controvert the plaint allegations despite several opportunities. Lastly on 04.02.2006, the right of the State to file written statement was closed and the suit was fixed for hearing under Order VIII Rule X of Code of Civil Procedure. Since the plaint allegations were not controverted, no issue actually arose between the parties for determination, nonetheless, the trial court after formulating the point of determination i.e. whether the plaintiff-appellant has been able to establish his case over the suit land by any cogent and reliable evidence proceeded to decide

the suit on merits. The suit was decreed but the decree, as stated earlier, was reversed by the first appellate court and its decision was upheld by the High Court.

9. The plaintiff-appellant has now come up before this Court by filing Special Leave Petition, which on leave being granted has been registered as Civil Appeal. We have heard Ms. Nandadevi Deka, learned counsel for the appellant and Mr. Suyash Vyash, learned counsel for the respondents.

10. The primary argument advanced on behalf of the plaintiff-appellant is that he or his predecessor-in-interest is in possession of the suit land ever since it was settled in favour of Makhan Singh by the ex-landlord Rambati Kuwer. During the consolidation proceedings, the rights of the plaintiff-appellant over the said land were accepted and vide order dated 12.11.1979, his name was directed to be recorded in the record-of-rights. In this way, the right and title of the plaintiff-appellant over the suit land stood crystalized. Therefore, the State of Bihar cannot in any way claim the said land and disturb his possession without following any procedure of law and payment of compensation. The appellate courts below have manifestly erred in law in reversing the decree of the court of first instance as the judgment and order of the Consolidation Officer is final and conclusive and cannot be overruled or brushed aside to record any findings contrary to it, more particularly when the plaintiff-appellant has adduced sufficient evidence to establish his right and possession over the suit land.

11. Learned Counsel for the State of Bihar set up the defence that the entire land of C.S.P. No. 332 is the pond land and it cannot be settled in favour of the plaintiff-appellant. He does not have any possession over the same. Secondly, in view of the bar imposed by Section 37 of the Consolidation Act, the civil suit as filed by the plaintiff-appellant itself was not maintainable and therefore the appellate courts below have not erred in reversing the order of the trial court and dismissing the suit.

12. On the submissions advanced by the parties and under the facts and circumstances of the case as narrated above, the moot question which arises for our consideration is: whether in view of the bar imposed under Section 37 of the Consolidation Act, the order of the Consolidation Authority confirming the title of the plaintiff-appellant

over the suit land and directing for recording his name in the record of rights under Section 10(B) of Consolidation Act, is liable to be reversed or ignored by the Civil Court.

13. A bare reading of the provisions of the Consolidation Act would reveal that upon declaration of the State Government of its intention to bring about a scheme of Consolidation in the village(s) and till the close of the consolidation operation, the duty of preparing and maintaining the record of rights and the village maps of each village shall be performed by the Director of Consolidation and no suit or legal proceeding in respect of any land in such area(s) shall be entertained by any court. The Consolidation Act even prohibits the transfer by any person of land falling within the notified area without the previous sanction of the Consolidation Officer during the consolidation operation. It further provides that no question in respect of any entry made in the map or register prepared in relation to the consolidation area, which might or ought to have been raised before the consolidation authorities shall be permitted to be raised or heard at any subsequent stage of the consolidation proceeding. The Consolidation Act specifically provides that all matters relating to changes and transfers affecting any rights or interests recorded in the register of land may be raised before the Consolidation Officer within the time prescribed and the disputes in this regard once decided cannot be reopened on the publication of the register.

14. Section 37 of the Consolidation Act bars the jurisdiction of the Civil Courts and it reads as under:

> "No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act."

15. In short, the scheme of the Consolidation Act provides that all rights in the land under consolidation, if any, would be determined by the consolidation authorities and the publication of the register of rights thereunder would be final and conclusive and it cannot be disputed at any subsequent stage. The aforesaid adjudication of the rights over the land under consolidation has not been specifically subjected to the rights of parties, if any, determined by the Civil Court. It is to be noted that the Legislature in its wisdom has provided for a separate

forum to deal with any matter for which a proceeding could or ought to have been taken under the Consolidation Act in the course of consolidation and bars the jurisdiction of the Civil Court.

16. Under the scheme of the Consolidation Act, the consolidation authorities are fully competent to deal with the issue of title over the land under consolidation except under certain contingencies. Thus, the consolidation authorities have the powers of the Civil Court to decide the question of the title subject to the judicial review by the High Court under Articles 32, 226 and 227 of the Constitution of India. In other words, the consolidation authorities have the status of the deemed courts and have the powers akin to the Civil Courts to decide the rights and title of the parties over the land under consolidation and, at the same time, oust the jurisdiction of the Civil Court.

17. We are conscious of the fact that revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to.

18. Here in the case at hand, there is no dispute to the fact that 0.32 decimal of R.S.P. No. 821 situate in village Kishanpur, Distt. Sitamarhi, Bihar, was settled by the ex-landlord Rambati Kuwer in favour of Makhan Singh through *patta* (lease deed), the execution of which is not in dispute. The said Makhan Singh adopted the plaintiff-appellant vide deed dated 27.05.1957 (*Exh-2*). The order of the Chakbandi Officer, Bathnaha *(Exh -7)* demonstrates that the plaintiff-appellant had filed Case No.11 of 1979 under Section 10(B) of the Consolidation Act for the correction of the entry in respect of the suit land and that the Consolidation Officer vide order dated 12.11.1979 on the basis of the documents and the oral evidence adduced before him ruled that plaintiff-appellant is the adopted son of Makhan Singh; that he is in possession of the suit land and no villager or any other party has any objection if the same is recorded in his name. The Consolidation Officer further referring to the *patta* by which the said land was settled in favour of Makhan Singh and the adoption deed directed the name of the plaintiff-appellant to be recorded in the record of rights.

19. It is an admitted fact that after the closure of the consolidation proceedings when the possession of the plaintiff-appellant came to be interfered with by the State, he was forced to file a suit for declaration of his rights over the said land irrespective of the finality of the order of the Consolidation Officer. The cause of action in the said suit was a fresh cause of action arising after the closure of consolidation proceedings. In the said suit no contest was made by the State of U.P., neither any written statement was filed nor any evidence was adduced on its behalf. The court of first instance on the basis of the evidence both documentary and oral adduced by the plaintiff-appellant decreed the suit and held him to be the owner in possession of the suit land.

20. In view of the aforesaid facts and circumstances, the rights of the parties over the suit land stood crystalised with the passing of the order dated 12.11.1979 by the Consolidation Officer which became final and conclusive. The State of Bihar never challenged the said order. It is not its case that the aforesaid order has been obtained by concealment of facts or by playing fraud upon the consolidation authorities. The State of Bihar at no point of time came forward to claim the right, title or interest of disputed land before any forum either the consolidation authorities or the Civil Court, rather forced the plaintiff-appellant to institute the civil suit despite recognition of his rights by the consolidation authorities.

21. In view of the above, when the rights of the plaintiff-appellant have been determined and recognised by the consolidation authorities, the order of the Consolidation Officer to that effect in favour of the plaintiff-appellant could not have been ignored by the Civil Court. The jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act. The appellate courts below completely fell in error in holding otherwise discarding the order of the Consolidation Officer which was sacrosanct as to the rights in respect to the suit land.

22. Insofar as, the bar of Civil Court imposed by Section 37 of the Consolidation Act is concerned, a plain reading of the said provision would reveal that the Civil Court is prohibited from entertaining any suit to vary or set aside any decision or order of the Consolidation Court passed under the Act in respect of the matter for which the

proceedings could have or ought to have been taken under the Consolidation Act.

23. In the instant case, the plaintiff-appellant has not instituted any suit either to vary or set aside any decision or order passed by the Consolidation Court under the Consolidation Act. The plaintiff-appellant had simply filed a suit for recognising the rights which have been conferred upon him by the Consolidation Court and has not filed a suit challenging any order passed by the Consolidation Court under the Act. Therefore, the bar of jurisdiction of Civil Court imposed by Section 37 is not applicable to the present suit which is a simpliciter for declaration of his rights over the suit land on the basis of the order of the Consolidation Court.

24. In view of the facts and circumstances, even though there was no necessity on the part of the plaintiff-appellant to have instituted any civil suit for declaration of his rights over the suit land inasmuch as his rights over the same stood determined by the Consolidation Court vide order dated 12.11.1979, nonetheless, a suit as filed by him is not barred by Section 37 of the Consolidation Act, as it does not propose to challenge any order passed by the Consolidation Court under the Consolidation Act.

25. Thus, our answer to the question framed in paragraph 12 above is that a civil suit for declaration of rights in respect of land where the Consolidation Court has already passed an order recognizing the rights of one of the parties is not barred by Section 37 of the Consolidation Act and that the Civil Court is not competent to either ignore or reverse the order passed by the Consolidation Officer once it has attained finality.

26. In the above facts and circumstances, the impugned judgment and orders of the appellate courts dated 20.10.2011 and 14.07.2008 are set aside and that of the court of the first instance dated 04.07.2006 is restored. Consequently, the suit of the plaintiff-appellant stands decreed.

27. The appeal is allowed with no order as to cost.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 10 : 2024 INSC 366

Shankar
v.
The State of Uttar Pradesh & Ors.

(Criminal Appeal No. 2367 of 2024)

02 May 2024

[Pamidighantam Sri Narasimha and Aravind Kumar, JJ.]

Issue for Consideration

Whether there is sufficient material against the appellant prompting the trial court to pass a summoning order u/s. 319 Cr.P.C.

Headnotes

Code of Criminal Procedure, 1973 – s. 319 – Summoning order u/s. 319 – Legality of – Appellants facing trial for offence u/s. 302 – Summoning order passed u/s. 319 by the trial court – High Court refused to quash the summoning order – Correctness:

Held: Degree of satisfaction required to exercise power u/s. 319 is much stricter, considering that it is a discretionary and an extra-ordinary power – Only when the evidence is strong and reliable, the power can be exercised – It requires much stronger evidence than mere probability of his complicity – Appellants were named in the first information statement by the first informant despite not being an eyewitness to the offence, however, in the statement u/s. 161 Cr.P.C, first informant clarified that her family had a long-standing enmity with appellants' family; that the names of appellants were written in the FIR falsely and without full information; and that the appellants were not involved in the murder of her son – Even in the charge sheet, the names of the appellants were not mentioned as accused – It is only in her deposition before the trial court the names of the accused resurfaced again – Almost a year later, the prosecution chose to file an application u/s. 319 – Change of circumstance which the prosecution seeks to contend on the basis of first informant's deposition does not satisfy the requirement of s. 319 at all – First informant not being an eye-witness, her deposition not sufficient enough to invoke the extra-ordinary jurisdiction u/s. 319 to summon the appellants – No other witnesses deposed anything against the appellants – No documentary evidence collected against the appellants – Also no role attributed to the appellants – These factors when looked in a holistic manner, make it clear that the

higher degree of satisfaction required for exercising power u/s. 319 not met with – Trial court erred in allowing the application u/s. 319 and issuing summons to the appellants – High Court having failed to quash the order of summons, the order passed by the trial court as also by the High Court set aside. [Paras 18-26]

Case Law Cited

Hardeep Singh v. State of Punjab **[2014] 2 SCR 1 : (2014) 3 SCC 92 – referred to.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Sufficient material; Summoning order; Degree of satisfaction; Power u/s. 319 CrPC; Discretionary and an extra-ordinary power.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2367 of 2024

From the Judgment and Order dated 04.04.2023 of the High Court of Judicature at Allahabad in A482 No. 30221 of 2017

With

Criminal Appeal No. 2368 of 2024

Appearances for Parties

Ms. Preetika Dwivedi, Abhisek Mohanty, Advs. for the Appellant.

Yasharth Kant, Jitendra Kumar Tripathi, Ankit Goel, Dhawal Uniyal, Nikhil Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

1. Leave granted.

2. The present appeals arise out of a decision of the High Court of Judicature at Allahabad dated 04.04.2023 in Application under Section 482 No. 30221 of 2017, whereby the High Court refused to quash a summoning order dated 24.08.2017 passed under Section 319

of the Cr.P.C. by the Additional District & Sessions Judge, Kanpur Dehat, where the Appellants herein were directed to face a trial for offence under Section 302 IPC. Both the Appellants being identically placed, their appeals are being dealt with together.

3. The issue that arises for our consideration is whether there is sufficient material against the Appellant prompting the Trial Court to pass a summoning order under Section 319 Cr.P.C. The principles of law being settled by the judgments of the constitutional benches of this Court, this question hinges upon the facts of the present case, which is as follows:

4. ***Facts and investigation:*** On 10.05.2011, the first informant (PW-1), who is the mother of the deceased, got an FIR lodged at P.S. Ghatampur, informing that her son was found dead near a tubewell in the wheat field of a fellow villager. In her statement, she alleged that her son was murdered by the present appellants, the father of the appellants, along with two others, due to certain old enmity existing between the two families.

5. The following day, the investigation officer recorded a statement of PW-1 under Section 161 Cr.P.C. In this statement she also stated that the deceased was quarrelsome, had a habit of picking up fights with other villagers and had a few criminal cases going on against them. Previously, he had also picked up fights with the father of the appellants. She stated that on 08.05.2011, Mahendra Singh, a gangster of the same village, came on a bike and asked the deceased to accompany him, on the pretext that Mahendra Singh would pay back a sum of Rs. 8,000 which he had borrowed from PW-1, and also that he would help the deceased arrive at a compromise with Accused No. 1 (father of the appellants) and Accused No. 3. Accordingly, the deceased left on the motorcycle of Mahendra Singh. She stated that Accused Nos. 1-3 were standing at a distance noticing the developments. She stated with conviction that Accused Nos. 1-3 along with Mahendra Singh killed the deceased. In this statement, PW-1 stated that the appellants were not involved and that she wrote their name in her first information statement incorrectly and without collecting full information. Two other persons (witness), Rajau Sengar and Karan Singh, in their Section 161 statements reiterated the statement of PW-1. Even they stated that the present appellants had no role whatsoever in the commission of the crime.

6. After conducting the investigation, the IO filed a chargesheet on 22.06.2011, where the present appellants were not named as accused. There were only four named accused in the chargesheet, however, Mahendra Singh who was arrayed as Accused No. 4 was absconding. It was categorically stated in the chargesheet that after investigation, it came to light that the naming of the present appellants was false.

7. ***Trial:*** On 20.05.2016, PW-1 was examined where she stated that "*My old enmity with accused Bacha Singh has been going in for the last 11 years and on the basis of suspicion, I had written the names of Shankar and Vishal in the FIR.*" However, at a later stage of her examination, she stated that "*It is wrong to suggest that because of old enmity, I have wrongly written the names of Bacha Singh and his sons in the FIR*". Apart from PW-1, none of the other 5 witness, spoke about the complicity of the appellants in the commission of the offence.

8. ***Trial Court:*** Pursuant to the statement made by PW-1 in her examination in chief, the Assistant Public Prosecutor, on 31.07.2017, filed an application under Section 319 of the Cr.P.C. to summon the appellants herein to face the trial.

9. The Ld. Trial Court, on 24.08.2017, allowed the application filed by the APP after noting certain previous decisions of this Court where it was held that if the evidence tendered in the course of trial shows that any person not named as an accused has a role to play in the commission of the offence, then he could be summoned to face trial even though he may not have been charge sheeted.

10. ***High Court:*** The above order passed by the Trial Court was challenged by the Appellants before the High Court by filing a petition under Section 482 Cr.P.C. This petition came to be dismissed by the High Court by its order dated 04.04.2023. While dismissing the petition, the High Court noted that at the stage of Section 482, the Court is only supposed to see if there exists a prima-facie case. It is this order of the High Court which is impugned before us.

11. ***Issue:*** The only question arising in the present appeal is whether the power under Section 319 Cr.P.C. has been properly exercised in light of the facts of the present case and evidence on record.

12. ***Analysis:*** We have heard Ld. counsel for appellants, Ms. Preetika Dwivedi and Ld. counsel for the Respondent State Mr. Ankit Goel.

13. At the outset, we may note that the four accused who were charge-sheeted, have passed away. As against them, the trial has abated. The learned counsel for the Respondent State has argued that even if the trial has abated against existing accused, there is no bar in summoning the appellants and starting the trial afresh[1]. This position of law is well-settled and the learned counsel for the appellant has also not disputed the same.

14. In this background, we will examine the legality of the summoning order under Section 319 Cr.P.C. on its own footing. Section 319 of the Cr.P.C. is as follows:

> *"**319. Power to proceed against other persons appearing to be guilty of offence***
>
> *(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
>
> *(2) ….*
>
> *(3) ….*
>
> *(4) …."*

15. Having taken note of the provision, we will note the principles laid down by a Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92**, for criminal courts to follow while exercising power under Section 319 Cr.P.C.:

> *"**94.** In Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. In Ram Singh v. Ram Niwas, (2009) 14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word "appear" as appearing*

1 *Gurmail Singh* v. *State of UP, (2022) 10 SCC 684*

in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

95. *At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter…*

105. *Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.*

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

16. The degree of satisfaction required to exercise power under Section 319 Cr.P.C. is well settled after the above-referred decision. The evidence before the trial court should be such that if it goes

unrebutted, then it should result in the conviction of the person who is sought to be summoned. As is evident from the above-referred decision, the degree of satisfaction that is required to exercise power under Section 319 Cr.P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity.

17. In this background, we will examine the evidence on record which prompted the trial court to exercise the power under Section 319 Cr.P.C. PW-1, who is the mother of the deceased, is the only witness who has named the appellants.

17.1 In the first information statement, she has taken the name of the appellants as having played a role in the commission of the crime owing to the past enmity between the two families. The relevant portion of this statement is as follows:

> *"I am quite sure that my son Vijay Singh has been jointly murdered by Bachha Singh s/o Mohan Singh, Shankar s/o Bacha Singh, Vishal s/o Bacha Singh-residents of Raha and Sanjay s/o Munna Singh, Kallu Singh s/o Munna Singh-residents of Jalala, Police Station Ghatampur. We have an old existing enmity with these people."*

17.2 However, in her Section 161 statement, she has stated that the appellants were not involved and that she named them without collecting full information. Two other witness, Rajau Sengar and Karan Singh, in their Section 161 statements have also stated that the appellants had no role whatsoever in the commission of the crime. Relevant portion of PW-1's statement under Section 161 Cr.P.C., is as follows:-

> *"…I had lent Rs. 8000 to Mahendra Singh long ago after selling Lahi. Vijay Singh had asked Mahendra Singh many times to repay the borrowed money but he did not give it back. Coming under the guise of this assurance, Vijay Singh left on Mahendra's motorcycle. Sanjay Singh and Kallu Singh sons of Munna Singh and Bacha Singh s/o Mohan Singh were also standing at some distance outside the house.*

> *They also lured my son Vijay Singh and accompanied Vijay Singh and Mahendra Singh and all four of them killed my son Vijay Singh and threw the dead body in the field near the tubewell of Mahendra Pratap Singh Bhadoria. The names of Shankar Singh and Vishal Singhs sons of Bachha Singh, which I have written in the FIR, have been written by me falsely without collecting full information. My son Vijay Singh was murdered by Mahendra Singh s/o Chandrapal Singh Sachan of village Laukaha, Bacha Singh s/o Mohan Singh of village Raha and Sanjay Singh and Kallu Singh s/o Munna Singh of village Jalala. Shankar and Vishal sons of Bacha Singh were not involved in my son's murder."*
>
> (emphasis supplied)

17.3 Even in the chargesheet, which was filed after investigation, the name of the appellants has not been mentioned as accused.

17.4 It is only in her deposition before the trial court that PW-1 has once again named the appellants. However, she has also stated that she has named them only on the basis of suspicion. The relevant portion of her deposition before the Trial Court is as follows:

> "*In my report, I made Bachha Singh, Shankar, Vishal, Kallu Singh and Mahendra Sachan accused. I had an old enmity with these people."*

In her cross-examination, PW-1 stated as follows:-

> "*There were two-three outstation cases and two-three local cases from the village were pending against my son Vijay Singh, which are closed now. The said cases were closed/concluded during the lifetime of Vijay Singh. My old enmity with accused Bacha Singh has been going on for the last 11 years and on the basis of suspicion, I had written the names of Shankar and Vishal in the FIR."*

18. It is evident from the above that the appellants were named in the first information statement, however, in the statement under Section 161 Cr.P.C, PW-1 clarified that the names of appellants were written

in the FIR falsely and without full information. She has also stated that the appellants were not involved in the murder of her son. Even in the charge sheet, the names of the appellants were not mentioned as accused. It is only in her deposition before the Trial Court the names of the accused resurfaces again.

19. None of the other witnesses, being PW's-2, 3, 4, 5 and 6 have deposed anything about the appellants.

20. On 31.07.2017, i.e. almost a year after the deposition of PW-1, the prosecution chose to file an application under Section 319 Cr.P.C. to the following effect:-

> *"It is most respectfully submitted that in the above mentioned case, the first informant Mrs. Sheela Singh had written the names of Shankar Singh and Vishal Singh in the First Information Report and the names of Shankar Singh and Vishal Singh have also been mentioned by her in her examination in chief also. For this reason, it is necessary to summon Shankar Singh and Vishal Singh for trial in the said case.*
>
> *Therefore, the Hon'ble court is requested to kindly pass an order thereby summoning accused Shankar Singh and Vishal Singh sons of Bachha Singh for trial in the said case.*
>
> *Yours faithfully,*
> *Sd/-illegible*
> *31.7.2017"*

21. At the first place, PW-1 has named the appellants in the FIR despite not being an eyewitness to the offence. In her statement under Section 161, she sought to clarify the position by recording that her family had a long-standing enmity with appellants' family. She also stated that the names of the appellants were mentioned and written by her "*falsely without collecting full information*." She categorically stated that the appellants are not involved in the murder of her son.

22. When we contrast this statement with her deposition given five years later, we do not see a drastic change in the stand of PW-1. Even in her chief examination, she had stated that she had an old enmity with the family of the accused. However, in her cross examination, she clarified that as the enmity with the appellants family was going on for the last eleven years, names of the appellants

were mentioned in the FIR on the basis of suspicion. Therefore, the change of circumstance which the prosecution seeks to contend on the basis of PW-1's deposition does not satisfy the requirement of Section 319 at all.

23. Having considered the matter in detail, we are of the opinion that PW-1, not being an eye-witness, her deposition is not sufficient enough to invoke the extra-ordinary jurisdiction under Section 319 to summon the appellants.

24. There are no other witnesses who have deposed against the appellants. There is no documentary evidence that the prosecution had collected against the appellants. There is absolutely no role that is attributed to the appellants. We are of the opinion that the deposition of PW-1 is also in line and consistent with her statement under Section 161. When these factors are looked in a holistic manner, it would be clear that the higher degree of satisfaction that is required for exercising power under Section 319 Cr.P.C. is not met in the present case.

25. For the reasons stated above we are of the opinion that the Trial Court committed a serious error in allowing the application under Section 319 and issuing summons to the appellants. The High Court should have exercised its jurisdiction under Section 482 and quashed the order. The High Court having failed to quash the order of summons dated 24.08.2017, we are inclined to allow these appeals and set-aside the order passed by the Trial Court dated 24.08.2017 and the also the judgment of the High Court dated 04.04.2023 dismissing the petition under Section 482.

26. For the reasons stated above, the present appeals are allowed, and the impugned order dated 04.04.2023 passed by the High Court of Judicature at Allahabad in Application under Section 482 No. 30221 of 2017 and the order dated 24.08.2017 passed by the Additional District and Sessions Judge, Court No. 5, Kanpur Dehat, in S.T. No. 434 of 2011 in Application Paper No. 83Kha under Section 319 Cr.P.C. are hereby set aside.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeals allowed.

[2024] 6 S.C.R. 20 : 2024 INSC 376

Alauddin & Ors.
v.
The State of Assam & Anr.

(Criminal Appeal No. 1637 of 2021)

03 May 2024

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

Issue for Consideration

Matter pertains to correctness of the order convicting the appellants for the offences punishable u/ss. 302/149 IPC when the statements in evidence full of omissions and contradictions and the evidence of last seen theory and motive not established.

Headnotes

Penal Code, 1860 – ss. 302/149 – Murder and unlawful assembly – Conviction of the appellants for the offences punishable u/ss. 302/149 for committing murder of the victim by the courts below – Correctness – Plea that statements in evidence of prosecution witness full of omissions and contradictions, and evidence of last seen theory and motive not established:

Held: Trial court did not follow the correct procedure while recording the contradictions – Material omissions in the testimony of one of the prosecution witness affected the reliability of the witness – Material part of the testimony of the other prosecution witnesses was a significant omission which amounted to contradiction – No reliable evidence to show the involvement of the appellants in assaulting the deceased – Testimony of so-called eyewitnesses could not be relied upon – Theory of last seen together is helpful to the prosecution if the deceased was seen in the company of the accused in the proximity of the time at which the dead body is found – Evidence shows that after the deceased was seen in the company of the accused, he was in the company of others as well – Theory of last seen together not of any assistance to the prosecution since the involvement of other persons in the offence not ruled out – Theory of last seen together is rejected – Thus, the prosecution failed to bring home the charge against the appellants – Impugned judgments by the courts below set aside – Code of Criminal Procedure, 1973 – ss.161, 162 – Evidence Act, 1872 – s.145. [Paras 5, 12-18]

* Author

Code of Criminal Procedure, 1973 – ss. 161, 162, 164 – Evidence Act, 1872 – s. 145 – Statements to police, use of, in evidence – Omission, when amounts to contradiction – Reliability of such statements:

Held: When witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction – When a prosecution witness whose statement u/s.161 (1) or s.164 has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded u/s.161 (1) or s.164, there is an omission – There would be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence – Explanation to s. 162 indicates that an omission may amount to a contradiction when it is significant and relevant – Thus, every omission is not a contradiction – It becomes a contradiction provided it satisfies the test laid down in the explanation u/s. 162 – When an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of s.162 must be followed for contradicting witnesses in the cross examination – As per proviso to sub-Section (1) of s.162, the witness has to be contradicted in the manner provided u/s. 145 of the Evidence Act – Object of this requirement of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction – This is a rule of fairness – Furthermore, every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony – Minor or trifle omission or contradiction not sufficient to disbelieve the witness's version – Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially – Material contradiction or omission depends upon the facts of each case – Whether an omission is a contradiction also depends on the facts of each individual case. [Paras 7-9]

Penal Code, 1860 – ss. 141, 149 – Unlawful assembly – When:

Held: s. 141 defines unlawful assembly as an assembly of five or more persons – U/s. 149, every member of an unlawful assembly is guilty of the offences committed in the prosecution of the common object of the unlawful assembly – Thus, to apply s. 149, there has to be an unlawful assembly – On facts, five appellants

were convicted for the offence punishable u/s. 302 with the aid of s. 149 and ultimately, the High Court held that only four accused were guilty – High Court did not hold that apart from the present appellants whose conviction was confirmed, others formed part of the unlawful assembly – Hence, there was no unlawful assembly within the meaning of s.141 – Appellants could not have been convicted for the offence punishable u/s. 302 with the aid of s. 149. [Para 4]

Case Law Cited

Tahsildar Singh & Anr. v. State of U.P. **[1959] Supp. 2 SCR 875 – relied on.**

List of Acts

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

List of Keywords

Evidence; Omissions and contradictions; Last seen theory and motive; Material omissions; Reliability of the witness; Offence of murder; Statements to the police; Unlawful assembly; ss. 161, 162, 164 of CrPC; s. 145 of the Evidence Act; ss. 141 and 149 IPC.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1637 of 2021

From the Judgment and Order dated 13.09.2021 of the Gauhati High Court in CRLA No. 205 of 2019

Appearances for Parties

Siddhartha Dave, Sr. Adv., Farrukh Rasheed, Ms. Jamtiben Ao, Md. Ekhlakh Alam, Seraj Ahmad, Ms. Reshma Bai Bhukya, Mahesh Kumar, Advs. for the Appellants.

Nalin Kohli, Sr. A.A.G., Anshul Malik, Sarthak Sharma, Shuvodeep Roy, Pravir Choudhary, Ms. Malini Poduval, Ms. Babita Sant, Ms. Niharika Dwivedi, Vaibhav Tiwari, Reepak Kansal, Surender Tyagi, Mrs. Annwesha Deb, Mrs. Sneha Rani, Prince Arora, Pankaj Kumar Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECT

1. The appellants are accused nos. 3, 1, 6 and 7 respectively. The appellants have been convicted for the offences punishable under Section 302, read with Section 149 of the Indian Penal Code **(for short, 'IPC')**. The allegation against the appellants is of committing culpable homicide amounting to the murder of one Sahabuddin Choudhury. The incident is of 3rd February 2013. There were eight accused who were tried for the offence. Out of the eight accused, the Trial Court convicted five. One died during the pendency of the trial. An appeal against conviction was preferred before the High Court. By the impugned judgment, the High Court confirmed the appellants' conviction. However, the High Court set aside the conviction of accused no. 5. The case of the prosecution is that accused no. 1 (Md. Abdul Kadir) picked up the victim of the offence from his residence at 4 pm on the date of the incident and took him to Bhojkhowa Chapori Bazar. The accused killed the victim behind L.P. School by assaulting him with a sharp weapon.

SUBMISSIONS

2. Learned senior counsel appearing for the appellants has taken us through the notes of evidence of the material prosecution witnesses. He pointed out that in paragraph 42 of its judgment, the Trial Court held that the claim of PW-1 (Md. Akhtar Hussain Choudhury) that he was an eyewitness was fallacious. He pointed out that even evidence of PW-3 (Md. Afazuddin Chaudhury) needs to be discarded, as his evidence is full of omissions and contradictions. Moreover, he cannot be termed an eyewitness. As far as evidence of PW-4 (Md. Saidur Ali) is concerned, he again submitted that the evidence is not worthy of acceptance, as it is wholly unreliable. He pointed out that evidence of PW-6 (Mustt Hasen Banu, wife of the deceased) shows that there was a prior enmity between her husband and the accused. He pointed out that PW-6 admitted that her husband had lodged a police complaint against the accused on the allegation that the accused had dispossessed him from his land. He submitted that evidence

of last seen together in the form of testimony of PW-7 (Md. Sultan Ali) cannot be relied upon. He submitted that the same is true with evidence of PW-9 (Md. Abdul Haque). He pointed out that evidence of PW-10 (Md. Anisul Haque) does not help the prosecution at all. He also invited our attention to the evidence of PW-11 (Sri Bidyut Bikash Baruah, Investigating Officer). He submitted that while recording the cross-examination of the prosecution witnesses, the contradictions had not been properly recorded in accordance with the law.

3. Learned senior counsel appearing for the State submitted that the evidence of prosecution witnesses shows that the deceased was last seen together with the accused. He submitted that coupled with the evidence of last seen together, the motive for the commission of offence had been established. Even otherwise, there is convincing evidence against the appellants. He, therefore, submitted that no fault can be found with the view taken by the High Court.

CONSIDERATION OF SUBMISSIONS

4. There is one aspect that was not brought to the notice of this Court, which goes to the root of the matter. As can be seen from paragraph 108 of the judgment of the Trial Court, the appellants have been convicted for the offence punishable under Section 302 with the aid of Section 149 of IPC. We may note here that ultimately, the High Court held that only four accused were guilty. Under Section 149 of IPC, every member of an unlawful assembly is guilty of the offences committed in the prosecution of the common object of the unlawful assembly. Therefore, to apply Section 149 of IPC, there has to be an unlawful assembly. Section 141 of IPC defines unlawful assembly as an assembly of five or more persons. The High Court has not held that apart from the present appellants whose conviction was confirmed, others formed part of the unlawful assembly. Hence, there was no unlawful assembly within the meaning of Section 141 of IPC. Therefore, the appellants could not have been convicted for the offence punishable under Section 302 of IPC with the aid of Section 149. The High Court has not modified the charge from Section 302, read with Section 149 of IPC, to Section 302, read with Section 34 of IPC.

CONTRADICTIONS AND OMMISSIONS

5. Before we deal with the merits, something must be stated about how the trial court recorded the prosecution witnesses' cross-examination

in this case, especially when they were confronted with their prior statements. The Trial Court did not follow the correct procedure while recording the contradictions.

6. Under Section 161 of the Code of Criminal Procedure, 1973 **(for short, 'CrPC')**, the police have the power to record statements of the witnesses during the investigation. Section 162 of CrPC deals with the use of such statements in evidence. Section 162 reads thus:

> **"162. Statements to police not to be signed: Use of statements in evidence.**—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.
>
> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.
>
> *Explanation*.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission

amounts to a contradiction in the particular context shall be a question of fact."

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 **(for short, 'Evidence Act')**. Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

> **"145. Cross-examination as to previous statements in writing**.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit

the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

> **"**155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—
>
> (1) ……...
>
> (2) ……
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.**"**

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of ***Tahsildar Singh & Anr. v. State of U.P.***[1] Paragraph 13 of the said decision reads thus:

> **"13.** The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment of this Court in *Bhagwan Singh* v. *State of Punjab* [(1952) 1 SCC 514 : (1952) SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:
>
> > Resort to Section 145 would only be necessary if the witness *denies* that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."
>
> It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. **Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous**

1 [1959] Supp. 2 SCR 875

statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two

> fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure."
>
> **(emphasis added)**

This decision is a *locus classicus,* which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination.

ANALYSIS OF EVIDENCE

11. PW-1 (a son of the deceased) claimed that accused no. 1 - appellant no. 2 picked up his father at 4.00 p.m. from his house on 3rd February 2013 and took him to Bhojkhowa Chapori Bazar. He stated that at 7.00 p.m., he returned home and around 8.00 to 8.30 p.m., he came to Bhojkhowa Chapori Bazar to make some purchases. He claimed that he was riding a motorbike, and in the flash of the headlight of the motorbike, he saw the accused no. 7 - appellant no. 4 (Md. Nur

Islam), accused no. 3 – appellant no. 1 (Md. Alaluddin), acquitted accused no. 2 (Md. Tahiruddin), accused no. 6 – appellant no. 3 (Md. Nurul Islam), accused no. 1 – appellant no. 2 (Md. Abdul Kadir), acquitted accused no. 5 (Md. Abdul Kadir Jilani) leaving the place on a motorbike after hacking a person. PW-1 stated that he got down from the motorcycle and found his father lying there. Evidence of PW-1 need not detain us, as the Trial Court has already held that his claim that he witnessed the incident was fallacious. However, he stated that at about 4 p.m. on the date of the incident, appellant no. 2 picked up his father from his house. PW-2 (Md. Asraful Islam) was declared as hostile.

12. Now, we come to the evidence of PW-3 (another son of the deceased). He deposed that appellant no. 2 came to their house at 4 p.m. on the date of the incident. The witness stated that the deceased was an influential Congress party leader. He stated that there was a meeting of Congress at Chapori Centre, and therefore, he took the deceased on his motorcycle. He stated that at 6.30 p.m., appellant no. 2 brought his father. He claims that he followed them on his bicycle. He stated that he heard a hue and cry from a distance of about 30 meters away from L.P School. After going ahead, he saw appellant no. 3 running towards the road with a sharp weapon in his hand. He stated that he saw appellant no. 3 in the flash of the headlight of the motorcycle. He claimed that he saw appellant no. 2 leaving by motorcycle. Then he found the body of his father. PW-3 was sought to be contradicted in the cross-examination based on his prior statement recorded under Section 161 of CrPC. A suggestion was given in his cross-examination that he did not tell the police that at about 6.30 p.m., appellant no. 2 returned with his father on a motorcycle. Moreover, a suggestion was given that he did not tell the police that he followed them on his bicycle. Another suggestion was given to the witness that he did not tell the police that while coming back from a meeting on a bicycle, he saw in the flash of the headlight of a motorcycle that appellant no. 3 was running away and leaving the place with a weapon. At this stage, it is necessary to look at the cross-examination of PW-11 (Sri Bidyut Bikash Baruah), the Investigating Officer. In the cross-examination, he stated thus:

> "PW3 Afazuddin Choudhury has not stated before me that he also went to attend the meeting. This witness has

> also not stated before me that at about 6:30 p.m. accused Kadir brought his father back from the meeting in a motor cycle and he also followed them after 10 minutes. This witness has also not stated before me that hue(sic) he was returning in his bicycle he saw, in the light of bike, that Nurul was running with a weapon in his hand."

Hence, the case which he made out in the examination-in-chief that he saw appellant no. 3 running away with the weapon in his hand in the flash of the motorcycle's headlight is an omission. This omission is very significant, which amounts to contradiction. Therefore, his evidence remains material only insofar as his statement about appellant no. 2 taking his father on a motorbike at 4.00 p.m. The witness stated that at 4.00 p.m., his father went to a meeting with appellant no. 2, as his father was an influential leader of Congress. Therefore, assuming that the deceased was last seen with appellant no. 2 at 4.00 p.m., the deceased thereafter attended a meeting of Congress. Thus, after 4.00 p.m., the deceased was also in the company of other persons.

13. Now, coming to evidence of PW-4, he claims that he saw eight to ten persons, including appellant no. 2, appellant no. 4, and the acquitted accused, assaulting the deceased by using a dao. He stated that he and PW-9 raised a hue and cry after which the accused left. The witness was contradicted by suggesting that he did not tell the police that about eight to ten people were assaulting the deceased by surrounding him. On this aspect, in the cross-examination, the Investigating Officer stated thus:

> "PW4 Saidar Ali has stated before me that he saw hulla near L.P. School while he was returning from the market. **This witness has not stated before me that he alongwith Ainul were going in a motor cycle. This witness has not stated before me that he saw accused Alaluddin, Nur Islam, Nurul, Kadir and Jilani assaulted Sahabuddin by means of dao. This witness has not mentioned the name of Abdul Kadir Jilani before me.** This witness has stated before me the name of Rustam, Mamrus and Tahiruddin. This witness has not stated before me that kadir surrendered before police station."

(emphasis added)

Thus, there are material omissions which affect the reliability of the witness. Thus, it is very doubtful whether PW-4 had seen the assault on the deceased.

14. PW-5 stated that at about 8.00 p.m., he saw the deceased, appellant nos. 2, 3 and 4, conversing on the road near Bhojkhowa Girl's School. The deceased requested him to carry his bag as the deceased stated that he was going to campaign for the election. The witness was confronted in his cross-examination with a suggestion that he had not told the police that at 8.00 p.m., while he was going back to his house, he saw the accused conversing with the deceased. PW-11, the Investigating Officer, admitted that PW-5 did not state before him that at about 8.00 p.m., while he was coming from Bhojkhowa, he saw the deceased conversing with the accused. Thus, the material part of the testimony of PW-5 is a significant omission which amounts to contradiction.

15. PW-6 is the wife of the deceased, who is neither an eyewitness nor a witness on the point of last seen together. However, she stated that her deceased husband had filed a complaint against the accused on the allegation that the accused had dispossessed him.

16. PW-7 stated that at 8.10 p.m., on the fateful day, while he was ready to go to his house to bring food, he noticed appellant no. 2 was riding on the pillion of the deceased's motorcycle. As seen from the evidence of PW-11, even this statement is an omission. PW-8 is a medical officer who performed postmortem on the body of the deceased. PW-9 stated that at 8.00 p.m. on the day of the incident, he had seen appellant no. 2 and Abdul Kadir Jilani (acquitted accused) leaving the place where the deceased was lying. Even this statement has been proven to be an omission in the evidence of PW-11. PW-10 is not an eyewitness or a witness who deposed about the last seen together.

17. Therefore, as far as evidence of assault on the deceased is concerned, there is no reliable evidence to show the involvement of the appellants. The only evidence regarding the last seen together is that at 4.00 p.m., on the date of the incident, appellant no. 2 took the deceased on his motorcycle. However, PW-3 has stated that appellant no. 2 took the deceased at 4.00 p.m. to attend a meeting of the Congress Party. He also said that his deceased father was an influential leader of the Congress. Therefore, after 4.00 p.m., there were also persons

other than the accused around the deceased. Even assuming that the accused were seen with the deceased on the day he was found dead, after he was allegedly seen with the accused, the deceased attended a meeting of the Congress Party. The theory of last seen together is helpful to the prosecution if the deceased was seen in the company of the accused in the proximity of the time at which the dead body is found. If the evidence shows that after the deceased was seen in the company of the accused, he was in the company of others as well, the theory of last seen together is not of any assistance to the prosecution. The reason is that the involvement of other persons in the offence is not ruled out. Hence, the fact that appellant no. 2 was found in the company of the deceased at 4.00 p.m. is not sufficient to link him with the commission of the offence of murder. For the reasons we have recorded, the testimony of so-called eyewitnesses cannot be relied upon. The theory of last seen together deserves to be rejected. Therefore, the prosecution has failed to bring home the charge against the appellants.

CONCLUSION

18. For the reasons recorded above, the impugned judgments of the Trial Court and High Court to the extent to which the appellants were convicted for the offence punishable under Section 302, read with Section 149 of IPC, are hereby set aside. The appellants are acquitted of charges against them. The appeal is accordingly allowed.

19. The appellants shall be set at liberty unless their custody is required concerning some other offence.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 36 : 2024 INSC 362

Deependra Yadav and Others
v.
State of Madhya Pradesh and Others

(Civil Appeal No. 5604 of 2024)

01 May 2024

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

Issue for Consideration

(i) Whether a fault can be found in the process of normalization and the consequential merger of the marks secured by the candidates who appeared in the two main examinations; (ii) Whether the Rule 4(3)(d)(III) of the Madhya Pradesh State Service Examination Rules, 2015 patently harmed the interest of the reservation category candidates.

Headnotes

Madhya Pradesh State Service Examination Rules, 2015 – The Single Judge of the High Court invalidated the decision taken by the Madhya Pradesh Public Service Commission (MPPSC) on 10.10.2022, proposing to hold a fresh main examination by cancelling the earlier one, and directed the MPPSC to hold a special main examination, for the new eligible reservation category candidates, as per the redrawn preliminary examination result – The Single Judge also directed that, on the basis of the results of these two main examinations, a fresh list of selected candidates should be prepared in terms of the Rules, 2015 for the interview, by merging and normalizing the two lists, as per the process adopted by the MPPSC on previous occasions – By judgment dated 25.01.2023, the Division Bench of the High Court dismissed the appeal, holding that the order passed by the Single Judge was just, proper and well-reasoned – Correctness:

Held: In State of U.P. and Others vs. Atul Kumar Dwivedi and others, the Supreme Court concluded that the exercise undertaken in adopting the process of normalization was quite consistent with the requirements of law – It was also observed that decisions made by expert bodies, including the Public Service Commissions, should not be lightly interfered with, unless instances of arbitrary and malafide exercise of power are made out – In the instant

* Author

case, two experts, who had guided the MPPSC in undertaking the process of normalization, appeared before the Court to explain the methodology adopted – The experts satisfied the Court that a transparent process was adopted to bring all the candidates onto an even platform so as to finalise the list of candidates eligible to be interviewed – This was done by applying a formula uniformly to the marks secured by all the candidates who appeared in the two main examinations, so that their marks would become comparable and enable preparation of a unified marks list – No lacuna in the process adopted or formula applied – Therefore, the process of normalization and the consequential merger of the marks secured by the candidates who appeared in the two main examinations cannot be found fault with – Thus, the impugned judgment dated 25.01.2023 passed by the Division Bench of the High Court upheld. [Paras 26, 27, 29]

Madhya Pradesh State Service Examination Rules, 2015 – Rule 4 – Amendment on 17.02.2020 – Recall of amendment on 20.12.2021 – Omission of Rule 4(3)(d)(III):

Held: The amendment effected on 17.02.2020 brought about a sea change in the methodology of Rule 4 – The amended Rule 4 of the Rules of 2015 provided that adjustment and segregation of meritorious reservation category candidates with meritorious unreserved category candidates would be only at the time of final selection and not at the time of the preliminary/main examination – Thereafter, on 20.12.2021, the Rules of 2015 were again amended – The position existing prior to the amendment effected on 17.02.2020 was restored – Further, the amended Rule 4(3)(d)(III) was altogether omitted from the Rules of 2015 – The result of such omission and Rule 4(1)(a)(ii), as it presently reads, is that meritorious reservation category candidates, who did not avail any benefit of relaxation, are to be clubbed with meritorious unreserved category candidates at the time of declaring the result of the preliminary examination itself – In effect, status *quo ante* was restored – Rule 4(3)(d)(III) of the Rules of 2015 patently harmed the interests of the reservation category candidates, as even meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as belonging to those reservation categories and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage – As a result, they continued to occupy the reservation category slots which would

have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks. [Paras 5, 8, 30]

Case Law Cited

State of U.P. and Others v. Atul Kumar Dwivedi and Others [2022] 1 SCR 28 **: (2022) 11 SCC 578;** *Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others* [2023] 3 SCR 714 **: 2023 SCC OnLine SC 344;** *Saurav Yadav and Others v. State of U.P. and Others* [2020] 11 SCR 281 **: (2021) 4 SCC 542 – referred to.**

Kishor Choudhary v. State of Madhya Pradesh and Another **(W.P. No.542/2021 of Madhya Pradesh High Court);** *Harshit Jain and Others v. State of Madhya Pradesh and Another* **(W.P.No.23828/2022 of Madhya Pradesh High Court) – referred to.**

List of Acts

Madhya Pradesh State Service Examination Rules, 2015; Constitution of India; Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994.

List of Keywords

Rule 4 of Madhya Pradesh State Service Examination Rules, 2015; Rule 4 of Madhya Pradesh State Service Examination Rules, 2015 amended on 17.02.2020; Rule 4 of Madhya Pradesh State Service Examination Rules, 2015 amended on 20.12.2021; Omission of Rule 4(3)(d)(III) of Madhya Pradesh State Service Examination Rules, 2015; Merging and normalising; Process of normalization; Expert bodies.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5604 of 2024

From the Judgment and Order dated 25.01.2023 of the High Court of M.P. Principal Seat at Jabalpur in WA No. 1706 of 2022

With

Special Leave Petition (C) Nos. 23514 and 27620 of 2023

Appearances for Parties

Saurabh Mishra, A.A.G., R.Bala Subramanyam, Gaurav Agarwal, Rakesh Khanna, Atma Ram N. S. Nadkarni, Sr. Advs., Jitendra Kumar Tripathi, Amit Sharma, Alok Kumar, Ravi Kumar, Shashank Gaurav, Rameshwar Singh Thakur, Ms. Samridhi S Jain, Manan Daga, Chaitanya Dixit, Aman Varma, Rakesh Mishra, Harsh Parashar, Akash Lalwani, Sunny Choudhary, Abhinav Shrivastava, Shivang Rawat, Dr. Harsh Pathak, Ms. Shaveta Mahajan, Mohit Choubey, S. S. Rebello, Ms. Deepti, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J.

1. Leave granted only in SLP (C) No. 5817 of 2023.

2. One lapse on the part of the State is all it took to generate this litigation, impacting multitudes of job aspirants in the State of Madhya Pradesh. The lapse was the amendment of an existing service rule on 17.02.2020 which was recalled thereafter on 20.12.2021, restoring the rule to its original position, but in the interregnum that amended rule was applied to an ongoing recruitment process. This prompted several challenges before the High Court of Madhya Pradesh at Jabalpur resulting in a spate of orders and directions leading up to these cases before us.

3. The Madhya Pradesh Public Service Commission (MPPSC) issued an advertisement on 14.11.2019 proposing to select candidates for 571 posts in the State services in accordance with the Madhya Pradesh State Service Examination Rules, 2015 (for brevity, 'the Rules of 2015'). The Rules of 2015 were framed in exercise of power under the *proviso* to Article 309 of the Constitution of India. The Madhya Pradesh State Service Examination-2019 was scheduled to be held by the MPPSC for filling up these posts, by conducting a preliminary examination followed by the main examination and interviews. The preliminary examination took place on 12.01.2020. The total number of candidates who registered for the preliminary examination stood at 3,64,877 but only 3,18,130 of them actually appeared for the examination. At that stage, on 17.02.2020, Rule 4 of the Rules of 2015 was amended

by the State of Madhya Pradesh. Rule 4, as it stood prior to the amendment and to the extent relevant for the purposes of this adjudication, read as under:

> 'Rule 4. Mode of preparation of select list.
>
> (1)(a)(i) On the basis of marks obtained in Preliminary Examination, candidates numbering 15 times the vacancies as advertised category wise will be declared successful for Main examination subject to the condition that candidates have scored minimum passing marks as may be specified by the Commission. In addition to this, all the other candidates who get marks equal to "Cut Off Marks" will also be declared successful for the main examination.
>
> (ii) Firstly, a list of Candidates of unreserved category shall be prepared. This list will include the candidates selected on the basis of the common merit from Scheduled Castes, Scheduled Tribes and Other Backward Classes, who have not taken any advantage/relaxation given to the concerned category.
>
> (iii) Secondly, separate lists of Scheduled Castes, Scheduled Tribes and Other Backward Classes will be prepared.
>
> .....
>
> (d) A common list of successful candidates shall be prepared after the preparation of all four lists, and examination result will be declared thereafter. This list will be roll number wise.'

4. It is clear from a bare reading of the above Rule 4 that the result of the preliminary examination was to be declared by clubbing meritorious reservation category candidates, who had not availed any reservation benefit, with the meritorious unreserved category candidates and not with their respective reservation category candidates. While so, the amendment effected on 17.02.2020 brought about a sea change in this methodology. To the extent relevant, the amended Rule 4 of the Rules of 2015 read thus:

> '4. Mode of preparation of select list: -
>
> (1)(a)(I) On the basis of marks obtained in Preliminary Examination, - category wise candidates numbering 15 times of the vacancies as advertised will be declared successful for Main examination subject to the condition that candidates have scored minimum passing marks as may be specified by the Commission. In addition to this, all the other candidates who get marks equal to "Cut Off Marks" will also be declared successful for the main examination.
>
> (II) Separate Lists of Candidates applied in Unreserved, Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Section shall be prepared. Reservation shall be given to Women and ExServicemen in all categories as per rules and instructions issued in this regard from time to time.
>
> .....
>
> (d) A common list of successful candidates shall be prepared after the preparation of all five lists, and there after examination result will be declared. This list will be roll number wise.
>
> .....
>
> (3)(d)(I) Results of Preliminary/Main Examination, the candidates shall be declared in the category mentioned as their category in their online application form.
>
> (II) Candidates of reserved category (Scheduled caste/ Scheduled Tribe/Other Backwards Classes/Economically Weaker Section) who get selected like general category candidates without any relaxation shall not be adjusted against the posts reserved for those reserved categories. They shall be adjusted against vacancies of unreserved category.
>
> (III) But above adjustment will only be at the time of final selection, not at the time of preliminary/main examination.'

5. In effect, the amended Rule 4 of the Rules of 2015 provided that adjustment and segregation of meritorious reservation category

candidates with meritorious unreserved category candidates would be only at the time of final selection and not at the time of the preliminary/main examination.

6. Surprisingly, the amended Rule 4 was applied to the ongoing recruitment process relating to the notified 571 vacant posts. The result of the preliminary examination conducted on 12.01.2020 was declared on 21.12.2020, applying the amended Rule 4. Thus, there was no segregation of meritorious reservation category candidates with those from the unreserved category and they were shown in their respective reservation categories only. The number of candidates who cleared the preliminary examination on this basis were 10,767.

7. While so, the *vires* of amended Rule 4(3)(d)(III) of the Rules of 2015 was challenged by some of the candidates in a batch of writ petitions before the High Court of Madhya Pradesh at Jabalpur. By interim order dated 22.01.2021 passed in those cases, the High Court directed that the recruitment process initiated pursuant to the preliminary examination result dated 21.12.2020 shall remain subject to the outcome of the writ petitions. Pursuant thereto, the MPPSC conducted the main examination of the Madhya Pradesh State Service Examination-2019 from 21.03.2021 to 26.03.2021. While so, on 20.12.2021, the Rules of 2015 were again amended by the State of Madhya Pradesh. Thereby, the position existing prior to the amendment effected on 17.02.2020 was restored. The newly amended Rule 4 of the Rules of 2015 read thus:

> 4(1)(a)(i) On the basis of marks obtained in the preliminary examination category wise candidates 20 times the number of advertised vacancies shall be declared successful for the main examination subject to the condition that the candidates have secured such minimum passing marks as may be specified by the Commission. In addition, all other candidates who have obtained marks equal to the 'cut off marks' shall also be declared qualified for the main examination.
>
> (ii) First of all, the cut off marks of unreserved category shall be determined. After this, those candidates belonging to the reserved category (Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) who have obtained marks more than

> or equal to the prescribed "cut off" of the unreserved category and who have taken the benefit of relaxations from time to time, shall be included in the respective category by separating them from the list of unreserved category.
>
> (iii) In the second phase, category-wise cut off marks of the reserved candidates shall be determined by preparing category-wise separate lists of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections.
>
> …..
>
> (c) After preparation of all the five lists, a common list of eligible candidates shall be prepared and thereafter the result shall be declared roll number wise.

8. Further, the amended Rule 4(3)(d)(III) was altogether omitted from the Rules of 2015. The result of such omission and Rule 4(1)(a)(ii), as it presently reads, is that meritorious reservation category candidates, who did not avail any benefit of relaxation, are to be clubbed with meritorious unreserved category candidates at the time of declaring the result of the preliminary examination itself. In effect, *status quo ante* was restored.

9. Notwithstanding this amendment, the result of the main examination held between 21.03.2021 and 26.03.2021 was declared by the MPPSC on 31.12.2021 and the number of candidates who provisionally qualified for interviews were 1918. However, by judgment dated 07.04.2022, a Division Bench of the High Court of Madhya Pradesh at Jabalpur partly allowed the pending writ petitions, *viz.*, W.P. No. 542 of 2021 and batch, titled **'Kishor Choudhary vs. State of Madhya Pradesh and another'**. Challenge in this batch of cases was not only to the validity of amended Rule 4(3)(d)(III) of the Rules of 2015 but also to Section 4(4) of the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (for brevity, 'the Adhiniyam'). Section 4(4) of the Adhiniyam reads as follows: -

> '4(4). If a person belonging to any of the categories mentioned in sub-section (2) gets selected on the basis of merit in an open competition with general candidates,

> he shall not be adjusted against the vacancies reserved for such category under sub-section (2).'

