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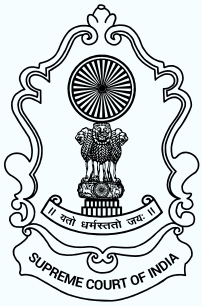

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v.
Sarita

(Civil Appeal No. 7380 of 2024)

10 July 2024

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

Issue for Consideration

Whether the present appeal falls under the criteria of 'irretrievable breakdown of marriage,' warranting the Supreme Court to exercises its powers under Article 142 of the Constitution to do complete justice.

Headnotes†

Marriage – Divorce – Whether the High Court erred in allowing the appeal of the Respondent and setting aside the decree of divorce granted by Family Court – Constitution of India – Article 142:

Held: i)The Appellant-husband and Respondent-wife have lived together on their own will for hardly 43 days since marriage – The period of separation has been more than 22 years – The parties have fought multiple legal battles against each other since 2002 itself with six cases filed against each other, including criminal cases – In the Impugned Order the High Court has set aside the order of the Family Court, stating that the parties are not living separately out of their free will and it is the Appellant who has refused to cohabit with the Respondent.

ii) In the present case the Respondent claims that she is willing to live with the Appellant – Respondent's actions are not in consonance with her claim – Appellant contends that Respondent's claim of willingness to live together is a false claim meant only to mislead the Court, delay the proceedings and harass the Appellant – Considering the long separation period of 22 years, the sour relations developed due to continuous legal battles, and the fact that both the parties are in their 50s now, having their independent lives makes the possibility of cohabitation implausible – Accordingly, the Supreme Court held the case to be fit for exercise of extraordinary powers conferred

* Author

under Article 142 of the Constitution and grant the decree of divorce under irretrievable breakdown of marriage in order to do complete justice to the parties – The judgement passed by the High Court of Allahabad passed in First Appeal No. 31 of 2007 is set aside. [Paras 15, 16, 17 and 19]

Case Law Cited

Shilpa Shailesh v. Varun Sreenivasan [2023] 5 SCR 165 **: 2023 SCC OnLine SC 544;** *Rajib Kumar Roy v. Sushmita Saha,* **2023 SCC OnLine SC 1221 – relied on.**

List of Acts

Constitution of India; Hindu Marriage Act, 1955.

List of Keywords

Irretrievable breakdown of marriage; Supreme Court's power under Article 142 to do complete justice.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7380 of 2024

From the Judgment and Order dated 22.08.2019 of the High Court of Judicature at Allahabad in FA No. 31 of 2007

Appearances for Parties

Sanjay Jain, Gaurav Agrawal, Sr. Advs., Lalit Chauhan, Ms. Mrinal Gopal Elker, Ms. Shambhvi Mansingh, Ms. Jasmine Chauhan, Ms. Harshita Sukheja, Nishank Tripathi, Ms. Palak Jain, Advs. for the Appellant.

Ms. Meenakshi Arora, Abhinav Mukerji, Sr. Advs., Ms. Pratishtha Vij, Chritarth Palli, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. The present appeal is preferred by Appellant-Dr. Vikas Kanaujia against the impugned order of High Court of Allahabad dated

22.08.2019, passed in First Appeal No. 31 of 2007, whereby the High Court allowed the appeal and set aside the decree of divorce granted by the Family Court, Meerut on 20.12.2006 in Matrimonial Case No. 123 of 2003 filed by the Appellant. The Appellant-husband had filed the petition for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955[1] on the ground of Cruelty.

3. The factual matrix of the case, along with the record of multiple legal proceedings between the parties, is summarised as follows:

4. Appellant-Dr. Vikas Kanaujia and Respondent-Dr. Sarita got married to each other on 20.02.2002 in accordance with Hindu Rites and Customs. The Respondent-wife came to her marital home at Meerut. The Appellant submitted in his plaint, that marriage was consummated but later the relationship between parties was strained as Respondent refused to perform marital obligations and misbehaved with his mother. On 22.02.2002, the younger brother and maternal aunt of the Respondent allegedly visited the house and the Respondent left for her paternal home along with them. The Appellant brought her back to marital home on 04.03.2002. Afterwards both the Appellant and Respondent went to Udhampur (Jammu and Kashmir) where the Appellant was working as an eye surgeon. However, the Appellant claims that behaviour of Respondent was cold and indifferent towards him. They both returned on 11.03.2002. On 17.03.2002 the Thirteenth day function (Terahi Ceremony) was held for a family member of Appellant. On the evening of same day, the Respondent left her marital home. Since then, the Respondent is residing at her paternal home. Thus, the Appellant and Respondent have lived together for barely 23 days as the Respondent shifted to her paternal home before completing even a month at her marital home.

5. The Appellant states that he made repeated attempts to bring back the Respondent but he failed as Respondent refused to live with him. Thus, the Appellant filed a suit under Section 9 of HMA for restitution of conjugal rights as Suit No. 598 of 2002. The Respondent, on the other hand, filed an application under Section 24 of the HMA for maintenance as Suit No. 336 of 2002. Both the

1 In short, HMA

cases were listed together before the Family Court on 28.11.2002 however allegedly the Respondent and her father misbehaved with the father of Appellant on the day of proceedings. Since no attempts of reconciliation were successful, on 26.02.2003 the Appellant filed a suit for dissolution of marriage under Section 13 of the HMA on the ground of 'Cruelty' as Matrimonial Case No. 123 of 2003. Appellant claimed 'cruelty' against Respondent on two grounds. First, the Respondent did not fulfil her marital obligation by depriving the Appellant of his conjugal rights. Second, the Respondent caused mental cruelty by her temperament and misbehaviour with family members of Appellant. On the other hand, in the Written Statement the Respondent-wife has stated that Appellant was unhappy in marriage since day one. She never refused to join the company of Appellant and live together. But the Appellant and his family wanted to remarry him for dowry. They had allegedly demanded dowry from Respondent as well.

6. While the proceedings in Matrimonial suit were pending, on 31.07.2006 the Family Court rejected the application filed by Respondent seeking maintenance under Section 24 of HMA, on the ground that Respondent was also a doctor and her earnings are at par with the Appellant.

7. The suit for restitution of conjugal rights was later withdrawn by the Appellant. On 26.05.2003, the Respondent wife filed a petition under Section 125 of the Code of Criminal Procedure, 1973 seeking maintenance as Case no. 89 of 2011. It was dismissed on 29.11.2013 on the ground that Respondent was earning at par with Appellant and thus not entitled to maintenance.

8. Further, on 24.02.2004 the Respondent filed Criminal complaint at Meerut under Sections 498A, 406 and 34 of Indian Penal Code, 1860[2] against the Appellant, his parents and siblings. In this complaint she alleged mental harassment, dowry demand and retention of the dowry articles by the accused persons in her marital home, against the accused persons. On 05.11.2004, FIR bearing No. 965/2004 was registered against the Appellant and abovementioned family members. As the Sessions Court passed an order for Conciliation

2 In short, 'IPC'

on 15.06.2005, the Appellant and Respondent lived together for 20 days from 15.06.2005 to 05.07.2005. However, on 05.07.2005, the police arrested family members of Appellant- his mother, father, sister and father, who were subsequently granted bail.

9. On 20.12.2006, the Family Court passed final order in Matrimonial Case No. 123 of 2003 by granting decree of divorce to Appellant. It decreed the suit on the ground of cruelty holding that Respondent had initiated false criminal proceedings against the Appellant. Thus, the Respondent filed First Appeal No. 31 of 2007 before the High Court.

10. Meanwhile on 08.07.2013, the Metropolitan Magistrate discharged the father, brother, and sister of the Appellant from all charges in connection with FIR No. 965 of 2004. The Respondent filed application for framing charges under Section 498A of IPC against the brother and sister of Appellant. However, the Magistrate rejected this application on 26.11.2013. On 18.12.2017, the Metropolitan Magistrate passed final order acquitting the Appellant and his mother. The Respondent filed Appeal before the Sessions Court. On 02.03.2023, the Sessions Court upheld the acquittal order passed by trial court.

11. By the Impugned order passed on 22.08.2019, the High Court allowed the appeal of Respondent filed in matrimonial case against the order of Family Court, thereby dismissing the petition to grant divorce. The High Court denied the ground of irretrievable breakdown of marriage stating that parties have not been living separately on account of their free will. It was the appellant who refused to co-habit with the Respondent and she herself did not desert him. Thus, the Appellant has approached this Court against the order of High Court which denied him divorce.

12. Afterwards, allegedly the Respondent visited residence of Appellant and made unsavoury enquiries in neighbourhood. She further filed a Missing Persons Complaint alleging that Appellant is missing. On 07.10.2019, the Respondent entered into the workplace of Appellant in OPD area of department of Ophthalmology in Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow along with police personnel, causing disturbance in the department. The Appellant

even got a warning letter from the head of the department to resolve personal grievances outside the premises. The police frequently visited the department and made enquiries about appellant in connection with the Missing complaint filed by Respondent.

13. We have heard learned counsel for the parties and perused the material on record. We are of the opinion that this is a fit case to exercise powers conferred on this Court under Article 142 of the Constitution of India. A Constitution Bench of this Court in **Shilpa Shailesh v. Varun Sreenivasan**[3] has held that this Court has the discretion to dissolve the marriage on the ground of irretrievable breakdown of marriage in order to do 'complete justice' to the parties, even if one spouse opposes such prayer. Relevant portion of Paragraph 50 of the judgment is reproduced hereunder:

> "…… ……. ……..
>
> (iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?
>
> This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142 (1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

14. In the present case we are convinced that the marriage has failed completely and there is no possibility of parties living together and thus the continuation of further legal relationship is unjustified.

3 [2023] 5 SCR 165 : 2023 SCC OnLine SC 544

15. The husband and wife have lived together on their own will for hardly 23 days since marriage. They further lived together for 20 more days from 15.06.2005 to 05.07.2015 as Sessions Court passed order for conciliation. Thus, in total the parties have not lived together for more than 43 days. The Respondent left her matrimonial house within the first month of marriage. The period of separation has been more than 22 years. The possibility of parties living together is further reduced as parties are in their early 50s now and have built independent lives. Further, the parties have fought multiple legal battles against each other since 2002 itself with six cases filed against each other, including criminal cases. The Respondent had filed a criminal case against the Appellant and his family members where they were arrested although subsequently discharged and acquitted.

16. Although the Respondent claims that she is willing to live with the Appellant believing in the sanctity of marriage, her actions are not in consonance with her claim. In this long period of 22 years, there was no one to stop her from living together with the Appellant. The mediation and conciliation proceedings have failed. The Appellant on the other hand states that the claim of willingness to live together is falsely projected claim before the Court of law only to mislead the Court, delay the proceedings and harass the appellant.

17. Thus, the effective cumulation of actions of both the parties in past 22 years since marriage has resulted in demolition of their matrimonial bond beyond repair. The marriage has ceased to exist both in substance and in reality. The relation has even taken a sour taste as the families of parties have also developed rivalries. The act of Respondent to lodge a missing complaint against Appellant after the delivery of impugned order is also indicative of the bitter relation between the parties. Considering the long separation period of 22 years, lack of existence of marriage between the parties and the sour relations developed due to continuous legal battles, we deem this case to be fit for exercise of extraordinary powers conferred under Article 142 of the Constitution.

18. In the case of **Rajib Kumar Roy vs Sushmita Saha**,[4] this Court exercised the power conferred under Article 142 of the Constitution of India by dissolving the marriage between parties who were living

4 2023 SCC OnLine SC 1221

separately for 12 years. Paragraph Nos. 9,10 and 11 of the judgement are reproduced hereunder:

> "9. Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of "irretrievable breakdown of marriage", which is also a facet of "cruelty". In Rakesh Raman v. Kavita, 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides. Which is precisely the case at hand.
>
> 10. Whatever may be the justification for the two living separately, with so much of time gone by, any marital love or affection, which may have been between the parties, seems to have dried up. This is a classic case of irretrievable breakdown of marriage. In view of the Constitution Bench Judgment of this court in Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC OnLine SC 544 which has held that in such cases where there is irretrievable breakdown of marriage then dissolution of marriage is the only solution and this Court can grant a decree of divorce in exercise of its power under Article 142 of the Constitution of India.
>
> 11. We therefore declare the marriage to have broken down irretrievably and therefore in exercise of our jurisdiction under Article 142 of the Constitution of India we are of the considered opinion that this being a case of irretrievable breakdown of marriage must now be dissolved by grant of decree of divorce."

19. In light of the facts and circumstances of the present case, along with powers conferred under Article 142 of the Constitution of India and judicial precedents discussed herein, we hereby grant the decree of divorce on account of irretrievable breakdown of marriage. As both the parties are professionally qualified medical doctors and

have sufficient and equal earnings, we are not inclined to award any permanent alimony.

20. The judgement dated 22.08.2019 passed by the High Court of Allahabad is hereby set aside. The marriage between the parties is dissolved, exercising powers under Article 142 of the Constitution of India. The present appeal is accordingly allowed.

21. Pending application(s), if any, is/are disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Gaurav Upadhyay, Hony. Associate Editor
(Verified by: Kanu Agrawal, Adv.*)*

[2024] 7 S.C.R. 942 : 2024 INSC 530

Kiran Jyot Maini
v.
Anish Pramod Patel

(Criminal Appeal Nos. 2915-2918 of 2024)

15 July 2024

[Vikram Nath* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Long-standing separation between the parties, multiple prolonged litigations pending adjudication, several failed attempts at reconciliation. Issue was as regards interim maintenance however, in view of irretrievable break down of marriage, marriage between the appellant-wife and respondent-husband was dissolved in exercise of powers under Article 142 of the Constitution of India. Amount of permanent alimony to be paid by the respondent to the appellant.

Headnotes†

Constitution of India – Article 142 – Exercise of powers under – Dissolution of marriage in view of its irretrievable break down – Parties cohabited for less than a year and were living separately for last nine years – Grave allegations of cruelty, hurt and dowry demands made by the appellant-wife against the respondent-husband – Multiple civil/criminal proceedings pending – Failed attempts of reconciliation:

Held: Inherent powers to dissolve a marriage under Article 142 are exercised where the Court finds that the marriage is dead, unworkable, beyond repair, emotionally perished and has thus irretrievably broken down, even though no grounds for divorce as provided in the applicable law are made out in the facts of the case – In the present case, the marriage between the parties has completely broken down – Parties have also mutually agreed that they have no intention of continuing their union as husband and wife – Orders and judgments of the courts below set aside – Marriage between the parties dissolved and the decree of divorce granted in exercise of powers under Article 142. [Paras 15, 18, 20, 34]

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* Author

Maintenance – Permanent alimony – Grant of – Marriage between the parties dissolved in exercise of powers under Article 142 of the Constitution of India – Respondent-husband working as the Vice President of a bank earned more than Rs. 5 Lakhs per month as net salary whereas appellant-wife had a salary of Rs.1,39,000/- per month – Appellant demanded Rs. 5 to 7 Crores as one-time settlement, the respondent offered to pay Rs. 50 Lakhs:

Held: Both the parties have high standards of living, which the appellant-wife continued to enjoy after their separation as well – Though both of them are well qualified and gainfully employed, the respondent earns approximately five times the monthly income of the appellant – Respondent has certain obligations towards three dependants, his own expenses, and certain bank loans, but he also evidently has the financial capacity to maintain his former wife – He has the legal obligation as also the financial capacity to maintain his wife after dissolution of marriage – Award of maintenance or permanent alimony should not be penal but should be for the purposes of ensuring a decent living standard for the wife – Keeping in view the social and financial status of the parties, their current employments as well as future prospects, standards of living, and their obligations, liabilities, and other expenses, respondent to pay Rs.2 Crores towards permanent alimony to the appellant within the time stipulated. [Paras 30, 32-34]

Maintenance – Permanent alimony – Fair amount of – Law as regards adjudication and determination of one-time settlement – Factors to be considered – Discussed.

Case Law Cited

Hitesh Bhatnagar v. Deepa Bhatnagar [2011] 6 SCR 118 **: (2011) 5 SCC 234;** *Ashok Hurra v. Rupa Bipin Zaveri* [1997] 2 SCR 875 **: (1997) 4 SCC 226;** *Shilpa Sailesh v. Varun Sreenivasan* [2023] 5 SCR 165 **: (2022) 15 SCC 754;** *Vinny Paramvir Parmar v. Paramvir Parmar* [2011] 9 SCR 371 **: 2011 (13) SCC 112;** *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* [2012] 7 SCR 607 **: (2012) 7 SCC 288;** *Rajnesh v. Neha and Another* [2020] 13 SCR 1093 **: (2021) 2 SCC 32 – relied on.**

Manish Jain v. Akanksha Jain [2017] 3 SCR 702 **: (2017) 15 SCC 801;** *Shailja & Anr. v. Khobbanna* **(2018) 12 SCC 199;** *Sunita Kachwaha & Ors. v. Anil Kachwaha* **(2014) 16 SCC 715 – referred to.**

List of Acts

Constitution of India; Penal Code, 1860; Dowry Prohibition Act, 1961; Protection of Women from Domestic Violence Act, 2005; Code of Criminal Procedure, 1973.

List of Keywords

Article 142 of the Constitution of India; Inherent powers to dissolve a marriage under Article 142 of the Constitution of India; Irretrievable break down of marriage; Marriage completely broken down; Dissolution of marriage; Marriage dissolved in exercise of powers under Article 142 of the Constitution of India; Decree of divorce granted in exercise of powers under Article 142 of the Constitution of India; One-time settlement in matrimonial disputes; Maintenance; Permanent alimony; Fair amount of permanent alimony; One-time settlement; Matrimonial disputes; Separation;Reconciliation failed; Interim maintenance; Allegations of cruelty, hurt and dowry demands; Social and financial status of the parties.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2915-2918 of 2024

From the Judgment and Order dated 01.12.2023 of the High Court of Delhi at New Delhi in CRLMC No.406 of 2023 and CRLMA No. 4294, 4907 and 17294 of 2023

With

Criminal Appeal Nos. 2919 - 2922 of 2024

Appearances for Parties

Gaurav Bhatia, Sr. Adv., Pawanshree Agrawal, Utkarsh Jaiswal, Advs. for the Appellant.

Sameer Kumar, Adv. for the Respondent.

Kiran Jyot Maini v. Anish Pramod Patel

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

CRL. APPEAL NOS……/2024@ SLP(CRL.) NOS.672-675/2024:

1. Leave granted.

2. The present appeals arise out of the impugned order dated 01.12.2023 passed by the Delhi High Court in CRL.M.C. 406/2023 & CRL.M.A. 4294/2023, CRL.M.A. 4907/2023, CRL.M.A. 17294/2023, whereby the Court has directed the respondent to pay only 20% of the total arrears of interim maintenance granted by the Additional Sessions Judge, Gautam Budh Nagar to the appellant in appeals before it. The present appeals also challenge the rejection of the appellant's prayer for attachment of bank account of the respondent and payment of the complete arrears of Rs. 65,00,000/- (Rupees Sixty-Five Lakhs only), as on date of the impugned judgement, towards interim maintenance.

3. The factual background of the present case is that the marriage between the appellant -wife and the respondent-husband was solemnized on 30.04.2015 and, within one year, on 13.04.2016 FIR No.34/2016 was registered on the basis of the complaint made by the appellant-wife at Police Station Mahila Thana, Gautam Budh Nagar, U.P. under Sections 498A/323/504 of Indian Penal Code, 1860[1] and Sections 3/4 of Dowry Prohibition Act, 1961.[2] In respondent's Criminal Miscellaneous Writ Petition before the Allahabad High Court seeking stay on arrest and quashing of FIR, vide order dated 06.05.2016 the High Court referred the parties to mediation and thereby granted stay on arrest of the respondent. The Writ Petition was subsequently dismissed on merit vide order dated 22.09.2016.

4. Appellant thereafter preferred Application No. 4622 of 2016 under Section 12 of the Protection of Women from Domestic Violence Act, 2005[3] before Judicial Magistrate, Gautam Budh Nagar, wherein an application seeking interim maintenance had also been filed by her

1 In short, "IPC"

2 In short, "Act, 1961"

3 In short, "PWDV Act"

under Section 23 of the PWDV Act. The Judicial Magistrate, vide order dated 10.05.2018, directed the respondent to pay interim maintenance of Rs. 35,000/- (Rupees Thirty-Five Thousand Only) to the appellant. Both the parties challenged this order through two separate appeals before the Additional Sessions Judge, Gautam Budh Nagar. Vide order dated 01.02.2019, the Additional Sessions Judge modified the order of the Judicial Magistrate and directed the respondent to pay Rs.45,000/- per month to the appellant and Rs.55,000/- per month to her daughter. The appeal preferred by the respondent was dismissed.

5. Aggrieved by the order of interim maintenance, the respondent preferred an Application bearing No. 12860/2019 under Section 482 of the Code of Criminal Procedure, 1973.[4] before the High Court of Allahabad and the matter was again referred to mediation vide order dated 09.04.2019. The mediation between the parties failed on 06.07.2019 and the appellant preferred a Criminal Application No. 41/2019 under Section 31(1) of PWDV Act against the respondent for non-compliance of order dated 01.02.2019 i.e. for non-payment of interim maintenance. Summons were issued by the Court of learned Additional Civil Judge, Third, Gautam Budh Nagar. The summons were challenged by the respondent before the High Court of Allahabad through Application No. 33533/2019 under Section 482 of CrPC. Vide order dated 16.09.2019, the summons were stayed and vide order dated 13.12.2019, the High Court of Allahabad directed expeditious disposal of application of appellant under Section 12 of PWDV Act pending before the Judicial Magistrate as there was no stay operating in the proceedings.

6. Upon application made by the respondent, the proceedings in Application No. 4622 of 2016 under Section 12 of PWDV Act and Criminal Application No. 41/2019 under Section 31(1) of PWDV Act were transferred to Tis Hazari Courts, Delhi vide order dated 13.08.2021 passed by this Court. Case No. 41/2019 was registered at Delhi as Case No. 882/2022 and Case No. 4622/2016 was registered as Case No. 691/2022. Notices were issued to the parties on 04.04.2022 by the Mahila Court, Tis Hazari, Delhi. In the meantime, the High Court of Allahabad vide order dated 14.03.2023 dismissed

4 In short, "CrPC

the applications filed by the respondent under Section 482 Cr.P.C. being Application No. 33533/2019 and Application No. 12860/2019 as infructuous on the statement made by his counsel. Respondent preferred a Criminal Revision Petition and a Criminal Miscellaneous Application before the High Court of Delhi which were registered as Criminal Revision Petition No. 298 of 2023 and Criminal Miscellaneous Case No. 1951 of 2023, respectively, praying for similar reliefs as before and challenging the orders of interim maintenance.

7. The appellant filed a petition under Article 227 of the Constitution of India read with Section 482, Cr.P.C. seeking appropriate directions including attachment of the accounts of the respondent, in the cases pending before the Mahila Court, Tis Hazari, Central, New Delhi, and the same was registered as Criminal Miscellaneous Case No. 406 of 2023. Vide order dated 08.05.2023, the High Court of Delhi disposed of the Miscellaneous Application file by the appellant in the petition and directed the respondent to pay 10% of the total arrears of interim maintenance due till 31.12.2022, that is, 10% of Rs. 52,95,000/- as immediate interim relief to the petitioner therein within a period of fifteen days from the date of the order.

8. In the proceedings before the Mahila Court at Tis Hazari, Delhi, the above order of the High Court was modified and the Court directed the respondent to pay Rs. 2 Lakhs to the appellant within twenty-four hours and remaining amount of Rs. 3,92,500/- (Rupees Three Lacs Ninety-Two Thousand and Five Hundred Only) before 09.06.2023.

9. The High Court of Delhi while finally disposing of the appellant's petition under Article 227 along with criminal revision and the miscellaneous application filed by the respondent, directed the respondent to pay 20% of the total arrears of interim maintenance to the petitioner therein, that is, 20 % of 65,00,000/- (Rupees Sixty-Five Lakhs only) within a period of twenty days. The High Court further rejected the appellant's prayer for attachment of the respondent's bank accounts and for payment of complete arrears of maintenance as on the date of the judgment, towards interim maintenance granted to the appellant vide order dated 01.02.2019 passed by the Additional Sessions Judge, Gautam Budh Nagar in Appeal Nos.39 & 62 of 2018. The High Court further directed the Metropolitan Magistrate, Mahila Court, Central District, Tis Hazari Court to decide the quantum of the interim maintenance amount payable monthly by the respondent to

the appellant in the case pending before it within three months, after taking into consideration income affidavit of both the parties. This order is challenged before us by the appellant wife on the ground that the respondent husband has disregarded the order of interim maintenance by not paying any amount towards interim maintenance since the last 5½ years.

10. The respondent-husband has contested against these appeals on the grounds that the appellant has been gainfully employed all these years during the pendency of the cases, has several assets in the form of immovable property, and with regard to her minor daughter from her previous marriage, she has already received maintenance amount of Rs. 40 Lakhs. The learned senior counsel for both the parties vehemently disagreed on the amount of interim maintenance that ought to be paid to the appellant by the respondent. But they appear to be in agreement of the strained relationship between the parties which is stated by both parties to be beyond the scope of reconciliation.

11. This Court also heard the parties in camera to discuss the possibility of a reunion but during the course of the proceedings both parties stated that they are willing to have their marriage annulled by mutual consent as there remains no possibility of the parties reuniting and the marriage now only exists on paper.

12. We have heard the learned senior counsel for the respective parties at length.

13. At the outset it is relevant to be noted and does not seem to be in dispute that differences arose between the parties within the first year of marriage itself and the appellant-wife and respondent-husband have been living separately since the last nine years. It also appears from the record that the parties were referred to mediation at several stages by different courts and all efforts for reconciliation and to continue the marriage have failed, and there is no possibility of a reunion between the parties. Thus, it appears that the marriage between the parties has irretrievably broken down.

14. It is also apparent from the record that complaint for cruelty, hurt, and dowry demand against the respondent was registered by the appellant within the first 11 months of their marriage followed by an application seeking protection under section 12 of PWDV Act filed

by the appellant. An application seeking interim maintenance was filed by the appellant under section 31(1) of the PWDV Act. Shortly thereafter, the respondent filed a petition under section17(1)(d) of the Special Marriage Act, 1954, seeking dissolution of marriage on grounds of cruelty. All these proceedings have since been pending and several challenges have been made by both parties in the order of interim maintenance as granted by the Judicial Magistrate and subsequently modified by the Additional Sessions Judge.

15. The above admitted facts of long-standing separation between the parties, prolonged and multiple litigations pending adjudication, and several failed attempts at reconciliation are evidence of the fact that the marriage between the parties has completely broken down.

16. In ***Hitesh Bhatnagar v. Deepa Bhatnagar***,[5] this Court observed that a marriage can be dissolved by the courts on the grounds of irretrievable breakdown of marriage only when it appears that it has become impossible to save the marriage, all efforts for reunion have failed and the Court is convinced beyond any reasonable doubt that there are no chances of the marriage surviving and succeeding.

17. Further, this Court had observed in ***Ashok Hurra v. Rupa Bipin Zaveri***,[6] that upon considering the cumulative effect of all necessary factors and that the marriage has perished due to long standing differences between the parties, and thus no useful purpose, emotional or practical, would be achieved by prolonging the suffering of the parties and in postponing the inevitable end to their relationship, the Court can pass an order for dissolution of marriage.

18. This Court in a catena of judgments over the years has exercised its inherent powers to dissolve a marriage under Article 142 of the Constitution of India where it finds that the marriage is dead, unworkable, beyond repair, emotionally perished and has thus irretrievably broken down, even though no grounds for divorce as provided in the applicable law are made out in the facts of the case.

19. In ***Shilpa Sailesh v. Varun Sreenivasan***,[7] this Court noted that it has the discretionary power under Article 142(1) of the Constitution

5 [2011] 6 SCR 118 : (2011) 5 SCC 234

6 [1997] 2 SCR 875 : (1997) 4 SCC 226

7 [2023] 5 SCR 165 : (2022) 15 SCC 754

of India to dissolve the marriage on the ground of irretrievable breakdown of marriage while exercising the discretion cautiously on the basis of the factual matrix in each case, evaluated on objective criteria and factors. This Court further held that whether the marriage has irretrievably broken down is to be factually examined and firmly established. The factors to be considered in such examination are such as, period of cohabitation after marriage, when they had last cohabited, nature and gravity of allegations made by the parties, orders passed in previous or pending legal proceedings, attempts at reconciliation or settlement and their outcomes, period of separation and such other similar considerations.

20. In the present case, the parties cohabited after marriage for less than a year and have been living separately since the last nine years. The nature of allegations made by the appellant are grave as, according to her, she was subjected to cruelty, hurt, and dowry demands by the respondent, and she has also initiated criminal action against her husband. Multiple attempts at reconciliation between the appellant and respondent have been made by the Courts at different stages but all efforts have been futile. Multiple legal proceedings are pending between the parties and do not appear to possibly conclude in the near future. This factual position is admitted by both the parties before this Court and they have also mutually agreed that they have no intention of continuing their union as husband and wife. Therefore, we are of the opinion that while the interest of the appellant-wife to be compensated needs to be protected through a one-time settlement, this is a fit case to exercise the discretionary powers vested in this Court under Article 142 of the Constitution of India and to dissolve the marriage between the parties.

21. Thus, considering all the facts and circumstances of the case and analysing the same in light of the considerations stated above, the marriage between the appellant-wife and respondent-husband is ordered to be dissolved in exercise of this Court's powers under Article 142 of the Constitution of India.

22. The next contention in this case is with respect to the amount of maintenance to be paid by the respondent-husband to the appellant-wife. While the issue of interim maintenance is now closed with the dissolution of the marriage, the interest of the wife still needs to be protected so that she does not suffer financially. The parties have

vehemently argued and contested each other's financial position, their individual incomes, and the assets owned by each other. In order to establish the correct financial position of both the parties, they have filed their respective affidavits of income and assets as ordered by this Court.

23. Before we go into the details of the financial position of the parties, we find it necessary to discuss the law laid down for adjudication and determination of one-time settlement in matrimonial disputes. This Court in a series of judgments has touched upon the question of one-time settlement and the factors that should be taken into consideration while determining fair amount of permanent alimony. While the cases deal with maintenance under different provisions of law, the principle for determination of maintenance by way of one-time settlement apply equally to all statutes and personal laws.

24. In ***Vinny Paramvir Parmar v. Paramvir Parmar***,[8] this Court held that there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down. The question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the following broad factors while determining permanent alimony – income and properties of both the parties respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependant on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the subsistence of the marriage, among other supplementary factors. This was further reiterated by this Court in ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal***,[9] while observing that permanent alimony is to be granted after considering largely the social status, conduct of the parties, the parties' lifestyle, and other such ancillary factors.

25. A two-judge bench of this Court in ***Rajnesh v. Neha and Another***,[10] elaborated upon the broad criteria and the factors to be considered

8 [2011] 9 SCR 371 : (2011) 13 SCC 112

9 [2012] 7 SCR 607 : (2012) 7 SCC 288

10 [2020] 13 SCR 1093 : (2021) 2 SCC 32

for determining the quantum of maintenance. This judgment lays down a comprehensive framework for determining the quantum of maintenance in matrimonial disputes, particularly focusing on permanent alimony. The primary objective is to prevent the dependent spouse from being reduced to destitution or vagrancy due to the failure of the marriage, rather than punishing the other spouse. The court emphasizes that there is no fixed formula for calculating maintenance amount; instead, it should be based on a balanced consideration of various factors. These factors include but are not limited to:

i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and dependent children.

iii. Qualifications and employment status of the parties.

iv. Independent income or assets owned by the parties.

v. Maintain standard of living as in the matrimonial home.

vi. Any employment sacrifices made for family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of husband, his income, maintenance obligations, and liabilities.

The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and dependent children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant's educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self-sufficiency. If the applicant has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing or caring for elderly family members, which may have impacted their career prospects.

26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support.

His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.

27. Additionally, the judgment addresses specific scenarios such as the right of residence under the PWDV Act, the impact of the wife's income on maintenance, and the needs of minor children. Even if the wife is earning, it does not bar her from receiving maintenance; the Court should assess whether her income suffices to maintain a lifestyle similar to that in the matrimonial home. The judgment also considers the expenses associated with the care of minor children, including educational expenses and reasonable amounts for extracurricular activities. Serious disability or illness of a spouse, child, or dependent family member, requiring constant care and recurrent expenditure, is also a significant consideration. Key precedents cited to reach this broad framework include **Manish Jain v. Akanksha Jain,**[11] **Shailja & Anr. v. Khobbanna,**[12] **and Sunita Kachwaha & Ors. v. Anil Kachwaha,**[13] which reinforce these principles and provide a sound, reasonable and fair basis for determining maintenance in subsequent cases.

28. In the case at hand, both the parties have submitted their affidavits of assets as ordered by this Court. It appears from the material on record that both the parties are well educated, gainfully employed, have high standards of living, and also have dependants to be taken care of. The respondent-husband is working as the Vice President of Deutsche Bank and has stated in the affidavit to be earning a gross monthly salary of around over Rs. 8 Lakhs and more than Rs. 5 Lakhs per month as net salary after deductions. Respondent

11 [2017] 3 SCR 702 : (2017) 15 SCC 801

12 (2018) 12 SCC 199

13 (2014) 16 SCC 715

states to have dependant parents who reside in the United States of America, but they also have a cumulative annual income of over Rs. 28 Lakhs. Respondent is responsible for their medical expenses and stay when they are visiting India. Respondent has also stated that he has a dependant aunt with around Rs.55,000/- medical expenses monthly being borne by him for her. Apart from this, the respondent has estimated his personal monthly expenses to be around Rs. 4 Lakhs. The respondent has submitted that, apart from certain stock investments and fixed deposits, he has no other properties in the form of assets. This submission is challenged by the appellant-wife by stating that respondent-husband allegedly owns a property in Pune which was their matrimonial home and he also owns another immovable property in New Jersey, USA.

29. The appellant-wife in her affidavit of assets has stated that she is currently working as Head of Human Resources with Sarla Holdings (P) Ltd. with a salary of Rs.1,39,000/- per month. She states that she is currently staying in her parental home for which she pays rent to her parents, and her dependants include her parents and her minor daughter. She has estimated that her monthly necessary expenses amount to over Rs. 4 Lakhs. Apart from this, she has also stated that she has to spend around Rs. 75,000/- per month towards the living and education expenses of her minor daughter. Respondent has vehemently contested this and has impressed upon his submission that the daughter is appellant's child from her previous marriage and she had received Rs.40 Lakhs as permanent alimony in that case towards the maintenance of the appellant and her daughter. She has submitted that her assets include certain immovable properties which she bought in the last few years.

30. Both the parties appear to have similar standards of living, which the appellant-wife has continued to enjoy after their separation as well. It is evident from their submissions that though both of them are well qualified and gainfully employed, the respondent-husband earns approximately five times the monthly income of the appellant-wife. Respondent-husband has certain obligations towards three dependants, his own expenses, and certain bank loans, but he also evidently has the financial capacity to maintain his former wife.

31. This Court explored the possibility of one-time settlement between the parties and in the course of the proceedings, the appellant-wife

had put forth a demand of Rs. 5 to 7 Crores as one-time settlement which would cover her maintenance expenses and necessary requirements. On the other hand, the respondent-husband expressed his willingness to pay only Rs. 50 Lakhs towards permanent alimony, submitting that the appellant is employed, has several assets, and that he has no obligation to maintain her daughter as he never adopted her.

32. It is not in dispute that the respondent has the legal obligation as also the financial capacity to maintain his wife after dissolution of marriage. It is also necessary to ensure that the award of maintenance or permanent alimony should not be penal but should be for the purposes of ensuring a decent living standard for the appellant wife. Considering the material on record, the factors stated above, the considerations noted herein, and the arguments advanced by the learned senior counsel on both sides, this Court is of the opinion that the demand made by the appellant is exceptionally high but, at the same time, the amount offered by the respondent is insufficient in the broader rubric of maintenance considerations.

33. Keeping in view the totality of the circumstances, the social and financial status of the parties, their current employments as well as future prospects, standards of living, and their obligations, liabilities, and other expenses, a one-time settlement amount of Rs. 2 Crores would be a balanced and fair amount. This amount would also cover all pending and future claims. Thus, we fix the said amount as permanent alimony to be paid by the respondent to the appellant within a period of four months.

34. Consequently, the appeals are allowed, the orders and judgments of the courts below are set aside, any pending cases be disposed of accordingly, and the decree of divorce be granted in exercise of this Court's power under Article 142 of the Constitution of India. Further, the respondent-husband shall pay Rs. 2 Crores towards permanent alimony to the appellant-wife within the time stipulated above. Parties would be at liberty to file certified copies of this order before the respective Courts where the cases, both civil and criminal, are pending whereupon the Court concerned shall pass appropriate orders closing such proceedings.

35. No order as to costs.

CRL. APPEAL NOS.....@SLP(CRL.) NOS-1168-1171 OF 2024:

36. Leave granted.

37. These appeals are also disposed of in similar terms/directions/ observations, as above.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 7 S.C.R. 957 : 2024 INSC 553

Vanshika Yadav
v.
Union of India and Others

(Writ Petition (Civil) No. 335 of 2024)

23 July 2024

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

Issue for Consideration

The National Eligibility-cum-Entrance Test (UG) 2024 examination was conducted by the National Testing Agency. The petitioners assert that a direction should be issued for convening a re-test on the ground that (i) there was a leakage of the question paper; and (ii) there are systemic deficiencies in the modalities envisaged for the conduct of the examination.

Headnotes†

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – Leakage of the question paper – Systemic deficiencies:

Held: The Court proceeded to record the essential conclusions in the following terms: (i) The fact that a leak of the NEET (UG) 2024 paper took place at Hazaribagh in the State of Jharkhand and at Patna in the State of Bihar is not in dispute; (ii) The CBI has indicated that at the present stage, the material which has emerged during the course of the investigation would indicate that about 155 students drawn from the examination centres at Hazaribagh and Patna appear to be the beneficiaries of the fraud; (iii) Since the investigation by the CBI has not attained finality at present point of time, this Court had in its previous order required the Union Government to indicate whether trends in regard to the existence of abnormalities can be deduced through data analytics on the basis of the results emanating from 4,750 centres situated in 571 cities – Pursuant to the directions of the Court, the Union Government has produced a report of IIT, Madras – At this stage, in order to obviate any controversy, the Court has independently scrutinized the data which has been placed on the record by the NTA; (iv) At the present stage, there is an absence of material on the record to lead to the conclusion that the entire result of the

examination stands vitiated or that there was a systemic breach in the sanctity of the examination; (v) Added to the absence of conclusive material on the record at the present stage, the data which has been produced on the record city-wise and centre-wise and the comparison of data for the years 2022, 2023 and 2024 are not indicative of a systemic leak of the question paper impacting the sanctity of the examination; (vi) In arriving at the ultimate conclusion, the Court is guided by the well-settled test of whether it is possible to segregate tainted students from those whose candidature does not suffer from any taint – If the investigation reveals the involvement of an increased number of beneficiaries over and above those who are suspects at the present stage, action shall be pursued against every student found to be involved in wrong doing at any stage, notwithstanding the completion of the counselling process; (vii) Directing a fresh NEET (UG) to be conducted for the present year would be replete with serious consequences for over two million students who have appeared in the examination – Adopting such a course of action would, in particular, (i) lead to a disruption of the admission schedule; (ii) lead to cascading effects on the course of medical education; (iii) impact the availability of qualified medical professionals in the future; and (iv) cause a serious element of disadvantage to students belonging to marginalized communities and weaker sections for whom reservation has been made in the allocation of seats – Ordering the cancellation of the entire NEET (UG) 2024 examination is not justified on the application of the settled tests which have been propounded in the decisions of this Court or on the basis of the data and material available on the record. [Paras 11 and 12]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – Leakage of the question paper – Systemic deficiencies – Constitution of a seven-member Expert Committee by the Union Government:

Held: The Union Government has constituted a seven-member Expert Committee – The Committee will abide by such further directions as may be issued by this Court in its final judgment and order in regard to the areas which should be enquired into by it so as to ensure that (i) the process of conducting the NEET (UG) and other examinations falling within the remit of the NTA is duly strengthened; and (ii) the instances which came to light during the course of the present year are not repeated in the future. [Para 23]

Vanshika Yadav v. Union of India and Others

Case Law Cited

Tanvi Sarwal v. Central Board of Secondary Education and Others [2015] 7 SCR 780 **: (2015) 6 SCC 573;** *Sachin Kumar and Others v. Delhi Subordinate Service Selection Board (DSSSB) and Others* [2021] 2 SCR 1073 **: (2021) 4 SCC 631 – referred to.**

List of Keywords

Education; Medical Education; Examination; Sanctity of the examination; National Eligibility-cum-Entrance Test (UG) 2024 examination; Leakage of the question paper; Systemic deficiencies; Course of investigation; Existence of abnormalities; Data analytics; Counselling process; Expert Committee.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 335 of 2024

(Under Article 32 of The Constitution of India)

With

Writ Petition (Civil) Nos. 362, 369, 368, 431, 379, 377, 376, 375, 425, 401, 415, 407, 412, 383, 419, 406, 403, 398, 414, 423, 404, 427, 441, 420, 430, 446, 410, 382, 381, 394, 384, 389, 417, 393 and 435 of 2024, Writ Petition (Civil) Diary No. 28729 of 2024, Writ Petition (Civil) Nos. 1741, 449 and 392 of 2024, Transfer Petition (Civil) Nos. 1659, 1597, 1600, 1602, 1596, 1808, 1741, 1737, 1735 and 1730 of 2024

Appearances for Parties

Tushar Mehta, SG, Shiv Mangal Sharma, AAG, Narender Hooda, Sanjay R. Hegde, Naresh Kaushik, Bikash Ranjan Bhattacharya, Santosh Paul, Amit Anand Tiwari, Naresh Kaushik, P. Wilson, Sudhanshu Choudhari, P.V. Dinesh, Thomas P Joseph, A Hariprasad, Sr. Advs., Sumit Kumar Sharma, Rajat Sangwan, Anurag Kulharia, Vaibhav Yadav, Dr. Navya Jannu, Sunny Kadiyan, Mrs. Parul Dagar, Rajesh Sheoran, Anas Chaudhary, Ms. Shehla Chaudhary, Hemendra Singh Kashyap, Mohd. Sharyab Ali, Shaurya Lamba, Shiv Bhatnagar, Aditya Mishra, Ashish Kumar Pandey, Yuvraj Nandal, Ms. Manisha Sharma, Gyan Prakash, Ms. Keerti Singh, Ms. Divya Kumari Singh, Ms. Tannu, Vedant Pardhan, Mathews J. Nedumpara, Ms. Usha Nandini V., Ms. Maria Nedumpara, Ms. Hemali Kurne, Ms. Rohini

Amin, Shameem Fayiz, Shwetank Sailakwal, Tanmaya Agarwal, Mrs. Aditi Agarwal, Deepak Panjwani, Anas Tanwir, Ebad Ur Rahman, Mayank Suryan, Zaid Raza, Shahrukh Ali, Ankit Tiwari, Tanay Hegde, Ms. Riya Sharma, Prateek Chandra, Durgesh Shukla, Mohammad Asif Abbas, Raghav Gupta, Aayushman Jauhari, Ms. Aparna Jauhari, Aakarsh Mishra, Aslam Ahmed Jamal, Rohit Jain, Ms. Shabiesta Nabi, Ms. Kheyali Singh, Abhishek Dwivedi, Arun Kumar Arunachal, Tasleem Arif, Satyapal Singh, Raees Ahmad, Harilal S, Rahat Khan Afridi, Ms. Latika Rungta Bajaj, Zeeshan Haider, Haris Beeran, Azhar Assees, Anand B. Menon, Ms. Maneesha Sunilkumar, Radha Shyam Jena, Kunal Cheema, Raghav Deshpande, Shubham Chandankhede, S.D. Singh, Ms. Bharti Tyagi, Ms. Shweta Sinha, Ram Kripal Singh, Ms. Meenu Singh, Siddharth Singh, Ashish Pandey, Prateek Rai, Ashutosh Bhardwaj, Shubham Saxena, Dr. Daksha Sharma, Ms. Aarti Sharma, Anmol Goyal, Anshuman Singh Khangarot, Vardhman Kaushik, Anand Singh, Mayank Sharma, Sanjana Mehrotra, Nishant Gautam, Dhruv Joshi, Vinay Kauhsik, Ajay Kanojiya, Rudra Rout, Vinay Kaushik, Ms. Shikha John, Shubham Dwivedi, Ms. Charu Mathur, Ms. Tanvi Dubey, Anukrit Gupta, Mekala Ganesh Kumar Reddy, Anilendra Pandey, C.P. Singh, Manoj Kumar, Rajeev Kumar Ranjan, Ms. Priya Kashyap, Shiv Sagar Tiwari, Mrs. Neetu Verma, Satendra Singh, Himanshu Chauhan, Nishesh Sharma, Shivam Singh, Avdhesh Kumar Singh, Rajendra Kumar Singh, Parth Sarathi, Gyanendra Vikram Singh, Rajesh Kumar Maurya, Ms. Soumya Gulati, Sanjay Kumar Visen, Dheeraj Kumar Singh, Dr. Arstu Upadhyay, Baldev Pathania, Eshu Aggarwal, Ms. Manshi Ahuja, Ms. Mrinalini Dayal, Ms. Anu Batra, Ms. Resha Panwar, Sudhir Naagar, Shamim Ahammed, Supratik Sarkar, Arnab Sinha, Arko Maity, Saurav Gupta, Alakh Alok Srivastava, Rishabh Bafna, Aditya Singh, Kamal Kishor, Aditya Kumar, Vaseem, Tanmay Yadav, Sriharsh Nahush Bundela, Vedant Mishra, B.K. Pal, Chinmoy Khaladkar, Suhaas Ratna Joshi, Mahendra Singh Rawat, Ms. Mallika Joshi, P. Ramesh, Raghav Sabharwal, Dr. Avinash Poddar, Ms. Anchal Poddar, Gaurav Gupta, Ms. Diva Singh, Ms. Rudrani Mishra, Ms. Samiksha Goswami, Awadhesh Sharma, Devendra Singh, Hiren Trivedi, Anuj Aggarwal, Shubhanshu Gupta, Chaitanya, Kartik Pant, Anand Kumar Singh, Ms. A Sumathi, Ms. Ila Shikhar Sheel, Sumeer Sodhi, Aman Nandarjog, Ujjwal Malhotra, Feroz Shaikh, Aamir Naseem, Inam Ahmad Khan, Danish Zubair Khan, Ms. Yoothica Pallavi, Aditya Shanker Pandey, Atul Kumar, Ms. Rekha Bakshi, Shaurya Sahay, Himanshu Sehrawat,

Ms. Tanvi Anand, Vishal Ranjan, Shaju Francis, Ms. Meenakshi Kalra, S N Kalra, Kamal, Ms. Jyoti Sharma, Chandan Kumar Singh, Ms. Tusharika Sharma, A. Karthik, Ms. Abiha Zaidi, Ms. Suriti Chowdhary, Anuj Bhave, Pritam Raman Giriya, Ms. Mithu Jain, Shashwat Jaiswal, Ravi Kumar, Divakar Kumar, Adutiya Veer, Karunakar Mahalik, Varun Kumar, Manoranjan Mishra, Gournga Biswal, Mrs. Monika, Sarbendra Kumar, Ms. Isha Singh, Sunil Kumar Agarwal, Narendra Mishra, Vinod Kumar Dwivedi, Mrs. Amita Agarwal, Amarjeet Sahani, Parvinder, Sachin Kumar Srivastava, Amrish Kumar, K. Parmeshwar, Kanu Agrawal, Mayank Pandey, Udai Khanna, Rajat Nair, Madhav Sinhal, Kanu Aggarwal, Ajay Kanojia, Ajay Kanojya, Ajay Kanoiya, Ms. Ananya Sharma, Subham Diwedi, Varun Chugh, Bhuvan Kapoor, Shreekant Neelappa Terdal, Samarpit Gupta, Ivan, Pranjul Chopra, Vivek Mathur, Sanyat Lodha, Ms. Nidhi Jaswal, Mrs. Abhinandini Sharma, Saurabh Rajpal, Ms. Shalini Singh, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Ms. Astha Sharma, Simranjeet Singh Rekhi, Kartikeya Rastogi, Akshay Girish Ringe, Sabarish Subramanian, C. Kranthi Kumar, Vishnu Unnikrishnan, Apoorv Malhotra, Naman Dwivedi, Lokesh Krishnan, Sarathraj B, Danish Saifi, Manish Kumar, Ms. Meera Kaura, Tejas Patel, Ms. Tanushree Bhalla, Ms. Muskaan Gandhi, Ms. Ritika Saini, Aditya Kumar Tripathi, Himanshu Rai, Vikash Vadit, Piyush Goel, Sunpreet Bawa, Tarun Bajaj, Pawan Aneja, Jugul Kishor Gupta, Raj Narayan Singh, Dilip Kumar, Ms. Babila K.K., Santosh Kumar Jha, Varinder Kumar Sharma, Ms. Sangeet Joshi, Shantanu Sharma, R.D. Rathore, Ms. Deeksha Gaur, Sagar Pahune Patil, Ms. Pranjal Chapalgaonkar, Ms. Gautami Yadav, Mrs. Sangeeta S. Pahune Patil, Abhinav Raghuvanshi, Kushagra Pandey, Avinash Tripathi, Mukesh Kumar, Yashaswi Sk Chocksey, Ankit Singh, Sushant, Vijay Rajput, Yashish Chandra, Ms. Neha Rai, Madhup Kumar Tiwari, Rajnish Kumar Singh, Abhilash M.R., Sayooj Mohandas, Tom Jospeh, Gautam Kumar Laha, Arun Kumar, Ms. Sandra Jaison, M/s. M.R. Law Associates, Dr. Gaurav Gupta, Ashwin Kumar Nair, Ritik Gupta, Sunil Gupta, Mrs. Sheetal Gupta, Puneet Khanna, Mayank Aggarwal, Pradeep Kumar Aggarwal, Vineet Yadav, Amir Yadav, Ms. Anna Oommen, Ms. Anne Mathew, Sanchit Garga, Namit Saxena, Divik Mathur, Nikhil Jain, Ms. Divya Jain, Bijo Mathew Joy, Ms. Gifty Marium Joseph, Dinny Thomas, Ms. Swathi H Prasad, Ms. Anzu K Varkey, Jasbir Singh Malik, Ms. Chandni Sharma, Abhishek Pareek,

Varun Punia, Kailash Prashad Pandey, Hitesh Kumar Sharma, Amit Kumar Chawla, S.K. Rajora, Akhileshwar Jha, Mahi Pal Singh, Ms. Manisha Chawla, Ms. Niharika Dewivedi, Ms. Yamini Sharma, Ms. Ritika Raj, Neeeraj Shrivsatav, Varun Varma, Prahkar Sukla, Ajay Mishra, Harender K Sangwan, Akash, Ms. Chanchal, Shashank Gusain, Advs. for the appearing parties.