The Division Bench upheld the validity of Section 4(4) of the Adhiniyam but declared Rule 4(3)(d)(III) of the Rules of 2015 *ultra vires* and set it aside. The Division Bench directed that, resultantly, the recruitment process must be conducted and completed in consonance with the unamended Rules of 2015.

10. Thereupon, the MPPSC issued Advertisement dated 29.09.2022 proposing to reconduct the main examination in compliance with the Division Bench judgment. This examination was proposed to be conducted in the second week of January, 2023. Further, on 10.10.2022, the MPPSC declared the revised result of the preliminary examination, in tune with the unamended Rule 4 of the Rules of 2015. In consequence, 13,080 candidates were declared qualified for the main examination, instead of the 10,767 candidates declared eligible earlier as per amended Rule 4(3)(d)(III).

11. While so, some candidates filed W.P. No. 23828 of 2022 before the High Court of Madhya Pradesh at Jabalpur assailing the decision of the MPPSC to cancel the result of the main examination held earlier on the ground that they would be required to reappear for the said examination despite clearing it in the first instance. The petitioners in SLP (C) No. 5817 of 2023, from which this appeal arises, intervened in the said writ petition and they were also heard. This writ petition was filed on 13.10.2022.

12. At that stage, Review Petition Nos. 1112 and 1175 of 2022 were filed seeking clarification of the judgment dated 07.04.2022 in **Kishor Choudhary** (*supra*). However, by order dated 18.11.2022, the Division Bench disposed of the review petitions leaving it open to the writ Court to consider and interpret its earlier judgment dated 07.04.2022. This order was passed as the Division Bench was informed of the fact that a fresh writ petition, *viz.*, W.P. No. 23828 of 2022, was pending consideration.

13. A learned Judge of the High Court of Madhya Pradesh allowed W.P. No. 23828 of 2022 and batch, titled '**Harshit Jain and others vs. State of Madhya Pradesh and another'** on 29.11.2022. Therein, the learned Judge noted that four categories of candidates emerged:

(i) the newly qualified reservation category candidates for the main examination (2,721, in number), as per the result dated 10.10.2022;

(ii) 1,918 select list candidates, who had passed the main examination held from 21.03.2021 to 26.03.2021 and qualified for the interview;

(iii) candidates out of these 1,918 candidates, who would be ousted from that select list of 1,918 candidates, if the special main examination is conducted and the results are normalized; and

(iv) 8,894 candidates, out of the 10,767 candidates, who had appeared for the main examination earlier but could not pass it.

14. The learned Judge observed that if the result of the main examination was cancelled, a premium would be given to the candidates from the fourth category by reviving their candidature, though they had failed to qualify in the first instance, and a right would be taken away from candidates who had already cleared the main examination and qualified for the interview. The learned Judge opined that this would cause serious prejudice and grave injustice to candidates who were declared eligible and had qualified in the short-listing process and that holding the entire main examination afresh would not only result in incurring huge costs but would also cause grave injustice to a large number of candidates, who had already cleared the main examination and were short-listed for the interview, without any fault on their part. Holding so, the learned Judge invalidated the decision taken by the MPPSC on 10.10.2022, proposing to hold a fresh main examination by cancelling the earlier one, and directed the MPPSC to hold a special main examination, as was done by it earlier on several occasions, for the new eligible reservation category candidates, as per the redrawn preliminary examination result. The learned Judge directed that, on the basis of the results of these two main examinations, a fresh list of selected candidates should be prepared in terms of the Rules of 2015 for the interview, by merging and normalizing the two lists, as per the process adopted by the MPPSC on previous occasions. This exercise was directed to be completed within six months.

15. Aggrieved by this judgment, three of the petitioners in SLP (C) No. 5817 of 2023 preferred an appeal before a Division Bench of the High Court. By judgment dated 25.01.2023 passed in Writ Appeal

No. 1706 of 2022, the Division Bench dismissed the appeal, holding that the order passed by the learned Judge was just, proper and well-reasoned and did not call for any interference.

16. The judgment dated 25.01.2023 of the Division Bench was assailed before this Court in SLP (C) No. 5817 of 2023, from which the present appeal arises. By order dated 10.04.2023, this Court rejected the prayer therein for interim relief but directed that, in the interest of justice, any proceedings/processes pursuant to the advertisement in question shall remain subject to the final orders to be passed in this case.

17. Prior thereto, by Advertisement dated 10.01.2023, the MPPSC notified that the main examination for the new candidates as per the revised preliminary examination result would be held from 15.04.2023 to 20.04.2023 in compliance with the judgment dated 29.11.2022 in W.P. No. 23828 of 2022. Thereafter, by order dated 13.01.2023, the MPPSC declared ineligible for interview some of the candidates who had cleared the main examination in the first instance. This was on the basis of the revised preliminary examination result, whereby 398 candidates out of the 1918 candidates who had cleared the earlier main examination stood ousted at the preliminary examination stage.

18. Challenging the order dated 13.01.2023, some of the affected candidates approached the High Court of Madhya Pradesh at Jabalpur, *vide* Writ Petition No. 4783 of 2023 and batch. The said batch of cases, tiled **'Vaishali Wadhwani and others vs. The State of Madhya Pradesh and another'**, was disposed of by a learned Judge of the High Court by judgment dated 23.08.2023. The learned Judge partly allowed those cases, but directed the MPPSC to merge and normalize the result of the first main examination and the result of the special main examination, held on the strength of the revised preliminary examination result, as directed in **Harshit Jain** (*supra*). Thereafter, the same learned Judge disposed of Writ Petition No. 25087 of 2023, titled **'Priyanka Pandey vs. The State of Madhya Pradesh and another'**, by judgment dated 07.10.2023, holding that his judgment in **Vaishali Wadhwani** (*supra*) was a judgment *in rem* and would apply to all the candidates who passed the main examination in the first instance and directed the MPPSC not to discriminate between candidates who approached the Court and those who did not.

19. The special main examination for the reservation category candidates who were declared eligible, in terms of the revised preliminary examination result, was conducted from 15.04.2023 to 20.04.2023. Their results were declared on 18.05.2023, after normalizing and merging the results of both the main examinations. The process of normalization of the results of the two main examinations was effected by the MPPSC in consultation with and under the guidance and advice of two experts. Normalization was undertaken in the context of the marks obtained by candidates in the two main examinations by applying a formula, so as to bring them all on an even keel. Thereby, 1983 candidates stood qualified for the interview. Out of the 1983 candidates declared qualified for the interview, 1,520 candidates figured in the list of 1918 candidates declared eligible earlier, on the strength of the first main examination, and the remaining 463 candidates emerged successful either in the special main examination or in the normalization process. Totally, 398 candidates out of the 1918 candidates, who were declared eligible for the interview earlier, stood ousted and were no longer eligible.

20. The MPPSC then issued Notification dated 23.06.2023, calling upon the 1983 selected candidates to appear for the interviews. Some of the ousted 398 candidates filed writ petitions before the High Court and were granted interim relief, by permitting them also to appear for the interviews. Interviews were conducted from 09.08.2023 to 19.10.2023.

21. The MPPSC filed Writ Appeal No. 2017 of 2023, aggrieved by the judgment in **Vaishali Wadhwani** (*supra*), on the ground that it proceeded on the erroneous assumption that the normalization process was applied to the marks secured in the preliminary examination and not in the two main examinations held thereafter. By interim order dated 19.12.2023, a Division Bench of the High Court stayed the order dated 23.08.2023 passed in **Vaishali Wadhwani** (*supra*). Aggrieved thereby, Vaishali Wadhwani and others filed miscellaneous applications, seeking vacating of the stay granted by the Division Bench in Writ Appeal No. 2017 of 2023. These applications were dismissed on 12.02.2024.

22. We are informed that the State of Madhya Pradesh proceeded on the strength of the results declared after the normalization and also issued appointment orders to the selected candidates, thereby

enabling them to join service. Insofar as the seven petitioners in SLP (C) No. 5817 of 2023 are concerned, the MPPSC stated that only three of them had cleared the preliminary examination, as per the pre-revised result dated 21.12.2020, and were eligible to write the main examination. However, one of them did not appear for the main examination while the other two did and failed. Thereafter, all seven of them were declared eligible, in terms of the revised preliminary examination result dated 10.10.2022, but they failed the special main examination and in the process of normalization held thereafter, as per the results declared on 18.05.2023.

23. Be it noted that Vaishali Wadhwani and others, the petitioners in Writ Petition No. 4783 of 2023 and batch, were successful before the High Court to some extent inasmuch as their writ petitions were partly allowed by the judgment dated 23.08.2023, but directing the MPPSC to merge and normalize the two lists, i.e., the result of the first main examination and the result of the special main examination. They, however, chose to file SLP (C) No. 23514 of 2023 before this Court against the said judgment dated 23.08.2023. As already noted hereinabove, Writ Appeal No. 2017 of 2023 was filed against the very same judgment by the MPPSC before a Division Bench of the High Court and the said appeal is pending consideration. More importantly, the petitions filed therein by Vaishali Wadhwani and others, seeking the vacating of the stay of the judgment dated 23.08.2023, were dismissed and that order was not subjected to challenge by them. Having sought vacating of the stay order passed in relation to the judgment dated 23.08.2023, in effect, seeking implementation thereof, it is surprising that Vaishali Wadhwani and the others sought to challenge the very same judgment before this Court. In any event, even if they have any grievance with the said judgment, it is not open to them to bypass the remedy of appeal available to them before the High Court itself. We are, therefore, not inclined to entertain their special leave petition.

24. Similarly, Mamta Mishra, who was also a petitioner in Writ Petition No. 4783 of 2023 along with Vaishali Wadhwani, chose to file SLP (C) No. 27620 of 2023 assailing the judgment dated 23.08.2023 passed therein. For reasons alike, as stated in the context of SLP (C) No. 23514 of 2023 filed by Vaishali Wadhwani and others, this special leave petition also does not merit consideration.

25. I.A. No. 102595 of 2023 was filed by four candidates seeking to come on record in SLP (C) No. 5817 of 2023. They claimed to be similarly situated to Deependra Yadav, the first petitioner therein. IA No. 132609 of 2023 was filed by two of the 398 ousted candidates, seeking to be impleaded in SLP (C) No. 5817 of 2023. I.A. No. 228055 was filed by 182 candidates seeking to come on record in SLP (C) No. 5817 of 2023, so as to support the petitioners therein. They stated that they stood ousted after normalization and merger of the marks secured by candidates in the two main examinations. However, as grievances of candidates who appeared in the Madhya Pradesh State Service Examination-2019 are not personal or individual to them alone and we are concerned with resolving the larger issue, we do not consider it necessary to implead any of these individual candidates who were not parties before the High Court or give them a hearing. In any event, all the relevant issues and aspects have been comprehensively and conclusively addressed by the learned senior counsel/counsel appearing for the parties on record and nothing more remains to be added thereto.

26. Further, we had requested the two experts, who had guided the MPPSC in undertaking the process of normalization, to appear before us so as to explain the methodology adopted. Having heard the two experts, namely Dr. Vastashpati Shastri and Mr. Indresh Mangal, we are fully satisfied that a transparent process, which was completely above board, was adopted to bring all the candidates onto an even platform so as to finalize the list of candidates eligible to be interviewed. This was done by applying a formula uniformly to the marks secured by all the candidates who appeared in the two main examinations, so that their marks would become comparable and enable preparation of a unified marks list.

27. Significantly, in ***State of U.P. and others vs. Atul Kumar Dwivedi and others***[1], this Court had occasion to consider application of moderation/ scaling of marks in a recruitment process and as to when such an exercise would be permissible. It was observed that normalization of marks means increasing and/or decreasing the marks obtained by students in different timing sessions (shifts) to a certain number, as observed by the High Court in its judgment, and it was noted

1 [2022] 1 SCR 28 : (2022) 11 SCC 578

that such normalization techniques help in comparing corresponding normalized values from two or more different data sets in a way that it eliminates the effects of the variation in the scale of the data sets, i.e., a data set with large values can be easily compared with a data set of smaller values and the normalized score/percentile is obtained by applying a formula. This Court, accordingly, concluded that the exercise undertaken in adopting the process of normalization was quite consistent with the requirements of law. This Court further observed that decisions made by expert bodies, including the Public Service Commissions, should not be lightly interfered with, unless instances of arbitrary and malafide exercise of power are made out.

28. On similar lines, in ***Tajvir Singh Sodhi and others v. State of Jammu and Kashmir and others***[2], this Court observed that interference in the selection process for public employment should generally be avoided, recognizing the importance of maintaining the autonomy and integrity of the selection process. Noting that Courts would recognize that the process of selection involves a high degree of expertise and discretion and that it would not be appropriate for Courts to substitute their judgment for that of a selection committee, it was observed that it is not within the domain of the Court, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a selection committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

29. The detailed explanation by the experts being rather technical, we do not propose to burden this judgment with the same, but the learned senior counsel/counsel opposing the MPPSC, who also heard the experts, did not bring to our notice any lacuna in the process adopted or the formula applied, whereby injustice was done to any candidate or any arbitrariness crept in. We, therefore, hold that the process of normalization and the consequential merger of the marks secured by the candidates who appeared in the two main examinations cannot be found fault with.

30. We may also note that Rule 4(3)(d)(III) of the Rules of 2015 patently harmed the interests of the reservation category candidates, as even

2 [2023] 3 SCR 714 : 2023 SCC OnLine SC 344

meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as belonging to those reservation categories and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage. As a result, they continued to occupy the reservation category slots which would have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks.

31. In ***Saurav Yadav and others v. State of U.P. and others***[3], a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical reservation categories would be entitled to be selected in the 'open category' and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.

32. This being the settled legal position, it appears that the State of Madhya Pradesh itself realized the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the judgment in **Kishor Choudhary** (*supra*), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such process.

3 [2020] 11 SCR 281 : (2021) 4 SCC 542

33. We may also note that the judgment in **Kishor Choudhary** (*supra*) was not subjected to challenge before this Court after the dismissal of the review petitions. The direction therein was to conduct and complete the examination process in accordance with the unamended Rules of the 2015. It was the later judgment in **Harshit Jain** (*supra*) that advocated the methodology of holding a special main examination for the reservation category candidates who were found eligible after revising the preliminary examination result in keeping with the unamended Rules of 2015. This direction was found to be justified by the Division Bench, which dismissed the writ appeal by way of the impugned judgment and, in our considered opinion, rightly so.

34. On the above analysis, we find that the impugned judgment dated 25.01.2023 passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 1706 of 2022 does not brook interference on any ground, be it on facts or in law.

The civil appeal arising out of SLP (C) No. 5817 of 2023 is, therefore, bereft of merit and is accordingly dismissed.

Further, as already mentioned hereinbefore, we are not inclined to entertain and consider SLP (C) Nos. 23514 and 27620 of 2023 on merits. The two SLPs are dismissed.

Pending I.A.s shall also stand dismissed.

Parties shall bear their respective costs.

Headnotes prepared by: Ankit Gyan *Result of the case:*
Civil Appeal and SLPs dismissed.

[2024] 6 S.C.R. 53 : 2024 INSC 391

Sheikh Noorul Hassan
v.
Nahakpam Indrajit Singh & Ors.

(Civil Appeal No. 1389 of 2024)

08 May 2024

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

Issue for Consideration

Matter pertains to the permissibility of filing of subsequent pleading-replication as envisaged in Ord. VIII r. 9 CPC, during the course of the proceeding of an election petition under the 1951 Act, and in what circumstances leave to file such subsequent pleading may be granted by an election tribunal/court.

Headnotes

Representation of Peoples Act, 1951 – s. 87(1) – Procedure before the High Court – Filing of replication by the election petitioner to the written statement filed by the returned candidate – Grant of leave by the High Court – When:

Held: As per s. 87(1), the High Court, acting as an Election Tribunal, is vested with all such powers as are vested in a civil court under the CPC and as such in exercise of its powers u/ Ord. VIII r. 9 CPC, is empowered to grant leave to an election petitioner to file a replication – However, such leave is not to be granted mechanically, the averments made in the plaint/election petition, the written statement and the replication to be considered – Upon consideration thereof, the Court may grant leave to explain/clarify the facts newly raised or pleaded in the written statement – Furthermore, while considering grant of leave, the Court must bear in mind that replication is not needed to merely traverse facts pleaded in the written statement, replication is not a substitute for an amendment; and a new cause of action or plea inconsistent with the plea taken in original petition/plaint is not to be permitted in the replication – On facts, the material facts alleged in the election petition were that while filing nomination papers the returned candidate failed to disclose details of some of his bank accounts, ownership of a motor vehicle, details of his spouse's profession/occupation, the investment made and the details of his

* Author

liability – Replication only sought to meet the explanation given by the returned candidate in his writtem statement – Replication did not seek to incorporate any new material facts or a new cause of action to question the election – It only sought to explain the averments made in the written statement – Thus, order of the High Court granting leave to the election petitioner to file a replication in answer to the new facts asserted in the written statement filed by the returned candidate justified and well within the discretionary jurisdiction of the High Court. [Paras 20-25]

Case Law Cited

Anant Construction (P) Ltd. v. Ram Niwas **1994 (31) DRJ 205 : 1994 SCC OnLine Del 615;** *Bachhaj Nagar v. Nilima Mandal and Anr.* **[2008] 14 SCR 621 : (2008) 17 SCC 491;** *K. Laxmanan v. Thekkayil Padmini and Ors.* **[2008] 16 SCR 1117 : (2009) 1 SCC 354;** *Jeet Mohinder Singh v. Harminder Singh Jassi* **[1999] Supp. 4 SCR 33 : (1999) 9 SCC 386;** *F.A. Sapa and others v. Singora and others* **[1991] 2 SCR 752 : (1991) 3 SCC 375;** *Harkirat Singh v. Amrinder Singh* **[2005] Supp. 5 SCR 817 : (2005) 13 SCC 511 – referred to.**

List of Acts

Representation of Peoples Act, 1951; Code of Civil Procedure, 1908.

List of Keywords

Election petition; Subsequent pleading; Replication; Grant of leave; Written statement; Facts newly raised or pleaded; Substitute for an amendment; Cause of action; Returned candidate.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1389 of 2024

From the Judgment and Order dated 14.03.2023 of the High Court of Manipur at Imphal in MC(El. Pet.) No. 119 of 2022

Appearances for Parties

Shyam Divan, Sr. Adv., Rakesh Kumar, Adv. for the Appellant.

Anupam Lal Das, Sr. Adv., David Ahongsangbam, S Gunabanta Meitei, B R Sharma, Raj Singh, Mohan Singh, Sanajaoba Pheiroijam, Ms. Rajkumari Banju, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Manoj Misra, J.

1. This appeal is directed against the order of the High Court of Manipur at Imphal[1] dated 14.03.2023, whereby leave has been granted to the election petitioner (the first respondent herein) to file a replication in answer to the new facts asserted in the written statement filed by the returned candidate (the appellant herein).

Factual Matrix

2. The first respondent filed an election petition seeking a declaration that the election of the returned candidate, namely, the appellant herein, is null and void under: (a) Section 100(1) (d) (i) (ii) and (iv); and (b) Section 100 (1) (b) of the Representation of Peoples Act, 1951[2]. In addition, thereto, a prayer was made to declare the election petitioner as duly elected from the concerned legislative constituency[3] of 12th Manipur Legislative Assembly.

3. In the election petition, it was alleged, *inter alia*, that the returned candidate had failed to make necessary disclosures in the nomination paper/the affidavit (i.e., Form 26) which had a material bearing on the election result. In support of that allegation, particulars of such non-disclosure / incorrect disclosure were detailed in the election petition. These allegations, however, were not only traversed in the written statement filed by the returned candidate (i.e. the appellant herein) but additional facts were also laid out therein. As a result, the election petitioner filed an application seeking leave to file a replication, which came to be allowed by the impugned order of the High Court.

Impugned Order

4. The High Court *vide* impugned order allowed the application seeking leave to file subsequent pleading while, *inter alia*, observing as follows:

> "15. The petitioner has filed the election petition, *inter alia,* on the ground that the first respondent has failed to disclose

1 High Court

2 1951 Act

3 4- Kshetrigao Assembly Constituency.

the details – status of his bank accounts with respective balances in Form 26. The first respondent has also failed to disclose the details of liability and also the car bearing DL4CNB4776 owned by him in Form 26.

16. On a reading of the election petition, it is seen that the petitioner has also taken other grounds. However, in reply to the ground for non-disclosure of the account details, the first respondent replied in his written statement that the said accounts opened for establishment of Self Help Group, namely, Panthoibi SHG, Yaiphabi SHG. Paragraphs 12 and 17 of the written statement speak about the opening of the bank accounts and also stated that some of the accounts have NIL balance and were lying in a dormant condition at the time of filing nomination papers. Therefore, there is no necessity to disclose the same in Form 26. The opening of the accounts for establishment of Self Help Groups, according to the petitioner, is new plea and the petitioner has to controvert the said facts by clarifying the relation between the accounts and Self Help Groups.

17. The learned counsel for the petitioner submitted that the accounts are joint accounts which actually belonged to the first respondent and others and nowhere mentioned that these accounts are the social or charitable account. The argument of the learned counsel for the petitioner appears to merit consideration.

18. The petitioner being election petitioner and the election petition being civil litigation, the celebrated principle of variance between pleading and proof is very much attracted in the matter of appreciation of evidence. It is lawful to the petitioner to file an application to add to his pleas already made in the election petition and the only condition thereon is the leave of the court. Even in cases that require leave, it is open to the court to grant leave with or without conditions.

19. It is pertinent to note that the law is well settled that the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder/replication or take a plea inconsistent to the pleas taken by him in the plaint, nor the rejoinder

can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement.

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23. The specific plea of the petitioner is that the first respondent has asserted some new facts in his written statement, particularly, paragraphs 1(i) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30 and it is necessary for the petitioner to reply by filing the replication. Though the first respondent contended that the petitioner has filed the proposed replication and introducing new facts and also trying to fill up the lacuna, nothing has been produced to prove the same.

24. Admittedly, on a reading of the averments set out in the subsequent pleading/replication, it is clear that they are the clarification and amplification of the earlier pleading made in the election petition and if the pleading of the election petition is read conjointly with the pleading of the replication, the pleading of replication are the addition of facts of the earlier facts of the election petition and the annexed documents are also related with the earlier facts of the election petition. In other words, the replication of the petitioner is to controvert the averments made in the written statement to the election petition. That apart, prima facie, the averments pleaded in the replication are not contrary to the averments made in the election petition and in fact, they are only explanatory to the plea taken by the first respondent in the written statement.

25. The argument of the learned counsel for the first respondent that the replication sought to be made by the petitioner clearly violates the requirement of the provisions of the Representation of People Act, 1951 and that the petitioner sought to introduce new facts after the expiry of 45 days, cannot be countenanced for the reason that the petitioner does not insert any new facts. It appears that the first respondent has filed his written statement on 4.8.2022 and petition to grant leave to file replication was filed on 7.9.2022 within a reasonable time.

> 26. As stated supra, the statement made in the replication are the denial of the statement made in the written statement filed by the first respondent to the election petition. If the same is received, no prejudice would be caused to the other side, especially, the first respondent. Moreover, it is the bounden duty of the election petitioner to clarify the averments made by the first respondent in his written statement. That apart, there is no bar for clarification of the earlier pleading, which has already been taken in the election petition by the petitioner.
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> xxx
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> 31. ……. On a perusal of the replication filed by the petitioner, this Court finds that the averments set out in the replication are not contrary to the averments set out in the election petition and these are only explanatory to the plea advanced by the first respondent in the written statement. Therefore, in order to explain/clarify the plea of the first respondent and for fair trial of the election petition and also in the interest of justice, this court is inclined to grant leave to the petitioner to file replication."

5. We have heard Mr. Shyam Divan, learned senior counsel, for the appellant (i.e., the returned candidate) and Mr. Anupam Lal Das, learned senior counsel, for the contesting respondent (i.e., the election petitioner).

Submissions on behalf of Appellant/Returned Candidate

6. Mr. Shyam Divan appearing for the appellant, *inter alia*, submitted:

   (i) The remedy of an election petition is a statutory remedy governed by the provisions of the 1951 Act. There is no provision in the 1951 Act for filing a replication in response to a written statement. Hence, there is no foundation in law for the impugned order;

   (ii) Election petitioner's replication is barred by the provisions of section 81[4] (1) of the 1951 Act as it sets out a time-limit of 45

4 **Section 81. Presentation of petitions.—** (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of that election are different, the latter of those two dates.

days for filing an election petition. Taking into consideration new allegations introduced through a replication would tantamount to entertaining a time-barred petition. Allegations in paragraphs 15, 16, 18, 19, 22 and 23 of the Replication are new. Not only that, new documents have been annexed by way of: (i) Ex.-A-18- List of Self-Help groups in the concerned Assembly Constituency; (ii) Ex.- A-19 and 20 - Status report of Income Tax demands; and (iii) A-21- Original Copy of registration certificate of vehicle number DL4CNB4776.

Submissions on behalf of First Respondent/ Election Petitioner

7. Per contra, Mr. Anupam Lal Das, *inter alia*, submitted:

(i) Section 87[5] of the 1951 Act provides that subject to the provisions of the Act, and of any rules made thereunder, an election petition shall be tried by the High Court in accordance with the procedure applicable under the Code of Civil Procedure, 1908[6] to try a suit. A written statement can be rebutted under Order VIII Rule 9[7] of the CPC. Therefore, it is incorrect to state that filing of a replication in the proceedings of an election petition has no legal basis.

(ii) No new case has been introduced by way of the replication. Though, by way of rebuttal of paragraphs 1(i) to (x) and

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Explanation.- In this sub-section, elector means a person who was entitled to vote at the election, to which the election petition relates, whether he has voted at such election or not.
(2) ****** (Omitted by Act 47 of 1966, w.e.f. 14.12.1966)
(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

5 **Section 87. Procedure before the High Court.—** (1) Subject to the provisions of this Act, and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:
Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.
(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

6 CPC

7 **Order VIII Rule 9.— Subsequent pleadings.—** No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim, and shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same.

paragraphs 14, 18.1 and 18.2 of the written statement, which introduced new facts, explanatory facts, by way of clarification / amplification of earlier pleading, have been pleaded, which is permissible in law. These include: (a) details of bank accounts; (b) details of tax demands/liability; and (c) ownership of vehicle, which are referred to in the original petition. The replication only seeks to rebut the explanation offered in the written statement in respect of those accounts, demands and the vehicle.

Analysis

8. Having taken note of the rival submissions, before we proceed to weigh the rival submissions in respect of the correctness of the impugned order, it would be useful to consider the following issue:

Whether during the course of the proceeding of an election petition, preferred under the provisions of the 1951 Act, subsequent pleading, as envisaged in Order VIII Rule 9 CPC, is permissible? If yes, in what circumstances leave to file such subsequent pleading may be granted by an Election Tribunal/ Court?

Subsequent Pleading can be filed in an Election Petition.

9. Before we deal with the aforesaid issue, it would be useful to refer to the provisions of the CPC in relation to pleadings. Order VI Rule 1 of the CPC declares that pleading shall mean a plaint and a written statement. Rule 9 of Order VIII specifically edicts that no pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court. Though, however, the Court may at any time require a written statement or additional written statement.

10. In **Anant Construction (P) Ltd. v. Ram Niwas[8],** High Court of Delhi, in an exhaustive judgment authored by R. C. Lahoti, J, as His Lordship then was, dealt with the terms 'Replication' and 'Rejoinder', as is commonly used for subsequent pleadings, as also as to when leave for filing subsequent pleading may be granted by the Court. After referring to various legal texts including Corpus Juris Secundum, it was observed:

8 1994 (31) DRJ 205 : 1994 SCC OnLine Del 615

"12. A more detailed rather exhaustive statement of law is to be found in CORPUS JURIS SECUNDUM. It would be useful to extract and reproduce the following paragraphs:

> "A reply or replication is purely a defensive pleading, the office or function of which is to deny, or allege facts in avoidance of, new matters alleged in the plea or answer and thereby join or make issue as to such new matters. (para 184)
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> No reply or replication is necessary where the issues are completed by, and no new matter is set up, in the plea or answer. (para 185 a.)
>
> At common law a replication is necessary where a plea introduces new matter and concludes with a verification; but under the codes, practice acts, or rules of civil procedure of a number of states *a reply to new defensive matter is not necessary or is necessary only when ordered by the court*. A reply to a counterclaim is generally necessary; but under some code provisions no reply or replication is required in any case. (para 185 b.(1))
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> The discretion which the court possesses, under some codes or practice acts, to direct the plaintiff, on the defendant's application, *to reply to new matter alleged as a defence by way of avoidance* will be exercised in favour of granting the application where the new matter, if true, will constitute a defence to the action and granting the order will prevent surprise and be of substantial advantage to the defendant without prejudice to the plaintiff. (para 185 b.(ii))
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> A replication, however, is unknown in the practice of a few states and in some states is not permitted. So too, under a statute providing that there shall be no reply except in enumerated situations, a reply is not permissible in a case not within one of the exceptions. Indeed, generally,

> in jurisdictions wherein pleading is governed by statutory provisions, *plaintiff has no right to file a reply when a reply is not required by statute or order of court and a reply filed in a case where no reply is required is to be treated as a nullity*, unless, and to the extent that, it constitutes an admission by plaintiff, as discussed infra para 204.
>
> Under the common law system of pleading, plaintiff may, at his election, *file a replication to a special plea setting up an affirmative defence*. On the other hand, it is proper *to reject a replication to pleas which merely traverse allegations of the declaration and set up no new matter*. Where the plea concludes to the contrary, plaintiff cannot reply with any new matter but must either accept it by a similiter or demur. So *a good special traverse can be answered only by joining issue thereon and not by filing a replication*. (para 191).

13. Decided cases in India use the term rejoinder loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.

14. A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three situations: (1) when required by law; (2) when a counter-claim is raised by the defendant; (3) when the court directs or permits a replication being filed. The court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking

> leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for 'confession and avoidance.'

Having observed so, a distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by way of a replication was noticed as under:

> "17. A distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by replication shall have to be kept in view. A plea which essentially constitutes the foundation of a claim made by the plaintiff or which is essentially a part of plaintiff's cause of action cannot be introduced through a replication. As already stated replication is always a defensive pleading in nature. It is by way of confession and avoidance or explanation of a plea raised in defence. It will be useful to quote from Halsbury's Laws of England (Volume 36, para 62, page 48):-
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> > "62. Necessity for amendment. The fact that a party may not raise any new ground of claim, or include in his pleadings any allegation or fact inconsistent with his previous pleadings, has been considered elsewhere. In order to raise such a new ground of claim, or to include any such allegation, amendment of the original pleading is essential."
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> 17.1 In *MSM Sharma versus Sri Krishna Sinha, AIR 1959 SC 395*, their Lordships refused to consider a plea raised in rejoinder for the first time, observing:
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> > "The case of bias of the Chief Minister (respondent No.2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondent had no opportunity to reply."

Finally, the Court summed up its conclusions as under:

"24. To sum up:

(1) 'Replication' and 'rejoinder' have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. 'Rejoinder' is a second pleading by defendant in answer to plaintiff's reply i.e. replication.

(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough, enabling reply being filed.

(3) I.A.s which do not involve adjudication of substantive rights of parties and / or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.

(4) A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations:

i. when required by law;

ii. when a counter claim is raised or set off is pleaded by defendant;

iii. when the court directs or permits a replication being filed.

(5) Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance'.

(6) A plaintiff seeking leave of the Court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave.

(7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.

(8) Subsequent pleadings are not substitute for amendment in original pleadings.

(9) A plea inconsistent with the plea taken in original pleadings cannot be permitted to be taken in subsequent pleadings.

(10) A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication."

(Emphasis supplied)

11. Now we shall have a look at the provisions of the 1951 Act in respect of addressing disputes regarding elections. Part VI of the 1951 Act, which comprises of five Chapters, deals with disputes regarding elections. Chapter I contains the definition clause (i.e., Section 79). Chapter II comprising of Sections 80 to 85 deals with presentation of election petitions to the High Court. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 80A, *inter alia*, provides that the High Court shall have jurisdiction to try an election petition. Section 81, *inter alia*, provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within 45 days from the date of election. Section 82[9] specifies as to

9 **Section 82. Parties to the petition. —** A petitioner shall join as respondents to his petition—
(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned

who shall be the parties to an election petition. Whereas, Section 83[10], inter alia, specifies as to what an election petition must contain. Section 84[11] speaks of the reliefs which an election petitioner may claim. Section 85, which dealt with the procedure on receiving petition, has been omitted with effect from 14.12.1966 by Act No.47 of 1966.

12. Chapter III comprising of Sections 86 to 107 deals with trial of Election Petitions. Section 86[12], *inter alia*, provides that,— (a) the

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candidates is void, claims a further declaration, that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such for the declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

10 **Section 83. Contents of petition.—** (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any practice that the petitioner alleges, including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such corrupt practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

11 **Section 84. Relief that may be claimed by the petitioner.—** A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

12 **Section 86. Trial of election petitions.—** (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. – An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after the election petition has been presented to the High Court, it shall be referred to the judge or one of the judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80 A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same judge, who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within 14 days from the date of commencement of the trial and subject to any order as to security for costs, which may be made by the High Court, being entitled to be joined as a respondent.

Explanation.— For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondent to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise, as it may deem fit, allow the particular particulars of any corrupt practice, alleged in the petition to be amended or amplified in such manner, as may in its opinion, be necessary for ensuring affair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice, not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act; (b) the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice, not previously alleged in the petition; and (c) the election petition shall be tried as expeditiously as possible and there shall be an endeavour to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. Section 87 provides that every election petition, subject to the provisions of the Act, and of any rules made there under, be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. Sections 93 to 99 deal with other procedural aspects which are not relevant for the controversy on hand. Section 100[13] enumerates the grounds for declaring election to be void. Section 101 deals with a situation when a candidate other than the returned candidate may be declared to have been elected. Section 102 addresses a situation where during the trial

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13 **Section 100. Grounds for declaring election to be void.—** (1) Subject to the provisions of sub-section (2), if the High Court is of opinion –

(a) that on the date of his election, returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been properly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected –

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the return candidate to be void.

(2) If in the opinion of the High Court, returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied –

(a) that no such practice was committed at the election by the candidate or his election agent, and every such correct practice was committed contrary to the orders, and without the consent, of the candidate, or his election agent;

(b) ***** (omitted by Act 58 of 1958)

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practises at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the return candidate is not void.

of an election petition, it appears that there is an equality of votes between candidates. Sections 103 to 107 deal with other procedural aspects which are not relevant for the case on hand.

13. Chapter IV deals with withdrawal and abatement of election petition, whereas Chapter IVA deals with appeals. Chapter V deals with costs and security of costs.

14. Part VII of the 1951 Act enlists corrupt practices and electoral offences.

15. A plain reading of Section 87 of the 1951 Act would indicate that, subject to the provisions of the 1951 Act and of any rules made thereunder, an election petition is to be tried, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. Order VI Rule 1 of CPC defines pleading as a plaint and a written statement. The object and purpose of pleadings is to ensure that the litigants come to trial with all issues clearly defined. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. A case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case, and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon **(see Bachhaj Nagar v. Nilima Mandal and Anr.[14])**.

16. Replication, though not a pleading as per Rule 1 of Order VI, is permissible with the leave of the Court under Order VIII Rule 9 of the CPC, which gives a right to file a reply in defence to set-off or counter-claim set up in the written statement. However, if filing of replication is allowed by the Court, it can be utilised for the purposes of culling out issues. But mere non-filing of a replication would not mean that there has been admission of the facts pleaded in the written statement **(see K. Laxmanan v. Thekkayil Padmini and Ors.[15])**.

17. Section 83 of the 1951 Act mandates that an election petition must contain a concise statement of the material facts on which the

14 [2008] 14 SCR 621 : (2008) 17 SCC 491, paragraphs 13 and 17

15 [2008] 16 SCR 1117 : (2009) 1 SCC 354, paragraph 29

petitioner relies. Additionally, an election petition should set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Since, an election petition is to be dismissed under sub-section (1) of Section 86 if not filed within the time specified in Section 81, such material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of the period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of the averment made in the election petition cannot be tried and cannot be made the subject matter of issues framed by the court **(See Jeet Mohinder Singh v. Harminder Singh Jassi[16])**.

18. Though the High Court while dealing with an election petition exercises powers under the CPC, those powers are subject to the provisions of the 1951 Act and of any rules made thereunder. In consequence, the general power of amendment of a pleading or of grant of leave to file replication, as is otherwise available to a Court under Order VI Rule 17 and Order VIII Rule 9 of the CPC, is limited by the provisions of the 1951 Act and the rules made thereunder. For example, sub-section (5) of Section 86 of the 1951 Act provides that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition, but it shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. The significance of sub-section (5) of Section 86 of the 1951 Act has been considered by a three-Judge Bench of this Court in **F.A. Sapa and others v. Singora and others[17]** in the following terms:

> "19. …….Section 86 (5) as it presently stands empowers the High Court to allow the 'particulars' of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of

16 [1999] Supp. 4 SCR 33 : (1999) 9 SCC 386, paragraph 45

17 [1991] 2 SCR 752 : (1991) 3 SCC 375

> widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the enquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. Only the particulars of that corrupt practice of which the germ exists in the election petition can be amended or amplified and there can be no question of introducing a new corrupt practice. It is significant to note that Section 86 (5) permits 'particulars' of any corrupt practice 'alleged in the petition' to be amended or amplified and not the 'material facts'. It is, therefore, clear from the trinity of clauses (a) and (b) of Section 83 and sub-section (5) of Section 86 that there is a distinction between 'material facts' referred to in clause (a) and 'particulars' referred to in clause (b) and what Section 86 (5) permits is the amendment / amplification of the latter and not the former. Thus, the power of amendment granted by section 86 (5) is relatable to clause (b) of Section 83 (1) and is coupled with a prohibition, namely, the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not relatable to clause (a) of Section 83 (1) as the plain language of Section 86 (5) confines itself to the amendments of 'particulars' of any corrupt practice alleged in the petition and does not extend to 'material facts'….."

19. As to what meaning is to be ascribed to the expression 'material facts', and what a pleading must contain, a three-Judge Bench of this Court in **Harkirat Singh v. Amrinder Singh**[18] observed as under:

> "48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary", or "primary"

18 [2005] Supp. 5 SCR 817 : (2005) 13 SCC 511

> [Burton's Legal Thesaurus (3rd Edition), p.349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.
>
> 51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of "material facts" pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.
>
> 52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

20. In light of the analysis above, we are of the view that by virtue of the provisions of Section 87 (1) of the 1951 Act, the High Court, acting as an Election Tribunal, subject to the provisions of the 1951 Act and the rules made thereunder, is vested with all such powers as are vested in a civil court under the CPC. Therefore, in exercise of

its powers under Order VIII Rule 9 of the CPC, it is empowered to grant leave to an election petitioner to file a replication.

21. However, such leave is not to be granted mechanically. The Court before granting leave must consider the averments made in the plaint/election petition, the written statement and the replication. Upon consideration thereof, if the Court feels that to ensure a fair and effective trial of the issues already raised, the plaintiff/election petitioner must get opportunity to explain/clarify the facts newly raised or pleaded in the written statement, it may grant leave upon such terms as it deems fit. Further, while considering grant of leave, the Court must bear in mind that,— (a) a replication is not needed to merely traverse facts pleaded in the written statement; (b) a replication is not a substitute for an amendment; and (c) a new cause of action or plea inconsistent with the plea taken in original petition/plaint is not to be permitted in the replication.

Grant of leave justified

22. In the instant case, the material facts alleged in the election petition, *inter alia,* were that while filing nomination papers the returned candidate had failed to disclose: (a) details of some of his bank accounts (i.e. six in number); (b) ownership of a motor vehicle, which stood registered in his name; (c) details of his spouse's profession or occupation; (d) the investment made by him on the land, by way of development, construction etc.; and (e) the details of his liability owed to the Bank.

23. In his written statement, the returned candidate (appellant herein) before giving a para-wise reply to the averments made in the election petition, made certain explanatory/preliminary averments in paragraph 1. Thereafter, in paragraph 10, it was averred that the returned candidate had filed two nomination papers along with form 26 affidavits and both were accepted after proper scrutiny on 9.2.2022. In paragraph 12, the returned candidate gave an explanation for bank account number 920010008072418 maintained with the Axis Bank. The explanation was to the effect that this account was of a self-help group for the purposes of providing aid to those who were affected by COVID-19 pandemic. In paragraph 13 a similar explanation was offered in respect of another bank account number 920010008661144 maintained with the Axis Bank. In paragraph 14, it was averred that the aforesaid bank accounts actually did not belong

to the returned candidate, his spouse or dependents, but were for social and charitable purpose, and that the returned candidate was associated with those accounts in a fiduciary capacity. It was alleged that those accounts were actually of self-help groups therefore, the returned candidate was under no obligation to disclose the amounts of money available in those accounts. In paragraph 15 of the written statement, an explanation was offered in respect of Axis Bank account number 910010004837498. It was claimed that the account had a zero balance and was lying dormant at the time of filing nomination papers, therefore no disclosure was warranted. The returned candidate also denied that there was an existing liability against that account. Similarly, in paragraph 16 of the written statement it was stated that Axis Bank account number 915020012865061 had zero balance and was lying dormant at the time of filing nomination paper, therefore no disclosure was warranted. In paragraph 18 of the written statement, fact with regard to filing of a writ petition to protect rights of forest dwellers was disclosed, and in paragraph 18.1, in respect of ICICI Bank account number 264301001639, explanation was offered to the effect that it was a joint bank account for the benefit of victim families dwelling in the forest, and that the account was in the name of certain other persons whereas the returned candidate had signed in the account opening form as a patron. In paragraph 18.2, a further statement was made that the bank account did not belong to the returned candidate, his spouse, or dependents, and that the account was for social/charitable use wherein the returned candidate had associated in a fiduciary capacity of a coordinator/facilitator. Further, to substantiate the said plea, the details of the 56 affected poor families were given. In paragraph 18.3, another defence in respect of those accounts was taken. In paragraph 19, it was averred that the motor vehicle of which disclosure was not made by the returned candidate had been gifted to one person in the year 2012, therefore there was no concealment in respect of that vehicle. In paragraph 21 of the written statement, it was stated that since value of immovable property was disclosed, there was no separate disclosure as regards the amount spent in the construction of residential house standing thereupon. Thus, there was no concealment. In paragraph 30 of the written statement, apart from a denial of the averments made in the paragraph of the election petition under reply, there was a statement with regard to filing of two nomination papers along with two affidavits.

24. In the application seeking leave to file replication, the election petitioner stated that the returned candidate had, in paragraphs 1 (I) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30, stated new facts of which a reply was required, therefore leave to file a replication be granted. In the replication, in paragraph 15, the election petitioner dealt with account number 920010008072418 maintained with the Axis Bank. Paragraph 16 of the replication dealt with account number 920010008661144, whereas paragraph 17 dealt with account numbers 920010008072418, 920010008661144. Similarly in paragraph 18 account number 910010004837498 was discussed and a report in respect of demand analysis and recoverability status was provided in a tabular form. In paragraph 19 account number 915020012865061 was discussed. Likewise, in paragraph 22, account number 264301001639 of the ICICI bank was discussed. In paragraph 23 again, account number 264301001639 was discussed. In paragraph 24, the registration of the vehicle in the name of the returned candidate was reiterated, and the claim that the vehicle was gifted in the year 2012 was denied. In paragraph 25, it was stated that whether the disclosure already made in respect of profession or occupation of spouse was proper or not, is for the Court to decide. Similarly, in paragraph 26 it was stated that the returned candidate was obliged to disclose the amount invested in the construction of residential house.

25. It is clear from above that the non-disclosure of bank accounts, alleged in the election petition, was sought to be explained by the returned candidate in his written statement. The replication only sought to meet that explanation. Similarly, the reply in the written statement in respect of other material facts pleaded in the election petition was sought to be dealt with, by way of explanation, in the replication. The replication does not seek to incorporate any new material facts or a new cause of action to question the election. It only seeks to explain the averments made in the written statement. Thus, in our view, leave to file replication was justified and well within the discretionary jurisdiction of the High Court.

26. We, therefore, find no merit in this appeal. The same is dismissed. There is no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal dismissed.

[2024] 6 S.C.R. 75 : 2024 INSC 399

Tapas Guha & Ors.
v.
Union of India & Ors.

(Civil Appeal Nos. 4603-4604 of 2024)

06 May 2024

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

Issue for Consideration

The Appellants in an Original Application before the National Green Tribunal (NGT) contended that there was widespread cutting of shade trees, uprooting of tea bushes and eviction of tea estate workers in the Doloo Tea Estate, the site identified for the Greenfield Airport Project in Assam, without obtaining environmental clearance. It was also contended that this was in violation of the provisions of Environmental Impact Assessment Notification, 2006, which necessitates prior Environmental Clearance and public consultation for Category-A projects in its Schedule. Whether the order of the National Green Tribunal (NGT) dismissing the Original Application holding that mere inclusion of a clause under the head 'Environment Clearances' in the form of said Notification does not deem the same to be mandatory for purposes of the EIA assessment study is legally sustainable?

Headnotes

Evidentiary value of the statements recorded on oath of witnesses for preparing the Report of the Secretary of the District Legal Services Authority (DLSA) – Statements show use of 200 to 250 JCBs 'day and night' for three days in May 2022 and prohibition in movement of inhabitants during that time – Report recorded that 89 shade trees found to be cut on inspection and a statement of the Circle Officer that 41,95,909 tea bushes have been uprooted – Considered:

Held: The Court should keep in mind that the statements of the witnesses, though recorded on an oath, have not been tested on the anvil of cross-examination – Yet the statement of the Circle Officer that 41,95,909 tea bushes have been uprooted, prima facie corroborates it, at this stage. [Paras 10-12]

The Affidavit of State Government placed reliance on the communication of the Member Secretary of the SEAC in Assam

* Author

– That this was a case of routine uprooting of tea bushes and shade trees to improve production of tea – Disbelieved:

Held: The argument of the Solicitor General that the possession of the site was handed over only in June 2022 and hence the destruction of the vegetation in May 2022 was not by the State authorities but likely by the inhabitants is inconceivable – On 11 May 2022, orders were issued by the District Magistrate under Section 144 CrPC – This was a prelude to the organized activities which took place in the month of May 2022, as recorded in the statements appended to the report of the DLSA – An organized operation involving over 200-250 JCBs at the behest of the tea garden workers is implausible – The clearance was evidently not a part of the regular maintenance of the tea estate but to facilitate the proposed new airport. [Paras 13-14]

National Green Tribunal (NGT) – Creation of – Purpose – Listed out:

Held: The NGT is an expert body established by a Central Statute viz., The National Green Tribunal Act, 2010, to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. [Paras 16-17]

National Green Tribunal (NGT) – Perfunctory dismissal of case – Criticized:

Held: The Tribunal ought to have verified the authenticity of the grievance – Callous approach towards adjudication undermines the integrity of the judicial process and also compromises the very purpose for which the NGT was established – Such callousness also reflects a lack of due diligence and disregard for the gravity of the environmental concerns raised by the appellants setting a concerning precedent which erodes public trust in the efficacy of environmental governance mechanisms. [Paras 16-17]

Environment – Environmental Impact Assessment Notification, 2006 – Para 2 of the Notification – Examined in the light of the facts:

Held: Paragraph 2 of the Notification makes it clear that before any construction or preparation of land by the project management except for securing the land, shall require prior environmental

clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule – Construction of airports is item 7(a) of the A Schedule to the Notification dated 14 September 2006 – Extensive activities were carried out at the site without obtaining environmental clearance and is in breach of paragraph 2 of the notification. [Paras 7 and 15]

The need for Environmental Regulations and Environmental Clearance – Explained:

Held: Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities – The infrastructure development must proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity – The requirement for Environmental Clearance prevents unchecked exploitation of natural resources and helps uphold the principles of sustainable development – The decision on whether an airport is situated at a particular place is a matter of policy, but when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, it has to be strictly complied with. [Paras 20-21]

List of Acts

National Green tribunal Act, 2010; EIA Notification S.O. 1533(E) Dated 14.09.2006.

List of Keywords

Environmental clearance; Felling trees; Tea estate; Greenfield airport.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4603-4604 of 2024

From the Judgment and Order dated 25.01.2024 of the National Green Tribunal, Eastern Zone in Original Application No. 15 of 2024 and I.A. No. 8/2024/EZ

Appearances for Parties

Prashant Bhushan, Ms. Ria Yadav, Advs. for the Appellants.

Tushar Mehta, Solicitor General, Nalin Kohli, Sr. A.A.G., Devajit Saikia, Advocate General, Gopal Sankaranarayanan, Sr. Adv., Raghav Shankar, Karan Lahiri, Abhikalp Pratap Singh, Ms. Aagam Kaur, Ms. Yamini Singh, Kartikey, Ravi Shankar Pandey, Aditya Dixit, Shuvodeep Roy, Saurabh Tripathi, Sumit Kumar, Ms. Rukmini Barua, Ms. Padmini Barua, Debadutta Kanungo, Ms. Alice Raj, Rahul Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. Application for intervention is allowed.

2. These Appeals arise from an order dated 25 January 2024 of the Eastern Zone Bench of the National Green Tribunal.

3. The Ministry of Civil Aviation of the Union Government decided to build a commercial Airport at Silchar in Assam since the existing defence airport is not suitable for domestic civilian operations.

4. Three tea estates, namely, (i) Doloo; (ii) Khoreel; and (iii) Silcoorie were identified by the Government of Assam for the sites of the airport. The Airport Authority of India[1] conducted a feasibility study and chose Doloo as the site for a new Greenfield Airport on land admeasuring approximately 335 hectares. AAI made a request for additional land, following which an adjacent area in the same tea estate admeasuring 69 hectares was identified. About 173 dwelling units are situated on the additional area of 69 hectares. The total land area thus admeasures 404 hectares.

5. The appellants moved the National Green Tribunal with the grievance that though in terms of the Notification dated 14 September 2006 of the Ministry of Environment and Forests, an Environmental Clearance is required for the construction of an airport, the site has been cleared of shade trees and tea bushes

1 "AAI"

despite the absence of such a clearance. The Appellant raised concerns regarding:

(i) extensive eviction leading to uprooting of 41,95,909 tea bushes, over 10,000 shade trees, and land acquisition in two divisions of the Tea Estate;

(ii) ongoing site clearance of 325 hectares with massive uprooting and felling;

(iii) imposition of Section 144 CrPC during eviction, utilizing 1050 bulldozers and excavators to clear 2500 bighas for the airport;

(iv) the airport project being Category-A, with site clearance already underway without prior Environmental Clearance, violating EIA Notification, 2006. Additionally, the proposed Airport falls under Category 'A', necessitating scoping, public consultation as per EIA Notification, 2006; however, post-eviction, no "public" remains for consultation in affected areas.

6. The National Green Tribunal[2], by its order dated 25 January 2024, dismissed the OA. The NGT held that an Environmental Impact Assessment Report was awaited and the Environmental Clearance for the airport has not been granted. Yet it held that the plea of the appellants for an order of restraint on the grant of site clearances and in principle approvals was without merit at that stage. The NGT also observed that the mere inclusion of a clause under the head 'Environment Clearances' in the form of said Notification does not deem the same to be mandatory for purposes of the EIA assessment study.

7. The Appeals were taken up by this Court on 22 April 2024. The Petitioners have been represented by Mr Prashant Bhushan. Mr Tushar Mehta, Solicitor General appears for the respondents. Mr Gopal Sankaranarayan, senior counsel has appeared for the intervenors. It is an admitted position that an Environmental Clearance is required for the project of setting up the airport and no such clearance has been issued. Paragraph 2 of the Notification dated 14 September 2006 is in the following terms:

> **"2. Requirements of prior Environmental Clearance (EC)**: The following projects or activities shall require

2 NGT

prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

The construction of airports in item 7(a) of the Schedule.

8. By the order of this Court dated 22 April 2024, the Secretary of the District Legal Services Authority, Cachar was directed to visit the site and submit a report to this Court on:

(i) Whether any felling of shade trees had taken place;

(ii) Whether any eviction at the site had taken place; and

(iii) The nature of the activities which have been carried out at the site.

9. At this stage, it would be material to note that contrary to the assertions of the appellants, on 22 April 2024, an affidavit was filed by the Joint Secretary to the Government of Assam in the General Administration Department stating that:

(i) there has been no felling of shade trees at the site in question;

(ii) no eviction of individuals or households had taken place from the land under consideration since the tract was not inhabited; and

(iii) removal of tea bushes "occurs routinely even as part of regular tea cultivation" for which no environmental clearance is required.

Annexed to the affidavit is a letter dated 22 April 2024 (issued on the same date as the affidavit) by the Member Secretary of the State Environment Impact Assessment Authority, Assam to the Member Secretary, SEIAA, Assam in the following terms :

> "Inviting reference to the subject cited above, this is to inform you that the matter has been referred by the Special Chief Secretary (Environment & Forest), Govt. of Assam, inviting comments / opinion as to the requirement of prior Environmental Clearance (EC) for clearance of Tea bushes, uprooting /removal of shade / cover crops in respect of Doloo Tea Estate. On careful perusal of the averments made in the instant petition, it is to be stated herein that cultivation of Tea in Assam is falling within the category of ***Special Cultivation*** for which the Govt. of Assam / District Commissioner allot land within the ambit of Rules under the Assam Land and Revenue Regulation, 1886.
>
> It is pertinent to point out here that in a tea garden, tea bushes and shade trees are removed and uprooted in regular intervals once the trees grow old and there is loss of production of tea. Generally, ***Siris*** tree species (***Albizia lebbeck/albizzia procera***) which are fast growing indigenous species of trees in Assam, are planted as shade trees/cover crops and primarily used to meet the requirement of fuel wood for workers in the tea gardens.
>
> As per the Assam Tea Garden Act / Policy, clearing of tea bushes and shade trees are permissible. Moreover, tea bushes are considered as agricultural crops (***Special Cultivation***) and uprooting activity of such tea bushes and shade trees do not fall under any of the project / activity to the Schedule of the **EIA Notification S.O. 1533(E) Dated 14.09.2006**.