Petitioner-in-Person.

Judgment / Order of the Supreme Court

Order

1. The National Eligibility-cum-Entrance Test (UG)[1] 2024 examination was conducted by the National Testing Agency[2] on 5 May 2024. The results were declared on 4 June 2024.

2. The examination was conducted at 4,750 centres comprised within 571 cities, besides 14 cities overseas. About 23,33,297 candidates appeared for the examination. They are competing for 1.08 lac medical admissions at the under-graduate level, of which approximately 56,000 seats are in government hospitals while the balance 52,000 seats are in privately managed institutions.

3. The 50th percentile represents the cut-off for qualification. The examination consists of 180 questions, each carrying four marks, thus making a total of 720 marks overall. One negative mark is assigned for an incorrect answer. Based on the result of the NEET (UG) 2024, the 50th percentile has worked out to 164 marks out of 720. Candidates who have attained this threshold are eligible to be considered for admission but are not guaranteed admission into the MBBS program. Seats are allocated both among the unreserved category of students and the reserved category, consisting of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections.

4. In this batch of cases, the petitioners assert that a direction should be issued for convening a re-test on the ground that (i) there was a leakage of the question paper; and (ii) there are systemic deficiencies in the modalities envisaged for the conduct of the examination.

1 "NEET (UG)"

2 "NTA"

5. The submission which has been urged on behalf of the petitioners is that the leak which took place in the course of the NEET (UG) examination is systemic in nature and, coupled with the structural deficiencies in the conduct of the examination, the appropriate course of action in view of the previous decisions of this Court, including in ***Tanvi Sarwal vs Central Board of Secondary Education and Others***[3] and ***Sachin Kumar and Others vs Delhi Subordinate Service Selection Board (DSSSB) and Others***,[4] is to direct a re-test.

6. By an interim order dated 8 July 2024, this Court called for disclosures on affidavit by the NTA; the Union of India; and by the Central Bureau of Investigation.[5] While flagging the principal issues in contention, the CBI has been involved in the process because the FIRs which were registered in Delhi, Gujarat, Rajasthan, Jharkhand, Maharashtra and Bihar have been transferred to it for investigation. In the earlier order, this Court noted that it would have to scrutinize the following aspects on the basis of the data which would emerge on the record, namely:

   (i) Whether the alleged breach took place at a systemic level;

   (ii) Whether the breach is of a nature which affects the integrity of the entire examination process; and

   (iii) Whether it is possible to segregate the beneficiaries of the fraud from the untainted students.

7. Directions were consequently issued to the above agencies of the Union to make specific disclosures on the issues which have been highlighted in the previous order.

8. Arguments have been heard over four days. We have had the benefit of considering the submissions urged on behalf of the petitioners, the Union of India and the NTA. Mr Y V Krishna, Additional Director, CBI has in the course of the proceedings apprised the Court on the status of the investigation.

9. Arguments have been concluded and judgment has been reserved.

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3 [2015] 7 SCR 780 : (2015) 6 SCC 573

4 [2021] 2 SCR 1073 : (2021) 4 SCC 631

5 "CBI"

10. There is an urgent need to provide certainty and finality to a dispute which affects the careers of over two million students. Hence, it is imperative that the final conclusions of the Court be recorded at the present stage. The reasons for the ultimate conclusions will follow later.

11. We proceed to record the essential conclusions in the following terms:

    (i) The fact that a leak of the NEET (UG) 2024 paper took place at Hazaribagh in the State of Jharkhand and at Patna in the State of Bihar is not in dispute;

    (ii) Following the transfer of the investigation to it, the CBI has filed its status reports dated 10 July 2024, 17 July 2024 and 21 July 2024. The disclosures by the CBI indicate that the investigation is continuing. The CBI has indicated that at the present stage, the material which has emerged during the course of the investigation would indicate that about 155 students drawn from the examination centres at Hazaribagh and Patna appear to be the beneficiaries of the fraud;

    (iii) Since the investigation by the CBI has not attained finality at the present point of time, this Court had in its previous order required the Union Government to indicate whether trends in regard to the existence of abnormalities can be deduced through data analytics on the basis of the results emanating from 4,750 centres situated in 571 cities. Pursuant to the directions of the Court, the Union Government has produced a report of Indian Institute of Technology,[6] Madras. The objection of the petitioners to the report of IIT, Madras on the grounds of alleged bias would be considered in the course of the reasoned judgment which will follow. At this stage, in order to obviate any controversy, the Court has independently scrutinized the data which has been placed on the record by the NTA;

    (iv) At the present stage, there is an absence of material on the record to lead to the conclusion that the entire result of the examination stands vitiated or that there was a systemic breach in the sanctity of the examination;

6 "IIT"

(v) Added to the absence of conclusive material on the record at the present stage, the data which has been produced on the record city-wise and centre-wise and the comparison of data for the years 2022, 2023 and 2024 are not indicative of a systemic leak of the question paper impacting the sanctity of the examination;

(vi) In arriving at the ultimate conclusion, the Court is guided by the well-settled test of whether it is possible to segregate tainted students from those whose candidature does not suffer from any taint. If the investigation reveals the involvement of an increased number of beneficiaries over and above those who are suspects at the present stage, action shall be pursued against every student found to be involved in wrong doing at any stage, notwithstanding the completion of the counselling process. No student who is revealed to have engaged in acts of fraud or to have been the beneficiary of malpractice would be entitled to claim a vested right or interest in the continuation of the admission in the future by virtue of the findings in this judgment; and

(vii) Directing a fresh NEET (UG) to be conducted for the present year would be replete with serious consequences for over two million students who have appeared in the examination. Adopting such a course of action would, in particular, (i) lead to a disruption of the admission schedule for the commencement of medical courses, setting back the entire process by several months; (ii) lead to cascading effects on the course of medical education; (iii) impact the availability of qualified medical professionals in the future; and (iv) cause a serious element of disadvantage to students belonging to marginalized communities and weaker sections for whom reservation has been made in the allocation of seats.

12. Ordering the cancellation of the entire NEET (UG) 2024 examination is not justified on the application of the settled tests which have been propounded in the decisions of this Court or on the basis of the data and material available on the record.

13. Apart from this, it is necessary to deal with another contention of the petitioners. One of the questions in the course of the NEET (UG) 2024 was in the following terms:

> "Given below are two statements:
>
> **Statement I**: Atoms are electrically neutral as they contain equal number of positive and negative charges.
>
> **Statement II**: Atoms of each element are stable and emit their characteristic spectrum.
>
> In the light of the above statements, choose the most appropriate answer from the options given below:
>
> (1) Statement I is incorrect but Statement II is correct.
>
> (2) Both Statement I and Statement II are correct.
>
> (3) Both Statement I and Statement II are incorrect.
>
> (4) Statement I is correct but Statement II is incorrect."

14. We have not indicated the number of the question since the number of the question as well of the options is likely to vary in different series of the question papers in view of the procedure which is followed to preserve the integrity of the process.

15. Initially, the answer key which was prepared by the NTA indicated that the fourth option extracted above was the correct answer. Subsequently, on representations submitted to NTA, a decision was taken to the effect that both the second as well as the fourth options would be treated to be the correct answers.

16. By an order of this Court dated 22 July 2024, the Director of IIT, Delhi was requested to constitute a three-member committee to submit its opinion on which of the options noted above would be the correct answer to the above question. The Director and Professor of the Department of Energy Science & Engineering at IIT, Delhi has in a report dated 23 July 2024, indicated that a three-member Committee from the Department of Physics comprising of (i) Professor Pradipta Ghosh; (ii) Professor Aditya Narain Agnihotri; and (iii) Professor Sankalpa Ghosh was constituted for that purpose.

17. The expert team constituted by the Director of IIT, Delhi has opined that option (4), as extracted above, is the correct answer. In order to obviate any ambiguity, option (4) which is to be treated as the correct answer is set out below:

> "(4) Statement I is correct but Statement II is incorrect."

18. The expert determination by the team constituted by the IIT, Delhi leaves no manner of ambiguity in regard to the correct option. This was, in fact, initially the only option which was treated as the correct answer by NTA. Options (2) and (4) are mutually exclusive and both cannot stand together.

19. We accept the report of IIT, Delhi. Accordingly, NTA shall revise the result of the NEET (UG) 2024 on the basis that option (4), as extracted above, represents the only correct answer to the question. NTA is directed to update the ranks of all candidates.

20. During the course of the hearing, the Court had been apprised of the fact that NTA was conducting a special test for 1,563 students in supersession of the compensatory marks which were awarded. The 1,563 students were given the option of either appearing for the special test or in the alternative, to opt for their original marks without the addition of compensatory marks. NTA is permitted to act following the test which was held.

21. The principal issue which has been urged before the Court relates to the sanctity of the NEET (UG) 2024 examination and whether the process should be scrapped and a fresh test should be reconvened. Having answered the question in the above terms, it needs to be clarified that if any student, including in the present batch, has an individual grievance not bearing on the issues which have been resolved by this judgment, it would be open to them to pursue their rights and remedies in accordance with law, including by moving the jurisdictional High Courts under Article 226 of the Constitution. However, before moving the High Court for the grant of relief, the petitioners would have to seek the withdrawal of their petitions before this Court, if any have been filed.

22. The Union Government has constituted a seven-member Expert Committee chaired by Dr K Radhakrishnan, former Chairman, ISRO consisting of the following members:

    (i) Dr K Radhakrishnan, Chairman

    (ii) Dr Randeep Guleria, Member

    (iii) Prof B J Rao, Member

    (iv) Prof Ramamurthy K, Member

(v) Shri Pankaj Bansal, Member

(vi) Prof Aditya Mittal, Member

(vii) Shri Govind Jaiswal, Member Secretary

23. The Committee will abide by such further directions as may be issued by this Court in its final judgment and order in regard to the areas which should be enquired into by it so as to ensure that (i) the process of conducting the NEET (UG) and other examinations falling within the remit of the NTA is duly strengthened; and (ii) the instances which came to light during the course of the present year are not repeated in the future.

24. The transfer petitions at the instance of the NTA or any other party raising the issue as regards the validity of NEET (UG) 2024 examination are allowed. The resulting transferred cases shall stand disposed of in terms of the above directions subject to the clarification that individual grievances, if any, that remain, may be addressed before the jurisdictional High Court. The interlocutory applications raising individual grievances are similarly permitted to be withdrawn with liberty reserved in the above terms.

T.P. (c) No. 1602 of 2024

25. Counsel for the petitioner in TP (Civil) No. 1602 of 2024 seeks permission of the Court to amend the petition. Permission is granted to amend the petition during the course of the week.

Writ Petition (Civil) No. 404 of 2024, Writ Petition (Civil) No. 381 of 2024, Writ Petition (Civil) No. 398 of 2024 & Writ Petition (Civil) Diary No. 28729 of 2024

26. Counsel for the petitioners seek the permission of the Court to withdraw the Petitions with liberty to pursue their rights and remedies in accordance with law, including by moving the jurisdictional High Courts under Article 226 of the Constitution.

27. The Petitions are dismissed as withdrawn with liberty as sought.

IA No. 146158 of 2024 & IA No. 146162 of 2024 In Writ Petition (Civil) No. 379 of 2024

28. Mr Kunal Cheema, counsel for the applicants seeks the permission of the Court to withdraw the Interlocutory Applications with liberty to pursue their rights and remedies in accordance with law.

29. The Interlocutory Applications are dismissed as withdrawn with liberty as sought.

Result of the case: W.P(C)No. 335 of 2024 – Reasoned judgment to follow.

Writ Petition (Civil) No. 404 of 2024, Writ Petition (Civil) No. 381 of 2024, Writ Petition (Civil) No. 398 of 2024 & Writ Petition (Civil) Diary No. 28729 of 2024 are dismissed.

IA No. 146158 of 2024 & IA No. 146162 of 2024 in Writ Petition (Civil) No. 379 of 2024 are dismissed.

[†]*Headnotes prepared by:* Ankit Gyan

[2024] 7 S.C.R. 970 : 2024 INSC 531

Bihar Staff Selection Commission & Anr.
v.
Himal Kumari & Anr. Etc.

(Civil Appeal Nos. 7815-7816 of 2024)

16 July 2024

[Vikram Nath* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

The issue pertains to the selection and appointment to the post of City Manager under the Urban Development and Housing Department, Govt. of Bihar. The said post is governed by the Bihar City Manager Cadre (Appointment and Service Conditions) Rules, 2014, which were framed under Article 309 of the Constitution of India.

Headnotes†

Bihar City Manager Cadre (Appointment and Service Conditions) Rules, 2014 – Rule 5 and Rule 11 – Appellants issued an advertisement for appointment to posts of City Managers in the State of Bihar – Respondent no. 1 achieved 22.575 marks out of 70 in the written examination – Appellants declared her unsuccessful as she did not obtain the minimum qualifying marks of 32% as she had secured 22.5 marks in the written test and she had no prior work experience, she achieved 0 marks out of 30 for the work experience – In totality, she has achieved 22.5 marks out of 100, below the minimum requirement of 32% – Aggrieved, Respondent no.1 filed writ petition, which was allowed by the Single Judge of the High Court – The Division Bench upheld the decision of the Single Judge of the High Court – Correctness:

Held: A conjoint reading of the Rules, 2014 in particular rules 5 and 11, with the advertisement and giving it a pragmatic and harmonious construction, what emerges is that 32% in the written examination would make a candidate eligible and qualified to be placed in the consideration zone – However, the merit list would be prepared after taking into consideration the marks obtained on account of experience – Thus, a candidate similar to Respondent no.1 would be eligible to be considered for

* Author

appointment having scored 32% marks (22.5 marks out of 70) in the written examination even though having no experience – The required minimum qualifying marks are concerned with marks obtained in the written test only, as is evident from the Rules 2014 as also the advertisement, and it has no relevance so far as for the final preparation of the merit list – The conduct of the appellants by not including respondent no.1 in the merit list is not in consonance with the said advertisement – Respondent no. 1 received 22.5 marks out of 70, 32.14 per cent, above the minimum qualifying marks of 32 per cent as per the advertisement – Therefore, the appellants were not right by denying her a place on the merit list – Impugned judgement does not warrant any interference. [Paras 16, 17, 21]

Case Law Cited

Employees' State Insurance Corporation v. Union of India & Ors. [2022] 1 SCR 373 **: (2022) 11 SCC 392 – referred to.**

List of Acts

Bihar City Manager Cadre (Appointment and Service Conditions) Rules, 2014; Constitution of India.

List of Keywords

Rule 5 and Rule 11 of Bihar City Manager Cadre (Appointment and Service Conditions) Rules, 2014; Article 309 of the Constitution of India; Pragmatic and harmonious construction; Minimum qualifying marks; Prior work experience.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7815-7816 of 2024

From the Judgment and Order dated 20.12.2022 of the High Court of Judicature at Patna in LPA Nos. 412 and 109 of 2021

Appearances for Parties

Vijay Hansaria, Sr. Adv., Arun K. Sinha, Rakesh Singh, Sumit Sinha, Advs. for the Appellants.

Mrs. Anjana Prakash, Sr. Adv., Anuj Prakash, Namit Saxena, Niraj Dubey, Pradum Kumar, Ms. Rachitta Rai, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave Granted

2. The appeals under consideration challenges the validity of the judgment dated 20 December 2022 (Corrected on 22 February 2023) passed by the Patna High Court in L.P.A. No's 412 and 109 of 2021 arising out of C.W.J.C. No. 7051/2020, whereby the Division Bench of the High Court dismissed both the appeals and refused to interfere with the judgment and order dated 15.10.2020 passed by the Single Judge.

3. The issue pertains to the selection and appointment to the post of City Manager under the Urban Development and Housing Department, Govt.of Bihar. The said post is governed by the Bihar City Manager Cadre (Appointment and Service Conditions) Rules, 2014,[1] which were framed under Article 309 of the Constitution of India.

4. For the present case, it is relevant to reproduce Rule 5 and Rule 11 of Rules 2014, which reads as follows:

> *"Rule 5 - Process of Recruitment, appointment and procedure of Recruitment:- (1) Appointment to the basic category of these posts in this cadre, will be by direct Recruitment (written examination) on the recommendation of the Commission. Total 100 marks will be determined for direct Recruitment.*
>
> *Out of total 100 marks, 70 marks will be determined for the written examination. 10 marks for experience for every year and a maxi-mum 30 marks shall be given for the appointment to the post of City Manager working on contract basis.*
>
> *Determination of subjects for written examination will be determining by the Commission in consultation with the Department.*

1 Rules, 2014

(ii) Not withstanding anything contain in these Rules, where any post in the cadre is vacant due to unavailability of suitable candidate or where any post is vacant due to leave of anyone or is vacant on temporary basis, in the interest of work that post may be filled up by suitable qualification holder person by deputation/ contract basis.

Rule 11 - Residual matters.- Rules, regulations and orders of the State Government for employees of suitable level will apply for members of this cadre with regard to the matters particularly not covered in these Rules or any regulations made under these Rules."

5. Appellants issued an advertisement dated 15.11.2016 under Rules, 2014, for appointment to 152 posts of City Managers in the State of Bihar. The advertisement contained the required information regarding the vacancies, eligibility, criteria etc. and the selection procedure to be followed for the appointment.

6. In the advertisement, the sub-heading of the *'Selection Process'* states,

"The commission will prepare a merit list on the basis of written examination and experience (for candidates working on the post of City Manager on contract) after receiving online applications submitted by eligible candidates. Total 100 marks will be determined for direct Recruitment. The written examination will be conducted of 100 questions and each question carrying 0.70 marks. 0.70 marks will be given for the correct answer and 0.70/4 marks will be deducted for the wrong answer.

Similarly, out of total 100 marks, 70 marks will be determined for written examination. Candidates working on contract basis on the post of City Manager will be given 10 marks per year and maximum 30 marks for their experience."

7. The sub-heading of the *'Qualifying marks'* states

"The minimum qualifying marks for the candidates for the written test are as follows:-

General Class - 40%

Backward Class - 36.5%

Most Backward Class - 34%

SC/ST - 32% Female - 32%".

8. Under the said advertisement, Respondent No. 1, who had no prior work experience, participated in the written examination conducted by the appellants for the said post. She achieved 22.575 marks out of 70 in the written examination. The appellants declared her unsuccessful vide communication dated 27.12.2019. The reason for declaring respondent no. 1 as unsuccessful was that she did not obtain the minimum qualifying marks of 32% as she had secured 22.5 marks in the written test and as she had no prior work experience, she achieved 0 marks out of 30 for the work experience. In totality, she has achieved 22.5 marks out of 100, below the minimum requirement of 32%. Meanwhile, respondent no. 1 contends that the minimum requirement of 32% mentioned in the advertisement is just for the written test as per a simple textual interpretation. She has achieved 22.5 marks out of 70, which comes to 32.14%, above the minimum qualifying marks of 32%.

9. Dissatisfied with the result communicated to her, she approached the High Court by filing a writ petition registered as C.W.J.C. No. 7051/2020, praying therein for issuance of an appropriate writ/order/direction to the appellants to call her for counselling as she was qualified as per the advertisement and secured more marks than the qualifying marks prescribed for the written test. She further prayed for quashing the letter dated 27.12.2019 and also for issuing directions for giving her appointment.

10. The Single Judge allowed the Writ Petition vide judgment dated 15.10.2020. The operative part of the judgment in favour of respondent No. 1 reads as under:

> *"Considering the submission of the parties and also on consideration of the advertisement which contains the qualifying marks, the Court is of the considered view that the minimum qualifying marks is relatable to only written test and once the candidates qualified in the written test he is entitled to be considered for preparation of merit list and those candidates who qualified in the written test cannot be excluded from consideration zone on the ground that the candidates failed to obtain qualifying marks over and*

above qualifying marks in the written test. Not only written examination but also 40%, 36.5%, 34%, 32% and 32% in General, BC, E.B.C., SC/ST and female categories on the basis of total 100 marks which includes written test as well as experience. Accordingly, the writ petition is disposed of with direction to the respondents to consider the case of the Petitioner and alike for appointment against the post of City Manager on the basis of qualifying marks in the written test and prepare merit list. The entire exercise in this regard must be completed by the respondents at the earliest preferably within a period of three months from the date of receipt/production of a copy of this order."

11. Aggrieved by the judgment, the appellants filed L.P.A. No. 412/2021 before the Division Bench. Some candidates also preferred an L.P.A. No. 109/2021 against the judgment of the Single Judge because despite having experience and more marks than Respondent No. 1 they would be adversely affected by the above judgment.

12. The appellant Commission was relying on an Executive Order dated 16.07.2007, which stated

"Uniform determination of minimum qualifying marks for various competitive examinations has been done by Resolution Nos. - 15838 dated 22.12.90 and 10258 dated 05.08.91 in the following form:-

General Category -40%

Backward Class -36.5%

Backward Class Annexure 1- 34%

SC/ST & Women Class-32%

The determination of minimum qualifying marks in the above form will be equally applicable to all written examinations (objective/subjective) for various reservation categories for competitive examinations of all services/cadres. Wherever applicable, it will be mandatory to obtain above minimum qualifying marks in the interview"

13. The Division Bench specifically dealt with the Executive order dated 16.07.2007 and dismissed the said L.P.A.'s for the reasons recorded which are reproduced hereunder:

"Heard learned counsels for the respective parties. Core issue involved in the present lis is whether Commission has committed error in taking note of criteria laid down in the executive order issued under Article 166 of the Constitution dated 16.07.2007 as one of the criteria for the purpose of City Manager post or not? First respondent was candidate for Recruitment to the post of City Manager and she was un-successful, therefore, she has approached this Court. Her grievance is that having regard to the merit read with the number of vacancies she is entitled to selection and appointment to the post of City Manager and further submitted that if Women Reservation (Horizontal Reservation) is given effect even in such circumstances the first respondent is entitled. The post of City Manager is governed by Rules, 2014. Perusal of Rule 5 read with Rule 11 there is no adoption of Government order dated 16.07.2007 in so far as criteria in other words addition to what-ever the procedure prescribed in Rule-5 and Rule 11 of Rules, 2014 is relating to the present selection and appointment procedure & applicability of various Rules & Government Orders in so far such of those persons enter the cadre & it is not related to selection procedure. On the other hand if any Government order subsequent to Rules, whatever the government order and Rules are applicable to the City Manager Cadre Post. Rule 11 cannot be read with Rule 5 so as to read additional criteria for the purpose of selection and appointment to the post of City Manager. Supplant by any material information by means of executive order without tinkering the original rule could be issued however, in the present, case executive order is dated 16.07.2007 on the other hand Rules is of the year 2014 there cannot be a supplant of Government order dated 16.07.2007 to Rules, 2014.

In the light of these facts and circumstances, the appellant have not made out a case so as to interfere with the order of the learned Single Judge…."

14. Aggrieved by the impugned judgment and order dated 20.12.2022 (Corrected on 23.02.2023), Appellants have approached this Court by filing the present appeals.

15. Upon thoroughly examining all the records and arguments presented, we find that the impugned judgment is justified and correct. The judgment warrants no interference. The Division Bench has rightly confirmed the judgment passed by the Ld. Single Judge.

16. A conjoint reading of the Rules, 2014 in particular rules 5 and 11, with the advertisement and giving it a pragmatic and harmonious construction, what emerges is that 32% in the written examination would make a candidate eligible and qualified to be placed in the consideration zone. However, the merit list would be prepared after taking into consideration the marks obtained on account of experience. Thus, a candidate similar to respondent no.1 would be eligible to be considered for appointment having scored 32% marks (22.5 marks out of 70) in the written examination even though having no experience. Whereas another candidate who has scored 32% marks in the written with three years experience will have scored a total of 22.5 plus 30 a total of 52.5 marks out of 100. Such a candidate will stand much higher in the merit list. The candidate with just qualifying 32% marks in the written (22.5 out of 70) with no experience will stand almost at the bottom of the merit list, but still she will be eligible and qualified to be appointed provided the merit list goes as low as 22.5 marks out of 100. Another example may be referred where a candidate has three years of experience (30 marks) but scores only seven marks out of 70 in the written test (10% marks in the written test) even though the total obtained would be 37 marks but would not be eligible or qualified to be considered as the minimum required marks in the written test i.e. 32% has not been obtained by the said candidate.

17. The required minimum qualifying marks are concerned with marks obtained in the written test only, as is evident from the Rules 2014 as also the advertisement, and it has no relevance so far as for the final preparation of the merit list. The conduct of the appellants by not including respondent no. 1 in the merit list is not in consonance with the said advertisement.

18. The merit list was prepared in terms of Rule 5, read with Rule 11 of Rules 2014, which has been presented at the beginning of the judgment. Rules 5 and 11 deal with the process of Recruitment, appointment, recruitment procedure, and Residual matters. Nowhere in such rules there is mention of any minimum qualifying marks required out of a total of 100 marks.

19. The appellants have argued that doubts and ambiguities in Rules 2014 can be successfully cleared using an Executive Order without tinkering with the original Rule. In the present case, the Executive Order is dated 16.07.2007 which is much earlier to the Rules which are of 2014. Therefore, the Executive Order of 2007 is in no way clarificatory or explanatory with respect to the Rules of 2014. The Division Bench rightly discarded the applicability of the Executive Order dated 16.07.2007. The only criteria for minimum qualifying marks have been mentioned in the Rules 2014 and the advertisement, which states that 32 % for women is the minimum qualifying marks for the written test (70 marks) and not out of 100 marks as interpreted by the appellants.

20. The judgment in the case of **Employees' State Insurance Corporation** vs. **Union of India & Ors.**,[2] relied upon on behalf of the appellants has no application in the facts of the present case. In the above judgment one of the issues was whether the executive decision will prevail or the statutory regulations. This Court, relying upon the settled law, held that the statutory regulations will prevail. In the present case the view taken by the High Court is also giving primacy to the Rules 2014 as compared to an earlier executive decision dated 16.07.2007. In fact the above judgment helps respondent no. 1.

21. Respondent no. 1 received 22.5 marks out of 70, 32.14 per cent, above the minimum qualifying marks of 32 per cent as per the advertisement. Therefore, the appellants were not right by denying her a place on the merit list. Impugned judgement does not warrant any interference.

22. Accordingly, these appeals are dismissed.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan

2 [2022] 1 SCR 373 : (2022) 11 SCC 392

[2024] 7 S.C.R. 979 : 2024 INSC 546

Parvinder Singh Khurana
v.
Directorate of Enforcement

(Criminal Appeal No. 3059-3062 of 2024)

23 July 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

The issue involved in these appeals concerns the power of the High Court or Sessions Court to grant an interim order of stay of operation of an order granting bail till the disposal of the application for cancellation of bail under sub-Section (2) of Section 439 of the Code of Criminal Procedure, 1973. Sub-Section (3) of Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is the corresponding provision of sub-section (2) of Section 439 of the CrPC.

Headnotes†

Code of Criminal Procedure, 1973 – s.439 – Bharatiya Nagarik Suraksha Sanhita, 2023 – s.483(3) – Application for cancellation of bail – Power to grant an interim stay of order granting bail to be exercised only in exceptional cases:

Held: In an application made under Section 439(2) of the CrPC or Section 483(3) of the BNSS or other proceedings filed seeking cancellation of bail, the power to grant an interim stay of operation of order to bail can be exercised only in exceptional cases when a very strong *prima facie* case of the existence of the grounds for cancellation of bail is made out – While granting a stay of an order of grant of bail, the Court must record brief reasons for coming to a conclusion that the case was an exceptional one and a strong *prima facie* case is made out. [Para 20(a)]

Code of Criminal Procedure, 1973 – s.439 – Bharatiya Nagarik Suraksha Sanhita, 2023 – s.483 – An *Ex-parte* interim stay of the bail order should not be granted:

Held: As a normal rule, the *ex-parte* stay of the bail order should not be granted – The said power can be exercised only in rare and very exceptional cases where the situation demands the passing

* Author

of such drastic order – Where such a drastic *ex-parte* order of stay is passed, it is the duty of the Court to immediately hear the accused on the prayer for continuation of the interim relief – When the Court exercises the power of granting *ex-parte* ad interim stay of an order granting bail, the Court is duty bound to record reasons why it came to the conclusion that it was a very rare and exceptional case where a drastic order of *ex-parte* interim stay was warranted. [Para 20(b)]

Code of Criminal Procedure, 1973 – s.439 – Bharatiya Nagarik Suraksha Sanhita, 2023 – s.483(3) – An ECIR was registered by respondent Enforcement Directorate for an offence punishable u/s.4 of the Prevention of Money Laundering Act – Thereafter, a complaint was filed u/s.44(1)(b) of PMLA – Appellant was arrested – By order dated 17.06.2023, the Special Court declined to grant bail u/s.167(2) of the CrPC, however, granted regular bail after recording a finding that the appellant satisfied the twin conditions for grant of bail incorporated in s.45(1)(ii) of the PMLA – Respondent-ED applied u/s.439(2) of the CrPC for cancellation of bail – On 23.06.2023, the High Court stayed the order granting bail – After several adjournments, on 22.05.2024 appellant was granted liberty to apply for interim bail:

Held: The order dated 23.06.2023 records the presence of the advocate representing the accused – However, the High Court did not hear the Advocate before granting stay – It was an *ex-parte* order of stay – The failure to hear the advocate for the accused and the failure to record reasons vitiates the order of stay – The order dated 23.06.2023 indicates that stay was granted without applying mind to the merits of the prayer for grant of stay – The Court ignored that the drastic order of stay of bail order had continued for 11 months which was passed without considering the merits – From 23.06.2023 till the end of June 2024, the application for cancellation of bail was listed on 28 different dates – On perusal of the order dated 17.06.2023 passed by the Special Court granting regular bail, it records a finding that the appellant has made out a case in terms of Section 45(1)(ii) of the PMLA on the power to grant bail – There are no allegation of the misuse of liberty granted under the bail order in the application for cancellation of bail – All the grounds in the said application are on merits – After having perused the said order (17.06.2023), this Court finds that the case was not the one that could have been termed a rare and exceptional case where an

order granting bail ought to be stayed – Therefore, the impugned orders by which the High Court granted the stay of order granting bail are set aside. [Paras 14, 15, 16, 19, 21]

Case Law Cited

Gulabrao Baburao Deokar v. State of Maharashtra [2013] 16 SCR 1181 **: (2013) 16 SCC 190;** *Narendra Kumar Amin v. CBI* **(2015) 3 SCC 417;** *Puran v. Rambilas* [2001] 3 SCR 432 **: (2001) 6 SCC 338 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Bail; Regular bail; Interim stay of order granting bail; Grounds for cancellation of bail; Exceptional cases; Ex-parte interim stay of the bail order; Misuse of liberty granted under the bail order; Application of mind to the merits of the prayer for grant of stay; Section 439 of Code of Criminal Procedure, 1973; Section 483(3) of Bharatiya Nagarik Suraksha Sanhita, 2023.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 3059-3062 of 2024

From the Judgment and Order dated 23.06.2023 in CRLMC No. 4374 of 2023 and CRLMA No. 16638 of 2023 in CRLMC No. 4374 of 2023 and dated 22.05.2024 in CRLMA No. 16638 of 2023 and CRLMA No. 13874 of 2024 in CRLMC No. 4374 of 2023 passed by the High Court of Delhi at New Delhi

Appearances for Parties

Sudhanshu Shashikumar Choudhari, Sr. Adv., Ms. Madhusmita Bora, Harsh Sethi, Pawan Kishore Singh, Dipankar Singh, Anant Nigam, Raghav Luthra, Advs. for the Appellant.

Tushar Mehta, SG, Zoheb Hussain, Annam Venkatesh, Vivek Gurnani, Abhipriya, Vivek Gaurav, Samrat Goswami, Ms. Aakriti Mishra, Arvind Kumar Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

ISSUE INVOLVED

2. The issue involved in these appeals concerns the power of the High Court or Sessions Court to grant an interim order of stay of operation of an order granting bail till the disposal of the application for cancellation of bail under sub-Section (2) of Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). Sub-Section (3) of Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') is the corresponding provision of sub-section (2) of Section 439 of the CrPC. The same issue arises in other proceedings adopted for challenging an order of grant of bail.

FACTUAL ASPECTS

3. On 1st December 2020, the Central Bureau of Investigation registered a crime against two companies and two individuals for the offences punishable under Section 120-B read with Sections 420,467,468 and 471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The subject matter of offence, inter alia, was the loan account of Jay Polychem India Ltd. On 23rd February 2021, the respondent Enforcement Directorate registered an Enforcement Case Information Report (ECIR) for an offence punishable under Section 4 of the Prevention of Money Laundering Act (for short, 'the PMLA'). Eleven persons were shown as accused in ECIR. However, the appellant was not shown as an accused. On 30th October 2021, the respondent filed a complaint before the Special Court under Section 44(1)(b) of PMLA. Even in the complaint, the appellant was not shown as an accused. From 31st October 2020 to 20th January 2023, the respondent called the appellant for investigation several times. Though the appellant cooperated, on 20th January 2023, the appellant was arrested.

4. The first bail application made by the appellant was rejected by the Special Court by the order dated 10th March 2023. On 17th March 2023, the respondent filed a supplementary complaint under the PMLA in which the appellant was shown as an accused. On 29th

April 2023, the appellant filed two separate applications seeking bail. In the first application, a prayer was made to grant a default bail under Section 167 (2) of the CrPC. The second application was for a grant of regular bail under Section 439 of the CrPC. By the order dated 17th June 2023, though the Special Court declined to grant bail under Section 167(2) of the CrPC, granted regular bail after recording a finding that the appellant satisfied the twin conditions for grant of bail incorporated in Section 45(1)(ii) of the PMLA. On 21st June 2023, the respondent applied under Section 439(2) of the CrPC before the High Court. On 23rd June 2023, the learned Single Judge of the Delhi High Court, sitting as a Vacation Judge, directed that the case should be listed before him on 26th June 2023 at 2.30 pm, and in the meanwhile, the order granting bail will remain stayed. This is the first impugned order. The hearing could not be held on 26th June 2023. On 28th June, 2023, the case was listed before another learned Single Judge who continued the interim relief of stay. Thereafter, the application was adjourned from time to time. Once the application for cancellation of bail was fully argued before a learned judge and, the order was reserved. However, the Judge recused himself. Thereafter, there were two more recusals.

5. On 2nd May 2024, the application for cancellation of bail was adjourned to 9th July 2024. On 3rd May 2024, the appellant applied to vacate the stay order. The application was listed on 22nd May 2024. The application for vacating stay could not be heard due to paucity of time. The learned Single Judge passed an order directing that the main application shall be heard on 9th July 2024 which was the date earlier fixed. The learned Judge, however, granted liberty to apply for interim bail.

6. Aggrieved by the first order granting stay passed on 23rd June 2023 and the second order dated 22nd May 2024 granting liberty to the appellant to apply for interim bail, these appeals have been preferred. This Court, by the order dated 7th June 2024, stayed the order of stay dated 23rd June 2023 and clarified that the appellant would be entitled to benefit of the order dated 17th June 2023 passed by the Special Court granting bail. Accordingly, the appellant has been enlarged on bail.

SUBMISSIONS

7. The learned counsel appearing for the appellant has taken us through various orders of the High Court. He pointed out that the application

for cancellation of bail was listed on 24 to 25 dates from 23rd June 2023 to July 2024. One learned Single Judge, after reserving the judgment, recused himself. After that, two other learned Single Judges recused themselves. His submission is that the order granting bail was casually stayed by the High Court on 23rd June 2023 without examining the merits of the case and without recording any reasons. He submitted that if the benefit of the order granting bail is allowed to be taken away by such a cryptic order of interim stay passed without application of mind, it will violate the liberty guaranteed to the appellant under Article 21 of the Constitution of India.

8. Learned counsel appearing for the respondent has produced a compilation of documents. He stated that in several cases, even this Court had stayed the order granting bail while issuing notice on prayer for cancellation of bail without recording any reasons. Relying upon two decisions of this Court in the case of ***Gulabrao Baburao Deokar v. State of Maharashtra***[1] and ***Narendra Kumar Amin v. CBI***,[2] he submitted that the power to cancel the bail is not confined to the ground of breach of terms and conditions on which bail was granted. If the order granting bail is unjustified, illegal or perverse, an order of cancellation of bail can be passed. He also relied on this Court's decision in the case of ***Puran v. Rambilas***.[3] He submitted that when there is a power to set aside or cancel the order granting bail, there always exists a power to stay the order pending final adjudication of the prayer for cancellation of bail. He pointed out that the same learned Special Judge had rejected the regular bail application made by the appellant by the order dated 10th March 2023, and only after three months, on 17th June 2023, the same learned Judge granted bail though there was no change in circumstances. He submitted that in view of this position, the High Court was justified in granting the interim stay on 23rd June 2023.

CONSIDERATION OF SUBMISSIONS

GROUNDS FOR CANCELLATION OF BAIL

9. Regarding the grounds available for cancellation of bail under Section 439(2), we can conveniently refer to a decision of this Court in the

1 [2013] 16 SCR 1181 : (2013) 16 SCC 190

2 (2015) 3 SCC 417

3 [2001] 3 SCR 432 : (2001) 6 SCC 338

case of ***Gulabrao Baburao Deokar***.[1] In paragraph 27 of the said decision, it was held thus:

> **"27.** Thus, it could certainly be said that the order passed by the Sessions Judge was an order passed in breach of the mandatory requirement of the proviso to Section 439(1) CrPC. It is also an order ignoring the material on record, and therefore without any justification and perverse. **As held by this Court in *Puran* v. *Rambilas* [(2001) 6 SCC 338: 2001 SCC (Cri) 1124], the High Court does have the power under Section 439(2) CrPC to set aside an unjustified, illegal or perverse order granting bail. This is an independent ground for cancellation as against ground of the accused misconducting himself."**
>
> (emphasis added)

As held in the case of ***Puran v. Rambilas***,[3] apart from the ground that the accused has committed breaches of terms and conditions on which bail is granted, if he has otherwise misconducted himself, the High Court or Sessions Court can exercise power under Section 439(2) of CrPC to cancel the bail. Bail can be cancelled if the bail order is wholly unjustified, patently illegal, or perverse. Once it is held that there is a power vesting in the High Court or Sessions Court to cancel bail by exercising power under Section 439(2) of CrPC, it follows that the power to stay an order granting bail is implicit in the Court dealing with the applications. The question is about the contours of the exercise of power to grant a stay.

POWER TO GRANT INTERIM STAY OF ORDER GRANTING BAIL

10. When a person is arrested, the rights guaranteed by Article 21 of the Constitution of India get substantially curtailed. The law permits arrests of the accused as provided in the CrPC or the BNSS. The effect of the grant of bail under the provisions of Sections 437 and 439 of the CrPC (Sections 480 and 483 of the BNSS) is that the liberty of the undertrial accused is restored pending the trial, subject to the accused complying with the conditions of bail. When the High Court or Sessions Court stays such an order, it amounts to taking away the liberty granted under the order of bail. When an application for cancellation of bail is filed, the High Court or Sessions Court should be very slow in granting drastic interim relief of stay of the order

granting bail. The reason is when a Court competent to grant bail finds the accused entitled to be enlarged on bail unless the said order is set aside on the limited grounds of cancellation available under sub-section (2) of Section 439 of CrPC or any other proceedings, the accused who has been granted bail cannot be normally deprived of his right to liberty guaranteed under Article 21 of the Constitution. Even if the order granting bail is not stayed, the accused can always be taken into custody if the bail is finally cancelled.

11. While issuing notice on an application for cancellation of bail, without passing a drastic order of stay, if the facts so warrant, the High Court can, by way of an interim order, impose additional bail conditions on the accused, which will ensure that the accused does not flee. However, an order granting a stay to the operation of the order granting bail during the pendency of the application for cancellation of bail should be passed in very rare cases. The reason is that when an undertrial is ordered to be released on bail, his liberty is restored, which cannot be easily taken away for the asking. The undertrial is not a convict. An interim relief can be granted in the aid of the final relief, which could be finally granted in proceedings. After cancellation of bail, the accused has to be taken into custody. Hence, it cannot be said that if the stay is not granted, the final order of cancellation of bail, if passed, cannot be implemented. If the accused is released on bail before the application for stay is heard, the application/proceedings filed for cancellation of bail do not become infructuous. The interim relief of the stay of the order granting bail is not necessarily in the aid of final relief.

12. The Court dealing with the application for cancellation of bail can always ensure that notice is served on the accused as soon as possible and that the application is heard expeditiously. An order granting bail can be stayed by the Court only in exceptional cases when a very strong *prima facie* case of the existence of the grounds for cancellation of bail is made out. The *prima facie* case must be of a very high standard. By way of illustration, we can point out a case where the bail is granted by a very cryptic order without recording any reasons or application of mind. One more illustration can be of a case where material is available on record to prove serious misuse of the liberty made by the accused by tampering with the evidence, such as threatening the prosecution witnesses. If the High Court or

Sessions Court concludes that an exceptional case is made out for the grant of stay, the Court must record brief reasons and set out the grounds for coming to such a conclusion.

13. An *ex-parte* stay of the order granting bail, as a standard rule, should not be granted. The power to grant an *ex-parte* interim stay of an order granting bail has to be exercised in very rare and exceptional cases where the situation demands the passing of such an order. While considering the prayer for granting an *ex-parte* stay, the concerned Court must apply its mind and decide whether the case is very exceptional, warranting the exercise of drastic power to grant an *ex-parte* stay of the order granting bail. Liberty granted to an accused under the order granting bail cannot be lightly and causally interfered with by mechanically granting an *ex-parte* order of stay of the bail order. Moreover, the Court must record specific reasons why it concluded that it was a very rare and exceptional case where a very drastic order of *ex-parte* interim stay was warranted. Moreover, since the issue involved is of the accused's right to liberty guaranteed by Article 21 of the Constitution, if an *ex-parte* stay is granted, by issuing a short notice to the accused, the Court must immediately hear him on the continuation of the stay.

ON FACTS OF THE CASE

14. Now, we come to the facts of the case. The order dated 23rd June 2023 records the presence of the advocate representing the accused. Therefore, the High Court ought to have heard the Advocate before granting the stay. But that was not done. Thus, it was an *ex-parte* order of stay. The failure to hear the advocate for the accused and the failure to record reasons vitiates the order of stay. The application for cancellation of bail was placed before the High Court on 23rd June 2023. The order dated 23rd June 2023 indicates that without even applying mind to the merits of the prayer for a grant of stay, the *ex-parte* stay was granted, and the application was ordered to be listed at 2.30 pm on 26th June 2023. However, the case was not heard on that day. After 23rd June 2023, the case appeared on 28th June before another Single Judge. He directed that the case be listed before the roster bench on 3rd July 2023. The order of stay was extended. On 3rd July 2023, the case was adjourned to 14th July 2023. On 14th July 2023, 7th August 2023, and 17th August 2023, arguments were heard on the application for cancellation of bail. For one reason or

another, further arguments could not be heard on 28th August 2023, 5th September 2023, 4th October 2023, 16th October 2023, 19th October 2023, and 3rd November 2023. Meanwhile, interim relief of stay of the order granting bail was continued from time to time.

15. The order of the High Court passed on 10th November 2023 records that the arguments were heard and judgment was reserved. After that, on 22nd December 2023, the application was listed for directions when the learned Judge, who had heard the arguments, passed an order directing that the application be listed before another Judge. From 8th January 2024 to 5th March 2024, the application was repeatedly adjourned without any hearing. On 5th March 2024, the case was again re-notified for 11th March 2024. On 11th March 2024, the learned Single Judge before whom the case was placed on eight earlier dates recused himself. On 12th March 2024, the case was shifted to another Single Judge who again passed an order of recusal. Incidentally, the same learned Judge had passed the *ex-parte* stay order on 23rd June 2023. After that, the case was adjourned on 18th March, 10th April and 2nd May 2024. On 2nd May 2024, the case was again adjourned to 9th July 2024. This compelled the appellant to apply to vacate the interim stay. The application for vacating stay was listed on 22nd May 2024, which was not heard due to paucity of time, and even the said application was adjourned to 9th July 2024, which was a date already fixed. The said order dated 22nd May 2024 does not make a happy reading. The order reads thus:

> "1. The matter could not be heard due to paucity of time.
>
> 2. List the matter on 09.07.2024 at 12:30 PM.
>
> 3. In case of any urgency in the matter or on any ground for which the petitioner wants to seek interim bail, it will be well within his right to do so and the same will be decided on merits as per law.
>
> 4. Interim order(s), if any, to continue, till the next date of hearing.
>
> 5. Copy of this order be given dasti under the signature Court Master.
>
> 6. The order be uploaded on the website forthwith."

The application moved before the Court was for vacating the stay.

It is very difficult to understand the propriety of granting liberty to the appellant to apply for interim bail without even touching the application for vacating interim relief. The High Court ignored the extreme urgency of hearing the application for vacating the stay. The Court ignored that the drastic order of stay of bail order had continued for 11 months which was passed without considering the merits. The appellant got no solace by the direction of the High Court that a copy of the said order be given dasti and that the same shall be uploaded forthwith.

16. In this case, it is so apparent from the first impugned order dated 23rd June 2023 that the order granting bail was mechanically stayed without considering merits. The application was kept on 26th June 2023 at 2.30 pm. The High Court ought to have heard the parties on the prayer for interim relief on 26th June 2023 if the main application for cancellation of bail could not be heard. From 23rd June 2023 till the end of June 2024, the application for cancellation of bail was listed on 28 different dates. As noted earlier, there were three recusals. One recusal was made more than one month after the judgment was reserved. The result of all this is that the *ex-parte* order of stay granted on 23rd June 2023, without considering the merits of the case, continued to operate for one year. Thus, the order of stay granted without hearing the accused continued to operate for more than one year without hearing the accused on merits. Whether such an approach violated the fundamental right to liberty of the appellant is a serious question we must ask ourselves. Except for stating that this is a sorry state of affairs, we cannot say anything further as we must show restraint. Ultimately, in vacation, this Court granted a stay on 7th June 2024 to the order of stay, paving the way for the appellant's release on bail in terms of the order dated 17th June 2023, passed one year ago.

17. There may be good reasons for three learned Judges to have recused themselves. But surely, the *ex-parte* order staying the order of bail passed without considering merits cannot continue to operate for one year without the appellant getting a hearing on the issue of continuation of the interim order. All Courts have to be sensitive about the most important fundamental right conferred under our Constitution, which is the right to liberty under Article 21.

18. The first application for regular bail filed by the appellant was rejected by the Special Court by the order dated 10th March 2023. At that

time, further investigation was in progress following filing the first complaint on 30th October 2021. The appellant was not named as an accused in the FIR of the predicate offence, ECIR, or in the first complaint under the PMLA. Within seven days after the first bail application was rejected, a second complaint was filed in which the appellant was shown as an accused for the first time. In view of the filing of the complaint, it was open for the appellant to file a second bail application based on a change in circumstances brought about by the supplementary complaint. The change was that the investigation against the appellant was completed.