This is submitted for favour of your kind perusal and needful action."

10. In pursuance of the directions of this Court, Ms Salma Sultana, a judge in the district judiciary in the State of Assam, posted as Secretary to the District Legal Services Authority Kachar submitted a report dated 27 April 2024. The report, *inter alia*, indicates that 89 shade trees were found to be cut. Ms Sultana has also stated that "the entire area is mostly a dense forest, therefore, other possible cut down shade trees were not visible due to dense forest and thick bushes". The report also indicates that according to the statement of the Circle Officer, Shri Arunjyoti Das, 41,95,909 tea bushes have been uprooted.

11. The Secretary of the District Legal Services Authority recorded statements on oath of witnesses who were tea garden workers, the Garden Manager, Circle Officer and Patwari among other persons. Several witnesses who were examined by the officer appointed by this Court have stated that:

    (i) tea bushes were uprooted from Doloo Tea Estate Airport site with the help of JCBs in the month of May 2022;

    (ii) the entire operation took place over three days and involved the use of about 200 to 250 JCBs 'day and night';

    (iii) shade trees were cut and uprooted; and

    (iv) during the operation the inhabitants were prevented from moving out of their homes.

12. The Court must take cognizance of the fact that the statements of these witnesses have not been tested on the anvil of cross-examination. At the same time, at this stage, it would *prima facie* appear that these statements would match with the statement of the Circle Officer to the effect that 41,95,909 tea bushes have been uprooted.

13. The contention of the State Government in the affidavit, which was tendered before this Court on 22 April 2024, was that tea bushes are removed routinely "even as a part of regular tea cultivation" for which no prior Environmental Clearance is required. To support this submission, reliance was placed on the communication of the Member Secretary of the SEAC in Assam which also records that in

a tea garden tea bushes and shade trees are removed and uprooted at regular intervals once the trees grow old and there is a loss of production of tea. The letter dated 22 April 2024 is a self-serving document prepared on the same date as the affidavit.

14. What warrants attention, however, is that in the present case, the clearance of the site cannot be unequivocally attributed to the cultivation activities of the tea estate. The clearance was evidently not a part of the regular maintenance of the tea estate but to facilitate the proposed new airport. The Solicitor General sought to urge that the possession of the site was handed over in June 2022 and hence the destruction of the vegetation in May 2022 was not by the respondents but likely by the inhabitants. It is inconceivable that an organized operation involving over 200-250 JCBs was done at the behest of the tea garden workers. Moreover, it has emerged that on 11 May 2022 orders were issued by the District Magistrate under Section 144 CrPC. This was a prelude to the organized activities which took place in the month of May 2022, as recorded in the statements appended to the report of the DLSA. The affidavit of the Joint Secretary to the State government has been rather liberal with the truth by suppressing the actual state of facts.

15. Paragraph 2 of the notification dated 14 September 2006 requires prior Environmental Clearance "before any construction work or preparation of land by the project management is carried out except for the securing of land". The nature of the activities which were carried out at the site was evidently of an extensive nature and is in breach of paragraph 2 of the notification.

16. There was a complete abdication of adjudicatory duties by the NGT to verify the authenticity of the grievance of the appellants. As an expert body which has been formed under a statute enacted by the Parliament, in the interest of the preservation of the environment, it was first and foremost the duty of the Tribunal to verify the authenticity of the grievance of the appellants.

17. The Tribunal, however, simply dismissed the OA having come to the conclusion that no Environmental Clearance had been issued. If the Tribunal were to enquire into the matter even on a *prima facie* assessment, the facts which have emerged before this Court would have come on the record. The perfunctory dismissal of the case by the NGT not only reflects a lack of due diligence but also demonstrates

a disregard for the gravity of the environmental concerns raised by the appellants. This casual, if not callous, approach to adjudication not only undermines the integrity of the judicial process but also compromises the very purpose for which the NGT was established – to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. Such negligence on the part of the Tribunal sets a concerning precedent, eroding public trust in the efficacy of environmental governance mechanisms.

18. The State Government has filed an application for directions before this Court seeking the initiation of proceedings against the appellants allegedly for having misled this Court into passing of the order dated 22 April 2024. During the course of the hearing, the Solicitor General has stated that the application is not being pressed.

19. From the material which has been placed on the record, we are clearly of the view that the authorities, in the present case, have acted in violation of the provisions contained in Para 2 of the notification dated 14 September 2006 by carrying out an extensive clearance at the site even in the absence of an Environmental Clearance.

20. The State Government has emphasised the need for establishing a civilian airport at Silchar which has led to the proposal to set up a Greenfield Airport on land admeasuring 335 hectares to which an additional component of 69 hectares has been added. The decision on whether an airport is situated at a particular place is a matter of policy. However, when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, those provisions have to be strictly complied with.

21. Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities. While acknowledging the importance of infrastructure development, it is paramount that such projects proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity. The requirement for Environmental Clearance serves as a crucial safeguard against unchecked exploitation of natural resources and helps uphold the principles of sustainable

development- which safeguards the interests of both present and future generations. Therefore, while the decision to establish an airport may serve broader policy objectives, it must be executed within the confines of legal frameworks designed to protect the environment and ensure responsible resource management. Failure to adhere to these norms not only undermines the integrity of environmental governance but also risks long-term environmental degradation and societal discord.

22. Setting up an airport is specifically within the ambit of Entry 7 of the Schedule to the notification dated 14 September 2006. Admittedly, no Environmental clearance has been issued till date. Development has to be in conformity with environmental standards prescribed by the law.

23. In consequence, there shall be a direction that absolutely no activity shall be carried out in breach of the provisions of the Notification dated 14 September 2006 at the site of the proposed greenfield airport at Silchar.

24. In the event that any application for the grant of Environmental Clearance has been filed or is filed hereafter, the processing of the application shall take place on the basis of the condition of the site as it existed prior to the date on which the illegal clearance of the tea bushes and shade trees took place in the proposed site of the greenfield airport.

25. In the above view of the matter, we allow the Appeals and set aside the impugned order of the National Green Tribunal dated 25 January 2024.

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

Headnotes prepared by:
Swathi H. Prasad, Hony. Associate Editor
(*Verified by:* Shadan Farasat, Adv.)

Result of the case:
Appeals allowed.

[2024] 6 S.C.R. 86 : 2024 INSC 363

Sharif Ahmed and Another
v.
State of Uttar Pradesh and Another

(Criminal Appeal No. 2357 of 2024)

01 May 2024

[Sanjiv Khanna* and S.V.N. Bhatti, JJ.]

Issue for Consideration

Nature of chargesheets filed in some jurisdictions by the State/ Police, without stating sufficient details of the facts constituting the offense or putting the relevant evidence on record; significance of chargesheets for taking cognizance, summoning of the accused etc. by the Magistrate; chargesheets and criminal proceedings against the appellants, if to be quashed.

Headnotes

Code of Criminal Procedure, 1973 – s.173 – Report of police officer on completion of investigation – Nature and standard of evidence in chargesheet – Chargesheet when complete:

Held: The requirement of "further evidence" or a "supplementary chargesheet" as referred to u/s.173(8) is to make additions to a complete chargesheet and not to make up or reparate for a chargesheet which does not fulfil requirements of s.173(2) – The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial – The nature and standard of evidence to be elucidated in a chargesheet should *prima facie* show that an offence is established if the material and evidence is proven – The chargesheet is complete where a case is not exclusively dependent on further evidence and the trial can proceed on the basis of evidence and material placed on record with the chargesheet – This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges – However, chargesheet need not elaborately evaluate the evidence, as the process of evaluation is a matter of trial – This does not mean that the chargesheet should not disclose or refer to the facts as to meet the requirements of s.173(2), and the mandate of the State rules – It is the police report which would enable the Magistrate to decide a course of action from the options

* Author

available to him – The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence – It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of s.190(1)(b) and s.204, CrPC – Investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file – Statements u/s.161 of the Code and related documents have to be enclosed with the list of witnesses – Role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons – Chargesheet and summoning order quashed in Cr.A. 2357 of 2024, appellants discharged – Chargesheet in SLP (Crl.) No.9482/2021 bereft of details and particulars, summoning order quashed. [Paras 13, 23, 24, 31, 40, 45]

Code of Criminal Procedure, 1973 – ss.173(2), 190, 204, 251 – Chargesheet integral to the process of taking cognisance, summoning of the accused, the issue of notice, framing of charge:

Held: There is an inherent connect between the chargesheet submitted under Section 173(2), cognisance which is taken u/s.190, issue of process and summoning of the accused u/s.204, and thereupon issue of notice u/s.251, or the charge in terms of Chapter XVII of the Code – The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages – The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative document and evidence available to the court till that stage – Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc. – These provisions, however, have to be read along with the power of the police to investigate under sub-section (8) to s.173 even when they have submitted a report u/sub-section (2) to s.173. [Para 20]

Deprecation – Of filing of chargesheets without stating sufficient details of the facts constituting the offense or putting the relevant evidence on record:

Held: In some states, the chargesheets merely carry a reproduction of the details mentioned by the complainant in the FIR, and then proceed to state whether an offence is made out, or not made out, without any elucidation on the evidence and material relied upon – In the format prescribed for the State of Uttar Pradesh, column 16 requires the investigating officer to state brief facts of the case – State of Uttar Pradesh issued circular stating that the investigation provisions contained in the Code and the police regulations with reference to s.173, CrPC were not consistently complied with and followed by the investigating officers and the supervising officers – The need to provide lead details of the offence in the chargesheet is mandatory as it is in accord with paragraph 122 of the police regulations – Similar directions were issued following the direction of the High Court of Judicature at Allahabad that brief narration of the material collected during investigation, which forms the opinion of the investigating officer, should be mentioned in the chargesheet. [Paras 2, 30]

Code of Criminal Procedure, 1973 – ss.190, 204 – Cognizance of offences by Magistrates – Issue of process – "cognisance":

Held: It indicates the juncture at which the court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such an offence – This is different from initiation of proceedings – Rather, it is a condition precedent to the initiation of proceedings by a Magistrate or judge – At this stage, the Magistrate has to keep in mind the averments in the complaint or the police report, and has to evaluate whether there is sufficient ground for initiation of proceedings – This is not the same as the consideration of sufficient grounds for conviction, as whether evidence is sufficient for supporting the conviction or not, can be determined only at the stage of trial, and not at the stage of cognisance – s.204 does not mandate the Magistrate to explicitly state the reasons for issue of summons and this is not a prerequisite for deciding the validity of the summons – Nevertheless, the requirement of the Code is that the summons is issued when it appears to the Magistrate that there is sufficient ground for proceeding against the accused – Magistrate in terms of s.204 is required to exercise his judicial discretion with a degree of caution, even when he is not required to record reasons, on whether there is sufficient ground for proceeding. [Paras 16, 17]

Criminal Law – Police investigation – Object and purpose – Discussed. [Para 26]

Non-bailable warrants – Charge sheet filed u/ss.323, 504, 506, 120B, 308, 325, Penal Code, 1860 – Bailable warrants issued – Application for exemption from personal appearance was filed which was rejected – Non-bailable warrants issued – High Court dismissed the petition u/s.482, CrPC to quash the criminal proceedings:

Held: Non-bailable warrants cannot be issued in a routine manner and the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State – While there are no comprehensive set of guidelines for the issuance of non-bailable warrants, this Court has observed on several occasions that non-bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence – Non-bailable warrants issued in appeal arising out of SLP (Crl.) No. 9482/2021 are quashed being unsustainable. [Paras 46]

Penal Code, 1860 – ss.406, 420, 503 – Offences under, when not made out – Discussed. [Paras 36, 37, 39]

Code of Criminal Procedure, 1973 – s.205 – Application for exemption from personal appearance was rejected by the Special Chief Judicial Magistrate, recording that as bail was not obtained till then and there is no provision for granting exemption from personal appearance prior to obtaining bail – Correctness:

Held: Not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail – The power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption – s.205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader – While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require – In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law. [Para 47]

Criminal Law – Civil disputes not involving criminal offence – Duty of a Magistrate:

Held: A Magistrate needs to be cautious in examining whether the facts of the case disclose a civil or a criminal wrong – Attempts at initiating vexatious criminal proceedings should be thwarted early on, as a summoning order, or even a direction to register an FIR, has grave consequences for setting the criminal proceedings in motion – Any effort to settle civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, should be deprecated and discouraged. [Para 44]

Case Law Cited

Dablu Kujur v. State of Jharkhand [2024] 3 SCR 614 : **(2024) SCC Online SC 269;** *K. Veeraswami v. Union of India and Others* [1991] 3 SCR 189 : **(1991) 3 SCC 655;** *H.N. Rishbud and Inder Singh v. State of Delhi* [1955] 1 SCR 1150 : **(1954) 2 SCC 934 – relied on.**

Tara Singh v. State [1951] 1 SCR 729 : **AIR 1951 SC 441;** *R.K. Dalmia etc. v. Delhi Administration* [1963] 1 SCR 253 : **AIR 1962 SC 1821;** *State Through Central Bureau of Investigation v. Hemendhra Reddy & Anr.* [2023] 7 SCR 134 : **2023 SCC OnLine SC 515;** *Bhagwant Singh v. Commissioner of Police and Another* [1985] 3 SCR 942 : **(1985) 2 SCC 537;** *Minu Kumari and Another v. State of Bihar and Others* [2006] 3 SCR 1086 : **(2006) 4 SCC 359;** *Bhushan Kumar and Another v. State (NCT of Delhi) and another* [2012] 2 SCR 696 : **(2012) 5 SCC 424;** *R.P. Kapur v. State of Punjab* [1960] 3 SCR 388 : **AIR 1960 SC 866;** *State of Haryana and Others v. Bhajan Lal and Others* [1992] Supp. 3 SCR 735 : **1992 Supp (1) SCC 335;** *Parkash Singh Badal and Another v. State of Punjab and Others* [2006] Supp. 10 SCR 197 : **(2007) 1 SCC 1;** *Narendra Kumar Amin v. Central Bureau of Investigation and Others* **(2015) 3 SCC 417;** *Central Bureau of Investigation v. R.S. Pai and Another* [2002] 2 SCR 889 : **(2002) 5 SCC 82;** *Zakia Ahsan Jafri v. State of Gujarat and Another* [2022] 6 SCR 1 : **2022 INSC 653;** *Satya Narain Musadi and Others v. State of Bihar* **(1980) 3 SCC 152;** *Abhinandan Jha and Others v. Dinesh Mishra* [1967] 3 SCR 668 : **AIR 1968 SC 117;**

State of Gujarat v. Jaswantlal Nathalal, **AIR 1968 SC 700;** *Indian Oil Corpn. v. NEPC India Ltd. and Others* **[2006] Supp. 3 SCR 704 : (2006) 6 SCC 736;** *Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd. Calcutta* **[1996] Supp. 3 SCR 360 : (1996) 5 SCC 591;** *Manik Taneja and Another v. State of Karnataka and Another* **[2015] 1 SCR 156 : (2015) 7 SCC 423;** *Deepak Gaba and Others v. State of U.P. and Another* **(2023) 3 SCC 423;** *Inder Mohan Goswami and Another v. State of Uttaranchal and Others* **[2007] 10 SCR 847 : (2007) 12 SCC 1;** *Vikas v. State of Rajasthan* **[2013] 8 SCR 208 : (2014) 3 SCC 321;** *Maneka Sanjay Gandhi and Another v. Rani Jethmalani* **[1979] 2 SCR 378 : (1979) 4 SCC 167;** *Puneet Dalmia v. Central Bureau of Investigation, Hyderabad* **[2019] 15 SCR 134 : (2020) 12 SCC 695;** *Popular Muthiah v. State Represented by Inspector of Police* **[2006] Supp. 3 SCR 100 : (2006) 7 SCC 296 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Code of Criminal Procedure, 1898; Constitution of India.

List of Keywords

Chargesheets; Police report; Chargesheets bereft of details/particulars; Cognizance; Summoning of the accused; Complete chargesheet; Further evidence; Supplementary chargesheet; Framing of charge; Issue of Process/Notice; Opinion of investigating officer; Non-bailable warrants; Bailable warrants; Exemption from personal appearance; Heinous crime, Evading process of law; Tamper/destroy evidence; Civil disputes not involving criminal offence; Civil wrong/criminal wrong.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2357 of 2024

From the Judgment and Order dated 12.01.2017 of the High Court of Judicature at Allahabad in CRLMA No. 960 of 2017

With

Criminal Appeal Nos. 2359 and 2358 of 2024

Appearances for Parties

Syed Mehdi Imam, Mohd Parvez Dabas, Uzmi Jamil Husain, Mushtaque Ahmad Khan, Tabrez Ahmad, Aamir Dabas, Rauf Rahim, Ali Asghar Rahim, Ms. Meenakshi Kalra, Saad Sharif, Pravir Singh, Anurag Malik, S.N. Kalra, Advs. for the Appellants.

Ardhendumauli Kumar Prasad, A.A.G., Sarvesh Singh Baghel, Arun Pratap Singh Rajawat, Ashish Madaan, Ms. Ananya Sahu, Ms. Saumya Sharma, Adarsh Upadhyay, Ms. Shubhali Pathak, Ms. Pallavi Kumari, Aman Pathak, Dushyant Parashar, Dinesh Pandey, Manu Parashar, Rajesh Srivastava, Gaurav Verma, Neeraj Dutt Gaur, Sanjay Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjiv Khanna, J.

Leave granted in the above matters.

2. The concerns which have arisen during the course of hearing the present appeals are of particular significance for meeting the ends of criminal justice, and relate to the nature of chargesheets filed in some jurisdictions by the state/police. For the sake of convenience, we would divide the judgment into two parts. The first part relates to the legal issue, that is, the contents of the chargesheet in terms of Section 173(2) of the Code of Criminal Procedure, 1973[1]. The second part deals with the factual aspects of each of the cases, and our decision.

PART I

3. The issue in the first part relates to chargesheets being filed without stating sufficient details of the facts constituting the offense or putting the relevant evidence on record. In some states, the chargesheets merely carry a reproduction of the details mentioned by the complainant in the First Information Report[2], and then proceed to state whether an offence is made out, or not made out, without any elucidation on the evidence and material relied upon. On this issue, the recent judgment of this Court in ***Dablu Kujur***

1 "Code", for short.

2 "FIR", for short.

v. ***State of Jharkhand***[3] aptly crystallises the legal position in the following words:

> "**17.** Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following:—
>
> **(i)** A report in the form prescribed by the State Government stating-
>
> **(a)** the names of the parties;
>
> **(b)** the nature of the information;
>
> **(c)** the names of the persons who appear to be acquainted with the circumstances of the case;
>
> **(d)** whether any offence appears to have been committed and, if so, by whom;
>
> **(e)** whether the accused has been arrested;
>
> **(f)** whether he has been released on his bond and, if so, whether with or without sureties;
>
> **(g)** whether he has been forwarded in custody under section 170.
>
> **(h)** Whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Penal Code, 1860"
>
> **(ii)** If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr. P.C.
>
> **(iii)** When the report in respect of a case to which Section 170 applies, the police officer shall forward to the

3 [2024] 3 SCR 614 : 2024 SCC Online SC 269

Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

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

4. The decision in ***Dablu Kujur*** (supra) refers to Section 157 of the Code which *inter alia* states that, if on information received or otherwise, an officer of the police station has reason to suspect commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognisance of the offence. Further, he shall proceed in person or depute any of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and if necessary, to take measures for discovery and arrest the offender. Such report is in the nature of a preliminary report. As per Section 169 of the Code, if it appears to the officer in-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify forwarding the accused to the Magistrate, then the officer shall release the person if he is in custody on his executing a bond, with or without sureties, with a direction to such person to appear if and when so required, before the Magistrate empowered to take cognisance of the offence from the police report.[4]

4 We clarify and respectfully agree with the view expressed by this Court in *Siddharth* v. *State of Uttar Pradesh and Another*, (2022) 1 SCC 676, which has interpreted Section 170 of the Code. The word 'custody' used in the said Section does not contemplate either police or judicial custody, for otherwise the Section would lead to unpalatable and incongruous consequences. It is observed that in normal and ordinary course, the police should avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. The word 'custody' in Section 170 has to be interpreted liberally and merely connotes presentation of the accused by the investigating officer. This is because personally liberty is an important aspect of the constitutional mandate. Existence of the power of arrest, and justification for exercise thereof are two different aspects. Section 170 of the Code does not impose an obligation on the officer in-charge to arrest each and every accused before or at the time of filing of the chargesheet.

5. Section 170 of the Code deals with the cases where it appears to the officer that there is sufficient evidence or reasonable ground to proceed. In such an event he is required to submit a police report or chargesheet under Section 173(2) of the Code. Elucidating on Section 173(2) of the Code in ***Dablu Kujur*** (supra), this Court observed:

> "**12.** We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the chargesheet/Police Report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the Police Report/Chargesheet are laid down in Section 173, more particularly sub-section (2) thereof.
>
> **13.** It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII of Cr. P.C., it is only the report forwarded by the police officer to the Magistrate under sub-section (2) of Section 173 Cr. P.C. that can form the basis for the competent court for taking cognizance thereupon. A chargesheet is nothing but a final report of the police officer under Section 173(2) of Cr. P.C. It is an opinion or intimation of the investigating officer to the concerned court that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.
>
> xx xx xx
>
> **15.** The issues with regard to the compliance of Section 173(2) Cr. P.C., may also arise, when the investigating officer submits Police Report only *qua* some of the persons-accused named in the FIR, keeping open the

investigation *qua* the other persons-accused, or when all the documents as required under Section 173(5) are not submitted. In such a situation, the question that is often posed before the court is whether such a Police Report could be said to have been submitted in compliance with sub-section (2) of Section 173 Cr. P.C. In this regard, it may be noted that in *Satya Narain Musadi* v. *State of Bihar*, this Court has observed that statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5)…"

6. We would like to elaborate on certain aspects, as submission of the chargesheet is for taking cognisance and summoning of the accused by the Magistrate, which stages are of considerable importance and significance.

7. Section 173 of the Code reads:

"**173.** Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

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

(a) the names of the parties;

(b) the nature of the information;

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

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

(e) whether the accused has been arrested;

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

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

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B,

376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

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

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

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

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

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

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

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

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

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

8. Sub-section (2) to Section 173 makes a considered departure from sub-Section (1) to Section 173 of the Code of Criminal Procedure, 1898[5]. Sub-section (1)(a) to Section 173 of the 1898 Code had stipulated that as soon as the investigation is completed, the officer in-charge of the police station shall forward to the Magistrate, a report in the form prescribed by the local government, sending forth the names of the parties, nature of the information and the names of the people who appear to be acquainted with the circumstances of the case and state whether the accused person has been forwarded in custody or released on a bond.

5 "1898 Code", for short.

9. We have referred to Section 173 of the 1898 Code, in view of reliance placed during the course of hearing on the decision of this Court in ***Tara Singh*** v. ***State***[6] and ***R.K. Dalmia etc.*** v. ***Delhi Administration***[7], which refer and relate to the 1898 Code.

10. In ***Tara Singh's*** case (supra), the question which had arisen was whether the challan preferred by the police was complete so as to enable the court to take cognisance within the meaning of Section 190(1)(b) of the 1898 Code. It was held that a challan submitted in the said case was complete except for submission of the report of the Imperial Serologist and drawing of the sketch map of the occurrence. In this context, reference was made to Section 173(1) of the 1898 Code and that the report/challan should set forth, *viz.* the names of the parties, nature of the information and names of persons who appear to be acquainted with the circumstances of the case. The cognisance, it was held, was proper.

11. In ***R.K. Dalmia*** (supra), again a reference was made to Section 173(1) of the 1898 Code and that the chargesheet must contain name of the parties, nature of the information and the names of persons who appear to be acquainted with the circumstances of the case. These observations were made in the context of the submission made on behalf of the accused that there was a change in the stand of the prosecution, which contention was rejected on several grounds, as mentioned in paragraphs 325 and 326 of the footnoted citation.

12. It is, therefore, apparent from the language of the legislation, that under the Code, that is, the Code of Criminal Procedure, 1973, the requirement and the manner of providing details in the chargesheet, stand verified.

13. The question of the required details being complete must be understood in a way which gives effect to the true intent of the chargesheet under Section 173(2) of the Code. The requirement of "further evidence" or a "supplementary chargesheet" as referred to under Section 173(8) of the Code, is to make additions to a complete chargesheet,[8] and not to make up or reparate for a chargesheet

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6 [1951] 1 SCR 729 : AIR 1951 SC 441

7 [1963] 1 SCR 253 : AIR 1962 SC 1821

8 *State Through Central Bureau of Investigation v. Hemendhra Reddy & Anr.*, 2023 SCC OnLine SC 515

which does not fulfil requirements of Section 173(2) of the Code. The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should *prima facie* show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges[9].

14. In the context of the present issue, it would be apt to refer to Section 190 and Section 204 of the Code, along with the provisions relating to contents of charge, namely, Sections 211 to 213 and Section 218 of the Code, which read as under:

> **"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;
>
> *(c)* upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.
>
> **XX XX XX**

9 See also, para 21 below on the power of the police to investigate under Section 173(8) of the Code.

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.

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211. Contents of charge.—(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence

must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

212. Particulars as to time, place and person.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:

> Provided that the time included between the first and last of such dates shall not exceed one year.
>
> **213. When manner of committing offence must be stated**.—When the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.
>
> xx xx xx
>
> **218. Separate charges for distinct offences**.—(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:
>
> Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.
>
> (2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

15. On the submission of the police report, ***Dablu Kujur*** (supra) refers to an earlier decision of this Court in ***Bhagwant Singh*** v. ***Commissioner of Police and Another***[10], and discusses the power and the role of the Magistrate when he receives the police report and the options available to him, in the following words:

> "**14.** When such a Police Report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options: **(i)** he may accept the report and take cognizance of the offence and issue process, **(ii)** he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report, or **(iii)** he may disagree with the report and

10 [1985] 3 SCR 942 : (1985) 2 SCC 537

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

It is in this context that the provisions of Sections 190 and 204 of the Code become important. Clause (a) of Section 190 states that the Magistrate can take cognisance of an offence on receiving a complaint of facts which constitute such offence. Clause (b) relates to a situation where the Magistrate receives a police report carrying such facts, i.e., facts which constitute such offence. In ***Minu Kumari and Another*** v. ***State of Bihar and Others***[11] this Court referred to the options available to the Magistrate on how to proceed in terms of Section 190(1)(b) of the Code, and held:

> "**11...**The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(*b*) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(*b*) and direct the issue

11 [2006] 3 SCR 1086 : (2006) 4 SCC 359

of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(*a*) though it is open to him to act under Section 200 or Section 202 also. (See *India Carat (P) Ltd.* v. *State of Karnataka* [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .)

12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in *Bhagwant Singh* v. *Commr. of Police* held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

13. We may add here that the expressions "charge-sheet" or "final report" are not used in the Code, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, there is nothing in Section 173 specifically providing for such a notice."

16. This Court in ***Bhushan Kumar and Another*** v. ***State (NCT of Delhi) and Another***[12] while referring to Sections 190 and 204 of the Code has observed that the expression "cognisance" in Section 190 merely means "becoming aware of", and when used with reference to a court or a judge it connotes "to take notice of judicially". It indicates the juncture at which the court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such an offence. This is different from initiation of proceedings. Rather, it is a condition precedent to the initiation of proceedings by a Magistrate or judge. At this stage, the Magistrate has to keep in mind the averments in the complaint or the police report, and has to evaluate whether there is sufficient ground for initiation of proceedings. This is not the same as the consideration of sufficient grounds for conviction, as whether evidence is sufficient for supporting the conviction or not, can be determined only at the stage of trial, and not at the stage of cognisance. This aspect is important and will be subsequently referred to when we examine the decision of this Court in ***K. Veeraswami*** v. ***Union of India and Others***[13], and the observations therein which have been referred to on several occasions in other judgments.

17. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issue of summons and this is not a prerequisite for deciding the validity of the summons. Nevertheless, the requirement of the Code is that the summons is issued when it appears to the Magistrate that there is sufficient ground for proceeding against the accused. Summons is issued to the person against whom the legal proceedings have commenced. Wilful disobedience is liable to be punished under Section 174 of the Indian Penal Code, 1860[14]. As a sequitur, keeping in mind both the language of Section 204 of the Code and the penal consequences, the Magistrate is mandated to form an opinion as to whether there exists sufficient ground for summons to be issued. While deciding whether summons is to be issued to a person, the Magistrate can take into consideration any *prima facie* improbabilities arising in the case. The parameters on which a summoning order can be interfered with are well settled by the decision of this court in ***Bhushan Kumar*** (supra). The Magistrate

12 [2012] 2 SCR 696 : (2012) 5 SCC 424

13 [1991] 3 SCR 189 : (1991) 3 SCC 655

14 "IPC", for short.

in terms of Section 204 of the Code is required to exercise his judicial discretion with a degree of caution, even when he is not required to record reasons, on whether there is sufficient ground for proceeding. Proceedings initiated by a criminal court are generally not interfered with by High Courts, unless necessary to secure the ends of justice.[15]

18. The decision in ***Bhushan Kumar*** (supra) also refers to Section 251 of the Code, which is a stage post appearance of the accused, and observes:

> "**20.** It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

19. Sections 211 to 213 and Section 218 of the Code deal with the contents of the charge. The object and purpose of these provisions is to bring the nature of allegations against the accused to his notice. These allegations have to be proved and established by leading evidence. The accused should not be taken by surprise or be unbeknownst so as to cause prejudice to him. The provisions of the Code also prescribe how to interpret the words used in the charge in terms of Section 214 of the Code, the effect of defects in the charge in terms of Section 215 of the Code, the power of the court to alter the charge and recall of the witnesses when a charge is altered in terms of Sections 216 and 217 of the Code.

20. There is an inherent connect between the chargesheet submitted under Section 173(2) of the Code, cognisance which is taken under Section 190 of the Code, issue of process and summoning of the

15 *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866; *State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp (1) SCC 335

accused under Section 204 of the Code, and thereupon issue of notice under Section 251 of the Code, or the charge in terms of Chapter XVII of the Code. The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages. The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative document and evidence available to the court till that stage. Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc.

21. These provisions, however, have to be read along with the power of the police to investigate under sub-section (8) to Section 173 of the Code even when they have submitted a report under sub-section (2) to Section 173 of the Code. The police also has the power to produce additional documents and evidence, as has been held by this Court in ***Parkash Singh Badal and Another*** v. ***State of Punjab and Others***[16]; ***Narendra Kumar Amin*** v. ***Central Bureau of Investigation and Others***[17]; and ***Central Bureau of Investigation*** v. ***R.S. Pai and Another***[18].

22. Recently a three Judge Bench of this Court in ***Zakia Ahsan Jafri*** v. ***State of Gujarat and Another***[19], has observed:

> "11. This Court in *Dayal Singh* noted that the investigating officer is obliged to act as per the Police Manual and known canons of practice while being diligent, truthful and fair in his/her approach and investigation. It has been noted in the reported decision that an investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Concededly, upon completion of investigation, the investigating officer is obliged to submit report setting out prescribed details, to the Magistrate empowered

16 [2006] Supp. 10 SCR 197 : (2007) 1 SCC 1

17 (2015) 3 SCC 417

18 [2002] 2 SCR 889 : (2002) 5 SCC 82

19 [2022] 6 SCR 1 : 2022 INSC 653

to take cognizance of the offence referred to therein, without unnecessary delay. The report so presented is the conclusion reached by the investigating officer on the basis of materials collected during investigation. The duty of the investigating officer is to collate every relevant information/material during the investigation, which he must believe to be the actual course of events and the true facts unraveling the commission of the alleged crime and the person involved in committing the same. He is expected to examine the materials from all angles. In the event, there is sufficient evidence or reasonable ground that an offence appears to have been committed and the person committing such offence has been identified, the investigating officer is obliged to record his opinion in that regard, as required by Section 173(2)(i)(d) of the Code. In other words, if the investigating officer intends to send the accused for trial, he is obliged to form a firm opinion not only about the commission of offence, but also about the involvement of such person in the commission of crime.

12. Such opinion is the culmination of the analysis of the materials collected during the investigation - that there is "strong suspicion" against the accused, which eventually will lead the concerned Court to think that there is a ground for "presuming" that the accused "has" committed the alleged offence; and not a case of mere suspicion. For being a case of strong suspicion, there must exist sufficient materials to corroborate the facts and circumstances of the case; and be of such weight that it would facilitate the Court concerned to take cognizance of the crime and eventually lead it to think (form opinion) that there is ground "for presuming that the accused has committed an offence", as alleged – so as to frame a charge against him in terms of Section 228(1) or 246(1) of the Code, as the case may be. For taking cognizance of the crime or to frame charges against the accused, the Court must analyze the report filed by the investigating officer and all the materials appended thereto and then form an independent prima facie opinion as to whether

there is ground for "presuming" that the accused "has" committed an offence, as alleged. (It is not, "may" have or "likely" to have committed an offence, but a ground for presuming that he has committed an offence). The Magistrate in the process may have to give due weightage to the opinion of the investigating officer. If such is to be the eventual outcome of the final report presented by the investigating officer, then there is nothing wrong if he applies the same standard to form an opinion about the materials collected during the investigation and articulate it in the report submitted under Section 173 of the Code. It may be useful to refer to the decisions adverted to in *Afroz Mohd. Hasanfata* including in the case of *Ramesh Singh* and *I.K. Nangia*.

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63. Needless to underscore that every information coming to the investigating agency must be regarded as relevant. However, the investigating agency is expected to make enquiries regarding the authenticity of such information and after doing so must collect corroborative evidence in support thereof. In absence of corroborative evidence, it would be merely a case of suspicion and not pass the muster of grave suspicion, which is the pre-requisite for sending the suspect for trial. This is the mandate in Section 173(2)(i)(d) of the Code, which postulates that the investigating officer in his report must indicate whether any offence appears to have been committed and if so, by whom. The opinion of the investigating officer formed on the basis of materials collected during the investigation/enquiry must be given due weightage. That would only be the threshold, to facilitate the concerned Court to take cognizance of the crime and then frame charge if it is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code."

23. In ***K. Veeraswami*** (supra), K. Jagannatha Shetty, J. pronounced the judgment for himself and M.N. Venkatachaliah, J. (as His Lordship then was) on the question of contents of the chargesheet and observed:

"**75.** In the view that we have taken as to the nature of the offence created under clause (*e*), it may not be necessary to examine the contention relating to ingredient of the offence. But since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (*e*) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

The latter portion of the aforesaid paragraph, referring to the details of the offence and the requirement for them to be proved in order to bring home the guilt of the accused at the later stage (the stage of trial) by adducing acceptable evidence, has to be understood in the context that the chargesheet need not elaborately evaluate the evidence, as the process of evaluation is a matter of trial. This does not mean that the chargesheet should not disclose or refer to the facts as to meet the requirements of Section 173(2) of the Code, and the mandate of the State rules. Further, the earlier portion of the same paragraph, while referring to the opinion of the investigating officer, does so to demonstrate the significance of the opinion of the investigating officer at this stage. However, this does not preclude the Magistrate from exercising her powers in adopting an approach independent from such opinion, as has been held by this Court in ***Bhagwant Singh*** (supra) and ***Minu Kumari*** (supra).

24. It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him.

25. In support of our reasoning, we would refer to the very next paragraph in the judgment of Shetty, J. in ***K. Veeraswami*** (supra) which reads as under:

> "**76.** The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (*a*) the names of the parties; (*b*) the nature of the information; (*c*) the names of the persons who appear to be acquainted with the circumstances of the case; (*d*)

> whether any offence appears to have been committed and, if so, by whom (*e*) whether the accused has been arrested; (*f*) whether he had been released on his bond and, if so, whether with or without sureties; and (*g*) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi* v. *State of Bihar* that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

This paragraph examines the contents of the chargesheet and on elaboration of the same holds that it is in accordance with the terms of Section 173(2) of the Code as well as the provisions of the penal enactment. In furtherance of this, reference is made to ***Satya Narain Musadi and Others*** v. ***State of Bihar***[20], in stating that the chargesheet should comply with the statutory requirements, and the various details prescribed therein should be included in the report.

26. The object and purpose of the police investigation is manyfold. It includes the need to ensure transparent and free investigation to ascertain the facts, examine whether or not an offence is committed,

20 (1980) 3 SCC 152

identify the offender if an offence is committed, and to lay before the court the evidence which has been collected, the truth and correctness of which is thereupon decided by the court.

27. In ***H.N. Rishbud and Inder Singh*** v. ***State of Delhi***[21], this Court notes that the process of investigation generally consists of: 1) proceeding to the concerned spot, 2) ascertainment of facts and circumstances, 3) discovery and arrest, 4) collection of evidence which includes examination of various persons, search of places and seizure of things, and 5) formation of an opinion on whether an offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the culmination of several stages that an investigation goes through. This Court in its decision in ***Abhinandan Jha and Others*** v. ***Dinesh Mishra***[22] states that the submission of the chargesheet or the final report is dependent on the nature of opinion formed, which is the final step in the investigation.

28. The final report has to be prepared with these aspects in mind and should show with sufficient particularity and clarity, the contravention of the law which is alleged. When the report complies with the said requirements, the court concerned should apply its mind whether or not to take cognisance and also proceed by issuing summons to the accused. While doing so, the court will take into account the statement of witnesses recorded under Section 161 of the Code and the documents placed on record by the investigating officer.

29. In case of any doubts or ambiguity arising in ascertaining the facts and evidence, the Magistrate can, before taking cognisance, call upon the investigating officer to clarify and give better particulars, order further investigation, or even record statements in terms of Section 202 of the Code.

30. Our attention has been drawn to the format prescribed for the State of Uttar Pradesh, which by column 16 requires the investigating officer to state brief facts of the case. In addition, the State of Uttar Pradesh has issued a circular dated 19.09.2023, which refers to an earlier circular bearing No. 59 of 2016 dated 20.10.2016, and states

21 [1955] 1 SCR 1150 : (1954) 2 SCC 934

22 [1967] 3 SCR 668 : AIR 1968 SC 117

that the investigation provisions contained in the Code and the police regulations with reference to Section 173 of the Code are not being consistently complied with and followed by the investigating officers and the supervising officers. The need to provide lead details of the offence in the chargesheet is mandatory as it is in accord with paragraph 122 of the police regulations. Similar directions were issued on 09.09.2022 following the direction of the High Court of Judicature at Allahabad that brief narration of the material collected during investigation, which forms the opinion of the investigating officer, should be mentioned in the chargesheet.

31. Therefore, the investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons.

PART II

32. As we turn to the second part of our judgment, it would be appropriate to lead our decision in each case with a brief overview of its pertinent facts:

A. Appeal arising out of SLP (Crl.) No. 1074/2017

- The appellants have been involved in a drawn-out litigation with several parties over the ownership of Property No. 80-A, 23,072 sq. ft., forming a part of Khasra no. 1016/647 and 645, situated within Chandrawli/Shahdara, now in Abadi, at Circular Road, Shahdara, Delhi- 110032.[23]

- Appellant No.2 – Sharif Ahmad and Appellant No.3 – Anwar Ahmad (since deceased), purchased a part in the subject property on behalf of their partnership firm Dream Land & Co., while Appellant No.1 – Vakil Ahmad (since deceased) had done so in his individual capacity.

23 "subject property", for short.

- To avoid prolixity, we would refrain from setting out the facts of the litigation in detail.
- The challenge before us relates to the First Information Report No. 108/2016 dated 23.05.2016, filed by Respondent No.2/complainant - Mohd. Iqbal, under Sections 420, 406 and 506 IPC at police station Hafizpur, Hapur, U.P. against the appellants. The FIR stated that the appellants had agreed to sell the subject property to Respondent No. 2 and had received part payment for the registry of the subject property. However, the appellants did not register the property and also failed to refund the concerned amount to Respondent No. 2.
- The Police recorded the statements of Respondent No.2, and the witnesses under Section 161 of the Code.
- According to these statements, the appellants had refused to refund the amount paid by Respondent No. 2 despite repeated requests to do the same.
- A complaint dated 03.09.2016 was filed against Respondent No. 2 at Police Station Tis Hazari by relatives of the appellants on account of receiving threats to their life.
- The appellants challenged FIR No. 108/2016 in W.P. (Cr.) No.20221/2016 before the Allahabad High Court and sought quashing of the proceedings. By an order dated 15.09.2016, the High Court stayed the arrest of the appellant until filing of the chargesheet.
- On 24.10.2016, a chargesheet was filed against the appellants under Sections 405 and 506 IPC.
- The appellants approached the Allahabad High Court in Cr. M.A. No. 960/2017 seeking the quashing of the chargesheet and of proceedings in Case No. 410/2016. The appellants submitted that the chargesheet is vague, filed without proper investigation, and fails to make out any offence.
- The Allahabad High Court dismissed the application for quashing of the chargesheet through the impugned order dated 12.01.2017.

- Hence, the appellants have filed the present appeal.

33. The FIR as registered, on the question of intimidation states that on 19.03.2016 the appellants had flatly refused to refund the money and had told Respondent No. 2 that they can do whatever they want. They had threatened the entire family of the complainant.

34. The chargesheet submitted by the investigating officer in the present case, under column 16 referring to the facts of the case, reads as under:

> "Sir, the above said case was got registered by the complainant Shri Iqbal on 23/5/16 at this police station, the investigation of which handed over to me S.I., the investigation of which done by me S.I. and from all the investigation till now, statement of the complainant, statement of the witnesses and inspection of place of occurrence, the deal of plot measuring 2600 which is at behind Sadar Police Station was finalized by the accused persons with the complainant and his partner Surender Sharma for 4 crore, for which by not getting executed the registry of the same at the time of the complainant and after receiving a sum of Rs. 1 crore of his partner Surender Sharma as earnest money, selling of plot to Kusum Jain and D.K. Jain, by not refunding a sum of Rs. 1 crore of the complainant and his partner, grabbing by doing breach of trust, making pretexts on demanding again and again and the threat to kill, hence the offence under section 406, 506 I.P.C. is thoroughly proved upon the accused persons Sharif Ahmed, Anwar Ahmed, Vakil Ahmed, Aadil Ahmed, the occurrence of section 420 I.P.C. is not found, hence the challan of the accused persons, by charge sheet No. 153/16 is filled in the court, it is prayed that punishment may be given by calling the proof."

35. A reading thereof would indicate that it refers to the complaint made by Respondent No. 2 – Iqbal on 23.05.2016 relating to the deal of a plot in respect of which part consideration was paid as earnest money. But thereafter, the appellants had sold the plot and were not refunding the earnest money and by doing so have committed breach of trust under Section 406 of the IPC. It also refers to the alleged pretexts being made by the appellants on money being demanded

and a threat to kill being extended. It is also recorded that an offence under Section 506 has been proved to have been committed. At the same time, the chargesheet states that no offence under Section 420 of the IPC is found to have been committed.

36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment.[24] Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially: to compel or deter by or as if by threats.[25] The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten

24 See Section 405 of the IPC and judgments of this Court in *State of Gujarat* v. *Jaswantlal Nathalal* AIR 1968 SC 700; *Indian Oil Corpn. v. NEPC India Ltd. and Others* (2006) 6 SCC 736; *Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta* (1996) 5 SCC 591

25 "intimidate". *Merriam-Webster.com*. Merriam-Webster, 2024.

the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in ***Manik Taneja and Another*** v. ***State of Karnataka and Another***[26], had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threating another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct.

40. In view of the aforesaid position, we quash the chargesheet and the summoning order. The appellants are discharged. We clarify that the observations made above will have no bearing on the civil proceedings, if any, already initiated or which may be initiated in future by the respondent/complainant.

B. Appeal arising out of SLP (Crl.) No. 5419/2022

- On 26.06.2019 the complainant – Wakeel Ahmad filed a complaint before the Additional Chief Judicial Magistrate, alleging that the accused persons, including the appellant – Imran, routinely take money on the pretext of *bainama* of property, and subsequently deny entering into such agreement and receiving any money.
- The court allowed the said complaint and ordered the concerned Police Station to register the complaint under Sections 420 and 120B IPC. FIR No. 519/2019 dated

26 [2015] 1 SCR 156 : (2015) 7 SCC 423

26.07.2019 was registered at Police Station Chandpur, Bijnor, Uttar Pradesh. The complainant also stated that the accused persons had threatened the complainant against pursuing legal action against them.

- By an order dated 19.09.2019, the High Court partly allowed the appellant's anticipatory bail application and directed the police not to arrest the appellant till the submission of the chargesheet.
- Chargesheet No. 582/2019 dated 18.10.2019 was filed, submitting that charges under Sections 420 and 120B IPC are established. The chargesheet lists the details of the accused as mentioned in the FIR and the relevant column relating to brief facts in the chargesheet reads:

> "Requesting to the Hon'ble Court is that on 28.07.2019 the Hon'ble Court ordered under section 156(3) Cr. P.C. for registering a FIR No. 519/2019 under the section of 420, 120B IPC against
>
> 1. Ziyauddin S/o Gyasudding aged about 70 years
> 2. Zamaluddin S/o Gyasuddin aged about 65 years
> 3. Kamaluddin S/o Gyasuddin aged about 50 years
> 4. Rahisuddin S/o. Unknown
> 5. Imran aged about 36 years S/o Zamaluddin
> 6. Kahsif S/o Zamaluddin aged about 31 all are residence of Mohalla Ktarmal, kasba Chandpur, Chanpur, Bijnor, UP. the crime under section 420, 120B IPC is proved against the Ziyauddin S/o Gyasudding, Zamaluddin S/o Gyasuddin, Kamaluddin S/o Gyasuddin, Rahisuddin S/o Unknown, Imran S/o Zamaluddin, Kahsif S/o Zamaluddin.

> Hence, filing this charge sheet before the Hon'ble court and requesting to this Hon'ble court to punish the all the accused."

- By an order dated 10.05.2021, the Allahabad High Court granted interim anticipatory bail to the appellant till 03.01.2022, in terms of the conditions mentioned in the order, and observed that the appellant herein may approach the High Court again if so advised, in case of a change in circumstances.
- On 23.03.2022, Allahabad High Court dismissed the Criminal Misc. Anticipatory Bail Application No.2235/2022 filed by the appellant, on the grounds of non-bailable warrants having been issued against the appellant and the chargesheet having been filed.
- Hence, the appellant has filed the present appeal.

41. We have already referred to the facts and also to the ingredients of the offence under Section 420 IPC. The assertions made in the FIR allege that the accused are frauds who have taken *bainama* (earnest money on the property), but thereafter are making excuses. The complainant had visited the accused at their house who had then threatened them to implicate them in false cases. They denied having received the money.

42. We allow the present appeal and direct that in the event of the appellant being arrested, he shall be released on bail by the arresting officer/investigating officer/trial court on the terms and conditions to be fixed by the trial court.

43. However, what is surprising and a matter of concern in the present case, is that the police had initially rightly not registered the FIR, which had prompted the complainant to approach the Court of Additional Chief Judicial Magistrate, Chandpur, Bijnor, Uttar Pradesh, alleging that he is an honest and respected person in the society and is well established in business, while the accused are fraudulent individuals. The Additional Chief Judicial Magistrate had subsequently ordered for the FIR to be registered on the basis of the written complaint.

44. We would also like to emphasise on the need for a Magistrate to be cautious in examining whether the facts of the case disclose a civil or a criminal wrong. Attempts at initiating vexatious criminal

proceedings should be thwarted early on, as a summoning order, or even a direction to register an FIR, has grave consequences for setting the criminal proceedings in motion.[27] Any effort to settle civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, should be deprecated and discouraged.[28]

C. Appeal arising out of SLP (Crl.) No. 9482/2021

- The complainant and Respondent No. 2 herein – Rajesh Wangvelu made a written complaint to the Station Officer, Police Station Aliganj, Lucknow, alleging that on 23.12.2019 at about 12:15 p.m. two officers of the National Research Laboratory for Conservation of Cultural Property, Lucknow[29], namely, Bachhan Singh Rawat, Security Officer and Mahendra Kumar, Division Clerk/Caretaker had attacked him with a helmet and lathi, and had threatened to kill him. At about 1:12 p.m. FIR No. 556/2019 dated 23.12.2019 was registered against Bachhan Singh Rawat and Mahendra Kumar under Section 323, 504 and 506 IPC.
- A statement under Section 161 of the Code was also recorded, where Rajesh Wangvelu stated that he was discriminated against for belonging to a different State. He had done nothing wrong and did not allow his subordinates to do anything wrong, for which reason Bachhan Singh Rawat and Mahender Kumar remained angry with him. He added in his statement that the appellant – Manager Singh was also present during this altercation. He had abused him and stated – "*maaro sale ko, bahut imandaar banta hai*" i.e., "hit him, he wants to be too honest". Bachhan Singh Rawat and Mahendra Kumar had hit him till he fainted. When he regained consciousness, they had left the place.
- Manager Singh, as the Director General of the NRLC, claims that he had noticed several discrepancies and

27 *Deepak Gaba and Others* v. *State of U.P. and Another*, (2023) 3 SCC 423

28 Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736

29 "NRLC", for short.

administrative errors committed by Rajesh Wangvelu, who was working as the Library and Information Officer.

- After issuing show-cause notices to Rajesh Wangvelu and considering his response, the Ministry of Culture issued a letter dated 02.08.2019, under the signature of appellant, indicating that Rajesh Wangvelu *prima facie* appeared to have committed temporary embezzlement of Rs. 38,338/- and for which action should be taken.

- A decision to shift the library was also confirmed by a committee, to which Rajesh Wangvelu had expressed his displeasure. On the day of shifting, i.e. 23.12.2019, a physical altercation occurred between Rajesh Wangvelu and the officers Bachhan Singh Rawat and Mahendra Kumar.

- Manager Singh has relied upon written communication of Bachhan Singh Rawat in which he has stated that on 23.12.2019 at about 12:00 noon, he was informed by Mahendra Kumar, that Rajesh Wangvelu had taken some items in his bag without the gate pass. Information in this regard had been given to Manager Singh and the Vigilance Officer. When Bachhan Singh Rawat had tried to frisk Rajesh Wangvelu, he had, in presence of another staff member Dr. Neeta Nigam, threatened Bachhan Singh Rawat and Mahendra Kumar with dire consequences and had sprayed chemical on their faces. Rajesh Wangvelu had assaulted them and thereupon had run away from the spot. On 23.12.2019 Manager Singh had accordingly written a letter to the Station Officer of Aliganj Police Station, informing him of the incident. Manager Singh is also relying on the communication dated 26.12.2019 written by him to the Director General of Police, Lucknow, and the communication dated 06.01.2020 by the appellant Manager Singh to the sub-inspector, and inquiry officer Police Station Aliganj.

- Rajesh Wangvelu was examined at 01:30 p.m., and his medical legal report dated 23.12.2019 refers to six injuries which have been found to be caused by a hard and blunt object. The injuries were simple. Rajesh Wangvelu,

however, also relies upon a report dated 24.12.2019, obtained by a private diagnostic centre, which states that there was a fracture at the head of the fifth metacarpal bone of the left hand.

- Manager Singh filed a petition for quashing of the proceedings arising out of FIR No. 556/2019 before the Allahabad High Court. He was given the benefit of arrest till the filing of the chargesheet, by an order of the High Court dated 09.01.2020.

- On 04.02.2020, a chargesheet was filed with an addition of Sections 308, 325 and 120B IPC, and impleading Manager Singh as an accused. The chargesheet under Section 173 of the Code, submitted before the court in the present case, under the column relating to brief facts of the case reads as under:

> "Sir, the aforesaid case was registered on the basis of written report/complaint of the complainant of the case and the investigation was being done by the S.I. Shri Ramchandra Mishra. On 15.01.2020 I have received the investigation. During the investigation, on the basis of the statement of the complainant as well as on the basis of medical report, section 120B/308/325 IPC was added and the name of accused Manager Singh has come into light, in which Bachan Sing Rawat and Mahendra Kumar were sent in judicial custody on 24.12.19. Till the filing of charge sheet, the accused Manager Singh has been granted stay of arrest by the court. The offences under Section 323/504/506/120B/308/325 IPC are duly proved against the accused Bachan Singh Rawat, Mahendra Kumar and Manger Singh. Therefore, charge sheet is filed against the accused Bachan Singh Rawat, Mahendra Kumar and Manager Singh under Section 323/504/506/120B/308/325 IPC before the Hon'ble Court. It is requested to summon the proof and punish and accused."

- On the chargesheet being submitted in the court of the Magistrate, order dated 10.02.2020 was passed recording that the chargesheet has been submitted for offences under 323, 504, 506, 120B, 308, 325 of the IPC against Bachhan Singh Rawat, Mahendra Kumar and Manager Singh. The order, taking cognisance and issuing summons, reads:

  "The chargesheet was filed under the offence number 556/2019, Section 323, 504, 506, 120B, 308, 325, IPC, Police Station Aliganj against the accused Bachan Singh Rawat, Mahendra Kumar and Manager Singh. Reviewed all prosecution forms. The grounds for taking cognizance are sufficient. Cognizance is taken.