19. We have carefully perused the order dated 17th June 2023 granting regular bail. After a detailed discussion, it records a finding that the appellant has made out a case in terms of Section 45(1)(ii) of the PMLA on the power to grant bail. We have perused the application made by the respondent before the High Court for cancellation of bail. We find no allegation of the misuse of liberty granted under the bail order in the said application. All the grounds are on merits. The order dated 17th June 2023 granting bail is a detailed order running into more than 50 pages, which considers the material on record from both complaints under the PMLA. After having perused the said order, we find that the case was not the one that could have been termed a rare and exceptional case where an order granting bail ought to be stayed.

20. Our conclusions are as under:

a. In an application made under Section 439(2) of the CrPC or Section 483(3) of the BNSS or other proceedings filed seeking cancellation of bail, the power to grant an interim stay of operation of order to bail can be exercised only in exceptional cases when a very strong *prima facie* case of the existence of the grounds for cancellation of bail is made out. While granting a stay of an order of grant of bail, the Court must record brief reasons for coming to a conclusion that the case was an exceptional one and a strong *prima facie* case is made out;

b. As a normal rule, the *ex-parte* stay of the bail order should not be granted. The said power can be exercised only in rare and very exceptional cases where the situation demands the passing of such drastic order. Where such a drastic *ex-parte* order of stay is passed, it is the duty of the Court to immediately hear

the accused on the prayer for continuation of the interim relief. When the Court exercises the power of granting *ex-parte* ad interim stay of an order granting bail, the Court is duty bound to record reasons why it came to the conclusion that it was a very rare and exceptional case where a drastic order of *ex-parte* interim stay was warranted.

21. Therefore, the appeals must succeed. We set aside the impugned orders by which the High Court granted the stay of the order granting bail. We make it clear that pending the hearing of application for cancellation of bail, the order dated 17th June, 2023 passed by the Special Court will continue to operate. We make it clear that all the contentions on the merits of the application for cancellation of bail are expressly left open to be decided by the High Court. The findings recorded in the judgment are only for considering the legality and validity of the order of stay on the order granting bail.

22. The appeals are, accordingly, allowed on the above terms.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 7 S.C.R. 992 : 2024 INSC 645

Javed Gulam Nabi Shaikh
v.
State of Maharashtra and Another

(Criminal Appeal No. 2787 of 2024)

03 July 2024

[J.B. Pardiwala and Ujjal Bhuyan, JJ.]

Issue for Consideration

High Court whether justified in denying bail to the appellant, an under-trial prisoner prosecuted under Unlawful Activities (Prevention) Act, 1967 and Penal Code, 1860.

Headnotes†

Bail – Denial – When not justified – Constitution of India – Article 21 – Right to speedy trial – Applicability of, irrespective of the seriousness of crime – Unlawful Activities (Prevention) Act, 1967 – Penal Code, 1860 – ss.489B, 489C, 120B, 34 – National Investigation Agency Act, 2008 – s.19 – Fake counterfeit Indian currency notes seized from the appellant-accused – In custody as an under-trial prisoner for four years – Bail denied:

Held: Bail is not to be withheld as a punishment – If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined u/Article 21, then it should not oppose the plea for bail on the ground that the crime committed is serious – Howsoever serious a crime may be, an accused has a right to speedy trial – Article 21 applies irrespective of the nature of the crime – Petitioner is still an accused and not a convict – He has been in jail as an under-trial prisoner for four years – No charges have been framed till date – There are around eighty witnesses to be examined, no clarity as to when the trial will ultimately conclude – The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be – Right of the accused to have a speedy trial was infringed thereby violating Article 21 – Impugned order passed by the High Court set aside – Appellant granted bail. [Paras 7, 8, 9, 19-21, 22, 23]

Criminal Law – Humanist approach towards delinquents – Need for – Discussed. [Para 18]

Javed Gulam Nabi Shaikh v. State of Maharashtra and Another

Case Law Cited

Gudikanti Narasimhulu & Ors. v. Public Prosecutor [1978] 2 SCR 371 **: (1978) 1 SCC 240;** *Gurbaksh Singh Sibba v. State of Punjab* [1980] 3 SCR 383 **: (1980) 2 SCC 565;** *Hussainara Khatoon v. Home Secy., State of Bihar* [1979] 3 SCR 169 **: (1980) 1 SCC 81;** *Kadra Pahadiya & Ors. v. State of Bihar* **(1981) 3 SCC 671;** *Abdul Rehman Antulay v. R.S. Nayak* [1991] Supp. 3 SCR 325 **: (1992) 1 SCC 225;** *Mohd Muslim @ Hussain v. State (NCT of Delhi)* [2023] 3 SCR 697 **: 2023 INSC 311;** *Union of India v. K.A. Najeeb* [2021] 1 SCR 443 **: (2021) 3 SCC 713;** *Satender Kumar Antil v. Central Bureau of Investigation* [2022] 10 SCR 351 **: (2022) 10 SCC 51 – relied on.**

List of Acts

Constitution of India; Unlawful Activities (Prevention) Act 1967; National Investigation Agency Act, 2008; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Bail; Bail denied; Under-trial prisoner; Accused not convict; Article 21 of the Constitution of India; Speedy trial; Fundamental right of accused to speedy trial; Seriousness of crime; Nature of crime serious; Accused presumed to be innocent until proven guilty; Criminal jurisprudence; Criminal law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2787 of 2024

From the Judgment and Order dated 05.02.2024 of the High Court of Judicature at Bombay in CRLA No. 1060 of 2023

Appearances for Parties

Sherali S. Khan, Sushant Kumar Yadav, Ankur Yadav, Advs. for the Appellant.

Abhikalp Pratap Singh, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Aagam Kaur, Aditya Krishna, Ms. Preet S. Phanse, Ms. Yamini Singh, Adarsh Dubey, Kartikey, Shubhendu Anand, Siddharth Sinha, Madhav Sinhal, Amit Sharma B, Arvind Kumar Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. This appeal arises from the order passed by the High Court of Judicature at Bombay dated 5th February 2024 in Criminal Appeal No 1060 of 2023 by which the High Court declined to release the appellant on bail in connection with his prosecution under the provisions of the Unlawful Activities (Prevention) Act 1967 (for short 'UAPA').

3. When this matter was taken up for hearing, both, the counsel appearing for the National Investigation Agency (NIA) as well as the counsel appearing for the State prayed for time. Having regard to the fact that the appellant is in custody past four years, we declined to adjourn the matter and proceeded to hear the same on merits.

4. It appears from the materials on record that on 9th February 2020 at about 9.30 am, on the basis of some secret information, the appellant herein was apprehended by Mumbai Police of the DCB CID Unit VIII from a bus stop at Terminal II Chhatrapati Shivaji Maharaj International Airport, Andheri. The search of the person of the appellant was undertaken. The appellant had a bag with him and from the bag 1193 numbers of counterfeit Indian currency notes of the denomination of Rs 2,000 were recovered. The counterfeit notes were seized and the appellant herein was arrested. The First Information Report was registered at the Sahar Police Station for the offences punishable under Sections 489B, 489C, 120B read with Section 34 of the Indian Penal Code.

5. It is the case of the prosecution that the consignment of the counterfeit notes was smuggled from Pakistan to Mumbai. Having regard to the nature of the crime as alleged, the investigation was ultimately taken over by the NIA. As a result, Case No RC/03/20/NIA/Mumbai came to be registered for the offences enumerated above. The investigation further revealed that on 6th February 2020, the appellant visited Dubai, and while he was in Dubai, he is said to have received the counterfeit notes from one of the absconding accused persons. On 9th February 2020, he is said to have returned to India.

6. The materials on record further reveal that two co-accused were arrested in connection with this offence and both are on bail as on

today. So far as one of the co-accused is concerned, the order granting bail to him is now the subject matter of challenge before this Court.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

   (i) The appellant is in jail as an under-trial prisoner past four years;

   (ii) Till this date, the trial court has not been able to even proceed to frame charge; and

   (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor***, High Court reported in (1978) 1 SCC 240. We quote:

> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox] :*
>
> > *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."*

11. The same principle has been reiterated by this Court in ***Gurbaksh Singh Sibba v. State of Punjab*** reported in (1980) 2 SCC 565 that

the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in ***Hussainara Khatoon v. Home Secy., State of Bihar*** reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

13. The aforesaid observations have resonated, time and again, in several judgments, such as ***Kadra Pahadiya & Ors. v. State of Bihar*** reported in (1981) 3 SCC 671 and ***Abdul Rehman Antulay v. R.S. Nayak*** reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

> *"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not*

often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In ***Mohd Muslim @ Hussain v. State (NCT of Delhi)*** reported in 2023 INSC 311, this Court observed as under:

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State reported in 1993 Cri LJ 3242, as "a radical transformation" whereby the prisoner:

> *"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."*

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further

deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in ***Union of India v. K.A. Najeeb*** reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

17. In the recent decision, ***Satender Kumar Antil v. Central Bureau of Investigation*** reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

> *"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."*

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is 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.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should

not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

22. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.

23. The appellant is ordered to be released on bail subject to the terms and conditions which the trial court may deem fit to impose. However, we on our own would impose the condition that the appellant shall not leave the limits of Mumbai city and shall mark his presence at the concerned NIA office or police station once every fifteen days. Any other condition which the trial court may deem fit to impose, it may do so in accordance with law.

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

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 7 S.C.R. 1001 : 2024 INSC 508

New Okhla Industrial Development Authority
v.
Darshan Lal Bohra & Ors.

(Civil Appeal No. 8048 of 2019)

10 July 2024

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

Issue for Consideration

(i) Whether the respondents-landowners forestalled their right to challenge the acquisition proceeding on the ground of non-compliance of Section 5A, Land Acquisition Act, 1894 because they have not filed objections; or they were not tenure holders as per the revenue records on the date of notification under Section 4 of the 1894 Act; or after submitting their objections, they have accepted compensation without any demur; (ii) If the answer to the aforementioned question is in negative, whether the mandatory procedure contemplated under Section 5A has been complied with in the instant case.

Headnotes†

Land Acquisition Act, 1894 – s.5A – Compliance with – Writ petitions were filed by the respondents-land owners challenging the acquisition proceedings on the ground of non-compliance of the procedure prescribed u/s.5A – Respondents claimed being unaware of the acquisition proceedings stating that they were not served with notices for hearings – High Court quashed the notification issued u/s.6(1) and annulled the land acquisition proceedings initiated by the appellant – Correctness:

Held: The person who submits objections u/s.5A must be accorded an opportunity of personal hearing – Such a hearing must precede with an advance notice served upon the objector – The failure to serve the notice would be sufficient to infer the defiance of s.5A – However, whether or not an advance notice of hearing was served upon an "objector" is a question of fact – Where the Collector takes a specific stand that notices were duly served upon the persons concerned and the record of service of such notices has been duly maintained, the statutory presumption inscribed u/s.114, Evidence

* Author

Act shall be drawn, wherein the Court may presume the existence of facts, including "that judicial and official acts have been regularly performed" – The rule of statutory presumption is a well-rooted principle in Common Law and founded upon the dictum '*omnia praesumuntur rite esse acta*', namely, that the act can be presumed to have been rightly and regularly done – The Court would presume that the official act was done rightly and effectively and the burden to prove contrary lies on the party who disputes the sanctity of such act – Thus, the onus lay on the landowners to demonstrate that the issuance or service of notices was inefficacious, which they failed to discharge given their presence at the time of hearings,as per the official record – Landowners were thus, duly served and the procedure as mandated by s.5A was substantially complied with – Impugned judgment of the High Court as well as all other judgments following the said judgment, set aside – Writ petitions filed by the respondents dismissed. [Paras 38-41, 56]

Maxim – '*Omnia Consensus Tollit Errorem*' – Applicability – Land Acquisition Act, 1894 – ss.5A, 6 – "person interested"; "objector" – Challenge to acquisition proceedings even by the respondents-landowners who did not file objections – High Court quashed the entire declaration issued u/s.6 and annulled the land acquisition proceedings initiated by the appellant:

Held: s.5A(1) gives a "person interested" the right to file objections, s.5A(2) affords only an "objector" the right to be heard – A person cannot claim hearing as a matter of right u/s.5A(2) unless he has filed objections – High Court erred while allowing the claim of even those landowners who did not invoke their remedy u/s. 5A(1) – An interested person who fails to file objections, is deemed to have acquiesced to the acquisition – Maxim '*Omnia Consensus Tollit Errorem*', i.e., every assent removes error is attracted in case of such owners – High Court could still have invalidated the acquisition qua these landowners had there been a reason going to the very root of the entire acquisition like the 'public purpose' of acquisition being conspicuously absent, or the acquisition process being an outcome of colorable exercise of power of eminent domain – In such cases, all the landowners, even if they had not filed objections, could seek annulment of the declaration issued u/s.6 – However, no such plea was taken in the instant batch of cases except that the procedure contemplated u/s.5A was deflated – Such objections were personal to the landowners, as they sought individual exemption on

the plea that they had raised residential constructions on their land under acquisition – Since it was a ground specific to each property, High Court was wrong to grant the benefit *en masse* and quash the entire declaration issued u/s.6 of the 1894 Act. [Paras 22, 23]

Land Acquisition Act, 1894 – Challenge to acquisition proceedings also by respondents-landowners who though filed objections u/s.5A but, subsequently accepted compensation:

Held: When a landowner receives compensation volitionally subsequent to filing of the objections u/s.5A and does not preserve the right to pursue such objections, there is implied consent to the acquisition – Having once acquiesced so, a landowner cannot be permitted to do a volte-face and re-agitate the objections – Holding otherwise, would open a Pandora's Box where the landowners will, on one hand, seek re-enquiry of their claims u/s.5A and, on the other, will also draw the compensation – Thus, there would, be no finality to the proceedings and the acquisition process would be tainted by uncertainty and unpredictability which would further have a chilling effect on the development projects – Therefore, such respondents non-suited on the ground that they accepted compensation without any protest. [Para 30]

Land Acquisition Act, 1894 – s.5A – Objections – If were effectively disposed – Owing to the similarities of contents and the fact that they pertained to the same parcel of land, several objections were disposed of by the Collector by a Common Order after grouping them together – High Court held that the objections were treated as an empty formality since the Collector disposed them by consolidating in groups:

Held: Objections were classified because of the similarity of substance and thus, it was plausible to group them together and dispose of by way of a Common Order – Not doing so would lead to sheer wastage of time and energy that would be spent in duplicating the recommendations for each individual objection – Similar objections can be consolidated and the Collector need not undertake the daunting and unnecessary task of disposing of thousands of objections separately – Thus, High Court erroneously held that the objections were disposed of cryptically merely because they were grouped – Furthermore, some of the objections were left out from the aforementioned groups wherein the Collector noted that the objectors sought exemption of their land on the ground of it being an 'abadi' area – This plea was rejected albeit while

disposing of other objections observing that the lands claimed to be 'abadi' merely have temporary and illegal constructions, and no person was residing there and finally, the Collector noted that all the objections were disposed of "in aforementioned terms" – Also, the absence of a formal rejection order in the case of a few objections would not per se vitiate the acquisition proceedings as the non-consideration of such objections is inconsequential, because even if it was an 'abadi' land, there is nothing in law that bars the State Government from acquiring the same – Exemption of such lands from the acquisition is a matter of State Policy and depends on the government's discretion – If the State Government opines that the land is needed for a larger public purpose and development projects, such land can be acquired, notwithstanding the fact that it was a residential property – Further, also in the instant case, admittedly the acquisition proceedings attained finality, most landowners accepted compensation and are deemed to have acquiesced to the acquisition process whereafter, significant investment had been made into the development projects – Thus, even if it is accepted that a handful of respondents did not get a fair enquiry u/s. 5A, the same may not be a sufficient ground to annul the acquisition process as substantial compliance had already been made. [Paras 47-52]

Land Acquisition Act, 1894 – s.4 – Notification under – Challenge to acquisition proceedings by the respondents-landowners who were subsequent purchasers – If such respondents had a locus:

Held: No – Notification issued u/s.4 creates an impediment on the transfer of title in a property – Subsequent purchasers do not acquire an unencumbered title over the property and they deliberately run the risk of securing a defective title – Thus, the respondents who clandestinely got sale deeds executed with or without collusion with the Registering Authorities after the acquisition process had commenced and/or whose names were not recorded in the revenue records before issuance of notification u/s. 4 of the Act, were also denuded of any cause of action u/s. 5A to object against the acquisition proceedings – No cause of action ever accrued in favour of the respondents in these cases to invoke writ jurisdiction of the High Court. [Paras 26, 28]

Land Acquisition Act, 1894 – s.5A – Construction and import – Discussed.

**New Okhla Industrial Development Authority v.
Darshan Lal Bohra & Ors.**

Land Acquisition Act, 1894 – s.5A – Notices when not served as per the procedure, acquisition proceedings if get vitiated:

Held: Even in cases where the notices were not served as per the procedure known in law, that by itself may not vitiate the acquisition proceedings unless it is shown that severe prejudice was caused to the landowners – Even when there is no material to show that the landowner was heard, it would not invalidate the acquisition proceedings if the objections are duly considered. [Para 43]

Case Law Cited

Talson Real Estate (P) Ltd. v. State of Maharashtra **(2007) 13 SCC 186;** *Rajasthan State Industrial Development & Investment Corpn. v. Subhash Sindhi Coop. Housing Society* [2013] 4 SCR 978 **: (2013) 5 SCC 427;** *Tej Kaur v. State of Punjab* [2003] 2 SCR 707 **: (2003) 4 SCC 485;** *Anand Singh v. State of U.P.* [2010] 9 SCR 133 **: (2010) 11 SCC 242 – relied on.**

Sam Hiring Company v. A.R. Bhujbal [1996] 1 SCR 475 **: (1996) 8 SCC 18;** *Narayan Govind Gavate v. State of Maharashtra* [1977] 1 SCR 763 **: (1977) 1 SCC 133;** *Savitri Devi v. State of U.P.* [2015] 7 SCR 512 **: (2015) 7 SCC 21;** *Babu Ram v. State of Haryana* [2009] 14 SCR 1111 **: (2009) 10 SCC 115;** *Shri Farid Ahmed Abdul Samad v. Municipal Corporation* [1977] 1 SCR 71 **: (1976) 3 SCC 719;** *Nareshbhai Bhaggubhai v. Union of India* [2019] 10 SCR 88 **: (2019) 15 SCC 1;** *NOIDA v. Lt. Col. J.B. Kuchhal* **(2020) 18 SCC 619;** *Competent Authority v. Barangore Jute Factory* [2005] Supp. 5 SCR 421 **: (2005) 13 SCC 477;** *Women's Education Trust v. State of Haryana* **(2013) 8 SCC 99;** *J.E.D. Ezra v. Secretary of State for India* **(1902) SCC OnLine Cal 179;** *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* [2005] Supp. 3 SCR 388 **: (2005) 7 SCC 627;** *Delhi Admn. v. Gurdip Singh Uban* [2000] Supp. 2 SCR 496 **: (2000) 7 SCC 296;** *Abhey Ram v. Union of India* [1997] 3 SCR 931 **: (1997) 5 SCC 421;** *V. Chandrasekaran v. Administrative Officer* [2012] 10 SCR 603 **: (2012) 12 SCC 133;** *Meera Sahni v. Lt. Governor of Delhi* [2008] 10 SCR 1012 **: (2008) 9 SCC 177;** *Kailash N. Dwivedi v. State of U.P.* **(2011) 15 SCC 98;** *Aflatoon v. Lt. Governor of Delhi* [1975] 1 SCR 802 **: (1975) 4 SCC 285;** *Anand Buttons Ltd. v. State of Haryana* **(2005) 9 SCC 164;** *Om Prakash v. State of U.P.* [1998] 3 SCR 643 **: (1998) 6 SCC 1;** *M.S.P.L. Ltd. v. State of Karnataka* [2022] 14 SCR 591 **: (2022) SCC OnLine SC 1380 – referred to.**

Gajraj v. State of U.P. **(2011) SCC OnLine All 1711 – referred to.**

List of Acts

Land Acquisition Act, 1894; Evidence Act, 1872; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

Challenge to acquisition proceedings; Land acquisition proceedings annulled; Compliance of Section 5A of Land Acquisition Act, 1894; Objections filed under Section 5A of Land Acquisition Act, 1894; Objections rejected; "Objector"; Annulment of acquisition process; Abadi land; Abadi area; Abadi deh; Notices to the affected landowners; Service of notices; Subsequent purchasers; Landowners were subsequent purchasers; Tenure holders; "person interested"; Implied consent to the acquisition; Estoppel; Acquiescence; Acquiesced to the acquisition; Notices for hearings not served; Personal hearing; Advance notice of hearing; Landowners duly served; Landowners received compensation; Consolidation of objections; Public purpose of acquisition; Public interest; Colorable exercise of power; Compensation accepted without any protest/demur; Development projects; Residential property; *Omnia Consensus Tollit Errorem*.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8048 of 2019

From the Judgment and Order dated 05.01.2017 of the High Court of Judicature at Allahabad in WC No. 36231 of 2015

With

Civil Appeal Nos. 8049, 8050, 8051, 8052, 8053, 8054, 8055, 8056, 8057, 8058, 8059, 8060, 8061, 8062, 8063, 8064 and 8065 of 2019

Appearances for Parties

Ravindra Kumar, Sr. Adv., Binay Kumar Das, Vipin Kumar Saxena, Ms. Priyanka Das, Ms. Neha Das, Shivam Saksena, Rachit Mittal, Parish Mishra, Adarsh Srivastava, Advs. for the Appellant.

Ravindra Kumar Raizada, Dhruv Mehta, Sr. Advs., Shashank Shekhar Singh, Abhinav Singh, Smarhar Singh, Jai Krishna Singh, Ms. Shweta Kumari, Manoj Kumar, Vikas Chopra, Rajesh Kumar Gautam, Anant

Gautam, Samir Mudgil, Ms. Anani Achumi, Dinesh Sharma, Ms. Shivani Sagar, R.P. Daida, Dr. Rajeev Sharma, Prashant Sharma, Pankaj Dubey, Pankaj Y, Dharmendra Sharma, Vipin Kumar Sharma, Raghuvir Sharma, Raghuvir Shy, Ms. Devjani Dekka Bharali, Jasbir Singh Malik, Sanjay Sharma, Ms. Chandni Sharma, Tej Singh Yadav, Varun Punia, Rahul Sharma, Ms. Jyoti Dutt Sharma, Ms. Jaikriti S. Jadeja, Adesh Choudhary, Shivang Goel, Ms. Usha Nandini V., Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

1. These appeals are preferred by New Okhla Industrial Development Authority (NOIDA) against the main judgment dated 05.01.2017 rendered in Writ C. No. 36231/2015 (in Civil Appeal No. 8048 of 2019, titled *NOIDA v. Darshan lal Bohra & Ors.*), passed by the High Court of Judicature at Allahabad (hereinafter, 'High Court'), whereby the land acquisition proceedings initiated at NOIDA's behest have been annulled by quashing the declaration dated 14.01.2015 issued under Section 6(1) of the Land Acquisition Act, 1894 (hereinafter, '1894 Act').

A. Facts

2. Given the broad similarity in all the connected matters, the factual matrix can be understood from the details of the lead matter, i.e., Civil Appeal No. 8048 of 2019, titled *NOIDA v. Darshan Lal Bohra & Ors.*

3. A notification under Section 4(1) of the 1894 Act was issued for the acquisition of land measuring 83.761 hectares situated in Village Badoli Banger, Tehsil Dadri, District Gautam Budh Nagar (hereinafter, 'Acquired Land'). The acquisition was intended for the "Planned Industrial Development in Gautam Budh Nagar" by NOIDA. The notification was published in the State Gazette on 28.09.2013 and in the daily newspapers "Amar Ujala" and "Dainik Jagran" on 27.11.2013. Additionally, a public announcement (*munadi*) was conducted on 18.01.2014. Through such mechanism, the persons interested were invited and allowed to lodge their objections, if any, against the proposed acquisition.

4. On 09.12.2013, Darshan Lal Bohra (hereinafter, 'Respondent No. 1') filed his objections under Section 5A of the 1894 Act (hereinafter, 'Section 5A') before the Collector-cum-Additional District Magistrate (hereinafter, 'Collector'), Gautam Budh Nagar, Uttar Pradesh. He submitted that his land was in '*abadi'* area and thus ought to be excluded from the acquisition process as per policy decision(s) of the State Government. He further stated that the land was being used for cattle rearing and he had his farm buildings constructed. Respondent No.1 emphasized that the acquisition would not only jeopardize his means of livelihood but also render him homeless.

5. Most of the other land-owners also objected to the acquisition of their lands primarily on the ground that such lands fell within '*abadi deh'.* The objections raised by Respondent No. 1, as well as by other landowners (*respondents in connected matters*), were to be adjudicated by the Collector. The notice fixing the date of hearing was forwarded to 'interested persons' through the Gram Pradhan, but the date of hearing was deferred on multiple occasions on the ground that only a few farmers came who also sought time to present their case(s). As a final opportunity, the matter was posted on 03.07.2014, when the Collector dismissed the objections and submitted a report under Section 5A(2) recommending for acquiring the subject land.

6. Following the rejection of objections, a declaration under Section 6(1) of the 1894 Act was issued on 14.01.2015, for acquiring 81.819 hectares of land. This declaration was also published in the daily newspapers "Amar Ujala" and "Dainik Jagran." Subsequently, *munadi* was conducted on 16.02.2015.

7. Feeling aggrieved by the said declaration, Respondent No. 1 filed Civil Misc. Writ Petition No. 36231/2015 before the High Court and sought quashing of the notifications issued under Section 4(1) and Section 6(1) of the 1894 Act.

8. During the pendency of the writ petition, the Collector passed an award on 17.06.2016, determining the total compensation for the acquired land to the tune of INR 2,21,79,27,378/- (INR 221.79 crores approximately). This was followed by the possession letters issued on 20.06.2016.

9. The High Court, *vide* impugned judgment, scrutinized the procedural aspects of the proceedings conducted by the Collector in hearing objections filed under Section 5A. It has held that though the notices

to the affected land-owners were purportedly issued through the Gram Pradhan for informing the date of hearing, there was nothing on record to show how effectively the Gram Pradhan intimated all tenure holders. The High Court has consequently inferred that the respondent-landowners were not properly informed of the date of personal hearing. The High Court has also found fault with the Collector in consolidating the objections without adequate consideration and treating them as an empty formality. The High Court, in light of the fact that the Collector attempted to rectify his earlier order by issuing a corrigendum, has also raised doubts on the fairness of the procedure. Consequently, the High Court has annulled the notification dated 14.01.2015, issued under Section 6(1) of the 1894 Act, with a direction that a fresh opportunity be given to the respondents and similarly situated tenure holders before proceeding further with the land acquisition process.

10. Discontented with the quashing of notification issued under Section 6(1) of the 1894 Act, NOIDA is in appeal before us.

B. Contentions on behalf of NOIDA/State

11. Mr. Ravindra Kumar, learned senior counsel representing NOIDA and Mr. Ravindra Kumar Raizada, learned senior counsel and Additional Advocate General for the State of Uttar Pradesh, vehemently argued that the High Court erred in nullifying the notification dated 14.01.2015 issued under Section 6(1) of the 1894 Act. Substantiating this, they made the following submissions:

On maintainability of challenge against the acquisition proceedings

a) It was explained that the respondent-tenure holders fall into four categories: (i) those who lodged objections and contested the acquisition; (ii) those who did not lodge objections but contested the acquisition; (iii) those who initially objected but later accepted compensation; and (iv) the subsequent purchasers. It was urged that the respondents falling in the second, third, and fourth categories, namely, those who did not object, accepted compensation, or are subsequent purchasers, do not have *locus standi* and/or have waived their right to challenge the subject acquisition.

b) NOIDA has already disbursed a compensation amount of INR 147,72,68,871 (approximately INR 147 crores) and nearly

185 out of total 210 affected land-owners have accepted such compensation. Additionally, INR 72,56,43,151 (approximately INR 72 crores) have been distributed to the farmers as no litigation bonus. Consequently, the challenge brought in by a miniscule group of land-owners ought not to have been entertained.

c) Moreover, post the acquisition, NOIDA has incurred a huge expenditure of INR 202.17 crore (approximately) on subsequent developments at the site. Hence, the annulment of acquisition process at this juncture defeats the *bona fide* public purpose and public interest.

On the effectiveness of hearing under Section 5A

d) It was then argued that the High Court fell in grave error in holding that the landowners were deprived of the opportunity to present evidence. Once an objector had submitted the objection in writing, no further oral hearing was obligated to be accorded. In this instance, affidavits were duly filed supporting the objections presented through legal counsels and thus the statutory requirements prescribed for an administrative enquiry as contemplated under Section 5A have been substantially complied with.

e) Relying upon ***Sam Hiring Company v. A.R. Bhujbal***,[1] it was canvassed that the Land Acquisition Officer functions as an administrative authority and not as a judicial or quasi-judicial forum. That the Act mandates consideration of objections by affording an opportunity of hearing, if it is so requested by the aggrieved persons. However, in this case, no such opportunity was sought by the landowners from the Collector.

f) ***Narayan Govind Gavate v. State of Maharashtra***[2] was pressed into aid to submit that Section 5A mandates an expeditious enquiry, focusing on objections lodged by landowners challenging the 'public purpose' behind the acquisition. The objections that are personal to the objectors would be irrelevant to such enquiry. In the instant case, since the objections did

1 [1996] 1 SCR 475 : 1996 (8) SCC 18

2 [1977] 1 SCR 763 : 1977 (1) SCC 133

not assail the genuineness or nature of the public purpose of acquisition, the personal claims did not warrant any one-to-one adjudication through the summary enquiry.

g) The objections raised by the respondent-landowners, seeking exemption of their land owing to it being within village '*abadi*', are wholly misconceived. Before the issuance of Section 4 notification on 28.09.2013, a survey was conducted by the Revenue Department to identify '*abadi*' land. The State has not acquired most of the land identified as '*abadi*' in the survey, except such parcels where unauthorized and illegal constructions had been raised as per the Collector's report.

C. Contentions on behalf of the Respondents

12. *Per contra,* respondent-landowners, represented by Mr. Dhruv Mehta, learned senior counsel along with learned Counsels S/Shri Dr. Rajeev Sharma, Jasbir Singh Malik, Smarhar Singh, Rahul Sharma and Ms. Jaikriti S. Jadeja, attempted to rebuff the submissions made on behalf of the appellant(s) in the following terms:

On maintainability of challenge against the acquisition proceedings

a) Acceptance of compensation does not preclude the respondents from challenging the acquisition proceedings. Respondent No. 1 asserts that the compensation was received in good faith, based on a mutual agreement with NOIDA. Under this settlement, Respondent No. 1 agreed to relinquish 0.5671 hectares of his land in favour of NOIDA in lieu of the release of remainder of his '*abadi*' land. The compensation was taken to safeguard Respondent No. 1's land from demolition. However, after accepting the compensation, NOIDA failed to honor the settlement and proceeded to acquire his remaining '*abadi*' land as well. Respondent No. 1 thus alleges *mala fide* intentions of NOIDA authorities behind initiating the acquisition process.

b) Reference was made to the Full Bench decision of the High Court in ***Gajraj v. State of U.P.***,[3] which was subsequently upheld by this Court in ***Savitri Devi v. State of U.P.***,[4] emphasising

3 2011 SCC OnLine All 1711.

4 [2015] 7 SCR 512 : (2015) 7 SCC 21

that accepting compensation does not amount to acquiescence to the acquisition if such proceedings are otherwise wrongful and illegal.

On the effectiveness of hearing under Section 5A

c) Citing ***Babu Ram v. State of Haryana***,[5] Mr. Dhruv Mehta, Learned Senior Counsel, emphatically argued that Section 5A of the 1894 Act is far more than a statutory edict, embodying Fundamental Rights enshrined in Articles 14 and 19 of the Indian Constitution. Hence, objections filed by the landowners were required to be considered in a quasi-judicial manner, and as the provision expressly confers the right to hearing, the Collector was obligated to accord such an opportunity to the affected landowners.

d) Learned Senior Counsel further submitted that the record of proceedings conducted by the Collector leaves no room to doubt that: i) the respondents were not served with notices for hearings; ii) personal hearings were not granted; and iii) there was a complete non-application of mind in addressing Section 5A objections. The personal hearing was crucial in the present case since the objections varied from owner to owner. The failure to provide such hearing amounts to gross violation of Section 5A, justifying the quashing of acquisition process. In this regard, he relied upon ***Shri Farid Ahmed Abdul Samad v. Municipal Corporation***.[6]

e) It was also pointed out that the Collector manipulated the official record of adjudication of the objections. The Collector claims to have decided the objections through a corrigendum, which was signed by such individuals who were either strangers to the acquisition or were not the objectors. NOIDA has not disputed the manipulation of records in relation thereto.

f) S/Shri Jasbir Singh Malik and Samarhar Singh, learned counsels, further argued that the respondents had already utilised a part of their lands for residential purposes – the same being within '*abadi*' area. They relied upon an order dated

5 [2009] 14 SCR 1111 : (2009) 10 SCC 115

6 [1977] 1 SCR 71 : (1976) 3 SCC 719

19.07.1992 passed by the Assistant Collector, Secunderabad in purported exercise of powers under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, whereby the subject land was classified as non-agricultural land. They also referred to the objections which Respondent No.1 had filed against a previous notification issued under Section 4 of the 1894 Act on 07.11.2007. In those objections, it was pointed out that the subject land was a part of the '*abadi*' area of the village and hence deserved to be exempted from acquisition. Those objections statedly found favour with the State Government and the land was accordingly excluded from the 2007 acquisition. It was, thus, contended that NOIDA or the State Government cannot initiate a fresh acquisition process as the subject land continues to be a part and parcel of '*abadi*' land.

g) Furthermore, most of the land adjoining their lands has been exempted from acquisition as it already stands declared as '*abadi*' area. Since only the respondents are sought to be singled out, the impugned action does not satisfy the equality test of Article 14 of the Constitution.

h) Lastly and alternatively, learned counsels for the respondents urged that in the event of acquisition process being upheld by this Court due to exigency or for regulated development of the area, in that case, the land-owners be held entitled to receive compensation at the current market value and in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter '2013 Act). In support thereto, they have placed reliance on the decisions in (i) ***Nareshbhai Bhaggubhai v. Union of India***;[7] (ii) ***NOIDA v. Lt. Col. J.B. Kuchhal;***[8] and (iii) ***Competent Authority v. Barangore Jute Factory,***[9] wherein, this Court after taking notice of the facts and circumstances, granted compensation on the current market value of the land.

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7 [2019] 10 SCR 88 : (2019) 15 SCC 1

8 (2020) 18 SCC 619

9 [2005] Supp. 5 SCR 421 : (2005) 13 SCC 477

D. Analysis

13. Having given our thoughtful consideration to the submissions at length, we find that primarily the following two issues arise for consideration of this Court:

a) Whether the respondents have forestalled their right to challenge the acquisition proceeding on the ground of non-compliance of Section 5A because:

i) they have not filed objections; or

ii) they were not tenure holders as per the revenue records on the date of notification under Section 4 of the 1894 Act; or

iii) after submitting their objections, they have accepted compensation without any demur?

b) If the answer to the aforementioned question is in negative, whether the mandatory procedure contemplated under Section 5A has been complied with in the instant case?

14. Before delving into these specific issues, it would be worthwhile to briefly discuss the construction and import of Section 5A of the 1894 Act.

15. The 1894 Act embodies the State's power of eminent domain, bestowing the sovereign right to appropriate private property for the public good. However, since the Right to Property is a significant Constitutional Right under Article 300A and losing one's land has grave repercussions for a landowner, the 1894 Act also contains various provisions to compress the State's power of expropriation from becoming a source of exploitation. One of such salient features is Section 5A, which *inter alia* provides thus:

> *"5-A. Hearing of objections.—(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.*
>
> *(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any*

person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall he deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

16. It may be seen from the plain language of Section 5A that it manifests the cardinal principle of *audi alteram partem*, and obligates the Collector to hear the person whose land is being compulsorily acquired by the State. This provision serves as a crucial safeguard, enabling the landowners to challenge the arbitrary acquisition and demonstrate the absence of 'public purpose' or presence of *mala fide* motive. Considering its vital importance, there are a string of decisions by this Court affirming that Section 5A is a mandatory provision with the flavour of fundamental rights.[10]

17. Section 5A was not originally a part of the 1894 Act. It was introduced later by the Land Acquisition (Amendment) Act, 1923, to rectify the defect pointed out in case of ***J.E.D. Ezra v. Secretary of State for India***.[11] The Calcutta High Court in that case expressed its inability to grant relief to the person whose property was being acquired, noting that the 1894 Act did not allow the landowners to raise objections against the acquisition. Consequently, the legislature thought it appropriate to amend the 1894 Act and insert a provision mandating that no declaration under Section 6 of the 1894 Act shall be issued unless time has been allowed to the 'persons interested' in the land to put in their objections.

10 *Women's Education Trust v. State of Haryana*, (2013) 8 SCC 99, para 1.

11 1902 SCC OnLine Cal 179.

18. The landowners thus became entitled to lodge their objections within thirty days of the notification published under Section 4 of the 1894 Act. The Collector is thereafter expected to give an opportunity of hearing to the objectors and make recommendations to the Appropriate Government after thorough consideration of their objections. Importantly, the hearing under Section 5A must be an effective opportunity and not an empty formality. If necessary, the Collector shall also make further enquiries and give final recommendations based on due application of mind.[12] If it is found that there has been total and utter non-compliance with Section 5A, thereby causing severe prejudice to the landowner, the Court shall give such affected person an appropriate remedy and, if feasible, even vitiate the acquisition proceedings.

19. Having understood the nuances of Section 5A, we shall now proceed to analyse each issue separately.

D.1. Maintainability of the respondents' challenge

D.1.1. Respondents who have not filed objections

20. The High Court has vitiated the acquisition proceedings on the premise that the hearing accorded under Section 5A was ineffective. NOIDA's grievance is that the High Court has jumped to such a conclusion without taking notice of the fact that some of the writ petitioners had never lodged their objections. Having failed to avail the remedy under Section 5A, such landowners cannot be heard to say that they were deprived of personal hearing or that their objections were disposed of without any application of mind.

21. We find merit in NOIDA's contention. We say so for this reason that while Section 5A(1) gives a "person interested" the right to file objections, Section 5A(2) affords only an "objector" the right to be heard. Given this conscious departure in the use of the terminology, a person cannot claim hearing as a matter of right under Section 5A(2) unless he has filed objections. This is what has been precisely held by this Court in ***Talson Real Estate (P) Ltd. v. State of Maharashtra***,[13] observing that:

12 *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627, para 9.

13 *Talson Real Estate (P) Ltd. v. State of Maharashtra* (2007) 13 SCC 186, para 15

> *"15. […] In the present case, as noticed above, the respondents have wholly complied with the requirements of the provisions of law. The appellant Company has not brought on record any iota of evidence to show that the abovenamed newspapers are not widely circulated in the locality where the land, in question, was situated. The High Court has rightly come to the conclusion that the provisions of Section 45 of the Act will not be attracted in cases where there is no obligation cast upon the authorities to issue notice to the persons interested once it is clear that* ***neither Section 4 nor Section 5-A of the Act contemplates any personal notice to the person interested other than the objectors for the purpose of conducting inquiry under Section 5-A of the Act****. Therefore, the question of applicability of Section 45 in the case of the appellant Company would not arise at all as the appellant Company had not filed any objection under Section 5-A to the acquisition proceedings consequent to the issuance of notification under Section 4 of the Act."*
>
> [emphasis supplied]

22. There is no gainsaying that a "person interested" under Section 5A(1), can seek annulment of the acquisition process if no opportunity to file objections, is accorded. However, such person cannot seek hearing as a statutory right unless has lodged the objections. Notably, the respondents' case is not that the objections were improperly invited. Rather, their grievance is that the notices of hearing were clumsily issued and the objections were mechanically rejected. It seems to us that even if their contention is factually correct, such a plea can be availed by those landowners only who had filed objections under Section 5A. An interested person who fails to file objections, is deemed to have acquiesced to the acquisition. The maxim *'Omnia Consensus Tollit Errorem',* i.e., every assent removes error, will thus be squarely attracted for such owners. Similarly, it is also not permissible for a landowner to contend that the Collector failed to apply his mind to objections, which were never filed before him in the first place.[14]

14 *Delhi Admn. v. Gurdip Singh Uban* (2000) 7 SCC 296, para 30

23. In our considered opinion, the High Court fell in error while allowing the claim of even those landowners who did not invoke their remedy under Section 5A(1) of the 1894 Act. We may, however, hasten to add that the High Court could still have invalidated the acquisition *qua* these landowners also had it found a reason going to the very root of the entire acquisition. For instance, where the 'public purpose' of acquisition is conspicuously absent, or the acquisition process is an outcome of colorable exercise of power of eminent domain, all the landowners, even if they had not filed objections, can seek annulment of the declaration issued under Section 6 of the 1894 Act. However, no such plea was taken in the instant batch of cases except that the procedure contemplated under Section 5A was deflated. Such objections were surely personal to the landowners, as they sought individual exemption on the plea that they have raised residential constructions on their land under acquisition. Since it is a ground specific to each property, the High Court was wrong to grant the benefit *en masse* and quash the entire declaration issued under Section 6 of the 1894 Act.[15]

24. It may be noted at this stage that the respondents in Civil Appeals No. 8055, 8056, 8058, 8059, 8060, and 8062 of 2019 have not been able to demonstrate that they ever filed objections under Section 5A of the Act. In most instances, the objections have not been produced, and the respondents have mentioned inconsistent dates of their filing. Further, while objections have been produced in Civil Appeal No. 8058 and 8059 of 2019, they precede the date of publication of the notification under Section 4 of the 1894 Act. Since these respondents could not show as to how they became aware of the acquisition proceedings, more so when NOIDA has cogently contested the veracity of such objections, we find it difficult to accept the respondents' stance with reference to the issue discussed hereinabove.

D.1.2. Locus of the Respondents who are subsequent purchasers

25. The second sub-issue regarding maintainability of the respondents' claim stems from the fact that a few of them are stated to have purchased their lands after the notification under Section 4 of the 1894 Act was issued. The short question that falls for consideration

15 *Delhi Admn. v. Gurdip Singh Uban* (2000) 7 SCC 296, para 53 and 54; *Abhey Ram v. Union of India* (1997) 5 SCC 421, para 13; *V. Chandrasekaran v. Administrative Officer* (2012) 12 SCC 133, para 24

is whether such landowners have *locus standi* to seek abrogation of the acquisition proceedings.

26. This issue is no longer *res-integra*. This Court has, in a wide range of judicial pronouncements, held that the notification issued under Section 4 of the 1894 Act creates an impediment on the transfer of title in a property.[16] The subsequent purchasers do not acquire an unencumbered title over the property and they deliberately run the risk of securing a defective title. The axiom that 'a public right cannot be altered by the agreement of private persons', will thus clog their right to raise objection against the acquisition.

27. We may usefully cite ***Rajasthan State Industrial Development & Investment Corpn. v. Subhash Sindhi Coop. Housing Society***,[17] in this context which summed up the past precedents observing that:

> *"13.* ***There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 notification in respect of the land, cannot challenge the acquisition proceedings****, and can only claim compensation as the sale transaction in such a situation is void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. (Vide Gian Chand v. Gopala [(1995) 2 SCC 528] , Yadu Nandan Garg v. State of Rajasthan [(1996) 1 SCC 334 : AIR 1996 SC 520], Jaipur Development Authority v. Mahavir Housing Coop. Society [(1996) 11 SCC 229], Jaipur Development Authority v. Daulat Mal Jain [(1997) 1 SCC 35], Meera Sahniv. Lt. Governor of Delhi [(2008) 9 SCC 177], Har Narain v. Mam Chand [(2010) 13 SCC 128 : (2010) 4 SCC (Civ) 793] and V. Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136: JT (2012) 12 SC 260].)"*
>
> [emphasis supplied]

16 *Meera Sahni v. Lt. Governor of Delhi* (2008) 9 SCC 177

17 [2013] 4 SCR 978 : (2013) 5 SCC 427, para 13

28. Those respondents who clandestinely got executed sale deeds with or without collusion with the Registering Authorities after the acquisition process had commenced and/or whose names were not recorded in the revenue records before issuance of notification under Section 4 of the Act, are thus denuded of any cause of action under Section 5A to object against the acquisition proceedings. In the present batch, NOIDA has taken a categorical and unrebutted stand that respondents in Civil Appeals Nos. 8057, 8062, and 8064 of 2019 fall under this category. That being so, no cause of action ever accrued in favour of the respondents in these cases to invoke writ jurisdiction of the High Court.

D.1.3. Respondents who have accepted the compensation

29. In addition to the plea that several landowners did not file objections and/or are subsequent purchasers, NOIDA/State have contended that some of the respondents had filed objections, but subsequently, they accepted compensation without any demur. Indeed, it is largely undisputed that Respondent No. 1 in the lead case was paid INR 1.54 cr. on 28.11.2016, and the balance amount of INR 2.61 cr. was deposited with District Judge, Gautam Budh Nagar under Section 31 of the Act on 05.12.2016. Similarly, in Civil Appeal 8050 of 2019, the landowner was paid INR 5.81 cr. on 04.07.2016. On this plank, it was strenuously urged on behalf of NOIDA/State that such of the landowners who have accepted compensation, partly or fully, without any protest, are estopped by their act and conduct from pursuing their objections under Section 5A. Secondly, possession of the acquired properties having been taken through the possession letters dated 20.06.2016, and the acquisition process being complete in all respect, the issue of procedural lapses under Section 5A has been rendered infructuous.

30. As regard to the question whether the landowners can still pursue their claims under Section 5A, we are of the considered opinion that NOIDA or the State can draw no milage out of the fact that possession of the acquired land had since been taken. We say so for the reason that the landowners cannot forcibly resist the delivery of possession to the beneficiary, namely, NOIDA. Such a state action cannot impinge upon their legal right to challenge the acquisition for non-compliance of the procedure prescribed under Section 5A. However,

if a landowner receives compensation volitionally subsequent to filing of the objections under Section 5A and does not preserve the right to pursue such objections, it may constitute a valid ground to implied consent to the acquisition. Having once acquiesced so, a landowner cannot be permitted to do a *volte-face* and re-agitate the objections.[18] If we were to hold otherwise, it would open a Pandora's Box where the landowners will, on one hand, seek re-enquiry of their claims under Section 5A and, on the other, will also draw the compensation. There would, thus, be no finality to the proceedings, and the acquisition process would be tainted by uncertainty and unpredictability. This would further have a chilling effect on the development projects, since the looming threat of potential litigation and exemptions from acquisitions would discourage the State from investing huge amounts and incurring development costs.

31. The respondents in Civil Appeals Nos. 8048 and 8050 of 2019 are, therefore, liable to be non-suited on the ground that they have accepted compensation without any protest.

32. We may in all fairness also deal with the contention of the respondents in Civil Appeal No. 8048 of 2019, who admittedly received the compensation but claim that it was part of a settlement wherein NOIDA purportedly agreed to exempt the land from acquisition. It was argued that since this settlement was not honoured by NOIDA, the acceptance of compensation cannot be fatal to their case. However, no such settlement has been produced on record by the respondents. Their claim is not substantiated by any document on record, hence their explanation is devoid of any merit.

33. Similarly, the respondents in Civil Appeal 8050 of 2019 have also not disputed the receipt of compensation, but they are said to have not been paid the full amount. In contrast, NOIDA has furnished detailed information, including the calculation chart and payment record. Be that as it may, there lies an independent remedy in law to recover the balance amount of compensation, if any. Once these respondents have received a substantial part of the compensation amount, their cause to pursue objection has eclipsed.

18 *Kailash N. Dwivedi v. State of U.P.* (2011) 15 SCC 98, para 14.

34. The respondents have relied upon ***Gajraj v. State of U.P.***,[19] in which a Full Bench of the High Court held that accepting the compensation would not amount to acquiescence. Since the cited decision was affirmed by this Court in ***Savitri Devi v. State of U.P.***,[20] the respondents have argued that acceptance of compensation by some of them, does not attract principles like estoppel or acquiescence. A closer examination of the ***Savitri Devi (supra)***, however, unfolds that this Court has affirmed our foregoing analysis:

> *"42. We have to keep in mind that in all these cases, after the land was acquired, which was of very large quantity and in big chunks, further steps were taken by passing the award, taking possession and paying compensation. In many cases, actual possession was taken and in rest of the cases, paper possession was taken where because of the land under abadi, actual possession could not be taken on spot immediately.* ***Fact remains that in many such cases where possession was taken, these landowners/ appellants even received compensation. All these petitions have been filed only thereafter which may not be maintainable stricto sensu having regard to the law laid down by the Constitution Bench of this Court in Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285: AIR 1974 SC 2077] and the dictum of this judgment is followed consistently by this Court in various cases*** *(see Murari v. Union of India [(1997) 1 SCC 15], Ravi Khullar v. Union of India [(2007) 5 SCC 231] and Anand Singh v. State of U.P. [(2010) 11 SCC 242 : (2010) 4 SCC (Civ) 423])."*
>
> [emphasis supplied]

35. In ***Savitri Devi (supra)***, this Court considering the peculiar circumstances and the intent of the High Court's order to provide increased compensation, seconded the grant of that relief in the larger public interest.[21] This is explicitly observed by this Court noting that:

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19 W.P. No. 37443/2011.