  ORDER

  Register the case. The copies are ready attached. Accused Bachan Singh Rawat and Mahendra Kumar are out on bail. Jamanatnama is attached in the file and the arrest of the accused Manager Singh was a stay on the arrest till the filing of the chargesheet in the sequence of the order of the Hon'ble High Court, Miscellaneous Bench – 262/2020 order dated 09-01-20. Summons issued against the accused. Giving copy for paperwork. Attendance should be presented on 01-03-2020."

- It appears that the matter was taken up for hearing by the Special Chief Judicial Magistrate, Lucknow on 18.02.2021, which records the presence of the counsel for Rajesh Wangvelu and that application for exemption from personal appearance was moved on behalf of Bachhan Singh Rawat and Mahendra Kumar. Manager Singh was absent and bailable warrants were issued against him, and he was required to appear on 04.03.2021.

- On 04.03.2021, an application for exemption from personal appearance was moved on behalf of Manager Singh on the ground that he had gone out for personal reasons where he had taken ill. This application was rejected on 04.03.2021 by the Special Chief Judicial Magistrate, recording that Manager Singh had not obtained bail till

then and there is no provision for granting exemption from personal appearance prior to obtaining bail. Therefore, non-bailable warrants have been issued against him.

- Another order dated 04.03.2021 records that bailable warrants were issued against Manager Singh but he had remained absent. To ensure his personal appearance non-bailable warrants were issued against him.
- By the impugned order dated 16.03.2021, the High Court had dismissed the petition filed by Manager Singh under Section 482 of the Code, to quash the criminal proceedings against him.
- On 03.09.2021, the High Court granted a further period of 10 days' time to Manager Singh to surrender. He did not surrender and filed another application seeking extension of time to surrender.
- On 03.12.2021, Manager Singh filed the present appeal challenging correctness of the impugned order dated 16.03.2021.
- Rajesh Wangvelu has, before us, referred to FIR No. 224 of 2020 registered under Sections 406, 419, 420, 467, 468, 471 IPC on account of certain contracts having been awarded by Manager Singh, Dr. Neeta Nigam, Bachhan Singh Rawat, Mahendra Kumar, to M/s. V.K. Singh Construction Company, Punjab, in which case a final report has been submitted to the court. He has also referred to an office order dated 03.09.2021 passed by the Government of India, Ministry of Culture, terminating services of Manager Singh with immediate effect.

45. Having regard to the facts of the present case, including the chargesheet as filed, which in our opinion is bereft of all details and particulars, we quash the summoning order against Manager Singh. The Special Chief Judicial Magistrate, would re-examine the entire matter in terms of the observations made in the present judgment and thereupon proceed in accordance with law.

46. We, however, would allow the present appeal to the extent that the non-bailable warrants issued against Manager Singh are unsustainable and should be quashed. It is a settled position of law

that non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of non-bailable warrants, this Court has observed on several occasions that non-bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence.[30]

47. Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code[31] should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in ***Maneka Sanjay Gandhi and Another*** v. ***Rani Jethmalani***[32] held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption.[33] Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.[34]

48. It is also directed that Manager Singh shall be released on bail by the arresting officer/ investigating officer/trial court on the terms and conditions to be fixed by the trial court in connection with the chargesheet originating from FIR No. 556 of 2019. The direction given by the High Court in its order dated 09.01.2020 restricting the grant of anticipatory bail till the filing of the chargesheet is accordingly

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30 *Inder Mohan Goswami and Another v. State of Uttaranchal and Others* (2007) 12 SCC 1; *Vikas v. State of Rajasthan* (2014) 3 SCC 321

31 Section 205 of the Code. Also see, Section 317 of the Code.

32 [1979] 2 SCR 378 : (1979) 4 SCC 167

33 See also, *Puneet Dalmia v. Central Bureau of Investigation, Hyderabad* (2020) 12 SCC 695

34 See, *Popular Muthiah v. State Represented by Inspector of Police* (2006) 7 SCC 296 and earlier judgment of the Calcutta High Court in *Rahim Sheikh* (1923) 50 Cal 872, 875

modified. We have issued the said direction in exercise of power under Article 142 read with Article 136 of the Constitution of India in view of the peculiar facts of the present case, including issue of non-bailable warrants etc. by the court of Special Chief Judicial Magistrate.

CONCLUSION

49. In view of the aforesaid discussion,

(i) the appeal arising out of SLP (Crl.) No. 1074/2017 preferred by Sharif Ahmed and Adil is allowed and the criminal proceedings are quashed;

(ii) the appeal arising out of SLP (Crl.) No. 5419/2022 is allowed with the direction that in the event of being arrested, the appellants – Imran and Kamaluddin shall be released on anticipatory bail in connection with the chargesheet under Sections 420 and 120B IPC arising out of FIR No. 519/2019 dated 26.07.2019 registered at Police Station Chandpur, District Bijnor, Uttar Pradesh on terms and conditions to be fixed by the trial court. In addition, the appellants – Imran and Kamaluddin shall comply with the conditions mentioned in Section 438(2) of the Code;

(iii) the appeal arising out of SLP (Crl.) No. 9482/2021 preferred by Manager Singh is partly allowed by –

(a) quashing the summoning order issued against Manager Singh, with an order of remand to the Magistrate in terms of the observations in this judgment;

(b) quashing the non-bailable warrants issued against Manager Singh; and

(c) directing release of Manager Singh on bail by the arresting officer/investigating officer/trial court on terms and conditions fixed by the trial court in connection with the chargesheet under Sections 323, 504, 506, 120B, 308 and 325 IPC, arising out of FIR No. 556/2019 dated 23.12.2019 registered at Police Station Aliganj, District Lucknow, Uttar Pradesh.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeals disposed of.

[2024] 6 S.C.R. 129 : 2024 INSC 369

Achin Gupta
v.
State of Haryana & Anr.

(Criminal Appeal No. 2379 of 2024)

03 May 2024

[J.B. Pardiwala* and Manoj Misra, JJ.]

Issue for Consideration

The appellant herein was chargesheeted u/ss.323, 406, 498A and 506 of IPC. The appellant filed a quashing petition for the purpose of getting the criminal proceedings quashed. The High Court by its impugned order, declined to quash the criminal proceedings in exercise of its inherent powers u/s. 482 of the Code of Criminal Procedure, 1973. Whether the High Court should have exercised its inherent power u/s. 482 of the Cr.P.C. for the purpose of quashing the criminal proceedings.

Headnotes

Penal Code, 1860 – ss. 323, 406, 498A and 506 – Code of Criminal Procedure, 1973 – s.482 – The contents of the FIR (dated 09.04.2021) indicated that appellant-husband and his family members had allegedly demanded dowry and thereby caused mental and physical trauma to the first informant-wife (respondent no.2) – After investigation, police filed chargesheet only against appellant – Appellant sought quashing of criminal proceedings – High Court declined to quash the same – Correctness:

Held: Appellant and respondent no.2 got married in 2008 – Appellant filed a divorce petition in July 2019 – However, same was later withdrawn as appellant was finding it difficult to take care of his child, while travelling to Court on the dates fixed – Appellant's mother had filed a domestic violence case against the respondent no.2 in october 2020 under provisions of the Protection of Women from Domestic Violence Act, 2005 – Allegations levelled in the FIR were vague, general and sweeping, specifying no instances of criminal conduct – FIR has no specific date or time of the alleged offences – In view of this Court, FIR in question was a counterblast to the divorce petition and also domestic violence case – The FIR was lodged on 09.04.2021, nearly 2 years after filing of the divorce

* Author

petition by appellant and 6 months after filing of the domestic violence case by her mother-in-law – There is no explanation for delay in filing FIR – According to the Court, it was only filed to harass the appellant and his family members – The High Court should have exercised its inherent power under Section 482 of the Cr.P.C. for the purpose of quashing the criminal proceedings. [Paras 16-19, 36]

Code of Criminal Procedure, 1973 – s.482 – Circumstances under which the inherent jurisdiction may be exercised:

Held: It is well settled that the power under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself – It is also well settled that Section 482 of the Cr.P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Code of Criminal Procedure – There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. [Para 20]

Code of Criminal Procedure, 1973 – Exercise of power under s.482 – Prevention of abuse of the process of the Court:

Held: It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist – The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse – It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice – In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice – When no offence is disclosed by the complaint, the court may examine the question of fact – When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. [Para 21]

Code of Criminal Procedure, 1973 – s.482 – No restriction on exercise of power – Stages of FIR, investigation and chargesheet:

Held: Once the investigation is over and chargesheet is filed, the FIR pales into insignificance – The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet – There is nothing in the words of Section 482 of the Cr.P.C. which restricts the exercise of the power of the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR – It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet. [Para 22]

Code of Criminal Procedure, 1973 – s.482 – General and sweeping allegations – Matrimonial dispute – Duty of Court:

Held: If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court – The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie*, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute. [Para 25]

Penal Code, 1860 – s.498A – Matrimonial dispute – Determining cruelty – Consequence of technical and hyper sensitive approach:

Held: The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status – A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage – Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment – The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. [Para 32]

Legislation – Suggestions by Court – Bhartiya Nyaya Sanhita, 2023 – ss. 85 and 86:

Held: Sections 85 and 86 of the Bhartiya Nyaya Sanhita, 2023 are verbatim reproduction of section 498A of the IPC – Attention was brought to the observations made by the Supreme Court in Preeti Gupta v. State of Jharkhand – Request made to the Legislature to look into the issue and take into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force. [Para 40]

Case Law Cited

R.P. Kapur v. State of Punjab, **AIR 1960 SC 866;** *State of A.P. v. Vangaveeti Nagaiah* **[2009] 6 SCR 160 : (2009) 12 SCC 466 : AIR 2009 SC 2646;** *Preeti Gupta v. State of Jharkhand* **[2010] 9 SCR 1168 : 2010 Criminal Law Journal 4303 (1);** *Arnesh Kumar v. State of Bihar* **[2014] 8 SCR 128 : Crl.A.No.1277 of 2014 decided on 02.07.2014;** *Geeta Mehrotra & Anr. v. State of U.P.* **[2012] 9 SCR 641 : (2012) 10 SCC 741;** *State of Haryana v. Bhajan Lal* **[1990] Supp 3 SCR 259 : [1992] Supp. (1) SCC 335;** *Mahmood Ali & Ors. v. State of U.P & Ors.,* **2023 SCC OnLine SC 950 – relied on.**

Kaslefsky v. Kaslefsky **(1950) 2 All ER 398 – referred to.**

Books and Periodicals Cited

American Jurisprudence 2nd edition Vol.24 page 206.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Protection of Women from Domestic violence Act, 2005; Bhartiya Nyaya Sanhita, 2023.

List of Keywords

Dowry; Cruelty and harassment; Mental and physical trauma; Quashing of criminal proceedings; Domestic violence; Section 498A of Penal Code 1860; Sections 85 and 86 of Bhartiya Nyaya Sanhita; Vague, general and sweeping allegations in FIR; Section 482 of Code of Criminal Procedure, 1973; Inherent power of the High Court; *Ex debito justitiae*; Abuse of process of the court; Miscarriage of justice; Matrimonial dispute.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2379 of 2024

From the Judgment and Order dated 05.04.2022 of the High Court of Punjab & Haryana at Chandigarh in CRM-M No.14198 of 2022

Appearances for Parties

Yusuf, Adv. for the Appellant.

Chritarth Palli, Dr. Monika Gusain, Parveen Kumar Aggarwal, Abhishek Grover, Vivek Gupta, Vikas Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J. B. Pardiwala, J.

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab & Haryana dated 05.04.2022 in the Criminal Main No. 14198-2022 (**CRM-M-141 98-2022**) filed by the Appellant herein (sole accused in the chargesheet) by which the High Court rejected the petition & thereby declined to quash the chargesheet dated 13.10.2021 for the offences punishable under Section 323, 406, 498A and 506 of the Indian Penal Code, 1860 (for short, the "**IPC**") arising from the First Information Report No. 95 of 2021 lodged by the Respondent No. 2 (wife of the Appellant) at the Urban Estate Hisar Police Station, District Hisar.

FACTUAL MATRIX

3. The FIR dated 09.04.2021 reads thus: -

> *"1. That the First Informant Tanu Gupta wife of Achin Gupta and daughter of Harish Manocha, is a resident of House No.1368, Urban Estate - 2, Hisar, Tehsil and District Hisar and is a peace loving and law abiding woman and my marriage was solemnized according to Hindu rites and rituals with Accused No.1 on 09.10.2008 at New Delhi. My family had spent about thirty lakhs rupees in my engagement*

ceremony and marriage as per the direction of the accused persons towards furniture, jewellery, clothes and other household articles. At the time of marriage, my family handed over all her jewellery and stridhan to the accused persons saying that it is the stridhan of the first informant and whenever the first informant will need her stridhan, it has to be given back to her whereupon the accused persons assured the family of the first informant that whenever the first informant will need it, they will give it back to her.

2. *That after the marriage, the first informant and Accused No.1 lived as husband and wife at B-39, Phase-2, Vikas Nagar, Hastsaal, Uttam Nagar, New Delhi 110059 and the first informant performed all the duties of a wife and out of the said wedlock a boy, namely, Advay aged 8 years was born, who is presently residing with Accused No.1.*

3. *That after few days of the marriage, when the first informant went to her matrimonial house at that time the Accused persons taunted that your family has lowered down our image in the society and before relatives by giving less dowry and said to the first informant that at least your family should have given a big car in the dowry because Accused No.1 is doing a good job and almost earns Rs. 1,50,000/- monthly and for him, we were getting proposal from rich families who would have spent crores of rupees on the marriage. On this the first informant said that her family had already given 5 lakhs rupees in cash for purchasing the car and have already spent more than their capability and now they cannot fulfil your demand for more dowry whereupon accused persons threatened the first informant saying that if you want to live with us then you have to get our above demand for the dowry fulfilled by your parents otherwise you will not be allowed to live in this house.*

4. *That whenever the first informant cooked food in the matrimonial home, the accused persons always used*

to point out unnecessary defects in the food and taunted the first informant that she does not know cooking. To harass and upset the first informant, the accused persons deliberately asked her to make various dishes and when the first informant showed her inability, the accused persons used to abuse and beat her.

5. *That Accused No.3 is the mother-in-law of the first informant, who is a teacher and she used to leave the house at 7:00 hrs in the morning for the school and the first informant used to do all household works and when her mother-in-law returned from the school, she deliberately used to point out defects in her work and used to taunt the first informant that your family should have given gold bangles to me and now, you would have to bring gold bangles from your family and when the first informant tell her that her family had already spent a lot over her marriage, then she used to abuse and give beatings to the first informant.*

6. *That Accused No.4 is the sister-in-law of the first informant who used to say that your family should have given a diamond set for me in the marriage which they have not given and now if you want to live in this house you have to bring diamond set for me otherwise I will not let you live in the house and besides this, Accused No.4 treated the first informant like a domestic servant and used to abuse and give beatings to the first informant over petty issues and instigated the other members of the family against the first informant. That the first informant always performed the duties of an ideal wife with utmost honesty and sincerity and the first informant had always lived with Accused No.1 with love and always fulfils his demands and demands of the other accused persons. That the first informant used to do all household work at her matrimonial house in whatever manner the accused persons used to ask her. In this way, there is no fault on the part of the first informant. That Accused No.1 had never treated*

the first informant with love and care rather he used to treat the first informant with cruelty. Beating and abusing the first informant on account of demand of dowry was a daily routine of the Accused persons.

7. *That Accused No. 1 is an alcoholic. Who use to torture, abuse, beat the first informant and treated her inhumanely on account of less dowry under the effect of alcohol. Whenever the first informant used to tell her parents-in law Accused No. 2 and 3 about this they said that until you do not get our demand of dowry fulfilled by your parents till then you have to bear all this. The Accused persons used to treat the first informant like a domestic servant. The first informant was not allowed to even make phone calls to her family and Accused No. 1 deliberately had hacked the phone of the first informant and she was not allowed to step out of the house. Being a Hindu woman the first informant tolerated all tortures of the Accused with a hope that one day they will mend their ways and the first informant's will live in the house happily but the same did not happen rather the behaviour of the Accused persons became more cruel towards the first informant.*

8. *That Accused No. 5 is the brother-in-law of the first informant and he resides in Delhi. After the marriage he used to come to the matrimonial house of the first informant alongwith Accused No. 4 and used to instigate Accused No. 1 to 3 against the first informant. When the first informant used to oppose this he used to hurl abuses to the first informant.*

9. *That during this period the Accused persons have beaten the first informant multiple times for demand of dowry and whenever the accused persons threw out the first informant out of the house every time the family of the Petitioner used to come along with panchas of the society and sat with the Accused persons and in every meeting at least something was given to the Accused persons but the Accused*

persons neither left their demand for dowry nor they changed their behaviour.

10. *That on 02.03.2012 a son Advay was born to the first informant, the Accused persons said to the first informant that now in the traditional gifts you have to fulfil our demand for dowry. In the traditional gift the family of the first informant gave 5 tolas of gold ornaments, 51 thousand rupees in cash, and spent about 1 lakh rupees on clothing, sweets and other items. But the Accused persons were not satisfied with the articles gifted at that time and were adamant on their demand.*

11. *That when the first informant was at her matrimonial house she was posted on the post of Assistant Professor in a college at Delhi but Accused No. 1 to 3 used to snatch the whole salary of the first informant and even did not give pocket money to the first informant. Whenever the first informant demanded pocket money from Accused No. 1 he used to beat her and said that you take your expenses from your family. It is pertinent to mention here that even after the marriage the family of the first informant many times gave pocket money and money for other expenses. Before going for her job the first informant used to do all household work and prepared lunch after waking up early in the morning and then she went to the college and after returning in the evening she used to do all household work.*

12. *That after the marriage, Accused No.3 and 4 pressurized the first informant that you have to wear saree because according to the tradition, the daughters-in-law used to wear sarees. When the first informant said that I am not able to do the household chores while wearing saree, they both used to beat and abuse the first informant.*

13. *That in 2014, the first informant came to know that her husband Respondent No.1 is in illicit relationship with Vandana Sharma and when the first informant*

objected to this Accused No. 1 used to abuse and beat her and used to threaten that if you will tell this fact to anyone, I will kill you. It is pertinent to mention here that on 19.03.2019 when Accused No. 1 had taken the abovenamed Vandana Sharma on a tour to Jaipur, Rajasthan at that time the first informant and her brother reached Khaskoti Hotel, Jaipur and there they found both of them in a compromising position and objected to it, Accused No. 1 slapped the first informant and said that why have you brought your family here. At that time the first informant and her family did not initiate any legal proceedings against the Accused No.1 because Accused No.1 had assured that after today he would not meet Vandana Sharma and after this the first informant went to her matrimonial house alongwith Accused No.1.

14. *That even after this Accused No. 1 used to talk with Vandana Sharma on phone and also met with her. While the first informant was at her matrimonial house, Accused No.1 filed a Divorce Petition on 25.07.2019 and which was filed on the basis of false and baseless grounds. In the said case when on 10.08.2019 a summon came at 6:30 in the morning, Accused No. 1 and 2 forcibly got the summons signed by the first informant and said that now we do not need you anymore and when the first informant objected to this, they had beaten the first informant. Thereafter the first informant called her father on phone and called him at her matrimonial house. Thereafter my family members came to my matrimonial house. Thereafter on 10.08.2019 the first informant filed an application against the Accused persons at Ranholla police station, Delhi and after that the first informant came to her parental house alongwith her father. Thereafter as per the order of the court the first informant again started living with Accused No. 1 at her matrimonial house.*

15. *That in March, 2020 during the pandemic of Covid-19, Accused No. 1 took the minor son with him and did not*

come home for so many days and before leaving the house Accused No. 1 had cut the water connection, and television connection of the house. Thereafter the first informant called her father on phone and called him at her house. Thereafter on 30.03.2020 the father of the first informant after getting the permission from police the father of the first informant brought her to her parental home from her matrimonial house. When the first informant informed Accused No. 1 over phone that I am going with my father then he said that who wants to keep you with him. Thereafter the family of the first informant held many meetings in the presence of elders and respectable members of the society and tried to convince the Accused persons that they should keep the first informant with them but the Accused persons were stubborn on their demands of dowry and had clearly refused to keep the first informant without fulfillment of their demand for dowry and when the first informant asked for her jewellery, stridhan and for her minor son, they clearly refused and threatened that if you file any complaint to the police against us we will kill the first informant.

16. That in this way, the Accused persons have ignored the first informant due to their dowry demand and they have even not returned the first informant her stridhan and are threatening that if without fulfilling their demand of dowry, the first informant comes to their house, they will kill her. Thus, by giving this complaint, a request is being made to take immediate action against the accused persons for demanding dowry, giving beatings and threatening me to kill and my stridhan be recovered from the accused persons. It will be so kind of you."

4. The plain reading of the aforesaid FIR would indicate that the Appellant and his family members are alleged to have demanded dowry and thereby caused mental and physical trauma to the First Informant. As stated in the FIR, the family of the First Informant had spent a large sum at the time of marriage and had also handed over her *'stridhan'* to the Appellant and his family. However, shortly

after marriage, the Appellant and his family started harassing the First Informant on the false pretext that she had failed to discharge her duties as a wife and daughter-in-law and also pressurised her for some more dowry. The Appellant is alleged to be an alcoholic and used to regularly raise his hands on the First Informant and treat her inhumanely. Allegedly, upon complaining to the Appellant's father and mother (Accused Nos. 2 & 3 in the FIR), they would take the side of their son i.e., the Appellant herein and would pressurize the First Informant to get something more towards dowry.

5. The First Informant has further alleged that her sister-in-law (Accused No. 4 in the FIR) used to harass her for a diamond set & would threaten that failing to get one, she would be driven out of her matrimonial home.

6. The First Informant was serving as an Assistant Professor and has alleged that the Appellant and his family would keep her entire salary. The Appellant would assault her whenever she would ask for money, saying that the First Informant should ask her family to bear her personal expenses.

7. It is also alleged that the Appellant was having an extra marital affair with one another woman, and he would threaten the First Informant with dire consequences had she told anyone of his affair. The Appellant continued with the extra marital affair for a long period & later filed a divorce petition in July 2019 on absolutely false and baseless grounds.

8. It is further alleged that during the initial days of the Covid-19 lockdown, the Appellant disconnected the water supply at their matrimonial home and took away their minor son. In such circumstances, the First Informant was left with no option but to leave her matrimonial home and return to her parents. Efforts were made for some settlement however the Appellant and his family kept on insisting for more dowry and also refused to return her stridhan.

9. Upon the FIR referred to above being registered, the police carried out the investigation & proceeded to file chargesheet dated 13.10.2021, only against the Appellant herein. A closure report was filed against the remaining 4 accused. The filing of the chargesheet culminated in the Criminal Case No. CHI/1856/2021in the court of Judicial Magistrate, First Class, Hisar.

10. The Appellant herein went before the High Court, with a quashing petition for the purpose of getting the criminal proceedings quashed. The High Court *vide* its judgment & order dated 05.04.2022 (**'impugned order'**), declined to quash the criminal proceedings in exercise of its inherent powers under Section 482 of the Criminal Procedure Code, 1973 (for short, the "**Cr.P.C.**"). The High Court made the following observations: -

> *"I have heard learned counsel for the petitioner at length and have gone through the record carefully.*
>
> ***The main thrust of the arguments raised by counsel for the petitioner is that the complainant had never been interested in living in the matrimonial home and she kept on pressurizing the petitioner for living separately from his family members. In order to achieve her objective she kept on causing harassment to the petitioner and his family members. However, a perusal of the allegations in the FIR would show that the petitioner and the family members gave taunting to the complainant for lowering down their image in the society. Demand of a car was also made. Complainant was taunted for not having been incurred sufficient expenditure on marriage by her parents. There are allegations of beating the complainant by her husband and the other family members. It has been specifically alleged that the petitioner is an alcoholic and has illicit relations with one Vandana Sharma.***
>
> *The Hon'ble Supreme Court has settled the law time and again regarding exercising the jurisdiction under Section 482 Cr.P.C. for quashing of FIR.* ***A reference in this regard may be made to the law settled in case of State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335, wherein following parameters have been given:-***
>
> > *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers*

under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Further, Hon'ble Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 SCC Online SC 315 has held that quashing of FIR is an exception rather than an ordinary rule and the High Court should exercise the powers under Section 482 Cr.P.C. sparingly with circumspection.

Taking into consideration the above facts and circumstances of the present case in the light of the law settled, the present case does not fall in the category of cases for invoking the inherent powers under Section 482 Cr.P.C. The parameters laid down by the Hon'ble Supreme Court mandate that in a case where from the bare reading of the allegations in the FIR no cognizable offence is made out or it has been lodged to wreak the vengeance then the High Court may intervene. The veracity of the allegations

levelled by the complainant can be assessed only after a thorough investigation and thereafter by the Trial Court on the basis of the evidence led before it.

Thus, this Court is of the opinion that the case of the petitioner does not qualify for exercising its jurisdiction under Section 482 Cr.P.C. Resultantly, the petition being devoid of any merit is hereby dismissed."

(Emphasis supplied)

11. In view of the aforesaid, the Appellant is before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Mr. Yusuf, the learned counsel appearing for the Appellant herein made the following submissions: -

- The Appellant and his family had filed a divorce petition and also a domestic violence case against the First Informant in 2019 and 2020 respectively. As a counter blast to the same, the FIR No. 95 of 2021 dated 09.04.2021 came to be lodged after a period of more than 11 months from the date the First Informant left her matrimonial home and that too, only after the service of summons to her in the domestic violence case. No plausible explanation has been offered for such delay.
- The FIR was filed with an oblique motive & by way of vengeance towards the Appellant. The First Informant and Appellant were married for over 12 years.
- The allegations in the FIR are too vague and general in nature. There is no specific allegation/incident of harassment levelled against the Appellant in the FIR.

SUBMISSIONS ON BEHALF OF THE FIRST INFORMANT/ RESPONDENT NO. 2

13. Mr. Parveen Kumar Aggarwal, the learned counsel appearing for the First Informant herein made the following submissions:

- The Appellant and his family continuously demanded for additional dowry after the marriage. They used to beat the First Informant and take away her entire salary.

- After filing of the divorce petition, the Appellant stopped paying anything towards her maintenance and also disconnected the basic facilities such as water connection etc., leaving her with no option but to leave the matrimonial home and return to her parents house at Hisar.
- The Appellant had an affair with another woman. Only with a view to save the marriage, she kept quiet and did not inform about it to the others.
- The domestic violence case filed against the First Informant is absolutely frivolous and vexatious.
- The Appellant failed to inform this Court that he had withdrawn the divorce proceedings instituted against the First Informant.

SUBMISSIONS ON BEHALF OF THE STATE

14. Mr. Chritarth Palli, the learned counsel appearing on behalf of the State (Respondent No. 1 herein) made the following submissions:

- The Police upon registration of the FIR, conducted a fair investigation. On completion of the investigation, the proceedings against 4 out of the 5 accused came to be dropped. However, having regard to the nature of the allegations levelled, the investigating officer thought fit to file chargesheet against the Appellant.

ANALYSIS

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the criminal proceedings should be quashed?

16. The Appellant and the Respondent No. 2 got married in October 2008. The couple lived together for more than a decade and in the wedlock a child was born in March 2012.

17. We take notice of the fact that the Appellant filed a divorce petition in July 2019 on the ground of cruelty. The divorce petition was withdrawn as the Appellant was finding it difficult to take care of his child, while travelling all the way to Hisar on the dates fixed by the Court. The Appellant's mother had to file a domestic violence case

against the First Informant in October 2020 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly ***2 years*** after the filing of the divorce petition by the Appellant and ***6 months*** after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr.P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.. While exercising powers under Section 482 of the Cr.P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to

do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

22. Once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet. There is nothing in the words of Section 482 of the Cr.P.C. which restricts the exercise of the power of the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet.

23. In ***R.P. Kapur v. State of Punjab*** reported in AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings: -

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

24. This Court, in the case of ***State of A.P. v. Vangaveeti Nagaiah***, reported in (2009) 12 SCC 466 : AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus: -

> ***"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.***
>
> *The illustrative categories indicated by this Court are as follows:*
>
> *"(1) Where the allegations made in the first information report or the complaint, even if they are taken at*

their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie,* whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

26. In ***Preeti Gupta* v. *State of Jharkhand*,** reported in 2010 Criminal Law Journal 4303 (1), this Court observed the following: -

> *"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.*
>
> *29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 which reads as under:*
>
> > *"**498-A. Husband or relative of husband of a woman subjecting her to cruelty**.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
> >
> > *Explanation.- For the purposes of this section, 'cruelty' means:*
> >
> > *(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
> >
> > *(b) harassment of the woman where such harassment is with a view to coercing*

her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate

relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble

Minister for Law and Justice to take appropriate steps in the larger interest of the society."

(Emphasis supplied)

27. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of ***Arnesh Kumar* v. *State of Bihar***, (Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014). In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before this Court, having failed to obtain the same from the High Court. In that context, the observations made by this Court in paras 6, 7 and 8 respectively are worth taking note of. They are reproduced below: -

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Penal Code, 1860. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate

is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature

did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr.P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. …"

(Emphasis Supplied)

28. In the case of ***Geeta Mehrotra & Anr. v. State of U.P.*** reported in (2012) 10 SCC 741, this Court observed as under: -

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

> *"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live*

peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in (2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of B.S. Joshi v. State of Haryana it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending

upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

(Emphasis supplied)

29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr.P.C. as once there are allegations disclosing the commission of a cognizable offence then whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of ***Bhajan Lal*** (supra). The category 7 as laid reads thus: -

"(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr.P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does

not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing

of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in ***Kaslefsky* v. *Kaslefsky***, (1950) 2 All ER 398 observed as under: -

> *"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."*
>
> *When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health……..when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the*

natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in *American Jurisprudence* 2nd edition Vol. 24 page 206. It reads thus: -

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."

(Emphasis supplied)

35. In one of the recent pronouncements of this Court in ***Mahmood Ali & Ors. v. State of U.P & Ors.,*** 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such

proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr.P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in ***Preeti Gupta*** (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

> "*34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.*
>
> *35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and*

make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

38. In the aforesaid context, we looked into Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in ***Preeti Gupta*** (supra). Sections 85 and 86 respectively are reproduced herein below:

*"**Husband or relative of husband of a woman subjecting her to cruelty.***

85. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Cruelty defined.

86. For the purposes of section 85, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

39. The aforesaid is nothing but verbatim reproduction of Section 498A of the IPC. The only difference is that the Explanation to Section 498A of the IPC, is now by way of a separate provision, i.e., Section 86 of the Bhartiya Nyaya Sanhita, 2023.

40. We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider

making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force.

41. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside.

42. The proceedings of CHI/1856/2021 arising from FIR No. 95 of 2021 dated 09.04.2021, pending in the Court of Judicial Magistrate, First Class, Hisar are hereby quashed.

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

44. We direct the Registry to send one copy each of this judgment to the Union Law Secretary and Union Home Secretary, to the Government of India who may place it before the Hon'ble Minister for Law and Justice as well as the Hon'ble Minister for Home.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 164 : 2024 INSC 368

Anees
v.
The State Govt. of NCT

(Criminal Appeal No. 437 of 2015)

03 May 2024

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

Issue for Consideration

Murder of appellant-accused's wife in their house in which the appellant, deceased and their 5 year old daughter lived. s.106, Evidence Act, 1872 was invoked and the appellant was convicted u/s.302, IPC for the murder. Whether the High Court committed any error in passing the impugned judgment affirming the conviction of the appellant.

Headnotes

Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – "*prima facie case*" (foundational facts) in the context of s.106 – Murder of appellant-accused's wife in the early morning hours in their house in which the appellant, deceased and their 5-year-old daughter were living – s.106 was invoked, appellant convicted u/s.302 for the murder – Correctness:

Held: s.106 would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused – In the present case, offence took place inside the four walls of the house in which the appellant, deceased and their 5-year-old daughter were living – The incident occurred in the early morning hours – When the Investigating Officer (IO) reached the house of the appellant, he found the deceased lying in a pool of blood – Appellant was also present there – The defence put forward by the appellant that two unidentified persons entered the house and inflicted injuries on the deceased and also on his body was found to be false – Clothes worn by the appellant at the time of the incident had blood stains which matched with the blood group of the deceased – Further, the conduct of the appellant in leading the IO and others to a drain nearby his house and the discovery of the knife from the drain is a

* Author

relevant fact u/s.8, Evidence Act – Thus, in view of the aforesaid foundational facts being duly proved, the courts below were justified in invoking the principles enshrined u/s. 106 – High Court committed no error in affirming the order of conviction passed by the trial court, holding the appellant guilty of the offence of murder of his wife – However, in view of the mitigating circumstances, appellant at liberty to prefer representation to the State Government for remission of sentence. [Paras 50, 56 and 84]

Evidence Act, 1872 – s.106 – Applicability – Principles of law:

Held: The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in s.106 – s.106 is an exception to s.101, Evidence Act – s.106 is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience" – Court should apply s.106 in criminal cases with care and caution – s.106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused – It cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence – It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed – To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden – So, until a prima facie case is established by such evidence, the onus does not shift to the accused. [Paras 36, 43, 44]

Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – "especially" – Meaning:

Held: s.106 provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him – The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused – s.106

refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory – If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit – But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn against him. [Paras 36, 45]

Evidence Act, 1872 – ss.8, 27 – 'conduct' – "relevant fact" – Weapon of offence, the knife was discovered at the instance of the appellant by drawing panchnama u/s.27:

Held: Conduct of the appellant in leading the IO and others to a drain nearby his house and the discovery of the knife from the drain is a relevant fact u/s.8 – In other words, the evidence of the circumstance simpliciter that the appellant pointed out to the IO the place where he threw away the weapon of offence i.e., knife would be admissible as 'conduct' u/s.8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of s.27 – Even while discarding the evidence in the form of discovery panchnama, the conduct of the appellant would be relevant u/s. 8 – The evidence of discovery would be admissible as conduct u/s.8 quite apart from the admissibility of the disclosure statement u/s.27. [Paras 56(e), 59]

Evidence – Positive facts vis-à-vis negative facts – Rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution:

Held: What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape – Positive facts must always be proved by the prosecution

– But the same rule cannot always apply to negative facts – It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused – When a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions – If the accused had a different intention that is a fact especially within his knowledge and which he must prove. [Para 46]

Evidence Act, 1872 – s.106 – Inapplicable when fact in question capable of being known not only to the accused but also to others:

Held: s.106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place – The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived – Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary. [Para 47]

Evidence Act, 1872 – s.8 – Conduct of the accused though relevant u/s.8, however, it alone cannot form the basis of conviction:

Held: Although the conduct of an accused may be a relevant fact u/s.8, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder – Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect – Thus, the conduct of the accused alone, though may be relevant u/s.8 cannot form the basis of conviction. [Para 61]

Evidence – Distinction between burden of proof and burden of explanation – Discussed. [Para 48]

Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – Crimes committed in complete secrecy – Difficulty faced by prosecution to lead direct evidence:

Held: Cases are frequently coming before the courts where the husband, due to strained marital relations and doubt as regards the character, has gone to the extent of killing his wife – These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence – No member of the family even if he is a witness of the crime, would come forward to depose against another family member – If an offence takes place inside the four walls of a house where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused – It is to resolve such a situation that s.106 exists in the statute book. [Paras 54, 55]

Code of Criminal Procedure, 1973 – ss.161(1), 162(1) – Evidence Act, 1872 – s.145:

Held: Statement made by a witness before the police u/s.161(1) can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to s.162(1) – Court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court – The words 'if duly proved' used in s.162 clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the IO – The statement before the IO can be used for contradiction but only after strict compliance with s.145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction. [Para 64]

Evidence Act, 1872 – s.145 – Cross-examination as to previous statements in writing – Appellant murdered his wife in their house – Case of the prosecution that the minor daughter (PW-3) was the sole eyewitness to the incident – However, she later turned hostile – Cross-examination by public prosecutor:

Held: In the present case, not only proper contradictions were not brought on record in the oral evidence of the hostile witnesses, but even those few that were brought on record, were not proved through the evidence of the IO – Such procedural lapses may lead to a very serious crime going unpunished –

In such circumstances, neither the public prosecutor nor the presiding officer of the trial court can afford to remain remiss or lackadaisical – After PW-3 was declared hostile, all that the public prosecutor did was to put few suggestions to her for the purposes of cross-examination – Surprisingly, even proper contradictions were not brought on record – PW-3 was not even appropriately confronted with her police statement – It is not sufficient for the public prosecutor while cross-examining a hostile witness to merely hurl suggestions, as mere suggestions have no evidentiary value – Trial judge also failed to play an active role in the present case. [Paras 67, 70, 71]

Criminal Justice System – Criminal Trial – Public Prosecutors – Appointment of – Consideration for appointment should not be political but only merit of the person:

Held: There should not be any element of political consideration in appointment to the post of public prosecutor, etc. – The only consideration for the Government should be the merit of the person – The person should be not only competent, but he should also be a man of impeccable character and integrity – He should be a person who should be able to work independently without any reservations, dictates or other constraints. [Para 67]

Criminal Trial – Cross-examination of a hostile witness by public prosecutor – Absence of effective and meaningful cross-examination – Deprecated– Evidence Act, 1872 – s.165 – Code of Criminal Procedure, 1973 – s.311– Duty of Trial Judge, Public Prosecutor:

Held: Public Prosecutors merely confront the hostile witness with his/her police statement recorded u/s.161 and contradict him/her with the same – They only bring the contradictions on record and thereafter prove such contradictions through the evidence of the IO – This is not sufficient – It is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth and also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded u/s.161 – If the questioning by the public prosecutor is not skilled, like in the case at hand, the result is that the State as a prosecuting agency will not be able to elicit the truth from the child witness – It is the duty of the court to arrive at the truth and subserve the ends of justice – Courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever

is being stated by the witnesses – The judge has to monitor the proceedings in aid of justice – Even if the prosecutor is remiss or lethargic in some ways, the court should control the proceedings effectively so that the ultimate objective that is the truth is arrived at – Court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency – Upon their failure showing indifference or adopting an attitude of aloofness, the trial judge must exercise the vast powers conferred u/s.165 of the Evidence Act and s. 311 CrPC – The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses in the appropriate context which he feels necessary for reaching the correct conclusion – The judge has uninhibited power to put questions to the witness either during the chief examination or cross-examination or even during re-examination for this purpose. [Paras 69, 73, 74]

Penal Code, 1860 – Exception 4 to s.300 – Benefit, when not available – Appellant murdered his wife in their house – Alternatively, appellant pleaded that the incident occurred in the heat of the moment without any pre-meditation as it could be a sudden fight between the two in the heat of passion upon a sudden quarrel:

Held: Exception 4 can be invoked if death is caused without premeditation; in a sudden fight; without the offenders having taken undue advantage or having acted in a cruel or unusual manner; and the fight must have been with the person killed – To bring a case within Exception 4, all the ingredients must be found – Benefit of Exception 4 cannot be given to the offender where he takes undue advantage or has acted in a cruel or an unusual manner – If the weapon used or the manner of attack by the assailant is disproportionate, that circumstance must be taken into consideration to decide whether undue advantage has been taken – Appellant inflicted as many as twelve blows with a knife on the deceased who was unarmed and helpless – Appellant took undue advantage and acted in a cruel manner – The present case is not one of culpable homicide not amounting to murder but of murder. [Paras 80, 82 and 83]

Words & Phrases – "prima facie case" – Meaning:

Held: The Latin expression prima facie means "at first sight", "at first view", or "based on first impression" – It means a case established by "prima facie evidence" which in turn means

"evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted" – In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment – In most legal proceedings, one party (typically, the plaintiff or the prosecutor) has a burden of proof, which requires them to present prima facie evidence for each element of the case or charges against the defendant – If they cannot present *prima facie* evidence, the initial claim may be dismissed without any need for a response by other parties – Evidence. [Para 49]

Case Law Cited

Shambhu Nath Mehra v. The State of Ajmer [1956] 1 SCR 199 **: AIR 1956 SC 404;** *Nagendra Sah v. State of Bihar* **(2021) 10 SCC 725;** *Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra* [2012] 7 SCR 1083 **: (2012) 10 SCC 373;** *Trimukh Maroti Kirkan v. State of Maharashtra* [2006] Supp. 7 SCR 156 **: (2006) 10 SCC 681;** *State of W.B. v. Mir Mohammad Omar and Ors.* [2000] Supp. 2 SCR 712 **: (2000) 8 SCC 382;** *Balvir Singh v. State of Uttarakhand* [2023] 12 SCR 815 **: (2023) SCC OnLine 1261;** *Ram Gulam Chaudhary & Ors. v. State of Bihar* [2001] Supp. 3 SCR 279 **: (2001) 8 SCC 311;** *Madan Singh v. State of Rajasthan* **1979 SCC (Cri) 56;** *Mohd. Aslam v. State of Maharashtra* **(2001) 9 SCC 362;** *Anter Singh v. State of Rajasthan* [2004] 2 SCR 123 **: (2004) 10 SCC 657;** *A.N. Venkatesh and Anr. v. State of Karnataka* **(2005) 7 SCC 714;** *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* [2003] Supp. 1 SCR 130 **: (2005) 11 SCC 600;** *V.K. Mishra v. State of Uttarakhand* **(2015) 9 SCC 588;** *Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors.* 2004 3 SCR 1050 **: (2004) 4 SCC 158;** *State of Rajasthan vs. Ani alias Hanif & Ors.* **AIR (1997) SC 1023;** *Vishal Singh v. State of Rajasthan* [2009] 3 SCR 444 **: (2009) Cri. LJ 2243;** *Kikar Singh v. State of Rajasthan* [1993] 3 SCR 696 **: AIR 1993 SC 2426 – relied on.**

Sharad Birdhichand Sarda v. State of Maharashtra [1985] 1 SCR 88 **: (1984) 4 SCC 116 – referred to.**

Director of Public Prosecutions, Transwal v. Minister of Justice and Constitutional Development **(2009) 4 SA 222 (CC) – referred to.**

Books and Periodicals Cited

Professor Glanville Williams – Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion – para 527 negative averments and para 528 – "require affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958; Webster's Third International Dictionary (1961 Edn.) – referred to.

List of Acts

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

List of Keywords

Section 106 of Evidence Act, 1872; Fact especially within knowledge; Murder; Prima facie case; Foundational facts; Relevant fact; Conduct of accused; Weapon of offence; Intention; Disclosure statement; Discovery panchnama; Sole eyewitness; Hostile witnesses; Cross-examination of hostile witness; Contradicting witness; Contradictions; Suggestions; Confrontation with police statement; Confronting hostile witness; Public prosecutor; Child witness; Participatory role; Mere tape recorders; Inside the house; Complete secrecy; Positive facts; Negative facts; Exception 4 to s.300, Penal Code, 1860; Cruel manner; Mitigating circumstances.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 437 of 2015

From the Judgment and Order dated 23.05.2014 of the High Court of Delhi at New Delhi in CRLA No. 320 of 1998

Appearances for Parties

Rishi Malhotra, Adv. for the Appellant.

Apoorv Kurup, Mukesh Kumar Maroria, Sanjay Kumar Tyagi, Mani Munjal, Vinayak Sharma, Raman Yadav, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

J. B. Pardiwala, J.:

For the convenience of exposition, this judgment is divided in the following parts: -

INDEX*

1. This appeal is at the instance of a convict accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, **"the IPC"**) and is directed against the judgment and order dated 23.05.2014 passed by the High Court of Delhi in Criminal Appeal No. 320 of 1998 filed by the appellant herein by which the High Court dismissed the appeal and thereby affirmed the judgment and order of conviction passed by the Additional Sessions Judge, Karkardooma Court, Delhi in Sessions Case No. 176 of 1996 holding the appellant guilty of the offence of murder punishable under Section 302 of the IPC and sentencing him to undergo life imprisonment with a fine of Rs. 5,000/-. In the event of default in the payment of the fine, the appellant was directed to undergo further rigorous imprisonment for six months.

* Ed. Note: Pagination as per the original Judgment.

A. CASE OF THE PROSECUTION

2. The deceased, namely, Saira was married to the appellant. The marriage of the deceased with the appellant was solemnised in 1982 in accordance with the Muslim rites and customs. In the wedlock, a daughter named Shaheena was born, who, at the time of the incident in 1995, was five years of age.

3. On 29.12.1995, at about 4:00 am, a wireless operator of the Delhi Police informed one lady constable who was on duty in a PCR that a woman had been stabbed in House No. 220, Gali No. 3, Mustafabad and that a responsible police officer may be asked to reach at the spot of occurrence. The said information was conveyed by the lady constable to the duty officer at P.S. Gokulpuri, who, in turn, reduced the same in writing and forwarded a copy thereof to S.I. Mohkam Singh for inquiry.

4. When S.I. Mohkam Singh, along with the SHO of the concerned Police Station, reached the place of occurrence, he found the deceased lying in a pool of blood, having suffered multiple deep stabbed wounds in the abdomen and other parts of the body. The appellant herein was also present at the place of occurrence. It was noticed that the appellant had also suffered a few superficial injuries. Both, the deceased and the appellant, were sent to the hospital where the deceased was declared as brought dead and the appellant was declared fit for the purpose of interrogation and was discharged after some preliminary treatment.

5. The investigation revealed that the marital relationship of the appellant with the deceased was strained on account of the deceased leaving the house all of a sudden without the permission of the appellant and thereafter returning late in the night hours. This was not liked by the appellant. On several occasions, altercations used to take place between the appellant and the deceased on such issues. It is the case of the prosecution that on the fateful night of the incident, an altercation took place between the appellant and the deceased, as a result, the appellant is alleged to have inflicted stab injuries indiscriminately with a knife all over the body of the deceased. It is also the case of the prosecution that the minor daughter Shaheena was the sole eyewitness to the incident.

6. In such circumstances referred to above, a rukka was prepared by the Investigating Officer and sent to the concerned Police Station based upon which the First Information Report No. 728 of 1995 was registered against the appellant for the offence punishable under Section 302 of the IPC.

7. The contents of the FIR are reproduced herein below:

"FIRST INFORMATION REPORT

First Information of a Cognisable Crime Reported under Section 154 Cr.PC.

FIR NO. 728/95

Date and hour of occurrence

1	*Date AND*	*29-12-95 AT 4 AM*
2	*Name and residence of information and complainant*	*DD No. 2A Dt: 20.12.95 at 7 AM Writing of Information S.I. Mohkam Singh.*
3	*Brief description of the offence (with section) and of property carried off, if any*	*Under Section 302 IPC*
4	*Place of occurrence and distance and direction from Police Station*	
5	*Name and Address of the Criminal*	*House No. 220 Old Hustafabi Uttar Pradesh, Distance 1 ½*
6	*Steps taken regarding investigation explanation of delay in recording information*	*No one stand responsible for such delay in this regard.*
7	*Date and time of dispatch from police station*	*Thro special way.*

Through wireless information was received that in Gali No.2 in House No. 222 near illegible factory knife blow has been given and some one be sent to the place of occurrence. On receiving the information, Constable Belt No.1 and SI Karam Singh left the police station

in government vehicle and constable illegible on the spot House no. 220 Gali No. 3 Old Mustaffa Bad. Over there the dead body of the deceased Saira was found on whose neck and stomach there were deep injuries and blood was pouring out over there, Aneesh husband of Saira was also present on the spot illegible. From there, we took them in government vehicle PR from the spot by constable available 1258 in government vehicle to GTB Hospital and ML No. illegible was prepared in which Saira was mentioned in writing illegible. On relatives coming, statements were recorded on the basis of illegible offence under Section 302/324 IPC was registered on diary at No.1175. Information may be noted in the rojnaamcha and myself illegible with crime team along with photographer proceeded of the occurrence and prepared report. On 29.12.95 at about 4 p.m. went to the House no. 220 Gali No. 3 Old Mustaffa Bad and the writing was made on 29.12.95 illegible signed of local SI PS Gokulpuri 27.12.95 police proceeding at this time on receipt of these writing in Hindi the case regarding the office by constable Gayasudeen No.11751. Case has been registered in the register."

8. In the course of the investigation, the Investigating Officer recorded the statement of Shaheena, the five-year old daughter of the deceased. Shaheena in her police statement stated that upon hearing the cries and shouts in the night hours, she woke up and witnessed her father, i.e., the appellant herein inflicting knife injuries on the body of her mother, i.e., the deceased.

9. The post-mortem of the dead body of the deceased was performed at the G.T.B. Hospital, Shahdara, Delhi. In the post-mortem report, the following injuries came to be noted:

> *"1. Incised wound 4 cm x 1.04 cm present over outer aspect of wound of left thumb.*
>
> *2. Incised wound 2 cm x 0.8 cm x 0.7 cm present over palmar aspect of proximal phalanx of left thumb.*
>
> *3. Incised wound 1 cm x 0.3 cm 0.3 cm present over dorsal aspect of middle phalanx of left ring finger.*

4. *Linear scratch 2 cm x 0.1 present over front of left arm, 4 cm above elbow joint.*

5. *Incised wound 6 cm x 1 cm x 0.6 cm present over front and inner aspect of left knee joint.*

6. *Incised wound 5 cm x 1 cm x 2 cm present over outer aspect of right thigh placed 7 cm above the knee joint.*

7. *Incised wound 1.3 cm x 0.1 x 0.5 cm present over palmer aspect of terminal phalanx of right middle finger.*

8. *Incised wound 2 cm x 0.3 x 0.5 cm present over palmar aspect of phalanx of right ring finger cutting the underlined wound.*

9. *Liner scratch 4 cm x 0.2 cm present over outer aspect of top of right shoulder.*

10. *Incised stab wound 4 cm x 0.5 cm present over front of abdomen in midline 2.5 cm below the xphoid process.*

    It is obliquely placed clean cut margin and one angle of the wound being more acute than the other on dissection. The track of the wound is going laterally, upwards and posteriorly, cutting the left lobe of liver cutting the pericardia sec. and dominated on cutting an entry the right auricle of heart. Haemorrhages and extravasation of blood presentation with the track of wound. Depth of wound is 9 cm.

11. *Incised stab wound present obliquely in midline over front of abdomen with interesting protruding out of the wound. It measures 4.5 x 0.2 cm and is placed 5 cm above the umbilicus. It has clean cut margin and one angle of the wound is more acute than the other. On dissection, the track of the wound is going up posteriorly and laterally and dominated by cutting the mesenteric blood vessels. Haemorrhage present in the mesentery depth of wound is 8 cm.*

12. *Incised cut through wound of neck measuring 10 cm x 2 cm into 4 cm present horizontally above the thyroid*

cartilage. Upper margin of the wound is placed 55 cm below chin and lower margin is 6 cm above the sterna notch. All soft tissues of the neck, measure blood vessel trachea and oesophagus have been cut through into till the vertebral column. Haemorrhage and extra vacation or blood present in the soft tissues of the wound.

13. *Red abrasion 2.5 cm x 0.3 cm present in midline over front of neck 1.5 cm below chin.*

14. *Red abrasion 2 cm. x 0.3 cm over left side of face 1.5 cm below the left eye."*

10. The weapon of offence, i.e., the knife was also discovered at the instance of the appellant herein by drawing a panchnama under the provisions of Section 27 of the Indian Evidence Act, 1872 (for short, '**the Evidence Act**'). The blood-stained clothes of the deceased as well as those of the appellant herein were collected and sent to the Forensic Science Laboratory for chemical analysis. The statements of various other witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, the "**Cr.P.C.**").

11. Upon completion of the investigation, the Investigating Officer filed a chargesheet for the offence punishable under Section 302 of the IPC in the Court of Metropolitan Magistrate, Karkardooma Courts, Delhi, who, in turn, committed the case to the Court of Sessions Judge, Karkardooma Courts, which culminated in the Sessions Case No. 176 of 1996.

12. The appellant pleaded not guilty to the charge framed by the Sessions Court and claimed to be tried.

13. The prosecution examined 17 witnesses in support of the charge. Shaheena (**PW-3**), was examined as the sole eye-witness to the incident. Shakeel Ahmad (**PW-4**), the brother of the deceased, and Rafiq (**PW-11**), the father of the deceased, were examined to establish the demand of dowry by the appellant from the deceased, and the harassment caused by him towards his deceased wife. Dr. Sayed Ali (**PW-9**), the neighbour of the appellant, was examined as a panch witness to prove the contents of the discovery panchnama of the knife used in the commission of the crime.

14. It is the case of the prosecution that the knife was discovered from a drain outside the house of the appellant, as pointed out by him, in the presence of the Investigating Officer and the panch witnesses.

15. The prosecution also examined the following official witnesses:

    a. Constable Munni Khan, who was on duty at the PCR at the time of the incident (**PW-5**)

    b. Constable Govind Singh, duty officer at the Gokulpuri P.S. at the time of the incident (**PW-8)**

    c. Constable Giasuddin, witness to the discovery of the knife (**PW-16**)

    d. S.I. Mohkam Singh, Investigating Officer of the case (**PW-17**)

16. It is pertinent to note that Shaheena (PW-3), the sole eye-witness to the incident, failed to support the case of the prosecution and was declared a hostile witness. She deposed before the trial court that upon hearing the noise and shrieks of her parents, she woke up in the night hours and saw that thieves had entered into their house and were assaulting her parents. She deposed that the thieves had a knife and they inflicted knife injuries on both her parents. She, however, admitted that she saw her mother lying on the floor bleeding profusely. However, she denied that it was the appellant who had inflicted injuries upon the deceased with a knife. She also denied that the relations of her parents were strained.

17. Dr. Sayed Ali, PW-9, the panch witness to the discovery panchnama also did not support the case of the prosecution and was declared as a hostile witness.

18. Dr. Anil Kohli, PW-1, who conducted the post-mortem on the dead body of the deceased, deposed that all the injuries were ante-mortem in nature and were sufficient in the ordinary course of nature to cause death, and more particularly the injuries no. 1-12 respectively were possible by a dagger/knife.