20 [2015] 7 SCR 512 : (2015) 7 SCC 21

21 Ibid, para 43 and 46.

> *"50. Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution.* ***However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/ specific background and, therefore, it would not form precedent for future cases."***
>
> [emphasis supplied]

36. Having held so, we further find that there are several respondents in this batch of appeals who had raised the objection; did not accept any compensation; and their names were duly recorded in the land records when the notification under Section 4 of the 1894 Act was published. Since each one of them has an indefeasible right to seek compliance of the procedure engrafted under Section 5A, we shall now proceed to analyse whether the Collector faithfully complied with the said provision in these cases.

D.2. Compliance with Section 5A of the 1894 Act

37. It may be recapitulated that according to the High Court, the Collector failed to adhere to the mandate of Section 5A as no record of authenticity as to how effectively the Gram Pradhan intimated all tenure holders, was produced. This was sufficient to infer that the respondent-landowners were not properly informed the date of personal hearing; their objections were treated as an empty formality since the Collector disposed them by consolidating in groups; and there are doubts about the procedural fairness as the Collector attempted to rectify an earlier order by issuing a corrigendum. To ascertain whether the High Court rightly attained these conclusions, we shall deal with each of these issues separately.

D.2.1. Presumption regarding notices not being served

38. It is timeworn law that the person who submits objections under Section 5A must be accorded an opportunity of personal hearing. Such a hearing must precede with an advance notice served upon the objector. As a necessary corollary, the failure to serve the notice would be sufficient to infer the defiance of Section 5A of the 1894 Act. Consequently, the acquisition process would be liable to be hammered.

39. However, it is essentially a question fact as to whether or not an advance notice of hearing has been served upon an "objector". Where the Collector has taken a specific stand that notices were duly served upon the persons concerned and the record of service of such notices has been duly maintained, the statutory presumption inscribed under Section 114 of the Evidence Act shall be drawn, which *inter alia* provides that the Court may presume the existence of facts, including "*that judicial and official acts have been regularly performed*".

40. The rule of statutory presumption is a well-rooted principle in Common Law and founded upon the dictum '*omnia praesumuntur rite esse acta',* namely, that the act can be presumed to have been rightly and regularly done. The Court would presume that the official act was done rightly and effectively and the burden to prove contrary lies on the party who disputes the sanctity of such act. The High Court unfortunately misconstrued this legal proposition while observing that there should be a presumption regarding notices not being served on the respondents.

41. The onus thus lay on the landowners to demonstrate that the issuance or service of notices was inefficacious. The official record suggests that several landowners were present at the hearings on 25.04.2014 and 05.06.2014, and the proceedings were further postponed at their request. Had the notices not been served, these landowners could not have been aware of the date of hearing or attended such proceedings. Given their presence at the time of hearings, it can be safely inferred that they were duly served. The burden to prove otherwise on the respondents, which they have failed to discharge.

42. In the absence of any allegation of *mala fide* exercise of power, the vague and overly broad claim of being unaware of the acquisition proceedings taken by the respondents during the course of hearing cannot be countenanced. This is especially noteworthy that only a small fraction of landowners have contested the acquisition, with nearly 90% not objecting to the proceedings. We are thus satisfied that the proceedings carried out under Section 5A ought not to have been set at nought on this ground.

43. We may also hasten to add that even where the notices were not served as per the procedure known in law, that by itself may not vitiate the acquisition proceedings unless it is shown that severe

prejudice was caused to the landowners. This Court, in ***Tej Kaur v. State of Punjab***,[22] viewed that even when there was no material to show that the landowner was heard, it would not invalidate the acquisition proceedings because the objections were duly considered:

> *"6. It is true that Section 5-A inquiry is an important stage in the acquisition proceedings and a person who is aware of Section 4(1) notification can raise objection to the effect that his property is not required for acquisition and he is also at liberty to raise the contention that the property is not required for any public purpose. It is also true, that the objector must also be given a reasonable opportunity of being heard and any violation of the procedure prescribed under Section 5-A would seriously prejudice the rights of the owner of the property whose land is sought to be acquired.* ***In the instant case, however, it is pertinent to note that the Collector had, in fact, conducted the Section 5-A inquiry, though there is no material on record to show that the appellants in Civil Appeal No. 66 of 1998 were heard in person. The facts and circumstances of Civil Appeal No. 66 of 1998 clearly show that the objection raised by the appellants was considered and partly allowed by the Collector.*** *About eight acres of land was sought to be acquired from the appellants as per the notification, but out of that, an extent of six acres was excluded from acquisition and only one-and-a-half acres of land was actually acquired by the authorities.* ***This would clearly show that the objection filed by the appellants was considered by the Collector****."*
>
> [emphasis supplied]

44. Although ***Taj Kaur*** ***(supra)*** does support the NOIDA/State with reference to the issue of compliance of Section 5A in its letter and spirit, we need not dependent on the said reasoning in the instant case in view of overwhelming material on record which shows that the procedure as mandated by Section 5A has been substantially complied with. We shall now accordingly, analyse whether the Collector had disposed of the objections fairly and effectively?

22 [2003] 2 SCR 707 : (2003) 4 SCC 485, para 6.

D.2.2. Effectiveness of disposal of objections

45. In this regard, the High Court has held that the Collector disposed of the objections improperly by a Common Order after grouping them, instead of evaluating merit of each claim separately.

46. The Collector undoubtedly decided 47 objections by clubbing them into five groups. However, such grouping was done keeping in view the similarities of contents and the fact that they pertained to the same parcel of land. For instance, Objection Nos 1, 17, 30, and 31 were grouped because they pertained to the same land, i.e., Gata No. 448 and 449, and had a common concern regarding existing construction on that land. Wherever the objections were distinct in nature, such as Objection No. 25 (which was regarding the quantum of compensation), the same was considered and decided separately.

47. Since the objections were classified because of the similarity of substance, it was plausible to group them together and dispose of by way of a Common Order.[23] If we were to endorse the High Court's view on this point, it would lead to sheer wastage of time and energy that would be spent in duplicating the recommendations for each individual objection. Moreover, this might be nearly impossible in some cases, such as the one mentioned in ***Aflatoon v. Lt. Governor of Delhi***,[24] where more than 6000 objections were filed under Section 5A. It will be preposterous to say that objections cannot be consolidated even when they are similar or that the Collector must undertake the daunting—and at the same time unnecessary—task of disposing of thousands of objections separately. Let us appreciate that it will serve no public purpose.

48. The High Court has thus erroneously held that the objections were disposed of cryptically merely because they were grouped. Had the respondents substantiated that the consolidation was done arbitrarily, impairing the fairness in adjudication, then only it could be said that each objection ought to have been dealt with separately.

49. We, however, find from the record that some of the objections have ostensibly been left out from the aforementioned five groups. For instance, the objection filed by the respondent in Civil Appeal No.

23 *Women's Education Trust v. State of Haryana*, (2013) 8 SCC 99, para 33.

24 *Aflatoon v. Lt. Governor of Delhi* (1975) 4 SCC 285, para 13.

8053 of 2019 was summarised as Objection No. 22, but have not been included in any of the groups *per se* while disposing it off. Similar is the case with the objections in Civil Appeals Nos. 8054 and 8061 of 2019, which were mentioned as Objection No. 23 and 8, respectively, in the Collector's report but were not included in any of the groups.

50. This would nevertheless lead to no legal implications. We say so for the reason that the Collector first summarized each of these objections separately, and noted that the objectors have sought exemption of their land on the ground of it being an '*abadi*' area. Thereafter, the Collector went on to reject this plea, albeit while disposing of other objections. He specifically observed that the lands claimed to be '*abadi*' merely have temporary and illegal constructions, and no person is residing there. Finally, the Collector noted that all the objections are disposed of "in aforementioned terms". The objections that were left out from the groups are also squarely covered by the above-cited reasoning.

51. In addition to what has been found on facts, it seems to us that the absence of a formal rejection order in the case of a few objections would not *per se* vitiate the acquisition proceedings for two reasons. Firstly, the non-consideration of such objections is inconsequential, because even if it was an '*abadi*' land, there is nothing in law that bars the State Government from acquiring the same. Instead, the exemption of such lands from the acquisition is a matter of State Policy and depends on the government's discretion.[25] If the State Government opines that the land is needed for a larger public purpose and development projects, such land can be acquired, notwithstanding the fact that it was a residential property.

52. Secondly, it is an admitted position that the acquisition proceedings in the instant case have nearly attained finality. Most landowners (i.e., 185 out of 210) have accepted compensation and, as discussed previously in ***Section D.1.3. (supra)***, are deemed to have acquiesced to the acquisition process. Subsequently, significant investment has been made into the development projects conceptualised there. Accepting the respondents' claim would require turning back the clock, which would adversely impact the larger public interest. In

25 *Anand Buttons Ltd. v. State of Haryana*, (2005) 9 SCC 164, para 13.

some cases, reversal of small pockets of land might be impossible also since they may lie in the middle of large development projects. In such peculiar circumstances, even if we accept that a handful of respondents did not get a fair enquiry under Section 5A, the same may not be a sufficient ground to annul the acquisition process as substantial compliance has already been made.

53. In ***Anand Singh v. State of U.P.***,[26] this Court held that:

> *"56.* ***In the written submissions of the GDA, it is stated that subsequent to the declaration made under Section 6 of the Act in the month of December 2004, award has been made and out of the 400 landowners more than 370 have already received compensation****. It is also stated that out of the total cost of Rs. 8,85,14,000 for development of the acquired land, an amount of Rs. 5,28,00,000 has already been spent by the GDA and more than 60% of work has been completed. It, thus, seems that barring the appellants and few others all other tenure-holders/landowners have accepted the "takings" of their land.* ***It is too late in the day to undo what has already been done. We are of the opinion, therefore, that in the peculiar facts and circumstances of the case, the appellants are not entitled to any relief although dispensation of enquiry under Section 5-A was not justified****."*
>
> [emphasis supplied]

Somewhat similar view has been taken by this Court in ***Om Prakash v. State of U.P.***[27] and ***M.S.P.L. Ltd. v. State of Karnataka***.[28]

D.2.3. Issuance of the corrigendum

54. Lastly, the High Court has held that the Collector wrongly issued a corrigendum to its previous order on 03.07.2014, which had raised suspicion on the fairness of the proceedings. A perusal of the corrigendum, however, suggests that it was largely insignificant as it merely contained the record of proceedings held before the hearing

26 [2010] 9 SCR 133 : (2010) 11 SCC 242, para 56.

27 [1998] 3 SCR 643 : (1998) 6 SCC 1, para 30.

28 [2022] 14 SCR 591 : 2022 SCC OnLine SC 1380, para 48.

on 03.07.2014. The corrigendum mentioned that the proceedings were postponed on 10.02.2014 since the decision on the implementation of the 2013 Act was awaited. Subsequently, after the proceedings were adjourned on multiple dates, the matter was finally posted for hearing on 03.07.2014.

55. It appears that the only purpose of the corrigendum was to bring further clarity into the ongoing process and not to tinker with the merits of the objections. There is nothing in the contents of the corrigendum to draw adverse inference or doubt the fairness of the procedure followed for deciding the objections.

E. Conclusion and Directions

56. For the afore-stated reasons:

(a) the appeals are allowed; the impugned main judgment dated 05.01.2017 of the High Court as well as all other judgments following the said judgment, which are under challenge in this batch of appeals, are hereby set aside;

(b) consequently, the writ petitions filed by the respondents on the ground that there is non-compliance of the procedure mandated by Section 5A of the 1894 Act are hereby dismissed without any order as to costs;

(c) the compensation amount, if already not paid, fully or partly, as per the award of the Collector, shall be paid to the respondents and other land-owners along with interest at the statutory rate within 4 weeks;

(d) the payment or receipt of compensation by the respondents shall be without prejudice to their right to seek further enhancement in compensation in accordance with provisions of the 2013 Act;

(e) with a view to remove any ambiguity and to prevent avoidable future litigation, it is clarified that since the 2013 Act came into force while the land acquisition process was still pending, the respondents and other land-owners/tenure holders are entitled to be paid compensation in accordance with Section 24(1) read with other relevant provisions of the 2013 Act; and

(f) since the respondents have been pursuing their objections filed under Section 5A of the 1894 Act in a *bona-fide* manner,

they shall be entitled to seek reference, if already not filed, for further enhancement of compensation and the limitation period for filing such reference shall commence from the date of pronouncement of this order.

57. All the matters stand disposed of in the aforementioned terms.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 7 S.C.R. 1031 : 2024 INSC 519

Rohini Sudarshan Gangurde
v.
The State of Maharashtra & Anr.

(Criminal Appeal No. 2877 of 2024)

10 July 2024

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

Issue for Consideration

Whether the alleged conduct of the appellant-accused in the nature of marital disputes attracts s.306 IPC read with s.107 IPC.

Headnotes†

Penal Code, 1860 – Ss. 306, 107 – Appellant is wife of deceased who committed suicide – Appellant and deceased resided in house jointly purchased by them – Cause of death 'due to hanging' – FIR lodged by mother of deceased under s. 306 IPC – Alleging deceased committed suicide because of harassment and beating by appellant on account of demand of money and for transfer of dwelling house in her name – Appellant allegedly also sent vulgar messages on mobile phone of deceased and would insist on him not visiting his parents and giving them money – Statement of colleague of deceased recorded wherein she referred to an incident when the appellant visited deceased and created a ruckus in the office by rushing towards him and being abusive – Chargesheet against appellant under section 306 of IPC – As per the chargesheet, offence took place at dwelling house where appellant harassed the deceased on account of money and for transfer of house in her name, inducing the deceased for attempt of suicide – Appellant preferred a discharge application before Trial Court – Trial Court rejected appellant's discharge application – High Court dismissed the revision application against the Trial Court's order.

Held: S.306 IPC must be read with s.107 IPC that explains the meaning of "abetment" – s.107 IPC lays down three criteria for abetment: there must be either an instigation, or an engagement or intentional aid to 'doing of a thing' – Applying these criteria to s.306 means the accused must have encouraged the person to

* Author

commit suicide or engaged in conspiracy with others to encourage the person to commit suicide or acted (or failed to act) intentionally to aid the person to commit suicide – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained – There must be clear *mens rea* to commit the offence – There must be an active/direct act leading the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide – Court must scrupulously examine facts and circumstances of the case and assess evidence adduced before it to find out whether the cruelty and harassment meted out left the victim with no other alternative but to put an end to life – Mere allegation of harassment without any positive action proximate to time of occurrence which led or compelled the person to commit suicide not enough to sustain conviction under s.306 IPC – For requirement of "instigation", not necessary that actual words be used to that effect, yet a reasonable certainty to incite the consequence must be capable of being spelt out – In a case where accused has, by acts or omission or by a continued course of conduct, created such circumstances that deceased was left with no other option except to commit suicide, "instigation" may be inferred – A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation – On facts, court found the three ingredients of s.306 r/w s.107 IPC not present – No proximate link between marital dispute of deceased with appellant and the commission of suicide – No active role or positive or direct act to instigate or aid the deceased in committing suicide – No allegation of suggesting the deceased to commit suicide at any time prior to commission of suicide. [Paras 7-14]

Case Law Cited

S.S. Chheena v. Vijay Kumar Mahajan [2010] 9 SCR 1111 : **[2010] 12 SCC 190;** *Amalendu Pal v. State of W.B.* [2009] 15 SCR 836 : **[2010] 1 SCC 707;** *Ramesh Kumar v. State of Chhattisgarh* [2001] Supp. 4 SCR 247 : **[2001] 9 SCC 618 – relied on**

Gurucharan Singh v. State of Punjab [2020] 8 SCR 741 : **[2020] 10 SCC 200 – referred to**

List of Acts

Penal Code, 1860

Rohini Sudarshan Gangurde v. The State of Maharashtra & Anr.

List of Keywords

Penal Code, 1860; S.306 IPC; S.107 IPC; Abetment of suicide; Abetment; Instigation; Proximate link; Marital dispute; Harassment; *mens rea*.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2877 of 2024

From the final Judgment and Order dated 05.09.2023 of the High Court of Judicature at Bombay in CRLRA No. 410 of 2022

Appearances for Parties

Anand Dilip Landge, Paras Yadav, Mrs. Sangeeta. S. Pahune. Patil, Advs. for the Appellant.

Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, K.K.L. Gautam, Ms. Vaishali Nariyala, Manoj Sharma, Madan Sagar, Rajbeer, Sanjeev Malhotra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. This appeal is preferred by the accused Appellant-Rohini Sudarshan Gangurde challenging the impugned order of Bombay High Court dated 05.09.2023 in Criminal Revision Application No. 410 of 2022. By this order the High Court has dismissed the Revision Application filed by the Appellant against the order of the Trial Court dated 24.02.2022. The Trial Court had rejected the discharge application of Appellant for her discharge from the offence under Section 306 of Indian Penal Code, 1860.[1]

3. Facts of the case are summarised as follows:

1 In short, 'IPC'

3.1 Appellant is the wife of deceased Sudarshan Gangurde, who hanged himself to death on 17.02.2020 in his house. The appellant wife is accused of abetment to suicide and was thus charged under Section 306 of IPC. The complaint was filed by Smt. Usha Gangurde, mother of deceased alleging physical and mental harassment by the accused.

3.2 Appellant Rohini and deceased Sudarshan had a love affair which turned into marriage on 09.03.2015 against the will of family members of both of them. The couple started residing separately at Shingnapur in Kolhapur. From the wedlock one male child Shoren was born on 27.05.2017. The couple had jointly purchased a Row House flat at Shingnapur where they were residing when the incident took place. The parents and family members of the deceased were residing at Mumbai. The deceased was serving in CPR Hospital at Kolhapur as Social Service Superintendent. He was on visiting terms with his parents.

3.3 On 17.02.2020, the deceased aged 38 years, was found in hanging position by the accused wife in the balcony of common house they were residing at in Shingnapur. The neighbors informed the police. No suicide note was found. The post mortem report found no signs of injuries on the body of deceased. The cause of death is noted to be 'due to hanging'.

3.4 On the same day, First Information Report bearing No. 74/2020 was lodged by the mother of deceased- Smt. Usha Gangurde against the appellant under Section 306 of IPC, alleging that her son committed suicide due to harassment and beating by his wife Rohini on account of demand of money and for transfer of the dwelling house at Shingapur in her name. She further stated that when her son visited her, he also told her that his wife was abusing and beating him, insisting on him not to visit his parents and not to give them money. When her husband-Ashok Gangurde stayed at the house of deceased in May 2019, he told her that accused Rohni was beating and abusing her son for money and transfer of house in her name. Due to these disputes, Rohini was residing separately from the deceased in her parent's house at Sangali. The complainant further stated that accused was sending vulgar messages on mobile phone

of the deceased. All this allegedly resulted in commission of suicide by the deceased.

3.5 Apart from the complainant, statement of one of the colleagues of the deceased Ujwala Sawant was also recorded. She referred to an incident dated 17.10.2019 when the appellant visited deceased and created a ruckus in the office by rushing towards him on being abusive. The incidence was corroborated by another colleague Mr. Bajirao Apte.

3.6 On the other hand, as per the statement of Appellant Rohini, her husband was addicted to liquor and there were quarrels between them on that ground. They tried to patch up as the deceased had assured to give up his habit to consume liquor. On this condition they resumed co-habitation. However, the deceased could not overcome the habit and started to drink more. It is argued by the counsel for Appellant that the deceased may have committed suicide out of frustration.

3.7 On 04.11.2020, the police filed the Charge-sheet against appellant under section 306 of IPC. As per the Charge-sheet, the offence took place on 17.02.2020 between 7.00 to 7.30 AM at the dwelling house in Shinganapur, where the accused harassed the deceased on account of money and for transfer of house in her name, inducing the deceased for attempt of suicide.

4. Based on the charge-sheet, the Sessions Case No. 100 of 2021 is registered and pending for adjudication before the Sessions Court at Kolhapur. On 02.12.2021, the Appellant-accused preferred a discharge application before Trial Court. On 24.02.2022, the Trial Court rejected the application. Aggrieved, the appellant preferred Criminal Revision Application before the High Court. The High Court, by the impugned order, has dismissed the Revision and thus effectively dismissed the discharge application. Therefore, the Appellant has challenged it before us.

5. The appellant has filed the present appeal on several grounds *inter alia*, that there is no evidence showing an active role played by Appellant which has abetted the commission of suicide. Further, the dwelling house was jointly purchased by the Appellant and the deceased and therefore there was no question of insisting to transfer the house in the name of Appellant. Neither the deceased, nor his

family members have raised the grievance against alleged harassment before the authorities, until the suicide. Thus, the appellant states that all allegations are fake and frivolous.

6. On the other hand, learned counsel for the respondent submitted that the ingredients essential for the offence under Section 306 IPC were clearly made out from the evidence collected during the investigation and as such the High Court has rightly dismissed the petition.

7. Having heard the arguments of both the counsels and after perusing the record, we find that the only question that needs to be determined in the instant case is whether the alleged conduct of the appellant-accused *prima facie* attracts Section 306 of IPC, to continue the proceedings of Trial Court against the appellant.

Section 306 and Section 107 of IPC read as:

> ***"306. Abetment of suicide-***
>
> *If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
>
> It must be read with Section 107 of IPC which explains the meaning of Abetment, which reads as:
>
> ***107. Abetment of a thing-***
>
> *A person abets the doing of a thing, who—*
>
> *First.—Instigates any person to do that thing; or*
>
> *Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.*
>
> *Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

> *Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."*

8. Reading these sections together would indicate that there must be either an instigation, or an engagement or intentional aid to 'doing of a thing'. When we apply these three criteria to Section 306, it means that the accused must have encouraged the person to commit suicide or engaged in conspiracy with others to encourage the person to commit suicide or acted (or failed to act) intentionally to aid the person to commit suicide.

9. In **S.S. Chheena v. Vijay Kumar Mahajan**,[2] this court explained the concept of abetment along with necessary ingredient for offence under Section 306 of IPC as under:

> "25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

10. In ***Amalendu Pal v. State of W.B.***,[3] this court explained the parameters of Section 306 in following words:

> "12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether

2 [2010] 9 SCR 1111 : (2010) 12 SCC 190

3 [2009] 15 SCR 836 : (2010) 1 SCC 707

> the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.
>
> 13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

11. In ***Ramesh Kumar v. State of Chhattisgarh***,[4] while explaining the meaning of 'Instigation', this court stated that:

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

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

12. These principles and necessary ingredients of Section 306 and 107 of Indian Penal Code were reiterated and summarized by this court in recent case of ***Gurucharan Singh vs State of Punjab***.[5]

13. After carefully considering the facts and evidence recorded by the courts below and the legal position established through statutory and judicial pronouncements, we are of the view that there is no proximate link between the marital dispute in the marriage of deceased with appellant and the commission of suicide. The prosecution has failed to collect any evidence to substantiate the allegations against the appellant. The appellant has not played any active role or any positive or direct act to instigate or aid the deceased in committing suicide. Neither the statement of the complainant nor that of the colleagues of the deceased as recorded by the Investigating Officer during investigation suggest any kind of instigation by the appellant to abet the commission of suicide. There is no allegation against the appellant of suggesting the deceased to commit suicide at any time prior to the commission of suicide by her husband.

14. Thus, none of the three essentials of Section 107 read with Section 306 IPC are existing.

15. Accordingly, the appeal is allowed. Impugned order of the High Court is set aside. The application for discharge is allowed.

Result of the case: Appeal Allowed.

†*Headnotes prepared by:* Aandrita Deb, Hony. Associate Editor
(Verified by: Shadan Farasat, Adv.)

5 [2020] 8 SCR 741 : (2020) 10 SCC 200

[2024] 7 S.C.R. 1040 : 2024 INSC 574

Nek Pal & Ors.
v.
Nagar Palika Parishad & Ors.

(Civil Appeal Nos. 8038-8039 of 2024)

26 July 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Whether substantial questions of law are required to be formulated at the time of admission of a second appeal under Section 100 of the Code of Civil Procedure, 1908, or at any time subsequent thereto.