19. Upon conclusion of the oral evidence, the further statement of the appellant was recorded by the trial court. In his statement recorded under Section 313 of the Cr.P.C., the appellant stated as under:

> *"I along with my wife deceased and my daughter Shaheena was sleeping in my house. Two persons caused injuries*

to my wife. I tried to save her but I was also hurt by those persons. I do not know as to why those strangers caused injuries to my wife. I am innocent. After causing the injuries those persons fled away from there."

20. The trial court, upon appreciation of the oral as well as documentary evidence on the record, held the appellant guilty of the offence of murder punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life and pay a fine of Rs. 5,000/. In the event of default in the payment of the fine, the trial court directed the appellant to undergo further rigorous imprisonment for six months.

21. The appellant, feeling dissatisfied with the judgment and order of conviction passed by the trial court, went in appeal before the High Court. The High Court dismissed the appeal and thereby affirmed the judgment and order of the conviction passed by the trial court. The High Court, while affirming the judgment and order of conviction passed by the trial court, held as under:

"10. PW-17's testimony that the appellant refused to make the statement as to the incident and on the other hand, his disclosure that he would make the statement later on, on arrival of his relatives speaks volume that the appellant wanted to invent some story by gaining time. Had two intruders actually caused injuries on the person of deceased Saira as has been subsequently propounded by the appellant, he would have immediately informed the police about the same so that the culprits are immediately caught and brought to book. PW-17's testimony that the appellant wanted to make the statement later on only on arrival of his relatives was not challenged by the appellant in PW-17's cross examination. At this stage, it would be appropriate to advert to the explanation given by the appellant in reply to question No. 12 in his statement under Section 313 Cr.P.C. which is extracted as under:-

*"**Q.12** Have you anything else to say?*

***Ans.** I along with my wife, deceased, and my daughter Siana was sleeping in my house. Two persons caused*

injuries to my wife. I tried to save her but I was also hurt by those persons. I do not know as to why those strangers caused injuries to my wife. I am innocent. After causing the injuries those persons fled away from there."

11. The explanation that two persons had caused injuries on the person of deceased Saira was admittedly not put to PW-17 in his cross examination. Had there been any truth in the explanation propounded by the appellant, he would not have been content to simply state that the injuries were caused by two persons, he would have given the detailed description (as far as possible) of the assailants as also the motive as to why the deceased alone was targeted particularly, when robbery was not the motive of the injuries alleged to have been inflicted by the two unknown intruders. Intrusion into the house by unknown third persons would have resulted in tell tail and revelatory evidence. There is no indication or suggestion relating to the said evidence.

xxx xxx xxx

18. As stated earlier, it is proved by overwhelming evidence and is not even disputed by the appellant that deceased Saira was inflicted injuries inside the matrimonial home (of the appellant and the deceased). Initially, the appellant was completely silent as to how his deceased wife suffered injuries. He told the I.O. that he would make a statement later on only when his relations would arrive. As we have pointed out earlier, in cross-examination of the I.O. and even in his statement under Section 313 Cr.P.C., the appellant has not given the details of the intruders. From the appellant's conduct in not disclosing to the I.O. as to how his deceased wife suffered fatal injuries, there was a lurking doubt even at that very time that it was only the appellant who was responsible for causing the injuries unless something material was really brought out by the appellant. Nothing prevented the appellant to have disclosed about the incident immediately when the

police reached the spot that the injuries were inflicted on his deceased wife by two unknown intruders. There was no indication or giveaway to show the presence of third parties who intentionally targeted the deceased. All these facts taken together, i.e. nondisclosure of the information about the incident to the police, not giving the details of the two intruders even in his statement under Section 313 Cr.P.C. etc. would really show that the explanation given by the appellant was false which would become an additional link in the chain of circumstantial evidence in view of Manu Sao v. State of Bihar, (2010) 12 SCC 310.

19.In Munna Kumar Upadhyay @ Munna Upadhyaya v. State of Andhra Pradesh, (2012) 6 SCC 174, it was reiterated that if the accused gave incorrect or false answers during the course of his statement under Section 313 Cr.P.C., the Court can draw an adverse inference against him. In para 76 of the report, the Supreme Court observed as under:-

> *"76. If the accused gave incorrect or false answers during the course of his statement under Section 313 Cr.P.C., the court can draw an adverse inference against him. In the present case, we are of the considered opinion that the accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain but had even given incorrect and false answers. In the present case, the Court not only draws an adverse inference, but such conduct of the accused would also tilt the case in favour of the prosecution."*

20. We are conscious of the fact that Shaheena (PW-3) the appellant's daughter has not supported the prosecution version that the appellant was the perpetrator of the crime. She, in fact, came out with the story which is in line with the explanation given by the appellant in his examination under Section 313 Cr.P.C. But at the same time, as stated above, no such explanation was given by the appellant to the I.O. when he reached the spot immediately on

getting information of the incident. No such question was even put to the I.O. when he entered the witness box as PW-17. The appellant did not choose himself to enter the witness box under Section 315 Cr.P.C. and subject himself for cross-examination in order to explain the peculiar circumstances in which his wife was murdered within his small house. What is more intriguing is why the intruders would keep their hands off in inflicting injuries on the appellant's person who as per his own showing tried to save his wife when she was being inflicted injuries by the two intruders. Therefore, we totally reject the so-called explanation given for the first time by the appellant in his examination under Section 313 Cr.P.C. The fact that the deceased's murder was committed within the four corners of the small house in the appellant's presence and the fact that the appellant even failed to disclose to the I.O. as to how his deceased wife suffered injuries and the giving of a false explanation unerringly point to the guilt of the appellant. It is firmly and clearly established that it was the appellant and the appellant alone who was the perpetrator of the crime.

21. It is true that S.I. Mohkam Singh (PW-17) had admitted in his crossexamination that the appellant's daughter had disclosed even before sending the rukka to the Police Station that the appellant had committed the gruesome act and that this fact not been mentioned in the rukka does not in any way belies the prosecution version. Perhaps the I.O. thought that it would be inappropriate to record the statement of a child aged about five years for the purpose of registration of an FIR against her father and to first independently investigate and come to more solid evidence. It may also be mentioned that during the investigation of this case, an application was moved by the appellant's father for getting the statement of Shaheena (PW-3) recorded under Section 164 Cr.P.C. which was not recorded by the learned Metropolitan Magistrate as the child was found to be tutored. It seems that the I.O. preferred not to be criticised for getting the case registered

on the basis of statement of a child of tender age. And so he did not record Shaheena's (PW-3) statement in the rukka.

22. We are conscious of the fact that Shaheena (PW-3) has not supported the prosecution version that her father, the appellant had caused injuries on the person of her deceased mother. The same, however, is of no consequence as the child was of tender years and as observed by the Trial Court was tutored by the appellant's father. The appellant, however, cannot make any advantage if PW-3 did not support the prosecution version.

23. We are not going to attach much importance to the alleged harassment and the demand of dowry by the appellant because of the contradictions and the discrepancies in the statements of PWs 4 and 11. Otherwise also, this is not a case under Section 306/304-B IPC and thus, the alleged harassment was of no consequence and could at best have provided some motive for commission of the crime.

24. In view of the foregoing discussion, we are of the view that the appeal is devoid of any merit; the same is accordingly dismissed. The judgment and order on sentence passed by the Trial Court are affirmed.

25. The appeal stands disposed of in above terms."

22. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

23. Mr. Rishi Malhotra, the learned counsel appearing for the appellant, submitted that the entire case of the prosecution rests on circumstantial evidence and thus all the circumstances from which the conclusion of guilt is to be drawn should be carefully established by the prosecution and the facts so established should be consistent only with the hypothesis of the guilt of the accused and inconsistent with the innocence of the accused. The counsel placed reliance on the decision of this Court in ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in (1984) 4 SCC 116 to fortify his submission

that the prosecution could be said to have failed to prove its case beyond reasonable doubt and could not have taken recourse to Section 106 of the Evidence Act in the absence of any foundational facts being laid for the same.

24. He further submitted that the sole eye-witness, Shaheena (PW-3), did not support the case of the prosecution and her oral evidence rather fortified the defence taken by the accused that some strangers entered the house in the night hours and caused injuries to the appellant and the deceased.

25. He submitted that Sayed Ali (PW-9), the panch witness examined by the prosecution to prove the discovery of the knife, also turned hostile and failed to prove the contents of the discovery panchnama.

26. One another submission canvassed was that the S.I. Mohkam Singh (PW-17), in his testimony before the trial court, admitted that he had questioned Shaheena (PW-3) before forwarding the written report/rukka to the police station. However, the said fact is missing in the written report/rukka prepared after completing the inquiry. This according to the learned counsel indicates that the testimony of S.I. Mohkam Singh (PW-17) is unworthy of reliance.

27. He submitted that the sole basis to convict the appellant was that the explanation offered by him was not sufficient to save him from the adverse inference drawn against him under Section 106 of the Evidence Act. However, the High Court failed to appreciate that the prosecution has to stand on its own legs and prove its case beyond reasonable doubt. Prosecution cannot throw the entire burden on the accused to prove his innocence.

28. He submitted that the courts below ought to have taken into consideration the conduct of the appellant at the time of the alleged incident. Had the appellant been the assailant, he would not have stayed back at the place of occurrence, but would have rather ran away after committing the alleged crime.

29. He also submitted that the prosecution could not establish any motive on the part of the appellant to commit the alleged crime. Both the trial court and the High Court proceeded on the assumption that as the deceased might have arrived at home late in the night, the same perhaps could have led to an altercation between the two leading to the incident. However, no witness has been examined in this regard.

30. In the last, the learned counsel submitted that even if the entire case of the prosecution is believed or accepted to be true, still the case would fall within the Exception 4 to Section 300 of the IPC. In other words, the submission is that the alleged crime could be said to have been committed without pre-meditation in a sudden fight upon a sudden quarrel.

C. SUBMISSIONS ON BEHALF OF THE STATE

31. Mr. Apoorv Kurup, the learned counsel appearing for the State submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in dismissing the appeal filed by the appellant and thereby affirming the judgment and order of conviction passed by the trial court.

32. He submitted that the following incriminating circumstances, in the form of foundational facts, were rightly taken into consideration by both the courts below for the purpose of invoking Section 106 of the Evidence Act.

    a. The incident occurred inside the house in which the appellant and the deceased resided. The deceased was found lying practically dead in a pool of blood.

    b. The appellant was present at the place of the incident till the time the Investigating Officer reached the house of the appellant upon receiving the information from the PW-8.

    c. The appellant failed to disclose before the Investigating Officer at the earliest point of time that two unidentified individuals entered the house and laid an assault.

    d. The explanation, or rather the defence, put forward by the appellant that two unidentified individuals entered the house and inflicted injuries on the deceased is falsified by the other circumstances on record.

    e. False explanation offered by the accused in his further statement recorded under Section 313 of the Cr.P.C. is an additional incriminating circumstance.

    f. The clothes worn by the appellant at the time of the incident had blood stains matching with the blood group of the deceased, i.e., 'AB' positive.

g. Although the prosecution might not have been able to establish the discovery of the weapon at the instance of the appellant in accordance with Section 27 of the Evidence Act, yet the fact that the appellant made a statement before the Investigating Officer in this regard and led the Investigating Officer along with the panch witnesses to a nearby drain from where the knife is said to have been discovered, would reflect on his conduct, which is a relevant fact under Section 8 of the Evidence Act.

33. In such circumstances referred to above, the learned counsel appearing for the State submitted that there being no merit in the appeal the same may be dismissed.

D. ANALYSIS

34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

i. Principles of law governing the applicability of Section 106 of the Evidence Act

35. Section 106 of the Evidence Act reads as follows:

> *"**106. Burden of proving fact especially within knowledge**.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*
>
> *Illustration*
>
> *(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*
>
> *(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."*

36. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not

in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

37. In ***Shambhu Nath Mehra v. The State of Ajmer***, AIR 1956 SC 404, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under:

> *"11. … The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.*
>
> *It is evident that that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are* Attygalle *v.* The King, *1936 PC 169 (AIR V 23) (A) and* Seneviratne *v.* R. *1936-3 All ER 36 AT P. 49 (B)."*

38. The aforesaid decision of ***Shambhu Nath*** (supra) has been referred to and relied upon in ***Nagendra Sah* v. *State of Bihar***, (2021) 10 SCC 725, wherein this Court observed as under:

> *"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about*

the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(Emphasis supplied)

39. In ***Tulshiram Sahadu Suryawanshi and Anr. v. State of Maharashtra***, (2012) 10 SCC 373, this Court observed as under:

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court

to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar and Ors. *[(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)*

> *"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In* Shambhu Nath Mehra v. The State of Ajmer *[AIR 1956 SC 404 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus :*
>
> > *'11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.*
> >
> > *The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.'"*
>
> (Emphasis supplied)

40. In ***Trimukh Maroti Kirkan v. State of Maharashtra***, (2006) 10 SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations made therein are considered relevant in the facts of the present case:

> *"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of*

circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland *v.* Director of Public Prosecutions *[1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in* State of Punjab *v.* Karnail Singh *[(2003) 11 SCC 271 : 2004 SCC (Cri) 135].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:*

> *"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."*

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

xxx xxx xxx

> *22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. …"*
>
> (Emphasis supplied)

41. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of ***State of W.B. v. Mir Mohammad Omar and Ors.***, (2000) 8 SCC 382. In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364, read with Section 34 of the IPC, and sentenced them to ten years rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them. The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paras 31 to 34:

> *"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a recognized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption*

is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody."

(Emphasis supplied)

42. Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

43. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

44. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a *prima facie* case is established by such evidence, the onus does not shift to the accused.

45. Section 106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

> *"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."*
>
> (Emphasis supplied)

46. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the *evidential burden* or burden of introducing evidence in proof of one's case as opposed to the *persuasive burden* or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — "require affirmative counter-evidence" at page 438 and foil, of *Kenny's outlines of Criminal Law*, 17th Edn. 1958.

47. But Section 106 of the Evidence Act has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

48. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with counter-vailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a *prima facie* case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may, therefore, as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See: ***Balvir Singh v. State of Uttarakhand***, 2023 SCC OnLine 1261]

ii. What is "*prima facie case*" (foundational facts) in the context of Section 106 of the Evidence Act?

49. The Latin expression *prima facie* means "at first sight", "at first view", or "based on first impression". According to *Webster's Third International Dictionary* (1961 Edn.), "prima facie case" means a case established by "prima facie evidence" which in turn means "evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted". In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment. In most legal proceedings, one party (typically, the plaintiff or the prosecutor) has a burden of proof, which requires them to present prima facie evidence for each element of the case or charges against the defendant. If they cannot present prima facie evidence, the initial claim may be dismissed without any need for a response by other parties.

50. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused.

51. The presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved.

52. To explain what constitutes a *prima facie* case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in ***Mir Mohammad*** (supra), wherein this Court has observed in paras 36 and 37 respectively as under:

> *"36. In this context we may profitably utilize the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*
>
> *37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."*
>
> (Emphasis supplied)

53. We should also look into the decision of this Court in the case of ***Ram Gulam Chaudhary & Ors. v. State of Bihar***, (2001) 8 SCC 311, wherein this Court made the following observations in paragraph 24 as under:

> *"24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The appellants then carried away the body.*

What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr. Mishra."

(Emphasis supplied)

54. Cases are frequently coming before the courts where the husband, due to strained marital relations and doubt as regards the character, has gone to the extent of killing his wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, like in the case at hand, even if he is a witness of the crime, would come forward to depose against another family member.

55. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the

statute book. In the case of ***Trimukh Maroti Kirkan*** (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

56. We are of the view that the following foundational facts, which were duly proved, justified the courts below in invoking the principles enshrined under Section 106 of the Evidence Act:

a) The offence took place inside the four walls of the house in which the appellant, deceased and their 5-year-old daughter were living. The incident occurred in the early morning hours between 3.30 am and 4.00 am.

b) When the Investigating Officer reached the house of the appellant, he found the deceased lying in a pool of blood. The appellant was also present at his house.

c) The defence put forward by the appellant that two unidentified persons entered the house and inflicted injuries on the deceased and also on his body is found to be false.

d) The clothes worn by the appellant at the time of the incident were collected by the Investigating Officer. The clothes had blood stains. According to the Forensic Science Laboratory report, the blood stains on the clothes of the appellant matched with the blood group of the deceased i.e., AB+

e) The conduct of the appellant in leading the Investigating Officer and others to a drain nearby his house and the discovery of the knife from the drain is a relevant fact under Section 8 of the Evidence Act. In other words, the evidence of the circumstance simpliciter that the appellant pointed out to the Investigating Officer the place where he threw away the weapon of offence i.e., knife would be admissible as ‘conduct’ under Section 8 irrespective of the fact whether the statement made by the

accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.

iii. Discovery of weapon under Section 27 of the Evidence Act

57. In ***Madan Singh* v. *State of Rajasthan***, 1979 SCC (Cri) 56, it was observed that where the evidence of the Investigating Officer who discovered the material objects is convincing, the evidence as to discovery need not be rejected on the ground that the panch witnesses did not support the prosecution version. Similar view was expressed in ***Mohd. Aslam* v. *State of Maharashtra***, (2001) 9 SCC 362.

58. In ***Anter Singh v. State of Rajasthan***, (2004) 10 SCC 657, it was further held: -

> *"10. … even if Panch witness turn hostile which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."*

59. Even while discarding the evidence in the form of discovery panchnama, the conduct of the appellant herein would be relevant under Section 8 of the Evidence Act. The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the Evidence Act, as this Court observed in ***A.N. Venkatesh and Anr.* v. *State of Karnataka***, (2005) 7 SCC 714: -

> *"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400]. Even if we hold that the disclosure statement made by the accused-appellants (Ex. P-15 and P-16) is not admissible*

under Section 27 of the Evidence Act, still it is relevant under Section 8. …"

60. In the ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***, (2005) 11 SCC 600, the two provisions i.e. Section 8 and Section 27 of the Evidence Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Evidence Act, wherein it was held:

"205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explains the ambit of the word 'conduct'. They are:

"Explanation 1.- The word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.- When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute "conduct" unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention:

"(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence— 'the police are coming to look for the man who robbed B', and that immediately afterwards A ran away, are relevant.

* * *

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

206. We have already noticed the distinction highlighted in Prakash Chand case (supra) between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case. In Om Prakash case (supra) this Court held that: (SCC p.262, para 14)

"Even apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.""

(Emphasis supplied)

61. However, in the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence

on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.

iv. Cross-examination by the public prosecutor of a hostile witness

62. In the case at hand, Shaheena (PW-3) was the most important witness for the prosecution, being the solitary eye witness to the incident. Shaheena (PW-3) at the relevant point of time was just five years old. Her childhood might have been very disturbed on account of the strained relations of her parents. The unfortunate incident must have had a lasting effect on her. However, when she entered the witness box, she decided to resile from her previous statement. Had she deposed as stated by her in her police statement then, probably, the prosecution would not have felt the need to invoke Section 106 of the Evidence Act. There could be innumerable reasons for a witness to resile from his/her police statement and turn hostile. Here is a case in which a five-year-old daughter might have resiled thinking that having lost her mother, the father was the only person who may take care of her and bring her up. However, why she turned hostile is not important. What is important is the role of the public prosecutor after a prime witness, more particularly a child witness of tender age, turns hostile in a murder trial. When any prosecution witness turns hostile and the public prosecutor seeks permission of the trial court to cross-examine such witness then that witness is like any other witness. The witness no longer remains the prosecution witness.

63. Section 162 Cr.P.C. bars the use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (*i*) of contradicting such witness by an accused under Section 145 of the Evidence Act; (*ii*) the contradiction of such witness also by the prosecution but with the leave of the Court; and (*iii*) the re-examination of the witness if necessary.

64. The court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words *'if duly proved'* used in Section 162 Cr.P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as under:

> *"**145.Cross-examination as to previous statements in writing**. — A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."*

66. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need of further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to

the passage marked for the purpose of contradiction, it will then be proved in the deposition of the Investigating Officer who, again, by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot *suo motu* make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction." [See: ***V.K. Mishra v. State of Uttarakhand*** : (2015 9 SCC 588]

67. In the case at hand, not only proper contradictions were not brought on record in the oral evidence of the hostile witnesses, but even those few that were brought on record, were not proved through the evidence of the Investigating Officer. Does the State expect Section 106 of the Evidence Act to come to its aid in every criminal prosecution. At times, such procedural lapses may lead to a very serious crime going unpunished. Any crime committed against an individual is a crime against the entire society. In such circumstances, neither the public prosecutor nor the presiding officer of the trial court can afford to remain remiss or lackadaisical in any manner. Time and again, this Court has, through its judgments, said that there should not be any element of political consideration in the matters like appointment to the post of public prosecutor, etc. The only consideration for the Government should be the merit of the person. The person should be not only competent, but he should also be a man of impeccable character and integrity. He should be a person who should be able to work independently without any reservations, dictates or other constraints. The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions, are one of judges' natural counterparts in the trial proceedings and also in the broader context of management of the system of criminal law.

68. A criminal case is built upon the edifice of evidence (whether it is direct evidence or circumstantial evidence) that is admissible in law. Free and fair trial is the very foundation of the criminal jurisprudence. There is a reasonable apprehension in the mind of the public at

large that the criminal trial is neither free nor fair with the Prosecutor appointed by the State Government conducting the trial in a manner where frequently the prosecution witnesses turn hostile.

69. Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross-examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr.P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This is not sufficient. The object of the cross-examination is to impeach the accuracy, credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. What we are trying to convey is that it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement.

70. In the case at hand, we have noticed that after Shaheena (PW-3) was declared hostile, all that the public prosecutor did was to put few suggestions to her for the purposes of cross-examination. Surprisingly, even proper contradictions were not brought on record. In other words, the PW-3 was not even appropriately confronted with her police statement. It is not sufficient for the public prosecutor while cross-examining a hostile witness to merely hurl suggestions, as mere suggestions have no evidentiary value.

71. The trial judge also failed to play an active role in the present case. The trial judge should have been conscious of the fact that Shaheena (PW-3) was asked to depose in the open court in a charged atmosphere and that too in the presence of the accused who was none other than her own father.

72. The impact of a court appearance on a child and the duty of the court towards a child witness have been very succinctly explained by the Constitutional Court of South Africa in the case of ***Director of Public Prosecutions, Transwal v. Minister of Justice and Constitutional Development*** reported in (2009) 4 SA 222 (CC). We quote the relevant observations as under:

> *"101. A court operates in an atmosphere which is intended to be imposing. It is an atmosphere which is foreign to a child. The child sits alone in the witness stand, away from supportive relatives such as a parent. The child has to testify in the presence of the alleged abuser and other strangers including the presiding judicial officer, the accused's legal representative, the court orderly, the prosecutor and other court officials. While the child may have met the prosecutor before - at least one assumes that the prosecutor would have interviewed the child in preparing for trial - the conversation now takes place in a context that is probably bewildering and frightening to the child. Unless appropriately adapted to a child, the effect of the courtroom atmosphere on the child may be to reduce the child to a state of terrified silence. Instances of children who have been so frightened by being introduced into the alien atmosphere of the courtroom that they refuse to say anything are not unknown."*

So far as conduct of the competency assessment of the child is concerned, it was held as follows:

> *"102. The child would be questioned by the judicial officer in order to satisfy himself or herself that the child understands that he or she is under a duty to speak the truth or understands the import of the oath. Regrettably this questioning, although well-meaning, is often theoretical in nature and may increase the child's sense of confusion and terror. The child may wonder why he or she is being subjected to this questioning. That is not all.*
>
> *xxx xxx xxx*
>
> *104. If the child decides to speak, then the prosecutor will take him or her through his or her evidence. The questioning*

of a child requires special skills, similar to those required to run day care centres or to teach younger children. Questioning a child in court is no exception: it requires a skill. Regrettably, not all of our prosecutors are adequately trained in this area, although quite a few have developed the necessary understanding and skill to question children in the court room environment…"

(Emphasis supplied)

73. If the questioning by the public prosecutor is not skilled, like in the case at hand, the result is that the State as a prosecuting agency will not be able to elicit the truth from the child witness. It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice. Even if the prosecutor is remiss or lethargic in some ways, the court should control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the trial judge must exercise the vast powers conferred under Section 165 of the Evidence Act and Section 311 of the Cr.P.C. respectively to elicit all the necessary materials by playing an active role in the evidence collecting process. (See: ***Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors.***, (2004) 4 SCC 158).

74. The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during the chief examination or cross-examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. (See: (para 12) of ***State of Rajasthan vs. Ani alias Hanif & Ors.***, AIR 1997 SC 1023).

v. Whether the appellant is entitled to the benefit of Exception 4 to Section 300 of the IPC?

75. We shall now deal with the alternative submission of the learned counsel for the appellant as regards the applicability of Exception 4 to Section 300 of the IPC.

76. He submitted that even otherwise it is the case of the prosecution that the appellant and the deceased were not leading a happy marital life and used to fight with each other for some reason or the other, more particularly, on account of the deceased returning home very late in the night. The learned counsel tried to develop an argument that on the fateful day of the incident also some verbal altercation might have taken place and this fact is also substantiated by the evidence of Shaheena (PW-3) that she had heard shouts and shrieks of her parents in the night hours. This would indicate that the incident had occurred in the heat of the moment without any pre-meditation. In other words, according to the learned counsel it could be a sudden fight between the two in the heat of passion upon a sudden quarrel. He also tried to fortify his submission pointing out that appellant had also suffered minor injuries.

77. The aforesaid submission of the learned counsel appearing for the appellant is baseless and without any merit. However, since a specific ground has been urged, we should answer the same.

78. The *sine qua non* for the application of an Exception to Section 300 always is that it is a case of murder but the accused claims the benefit of the Exception to bring it out of that Section and to make it a case of culpable homicide not amounting to murder. This plea, therefore, assumes that this is a case of murder. Hence, as per Section 105 of the Evidence Act, it is for the accused to show the applicability of the Exception. Exception 4 reads as under:

> *"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

79. A perusal of the provision would reveal that four conditions must be satisfied to bring the matter within Exception 4:

(i) it was a sudden fight;

(ii) there was no premeditation;

(iii) the act was done in the heat of passion; and; that

(iv) the assailant had not taken any undue advantage or acted in a cruel manner.

80. On a plain reading of Exception 4, it appears that the help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or having acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found.

81. This Court in ***Vishal Singh v. State of Rajasthan*** , (2009) Cri. LJ 2243 has explained the scope and ambit of Exception 4 to 300 of the IPC. A three-Judge Bench observed in para 7 as under:

> "*7. The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for, in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately*

applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. These aspects have been highlighted in Dhirajbhai Gorakhbhai Nayak v. *State of Gujrat (2003 (5) Supreme 223]; Parkash Chand* v. *State of H.P. (2004 (11) SCC 381); Byvarapu Raju* v. *State of A.P. and Anr. (2007 (11) SCC 218) and Hawa Singh and Anr.* v. *State of Haryana (SLP (Crl.) No. 1515/2008, disposed of on 15.1.2009)."*

(Emphasis supplied)

82. If the aforesaid principles, as explained by this Court, are to be applied to the facts of the present case, we have no hesitation in saying that the present case is not one of culpable homicide not amounting to murder but the same is a case of murder. We should not overlook the fact that the appellant inflicted as many as twelve blows with a knife on the deceased who was unarmed and helpless.

83. Where the offender takes undue advantage or has acted in a cruel or an unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is disproportionate, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In ***Kikar Singh v. State of Rajasthan*** reported in AIR 1993 SC 2426, it was held that if the accused used deadly weapons against an unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage. A fight suddenly takes place, for which both the parties are more or less to be blamed. It might be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. There is then mutual provocation and aggravation and it is difficult to apportion the share of blame which attaches to each fighter. It takes two to make a fight. Assuming for the moment that it was the deceased who picked up a fight with the appellant or provoked the appellant in some manner with her conduct or behaviour, still the appellant could be said to have taken undue advantage & acted in a cruel manner.

84. For all the foregoing reasons, we have reached to the conclusion that the High Court committed no error in affirming the judgment and order of conviction passed by the trial court, holding the appellant guilty of the offence of murder of his wife.

85. Before we close this matter, we are persuaded to look into a few mitigating circumstances emerging from the record of the case. We take notice of the fact that the appellant got married to the deceased in 1982. During those days, triple talaq was prevalent among the Muslims. In the year 1992, the appellant divorced the deceased with the aid of triple talaq. However, thereafter, he once again brought her back home. In the year 1995, the incident occurred. The appellant

came to be convicted by the trial court in the year 1998. On appeal before the High Court, in the year 1998 itself, the substantive order of sentence of life imprisonment came to be suspended and the appellant was ordered to be released on bail. It took 16 years for the High Court to decide the appeal which ultimately came to be dismissed on 23.05.2014. Upon dismissal of the appeal, the appellant was once again taken into custody and since then he has been undergoing the sentence of life imprisonment. We are informed that he has undergone almost 11 years of imprisonment so far. It appears that as on date the appellant must be about 65 years of age. Almost half of his life lived so far has been spent undergoing the ordeal of the criminal prosecution. When a crime is committed, a variety of factors are responsible for making the offender commit the crime. Those factors may be social and economic, may be the result of value erosion or parental neglect; may be because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

86. In the facts of this case, more particularly keeping in mind the mitigating circumstances as stated above, we grant liberty to the appellant to prefer an appropriate representation addressed to the State Government praying for remission of sentence. If any such representation is filed by the appellant, the State Government shall look into the same at the earliest and take an appropriate decision on the same in accordance with law within four weeks from the date of the receipt of such representation and communicate the same in writing to the appellant.

87. In the result, this appeal fails and is hereby dismissed in the aforesaid terms.

88. Pending application(s), if any, also stand disposed of.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal dismissed.

[2024] 6 S.C.R. 214 : 2024 INSC 403

Shriram Chits (India) Private Limited
Earlier Known as Shriram Chits (K) Pvt. Ltd
v.
Raghachand Associates

(Civil Appeal No. 6301 of 2024)

10 May 2024

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

Issue for Consideration

Matter pertains to the maintainability of the complaint, whether the service obtained by the complainant was for a commercial purpose.

Headnotes

Consumer Protection Act, 1986 – s. 2(7) – Maintainability of complaint – Consumer complaint before the district forum alleging deficiency of service and seeking refund of amount from the opposite party – Instead of examining whether the service availed by complainant was for commercial purpose, the district forum determined whether the complainant fell within the definition of 'person' and holding that there was 'deficiency in service', ordered for refund of the claimed amount with interest – Said order upheld by forums below without examining the maintainability issue – Maintainability challenge before this Court, as to whether the service obtained by complainant was for commercial purpose:

Held: Onus to prove that the service was obtained for a commercial purpose is on the service provider – Standard of proof has to be measured against a 'preponderance of probabilities' – If and only if, the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part-explanation (a) to s. 2(7) to show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment – Plea of the opposite party that the complainant has not pleaded nor proved that the service was obtained for earning his livelihood through the means of self employment, relates to the third part of the definition of consumer – Question of inquiring into the third part would only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that

* Author

the service obtained was for a commercial purpose – Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment – On facts, opposite party merely pleaded in its version that the service was obtained for commercial purpose – No evidence led to probabilise its case other than merely restating its claim on affidavit – Plea without proof and proof without plea is no evidence in the eyes of law, thus, the matter dismissed. [Paras 21-23]

Consumer Protection Act, 1986 – Technical pleas – Manner in which consumer forums must decide the pleas – Plea raised by service providers that the services obtained/goods bought was for a commercial purpose and, thus, the complaint filed on behalf of such persons not maintainable:

Held: Such pleas are decided on the manner in which the issues are framed – Unless the burden of proof is properly cast on the relevant party, the consumer forum would not be in a position to arrive at proper decision – Thus, guidance provided on how the issues must be framed and the manner in which the evidence must be appreciated. [Para 19]

Consumer Protection Act, 1986 – s. 2(7) – Definition of consumer – Deconstruction of s. 2(7)(i):

Held: There are three parts to the definition of a consumer – First part sets out the prerequisites for a person to qualify as a consumer-there must be purchase of goods, for consideration – Second part is an 'exclusion clause' ['carve out'] which has the effect of excluding the person from the definition of a consumer – The carve out applies if the person has obtained goods for the purpose of 'resale' or for a 'commercial purpose' – Third part is an exception to the exclusion clause, it relates to explanation (a) to s. 2(7) which limits the scope of 'commercial purpose', the expression, 'commercial purpose' does not include persons who bought goods 'exclusively for the purpose of earning his livelihood, by means of self-employment' – Significance of deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts – Onus of proving the first part-person had bought goods/availed services for a consideration, rests on the complainant himself – Carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing benefits under the Act – Onus of proving that the person

falls within the carve out must necessarily rest on the service provider and not the complainant – Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it – Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers – Negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose. [Paras 15, 20]

Case Law Cited

Laxmi Engineering Works [1995] 3 SCR 174 **: (1995) 3 SCC 583;** *Leelavathi Kirtilal Medical Trust v. Unique Shanti Developers* [2019] 14 SCR 563 **: (2020) 2 SCC 265;** *Cheema Engineering Services* [1996] Supp. 8 SCR 340 **: (1997) 1 SCC 131;** *Paramount Digital Lab* **(2018) 14 SCC 81 – referred to.**

List of Acts

Consumer Protection Act, 1986; Evidence Act, 1872.

List of Keywords

Maintainability of complaint; Deficiency of service; Service availed by complainant for commercial purpose; Definition of 'person'; Refund of amount with interest; Service providers; Expression 'complaint'; Definition of consumer; Onus to prove; Standard of proof; Preponderance of probabilities'; Earning livelihood by means of self-employment; Technical pleas; Burden of proof; Deconstruction of s. 2(7)(i) of the Consumer Protection Act; Exclusion clause' ['carve out']; 'resale' or for 'commercial purpose'; 'One who pleads must prove'; Consumer-friendly and beneficial legislation; Negative burden.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil appeal No. 6301 of 2024

From the Judgment and Order dated 10.03.2021 of the National Consumers Disputes Redressal Commission, New Delhi in RP No. 831 of 2020

With

Civil Appeal Nos. 6302, 6303, 6304, 6305, 6306, 6307 and 6308 of 2024

Shriram Chits (India) Private Limited Earlier Known as Shriram Chits (K) Pvt. Ltd v. Raghachand Associates

Appearances for Parties

Shailesh Madiyal, Sr. Adv., Vaibhav Sabharwal, Ms. Divija Mahajan, Ms. Sunidhi Hegde, Ms. Sakshi Banga, Ms. Amisha Devi, Mrigank Prabhakar, Advs. for the Appellant.

Gopal Sankaranarayanan, Sr. Adv., Ms. Anindita Mitra, Ms. Jhanvi Dubey, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Aravind Kumar, J.

1. Leave granted.

2. The appellant ('*OP*'/'*service provider*', used interchangeably) has challenged the order dated 10.03.2021 of the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) in these appeals. The respondent (complainant) had successfully redressed its consumer grievance, originally, before the Principal Consumer Disputes Redressal for Bangalore Urban District, at Bangalore ('*District Forum*'). The service provider was unsuccessful in upsetting the order of the District Forum before the State Consumer Disputes Redressal Commission, Bangalore ('*State Forum*') as well as the NCDRC. That is how this matter has come before us.

3. The service provider is a registered Chit Fund company engaged in Chit business. Admittedly, the complainant had subscribed to certain chits in the said business. The subscription was made in the chit group 53005/Ticket No.9 for a chit value of Rs.1,00,000/- payable at the rate of Rs.2500/- per month for a period of 40 months.

4. It is the case of the complainant that the OP had illegally stopped the chit business in the year 1996. The complainant requested the OP to repay the chit amount deposited until stoppage of the business. The OP refused to re-pay the subscription amount since, according to it, the complainant owed certain dues to it and therefore, it adjusted the subscription amount against pending dues of the complainant.

5. Initially, the complainant sought to redress its grievance relating to non-refund of the subscription amount, before the authority

constituted under the Chit Funds Act 1982.[1] Thereafter, the OP filed WP No.22568/2012 with 9 other connected writ petitions against the order of the Additional Registrar. Whereas the Complainant also filed WP No.17045/2014 with 9 other connected writ petitions questioning the finding with regards to the maintainability under the Chit Funds Act. On 16.11.2015, the High Court directed the complainant to approach the Consumer Forum and held that said cases were not maintainable under the Chit Funds Act.

6. It is against this background that the complaint comes to be filed before the District Forum alleging that the illegal termination of the chit fund business and consequent non-refund of the subscription amount, resulted in deficiency of service. The prayer in the complaint was for a direction to be issued to the OP to refund Rs.18,750/- along with future interest at the rate of 18% p.a.

7. In the written version, the OP, apart from contesting the claim on merits, raised a preliminary objection that the complaint is not maintainable since the complainant does not qualify the definition of a '*consumer*'. According to the OP, the service obtained by the complainant was for a commercial purpose, and by that fact, the complainant would stand excluded from availing any remedy under the Consumer Protection Act, 1986. To demonstrate that the service was obtained for a commercial purpose, the OP relied on two circumstances: (a) the statement in the complainant that there was an '*understanding between complainant and opposite party to promote chit business*'; (b) findings[2] of an internal audit conducted by the OP.

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1 The complainant had filed 10 cases before the Assistant Registrar of Co-operative Societies i.e., Dispute No.1062/2004-05 to 1071/2004-05, for recovery of adjusted amount, whereunder the Assistant Registrar passed an award and directed the OP to pay the amount to complainant. Against the said order OP unsuccessfully challenged the orders in appeals before Additional Registrar of Co-operative Societies, Aliaskar Road, Bangalore, in appeal No.33/CAP/2009-10 to No.42/CAP/2009-10. The Additional Registrar directed the opposite party to pay the award amount on the ground that said chit groups did not come under the Chit Fund Act.

2 As per the Internal Audit, the Complainant held 1023 prized chits, and 1043 non-prized chits. The report also mentions various correspondences between the complainant and OP with regards to the increasing disparity between the total liability of the fund, and the paid-up value of the non-prized chits. As per the audit report, the balance liability amounted to Rs. 1.86 crores. It was stated that owing non-payment of outstanding arrears, the foreman in accordance with Section 28 and Section 29 of the Chit Fund Act is bound to remove the defaulted non-prized subscriber to keep the chit running, hence the defaulted non-prized tickets maintained by Complainant were removed, and the paid amounts were adjusted against arrears in the prized chits.

8. Against the said pleadings available on record, the District Forum proceeded to frame the following issue:

I. Whether the Complainant has proved the alleged deficiency in service by the Opposite Party?

II. If so, to what relief the Complainant is entitled?

9. There was no specific issue framed on the preliminary question as to whether the complainant fell within the definition of consumer as understood under Section 2 (1) (d) of the Act of 1986. However, the District Forum did address itself, though incorrectly, to the objection of the OP that the complaint was not maintainable. Instead of examining whether the service availed on behalf of the complainant was for a commercial purpose, the District Forum determined whether the complainant fell within the definition of a "person" as defined in Section 2 (1)(m) of the Act. On merits, it found that there was, in fact, '*deficiency in service*' and ordered for refund of the claimed amount with interest of 18% p.a.

10. In appeal, the State Forum has cursorily found that the District Forum was correct in concluding that there was deficiency in service, on merits. Nothing has been said, however, as regards the challenge to the maintainability of the complaint even though a specific ground was taken in the memorandum of appeal towards that end.

11. The NCDRC has agreed with the State Forum and District Forum on the merits of the issue and found no reason to interfere with the '*well appraised detailed order*' of the District Forum. It noted that there was no necessity to reappreciate the evidence de novo since the forums below had properly appreciated the issue in dispute. On the maintainability issue, the NCDRC appears to have mirrored the approach of the District Forum. Instead of examining whether the service obtained by the complainant was for a '*commercial purpose*', it examined the question of whether the complainant falls within the definition of '*person*'. Neither was such an objection raised by the OP in the version originally submitted before the District Forum nor was such a contention orally taken before the NCDRC. We fail to understand how the NCDRC failed to grasp the exact nature of the maintainability challenge. Be that as it may.

12. It is against the above backdrop that we are called upon to determine the present *lis*. Instead of remanding the matter back to the Consumer

Forum we intend to decide the maintainability challenge here itself. The question that has eluded three judicial forums has now to be settled once and for all. That question simply is: Whether the service obtained by the complainant was for a commercial purpose?

13. Section 2 (7) of the Act defines a consumer to mean:

> Section 2 (7) "consumer" means any person who—
>
> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
>
> (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.
>
> *Explanation*.—For the purposes of this clause,—
>
> (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
>
> (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

14. The provision as it stands now (as extracted above) was not how it appeared when it was grafted in the original Act. The definition of '*consumer*' has undergone textual amendments in 1993 and in 2002. For ease of reference, the evolutionary history of the provision from its origin until the 2019 Act is captured in the table below:

Consumer Protection Act 1986	**The Consumer Protection (Amendment) Act, 1993**	**The Consumer Protection (Amendment) Act, 2002**	**Consumer Protection Act 2019**
"consumer" means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person	"consumer" means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) **[hires or avails of]** any services for a consideration	"consumer" means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration	(7) "consumer" means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment

who obtains such goods for resale or for any commercial purpose; or (ii)hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person	which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who **[hires or avails of]** the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. **Explanation.—For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;**	which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person **but does not include a person who avails of such services for any commercial purpose.** Explanation.—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him **and services availed by him** exclusively for the purposes of earning his livelihood by means of self-employment;	and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose. **Explanation. —For the purposes of this clause, — (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;**

15. Structurally, there are three parts to the definition of a consumer. We can deconstruct Section 2(7)(i) as a matter of illustration.[3] The first part sets out the jurisdictional prerequisites for a person to qualify as a consumer – there must be purchase of goods, for consideration[4] . The second part is an '*exclusion clause*' ['*carve out*'] which has the effect of excluding the person from the definition of a consumer. The carve out applies if the person has obtained goods for the purpose of '*resale*' or for a '*commercial purpose*'. The third part is an exception to the exclusion clause – it relates to Explanation (a) to Section 2(7) which limits the scope of '*commercial purpose*'. According to the said explanation, the expression, '*commercial purpose*' does not include persons who bought goods '*exclusively for the purpose of earning his livelihood, by means of self-employment*'. The significance of this structural break down will be discussed shortly.

16. The carve out existed as part of the original enactment. However, the Explanation to Section 2(7) was inserted by amendment in 1993.

17. Judicial experience has shown us that the service providers most often than not take up a plea in their written version that the service obtained/goods bought was for a commercial purpose. For, if they succeed in their plea, the complainant is excluded from availing any benefit under the Act. According to Section 11, the District Forum has jurisdiction to entertain complaints '*where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs*'. The expression '*complaint*' is defined in Section 2(1)(7)(c) to mean any allegation made in writing by a complainant relating to certain enumerated subjects. A complainant is defined 2(1)(b) to mean a consumer, among other entities. Therefore, to file a complaint, one must be a complainant and for one to be a complainant, he must be a consumer. If a person fails to come within the definition of a consumer, he cannot be a complainant[5] and therefore, such person cannot file a complaint under the Act.

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3 The logic can be identically extended to Section 2(7)(ii)

4 The consideration may have been paid or partly paid or agreed to be paid in future.

5 Complainant is defined under Section 2 (1) (b) of the Act. A complainant means – (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act,1956 or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint.

18. In the facts of the instant case, the OP had raised a plea in its version that the complainant does not satisfy the definition of consumer since the service was obtained for a commercial purpose. Sri Shailesh Madiyal, learned Senior Advocate for the OP has argued vehemently that the complainant has not pleaded let alone prove that the services availed by it was for securing the livelihood of the complainant by means of self-employment. According to Sri Shailesh Madiyal, the onus to prove that services were availed for earning livelihood rests on the complainant. In support of his submission, he has relied on ***Laxmi Engineering Works* – *(1995) 3 SCC 583;* *Leelavathi Kirtilal Medical Trust v. Unique Shanti Developers* – *(2020) 2 SCC 265;* *Cheema Engineering Services* *(1997) 1 SCC 131*** and; ***Paramount Digital Lab (2018) 14 SCC 81.***

19. Before we deal with the contention of Sri Shailesh Madiyal, it would be necessary to set out the manner in which consumer forums must decide technical pleas raised by service providers to the effect that the services obtained/goods bought was for a commercial purpose and, therefore, the complaint filed on behalf of such persons are not maintainable. The crucial step in deciding such pleas would turn on the manner in which the issues are framed. Unless the burden of proof is properly cast on the relevant party, the consumer forum would not be in a position to arrive at proper decision. Therefore, we proceed to provide some guidance on how the issues must be framed and the manner in which the evidence must be appreciated.

20. As we have shown above, the definition of consumer has three parts. The significance of deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts. There can hardly be any dispute that the onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself. The carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing benefits under the Act. The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant. This is in sync with the general principle embodied in Section 101 and 102 of the Evidence Act that '*one who pleads must prove*'. Since it is always the service

provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it. Further, it cannot be forgotten that the Consumer Protection Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers.[6] Moreover, a negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose.

21. Having held that the onus to prove that the service was obtained for a commercial purpose is on the service provider, we may clarify the standard of proof that has to be met in order to discharge the onus. The standard of proof has to be measured against a '*preponderance of probabilities*'. The test to determine whether service obtained qualified as a commercial purpose is no longer res integra in view of this Court's decision in ***Lilavathi v. Kiritlal*** *(supra)*. Para 19 sets out the principles on which it must be determined whether the onus of proving '*commercial purpose*' has been properly discharged by the service provider.

22. If and only if, the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part, i.e. the Explanation (a) to Section 2(7) – to show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment.

23. In this background, we must consider the plea of Sri Shailesh Madiyal that the complainant has not pleaded nor proved that the service was obtained for earning his livelihood through the means of self-employment. His argument relates to the third part of the definition of consumer. The question of inquiring into the third part will only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that the service obtained was for a commercial purpose. Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment. In the facts of this case, the OP has merely pleaded in its version that the service was obtained

6 National Insurance Co. Ltd. v. Harsolia Motors and Ors. (2023) 8 SCC 362.

for a commercial purpose. No evidence has been led to probabilise its case other than merely restating its claim on affidavit. It is now well too settled that a plea without proof and proof without plea is no evidence in the eyes of law.

24. We do not wish to address ourselves to the merits of the issue since three Forums have concurred in their finding that there was proved deficiency of service.

25. Accordingly, we dismiss the appeals.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals dismissed.

[2024] 6 S.C.R. 227 : 2024 INSC 409

Union of India & Anr.
v.
Dr. Asket Singh & Ors.

(Civil Appeal Nos. 1636-1637 of 2016)

01 May 2024

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

Issue for Consideration

Matter pertains to the challenge to the relief of solatium and interest on the compensation amount granted by the High Court.

Headnotes

Requisitioning and Acquisition of Immovable Property Act, 1952 – s. 8(1)(a) – Compensation – Delay in payment of – Grant of solatium and interest by the High Court – Challenge to:

Held: Right to hold immovable property is no longer a fundamental right but is a right u/Art. 300A – On facts, land owned by the first respondent stood vested in the Central Government in the year 1964 – Offer for payment of compensation was made by the Collector belatedly after 12 years in 1976 – Delay of more than 12 years attributable solely to the Central Government – Since the respondents declined to accept the offer, the Arbitrator was appointed in 1976, it took slightly less than 20 years to conclude the proceedings – Nothing on record that the proceedings were delayed due to any conduct attributable to the first respondent – Delay in appointing the arbitrator must be attributed to the Central Government, as the Central Government took 12 years to offer compensation – In effect, market value prevailing on the date of acquisition was paid to the owners after lapse of more than 30 years from the date of vesting – As there are no provisions under the 1952 Act to compensate the owner for the delay in making payment of compensation, in such cases, solatium and interest must be paid by the Central Government – Compensation must be paid to the owner of the acquired property within a reasonable time from the date on which the acquired property vested in the acquiring body – Requirement of making payment of compensation within a reasonable time from the date of vesting must be read

* Author

into the 1952 Act – Long delay of 12 years even in offering compensation would attract arbitrariness which is prohibited by Art. 14 – Considering the huge delay involved in payment of compensation, the High Court rightly granted solatium and interest – As the first respondent has been paid compensation 7 years back, no costs imposed – Constitution of India – Arts. 14, 300A. [Paras 7-10]

Case Law Cited

Harbans Singh Shanni Devi v. Union of India; Union of India v. Chajju Ram [2003] 3 SCR 647 **: (2003) 5 SCC 568;** *Dilawar Singh & Ors. v. Union of India & Ors.* [2010] 12 SCR 1059 **: (2010) 14 SCC 357;** *Union of India v. Hari Krishan Khosla* [1992] Supp. 1 SCR 620 **: 1993 Supp. 2 SCC 149 – referred to.**

List of Acts

Requisitioning and Acquisition of Immovable Property Act, 1952.

List of Keywords

Compensation; Delay in payment of compensation; Grant of solatium; Grant of interest; Right to hold immovable property; Fundamental right; Delay; Date of acquisition; Arbitrariness; Costs.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1636-1637 of 2016

From the Judgment and Order dated 29.04.2015 of the High Court of Punjab and Haryana at Chandigarh in FAO Nos. 2307 and 2673 of 1998

Appearances for Parties

Mukul Singh, Indira Bhakar, Sharath Nambiar, Shubham Saxena, Vineet Singh, Dr. Arun Kumar Yadav, T. S. Sabarish, Udai Khanna, Dr. N. Visakamurthy, Arvind Kumar Sharma, Advs. for the Appellants.

Ms. Rajshree Bhatnagar, T. R. B. Sivakumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

Heard the learned counsel appearing for the parties.

2. The facts of the case are glaring. The respondents are the owners of the lands subject matter of these appeals. At the instance of the Ministry of Defence, acquisition proceedings were initiated under the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short "the 1952 Act"). A notice of acquisition under Section 7 of the 1952 Act was issued on 26th March, 1964 which was published in the State Government Gazette on 3rd April, 1964. The vesting of the acquired property was complete on publication of the notice in the official gazette.

3. The provisions for grant of compensation in respect of the acquired land are found in Section 8 of the 1952 Act. The first option provided therein is to fix the compensation by an agreement between the acquiring body and the owners. if there is no such agreement, under clause (b) of sub-section (1) of Section 8, the Central Government is required to appoint an arbitrator for determining the amount of compensation payable. An offer for payment of compensation was made by the appellants belatedly after 12 years on 16th August, 1976. The respondents declined to accept the said offer. Therefore, the Land Acquisition Officer addressed a letter to the Government on 8th October, 1976 to appoint an arbitrator. Accordingly, the Additional District Judge, Gurdaspur was appointed as the Arbitrator. Nearly 22 years thereafter on 8th May, 1998, the award was declared by the Arbitrator by which he came to the conclusion that the market value of the acquired land was Rs.150/- per Marla.

4. An appeal was preferred by the first respondent as well as by the present appellants for challenging the award of the Arbitrator. By the impugned judgment, the High Court held that the market value ought to be Rs.350/- per Marla which was determined in the cases of similarly situated acquired lands. As there was a gross and inordinate delay in completing the arbitral proceedings for determination of the market value, relying upon the decisions of this Court in the cases of *Harbans Singh Shanni Devi v. Union*

of India[1] and *Union of India* v. *Chajju Ram*[2] which were followed by this Court in a decision in the case of *Dilawar Singh & Ors. v. Union of India & Ors.*[3], the High Court granted solatium at the rate of 30% of the market value and interest on the compensation amount at 9% and 15%.

5. The submission of the learned counsel appearing for the appellants is that the relief of solatium and interest has been granted in earlier cases by this Court where there was a delay on the part of the Central Government in appointing an Arbitrator for determination of compensation. In this case, the delay is mainly in disposal of the arbitral proceedings. He, therefore, submitted that the High Court ought not to have awarded both solatium and interest. The learned counsel appearing for the first respondent pointed out that in terms of the impugned judgment, the first respondent has received the entire compensation amount about 7 years back.

6. It will be useful to refer to paragraphs 9 and 10 of the decision of this Court in the case of *Dilawar Singh*[3] which reads thus:

> "9. It is common ground that the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 do not make any provision for the grant of solatium or interest to the expropriated landowners. The absence of any such provision in the said act was in fact made a basis for a challenge to the constitutional validity of the enactment which was repelled by this Court in *Union of India v. Hari Krishan Khosla*[4]. This Court pointed out that any comparison between acquisition made under the Requisitioning and acquisition Act would be odious in view of the dissimilarities between the two enactments. That decision was followed in subsequent pronouncements of this Court in *Union of India v. Chajju Ram*[2] where a similar attack was mounted against the constitutional validity of the Defence of India Act, 1971 but repelled by this Court relying upon the decision in *Hari Krishan Khosla*[4].

1 decided on 11th February, 1985 in Civil Appeal No.470-471 of 1985

2 [2003] 3 SCR 647 : (2003) 5 SCC 568

3 [2010] 12 SCR 1059 : (2010) 14 SCC 357

4 [1992] Supp. 1 SCR 620 : 1993 Supp (2) SCC 149

10. What is noteworthy is that in both these matters this Court had made a distinction between cases in which there was inordinate delay in the appointment of an arbitrator and consequent delay in the determination of the amount of compensation payable to the owners and other case where there was no such delay. In para 79 of the judgment of this Court in *Hari Krishan Khosla*[4], this Court observed:

> "79. This is a case in which for 16 years no arbitrator was appointed. We think it is just and proper to apply the principle laid down in *Harbans Singh Shanni Devi v. Union of India*[1]. The Court held as under:
>
> > Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of the arbitrator was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30% of the amount of compensation and interest at the rate of 9% per annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in the meanwhile been amended with a view to providing solatium at the rate of 30% and interest at the rate of 9% per annum."

7. As noted in the said decision, there is no provision for grant of solatium and interest under the 1952 Act.

8. It is true that the right to hold immovable property is no longer a fundamental right but it is a right under Article 300A of the Constitution of India. Considering the peculiar provisions of the 1952 Act, the

land owned by the first respondent stood vested in the Central Government on 3rd April, 1964. Therefore, the compensation ought to have been paid to the first respondent within a reasonable time from 3rd April, 1964. Under clause (a) of sub-section (1) of Section 8, there is a provision to decide the amount of compensation by an agreement. Such agreement could have been arrived at, provided the Central Government had submitted their proposal or offer to the first respondent. However, the offer was actually made by the Collector in August, 1976. Thus, there was no attempt made by the Central Government to bring about the consensus on the market value for a period of more than 12 years. Inordinate time of 12 years was taken by the Government to offer compensation to the first respondent. We must record here that this delay of more than 12 years is attributable solely to the Central Government. After the Arbitrator was appointed on 8th October, 1976, it took slightly less than 20 years to conclude the proceedings. There is nothing placed on record to show that the proceedings were delayed due to any conduct attributable to the first respondent. The delay in appointing the arbitrator must be attributed to the Central Government, as the Central Government took 12 years to offer compensation. In effect, market value prevailing on the date of acquisition was paid to the owners after lapse of more than 30 years from the date of vesting.

9. After having perused the aforesaid decisions of this Court, we find that as there are no provisions under the 1952 Act to compensate the owner for the delay in making payment of compensation, a direction was issued by this Court that in such cases, solatium and interest must be paid by the Central Government. The main reason for taking the said view is that the compensation must be paid to the owner of the acquired property within a reasonable time from the date on which the acquired property vested in the acquiring body. The requirement of making payment of compensation within a reasonable time from the date of vesting must be read into the 1952 Act. In fact, such a long delay of 12 years even in offering compensation will attract arbitrariness which is prohibited by Article 14 of the Constitution of India. The first respondent had an option of even seeking quashing of the acquisition on the ground of this arbitrariness which may have violated his rights under Article 300A of the Constitution of India.

10. Considering the huge delay involved in payment of compensation, the High Court has rightly granted solatium and interest in terms of the decisions of this Court. In fact, we are surprised to note that the appellants have dragged the first respondent to this Court. There is absolutely no merit in these appeals. As the first respondent has been paid compensation 7 years back, we are refraining from imposing costs.

11. Hence, the appeals are dismissed.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeals dismissed.

[2024] 6 S.C.R. 234 : 2024 INSC 396

K.P. Khemka & Anr.
v.
Haryana State Industrial and Infrastructure Development Corporation Limited & Ors.

(Civil Appeal No. 6144 of 2024)

08 May 2024

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

Issue for Consideration

By the impugned judgment, the High Court dismissed the writ petitions and rejected the contention of the appellants herein that if a debt is time-barred under the Limitation Act, 1963, the same cannot be recovered by resorting to the Haryana Public Moneys (Recovery of Dues) Act, 1979 read with the State Financial Corporation Act, 1951.

Headnotes

Haryana Public Moneys (Recovery of Dues) Act, 1979 – State Financial Corporation Act, 1951 – Limitation Act, 1963 – The appellants herein had relied upon the judgment of a three-Judge Bench of the Supreme Court in *State of Kerala and Others vs. V.R. Kalliyanikutty & Anr.* to contend that a time-barred debt under the Limitation Act cannot be recovered under the Recovery of Dues Act – Respondent contended that the impugned order of the High Court was perfectly justified in holding that the decision of this Court in *V.R. Kalliyanikutty* has not considered the holding in *Bombay Dyeing* and *Tilokchand Motichand*:

Held: The Division Bench in the impugned order do not directly address the holding in V.R. Kalliyanikutty that the Kerala Revenue Recovery Act did not create any additional right to recover and enforce the outstanding amounts due – The real question that arises is do the State Financial Corporations Act, 1951 and the Recovery of Dues Act create a distinct right and provided an alternative mechanism of enforcement to recover the amount due, even if the amounts due were time barred – While the process of filing a civil suit may be barred because of the statute of limitation, the power to recover vested through Section 32-G

* Author

of the State Financial Corporations Act read with Section 2(c) and Section 3 of the Recovery of Dues Act is a distinct power which continues notwithstanding that another mode of recovery through a civil suit is barred – Understood in that sense, it does appear that there is an additional right to enforce the claims of the financial corporations notwithstanding the bar of limitation – Also, in a three-judge Bench decision of the Supreme Court in K.C. Ninan v. Kerala State Electricity Board, 2023 INSC 560, the Court noticed the decision in V.R. Kalliyanikutty and concluded that statute of limitation only barred a remedy, while the right to recover the loan through *'any other suitable manner provided'* remains untouched – For a comprehensive consideration and an authoritative pronouncement after taking into account all aspects, the matter needs to be placed before the Hon'ble Chief Justice of India to constitute an appropriate three-judge Bench. [Paras 13, 14, 18, 31, 32]

Case Law Cited

State of Kerala and Others v. V.R. Kalliyanikutty & Anr. **[1999] 2 SCR 372 : (1999) 3 SCC 657;** *Bombay Dyeing and Manufacturing Company Limited v. The State of Bombay and Ors.* **[1958] 1 SCR 1122;** *Tilokchand and Motichand and Others v. H.B. Munshi and Another* **[1969] 2 SCR 824 : (1969) 1 SCC 110;** *Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur* **[1978] 2 SCR 249 : (1978) 1 SCC 44;** *Director of Industries, U.P. v. Deep Chand Agarwal* **[1980] 2 SCR 1015 : (1980) 2 SCC 332;** *New Delhi Municipal Committee v. Kalu Ram* **[1976] Supp. 1 SCR 87 : (1976) 3 SCC 407;** *K.C. Ninan v. Kerala State Electricity Board* **[2023] 9 SCR 637 : 2023 INSC 560 – referred to.**

Hansraj Gupta v. Dehra Dun-Mussorie Electric Tramway Co. Ltd., **AIR 1933 PC 63 – referred to.**

Sri Narain v. Liquidator, Union Bank of India, **ILR 4 Lah. 109 – referred to.**

Books and Periodicals Cited

Salmond on Jurisprudence, 12th Edition, on concepts of "Right" and "Power" [Page 224, 229 & 230]

List of Acts

Haryana Public Moneys (Recovery of Dues) Act, 1979; State Financial Corporation Act, 1951; Limitation Act, 1963.

List of Keywords

Debt; Time-barred debt; Remedy; Time-barred debt under Limitation Act, 1963; Recovery of dues under Haryana Public Moneys (Recovery of Dues) Act, 1979; Limitation Act bars remedy; Limitation Act does not extinguish debt; Recovery of loan; Right to recover; Recovery proceedings; Alternative mechanism of enforcement to recover the amount due; Additional rights to enforce claims.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6144 of 2024

From the Judgment and Order dated 24.04.2015 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 15983 of 2013

With

Civil Appeal No. 6145 of 2024

Appearances for Parties

Rakesh Kumar, Saurabh Mishra, Ms. Preeti Kashyap, Varun Pandit, Shrimay Mishra, Abhimanyu Tewari, Ms. Eliza Bar, Siddhant Saroha, Sidhant Awasthy, Manav Bhalla, Praveer Singh, Advs. for the Appellants.

Lokesh Sinhal, Sr. A.A.G. Akshay Amritanshu, Nikunj Gupta, Ms. Himanshi Shakya, Samyak Jain, Karunakar Mahalik, Manish K. Bishnoi, Rajat Navet, Kushagra Pandit, D. S. Mahra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeals arise from the judgment of a Division Bench of the High Court of Punjab and Haryana at Chandigarh dated 24.04.2015 in CWP No. 15983 of 2013 and CWP No. 26452 of 2014. By the said

judgment, the High Court dismissed the writ petitions and rejected the contention of the appellants herein that if a debt is time-barred under the Limitation Act, 1963, the same cannot be recovered by resorting to the Haryana Public Moneys (Recovery of Dues) Act, 1979 (for short "the Recovery of Dues Act") read with the State Financial Corporation Act, 1951. In so holding, the Division Bench applied the well established principle that the Limitation Act, which applies to Courts, merely bars the remedy and does not extinguish the debt.

3. The appellants herein had relied upon the judgment of a three-Judge Bench of this Court in ***State of Kerala and Others vs. V.R. Kalliyanikutty & Anr.*** **(1999) 3 SCC 657** to contend that a time-barred debt under the Limitation Act cannot be recovered under the Recovery of Dues Act. While dealing with this contention, the High Court relied upon the judgment of a Constitution Bench of this Court in ***Bombay Dyeing and Manufacturing Company Limited*** vs. ***The State of Bombay and Ors.***, **1958 SCR 1122** to reiterate the principle that the Limitation Act merely bars the remedy and does not extinguish the debt. The High Court also distinguished the judgment in ***V.R. Kalliyanikutty*** ***(supra)*** by holding that the judgments of this Court in ***Bombay Dyeing and Manufacturing Company Limited*** ***(supra)*** and ***Tilokchand and Motichand and Others vs. H.B. Munshi and Another***, **(1969) 1 SCC 110** were not brought to the notice of the Bench deciding ***V.R. Kalliyanikutty*** ***(supra)***.

4. Facts in Civil Appeal arising out of SLP (C) No. 14213 of 2015 are as follows:

i. Respondent No.3 - M/s Khemka Ispat Limited was a Company engaged in the business of manufacture, production, import, export, sale and distribution of all types of Cold Rolled Strips, steel sockets, pipe and tube products, and other allied goods.

ii. On **07.03.2003**, Respondent No.3 had taken a Term Loan under an Equipment Finance Scheme from Respondent No.1 - Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as "the HSIDC Ltd.") for a sum of Rs.105.90 lakhs. In view of the said Term Loan, Respondent No.3 had entered into a Loan Agreement with HSIDC Ltd. along with the personal guarantees of the appellants herein.

iii. On **31.03.2003**, the sanctioned loan amount to the tune of Rs.105 lakhs was disbursed to Respondent No.3. On **15.07.2003**, further amount of Rs. 2 lakhs was disbursed. The Loan was to be repaid in five years with a moratorium period of six months w.e.f. 01.10.2003.

iv. On **19.08.2004**, the First Default Notice was issued to Respondent No.3 by HSIDC Ltd. along with intimation of a right under Section 29 of the State Financial Corporations Act.

v. In the meantime, Respondent No.3 became a Sick Company and reference was made to the Board for Industrial and Financial Reconstruction (for short "the BIFR"). On **31.07.2006**, the outstanding as on date to HSIDC Ltd. was Rs.99.32 lakhs.

vi. On **17.08.2006**, BIFR declined Respondent No.3's Reference and the One-Time Settlement request. ING Vysya Bank also informed the BIFR that it had taken over possession of the unit, in accordance with which the BIFR ordered the reference to have abated. Respondent No. 3 informed the said ING Vysya Bank that the latter will not be responsible for the dues of the HSIDC Ltd, and that the machinery is in possesison of the Company. On **01.06.2007**, HSIDC Ltd. took possession of the movables.

vii. While proceedings were carrying on against the principal borrower, on **08.08.2007**, Respondent No.1 HSIDC Ltd. issued a show cause notice under Section 3(1)(b) of the Recovery of Dues Act to Respondent No.3, which notice was returned back with the remarks "closed/left".

viii. On **25.09.2007**, a winding up petition was filed by one of the creditors of Respondent No.3 in C.P. NO. 171 of 2007 before the High Court of Delhi, wherein a provisional order to wind-up was passed and a provisional liquidator appointed. Further, Final Order of winding up of Respondent No.3 appears to have been passed on **24.03.2009**.

ix. When the matter stood thus, on **29.10.2009**, Respondent No.1 issued a show cause notice under Section 3(1)(b) of the Recovery of Dues Act to the Appellants and the same was returned with the remarks "left/closed".

x. Thereafter, on **10.01.2012**, recovery notice sent to the appellants by Respondent No.2, the Additional General Manager of HSIDC

Ltd., under Section 3(1)(b) of the Recovery of Dues Act was returned with the remarks "left/closed". The order determining the amount due as Rs. 213.19 lakhs w.e.f **10.01.2012** was passed by the HSIDC Ltd.

xi. On **02.02.2012**, the HSIDC Ltd. sent a notice under the provisions of the Recovery of Dues Act to the Appellants and the Respondent No. 3 indicating the sum determined to be due from them, which was to the tune of Rs.213.19 lakhs. On **01.03.2012**, the appellants filed their reply. This was rejected by the Respondent No. 2, Additional General Manager of HSIDC Ltd., on **15.11.2012**. Thereafter, the Respondent No. 2, Additional General Manager of HSIDC Ltd., issued a Final Notice under the provisions of the Recovery of Dues Act dated **15.11.2012** calling upon the appellants to pay Rs. 213.19 lakhs which was determined to be due from the Appellants and Respondent No. 3.

xii. On **11.01.2013**, recovery certificate under Section 3(1) of the Recovery of Dues Act for a sum of Rs. 243.11 lakhs, was issued.

xiii. On **12.07.2013**, appellants filed CWP No. 15983 of 2013 challenging the recovery notice. The relevant ground was raised in the following terms:

> "G. *BECAUSE the Impugned Orders deserve to be quashed as the recovery which has been initiated by first sending the notice on 10.01.2012 under the provisions of Haryana Public Moneys (Recovery of Dues) Act, 1979 is much beyond the limitation to recover any dues by the Corporation. The period of limitation if any was 3 years from 31.07.2004, when the amount stood and payable by Respondent No. 3 Company (in Liqn.). The period to recovery from either the Company or the Guarantors who stood surety for the said amount expired in the year 2007. The recovery as per the notices sent by the Respondent Corporation admittedly have been sent on 10.01.2012 and subsequent thereto and therefore any adjudication or determination of a sum due in view of the above said Act is unsustainable and is in any case time barred"*

xiv. The Writ Petition was dismissed *vide* the impunged order.

5. ***The facts in Civil Appeal arising out of Special Leave Petition (C) No. 23041 of 2015 are as under:***

i. The Haryana Financial Corporation sanctioned a term loan of Rs.88,74,000/- to Respondent No.5 - Cosmo Flex Private Limited on **31.01.1996**. The loan was to be repaid within a period of eight weeks by way of quarterly instalments and the agreed rate of interest was 19.5% with half yearly rests. On **17.03.1997**, the loan agreement was executed.

ii. The appellant, who was a Director of the R-5 Company, claims that he resigned from the Directorship of the Respondent No. 5 Company on **06.04.1998**.

iii. On **29.07.1998**, the loan was recalled by the Haryana Financial Corporation.

iv. In the meantime, the appellant claims that on account of his resignation from Directorship of the Respondent No. 5 company, he was paid a full and final settlement from the Company on **23.10.1998.** Thereafter, he claims that the Registrar of Companies was also intimated about the fact of his resignation, on **12.10.1998.**

v. The Haryana Financial Corporation, on **19.08.1999**, sent a notice for taking over possession of the Company's assets and thereafter took possession on **31.08.1999**.

vi. The Haryana Financial Corporation has set-out the time-line of events where multiple recovery notices under the Recovery of Dues Act were issued, leading up to the determination of the sum due from the Appellants herein, in the following terms:

> "***4.*** *...On continous non-repayment of dues, the possession of the mortgaged properties was taken over under section 29 of the State Financial Corporations Act, 1951. The primary security was disposed of by the Corporation for Rs. 61.00 lakh on* ***16.12.1999****. The Recovery Certificate was issued on* ***22.09.2000*** *to the Collectors Gurgaon, Delhi & Srinagar and were returned in the year 2001 on the ground that no immovable/movable properties were available in the names of directors/guarantors and*

*they were not residing at the given addresses. The fresh Recovery Certificate was issued on **10.08.2005** u/s 3 of Haryana Public Moneys (Recovery of Dues) Act, 1979 in the name of Collectors, Sri Nagar, Delhi & Gurgaon through Collector, Gurgaon. The Recovery Certificate pertaining to Collectors, Sri Nagar & Delhi were returned by Collector, Gurgaon to send the same directly to the concerned Collectors as there was no provisions to send the same by one Collector to another Collector. After obtaining legal opinion as per which, it was advised that as per Section 3 of the Revenue Recovery Act, the Collector may send a certificate to other Collector, Recovery Certificates were returned to Collector, Gurgaon. However, Recovery Certificate in the name of Collector Gurgaon was being pursued. As Recovery Certificate with Collector Delhi was not traceable in his office, photocopy of the Recovery Certificate was re-lodged with Collector Delhi on **16.04.2008.** It was informed by Collector Delhi that the Recovery Certificate lodged with them was not in their jurisdiction and as such recovery cannot be effected. Further, the directors residing at Gurgaon & Delhi had shifted to some unknown places. However, as the new addresses of one of the Directors Sh. Charanjeet Gaba were found out, fresh RCs were issued to Collectors Delhi (Central, East, South & West), Gurgaon & Sri Nagar (Kashmir) on **19.04.2010** u/s 32G of the State Financial Corporations Act. However, the Recovery Certificate dated **19.04.2010** was quashed by the High Court of Punjab and Haryana vide order dated **02.12.2011** passed in CWP No. 12226 of 2010 on the ground that the same was issued without affording the Petitioners an opportunity of personal hearing. The Corporation was given liberty to proceed after hearing the petitioner and giving him opportunity to file his objections.*

xxx xxx xxx

> ***7.*** *Accordingly, personal hearings were given to defaulting borrowers/guarantors for sum determination under Section 32-G of the State Financial Corporations Act, 1951 on* ***11.12.2013****,* ***19.03.2014*** *and* ***06.08.2014****, objection raised by Sh. Charanjeet Gaba, borrower/ guarantor verbally during the personal hearing as well as through various representations were dealt in detail in the proceeding of personal hearing held on* ***06.08.2014****. However, as no constructive proposal for repayment/settlement under the new Settlement Policies of HFC-2011 was recived from Sh. Charanjeet Gaba or other borrowers/guarantors, Recovery Certificate was issued to Collectors, Srinagar, Solan (HP), Gurgaon & Delhi on* ***08.10.2014*** *for the recovery of Rs. 14,55,11,275/- with further interest @24% from* ***01.03.2014,*** *the same stand challenged by the petitioner before the Hon'ble High Court as stated above*."
>
> **(emphasis supplied)**

vii. The appellant challenged the proceedings dated **06.08.2014** by filing CWP No. 26452 of 2014. By the Impugned Order, the Writ Petition was dismissed.

viii. In the Special Leave Petition filed before this Court, the case of the Appellant as regards the debt being time-barred is as follows:

> *"A. Because the order/proceedings dated 06.08.2014 passed by Respondent No. 3 under Section 32 (G) of the State Financial Corporation Act for recovery of Rs. 14,55,11,275/- along with pendente lite and future interest could not have been issued as the recovery had already become time barred against the petitioner. Since the recovery on the basis of mortgaged property had already been effected by way of sale dated 16.12.1999 the remaining amount could not be recovered beyond the limited time of three years"*

Contentions of the Parties

6. Before us, learned counsel for the appellants contend that the judgment in ***V.R. Kalliyanikutty*** ***(supra)*** directly covers the issue

as according to them, in substance, there is no difference between the provisions of the Kerala Revenue Recovery Act, with which ***V.R. Kalliyanikutty (supra)*** was concerned, and the Recovery of Dues Act of the State of Haryana. According to the learned counsel, ***V.R. Kalliyanikutty (supra)*** has clearly held that Acts, like the Recovery of Dues Act, are intended for speedy recovery of loans and do not create a new right in the creditor. It is their contention that on that reasoning the word "due" in the Recovery of Dues Act cannot be interpreted to include time-barred debts.

7. Learned counsel for the respondent-Corporations strongly refuted these contentions and contended that the impugned order was perfectly justified in holding that the decision of this Court in ***V.R. Kalliyanikutty (supra)*** has not considered the holding in ***Bombay Dyeing (supra)*** and ***Tilokchand Motichand (supra)***.

Questions that arise for this Court's consideration

8. The questions that fall for consideration are, firstly, are the appellants right in contending that the recovery proceedings initiated against them under the Recovery of Dues Act are barred in view of the principle laid down in ***V.R.Kalliyanikutty (supra)***. Secondly, if they are right, then is the decision in ***V.R. Kalliyainkutty (supra)*** contrary to the holding in ***Bombay Dyeing and Manufacturing Company Limited (supra)*** and if so what is the course open for this two-Judge Bench.

***Reasoning in V.R. Kalliyanikutty* (supra)**

9. To appreciate these contentions, we need to first understand the law laid down in ***V.R. Kalliyanikutty (supra)***. The primary question of law involved in ***V.R. Kalliyanikutty (supra)*** was, whether a debt which is barred by the law of limitation can be recovered by resorting to recovery proceedings under the Kerala Revenue Recovery Act, 1968. This apart, the Bench, after setting out the scheme of the Kerala Revenue Recovery Act, examined the further question as to whether the object of the Kerala Revenue Recovery Act was only for speedy recovery or if the said Act also enlarged the right to recover. Additionaly, the Bench addressed the question as to whether the words "*amount due*" would refer to the amounts repayable under the terms of the Loan Agreement executed between the debtor and the creditor irrespective of whether the claim was time-barred or whether the words refer to only those claims which are legally recoverable.

10. Relying upon ***Hansraj Gupta vs. Dehra Dun-Mussorie Electric Tramway Co. Ltd.***, **AIR 1933 PC 63**, the Bench in ***Kalliyanikutty*** **(supra)** held that the Kerala Recovery Act did not create any new right and that it merely provided a process for speedy recovery. In view of the same, it held that since the Act did not create any right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable. The Bench thereafter distinguished the judgment in ***Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur,*** **(1978) 1 SCC 44** as having no applicability to the interpretation of the Kerala Revenue Recovery Act. It further relied on the judgment of this Court in ***Director of Industries, U.P.*** vs. ***Deep Chand Agarwal*** **(1980) 2 SCC 332** to reinforce its holding on the interpretation of the word 'due' under the Kerala Revenue Recovery Act. The plea that the statute of limitation merely bars the remedy and does not touch upon the right was not accepted by the Court by holding that the rights of the parties are not enlarged by the Kerala Revenue Recovery Act and that unless the Act expressly provided for enlargement of claims extending to the recovery of barred debts, that principle will not apply. Ultimately, the Court held that under the provisions of the Kerala Revenue Recovery Act a debt which is barred by the law of limitation cannot be recovered.

11. The Division Bench, in the impugned order, has relied on ***Bombay Dyeing*** ***(supra)*** to reinforce the point that the statute of limitation only bars the remedy and does not extinguish the debt. The decision in ***Bombay Dyeing*** ***(supra)*** was a case where the Constitution Bench of this Court reiterarted the principle that statutes of limitation only bar the remedy and do not extinguish the right and so holding, it found that the definition of "*unpaid accumulations"* in that case did apply to wages of employees that were time-barred. The Court went on to hold that while time-barred wages did vest in the State, since the Act did not, in that case, provide for disbursement of the wages to the workers whose claims could be established and since there was no provision for the workers making the claim, the Act was held to be contrary to Article 31(2) of the Constitution, which then existed.

12. It is well settled that the laws of limitation only bar the remedy and do not extinguish the right, except in cases where title is acquired by prescription. We may note here that ***V.R. Kalliyanikutty*** ***(supra)*** did not dispute the principle that the statute of limitation only bars

the remedy and does not extinguish the debt. After considering this principle it went onto hold that there was no enlargement of right in the Kerala Revenue Recovery Act. The impugned order, in the present case, further holds that ***Bombay Dyeing*** ***(supra)*** and ***Tilokchand and Motichand*** ***(supra)*** were not brought to the notice in ***V.R. Kalliyanikutty*** ***(supra)***. The decision in ***Tilokchand and Motichand*** ***(supra)*** was a case which *inter alia* dealt with extension of the principles of laches and res judicata to writ proceedings and have no direct relevance to the present controversy. The impugned order, in the present case, thereafter goes on to hold that the machinery for recovery under the Recovery of Dues Act or the State Financial Corporations Act do not have the trappings of a Court to hold that the provisions of the Limitation Act have no application for the same.

***Discussion and Reasoning*:-**

13. In our view, the findings of the Division Bench in the impugned order do not directly address the holding in ***V.R. Kalliyanikutty*** ***(supra)*** that the Kerala Revenue Recovery Act did not create any additional right to recover and enforce the outstanding amounts due.

14. The real question that arises is do the State Financial Corporations Act, 1951 and the Recovery of Dues Act create a distinct right and provided an alternative mechanism of enforcement to reover the amount due, even if the amounts due were time barred? To answer this question, we need to examine the relevant statutory provisions.

15. The objects and reasons of the State Financial Corporations Act are relevant for the purposes of the present case. They read as under:

> "The intention is that the State Corporations will confine their activities to financing medium and small scale industrial and will, as far as possible, consider only such cases as are outside the scope of the Industrial Finance Corporation. The State Governments also consider that the State Corporations should be established under a special Statute in order to make it possible to incorporate in the Constitution necessary provisions in regard to majority control by Government, guaranteed by the State Government in regard to the repayment of principal, and payment of a minimum rate of dividend on the shares, restriction on distribution of profits and **special powers for the enforcement of its claims and recovery of dues**.

> The main features of the Bill are as follows:-
>
> (vii) The Corporation will be authorised to make long-term loans to industrial concerns and to guarantee loans raised by industrial concerns which are repayable within a period of not exceeding 25 years. The Corporation will be further authorised to underwrite the issue of stocks, shares, bonds or debentures by industrial concerns, subject to the provision that the Corporation will be required to dispose of any shares, etc., acquired by it in fulfilment of its underwriting liability within a period of 7 years.
>
> (ix) **The Corporation will have special privileges in the matter of enforcement of its claims against borrowers**"
>
> (emphasis supplied)

Section 32-G of the State Financial Corporations Act reads as under:-

> "**32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.—**Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, **may, without prejudice to any other mode of recovery**, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it **may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue**."
>
> (emphasis supplied)

16. This apart, for the purposes of the present case, the relevant provisions of the Recovery of Dues Act, being Section 2(c) and Section 3 of the Recovery of Dues Act, are for the sake of convenience set out hereinbelow:

> "2. **Definitions**
>
> In this Act, unless the context otherwise requires, -

(c) "defaulter" means a person who either as principal or as surety, is a party –

(i) to **any agreement relating to a loan**, advance or grant given under that agreement or relating to credit in respect of, or relating to hire-purchase of, goods sold by the State Government or the Corporation, by way of financial assistance;

and such person makes any default in repayment of the loan or advance or any instalment thereof or, having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof or otherwise fails to comply with the terms of the agreement;

3. Recovery of certain dues as arrears of land revenue

(1) Where any sum is recoverable from a defaulter –

(a) by the State Governemnt, such officer as it may, by notificaitaon, appoint in this behalf;

(b) **by a Corporation or a Government company, the Managing Director thereof, shall determine the sum due from the defaulter**.

(2) The Officer or the Managing Director, as the case may be, referred to in sub-section (1), shall send a certificate to the Collector mentioning the sum due from the defaulter and requesting that such sum together with the cost of proceedings be recovered as if it were an arrear of land revenue.

(3) A certificate sent under sub-section (2) shall be conclusive proof of the matters stated therein and the Collector, on receipt of such certificate, shall proceed to recover the amount stated therein as an arrear of land revenue.

(4) No civil court shall have jurisdiction –

(a) to entertain or adjudicate upon any case; or

(b) to adjudicate upon or proceed with any pending case;

relating to the recovery of any sum due as aforesaid from the defaulter. The proceedings relating to the recoery of the sums due from the defaulters, pending at the commencement of this Act in any civil court, shall abate."

(emphasis supplied)

17. It will be clear from Section 32-G of the State Financial Corporations Act that the Section confers a right of recovery on the financial corporation, without prejudice to any other mode of recovery which includes the right to file a suit. The conferment of such a right to recover an 'amount due' as arrears of land revenue, notwithstanding any other remedy, is for a public purpose and in public interest.

18. At this point, we deem it appropriate to refer to a passage from Salmond on Jurisprudence, 12th Edition, on the concepts of "Right" and "Power" [Page 224, 229 & 230]:

> "***42. Legal rights in a wider sense of the term***
>
> *We must now consider the wider use of the term, according to which rights, do not necessarily correspond with duties. In this generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. Of rights in this sense there are four distinct kinds. These are (1) Rights (in the strict sense), (2) Liberties, (3) Powers, and (4) Immunities. Each of these has its correlative, namely (1) Duties, (2) No-Rights, (3) Liabilities, and (4) Disabilities.*
>
> *A **debt** is not the same thing as a right of action for its recovery. A former is the right in the **strict and proper sense**, corresponding to the duty of the debtor to pay; **the latter is a legal power**, corresponding to the liability of the debtor to be sued. That the two are distinct appears from the fact that the right of action may be destroyed (as by prescription) while the debt remains*
>
> *A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons. Powers are either public or private. The former are those which are vested*

> *in a person as an agent or instrument of the functions of the state; they comprise the various forms of legislative, judicial, and executive authority…The correlative of power is a liability. This connotes the presence of a power vested in someone else, as against the person with the liability. It is the position of one whose legal rights (in the wide sense) may be altered by the exercise of a power…the most important form of liability is that which corresponds to the various powers of action and prosecution. Such liability is independent of the question whether the particular action or prosecution will be successful, and is therefore independent of (say) the duty to pay damages for a civil wrong"*
>
> (emphasis supplied)

As would be clear from the passage above, a debt is not the same thing as the right of action for its recovery. While the debt is the right in the creditor with the corelative duty on the debtor the right of action for recovery is in the nature of a legal power. While the process of filing a civil suit may be barred because of the statute of limitation, the power to recover vested through Section 32-G of the State Financial Corporations Act read with Section 2(c) and Section 3 of the Recovery of Dues Act is a distinct power which continues notwithstanding that another mode of recovery through a civil suit is barred. Understood in that sense, it does appear that there is an additional right to enforce the claims of the financial corporations notwithstanding the bar of limitation. The same is the case with the provisions of the Kerala Revenue Recovery Act which fell for consideration of this Court in ***V.R. Kalliyanikutty*** **(supra)**.

19. No doubt, even where the statute of limitation does not apply, the power has to be exercised within a reasonable time. In that scenario the further question would be: Whether the time available would analogously be the time available for execution of decrees? Since no specific arguments have been advanced and since the Division Bench in the Impugned Order was not engaged with that issue, we refrain from dealing with the same.

20. In the context of the Kerala Revenue Recovery Act, the decision in ***V.R. Kalliyanikutty*** ***(supra)*** needs to be discussed. The relevant portions of the judgment is extracted hereinbelow:

"3. ...Under Section 71, however, there is a provision for extending the Act to recovery of certain other dues if the Government is satisfied that it is necessary to do so in public interest. Under Section 71 it is provided as follows:

> *"71. Power of Government to declare the Act applicable to any institution.—The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."*

4. In exercise of its powers under Section 71, the State Government has issued a notification bearing SRO No. 797 of 1979 by which the provisions of the said Act have been made applicable to the recovery of the amounts due from any person to any bank on account of any loan advanced to such person by that bank for agriculture or agricultural purposes. Under another notification SRO No. 851 of 1979 issued under Section 71 by the State Government the provisions of the said Act are also made applicable to the recovery of amounts due from any person or class of persons to the Kerala Financial Corporation. Thus in public interest the State Government has made the said Act applicable for speedy recovery of loans given by a bank for agricultural purposes as well as for speedy recovery of loans given by the Kerala Financial Corporation. The overall scheme of the Act, therefore, is to provide for speedy recovery, not merely of public revenue but also of certain other kinds of loans which are required to be recovered speedily in public interest.

5. Explaining analogous provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1965, this Court in Director of Industries, U.P. v. Deep Chand Agarwal [(1980) 2 SCC 332 : AIR 1980 SC 801] held that the said Act is passed with the object of providing a speedier remedy to the State

Government to realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. Explaining the need for speedy recovery, it says that the State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry or for such other purposes which would advance the economic well-being of the people. Moneys so advanced have to be recovered expeditiously so that fresh advances may be made for the same purpose. It is with the object of avoiding the usual delay involved in the disposal of suits in civil courts and providing for an expeditious remedy that the U.P. Act had been enacted. It was on this ground that this Court upheld the classification of loans which are covered by the said U.P. Act in a separate category. It held that this is a valid classification and the provisions of the Act are not violative of Article 14.

6. The same reasoning would apply to the loans which are covered by the said notifications under Section 71 of the Kerala Revenue Recovery Act. Agricultural loans and loans by the State Financial Corporation are also loans given in public interest for the purpose of economic advancement of the people of the State, to help them in agricultural operations or establishment of industries. For this reason the Kerala Revenue Recovery Act has been made applicable to such loans so that there can be a speedy recovery of such loans and the amounts can be utilised for similar objects again.

18. In the premises under Section 71 of the Kerala Revenue Recovery Act claims which are time-barred on the date when a requisition is issued under Section 69(2) of the said Act are not "amounts due" under Section 71 and cannot be recovered under the said Act. Our conclusion is based on the interpretation of Section 71 in the light of the provisions of the Kerala Revenue Recovery Act."

Under the said provision, the Government in public interest could make the Revenue Recovery Act applicable to recovery of amounts

due to any person or class of persons or to any specified institution or any class or classes of institutions and on such notification by the provisions of the Act was applicable to such recovery. Admittedly, in ***V.R. Kalliyanikutty*** ***(supra)*** a notification was issued making the provisions of the Kerala Revenue Recovery Act applicable to the Kerala Financial Corporation. The Kerala Financial Corporation is also a Corporation under the said Financial Corporation Act to which Section 32-G applied.

21. In our view, while the Court focused on the implication of a notification under Section 71 of the Kerala Revenue Recovery Act whereunder the Government could declare the Act applicable to any institution, the attention of the Court in ***V.R. Kalliyanikutty*** **(supra)** was not drawn to the powers envisaged under the State Financial Corporations Act which were also applicable to the recovery of debts in Kerala. As noticed above, the statement of objects and reasons of the State Financial Corporations Act refers to providing State Financial Corporations with 'special privileges in the matter of enforcement of claims against borrowers'. This is reflected through Section 32-G of the State Financial Corporations Act which we have set-out hereinabove.

22. This Court in ***V.R. Kalliyanikutty*** **(supra)** held that the words '*amounts due*' occuring in the Kerala Revenue Recovery Act would only include legally recoverable debts i.e. debts which are not time-barred. For this purpose, it may be apposite to refer to the relevant portions from the decision in ***V.R. Kalliyanikutty*** **(supra)**:

> "*9. In the case of Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [AIR 1933 PC 63 : 60 IA 13] the Privy Council was required to interpret the words "money due" under Section 186 of the Companies Act, 1913. Section 186 dealt with the recovery of any money due to the company from a contributory. Interpreting the words "money due", the Privy Council said that the phrase would only refer to those claims which were not time-barred.*
>
> *10. The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial*

institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of the whole or part of the money paid under protest. Under sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.

11. Therefore, under Section 70(3) a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law he would be entitled to submit in the suit that the claim against which the recovery has been made is time-barred. Hence no amount should have been recovered from him. When the right to file a suit under Section 70(3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act which expressly brings about such a result. Provisions of the said Act, however, indicate to the contrary. Moreover, such a wide

interpretation of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims.

12. In the case of New Delhi Municipal Committee v. Kalu Ram [(1976) 3 SCC 407] relying on the Privy Council decision in Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [AIR 1933 PC 63 : 60 IA 13] this Court interpreted Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 in a similar way. Under that section where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. While considering the meaning of the words "arrears of rent payable" this Court examined whether Section 7 creates a right to realise arrears of rent without any limitation of time. The Court observed that the word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. In the context of recovery of arrears of rent under Section 7, this Court said that if the recovery is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent the determination must be in accordance with law. Section 7 only covers arrears not otherwise time-barred.

***16.** There is no question, however, in the present case of any payment voluntarily made by a debtor being adjusted by his creditor against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of "amounts due". Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution*

filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such a process of recovery would start with a written requisition issued in the prescribed form by the creditor to the Collector of the district as prescribed under Section 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act."

(emphasis supplied)

23. In order to arrive at the conclusion that the words '*amounts due*' occurring in the Kerala Revenue Recovery Act would only include legally recoverable debts i.e. debts which are not time-barred, the Court in ***V.R. Kalliyanikutty*** **(supra)** relies upon three decisions. First is the decision of the Privy Council in ***Hansraj Gupta*** **(supra)**, second is the decision of the this Court in ***New Delhi Municipal Committee*** vs. ***Kalu Ram***, **(1976) 3 SCC 407** and third, is the decision of this Court ***Deep Chand*** **(supra)**.

24. The decision in ***Hansraj Gupta*** **(supra)** was in the context of an application filed by the Official Liquidator praying that the Appellants therein, in their capacity as contributories, must be ordered to pay a debt owed by them to the Company. This Application was made under Section 186(1) of the Indian Companies Act, which provides as follows:

"Court may, at any time after making a winding-up Order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act."

The decision in ***Hansraj Gupta (supra)*** involved interpretation of the words 'any money due' occurring in Section 186(1) of the Indian Companies Act. The Privy Council, while following and affirming the judgment of the Lahore High Court in ***Sri Narain v. Liquidator, Union Bank of India***, **ILR 4 Lah. 109**, held that a time-barred debt could not be enforced by a summary order under Section 186 since the section did not create new liability or confer new rights and since it merely created a summary procedure for enforcing existing liabilities.

25. Additionally, in ***Hansraj*** **(supra)** the Limitation Act applied to the company court, since it was a 'court'. Section 46-B of the State Financial Corporations Act provides that the said Act was to have effect notwithstanding anything inconsistent therewith contained in any other law. The authority under the Recovery of Dues Act not being a 'court', the provisions of the Limitation Act cannot *proprio vigore* apply.

26. The decision of this Court in ***Kalu Ram*** **(supra)** is again based fully on the interpretation of the Privy Council in ***Hansraj*** **(supra)**. That apart, the decision in ***Kalu Ram*** **(supra)** involved the interpretation of the words '*arrears of rent payable*' under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The Court noted that the word '*payable*' generally means '*that which should be paid*' and thereafter concluded that the word can only be interpreted to mean dues which are legally recoverable. The provisions herein use the words '*amounts due*' and are provisions which create a right to recover through a separate mechanism, notwithstanding the right to file a civil suit.

27. At this juncture, we also deem it fit to note the decision of this Court in ***KGU Trust*** **(supra)**.The decision in ***KGU Trust*** **(supra)** was rendered while interpreting the words '*entire amount of rent due*' occurring in Section 20(4) of the U.P Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. While the landlord could file an eviction suit on the ground that the tenant is in arrears of rent, the Tenant was given an option to resist this eviction suit by depositing this '*entire amount of rent due*'. While the decision in ***V.R. Kalliyanikutty*** **(supra)** rightly states that the said provision was a benefit being conferred on the tenant, we deem it necessary to refer to the other findings of this Court in ***KGU Trust*** **(supra)** which are of relevance for the purposes of answering the questions before us. In arriving at the conclusion

that the '*entire amount of rent due*' would include even time-barred claims, the Court in ***KGU Trust*** **(supra)** specifically noted the decision in ***Bombay Dyeing*** **(supra)** and the principle that the Limitation Act only bars the remedy and does not extinguish the debt. The Court also noted **Halsbury's Laws of England** where it is stated that the Limitation Act would only take away the remedy while leaving the right untouched, and that '*if a creditor whose debt is statute-barred has* ***any means of enforcing his claim*** *other than by action or set-off, the Limitation Act does not prevent him from* ***recovering by those means***'**. [Paragraph 4, 5 of *KGU Trust (supra)*]**

28. ***Deep Chand*** **(supra)** was a case where there was a challenge to the constitutionality of Section 3 of the U.P Public Moneys (Recovery of Dues) Act, 1965. The argument was that Section 3 provided two remedies to the Government – one being a suit and another being a remedy under the Act – and that the latter remedy was more onerous and without any guidelines in law. [Paragraph 2 of ***Deep Chand*** **(supra)**] In upholding the Constitutionality of the U.P Act, the Court noted that the object of the U.P Act was to enable speedy recovery of money and that therefore, the classification was valid. [Para 6 of ***Deep Chand*** **(supra)**]

29. While it is true that the U.P Act, similar to the Haryana Revenue Recovery Act [in the present case] or the Kerala Revenue Recovery Act, was enacted with the object to have speedy recovery of dues, this does not take away from the fact that the right was vested in the Financial Corporations to recover the loans through the said Acts, notwithstanding any other right, including the right to file a suit.

30. As far as the finding in ***V.R. Kalliyanikutty*** **(supra)** regarding Section 70(3) of the Kerala Revenue Recovery Act, which provides for a suit by the debtor for refund after payment under protest, is concerned, what is to be noted is that the defence for the State Financial Corporations that the State Financial Corporations Act conferred an additional right to recover amounts due would still be applicable. Therefore, the existence of the right to the debtor under Section 70(3) of the Kerala Revenue Recovery Act cannot be said to be determinative of the issue.

31. It would also be apposite to point out that the applicability of ***V.R. Kalliyanikutty*** **(supra)** to Section 56(2) of the Electricity Act, 2003 recently fell for consideration before a three-judge Bench of this Court

in ***K.C. Ninan*** v. ***Kerala State Electricity Board*****, 2023 INSC 560**. One of the questions which the Court was faced with was whether the statutory bar on recovery of electricity dues after the limitation period of two years provided under Section 56(2) of the Electricity Act, 2003 would have an implication on the civil remedies of the Electric Utilities to recover such arrears. The auction purchasers, who had purchased premises where electricity had been disconnected due to defaults of the previous owners, argued that the period of limitation would apply to such dues and that Electric Utilities could not demand such time-barred dues from them. The Court in ***K.C. Ninan*** **(supra)**, after a comprehensive analysis of the scheme of the Electricity Act, held that the power to initiate proceedings to recover the electricity dues was independent of the power to disconnect electrical supply. Thereafter, the Court noticed the decision in ***V.R. Kalliyanikutty*** **(supra)** and concluded that statute of limitation only barred a remedy, while the right to recover the loan through '*any other suitable manner provided*' remains untouched. Having so held, the Court rejected the argument of the auction purchasers and concluded that the bar of limitation under Section 56(2) of the Electricity Act would only restrict the remedy of disconnection under Section 56 of the Electricity Act and that the Electric Utilities were entitled to reocver electricity arrears through civil remedies or in exercise of its statutory power.

32. In view of what has been pointed out hereinabove, we are of the opinion that, for a comprehensive consideration and an authoritative pronouncement after taking into account all aspects, including those dealt with hereinabove, the matter needs to be placed before the Hon'ble Chief Justice of India to constitute an appropriate three-judge bench.

33. Let the papers along with this order be placed before Hon'ble the Chief Justice of India for seeking appropriate directions from His Lordship, in this regard.

Headnotes prepared by: Ankit Gyan

Result of the case:
Matter referred to CJI to constitute 3 Judges Bench.

[2024] 6 S.C.R. 259 : 2024 INSC 397

Col. Ramneesh Pal Singh
v.
Sugandhi Aggarwal

(Civil Appeal No. 6137 of 2024)

08 May 2024

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

Issue for Consideration

Matter pertains to the guardianship of two minor children till they attain the age of majority.

Headnotes

Guardian and Wards Act, 1890 – ss. 7, 9 and 25 – Custody of two minor children – Family Court granted permanent custody of minor children to the father-serving Army Officer and provided visitation rights to the mother – However, the High Court set aside the order and granted the parties shared custody of the minor children – Challenge to:

Held: Principal consideration whilst deciding an application for guardianship under the Act in exercise of its parens patriae jurisdiction would be the 'welfare' of the minor children – Dispute must be decided on the basis of a holistic and all encompassing approach including inter alia the socio economic and educational opportunities made available to the minor children; healthcare and overall well being of the children; the ability to provide physical surroundings conducive to growing adolescents; the preference of the minor children as also stability of surroundings of the minor children – On facts, unwavering and strong desire of the children to continue to reside with the father – Said desire/preference although in itself cannot be determinative of custody of the children, but must be given due consideration – As regards, upbringing and welfare of the minor children, the Indian Armed Forces provides a robust support system to the kin of its officers which undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child – Nothing on record to suggest that the interests and welfare of the minor children were in any manner affected during their stay with the father – Furthermore, the father could not have been said to have engaged or propagated 'alienating behaviour' as alleged by the mother – High Court failed to appreciate the said

* Author

nuance and proceeded on an unsubstantiated assumption that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of 'alienating behaviour' having been identified by any Court – High Court neither correct nor justified in interfering with the order passed by the Family Court – In view thereof, it is just and appropriate that the custody of the minor children is retained by the father, subject to the visitation rights of the mother as granted by the Family Court. [Paras 8, 12, 13, 14, 16, 24-27]

Child and family welfare – Child custody dispute – 'Parental alienation syndrome'-PAS – Concept of:

Held: 'Parental alienation syndrome'-PAS is a thoroughly convoluted and intricate phenomenon requiring serious consideration and deliberation – Recognising and appreciating the repercussions of PAS certainly shed light on the realities of longdrawn and bitter custody and divorce litigations on a certain identified sect of families – However, there can be no straitjacket formula to invoke the principle of PAS laid down by this Court in *Vivek Singh's case – Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour – Said label has far-reaching implications which must not be imputed or attributed to an individual parent routinely – Courts must endeavour to identify individual instances of 'alienating behaviour'in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children. [Paras 18-20, 22, 23]

Child and family welfare – Child custody dispute – Upbringing and welfare of the minor children – Effect of the nature of employment of father serving in Indian Armed forces:

Held: Indian Armed Forces provides a robust support system to the kin of its officers so as to ensure minimal disruption in the lives of the civilian members of an officer's family – This support system includes residential accommodation, a network of army schools, hospitals and healthcare facilities – Moreover, various extra-curricular activities, recreational clubs; and other social and cultural functions are made available for the benefit of the kin of officers of the Indian Armed Forces – Said support system undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child. [Para 16]

Case Law Cited

Vivek Singh v. Romani Singh* [2017] 2 SCR 312 : **(2017) 3 SCC 231 – held inapplicable.

Jitender Arora v. Sukriti Arora [2017] 1 SCR 707 **: (2017) 3 SCC 726;** *Nil Ratan Kundu v. Abhijit Kundu* [2008] 11 SCR 1111 **: (2008) 9 SCC 413;** *Mausami Moitra Ganguli v. Jayant Ganguli* [2008] 8 SCR 260 **: (2008) 7 SCC 673;** *Vishnu v. Jaya* **(2010) 6 SCC 733;** *Lahari Sakhamuri v. Sobhan Kodali* [2019] 5 SCR 240 **: (2019) 7 SCC 311;** *Gaurav Nagpal v. Sumedha Nagpal* [2008] 16 SCR 396 **: (2009) 1 SCC 42;** *Rosy Jacob v. Jacob A. Chakramakkal* [1973] 3 SCR 918 **: (1973) 1 SCC 840;** *V. Ravi Chandran (Dr.) (2) v. Union of India* [2009] 15 SCR 960 **: (2010) 1 SCC 174;** *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari* [2019] 7 SCR 335 **: (2019) 7 SCC 42;** *Shazia Aman Khan and Ors. v. The State of Orissa and Ors.* [2024] 3 SCR 10 **: 2024 INSC 163 – referred to.**

Re C ('parental alienation'; instruction of expert) **[2023] EWHC 345 (Fam) – referred to.**

List of Acts

Guardian and Wards Act, 1890; Protection of Women from Domestic Violence Act, 2005.

List of Keywords

Guardianship; Custody of minor children; Visitation rights; Shared custody; Parens patriae jurisdiction; Upbringing and welfare' of the minor children; Socio economic and educational opportunities; Healthcare and overall wellbeing of the children; Physical surroundings conducive to growing adolescents; Preference of minor children; Stability of surroundings of minor children; Desire/ preference of minor child; Indian Armed Forces, robust support system to kin of its officers; Mental stimulation, growth and overall development of personality of child; Alienating behaviour'; 'Parental alienation syndrome'-PAS; Principle of parental alienation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6137 of 2024

From the Judgment and Order dated 11.10.2023 of the High Court of Delhi at New Delhi in MATAPP (FC) No. 132 of 2020

Appearances for Parties

Vivek Chib, Sr. Adv., Prabhas Bajaj, Priyanshu Tyagi, Rishav Rai, Ms. Unnatu Jhunjhunwala, Ms. Mansi Gupta, Rithvik Mathur, Ms. Manmeet Kaur Sareen, Advs. for the Appellant.

Ms. Vandana Sehgal, Mohit Yadav, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

Introduction

1. Leave granted.

2. The present appeal preferred by the Appellant seeks to assail the correctness of an order dated 11.10.2023 passed by a Division Bench of the High Court of Delhi at New Delhi (the "**High Court**") in M.A.T. APP (F.C.) 132 of 2020 (the "**Impugned Order**"). *Vide* the Impugned Order the High Court partly allowed the appeal preferred by the Respondent against an order dated 22.08.2020 passed by the Learned Family Court, West, Tis Hazari Court (the "**Family Court**") in GP No. 45/17 (Old GP No. 75 of 2015) whereby the Family Court granted permanent custody of minor children to the Appellant and provided visitation rights to the Respondent (the "**Underlying Order**"). Pertinently, *vide* the Impugned Order, the High Court set aside the Underlying Order; and accordingly granted the parties shared custody of the Minor Children (*defined below)*.

Factual Background

3. The facts and proceedings germane to the contextual understanding of the present *lis*, are as follows:

   3.1. The marriage between (i) the Appellant i.e., now serving as a Colonel in the Indian Armed Forces presently posted at Jalandhar, Punjab; and (ii) the Respondent i.e., now employed as a teacher in Delhi Public School, Gurugram - was solemnized on 22.12.2002 at Delhi, in accordance with *Hindu/Sikh* rites and rituals. Two minor children were born out of the wedlock i.e., (i) a 15 (fifteen) year old daughter (hereinafter "**SSU**"); and (ii) a 12 (twelve) year old son (hereinafter "**SSH**") (hereinafter, SSU and SSH shall collectively be referred to as the "**Minor Children**").

3.2. In December 2013, the Appellant having been promoted to the rank of Colonel in the Indian Armed Forces, was posted to serve in the Jammu and Kashmir. Accordingly, it was decided that the Respondent together with the Minor Children would reside in New Delhi. The relationship between the Parties deteriorated significantly; and thereafter took a turn for the worst on 08.08.2015, forcing the Respondent to leave the matrimonial home for 1 (one) night. Upon returning the next day i.e., 09.08.2015, the Respondent found the residence locked, and the Appellant along with the Minor Children unavailable at aforesaid residence.

3.3. The Respondent was constrained to file (i) a missing children's report on 19.08.2015; and thereafter (ii) an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the "**DV Act**") on 17.08.2015. Subsequently, the Respondent learnt that the Minor Children along with the Appellant were residing in Gulmarg, Jammu and Kashmir and were scheduled to move to Bikaner, Rajasthan in furtherance of the nature of the Appellant's service. Aggrieved, the Respondent filed a petition under Section 7, 9 and 25 of the Guardian and Wards Act, 1890 (the "**Act**") before the Family Court seeking custody of the Minor Children on 21.11.2015. On the other hand, the Appellant filed a similar petition seeking custody of the Minor Children before the Learned Principal Jude, Family Court, Bikaner, Rajasthan.

3.4. This Court *vide* an order dated 29.03.2017, transferred the custody petition filed by the Appellant before the Learned Principal Jude, Family Court, Bikaner, Rajasthan to the Family Court in Delhi. Thereafter, *vide* an order dated 16.10.2017, the Family Court granted interim custody of the Minor Children to the Respondent (the "**Interim Custody Order**"). Aggrieved, the Respondent preferred an Appeal before the High Court. *Vide* an order dated 06.12.2017, the High Court initially stayed the operation of the Interim Custody Order; thereafter *vide* an order dated 19.04.2018 granted the Respondent custody of the Minor Children on alternative weekends; and finally *vide* an order dated 01.10.2019, dismissed the appeal and vacated the *interim* order(s) observing *inter alia* that the appeal was not maintainable.

3.5. Aggrieved, the Appellant preferred a writ petition under Article 227 of the Constitution of India before the High Court challenging the correctness of the Interim Custody Order (the "**Writ Petition**"). *Vide* an order dated 29.04.2020, the High Court formulated an *interim* custody arrangement between the parties after interacting with the Minor Children. Pertinently, although an SLP was preferred against the aforesaid order, this Court did not interfere with the order passed by the High Court; and only directed the Family Court to decide the custody petition within a period of 1 (one) month.

3.6. In the aforesaid context, the custody petition came to be disposed of by the Family Court *vide* the Underlying Order as under:

> *"16.1 In view of the aforesaid discussion, it is directed that the permanent custody of minor children SSU and SSH shall remain with the respondent. However, the petitioner shall be entitled to have interaction with the minor children daily through audio-video call for half an hour, between 7:00 PM to 8:00 PM. The respondent shall facilitate the said call. She shall also be entitled to visit the minor children and take them out with her from 10:00 AM to 5:00 PM, on every second and fourth Sunday, at the station, where the minor children are staying, subject to their school/educational commitments. She can pick up the children from their residence at 10:00 AM and drop them back at 5:00 PM. If it is not possible to have visitation on any such day, it shall be compensated on the next Sunday i.e. third or fifth/first Sunday. Further, during the summer vacations and the winter vacations in the school(s) of the minor children, the petitioner shall be entitled to have the custody of the minor children for ten days and five days respectively. Such days can be mutually decided by the parties. Accordingly, the petition filed by the petitioner for seeking custody of the minor children SSU and SSH is dismissed, subject to contact/visitation/custody rights of the petitioner as aforesaid."*

3.7. Aggrieved by the Underlying Order, the Respondent preferred an appeal under Section 19 of Family Courts Act, 1984 before the High Court. During the pendency of the appeal, certain *interim* order(s) came to be passed from time to time, subsequently, *vide* the Impugned Order, the High Court granted the parties shared custody of the Minor Children as under:

> *"34. In view of the aforesaid discussion, the impugned order dated 22.08.2020 is set aside. We, accordingly, partly allow the appeal and direct that the appellant and the respondent will share custody of the minor children 'SSU' and 'SSH' in the following manner:*
>
> *(i) Till the start of the next academic session the appellant would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the appellant shall travel to the respondent's station of posting, on her own expenses on the second Friday of every month. She shall either make her own arrangements for accommodation or request the respondent to arrange for her accommodation at a guest house in the Cantonment Area. The respondent will hand over the custody of the children to the appellant on the evening of Friday, after she has arrived. The children shall remain with the appellant till Sunday evening and thereafter, the respondent shall pick them up before the appellant leaves for Delhi. On the fourth Friday of every month, the respondent shall either bring the children to Delhi or send them by flight, while placing them in the care of the airline staff. In such a situation, the appellant will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the respondent.*

(ii) Prior to the beginning of the next academic session, the appellant shall ensure that admission of the minor children is secured at the school where she is currently teaching, i.e., Delhi Public School, Gurugram, Haryana. The respondent shall fully cooperate in the admission process. Thereafter, the respondent shall hand over the custody of the minor children to the appellant. The children will stay with the appellant at her residence in Delhi. In such a situation, the respondent would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the respondent shall travel to Delhi, on his own expenses on every second Friday. He shall make his own arrangements for accommodation. The appellant will hand over the custody of the children to the respondent on the evening of Friday, after he has arrived. The children shall remain with the respondent till Sunday evening and thereafter, the appellant shall pick them up before the respondent leaves. On the fourth Friday of every month, the appellant shall either bring the children to the respondent's station of posting or send them by flight, while placing them in the care of the airline staff. In such a situation, the respondent will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the appellant.

(iii) In case the respondent is posted to a station in the NCT of Delhi, the appellant and the respondent will have custody of the minor children for two weeks each including the weekends, every month. The children shall stay with the appellant for the first two weeks

of every month and with the respondent for the next two weeks of every month. At the end of the second week of every month, i.e., on Sunday evening, the appellant shall drop the children at the respondent's accommodation. At the end of every fourth week, i.e., on Sunday evening, the respondent shall drop the children back at the appellant's residence.

(iv) During summer vacations and winter vacations, the appellant and the respondent shall have custody of the minor children for an equal number of days. Such days can be mutually agreed upon by the parties. It is clarified that in case the children are required to travel as a result of the said arrangement during vacations, the expenses for their travel shall be borne by the parent who they are visiting. Therefore, if the children are travelling from the respondent's station of posting to Delhi, the expenses shall be borne by the appellant. If the children are travelling from Delhi to the respondent's station of posting, the expenses shall be borne by the respondent."

3.8. Aggrieved by the Impugned Order, the Appellant preferred SLP (C) No. 28466 of 2023 (the "**SLP**") before this Court i.e., now converted to this instant appeal. *Vide* an order dated 05.01.2024, this Court stayed the operation of the Impugned Order.

3.9. It would also be relevant to clarify that, up until this stage, the custody of the Minor Children has essentially remained with the Appellant despite (i) various interim order(s) passed by (a) the High Court; and (b) the Family Court in favour of the Respondent; and (ii) the initiation of contempt proceedings before the High Court.

Contentions of the Parties

4. Shri Vivek Chib, Learned Senior Counsel appearing on behalf of the Appellant, urged the following:

4.1. That the Minor Children have been residing with him happily since '15 i.e., for period extending to almost to 9 (nine) years and it is the desire of the Minor Children to continue to reside with the Appellant. In this regard, it was submitted that the aforesaid preference has been communicated by the Minor Children to various court(s) from time -to-time including *inter alia* the High Court.

4.2. That the High Court proceeded on an erroneous assumption that the prolonged period of separation between the Respondent and the Minor Children has sub-consciously influenced the Minor Children against the Respondent.

4.3. That the Underlying Order passed by the Family Court was a detailed and well-reasoned order which has been passed after a thorough analysis of the copious evidence and material(s) on record in favour of the Appellant.

4.4. Lastly, Mr. Chib relied on the following decision(s) of this Court to buttress the aforesaid submission(s):

(a) ***Jitender Arora v. Sukriti Arora***, *(2017) 3 SCC 726*;

(b) ***Nil Ratan Kundu v. Abhijit Kundu***, *(2008) 9 SCC 413*;

(c) ***Mausami Moitra Ganguli v. Jayant Ganguli***, *(2008) 7 SCC 673*;

(d) ***Vishnu v. Jaya***, *(2010) 6 SCC 733*; and

(e) ***Lahari Sakhamuri v. Sobhan Kodali***, *(2019) 7 SCC 311*.

5. Ms. Vandana Sehgal, AOR appearing on behalf of the Respondent brought forth the following key contentions:

5.1. That the Appellant has forcefully retained the custody of the Minor Children for a prolonged period of 8 (eight) years in blatant disregard of various order(s) passed by the High Court and / or the Family Court directing *interim* shared custody of the Minor Children at different points of time.

5.2. That the Underlying Order granted the Appellant custody of the Minor Children proceeding on an erroneous and irrelevant consideration i.e., the alleged act of adultery.

5.3. That the Appellant has deliberately disenfranchised the Minor Children from their mother i.e., the Respondent herein, and accordingly it was vehemently contended that the present *lis* is a classic case of '*parental alienation syndrome*' ("**PAS**").

5.4. That the Minor Children are at an impressionable age and require the presence of their mother i.e., the Respondent.

5.5. That the Court whilst exercising its *parens patriae* jurisdiction must not limit itself to the wish and / or desire of the Minor Children but must ensure the welfare of the Minor Children.

5.6. That the Respondent is employed as a teacher in a reputed school in Gurugram; and would be able to provide the Minor Children with a stable and conducive environment as opposed to Appellant i.e., a serving officer in the Indian Armed Forces, who is due to be transferred to a field station as opposed to a family station.

5.7. In regard to the aforesaid, Ms. Sehgal relied on the following:

(a) ***Vivek Singh v. Romani Singh****, (2017) 3 SCC 231*;

(b) ***Gaurav Nagpal v. Sumedha Nagpal*** *(2009) 1 SCC 42*;

(c) ***Nil Ratan Kundu*** ***(Supra)***; and

(d) ***Rosy Jacob v. Jacob A. Chakramakkal****, (1973) 1 SCC 840*.

Analysis and Findings

6. We have heard the learned counsels appearing on behalf of the respective parties at length and we have carefully considered and deliberated upon the submission(s) made on behalf of the parties.

7. In the instant appeal we have been called upon to decide the guardianship of 2 (two) minor children i.e., (i) SSU; and (ii) SSH, till they attain the age of majority.

8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the 'welfare' of the minor children.[1]

1 ***V. Ravi Chandran (Dr.) (2) v. Union of India*** (2010) 1 SCC 174

9. The aforesaid principle is also enshrined in Section 17 of the Act, the same is reproduced as under:

> *"**17. Matters to be considered by the Court in appointing guardian.** – (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*
>
> *(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.*
>
> *(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.*
>
> *[2]* * * * **
>
> *(5) The Court shall not appoint or declare any person to be a guardian against his will."*

10. In this context, it would be appropriate to refer to a decision of this Court in ***Nil Ratan Kundu* (Supra)** wherein parameters of 'welfare' and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

> *"52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor*

2 Sub-section (4) omitted by Act 3 of 1951, s. 3 and the Schedule.

by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot beignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

xxx

55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.

56. In Rosy Jacob [(1973) 1 SCC 840] this Court stated:

(SCC p. 854, para 15)

> *"15. … The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading."*

It was also observed that the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the elevant circumstances. The father's fitness cannot override considerations of the welfare of the minor children.

57. In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should

exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."

11. Furthermore, this Court in ***Gaurav Nagpal*** ***(Supra)*** undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term 'welfare' in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.

12. Accordingly, in view of the aforesaid, not only must we proceed to decide the present *lis* on the basis of a holistic and all-encompassing approach including *inter alia* (i) the socio-economic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall-wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as mandated under Section 17(3) of the Act.[3] Furthermore, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.[4]

13. In the present factual matrix, the minor children i.e., SSU; and SSH have interacted with the Court(s) to express their preference of guardian on a plethora of occasions. Accordingly, we consider it appropriate to briefly delve into the observations of the Court(s) *vis-à-vis* the preference expressed by the Minor Children:

    13.1. The Learned Single Judge of the High Court engaged with the Minor Children on 24.02.2020 i.e., SSU was approximately 11.5 (eleven and a half) years old; and SHH was approximately 8 (eight) years old. The Learned Single Judge in his order dated 29.04.2020 recorded that he found the Minor Children to be confident and well-groomed. Furthermore, it has been categorically stated no overt preference was indicated by the Minor Children in respect to one parent over the other.

    13.2. Thereafter, the Family Court engaged in a personal interaction with the Minor Children on 11.08.2020 i.e., when SSU

3 ***Lahari Sakhamuri*** ***(Supra)***; and ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*** (2019) 7 SCC 42

4 ***Shazia Aman Khan and Ors. vs. The State of Orissa and Ors.*** 2024 INSC 163

was approximately 12 (twelve) years old; and SSH was approximately 8.5 (eight and a half) years old. Pertinently, in Underlying Order, the Family Court observed that the Minor Children expressed their preference to reside with the Appellant. Additionally, it was observed that the Minor Children were doing well in the pursuit of their education and co-curricular activities whilst residing with the Appellant; and that the Minor Children were well-settled and progressing fine.

13.3. Subsequently, the Division Bench of the High Court interacted with the Minor Children on two occasions i.e., (i) 23.08.2021; and (ii) 17.08.2022. Pertinently, the Division Bench in an order dated 23.08.2021 observed that the children were intelligent and reasonably grown up. On the other hand, the Division Bench in the Impugned Order observed that the Minor Children expressed their clear desire to reside with the Appellant.

13.4. In the Supreme Court, we considered it necessary to interact with the Minor Children ourselves. Accordingly, *vide* an order dated 19.03.2024, we directed the Appellant to produce the Minor Children in Court so as to enable us to interact with them. On 05.04.2024, we interacted with both SSU; and SSH in chambers. We found the Minor Children to be intelligent, confident, cognisant of the *pros* and *cons* of their decisions and most importantly content / happy. During our interactions with the Minor Children, despite probing the issue of guardianship on more than one occasion, the Minor Children categorically stated that they were happy and wished to reside with their father only i.e., the Appellant.

14. The natural and consequential deduction from the aforesaid interaction(s) between the Minor Children and various Court over a period spanning over 4 (four) years, is the unwavering and strong desire of the children to continue to reside with the Appellant. The aforesaid desire / preference although in itself cannot be determinative of custody of the children, but it must be given due consideration on account of it being a factor of utmost importance.

15. Having settled the preference of the Minor Children, we turn towards, the next leg of the analysis to be undertaken by this Court in questions involving custody of children i.e., considerations of welfare of the children.

16. In the instant appeal, certain contentions were raised by Ms. Sehgal in relation to the nature of employment of the Appellant posing a challenge in the upbringing and welfare of the Minor Children. We find ourselves unable to subscribe to the aforesaid view, as we find that the Indian Armed Forces provides a robust support system to the *kin* of its officer(s) so as to ensure minimal disruption in the lives of the civilian member(s) of an officer's family. This support system includes residential accommodation, a network of army schools, hospitals and healthcare facilities. Moreover, various extra-curricular activities i.e., sport(s) facilities and recreational clubs; and other social and cultural functions are made available for the benefit of the *kin* of officers of the Indian Armed Forces – the aforesaid support system undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child.

17. At this juncture it would also be relevant to deal with the main thrust of the argument put forth by Ms. Sehgal in relation to the preference indicated by the Minor Children i.e., it was contended that the present case is a classic case of PAS wherein the Minor Children have been influenced against the Respondent; and accordingly the preference indicated by the Minor Children ought not to be considered representative of the true emotions of the Minor Children. In view of the aforesaid, the decision of this Court in ***Vivek Singh*** ***(Supra)*** was heavily relied upon to substantiate her submission. The relevant paragraph is reproduced as under:

> *"18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this*

end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are "right" in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent i.e. the mother and change her to agree with the appellant's viewpoint cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologists term it as "The Parental Alienation Syndrome" [The Parental Alienation Syndrome was originally described by Dr Richard Gardner in "Recent Developments in Child Custody Litigation", The Academy Forum, Vol. 29, No. 2: The American Academy of Psychoanalysis, 1985]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in

the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality."

18. The aforesaid submission found favour with the High Court. Pertinently, the High Court in the Impugned Order observed that the possibility of the Minor Children having been influenced against the Respondent, could not be ruled out.

19. We find ourselves unable to agree with the High Court - in our considered opinion, the High Court has failed to appreciate the intricacies and complexities of the relationship between the parties and accordingly, proceeded to entertain allegations of PAS on an unsubstantiated basis.

20. PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important for us to remember that there can no straitjacket formula to invoke the principle laid down by this Court in ***Vivek Singh*** ***(Supra)***.

21. The role of a Court *vis-à-vis* allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in ***Re C ('parental alienation'; instruction of expert)***, *[2023] EWHC 345 (Fam)*. Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ("**ACP**") and thereafter observed as under:

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

> *'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'*
>
> *It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful.* ***What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied.****"*

22. We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and / or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.

23. Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of *parental alienation* so as to overcome the preference indicated by the minor children.[5]

5 Recognised by this Court in ***Vivek Singh*** ***(Supra)***.

24. In the instant appeal, the Family Court has categorically recorded that there was nothing on record to suggest that the interests and welfare of the Minor Children were in any manner affected during their stay with the Appellant. Additionally, the Learned Single Judge of the High Court interacted with the Minor Children on 24.02.2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident on 08.08.2015, and categorically recorded that the Minor Children expressed no overt preference amongst their parents – the aforesaid observation by the Learned Single Judge, is crucial as it underscores that while the relationship between the parties may have been strained; the Minor Children could not be said to have exhibited any indication of *'parental alienation'* i.e., there was no overt preference expressed by the Minor Children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. The aforesaid position is also supported by materials on record to suggest that (i) the Minor Children are cognisant and aware of the blame game being played *inter se* the parties; and (ii) that the Minor Children did not foster unbridled and prejudiced emotions towards the Respondent. Accordingly, we find that the Appellant could not have been said to have engaged or propagated *'alienating behaviour'* as alleged by the Respondent.

25. Therefore, in our considered opinion, the High Court failed to appreciate the aforesaid nuance and proceeded on an unsubstantiated assumption i.e., that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of *'alienating behaviour'* having been identified by any Court. In view of the aforesaid discussion, we find that the reliance placed on ***Vivek Singh* (Supra)** by the Respondent is misdirected and the High Court erred in law and in fact whilst relying on the said decision.

26. Accordingly, on an overall consideration, we are convinced that the High Court was neither correct nor justified in interfering with the well-considered and reasoned order passed by the Family Court granting custody of the Minor Children to the Appellant for the reasons recorded above.

Directions & Conclusions

27. In view of the aforesaid discussion, we consider it just and appropriate that the custody of the Minor Children is retained by the Appellant,

subject to the visitation rights of the Respondent as granted by the Family Court *vide* the Underlying Order i.e., the final order dated 22.08.2020.

28. The appeal is allowed in the aforesaid terms; the Impugned Order is set aside. Pending applications, if any, stand disposed of. No order as to cost(s).

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 280 : 2024 INSC 432

Mahendra Kaur Arora
v.
HDFC Bank Ltd

(Civil Appeals No. 6096-6097 of 2017)

08 May 2024

[Hima Kohli and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

In a petition u/Article 227 of the Constitution of India, Single Judge upheld the order passed by Appellate Rent Tribunal by which the decree passed in favour of the appellant-landlady by the Rent Tribunal was set aside and counter claim filed by the respondent-Bank seeking refund of the security amount was allowed. Appellant filed *intra* court appeal which was dismissed by the Division Bench of the High Court as not maintainable.

Headnotes

Lease Agreement – Respondent-Bank terminated the lease agreement by issuing three months' notice in terms of clause 6 thereof – However, did not hand over the vacant possession of the premises to the appellant-landlady and continued occupying it – As per the appellant, the respondent also did not pay the use and occupation charges in respect of the subject premises, after adjusting the security deposit towards the rent payable for three months – Application filed by appellant seeking eviction and recovery of arrears of rent was decreed by Rent Tribunal, counter claim filed by the respondent was rejected – Appeal filed by respondent, allowed by Appellate Rent Tribunal – Appellant filed petition u/Article 227 of the Constitution of India before the High Court, dismissed by Single Judge – Appellant filed *intra* court appeal, dismissed by Division Bench of the High Court as not maintainable:

Held: Language of Clause 6 of the Agreement made it abundantly clear that the respondent-Bank was liable to refund of the deposit amount contemporaneous to removing itself from the leased premises and handing over vacant possession thereof to the appellant and giving charge thereof to her, which procedure was not followed – Impugned order passed by Single Judge not

sustainable – However, order passed by the Division Bench of the High Court is maintained for the reason that no intra-court appeal could have been preferred by the appellant against an order passed by the Single Judge on a petition filed u/Article 227, Constitution of India – Judgment passed by Rent Tribunal restored and the decree passed in favour of the appellant upheld. [Paras 10, 11]

Constitution of India – Article 227 – Order passed in proceedings u/Article 227, maintainability of intra-court appeal:

Held: No intra-court appeal can be preferred against an order passed by Single Judge on a petition filed u/Article 227 of the Constitution of India. [Para 11]

List of Acts

Constitution of India.

List of Keywords

Lease Agreement; Rent Tribunal; Appellate Rent Tribunal; Non-payment of rent; Eviction; Recovery of arrears of rent; Use and occupation charges; Termination of lease agreement; Vacant possession not handed over; Security deposit; Refund of deposit amount; Counter claim; *Intra* court appeal.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6096-6097 of 2017

From the Judgment and Order dated 30.07.2015 in DBCSA No. 332 of 2012 and 09.01.2012 in SBCWP No. 8464 of 2009 of the High Court of Judicature for Rajasthan at Jaipur

Appearances for Parties

Ms. Sobha Gupta, Sr. Adv., Rishi Matoliya, Nikhil Kumar Singh, Raghuveer Pujari, Ms. Sumati Sharma, Advs. for the Appellant.

Sandeep P. Agarwal, Sr. Adv., Varun Phogat, Viresh B. Saharya, Himanshu Dagar, Nitin Sejwal, Saujanya, Ms. Tanya Chanda, Akshat Agarwal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. The appellant-landlady is aggrieved by the judgment dated 30th July, 2015 passed by the Division Bench[1] as also the order dated 09th January, 2012 passed by the learned Single Judge in a writ petition[2] filed before the High Court of Judicature for Rajasthan at Jaipur Bench, preferred by her under Article 227 of the Constitution of India.

2. The facts of the case reveal that the appellant-owner of a commercial premises at Vashistha Marg, Raja Park, Jaipur had leased out a part of the said premises[3] to the respondent-Bank for a period of nine years in terms of the lease agreement dated 13th October, 2000, executed between the parties. The relevant clauses of the said lease agreement are reproduced hereinbelow :

> ***"LESSEE'S COVENANTS:***
>
> *2 (j) On the expiry of the said period of the lease or any renewal thereof, the Lessee shall deliver the demised premises in such order and condition as in consistent with the terms, covenants and conditions on the part of the Lessee herein contained (save and except damage to the demised premises by the fire unless the fire has occurred due to negligence of the Lessee), riots, earthquake, storm, war, civil commotion, acts of God and other conditions over which the Lessee shall have no control) SUBJECT ALWAYS to what is stated hereinafter.*
>
> ***ASSIGNMENT/TERMINATION/RENEWAL***
>
> *6 (a) The Lessee shall be entitle to assign or sub-let or otherwise allow use and occupation of the demised premises or any part thereof to its business associates, affiliate companies but not beyond the tenure of this lease or renewal thereof (if any) , as mentioned hereunder.*
>
> *(b) Notwithstanding anything contained herein, the Lessee shall always be entitled, without assigning any reason, to*

1 D.B. Civil Spl. Appeal (Writ) No.332 of 2012

2 S.B. Civil Writ Petition No.8464 of 2009

3 Shop No.485 and basement

terminate this lease at any time before the expiry of the tenure of this lease or any renewal period (if any) thereof, by giving to the Lessor three months' prior notice in writing."

3. In terms of the lease agreement, the agreed monthly rent of the premises was fixed at ₹28,625/- (Rupees Twenty eight thousand six hundred twenty five only). Vide letter dated 10th May, 2004, the respondent-Bank terminated the lease agreement by issuing a three months' notice in terms of clause 6 thereof. The said notice period was made effective from 16th August, 2004.

4. It is the version of the appellant-landlady that the respondent-Bank did not hand over the vacant and peaceful possession of the leased premises to her and instead, continued occupying the subject premises upto 18th June, 2006, when the keys were finally handed over to her. It is also the stand of the appellant-landlady that the respondent-Bank did not pay her the use and occupation charges in respect of the subject premises from 16th August, 2004 till 20th February, 2006, after adjusting the security deposit of ₹85,875/- (Rupees Eighty five thousand eight hundred seventy five only) towards the rent payable for three months.

5. Aggrieved by the non-payment of rent by the respondent-Bank, the appellant filed an application before the Rent Tribunal, Jaipur City, Jaipur on 20th February, 2006 seeking eviction and recovery of the arrears of rent. It was after institution of the aforesaid petition by the appellant-landlady that the respondent-Bank handed over the keys of the premises to her before the Presiding Officer of the Rent Control Tribunal on 18th June, 2006. The petition filed by the appellant-landlady was contested to the hilt by the respondent-Bank who also filed a counter claim seeking refund of the security amount along with interest @ 24% per annum compounded quarterly, w.e.f. 17th August, 2004, till realization. *Vide* judgment dated 10th April, 2008, the rent application filed by the appellant-landlady was decreed in her favour and the counter claim filed by the respondent-Bank was rejected.

6. Aggrieved by the aforesaid decision, the respondent-Bank filed an appeal before the Appellate Rent Tribunal which was allowed vide order dated 05th March, 2009. As a consequence thereof, the decree passed in favour of the appellant-landlady was set aside and the counter claim filed by the respondent-Bank was allowed. The said order was challenged by the appellant-landlady by filing a petition

under Article 227 of the Constitution of India before the High Court which was dismissed by the learned Single Judge *vide* order dated 09th January, 2012. Instead of approaching this Court for relief against the said order, the appellant filed a misconceived intra court appeal that has been dismissed by the Division Bench of the High Court as not maintainable *vide* order dated 30th July, 2015. Both the orders are under appeal before us.

7. Ms. Shobha Gupta, learned Senior counsel appearing for the appellant-landlady submits that the learned Single Judge has erred in upholding the order passed by the Appellate Rent Tribunal whereby the decree passed in favour of the appellant-landlady was set aside inasmuch as the Court failed to appreciate the fact that the notice dated 10th May, 2004 issued by the respondent-Bank referred to its proposal to handover possession of the subject premises on 16th August, 2004. It is urged that the security deposit could have been refunded to the respondent-Bank contemporaneous to handing over vacant and peaceful possession of the premises to the appellant-landlord, which in the instant case was not done. It is therefore, submitted that the obligation cast on the appellant-landlady to refund the security amount in terms of the lease agreement did not arise till the respondent-Bank actually vacated the subject premises which admittedly remain in its possession till 18th June, 2006.

8. *Per contra*, Mr. Sandeep P. Agarwal, learned Senior counsel appearing for the respondent-Bank seeks to rely on the terms and conditions of the lease agreement and, in particular clauses of the Deposit Agreement dated 13th October, 2000. Clauses 6 and 8 of the Deposit Agreement read as follows :

> *"6. It is agreed by and between the parties hereto that on the said Lease Agreement of any renewal thereof expiring by efflux of time or coming to an end for any reason whatsoever as provided in the said Lease Agreement the Lessor shall refund (without any deduction on any account and without interest) the said deposit to the Lessee simultaneously with the Lessee removing itself/ its officers / employees using the leased premises from and vacating the leased premises and giving charge thereof to the Lessor (reasonable wear and tear, damages/ Loss to / destruction of the leased premises by fire not caused*

by the willful neglect on the part of the Lessee, its officers /employees using the leased premises, Civil commotion, riots, air attack, act of God and anything else beyond the control of the Lessee excepted)."

8. In the event the Lessor does not refund the said deposit to the Lessee in full, at the time of the said Lease Agreement or any renewal thereof comes to an end, as aforesaid, then the consequences mentioned in para nos. i) to iii) hereunder shall follow:

i) The Lessee shall (without prejudice to its rights and remedies in law) , not be obliged or bound to vacate and give charge of the leased premises to the Lessor and the Lessee shall be entitled to use or permit, the leased premises to be used by any person of its choice without being liable to pay any rent, outgoings or damages to the Lessor until such time as the Lessor does not refund to the Lessee the said deposit in full ; and

ii) In addition, the Lessor shall be liable to pay to the Lessee interest @ 24% p. a. compounded quarterly, on the said deposit from the date of termination or expiry of the said Lessee Agreement or any renewal thereof till the date of refund of the said deposit by the Lessor to the Lessee; and

iii) *In the event the Lessor is unable to return the deposit as aforesaid for a period of 30 days from the date it becomes due, the Lessee shall be liberty to further sub- let the leased premises for period of not less than 12 months at a time on such terms and conditions as the Lessee may in its absolute discretion may deem fit"*

9. It is the stand of the respondent-Bank that in terms of the aforesaid clauses of the Deposit Agreement, the appellant-landlady was under an obligation to refund the security deposit to the respondent-Bank at the time of handing over vacant and peaceful possession of the leased premises, which she failed to do and therefore, the aforesaid clauses entitle the respondent-Bank to continue using the leased

premises itself or by any other person of its choice without any liability to pay any rent/outgoings/damages.

10. We are afraid, the aforesaid argument advanced by learned counsel for the respondent-Bank is not persuasive. The language of Clause 6 of the Deposit Agreement makes it abundantly clear that the respondent-Bank was liable to refund the deposit amount contemporaneous to the Bank removing itself from the leased premises and handing over vacant possession thereof to the appellant-landlady and giving charge thereof to her, which procedure in the instant case, had not been followed. There is nothing on record to demonstrate that any steps were taken by the respondent-Bank calling upon the appellant-landlady to remain present at the subject premises for purposes of handing over/taking over possession of the leased premises on a particular date and time and giving charge thereof to her for her to refund the security deposit simultaneously to the respondent-Bank.

11. For the aforesaid reasons, we are unable to sustain the impugned order dated 09th January, 2012 passed by the learned Single Judge that has upheld the order dated 05th March, 2009, passed by the Appellate Rent Tribunal, Jaipur. However, the order dated 30th July, 2015 passed by the Division Bench of the High Court is maintained for the reason that no intra-court appeal could have been preferred by the appellant-Landlady against an order passed by the learned Single Judge on a petition filed under Article 227 of the Constitution of India. As a result, Civil Appeal No. 6096 of 2017 is allowed, the judgment dated 10th April, 2008 passed by the Rent Tribunal is restored and the decree passed in favour of the appellant-landlady is upheld. Civil Appeal No. 6097 of 2017 is however dismissed as there is no error in the finding returned by the Division Bench of the High Court regarding maintainability of an appeal against the order dated 09th January, 2012, passed in proceedings under Article 227 of the Constitution of India. Parties are left to bear their own expenses.

Headnotes prepared by: Divya Pandey *Result of the case:*
Civil Appeal No. 6096 of 2017 allowed;
Civil Appeal No. 6097 of 2017 dismissed.

[2024] 6 S.C.R. 287 : 2024 INSC 430

Smt. Shyamo Devi and Others
v.
State of U.P. Through Secretary and Others

(Civil Appeal No. 5539 of 2012)

16 May 2024

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

Issue for Consideration

Subject land was designated as a Panchayat Ghar however, later it was re-assigned for residential use and allotments were made to allottees including appellants (writ petitioners in High Court) u/s.122-C, Uttar Pradesh Zamindari Abolition and Land Reforms Act. Proceedings for cancellation of the allotments were initiated based on the report of the Lekhpal which was undisputedly after 13 years from the date of allotment. Since, there is no limitation fixed for initiation of the proceedings under the aforesaid Act, whether such initiation of the proceedings can be at any length of time or at any point of time where no limitation is prescribed. Whether any fraud was committed by the writ petitioners or was attributed to them under the show cause notices.

Headnotes

Uttar Pradesh Zamindari Abolition and Land Reforms Act – s.122-C(6) – Cancellation of allotment of land, no limitation fixed for initiation of the proceedings – Exercise of *suo moto* power by Collector, if can be at any time or such power is to be exercised within a reasonable time and if so, within what time:

Held: This Court had an occasion to consider similar issue namely the exercise of *suo moto* power u/sub-section (4) of s.50-B of Andhra Pradesh (Telangana Area) Tenancy and Agriculture Lands Act, 1950 in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy [2003] Supp. 2 SCR 698, wherein it was held that *suo moto* power should be exercised within a reasonable period even in case of fraud and within a reasonable time from the date of discovery of fraud and it depends on facts and circumstances of each case – Further, in sub-section (4) of s.50-B, AP Act, the expression "the collector may, suo moto *at any time*;" is occurring while such expression is conspicuously absent in sub-section (6) of s.122-(C) of UPZALR

* Author

Act – Furthermore, the report or the communication of the Lekhpal forwarded to the Tehsildar does not even suggest or indicate any fraud having occurred or alleged against writ petitioners – However, the Tehsildar in the report submitted to the District Magistrate, on the basis of certain presumed irregularities concluded that allotment was irregular and approval of allotment was on the basis of forged signature of Sub-District Magistrate – Although, the basis of such conclusion namely signature of the Sub-District Magistrate having been forged was not specified – No allegation of whatsoever nature was attributed to the allottees of they having forged the signature/s – In the facts and circumstances of the present case, no fraud was attributed to the writ petitioners in show cause notices – Impugned order of the High Court; the order passed by the Additional Collector which held that proceedings for cancellation could be started at any time as well as the order passed by the Additional Commissioner, (Administration) Moradabad Division are unsustainable and set aside. [Paras 13, 15-17, 19]

Case Law Cited

Additional Commssioner, Revenue and Others v. Akhalaq Hussain and Another **[2020] 2 SCR 1001 : (2020) 4 SCC 507;** *State of Punjab v. Bhatinda Milk Producer Union Limited* **[2007] 11 SCR 14 : (2007) 11 SCC 363;** *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy* **[2003] Supp. 2 SCR 698 : (2003) 7 SCC 667 – relied on.**

List of Acts

Uttar Pradesh Zamindari Abolition and Land Reforms Act.

List of Keywords

Cancellation of allotment of land; Panchayat ghar; Period of limitation not prescribed; Fraud; Exercise of *suo moto* power; Within reasonable time/period; Discovery of fraud; Forged signature; Show cause notices.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5539 of 2012

From the Judgment and Order dated 19.01.2010 of the High Court of Judicature at Allahabad in CMWP No. 1995 of 2010

Smt. Shyamo Devi and Others v.
State of U.P. Through Secretary and Others

Appearances for Parties

Yash Pal Dhingra, Adv. for the Appellants.

Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Vinayak Mohan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aravind Kumar, J.

1. This appeal is directed against the judgment dated 19.01.2010 passed in Writ Petition No.1995 of 2010 by the High Court of judicature at Allahabad whereunder the writ petition filed by the appellants herein (hereinafter referred to as *'writ petitioners or petitioners'*) challenging the order dated 23.09.2009 passed in Revision No.68 of 2008-09 came to be dismissed and said order came to be upheld for the reason that the revision petition is not maintainable and consequently the order dated 07.02.2008 passed by the Additional Collector holding that proceedings for cancellation of the *patta* could be started at any time came to be upheld.

2. By our order dated 13.03.2024, we had made it clear that since none had appeared on behalf of the appellants (writ petitioners) no further adjournment would be granted and in the interest of justice one last opportunity came to be extended to the writ petitioners. However, even today when the matter is called in the second round none has appeared on behalf of the appellants. Hence, we have proceeded to examine the case on merits by considering the pleas advanced in the appeal, grounds urged therein and the arguments advanced on behalf of the respondents' counsel.

3. Short facts leading to the filing of this appeal are as under:

4. In the year 1969-70, the khasra plot No.185 in Rampur Kedhar Village, UP was designated as a Panchayat Ghar but later it was declared unsuitable in 1993. On the request of the village Pradhan a portion of the said plot was re-assigned for residential use by the Assistant Collector and subsequently different plots of land in said survey number came to be allotted to different individuals including the writ petitioners under Section 122-C(i)(d) of Uttar Pradesh Zamindari Abolition and Land Reforms Act (hereafter referred to as '***UPZALR Act'*** for short).

5. After 13 years, the Secretary/Lekhpal of Bhumi Prabandhank Samiti, Rampur forwarded a report to the jurisdictional Tehsildar opining thereunder that plot No.185 had been originally designated as Panchayat Ghar and classified under Section 132 of UPZALR Act and accordingly recorded in the revenue records, which had been unlawfully allotted for residential use. Hence, he proposed for cancellation of the allotments made and to take possession of the land from all the allottees including writ petitioners. The Tehsildar in turn forwarded a proposal to the District Magistrate for cancellation of the allotment vide communication dated 18.06.2007. This, resulted in show cause notices dated 05.07.2007 being issued to the writ petitioners and same was duly replied by them by filing objections on 04.10.2007. An application came to be filed by the petitioners to decide the issue of the limitation as preliminary issue, since the proceedings had been initiated after 13 years from the date of allotment contending *inter alia* that within a period of 3 years the proceedings ought to have been initiated. The Additional Collector by order dated 07.02.2008 was of the view that action initiated being *suo moto,* no limitation has been provided under Section 122-C(6) of UPZALR Act; that during the consolidation proceedings the land had been specified "Panchayat Ghar" and it was covered under Section 132(6) of the UPZALR Act; the allotment of land being irregular and no time limit having been fixed for cancellation of allotment made under Section 122-C(6). Hence, he arrived at a conclusion that there is no limitation fixed under the Act and proceeded to reject the application filed.

6. Being aggrieved by the said order the revision petition came to be filed before the Additional Commissioner which came to be entertained on merits and dismissed.

7. Being aggrieved by the aforesaid two (2) orders, the writ petitioners challenged the same in Writ Petition No.1995 of 2010 which came to be dismissed on two grounds namely the revision petition filed was not maintainable in the teeth of Section 122-C(7); and, on the ground that impugned order dated 07.02.2008 passed by the Additional Collector over-ruling the objections of the writ petitioners with regard to limitation is correct and it was meritless. Hence, this appeal.

8. As already noticed by us herein above, none have appeared on behalf of the writ petitioners. Shri Tanmaya Agarwal, learned counsel appearing for the respondent-state has vehemently contended

that fraud vitiates all acts and in the instant case the revenue was empowered under the UPZALR Act to cancel the illegal and fraudulent allotment of land made in favour of the writ petitioners and as such suit had been instituted for cancellation of allotment for which no limitation has been specified under Section 122-C(6) of UPZALR Act and particularly when the land in question had been reserved as Panchayat Ghar it would be governed under Section 132 of the UPZALR Act. He would also submit that even otherwise where a bhumidhar uses the land for a purpose not connected with agriculture, horticulture or animal husbandry same would be in contravention of Section 143 and admittedly no permission had been procured for the usage of the land for residential purposes as required under Section 143. Hence, he would contend that the authorities were within their jurisdiction to initiate the proceedings for cancelling the allotment and the revenue authorities as well as the High Court had rightly refused to interfere with the impugned order dated 07.02.2008 and rejected the writ petition whereunder they had sought for the suit being dismissed as barred by limitation. Hence, he prays for rejection of this appeal.

9. Having heard the learned Counsel representing the State, it would be apposite to note the order dated 17.07.2012 passed by this Court. It reads:

> "Leave granted.
>
> In the meanwhile, **the parties are directed to maintain status quo in respect of the disputed land**, as it is obtaining today. This would necessarily mean that neither party shall change the present character of the property or alienate the same to any other person in any manner whatsoever."
>
> (Emphasis Supplied by us)

10. The writ petitioners who are rustic and illiterate villagers had submitted applications for allotment of land for purposes of house construction in the village Dhodhar, Tehsil Thakurdwara, District Moradabad. Pursuant to the same the writ petitioner's husband/ father amongst others were allotted 150 sq. yards land each in Gata No. 185 Mi. The said allotment came to be approved by the Sub-District Magistrate on 27.06.1994 and allotment was made in pursuance to the proposal dated 15.05.1994 forwarded by The

Land Management Committee, Rampur, Dhodhar. Hence, the writ petitioners and other allottees have put up construction by putting up residential accommodation and have been residing therein with their family members. However, after a period of 13 years namely on 13.06.2007 the Lekhpal submitted a report for cancellation of such allotment on the ground that the land allotted to the writ petitioners and other allottees were classified as Panchayat Ghar and as per Section 132 of UPZALR Act the same could not have been allotted to the writ petitioners. Based on the said report, Tehsildar, on 18.06.2007 forwarded a report to the Sub-District Magistrate, proposing thereunder to initiate proceedings and recommended for cancellation of the allotment. Hence, the proceedings for cancellation of the allotment came to be initiated by issuance of show cause notice dated 05.07.2007 to all the allottees.

11. Thus, it emerges from the afore-stated facts that the authorities initiated the proceedings for cancellation of the allotment initially based on the report dated 13.06.2007 of the Lekhpal which was undisputedly after 13 years from the date of allotment. It is no doubt true that there is no limitation fixed for initiation of the proceedings under the UPZALR Act as contended by the learned Counsel for the Respondents. This Court in ***Additional Commssioner, Revenue and Others v. Akhalaq Hussain and Another*****, (2020) 4 SCC 507** vide paragraph 28 has held that sub-section (6) of Section 122C empowers the collector to enquire with regard to the manner of allotment being irregular and may proceed to cancel the allotment if he satisfies that such allotment is irregular. Section 122C (6) reads as under:

> "**122C (6)** The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease."

12. However, the question which requires to be addressed is whether such initiation of the proceedings can be at any length of time or at any point of time where no limitation is prescribed. This Court

in **State of Punjab Vs. Bhatinda Milk Producer Union Limited** reported in **(2007) 11 SCC 363** has held:

> **"18.** It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

13. This Court had an occasion to consider similar issue in the matter of **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy, (2003) 7 SCC 667** namely the exercise of *suo moto* power under sub-section (4) of Section 50-B of Andhra Pradesh (Telangana Area) Tenancy and Agriculture Lands Act, 1950 (for short 'AP Act') i.e., can it be at any time or such power is to be exercised within a reasonable time and if so, within what time? The facts obtained in the said case was that the owners of the subtle land executed various sale deeds in favour of different persons on plain paper and possession of the lands was also delivered to the purchasers. The vendees applied under Section 50-B of the AP Act for validation of sales and the concerned Tehsildar issued validation certificates on various dates. The said orders of the Tehsildar came to be challenged before the Joint Collector of the District by the Special Tehsildar and authorised officer (land reforms) which appeals came to be dismissed in 1988. It is thereafter the Joint Collector issued show cause notices purporting to exercise the *suo moto* power under sub-section (4) of Section 50-B of the Act to both the vendors and the vendees as to why the validation certificates issued in the year 1974 or earlier should not be cancelled after considering the objections filed in response to the show cause notices, the Joint Collector set aside the validation certificates in 1989. The learned Single Judge before whom challenge was laid accepted the plea of the writ petitioners by arriving at a conclusion that *suo moto* power of revision ought to have been exercised within a reasonable period, though Section 50-B (4) of the Act empowers the authority to exercise such *suo moto* power at any time. The impleading applicants who had filed the complaint, assailed the order of learned Single Judge before the Division Bench without success. In so far as the validation certificates which were found to be fraught with fraud came to be

set aside by the Division Bench and also taking into account that the parties did not produce the documents.

14. Sub-section (4) of Section 50-B of the AP Act can be juxtaposition with sub-section (6) of Section 122-C of the UPZALR Act for immediate reference and it reads:

Section 122-C (6) of UPZALR Act	**Section 50-B (4) of AP Act**
122-C (6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.	**50-B (4)** The Collector may, suo-motu at any time, call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under this section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit: Provided that no order adversely affecting any person shall be passed under this sub-section unless such person has had an opportunity of making his representation thereto.

15. In **Ibrahimpatnam's** case (supra) wherein sub-section (4) of Section 50-B was pressed into service discloses that the expression ***'the collector may, suo moto at any time;*** is occurring while such expression is conspicuously absent in sub-section (6) of Section 122-(C) of UPZALR Act. In the aforesaid case, it came to be held by the Apex Court that *suo moto* power should be exercised within a reasonable period even in case of fraud and within a reasonable time from the date of discovery of fraud and it depends on facts and circumstances of each case. It came to be further held:

> **"12.** The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in sub-section

(4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time.

19. It is also necessary to note that the suo motu power was sought to be exercised by the Joint Collector after 13-15 years. Section 50-B was amended in the year 1979 by adding sub-section (4), but no action was taken to invalidate the certificates in exercise of the suo motu power till 1989. There is no convincing explanation as to why the authorities waited for such a long time. It appears that sub-section (4) was added so as to take action where alienations or transfers were made to defeat the provisions of the Land Ceiling Act. The Land Ceiling Act having come into force on 1-1-1975, the authorities should have made inquiries and efforts so as to exercise the suo motu power within reasonable time. The action of the Joint Collector in exercising suo motu power after several years and not within reasonable period and passing orders cancelling validation certificates given by the Tahsildar, as rightly held by the High Court, could not be sustained."

In the teeth of the expression '**any time**' not being found in sub-section (6) of Section 122-C, it would not detain us for too long to set aside the impugned orders.

16. However, in order to satisfy ourselves as to whether the issue of fraud would arise in the instant case? And if so, whether such foundational facts had been laid in the proceedings initiated? Or such fraud, if any, has been committed by the writ petitioners or attributed to

them under the show cause notices has also been examined. The foundational facts narrated herein above, at the cost of repetition requires to be noticed namely the report or the communication of the Lekhpal dated 13.06.2007 forwarded to the Tehsildar. Perusal of the same does not even suggest or indicate of such fraud having occurred or alleged against writ petitioners. However, in the report dated 18.06.2007 submitted by the Tehsildar to the District Magistrate, it has been stated therein that subject land had been preserved for Panchayat Ghar and it is based on the information furnished by the peshkar working in the office Sub-District Magistrate who is said to have intimated that the file does not bear the signature of the then Sub-District Magistrate and the Tehsildar is also said to have found certain irregularities. In other words, on the basis of such presumed irregularities he has jumped to the conclusion that allotment was irregular, against law and approval of allotment was on the basis of forged signature of Sub-District Magistrate. However, the basis of such conclusion namely signature of the Sub-District Magistrate having been forged is not specified or in other words report is silent. It is also interesting to note that no allegation of whatsoever nature has been attributed to the allottees of they having forged the signature/s. In this background, we are of the considered view that the principles enunciated by this Court in **Ibrahimpatnam's** case (supra) would be squarely applicable to the facts on hand and as such the order impugned herein cannot be sustained.

17. We also make it clear that though the power of the Collector is available to initiate *suo moto* action for cancellation of allotment under sub-section (6) of Section 122-C in case of fraud and such foundational facts would disclose the same, it would suffice to initiate the proceedings as fraud vitiates all proceedings as held in **Akhalaq Hussain's** case referred to supra. By making this position of law explicitly clear and in the facts and circumstances of the present case as unfolded which is discussed in detail herein above disclosing same not being laid in show cause notices, we are of the considered view that impugned order as well as the orders impugned before the writ court would not be sustainable.

18. Yet another factor which has swayed in our mind to quash the impugned order is the fact that pursuant to the allotment made on 27.06.1994 the allottees who are poor rustic villagers have constructed their houses and the allotment was made based on the

approval granted by the then Sub-District Magistrate and they have been residing in the residential buildings so constructed by them for the last several years and to unsettle the same would result in heaping injustice to those poor hapless persons and particularly when the subject land has been utilized for allotment to the poor and houseless persons.

19. For the cumulative reasons afore-stated, appeal is allowed and the impugned order dated 19.01.2010 as well as the order dated 07.02.2008, passed by Additional Collector- respondent No.3 herein and the order dated 23.09.2009 passed by the Additional Commissioner, (Administration) Moradabad Division are hereby set aside subject to observation made herein above. No order as to costs.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal allowed.

[2024] 6 S.C.R. 298 : 2024 INSC 428

Mukatlal
v.
Kailash Chand (D) Through Lrs. and Ors.

(Civil Appeal No. 6460 of 2024)

16 May 2024

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

Issue for Consideration

Matter pertains to the right of the legal heir of Hindu widow to enforce her right of succession in the unpartitioned Joint Hindu Family property by virtue of s. 14(1) of the Hindu Succession Act, 1956.

Headnotes

Hindu Succession Act, 1956 – s.14(1) – Property of a female Hindu to be her absolute property – Right of the legal heir of Hindu widow to enforce her right of succession in the unpartitioned joint hindu family property by virtue of s.14(1), when neither the widow nor her legal heir in possession of the suit land:

Held: For establishing full ownership on the undivided joint family estate u/s. 14(1), the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift or be her own skill or exertion, or by purchase or by prescription – On going through the pleadings in the Revenue suit for partition filed by legal heir, it is clear that that the widow or the legal heir himself were never in possession of the suit property – As a matter of fact, the suit was filed by pleading that the suit property was a joint Hindu family property and appellant-beneficiary of the unpartitioned estate by way of Will, had consented to give half share of the suit property to the legal heir on his demand – This assertion was denied by appellant – Widow was never in possession of the suit property because the civil suit was filed by her claiming the relief of title as well as possession and the same was dismissed and she was held only entitled to receive maintenance from the undivided estate – This finding of the civil Court was never challenged – Since, widow was never in possession of the suit property, as a necessary corollary the

* Author

Revenue suit for partition claiming absolute ownership u/s. 14(1) could not be maintained by her adopted son, plaintiff by virtue of inheritance – Thus, the impugned judgments restoring the judgment and decree of the Revenue Court that the plaintiff being the sole legal heir of the widow has coparcenary rights over the lands belonging to widow's husband, cannot be sustained and are set aside. [Paras 17, 24-28]

Case Law Cited

M. Sivadasan (Dead) through Lrs. and Others v. A. Soudamini (Dead) through Lrs. and Others **(2023) SCC OnLine SC 1078 – relied on.**

Ram Vishal(dead) by LRs. And Others v. Jagannath and Another **(2004) 9 SCC 302;** *Vasant and Anr. v. Dattu & Ors.* **(1987) 1 SCC 160;** *Munni Devi alias Nathi Devi (Dead) Thr LRs & Ors. v. Rajendra alias Lallu Lal (Dead) Thr LRs & Ors.* **[2022] 3 SCR 876 : (2022) SCC OnLine SC 643 – referred to.**

List of Acts

Hindu Succession Act, 1956.

List of Keywords

Right of succession in the unpartitioned joint hindu family property; Full ownership; Undivided joint family estate; Inheritance or devise; In lieu of maintenance or arrears of maintenance; Suit for partition; Absolute ownership.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6460 of 2024

From the Judgment and Order dated 02.11.2017 of the High Court of Judicature for Rajasthan at Jaipur in DBSAW No. 1029 of 2006

Appearances for Parties

Puneet Jain, Mrs. Christi Jain, Mann Arora, Ms. Akriti Sharma, Ms. Lisha, Ms. Pratibha Jain, Advs. for the Appellant.

Bishwajit Bhattacharya, Sr. Adv., Atul Jha, Vinayak Sharma, Dharmendra Kumar Sinha, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

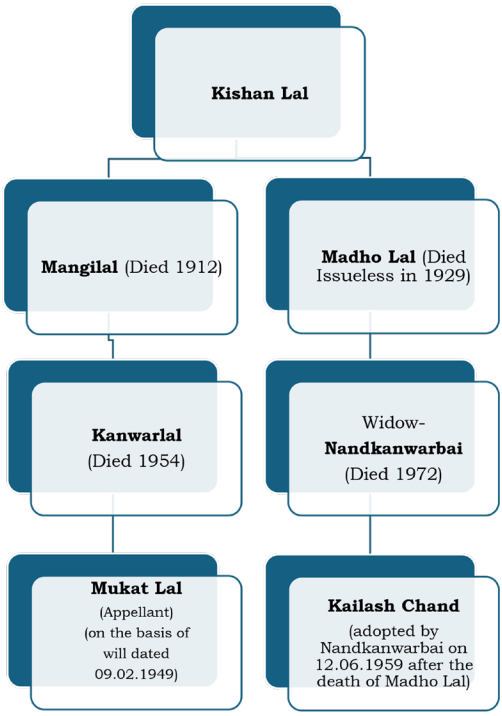
Mehta, J.

1. Leave granted.

2. The instant appeal by special leave challenges the final judgment and order dated 2nd November, 2017 passed by learned Division Bench of the Rajasthan High Court in D.B. Special Appeal (Writ) No. 1029 of 2006 whereby the appeal preferred by the appellant questioning the legality and validity of the judgment dated 21st July, 2006 passed by learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No. 1587 of 1993 was dismissed.

3. For the sake of convenience, the parties shall be referred to by their rank in the Revenue Court.

4. In order to appreciate the controversy involved in the matter in the proper perspective, it would be beneficial to reproduce the genealogical table/pedigree of the families of the parties.



Chronological List of Events: -

Dates	Event
After the death of Kishan Lal, Hindu Undivided Family(HUF) property devolved among his two sons, Mangilal and Madho Lal.	
1912	Mangilal passed away. (Survived by his son, Kanwarlal)
1929	Madho Lal passed away (Issueless, survived by his widow- Smt. Nandkanwarbai)
09.02.1949	Kanwarlal executed a will in favour of his son, Mukat Lal (appellant herein).
1954	Kanwarlal Passed Away.
First Set of Legal Proceedings	
1958	Smt. Nandkanwarbai filed Civil Suit No. 11of 1958 for declaration of title and possession in respect of the suit property.
21.05.1959	Civil Suit No. 11 of 1958 was dismissed however the Civil Judge held that Smt. Nandkanwarbai had the right to be maintained out of the suit property.
12.06.1959	Smt. Nandkanwarbai adopted Kailash Chand(original respondent herein).
12.07.1966	Mukat Lal preferred Appeal No. 64 of 1966 against order dated 21.05.1959 passed in Civil Suit No. 11 of 1958.
09.02.1968	Civil Judge allowed Appeal No. 64 of 1966 and set aside the order to the extent that it gave Smt. Nandkanwarbai the right to be maintained out of the suit property. Aggrieved, Smt. Nandkanwarbai preferred SB Civil Second Appeal No. 347 of 1968
1972	Smt. Nandkanwarbai passed away. Kailash Chand was substituted as legal representative of deceased Smt. Nandkanwarbai in 1973.
20.03.1973	High Court allowed SB Civil Second Appeal No. 347 of 1968 and held that Smt. Nandkanwarbai was entitled to the right of maintenance out of the suit property, she being the widow of the deceased coparcener in joint Hindu family property.

Present Proceedings	
20.06.1979	Revenue Suit No. 37 of 1979 under section 53 of Rajasthan Tenancy Act, 1956 was filed by Kailash Chand, for partition of the suit property, in the capacity of the legal heir of his adopted mother Smt. Nandkanwarbai.
14.12.1983	Revenue Suit No. 37 of 1979 was allowed and decreed by Sub Divisional Officer, Bundi wherein it was held that Kailash Chand being the sole legal heir of Smt. Nandkanwarbai has coparcenary rights over the lands belonging to Madho Lal.
1984	Mukat Lal preferred Appeal No. 12 of 1984 challenging order dated 14.12.1983 before Revenue Appellate Authority, Kota.
31.01.1986	Revenue Appellate Authority, Kota allowed Appeal No. 12 of 1984 and decree passed by Sub Divisional Magistrate, Bundi dated 14.12.1983 was set aside.
1986	Kailash Chand preferred Second Appeal being S.A. 120 of 1986 before Board of Revenue, Ajmer.
12.03.1992	Board of Revenue, Ajmer dismissed S.A. 120 of 1986
1993	Kailash Chand filed a Writ Petition being S.B. Civil Writ Petition No. 1587 of 1993 before High Court challenging the order passed by Board of Revenue, Ajmer dated 12.03.1992.
21.07.2006	Ld. Single Judge allowed S.B. Civil Writ Petition No. 1587 of 1993 and set aside the judgments passed by Revenue Appellate Authority, Kota and Board of Revenue, Ajmer.
2006	Mukat Lal filed a Writ Appeal being DB Special Appeal (Writ) No. 1029 of 2006 before the Division Bench.
02.11.2017	Ld. Division Bench dismissed DB Special Appeal (Writ) No. 1029 of 2006 and upheld the order of the Ld. Single Judge dated 21.07.2006.
06.02.2018	Present SLP was filed.

5. The core question of law involved in this appeal is as to the right of the plaintiff Kailash Chand being legal heir of Hindu widow Smt. Nandkanwarbai to enforce her right of succession in the unpartitioned

Joint Hindu Family property by virtue of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter being referred to as 'Succession Act') by filing a suit in the Revenue Court.

6. Few facts, most germane and relevant to the issue are required to be extracted from the chronology of dates and events. The suit property was owned by Kishan Lal who had two sons, namely, Mangilal and Madho Lal. Madho Lal was married to Smt. Nandkanwarbai. Mangilal had a son Kanwarlal. Mangilal died in the year 1912 whereas Madho Lal died issueless in 1929. Smt. Nandkanwarbai claims to have adopted plaintiff Kailash Chand on 12th June, 1959 that is nearly after 30 years from the date of death of Madho Lal. Kanwarlal had executed a will of the entire unpartitioned estate in favour of defendant Mukat Lal(appellant herein) on 9th February, 1949. Shri Kanwarlal passed away in the year 1954. Thus, the suit property devolved upon defendant Mukat Lal under the will executed by late Shri Kanwarlal.

7. Smt. Nandkanwarbai, widow of late Madho Lal filed a Civil Suit No. 11 of 1958 seeking a declaration of title and possession over the suit property contending that the property in question was a joint Hindu family property and that the will allegedly executed by late Kanwarlal was illegal. It was further contended in the suit that defendant Mukat Lal was not entitled to any share in the HUF property by virtue of the will. The Civil Court dismissed the said suit vide judgment and decree dated 21st May, 1959 while recognizing the right of Smt. Nandkanwarbai only to the extent of receiving maintenance from the suit property.

8. Smt. Nandkanwarbai, did not challenge the said judgment any further. However, defendant Mukat Lal on attaining majority, preferred an appeal against the judgment dated 21st May, 1959 which was allowed by the learned Senior Civil Judge vide judgment dated 9th February, 1968 and the judgment and decree passed by the civil Court in favour of Smt. Nandkanwarbai to the extent of the right to receive maintenance from the suit property was set aside.

9. Being aggrieved, Smt. Nandkanwarbai preferred a Second Appeal No. 347 of 1968 before the learned Single Judge of Rajasthan High Court. During the pendency of the said second appeal, in the year 1972 Smt. Nandkanwarbai passed away and her legal heir i.e. plaintiff Kailash Chand was taken on record. Learned Single Judge of

Rajasthan High Court, vide judgment dated 20th March, 1973 allowed the second appeal filed by Smt. Nandkanwarbai and restored the civil Court's judgment to the extent of her right to be maintained from the suit property. Resultantly, the status of defendant Mukat Lal as being the beneficiary of the suit lands as being the legatee of the will made by his father Shri Kanwarlal stood crystallized.

10. The plaintiff Kailash Chand filed Revenue Suit No. 37 of 1979 for partition of the suit property before the Revenue Court claiming that Smt. Nandkanwarbai was entitled to a rightful share in the property by virtue of Section 14(1) of the Succession Act.

11. The present appeal arises from the aforesaid Revenue Suit No. 37 of 1979 seeking partition which culminated in the impugned judgment dated 2nd November, 2017 passed by the learned Division Bench of the Rajasthan High Court.

12. It may be reiterated that the issue regarding title and possession over the suit property stands concluded against Smt. Nandkanwarbai (deceased widow) vide judgment and decree dated 21st May, 1959 passed in Civil Suit No. 11 of 1958. The said Civil Suit was dismissed by the competent Court qua the relief of possession and title while recognizing the right to Smt. Nandkanwarbai only to the extent of receiving maintenance from the estate. Admittedly, Smt. Nandkanwarbai did not challenge the judgment and decree dated 21st May, 1959 and thus, it attained finality to the extent of possession and title. Apropos, there is no dispute qua the fact that Smt. Nandkanwarbai was never in possession of the suit property.

13. Shri Puneet Jain, learned counsel representing the appellant advanced the following pertinent submissions and urged that the Division Bench erred in law in dismissing the appeal preferred by the appellant affirming the judgment of the learned Single Judge and restoring the judgment and decree of the Revenue Court.

    (i) That Smt. Nandkanwarbai had no interest, either limited or otherwise, in the suit land which could fructify into absolute ownership under section 14(1) of the Succession Act and the Division Bench erred in treating "Charge over property towards Maintenance" as possession over the property.

    (ii) It was contended that in order to attract Section 14(1) of the Succession Act, there must be a "Property possessed by the

Hindu Women" but in the present case, the suit for possession and title filed by Smt. Nandkanwarbai was dismissed and hence she was never in possession, either legal or actual, over the suit property.

iii) That the civil suit for title and possession filed by Smt. Nandkanwarbai having been dismissed, the judgment of the civil Court operated as res judicata and hence the relief could not have been granted to her adopted son[Kailash Chand(plaintiff)] in the subsequent partition suit filed in the Revenue Court.

iv) While placing reliance on the decision of this Court in ***Ram Vishal (dead) by LRs. And Others v. Jagannath and Another***[1], it was contended that since Smt. Nandkanwarbai was never in possession of the suit property which were agricultural lands' either by inheritance or in lieu of maintenance, as a consequence, Section 14(1) of the Succession Act could not be applied so as to confer proprietary rights upon her adopted son [Kailash Chand (plaintiff)].

v) Learned counsel, Shri Jain further contended that reliance placed by the learned Single Judge on the decision of ***Vasant and Anr. v. Dattu & Ors.***[2]***,*** is *ex-facie* erroneous as the said judgment deals with issues related to properties held by the joint Hindu family having several surviving coparceners and not that of a sole surviving coparcener.

He thus, implored the Court to accept the appeal and set aside the impugned judgments.

14. *E-converso*, Shri Bishwajit Bhattacharya, learned senior advocate representing the respondents, vehemently and fervently opposed the submissions advanced by learned counsel for the appellant and contended that the issue in the present case regarding the ambit of the rights of a female Hindu on the undivided joint Hindu family estate under Section 14(1) of the Succession Act has been settled by this Court in the case of ***Munni Devi alias Nathi Devi(Dead) Thr LRs & Ors. v. Rajendra alias Lallu Lal(Dead) Thr LRs & Ors.***[3]

1 (2004) 9 SCC 302

2 (1987) 1 SCC 160

3 [2022] 3 SCR 876 : 2022 SCC OnLine SC 643

He placed reliance on the pertinent observations (reproduced *infra*) made by this Court in ***Munni Devi*** *(supra)* and implored the Court to dismiss the appeal and affirm the impugned judgments.

15. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the material available on record.

16. The plank contention of Shri Puneet Jain, learned counsel representing the appellant for assailing the impugned judgments was that the deceased widow Smt. Nandkanwarbai was never in possession of the suit property and as a consequence, her adopted son, plaintiff Kailash Chand, was precluded from claiming partition of the suit property by virtue of succession and hence, the Revenue suit was not maintainable. He had placed reliance on the findings arrived at by the civil Court in the suit filed by Smt. Nandkanwarbai to buttress this contention.

17. At the outset, it may be noted that in so far as the aspect that Smt. Nandkanwarbai(deceased widow) had never been in possession of the suit property is concerned, the same is virtually an admitted position from the record because she never challenged the judgment and decree dated 21st May, 1959 whereby the suit filed by her for declaration of title and possession was dismissed by the civil Court and she was held only entitled to receive maintenance from the undivided estate. Thus, indisputably neither Smt. Nadkanwarbai nor the plaintiff Kailash Chand were ever in possession of the suit land.

18. In the case of ***Munni Devi****(supra)* which was heavily relied upon by the learned counsel for the respondent Shri Bhattacharya, the admitted position was that Bhonri Devi, widow of Late Dhannalalji was actually residing in the suit property during the time the coparcener Shri Harinarayanji was alive and even after his death, she continued to reside in the said house and used to collect the rents from the tenants who were occupying the suit property till the date of filing of suit.

19. A Bench of two Honourable Judges of this Court after considering the gamut of Section 14 of the Succession Act in the case of ***Munni Devi***(*supra*) observed as below: -

> "**14.** In view of the above, there remains no shadow of doubt that a Hindu woman's right to maintenance was not and is not an empty formality or an illusory claim being conceded as a

matter of grace and generosity. It is a tangible right against the property, which flows from the spiritual relationship between the husband and the wife. The said right was recognised and enjoined by pure Shastric Hindu Law, which existed even before the passing of the 1937 or the 1946 Acts. Those Acts merely gave statutory backing recognising the position as was existing under the Shastric Hindu Law. Where a Hindu widow is in possession of the property of her husband or of the husband's HUF, she has a right to be maintained out of the said property. She is entitled to retain the possession of that property in lieu of her right to maintenance. Section 14(1) and the Explanation thereto envisages liberal construction in favour of the females, with the object of advancing and promoting the socio-economic ends sought to be achieved by the said legislation. **As explained in V. Tulasamma (supra) case, the words "possessed by" used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same. Of course, it is equally well settled that the possession of the widow, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title**.

15. The undisputed facts in the instant case are that Dhannalalji, the husband of Bhonri Devi expired in 1936, Ganeshnarayanji, the father-in-law of Bhonri Devi expired in 1938 and Harinarayanji, the brother of Ganeshnarayanji died on 11.11.1953. Daulalji was adopted by Sri Bakshji in the year 1916. Harinarayanji, Ganeshnarayanji and Sri Bakshji had common ancestor Gopalji. It is also not disputed that the suit property was an ancestral property in the hands of Harinarayanji and Ganeshnarayanji. **It is also not disputed that Bhonri Devi was staying in the suit property before the death of Harinarayanji, and after his death she was in possession and in charge of the said property, and was maintaining herself by collecting rent from the tenants who were occupying part of the suit property.**

16. Now it appears from the documents on record that the rent notes (Exhibit A-2 to A-11) executed during the period 1955 to 1965 in respect of the part of the suit property, were executed in the name of Bhonri Devi. The concerned defendants in the suit had also filed their written statements, stating that they were paying rent to Bhonri Devi only. It further appears from the document (Exhibit A-13) that Daulalji had raised an objection against Bhonri Devi paying the house tax in respect of the suit property and that the Municipal Commissioner, Jaipur vide order dated 28.03.1957 had observed that Bhonri Devi was paying the tax in the past also. An appeal against the said order was preferred by Daulalji before the Administrator of Municipal Council, Jaipur however the same was also rejected vide the order dated 28.01.1959. It was observed therein that "In this case there is a dispute regarding ownership. Municipal Commissioner who is the reversing authority in his judgment dated 28.03.1957 held that Bhonri Devi who was paying tax to the municipality in the past, should pay the tax and for question of title the concerned party should seek remedy in the Civil Courts."

17. From the said documents it clearly emerges that Bhonri Devi was paying the house tax prior to 1956 and was collecting the rent from the tenants prior to and after 1956. Pertinently from the document Exhibit-54, it emerges that in 1940 Bhonri Devi, when she was staying with her in-laws, had no source of maintenance, and therefore she was granted Rs. 2.50 per month by way of maintenance, by the Punya Department of the Government. She claiming to be a PARDANASHEEN lady had authorised Daulalji to collect the said amount of maintenance. The said document clearly shows that Bhonri Devi was residing in the suit house since 1940. **Be that as it may, it was well established that Bhonri devi was in possession of the suit house before and after the death of Harinarayanji in 1953 and had continued to remain in possession thereafter and was collecting rent from the tenants who were in occupation of part of the suit premises**

since 1955, till the date of filing of the suit in 1965 by the plaintiff Daulalji.

18. The afore-stated facts and circumstances clearly established that Bhonri devi had long settled possession of the suit property, which she had acquired in lieu of her pre-existing right to maintenance, prior to the commencement of the Act of 1956, which entitled her to become a full owner of the suit property by virtue of Section 14(1) of the said Act. Her exclusive possession of suit property after the death of Harinarayanji in 1953 i.e., prior to coming into force of the said Act in 1956, was not only not disputed but was admitted by the plaintiff Daulalji in the plaint itself. Her pre-existing right to maintenance from the estate of the HUF of her husband was also well established. The submission of Mr. Jain for the appellants that mere right to maintenance would not ipso facto create any charge on the property and that for creating legal charge recognising right of Hindu women to maintenance required execution of a document, device or agreement, cannot be countenanced. **Her pre-existing right to maintenance, coupled with her settled legal possession of the property, would be sufficient to create a presumption that she had a vestige of right or claim in the property, though no document was executed or specific charge was created in her favour recognizing her right to maintenance in the property.**

19. It may be noted that in the Will executed by Harinarayanji in favour of Daulalji, there was no mention of the suit property. What was stated in the Will was that whatever movable and immovable property, which belonged to Harinarayanji would be devolved upon Daulalji. It was only in the Probate proceedings filed by Daulalji in respect of the said Will, he had shown the suit property in the Schedule. It is true that the objections raised by Bhonri Devi against granting of Probate in favour of Daulalji were not accepted by the Probate Court, and the alleged Will executed by Harinarayanji in favour of Bhonri Devi was also not proved by her in the said proceedings. **Nonetheless, in view of her**

pre-existing right to maintenance from the estate of the HUF of her husband and in view of her exclusive settled possession of the suit property prior to and after the commencement of the Act of 1956, the only conclusion which could be drawn, would be that Bhonri Devi had acquired the suit property in lieu of her pre-existing right to maintenance, and that she had held the suit property as the full owner and not limited owner by virtue of Section 14(1) of the said Act of 1956.

20. As stated earlier, Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a **Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. The word "possessed by" and "acquired" used in Section 14(1) are of the widest amplitude and include the state of owning a property.** It is by virtue of Section 14(1) of the Act of 1956, that the Hindu widow's limited interest gets automatically enlarged into an absolute right, when such property is possessed by her whether acquired before or after the commencement of 1956 Act in lieu of her right to maintenance."

(emphasis supplied)

20. Thus it is clear from the above observations and findings in the case of ***Munni Devi*** (*supra*) that this Court after taking into consideration the pre-existing right of Bhonri Devi to maintenance from the estate of the HUF of her husband and her exclusive settled possession over the suit property concluded that she had acquired the suit property in lieu of her pre-existing right to maintenance and that she had held the suit property as the full owner and not limited owner by virtue of Section 14(1) of the Succession Act.

21. Thus, what we are required to adjudicate in the present case is as to whether in absence of even a semblance of possession either actual or legal over the suit property, plaintiff Kailash Chand being the legal heir of Smt. Nandkanwarbai was entitled to institute a Revenue suit for partition of the suit property based on the succession rights of the widow on the joint Hindu family property. In this very context, we would like to gainfully refer to the judgments of this Court which were relied upon by Shri Puneet Jain, learned counsel for the appellant.

22. In the case of ***Ram Vishal*** *(supra)* this Court held as under: -

> "**16.** In our view, the authority in Raghubar Singh case [(1998) 6 SCC 314] can be of no assistance to the respondent. **As has been held by this Court, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property. Such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or by her own skill or exertion, or by purchase or by prescription**. In the present matter, it is nobody's case that Manki had got possession of the 1/4th share in lieu of maintenance or in arrears of maintenance. It was also not their case that there was a partition of the property and that in such partition, she had been given the property. A mere right of maintenance without actual acquisition in any manner is not sufficient to attract Section 14."
>
> (emphasis supplied)

23. Further, in the case of ***M. Sivadasan (Dead) through Lrs. and Others v. A. Soudamini (Dead) through Lrs. and Others***[4], this Court held as under: -

> **"4.** This argument of the plaintiff was rejected by the Trial Court and the same was upheld by the First Appellate

4 2023 SCC OnLine SC 1078

Court as well as by the Second Appellate Court on the reasoning that after the death of Sami Vaidyar, his son Sukumaran succeeded in the property in year 1942 itself. Thereafter, Sukumaran and later the children succeeding Sukumaran had the right over the property which undisputedly remained in their possession. Section 14 sub-Section (1) had no application in this case. **The essential ingredient of Section 14 sub-Section (1) is possession over the property. Admittedly the plaintiff was never in possession of the property. The possession was always that of the defendant and therefore Section 14 sub-Section (1) would not be applicable.** In Ram Vishal (dead) by lrs. v. Jagan Nath. reported in (2004) 9 SCC 302 the position of possession being a pre-requisite to sustain a claim under sub-section (1) of Section 14 of the 1956 Act was confirmed in Para 16 which is quoted below:

> '16. In our view, the authority in Raghubar Singh case [(1998) 6 SCC 314] can be of no assistance to the respondent. **As has been held by this Court, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property**. Such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or by her own skill or exertion, or by purchase or by prescription…'

5. As per the law as it existed at their relevant time the property which was an agricultural property would devolve upon the male child and daughters would get only a limited right to maintenance till, they were married and the widow would be entitled to maintenance from the income from the property till her death or remarriage. As per the family Settlement Deed dated 12.03.1938 which was relied upon by both the parties, the property in dispute was specifically allotted to Sami Vaidyar and his only son Sukumaran. Therefore, the widow of Sami Vaidyar i.e.,

> Choyichi will not have any right over the property. The findings of all the courts below were that Choyichi was never in possession of the property and therefore she would not get the right, as claimed by her under Section 14(1) of the Hindu Succession Act, 1956."
>
> (emphasis supplied)

24. Seen in the light of the ratio of the above judgments, it is clear that for establishing full ownership on the undivided joint family estate under Section 14(1) of the Succession Act the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or be her own skill or exertion, or by purchase or by prescription.

25. Even on going through the pleadings in the Revenue suit for partition filed by plaintiff Kailash Chand, it is clear that there is not even a whisper in the plaint that Smt. Nandkanwarbai or the plaintiff Kailash Chand himself were ever in possession of the suit property. As a matter of fact, the suit was filed by pleading that the suit property was a joint Hindu family property and defendant-Mukat Lal(appellant herein) had consented to give half share of the suit property to the plaintiff Kailash Chand on his demand. This assertion was denied by defendant-Mukat Lal.

26. In this context, when we consider the effect of the earlier civil suit instituted by Smt. Nadkanwarbai(deceased widow), it becomes clear that she was never in possession of the suit property because the civil suit was filed by her claiming the relief of title as well as possession and the same was dismissed. This finding of the civil Court was never challenged. Since, Smt. Nadkanwarbai was never in possession of the suit property, as a necessary corollary the Revenue suit for partition claiming absolute ownership under Section 14(1) of the Hindu Succession Act could not be maintained by her adopted son, plaintiff Kailash Chand by virtue of inheritance.

27. On close scrutiny of the judgments rendered by the learned Single Judge and the learned Division Bench of the High Court, we find that there is no consideration in these judgments that the predecessor of the plaintiff Kailash Chand or the plaintiff himself were ever in

possession of the suit property or had acquired the same in the manner as indicated in the judgment of ***M. Sivadasan*** *(supra).*

28. As a consequence of the above discussion, the impugned judgments do not stand to scrutiny and cannot be sustained.

29. Resultantly, the judgment dated 2nd November, 2017 rendered by learned Division Bench and the judgment dated 21st July, 2006 rendered by the learned Single Judge are hereby reversed and set aside.

30. Consequently, the Revenue Suit No. 37 of 1979 filed by the plaintiff is dismissed.

31. The appeal is allowed in these terms. No costs.

32. Decree be prepared accordingly.

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

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal allowed.

[2024] 6 S.C.R. 315 : 2024 INSC 385

Sukhpal Singh
v.
NCT of Delhi

(Criminal Appeal No. 55 of 2015)

07 May 2024

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

Issue for Consideration

Appellant was convicted u/s.302, Penal Code, 1860 for the murder of his wife. Courts below whether justified in holding that the statement of Complainant-PW-1 recorded in proceedings u/s.299, Code of Criminal Procedure, 1973 could be read as a piece of substantive evidence; whether the prosecution could establish the links in the chain of incriminating circumstantial evidence.

Headnotes

Code of Criminal Procedure, 1973 – s.299 – Record of evidence in absence of accused – Evidence Act, 1872 – s.33 – Appellant murdered his wife owing to her suspected infidelity however, fled away from the crime scene and remained absconding for nearly 10 years – Charge sheet was filed u/s.299 showing him to be an absconder – Complainant (PW-1) was examined on oath in proceedings u/s.299 where he gave detailed account of the sequence of events witnessed by him – However, he could not be produced for deposition in the trial which resumed after the arrest of the appellant, as he could not be found at the address given in the FIR despite all sincere efforts – Statement of PW-1 recorded during proceedings u/s.299 was relied upon as a piece of incriminating evidence against the appellant, apart from other incriminating circumstantial evidences and appellant was convicted u/s.302 – Conviction and sentence affirmed by High Court – Sustainability:

Held: s.299 (1) is in two parts, the first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him – In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence

* Author

cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable – In the present case, circumstances of motive, last seen, confession and abscondence from the crime scene after committing the crime etc. were all spoken by the witness (PW-1) in his statement recorded on sworn affirmation during the proceedings u/s.299 – His statement by itself provides a complete chain of circumstantial evidence sufficient to establish the guilt of the appellant – Thus, in light of the provisions of s.299 r/w s.33 of the Evidence Act, 1872, the trial Court and High Court were justified in holding that the statement of PW-1 recorded in these proceedings was fit to be read as a piece of substantive evidence – Prosecution established a clinching and complete chain of incriminating circumstantial evidence pointing exclusively towards the guilt of the appellant and totally inconsistent with his innocence or the involvement of any other person in the crime – Impugned judgments not interfered with. [Paras 31, 36, 38, 39, 47, 48, 50]

Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – Appellant failed to offer explanation for the homicidal death of his wife in the house during night time when only him and deceased were present, leading to interference of guilt by virtue of s.106:

Held: The circumstances leading to murder of appellant's wife were in his exclusive knowledge – He offered no explanation as to the manner in which she was strangled to death within the confines of the room where only he and the deceased were present – The bald plea of denial offered by the appellant by way of an explanation to this gravely incriminating circumstance is not sufficient to absolve him of the burden cast upon him by virtue of s.106. [Para 46]

Case Law Cited

Nirmal Singh v. State of Haryana [2000] 2 SCR 807 : **(2000) 4 SCC 41;** *Jayendra Vishnu Thakur v. State of Maharashtra & Another* [2009] 8 SCR 591 : **(2009) 7 SCC 104 – relied on.**

List of Acts

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

List of Keywords

Section 299 of Code of Criminal Procedure, 1973; Record of evidence in absence of accused; Piece of substantive evidence; Incriminating evidence; Links in the chain of incriminating circumstantial evidence; Burden of proving fact especially within knowledge; Suspected infidelity; Absconder; Abscondence of accused; No immediate prospect of arrest; Motive; Last seen together; Homicidal death; Wrong explanation by accused in statement under Section 313 Code of Criminal Procedure, 1973; Section 106 of Evidence Act, 1872; Circumstantial evidence; Complete chain of circumstances; Murder inside the house.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 55 of 2015

From the Judgment and Order dated 07.01.2010 of the High Court of Delhi at New Delhi in CRLA No. 296 of 2003

Appearances for Parties

Ambreesh Kumar Aggarwal, Adv. for the Appellant.

Rajan Kumar Chourasia, Sanjay Kumar Tyagi, Ms. Seksha, Mukesh Kumar Maroria, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. The instant appeal is directed against the judgment dated 7th January, 2010 passed by the High Court of Delhi in Criminal Appeal No. 296 of 2003 whereby the appeal filed by the appellant against the judgment and order of conviction and sentence dated 6th March, 2003 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter being referred to as the 'trial Court') was rejected.

2. By the said judgment, the trial Court convicted the accused appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter being referred to as the 'IPC') and sentenced him to life imprisonment and fine of Rs.2000/- (in default further rigorous imprisonment for six months).

3. Leave was granted by this Court in this matter on 8th January, 2015 and the accused appellant was released on bail on furnishing bail bonds to the satisfaction of the trial Court.

Brief facts:-

4. The accused appellant was married to Usha and three children were born out of the wedlock. However, the spouses got embroiled in a matrimonial strife and thus the appellant left company of his wife Usha and started residing at his village Khatta, U.P.

5. The officers of Police Station Bhajan Pura received a wireless message on 20th May, 1990 from the PCR regarding an incident which had taken place outside the shops of Rori and Badarpur. Acting on the said information, Head Constable Mohan Lal, Constables Jai Pal, Bhagwan Dass and Ramesh Chand along with Inspector Ishwar Singh reached House no. J-387, Gali No. 14, Kartar Nagar, Delhi where Usha w/o Sukhpal (the appellant herein) was found lying dead on a cot in a room of the said house. On cursory inspection, abrasions, scratches and other injury marks associated with bleeding were noticed on the neck, mouth, shoulder and private parts of the deceased Usha. Marks of dragging were also found on the right leg below the knee. Strips of tablets were found scattered around the cot on which the dead body was lying. The police officials claim to have recovered a handwritten note (Exhibit PW-12/E) from the crime scene bearing a recital indicating that the scribe was the killer of Usha. The prosecution alleges that the said note was written by the accused appellant.

6. Statement (Exhibit PW-1/A) of Ashok Kumar Pathak, resident of House No. J-386, Gali No. 14, Kartar Nagar, Delhi was recorded by the police officials on 20th May, 1990 wherein he stated that he was residing in the immediate vicinity of House No. J-387, Gali No. 14, Kartar Nagar, Delhi, where Usha with her husband Sukhpal (accused appellant) and three children had been residing for the last 3-4 years. Ashok Kumar Pathak was serving with M/s. R.P. Associates and that he had got Sukhpal employed in that very firm. Sukhpal suspected his wife Usha of infidelity which often led to quarrels between them and, therefore, Sukhpal left his wife and children and started residing in village Khatta, U.P. He used to commute from the village for attending to his job. Sometimes, he would also come and stay with Usha. Four days prior to the alleged occurrence, Sukhpal had

visited Usha and on that day, Usha's sister (Sudha) had also come there. Sukhpal quarrelled with Usha and went away. On the next day, Usha's sister, Sudha (PW-10) took the three children of Usha and went to her house. On the day prior to incident, i.e., on 19th May, 1990, in the evening when Ashok Kumar Pathak had returned from duty and got free after having his meals, at about 9.30 p.m., he saw that Sukhpal had come to visit Usha on his cycle. The spouses were talking while sitting on a cot in the courtyard. He went to the terrace for sleeping and after some time, it started raining so he came downstairs and saw that Sukhpal and Usha had also gone inside their room. The next morning i.e. 20th May, 1990, while he was carrying out his daily chores, he saw Sukhpal's cycle parked in the courtyard and presumed that he and Usha were inside the house. He did not see any movement in the house for the entire day and even at about 5.30 p.m., he saw the cycle of Sukhpal parked at the same place but neither Sukhpal nor Usha were to be seen. So, he called out from outside, but nobody responded, on which he went into the room and found Usha lying dead on a cot. Sukhpal was not present there. He informed the neighbours who, in turn, called the police. He bore a suspicion that Sukhpal (appellant herein) might have killed Usha sometime during the night and had fled away. This statement was taken as a complaint and based thereupon, FIR No. 213 of 1990 (Exhibit PW-13/F) came to be registered at P.S. Bhajanpura for the offence punishable under Section 302 IPC.

7. The dead body of Usha was subjected to autopsy and the post mortem report (Exhibit PW-15/A) was received with a pertinent opinion that cause of death was "Asphyxia resulting from manual strangulation". A confession letter/note (Exhibit PW-12/E) was found below the cot where the dead body was lying and it was seized vide memorandum (Exhibit PW-13/B) and spot inspection memo (Exhibit PW-12/B) was prepared.

8. The Investigating Officer (PW-13) collected two letters (Exhibit PW-12/C and PW-12/D) purportedly written by the accused appellant from the employer namely Sanjiv Jain (PW-8). Specimen Pad (Exhibit PW-13/O) of the employer was also collected and seized vide memorandum (Exhibit P-13/N).

9. The prosecution alleges that the accused appellant fled away from the crime scene. Efforts were made to trace him out without any

success and thus proceedings under Section 82 and Section 83 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') were initiated against him. The accused appellant was declared to be a proclaimed offender and a charge sheet came to be filed against him under Section 299 CrPC by showing him to be an absconder. As per the prosecution case, the complainant Ashok Kumar Pathak, Head Constables Mohan Lal and Surender Kumar and Inspector Bal Kishan were examined on oath in proceedings under Section 299 CrPC and the file was consigned to the record room.

10. The accused appellant could be apprehended on 9th August, 2000 i.e. nearly after ten years of the incident. He gave a disclosure statement pointing out the place of incident. His specimen handwritings (Exhibits PW-5/D, 5/E and 5/F) were obtained while he was in police custody. Thereafter, the confession note (Exhibit PW-12/E), the specimen handwritings (Exhibits PW-5/D, PW-5/E and PW-5/F) along with admitted handwritings (Exhibits PW-12/C and PW-12/D) (collected from the employer of accused appellant) were sent to FSL for comparison. The handwriting expert (PW-24) issued a report (Exhibit PW-12/F) opining that the confession letter/note (recovered from the crime scene) was in the handwriting of the accused appellant.

11. A supplementary charge sheet came to be filed against the accused appellant for the offence punishable under Section 302 IPC. The trial Court framed charge against the accused appellant for the said offence. He pleaded not guilty and claimed trial. The prosecution examined 24 witnesses and exhibited 48 documents to support its case.

12. It is relevant to mention here that the complainant Ashok Kumar Pathak, was not produced for deposition in the trial which resumed after the arrest of the accused appellant. The trial Court held that the non-examination of complainant Ashok Kumar Pathak was not a deliberate act of the prosecution and rather the same was beyond the control of prosecution. The trial Court further found that complainant Ashok Kumar Pathak was examined on oath on 17th July, 1991 in proceedings under Section 299 CrPC. In this sworn statement, Ashok Kumar Pathak proved his signature on the statement[Exhibit PW-1/A (which led to registration of FIR)] made by him to the police on 20th May, 1990 and gave a detailed account of the sequence of events witnessed by him. The complainant Ashok Kumar Pathak could not

be examined in the trial proceedings post arrest of the accused as he could not be found at the address given in the FIR despite all sincere efforts.

13. The trial Court held that since Ashok Kumar Pathak could not be located despite genuine efforts, his sworn deposition recorded in absence of the accused appellant was liable to be read in evidence as per the provisions of Section 299 CrPC. Accordingly, the said statement was relied upon as a piece of incriminating evidence against the accused appellant.

14. The trial Court also placed reliance on the confession note/letter (Exhibit PW-12/E) holding that the same was found to be in the handwriting of the accused appellant by the handwriting expert (PW-24) vide report (Exhibit PW-12/F). The said confession was treated to be an admission and a strong link of incriminating circumstantial evidence against the appellant.

15. Placing reliance upon the evidence of Ashok Kumar Pathak recorded in proceedings under Section 299 CrPC and the evidence of the handwriting expert (PW-24), the trial Court held the confession note (Exhibit PW-12/E) to be an unimpeachable piece of evidence sealing the fate of the accused. Corroboration thereto was sought from the evidence of Sudha (PW-10), sister of the deceased Usha. By relying on these incriminating links of circumstantial evidence, the trial Court proceeded to convict and sentenced the accused appellant as above vide judgment dated 6th March, 2003.

16. The appeal preferred by the accused appellant in the High Court of Delhi was rejected by learned Division Bench of High Court vide judgment dated 7th January, 2010 holding that the confession note (Exhibit PW-12/E) written by the accused appellant proved his culpability in the crime. The prosecution had established that the accused appellant was in company of the deceased Usha at her house where she was murdered in the intervening night of 19th and 20th May, 1990. The prosecution also established that the deceased was done to death by violence in the said intervening night and that the accused appellant had absconded to flee from justice which established his guilty conduct.

17. The accused appellant has challenged the above judgment affirming his conviction and sentence through this appeal by special leave.

Submissions on behalf of the appellant: -

18. Learned legal aid counsel appointed by Supreme Court Legal Services Committee (SCLSC) for representing the appellant advanced extensive submissions to assail the impugned judgment. He urged that:-

(i) The trial Court as well as the High Court committed grave factual error in holding that complainant Ashok Kumar Pathak was examined on oath in proceedings under Section 299 CrPC. As per learned counsel, this finding is totally contrary to the record because the statement of complainant Ashok Kumar Pathak relied upon by the trial Court and the High Court is actually the statement of the said witness recorded by the SHO, PS Bhajan Pura under Section 161 CrPC which was proved by the Investigating Officer (PW-13) in proceedings under Section 299 CrPC.

(ii) The confession note (Exhibit PW-12/E) is a fabricated piece of evidence because the prosecution did not make any endeavour to get the two admitted documents (Exhibit PW-12/C and PW-12/D) collected from the employer of the accused appellant, i.e., Sanjiv Jain (PW-8) compared with the confession note (Exhibit PW-12/E). This contention was made without prejudice to the plea that the very process of collecting these documents is under a cloud of doubt because the Investigating Officer (PW-13) could not have had any idea that the accused had worked in M/s. R.P. Associates.

(iii) The handwriting expert's report (Exhibit PW-12/F) and the testimony of the handwriting expert (PW-24) is not reliable, since the expert did not give any opinion after comparing the admitted writings (Exhibit PW-12/C and PW-12/D) (seized from the employer of the accused appellant) with the confession note (Exhibit PW-12/E).

(iv) Without prejudice to the above, learned counsel submitted that from a visual comparison of the confession note (PW-12/E) and the specimen handwritings of the accused (Exhibit PW-5/D, PW-5/E and PW-5/F), it would become clear that there is no similarity whatsoever in the two sets of handwritings so as to conclude with any degree of certainty that the scribe of these

documents was one and the same. He thus urged that the report (Exhibit PW-12/F) of the handwriting expert (PW-24) is unreliable and cannot be pressed into service for affirming the guilt of the accused.

(v) He urged that the evidence of Sudha (PW-10) is totally unreliable and not trustworthy and deserves to be discarded. It was admitted by the prosecution that the accused appellant and Usha had divorced each other and thus it is totally unbelievable that the accused appellant had come and stayed with Usha, few days before the incident as claimed by Sudha (PW-10). He urged that the evidence of Sudha (PW-10) is not trustworthy and deserves to be discarded.

(vi) The claim of the prosecution that the accused appellant was absconding is totally unfounded because in the FIR, it was clearly mentioned that the accused appellant after divorcing deceased Usha had started residing in his village Khatta, U.P. However, the Investigating Officer (PW-13) made no effort whatsoever to apprehend the accused appellant from his village.

(vii) It has been admitted by material prosecution witnesses that deceased Usha was indulged in sex trade and that Sandeep Kumar used to solicit her services. Sandeep Kumar and Rajbir Singh (PW-14) were apprehended by the police on suspicion of the death of Usha, however, proper investigation was not made on this aspect. As per him, the possibility of Usha having been murdered by some other person cannot be ruled out.

19. Learned counsel concluded his submissions urging that the case is based purely on circumstantial evidence. The entire chain of incriminating circumstances has to be established leading to the only conclusion consistent with the guilt of the accused and inconsistent with the guilt of anyone else. As per the learned counsel, this chain was not established conclusively by cogent and clinching evidence and hence conviction of the accused appellant as recorded by the trial Court and affirmed by the High Court is unsustainable and should be set aside.

Submissions on behalf of the respondent-State:-

20. *Per contra*, learned counsel for the respondent State fervently and vehemently opposed the submissions advanced by learned counsel

for the appellant and contended that the chain of incriminating circumstances is complete in all aspects exclusively pointing out towards the guilt of the accused. The learned counsel made the following pertinent submissions imploring the Court to dismiss the appeal and upheld the conviction of the accused appellant: -

(i) That the statement of Ashok Kumar Pathak recorded as PW-1 during proceedings under Section 299 CrPC was rightly relied upon as admissible and reliable piece of evidence. The non-examination of Ashok Kumar Pathak during trial is not a deliberate act of prosecution, rather, the witness could not be examined during regular trial after apprehension of the accused appellant. The witness could not be traced by the prosecuting agency inspite of best efforts. The prolonged abscondence of the accused is primarily the reason for non-examination of Ashok Kumar Pathak.

(ii) That the complainant Ashok Kumar Pathak in his evidence as PW-1 during proceedings under Section 299 CrPC has admitted his signature on his statement[Exhibit PW-1/A (based upon which FIR was registered)] and also elaborated about the averments made therein which he had witnessed with his own eyes.

(iii) That the evidence of Ashok Kumar Pathak clearly establishes the presence of accused appellant with Usha on intervening night of 19th/20th May, 1990, whereafter, the lady was found murdered and the accused was found absconding from the crime scene leaving behind a confessional note. Ashok Kumar Pathak also proved about the motive of the appellant to commit the crime.

(iv) The testimony of Usha's sister Sudha (PW-10) establishes that the accused appellant used to quarrel with Usha suspecting her infidelity and there were repeated altercations between the spouses. They had indulged in a fight just four days prior to the incident. This also establishes the motive attributed to the appellant to commit the offence.

(v) That there is no evidence on record to show that accused appellant and Usha were divorced except a bald statement made in this regard in the confession note (Exhibit PW-12/E).

(vi) That the report (Exhibit PW-12/F) submitted by the handwriting expert, Deepa Verma (PW-24) proves that the handwriting on the

confession note (Exhibit PW-12/E) which was recovered from the crime scene matched with the handwriting on the two admitted documents (Exhibits PW-12/C and PW-12/D) collected from the employer of the accused appellant and specimen handwritings (Exhibits PW-5/D, PW-5/E and PW-5/F) given by the accused appellant to the police which in turn concludes the fact that the confession note is in the handwriting of the accused.

21. He urged that the prosecution has proved the case against the accused appellant by leading cogent and convincing chain of incriminating circumstantial evidence and implored the court to dismiss the appeal.

22. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and have gone through the judgments of the trial Court and the High Court as well as the evidence available on record.

Discussion and Conclusion: -

23. The main thrust of submissions advanced by Shri Ambreesh Kumar Aggarwal, learned legal aid counsel representing the appellant so as to criticise the findings of the trial Court and the High Court was that both the Courts erred in holding that the statement of complainant Ashok Kumar Pathak had been recorded on oath in the proceedings under Section 299 CrPC. As per Shri Aggarwal, only the Section 161 CrPC statement of complainant Ashok Kumar Pathak was exhibited by the Investigating Officer (PW-13) and he never stepped into the witness box.

24. In order to verify this fervent submission of learned counsel for the appellant, we carefully sifted through the record and find that the submission so made is without any foundation. The accused appellant was absconding and could not be arrested and thus, the Investigating Officer (PW-13) made all possible efforts including the procurement of warrant of arrest, attempt to serve the same at the village of the appellant, i.e., Khatta, U.P. He tried to locate the accused appellant at various locations, without any success. The warrant which is available on record clearly bears the address of the accused appellant as Khatta, Prahladpur, Bagpat, U.P.

25. Even proceedings of proclamation and attachment were undertaken under Sections 82 and 83 CrPC but to no avail because the accused

appellant had vanished after the crime and was not traceable at the crime scene or at his known address i.e. village Khatta, U.P. The fact regarding his abscondence was also published. Accordingly, a charge sheet came to be filed under Section 299 CrPC showing the accused appellant to be an absconder.

26. The trial Court passed an order dated 18th March, 1991 declaring the accused appellant to be an absconder and permission was granted to the prosecution to proceed with the trial by resorting to the procedure under Section 299 CrPC. This order was never questioned before any court of law.

27. The trial Judge recorded the statement of Ashok Kumar Pathak, the complainant as PW-1 under Section 299 CrPC on 17th July, 1991 after administrating oath to him which begins in the following manner: -

> "Shri Ashok Kumar Pathak, s/o Shri Ram Puran aged 28 years, R/O Kartar Nagar, Gali No. 14, Delhi on S.A. (sworn affirmation)"

28. This statement bears the signature of the presiding officer of the Court and so also of the complainant Ashok Kumar Pathak. Three more witnesses, namely, Head Constables Mohan Lal and Surender Kumar and Inspector Bal Kishan were also examined on oath in proceedings under Section 299 CrPC.

29. In this background, the fervent submission of the learned counsel for the appellant that the prosecution only exhibited the statement of complainant Ashok Kumar Pathak recorded under Section 161 CrPC and that he was never examined on oath in proceedings under Section 299 CrPC seems to have been made out of sheer ignorance and without ascertaining the correct position from the original record.

30. Section 299 of CrPC expressly provides for the power of the Court to record evidence in absence of the accused in the following term: -

> **"299. Record of evidence in absence of accused**.— (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the court competent to try or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in

> evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.
>
> (2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the First Class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India."

31. Sub-section (1) of Section 299 CrPC is in two parts, the first part provides for proof of jurisdictional fact in respect of abscondence of an accused person and the second that there was no immediate prospect of arresting him. In the event, an order under the said provision is passed, deposition of any witness taken in the absence of an accused may be used against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

32. This Court in the case of ***Nirmal Singh v. State of Haryana***[1] while considering the issue that under what circumstances and by what method, the statement of a witness under Section 299 of CrPC could have been tendered in the case for being admissible under Section 33 of the Indian Evidence Act, 1872 and whether they can form the basis of conviction, held as follows:

> **"4. …..Section 299 of the Code of Criminal Procedure consists of two parts. The first part speaks of the circumstances under which witnesses produced by**

1 [2000] 2 SCR 807 : (2000) 4 SCC 41

the prosecution could be examined in the absence of the accused and the second part speaks of the circumstances when such deposition can be given in evidence against the accused in any inquiry or trial for the offence with which he is charged. This procedure contemplated under Section 299 of the Code of Criminal Procedure is thus an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary, therefore, that all the conditions prescribed, must be strictly complied with. In other words, before recording the statement of the witnesses produced by the prosecution, the court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under the first part of Section 299 (1) of the Code of Criminal Procedure….

…..There possibly cannot be any dispute with the proposition of law that for taking the benefits of Section 299 of the Code of Criminal Procedure, the conditions precedent therein must be duly established and the prosecution, which proposes to utilise the said statement as evidence in trial, must, therefore, prove about the existence of the preconditions before tendering the evidence…..

….**On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299 (1) of the Code of Criminal Procedure is established**….”

(emphasis supplied)

33. Further, in the case of ***Jayendra Vishnu Thakur v. State of Maharashtra & Another*** [2] it was held as follows: -

> **"25. It is also beyond any cavil that the provisions of Section 299 of the Code must receive strict interpretation, and, thus, scrupulous compliance therewith is imperative in character.** It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. Under Section 3 of the Evidence Act like any other fact, the prosecution must prove by leading evidence and a definite categorical finding must be arrived at by the court in regard to the fact required to be proved by a statute. Existence of an evidence is not enough but application of mind by the court thereupon as also the analysis of the materials and/or appreciation thereof for the purpose of placing reliance upon that part of the evidence is imperative in character.
>
> **29. Indisputably both the conditions contained in the first part of Section 299 of the Code must be read conjunctively and not disjunctively. Satisfaction of one of the requirements should not be sufficient…."**
>
> **(emphasis supplied)**

34. The statement of Ashok Kumar Pathak dated 17th July, 1991 recorded in proceedings under Section 299 CrPC is as follows: -

> "I am working as Salesman/supply man in the M/s R.P. Associates a shop of medicines in Bhagirath Place for the last about seven years. In my neighbourhood accused Sukhpal along with his wife Usha and children used to reside in H.No.387 Gali No.14 Kartar Nagar for the last 3/4 years prior to this case. He was having two daughters and one son. Later on he also joined service in M/s R.P. Associates, Bhagirath Place with my assistance. Accused suspected infidelity of his wife Smt. Usha and for this reason they were not having good relations and

2 [2009] 8 SCR 591 : (2009) 7 SCC 104

they always used to quarrel with each other. Prior to the occurrence of this case accused left his house leaving his wife Smt. Usha and three children at the above said house for his village Khatta in UP and used to come to his shop therefrom. Sometimes they used to visit with his wife Usha at his house. About four days back prior to this occurrence accused Sukhpal had come to his house where sister of Usha was also found present with Usha at his house and on that day Sukhpal had quarrelled with his wife Usha and he then returned. Next day sister of Usha also left with three children of Usha to her house, leaving her sister alone at her house.

On 19.5.1990 at about 10.30 P.M. I saw accused Usha & Sukhpal who came on a cycle to his house having conversation with his wife, sitting on a cot in the court-yard of his house, and I went on the roof of my house, and slept. In the night when the rain was started I came down from the roof and I saw the accused Sukhpal along with his wife Usha going into inside their room. Both of them went inside their room. Next morning due to holiday (closeday being Sunday) I woke up some late and started my daily routine work. I found the cycle of Sukhpal parked in the court-yard of his house. I thought that both of them might be in their room. In the noon I again found the cycle of Sukhpal parked in the court-yard of the house but none of them was seen outside their room. In the evening at about 5.30 P.M. when I called them but no response came from his house but the door of the room was opened. When I entered the room of Usha I found Smt. Usha dead lying on the cot and accused Sukhpal was found missing therefrom. I informed the nearby residents who called the police. Accused Sukhpal had run away from his house after committing the murder of his wife Usha in the night. Police came there and completed the proceedings. I save my statement to the police and I signed my statement which is Ex.PW-1/A and is correct. Other mohalla people also collected there.

There were many injuries on the throat and shoulder, neck of Smt. Usha. There was blood on the bed sheet on which medicines were found scattered and letter written

in Hindi by accused Sukhpal regarding the murder of his wife Usha was also found under the cot.

I identify the hand-writing of Sukhpal on that letter, because he was working with me at the aforesaid medicine shop where we used to prepare and write the documents. I have seen him signing and writing the documents at the above said shop with me. Police seized that letter vide a memo Ex.PW1/B and I signed the same.

One old cycle make Avon of accused Sukhpal was seized vide a memo which is Ex.PW1/D. I signed the same. I had seen the accused using that cycle earlier also and so I identify this case to be of accused Sukhpal. Surinder Kumar who was also present there also signed the memo.

On 22.5.1990 I was present on my duty at the shop of M/s R.P. Associates, 1696/8 Ist floor Mohan Building Bhagirath Place where accused Sukhpal also used to work. On that day police officials visited the shop where Sanjiv Kumar, owner of the above said shop reduced two letters to the police. One letter was an application for resignation from the service written by Sukhpal to M/s R.P. Associates and another letter at 12.6.89 addressed to R.P. Associates requesting for service to him. Both these letters were written and signed by accused Sukhpal. I identify his writing and signature on it. These letters are Ext.PW/E and Ex.PW/F. These letters were seized vide memo Ex.PW1/G and I signed it. The letter addressed to the police officer written by Sukhpal which was seized from the spot by the police is Ex.P1. which was taken into possession vide memo Ex.PW1/B. Sanjiv Jain owner of the above said shop produced one page of the letter pad to the police who seized the same vide memo Ex.PW1/H and I signed the same."

35. The statement of Ashok Kumar Pathak (reproduced *supra*) gives positive and unwavering proof of the following circumstances: -

(i) The accused appellant Sukhpal was married to Usha (deceased).

(ii) There was an ongoing marital strife between the spouses owing to the suspected infidelity of Usha and on this ground, they

used to quarrel with each other. The accused appellant left his wife Usha and his three children and started living in village Khatta, U.P. The accused suspected infidelity of Usha imputes a strong motive to the accused for her murder.

(iii) Ashok Kumar Pathak had facilitated a job for the accused appellant in M/s. R.P. Associates.

(iv) Inspite of the strife and acrimonious relationship, the accused appellant often used to visit his wife Usha and would stay with her. He had come and stayed with Usha four days before the incident and at that time, Sudha, sister of Usha was also present. Sukhpal quarrelled with Usha in presence of her sister and then went away.

(v) A day prior to the incident also, accused appellant had come to House No. J-387, Gali No. 4, Kartar Nagar, Delhi where the alleged incident took place and stayed with Usha.

(vi) The witness Ashok Kumar Pathak saw the accused appellant parking his cycle in the courtyard of the house. He also saw the accused appellant (Sukhpal) and wife (Usha) talking to each other while sitting on a cot in the courtyard. Then it started raining whereupon, both were seen going into the house from the courtyard. On the next morning, neither the accused appellant nor Usha were anywhere to be seen.

(vii) The witness went to Usha's house in the evening and saw her dead body lying on cot with large number of injuries whereas the accused appellant was missing. The cycle of the accused appellant was still parked in the courtyard of the house.

(viii) A handwritten note (Exhibit PW-12/E) confessing to the murder was found lying underneath the cot on which the dead body was lying. The witness categorically stated that this note was written in the handwriting of the accused appellant which the witness was able to identify on account of both having worked together in the same concern (M/s. R.P. Associates) for a significant period of time.

36. Thus, the circumstances of motive, last seen, confession and abscondence from the crime scene after committing the crime are all spoken to by the witness Ashok Kumar Pathak (PW-1) in his statement dated 17th July, 1991 (reproduced *supra*) recorded on sworn

affirmation during the proceedings under Section 299 CrPC. It may be stated here that Ashok Kumar Pathak had no motive whatsoever to falsely implicate the accused appellant for the murder of Usha.

37. The fact regarding Usha's homicidal death is not in dispute. The Medical Jurist (PW-15) gave categoric testimony to the effect that Usha had been manually strangled and the cause of death was Asphyxia. Thus, we need not discuss the medical evidence in detail.

38. The statement of Ashok Kumar Pathak by itself provides a complete chain of circumstantial evidence sufficient to establish the guilt of the accused appellant. The accused appellant vanished from the crime scene and remained absconding for a period of nearly 10 years. He could be apprehended on 9th August, 2000, whereafter, regular trial was conducted. During the period of abscondence of the accused appellant, the complainant Ashok Kumar Pathak seems to have left his house at Kartar Nagar, Delhi where he used to reside earlier. Despite ample efforts being made by the Investigating Agency to summon and examine Ashok Kumar Pathak, he could not be traced out and produced in the witness box for deposition during trial after the accused had been arrested.

39. Viewed in light of the provisions of Section 299 CrPC read with Section 33 of the Indian Evidence Act, 1872 as interpreted by this Court in the case of ***Nirmal Singh*** *(supra)* and ***Jayendra Vishnu Thakur*** *(supra),* the trial Court was justified in holding that the statement of Ashok Kumar Pathak recorded in these proceedings was fit to be read as a piece of substantive evidence. We concur with the findings recorded by the trial Court and affirmed by the High Court on this vital aspect of the matter.

40. Sudha (PW-10), sister of deceased Usha also stated that the accused appellant used to quarrel with his wife Usha suspecting her infidelity. The witness also stated that the accused appellant had come to the house of Usha in her presence about four days before the incident and went away after fighting with Usha. Thus, evidence of this witness also establishes the motive attributed to the accused appellant for commission of the murder. Her testimony is also sufficient to conclude that inspite of the acrimonious relations between the husband and wife, the accused appellant used to visit Usha frequently from the village Khatta, U.P. where he was residing after having abandoned his wife and children.

41. The witness Sanjiv Jain (PW-8), employer of accused appellant gave evidence to the effect that the Investigating Officer (PW-13) collected the admitted writings of the accused (Exhibit PW-12/C and Exhibit PW-12/D) from him during the course of the investigation. Sanjiv Jain (PW-8) had no motive whatsoever so as to falsely implicate the accused in this case. He had provided employment to the accused which fact is not disputed. The version of Sanjiv Jain (PW-8) to the effect that the Investigating Officer (PW-13) collected the scripts/ documents written by the accused while working in his establishment finds corroboration from the statement of Ashok Kumar Pathak recorded in the proceedings under Section 299 CrPC.

42. The contention of learned counsel for the appellant that the two persons namely, Sandeep Kumar and Rajbir Singh (PW-14) were involved in an illicit affair with Usha and they might have murdered the lady has no legs to stand because in view of what has been stated by Ashok Kumar Pathak in his testimony recorded under Section 299 CrPC, it is clear that no one other than the accused appellant was present in the house with Usha on the night she was murdered.

43. The Investigating Officer (PW-13) duly proved the process of arrest of accused on 9th August, 2000, i.e., after more than 10 years of the incident.

44. The specimen writings (Exhibits PW-5/D, 5/E and 5/F) of the accused appellant were lawfully collected by the Investigating Officer (PW-13) after he was arrested and all these documents were placed on record with the charge sheet. These specimen writings (Exhibits PW-5/D, 5/E and 5/F) and the admitted writings (Exhibits PW-12/C and PW-12/D) of the accused appellant along with confession note (Exhibit PW-12/E) recovered from the crime scene were sent to the handwriting expert (PW-24) for comparison from where a report (Exhibit PW-12/F) was received to the effect that the handwritings on these documents match with each other. As is required under law, the handwriting expert Deepa Verma was examined as a witness (PW-24) and she proved the report (Exhibit PW-12/F) establishing the fact that the handwriting on the confessional note (Exhibit PW-12/E) recovered from the crime scene matched with the handwriting of the accused appellant on the specimen and admitted writings.

45. The Investigating Officer (PW-13) gave unimpeachable evidence proving the various steps taken by him for collection of evidence

during investigation so as to link the accused appellant with murder of Usha. The fact that the accused appellant was present with Usha on the night preceding the murder is firmly established from the deposition of Ashok Kumar Pathak. He went absconding after the murder and could not be traced out for almost 10 years which is also a strong circumstance pointing towards his guilty state of mind.

46. The circumstances leading to murder of Usha were in the exclusive knowledge of the appellant. He has offered no explanation as to the manner in which Usha was strangled to death within the confines of the room where only he and the deceased were present. The bald plea of denial offered by the accused by way of an explanation to this gravely incriminating circumstance is not sufficient to absolve him of the burden cast upon him by virtue of Section 106 of the Indian Evidence Act, 1872.

47. As a consequence of the above discussion, we are of the firm view that the prosecution has established the following links in the chain of incriminating circumstantial evidence: -

    (i) Motive;

    (ii) Last seen together;

    (iii) Medical evidence establishing that the cause of death of the deceased was homicidal.

    (iv) Confessional note;

    (v) Abscondence for nearly 10 years;

    (vi) Wrong explanation given by the accused in his statement under Section 313 CrPC;

    (vii) Failure of the accused to offer explanation for the homicidal death of his wife in the night time when only the accused and deceased were present in the house leading to the interference of guilt by virtue of Section 106 of the Indian Evidence Act, 1872.

48. Connected together, all these facts form a clinching and complete chain of incriminating circumstances pointing exclusively towards the guilt of the accused appellant and totally inconsistent with his innocence or the involvement of any other person in the crime.

49. Consequently, we have no hesitation in confirming the view taken by the trial Court and the High Court in convicting and affirming the

conviction of the accused appellant for the charge of committing murder of Usha.

50. The impugned judgments do not suffer from any infirmity warranting any interference.

51. Hence, the appeal fails and is hereby dismissed as such.

52. The appellant is on bail. His bail bonds are cancelled. He shall surrender before the trial Court within the next 60 days to serve the remainder of the sentence. In case the appellant fails to surrender before the trial Court within the aforesaid period, the trial Court shall take steps to apprehend him and make him serve out the sentence.

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

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal dismissed.