Headnotes†

Code of Civil Procedure, 1908 – Section 100 – Substantial question of law:

Held: Unless substantial questions of law are formulated at the time of admission of the appeal, or any time subsequent thereto, a second appeal cannot be finally heard – The reason is that a second appeal can be heard only on a substantial question of law formulated earlier – The act of finally hearing a second appeal without framing any substantial question of law is itself illegal – The High Court could have framed substantial questions of law, and heard the appeal after a few days, so that the Advocates had notice that the appeal will be heard on specific substantial questions of law. [Para 3]

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Formulation of question of law under Section 100 CPC; Substantial question of law for second appeal; Second Appeal.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8038-8039 of 2024

From the Judgment and Order dated 13.11.2017 of the High Court of Uttarakhand at Nainital in SA No. 34 and 48 of 2003

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* Author

Appearances for Parties

C.A. Sundaram, Sr. Adv., Kamaljeet Singh, Sumit Bansal, Udaibir Singh Khochar, Abhishek Gupta, Ms. Tulna Rampal, Ananta Prasad Mishra, Advs. for the Appellants.

Jitendra Mohan Sharma, Sr. Adv., Raju Sonkar, Mrs. Priti Rashmi, Ms. Priya Rastogi, Dharmendra Kumar Sinha, Sunil Prakash Sharma, Kumar Deepraj, Ms. Aditi Lekhi, Vinay Garg, Ms. Neetu Rawat, Upendra Mishra, Vikas Mehta, Mrs. Shashi Kapila, Ankit Vashisht, Pavesh, Shrivandit Mishra, Suraj, Sidharth Yadav, M/s. Anuradha & Associates, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

2. Our attention is invited to the impugned judgment of the High Court in a Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "the CPC"). Following is the relevant part of the impugned judgment:

> "Since no substantial question of law was formulated at the time of admission of the appeal on 30.5.2003, hence having heard the matter partially and during the course of arguments, in the presence of learned Counsels of both the parties, this Court confined itself to adjudicate the following substantial questions of law:
>
> 1. Whether the alleged transaction of the disputed property was void ab initio being the violation of Section 7 of Hindu Public Religious Institution (Prevention of Dissipation of Properties) Act, 1962.
>
> 2. Whether the property was owned by Dera Baba Dargah Singh and was of the religious charitable nature. If it is so, whether it could have been transferred by the self claimed manager Jaswinder Singh in the nature and manner it was transferred?

> 3. Whether both the lower courts have rightly decreed the suit on the basis of Khasra, Khatauni and 'Kisan Bahi' which were issued by the revenue officials in favour of the lease holders."

3. The aforesaid paragraph indicates that at the time of admitting the second appeal under Section 100 of the CPC, substantial questions of law were not formulated. Unless substantial questions of law are formulated at the time of admission of the appeal or any time subsequent thereto, a second appeal cannot be finally heard. The reason is that a second appeal can be finally heard only on a substantial question of law formulated earlier. In fact, the act of finally hearing a second appeal without framing any substantial question of law is itself illegal. There is nothing on record to show that the High Court formulated the substantial questions of law and gave an opportunity to the parties to argue on the basis of those substantial questions of law. All that the High Court says is the Court has confined itself to three substantial questions of law. The High Court did not put the rival Advocates to the notice before the commencement of hearing that it was proposing to hear the appeal on specific substantial questions of law. The High Court could have framed substantial questions of law and heard the appeal after few days so that the Advocates had a notice that the appeal will be heard on specific substantial questions of law.

4. Therefore, the procedure followed by the High Court is completely illegal and contrary to Section 100 of the CPC. Only on this ground, we set aside the impugned judgment dated 13th November, 2017 and restore Second Appeal Nos.34/2003 and 48/2003 to the file of the High Court of Uttarakhand at Nainital. All contentions of the parties on merits of the Second Appeals are kept open.

5. A copy of this order shall be forwarded by the Registry to the Registrar (Judicial) of the High Court of Uttarakhand. The Registrar (Judicial) of the High Court shall list the restored Second Appeals before the roster Bench on 27th August, 2024. The parties, who are appearing today, shall be under an obligation to appear before the High Court on that date. The High Court need not issue a notice to those parties.

6. If the High Court wants to frame substantial questions of law as indicated in the impugned judgment or if the High Court desires to frame additional substantial questions of law, it is open for the

High Court to do so. After completing the said exercise, the High Court shall fix a date for hearing of the Second Appeals taking into consideration the fact that the Second Appeals are 21 years old.

7. We also clarify that till the date of the impugned judgment if any interim relief was operative in the restored Second Appeals, the same shall continue to operate.

8. The Civil Appeals are partly allowed on the above terms.

9. Pending applications, including the application for impleadment, stand disposed of accordingly.

Result of the case: Appeals partly allowed.

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

[2024] 7 S.C.R. 1044 : 2024 INSC 575

Ajay Kumar Bhalla & Ors.
v.
Prakash Kumar Dixit

(Civil Appeal No. 8129-8130 of 2024)

29 July 2024

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

Issue for Consideration

Respondent approached the High Court of Delhi for challenging an order of the DIG (CR&VIG), whereby he was removed from service. The High Court set aside the impugned order; imposed a minor penalty on him; reinstated him without back wages; directed his reinstatement to be dated back to 1995 (when the original order of dismissal was made) for the purposes of pay fixation, seniority and all other consequential benefits including promotions; and also directed the Order to be implemented within 8 weeks. When he was not reinstated within time prescribed and was denied promotion to the eligible rank of IG by the time he superannuated, the Respondent initiated contempt proceedings before a Single Judge in the High Court. The Court was of the opinion that there was willful disobedience on the part of the Appellants in complying with the earlier directions issued by the Division Bench. The Appellants went in Appeal before a Division Bench of the High Court. It was rejected as not maintainable under Section 19 Contempt of Courts Act.

The issue before the Hon'ble Supreme Court was to decide as to when a Letter Patent Appeal lies against an Order of a Single Judge of High Court if such an appeal is not maintainable under Section 19 of The Contempt of Courts Act, 1971.

Headnotes†

Contempt of Courts Act, 1971 – Section 19 – Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others [2006] Supp. 2 SCR 986 – The position w.r.t. appeals against orders in contempt proceedings – Reiterated:

* Author

Held: Para 11 of the judgment in Midnapore Peoples' Coop. Bank Ltd. case sums up the principles in regard to appeals against orders in contempt proceedings, as under:-

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases). [Para 13]

Letter Patent Appeal – Whether it lies in the facts of the case – Principles laid down in Midnapore Peoples' Coop. Bank

Ltd. and Others v. Chunilal Nanda and Others [2006] Supp. 2 SCR 986 applied:

Held: Single Judge in his order held that – (1) the appellants were guilty of contempt of the order; (2) the respondent was entitled to promotion to the rank of IG; and (3) gave an opportunity to the Appellants "to issue a fresh order granting promotion to the petitioner to the rank of IG" to bring him at par with his immediate junior – There is a crystallized finding about the entitlement of Respondents and guilt of Appellants – The finding on Appellants' guilt cannot be challenged under Section 19 Contempt Act at this stage since there is no order imposing punishment – The finding with regard to the entitlement of promotion is amenable to challenge as per principle laid down in Para 11 (V) of the Midnapore Peoples' Coop. Bank Ltd. and Others judgment – Letter Patent Appeal restored. [Paras 15, 17, 18]

Case Law Cited

Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others **[2006] Supp. 2 SCR 986 : (2006) 5 SCC 399 – relied on**

List of Acts

The Contempt of Courts Act, 1971.

List of Keywords

Contempt; Letter Patent Appeal; Reinstatement; Section 19 of Contempt Act.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8129-8130 of 2024

From the Judgment and Order dated 10.05.2024 and 02-06-2023 of the High Court of Delhi at New Delhi in LPA No. 157 of 2024 and CONT.CAS(C) No. 198 of 2020 respectively

Appearances for Parties

Tushar Mehta, Solicitor General, Vikramjeet Banerjee, A.S.G., Siddharth Sinha, Ms. Sansriti Pathak, Astha Singh, Ishaan Sharma, Arvind Kumar Sharma, Advs. for the Appellants.

Sanjoy Ghose, Sr. Adv., Anand Shankar Jha, Rohan Mandal, Abhilekh Tiwari, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. Delay condoned.

2. Leave granted.

3. A disciplinary proceeding was convened against the petitioner for alleged acts of misconduct when he was posted as Officer Commanding B/30 Bn., CRPF. He was removed from service in July 1995.

4. After the appeal against the order of punishment was rejected, the respondent instituted proceedings under Article 226 of the Constitution. For the purpose of present discussion, it is not necessary to deal with all the intervening stages in the proceedings.

5. By an order dated 24 December 2019, the Division Bench of the High Court of Delhi directed that :

> "34 For all of the aforementioned reasons, the order dated 16th October, 2018, passed by the DIG (CR&VIG) in the Directorate General, CRPF, imposing the penalty of removal from service on the Petitioner, is hereby set aside. The minor penalty as decided by the DA viz., "reduction to a lower stage in the scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and adversely affecting pension" will be the penalty in the Petitioner's case.
>
> 35 Consequently, the Petitioner is directed to be forthwith reinstated in service, with all consequential benefits, but without any back wages. The date of reinstatement will relate back to the date of his having been originally removed from service i.e. 10th July 1995, for the purposes of pay fixation, seniority and all other consequential benefits including promotions. The consequential orders by way of implementation of this judgment be issued not later than 8 weeks from today."

6. The respondent instituted contempt proceedings before the High Court of Delhi. He was reinstated in service by an order dated 8 March 2021. The respondent was promoted to the rank of Deputy Commandant on a notional post with effect from 17 October 2021 by an order dated 22 March 2023. He superannuated from service on 31 March 2023.

7. In the course of the hearing of the contempt proceedings, the Single Judge in an order dated 2 June 2023, noted the submission of the respondent that even if the date of implementation of the minor penalty was from 16 October 2018, he would be entitled to all promotions till the rank of IG from 2021 till the date of his retirement on 31 March 2021. This emerges from paragraph 38 of the judgment of the Single Judge, which is in the following terms:

> "38 The Petitioner in his written submissions dated 02.03.2023 had stated that even if the date of implementation of minor penalty is considered to take effect from 16.10.2018, he would be entitled to all promotions till the rank of IG from the year 2021, till his date of retirement, i.e. on 31.03.2023. The learned counsel for the Petitioner had relied upon the said submission during the course of hearing dated 03.03.2023 and submitted that the Petitioner would be satisfied if he is granted the rank of IG as on the date of his retirement.:

8. After recording the above submission, the Single Judge proceeded to hold that there was a willful disobedience of the directions which were issued by the Division Bench with respect to pay fixation, seniority and all other consequential benefits including promotion. The finding in that regard is contained in paragraph 39 of the judgment of the Single Judge, which reads as follows :

> "39 This Court is, therefore, of the opinion that there is willful disobedience by the Respondent(s) of the directions issued by the Division Bench with respect to the implementation of the directions issued at paragraph 35 of the judgment dated 24.12.2019 with respect to pay fixation, seniority and all other consequential benefits including promotion."

9. Thereafter, the Single Judge held the Inspector General of Police (Personnel) and DIG (Personnel) who held office as on 22 March 2023 guilty of contempt of court for willful disobedience of the directions contained in the judgment of the Division Bench dated 24 December 2019. The Single Judge granted an opportunity to the appellants herein in the following terms :

> "41 This Court, however, grants an opportunity of six (6) weeks to the aforesaid Contemnors to issue a fresh order granting promotion to the Petitioner to the rank of IG to bring him at par with his immediate junior as per the merit cum seniority list at the time of the appointment."

10. It was observed that in case the contemnors did not issue appropriate orders granting promotion to the respondent to the rank of IG within the time granted, the case would he heard for sentencing on the next date of hearing.

11. A Letters Patent Appeal was filed before the Division Bench against the order of the Single Judge dated 2 June 2023. The Division Bench, however, rejected the Letters Patent Appeal as not being maintainable on the ground that an appeal under Section 19 of the Contempt of Courts Act would not be maintainable since no punishment had been imposed by the Single Judge and the observations made by the Single Judge were not to be construed as crystallizing any right in favour of the respondent. On this understanding, the Division Bench has observed as follows :

> "52 He submitted that if the observations made by the Court in the impugned judgment are not construed as crystalising any rights in favour of the respondent and are only read as confined to the question whether the appellants have committed any willful disobedience of the order of the Court, the appellants would be satisfied.
>
> 53 In view of our understanding of the impugned judgment as noted above, the learned Single Judge has not decided any dispute regarding the rights and obligations of the parties other than whether the appellants had committed contempt of court. All

observations made by the learned Single Judge must be read only for the purposes of determining whether the appellants had willfully violated the judgment dated 24.12.2019 issued by this Court."

12. The narrow issue which falls for consideration at the present stage is as to whether the Letters Patent Appeal against the order of the Single Judge dated 2 June 2023 was maintainable.

13. The law on the subject is settled by a judgment of a two Judge Bench of this Court in ***Midnapore Peoples' Coop. Bank Ltd. and Others v. Chunilal Nanda and Others.***[1] Paragraph 11 of the decision sums up the principles succinctly as follows :

> "11 The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:
>
> I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.
>
> II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.
>
> III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

1 [2006] Supp. 2 SCR 986 : (2006) 5 SCC 299

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly."

14. Following the decision in ***Midnapore Peoples' Coop. Bank Ltd.***, it is a settled principle that an appeal under Section 19 lies only against an order imposing punishment for contempt.

15. In the order dated 2 June 2023, it has been held that the respondents before the Court, namely, the appellants to these proceedings are guilty of contempt. A Letters Patent Appeal would not be maintainable under Section 19, if the matter were to only rest there. However, from the extracts which have been reproduced in the earlier part of this judgment, it is evident that the Single Judge:

(i) Recorded the submission of the respondent herein (as set out in the written submissions dated 2 March 2023) that even if the implementation of the minor penalty was to take effect from 16 October 2018, he would be entitled to all promotions till the rank of IG from 2021 till the date of his retirement on 31 March 2023; and

(ii) Held that there was willful disobedience of the directions issued by the Division Bench on 24 December 2019 with respect to pay fixation, seniority and all other consequential benefits including promotion.

16. The Single Judge, after recording the submissions as adverted to above, entered a specific finding in paragraph 39 that "this court is therefore, of the opinion that there is willful disobedience" (emphasis supplied). The above finding follows immediately upon the previous paragraph of the order which records the contention of the respondent herein that he was entitled to promotion to the rank of IG, in any event with effect from 2021.

17. Bearing in mind the above finding, the Single Judge gave an opportunity to the appellants "to issue a fresh order granting promotion to the petitioner to the rank of IG" to bring him at par with his immediate junior. Reading the entirety of the order of the Single Judge, it is clear that besides holding that the appellants (who we the respondents before the Single Judge) were guilty of contempt of court, there is a crystallized finding that the respondent herein was entitled to promotion as IG, in any event with effect from 2021.

18. The Division Bench has lost sight of this aspect. The Division Bench, in paragraph 52, noted the submission of the respondent that the judgment of the Single Judge should not be construed as crystallizing any right in favour of the respondent and should only be confined to the question as to whether the appellants herein had committed a willful disobedience of the order of the Division Bench dated 24 December 2019. The Division Bench accepted this submission and observed that "in view of our understanding of the impugned judgment, as noted above, the learned Single Judge has not decided any dispute regarding the rights and obligations of the parties" other than adjudicating on the issue of contempt. The judgment of the Division Bench lost sight of the fact that whether the appeal was maintainable would have to be construed on a plain reading of the judgment of the Single Judge. Two aspects were covered by the judgment of the Single Judge :

Firstly, a finding that the appellants were guilty of contempt of the order dated 24 December 2019; and

Secondly, that the respondent was entitled to promotion to the rank of IG.

The first aspect is not amenable to an appeal under Section 19 at the present stage. The finding that the respondent was entitled to promotion to the rank of IG would be amenable to an appeal in terms of the law laid down by this Court in ***Midnapore Peoples' Coop. Bank Ltd.*** ***(supra)***, more particularly in paragraph 11(V) which has been extracted above.

19. For the above reasons, we set aside the impugned judgment and order of the Division Bench dated 10 May 2024 and restore Letters Patent Appeal 157 of 2024 in Contempt Case No 198 of 2020 together with the associated interlocutory applications to the file of the Division Bench for consideration on merits in terms of the above directions.

20. Mr Sanjay Ghosh, senior counsel appearing for the respondent states that no coercive steps would be taken against the appellants till the next date of listing before the High Court of Delhi.

21. All the contentions of the parties on the merits of the Letters Patent Appeal are kept open.

22. The Delhi High Court may consistent with the exigencies of work, take up the Letters Patent Appeal for expeditious disposal.

23. The Appeals are accordingly allowed in the above terms.

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

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Swathi H. Prasad, Hony. Associate Editor
(Verified by: Kanu Agrawal, Adv.*)*

[2024] 7 S.C.R. 1054 : 2024 INSC 534

Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari
v.
State of Uttar Pradesh

(Criminal Appeal No. 2790 of 2024)

18 July 2024

[J.B. Pardiwala and Ujjal Bhuyan,* JJ.]

Issue for Consideration

High Court whether justified in denying bail to the appellant, an under-trial prisoner prosecuted under Unlawful Activities (Prevention) Act 1967 and Penal Code, 1860 who had been in custody for more than nine years.

Headnotes†

Bail – Denial – When not justified – Constitution of India – Article 21 – Right to speedy trial – Serious charges no ground to deny bail – Unlawful Activities (Prevention) Act, 1967 – SS.16, 43D – Penal Code, 1860 – SS. 489B, 489C – Fake counterfeit Indian currency notes seized from the appellant-accused, a foreign national – In custody as an under-trial prisoner for nine years – Bail denied:

Held: An accused or an undertrial has a fundamental right to speedy trial traceable to Article 21 – If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously – When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious – Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude – In the present case, the appellant has been in custody for more than nine years – Trial likely to take considerable time as only two witnesses have been examined – Impugned order of the High Court set aside and quashed – Appellant granted bail subject to the conditions stipulated. [Paras 22, 34]

Penal Statutes – Statutory restrictions – Constitution of India – Article 21 – Infringement – Duty of constitutional court:

* Author

Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh

Held: Right to life and personal liberty enshrined under Article 21 is overarching and sacrosanct – A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 has been infringed – In that event, such statutory restrictions would not come in the way – Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part – In the given facts of a particular case, a constitutional court may decline to grant bail – But it would be very wrong to say that under a particular statute, bail cannot be granted. [Para 32]

Bail – Denial of bail to an undertrial – Judgment in NIA v. Zahoor Ahmad Shah Watali reported as [2019] 5 SCR 1060 not a precedent to deny bail to an undertrial:

Held: Decision in Zahoor Ahmad Shah Watali has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial. [Para 28]

Case Law Cited

Gurwinder Singh v. State of Punjab **[2024] 2 SCR 134 : (2024) SCC Online SC 109 – distinguished.**

NIA v. Zahoor Ahmad Shah Watali **[2019] 5 SCR 1060 : (2019) 5 SCC 1 – explained.**

Union of India v. K.A. Najeeb **(2021) SCC Online SC 50;** *Javed Gulam Nabi Shaikh v. State of Maharashtra* **[Criminal Appeal No. 2787 of 2024] – relied on.**

Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India **[1994] Supp. 4 SCR 386 : (1994) 6 SCC 731;** *Shaheen Welfare Association v. Union of India* **[1996] 2 SCR 1123 : (1996) 2 SCC 616;** *Angela Harish Sontakke v. State of Maharashtra* **(2021) 3 SCC 723;** *Frank Vitus v. Narcotics Control Bureau,* **Criminal Appeal No. 2814-15 of 2024 – referred to.**

List of Acts

Constitution of India; Unlawful Activities (Prevention) Act, 1967; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Bail; Bail denied; Fake counterfeit currency notes seized; Under-trial prisoner; Long incarceration; Prolonged trial; Article 21 of the Constitution of India; Speedy trial; Fundamental right of accused to speedy trial; Serious offence; Serious charges; Right to life and personal liberty; Restrictive statutory provisions; Penal statute; Constitutional court; Constitutionalism; Rule of law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2790 of 2024

From the Judgment and Order dated 03.04.2023 of the High Court of Judicature at Allahabad, Lucknow Bench in CRMBA No. 2282 of 2021

Appearances for Parties

M.S. Khan, Tripurari Ray, Balwant Singh Billowria, Anirudh Ray, Ms. Qusar Khan, Akshay Singh, Vivekanand Singh, Manu Shanker Mishra, Advs. for the Appellant.

Ms. Garima Prasad, Sr. A.A.G./Sr. Adv., Shaurya Sahay, Shobhit Dwivedi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

Leave granted.

2. Heard learned counsel for the parties.

3. This appeal is directed against the order dated 03.04.2023 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Miscellaneous Bail Application No. 2282 of 2021 (Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of U.P.).

3.1. By the aforesaid order, the High Court of Judicature at Allahabad, Lucknow Bench ('High Court' hereinafter) has rejected the bail application of the petitioner filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) in Crime No. 01 of 2015 registered under Sections 489B and 489C of the Indian Penal Code, 1860 ('IPC' for short) and under Section 16 of the

Unlawful Activities (Prevention) Act, 1967 ('UAP Act' for short) before Police Station ATS, Uttar Pradesh, District Lucknow.

4. This Court by order dated 10.04.2024 condoned the delay in filing the related Special Leave Petition (Criminal) Diary No. 11387 of 2024 and issued notice. On delay being condoned, the case came to be registered as Special Leave Petition (Criminal) No. 5260 of 2024. The matter was heard by the Vacation Bench on 03.07.2024.

5. First Information Report (FIR) was lodged against the appellant by the informant Inspector Tej Bahadur Singh under Sections 121A, 489B and 489C of IPC. It came to be registered as Crime No. 01 of 2015. Informant stated that fake Indian currency notes of the denomination of Rs. 1,000 and Rs. 500, totalling a sum of Rs. 26,03,500.00, were recovered from the possession of the appellant on 22.02.2015 at about 09:10 PM from the Indo-Nepal border. He was apprehended by a constable of the ATS team and brought to the ATS Headquarter. In the course of investigation, the appellant disclosed his name as Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari, resident of Narayani Parsa, Belwa, Nepal. In addition to the fake Indian currency notes, one Nepalese driving licence of the appellant and one Nepalese citizenship certificate also of the appellant were recovered besides two mobile phones. According to the police, appellant had confessed that he was engaged in the illegal trade of supplying counterfeit Indian currency notes in Nepal. The appellant was arrested on 23.02.2015.

6. Appellant had moved a bail application before the Additional Sessions Judge, Special Judge, Lucknow ('trial court' hereinafter) but the same was rejected on 24.08.2016. It was thereafter that the related bail application was filed by the appellant before the High Court which came to be dismissed by the impugned order.

7. At this stage, it may be stated that chargesheet against the appellant under Section 489B and 489C IPC was filed by the prosecution on 19.08.2015. Supplementary chargesheet under Section 16 of the UAP Act was filed on 26.08.2015. It was mentioned therein that the Hon'ble Governor had granted sanction on 25.08.2015 to prosecute the appellant under Sections 489B and 489C IPC read with Section 16 of the UAP Act, as amended. Before the trial court, the case came to be registered as Case No. 940 of 2015.

8. The trial court considered the chargesheet as well as the discharge application filed by the appellant and by the common order dated 27.05.2016, the discharge application was dismissed, while directing that charges be framed against the appellant under aforesaid provisions of law.

9. By order dated 16.07.2016, the trial court framed the charge against the appellant under the aforesaid provisions who pleaded not guilty. Thereafter, the trial court issued summons to the prosecution witnesses.

10. It may also be mentioned that the Home Department, Government of U.P. passed an order on 13.01.2017, stating that the earlier sanction granted by the Hon'ble Governor on 25.08.2015 was modified whereafter the Hon'ble Governor granted full sanction for prosecution of the appellant in the aforesaid case for commission of the offence under Section 16 of the UAP Act which is punishable under Section 45(2) of the aforesaid Act.

11. Appellant filed an application before the High Court under Section 482 of Cr.P.C. for quashing of the order dated 27.05.2016 passed by the trial court whereby the application for discharge moved by the appellant was rejected. He also sought for quashing of the order dated 16.07.2016 passed by the trial court framing charge against the appellant.

    11.1. The High Court by the order dated 08.10.2021 took the view that no cognizance could have been taken by the trial court against the appellant in the absence of any valid sanction of prosecution for the offence under Section 16 of the UAP Act. The High Court held that although sanction for prosecution had been obtained, yet the same was not based upon recommendation after an independent review of the evidence collected during the course of investigation by the appropriate authority as required under Section 45(2) of the UAP Act. According to the High Court, it was a clear case of non-application of mind as the State failed to comply with the mandatory statutory provision under Section 45 of the UAP Act. Thus, the sanction orders dated 25.08.2015 and 13.01.2017 were held to be invalid. Therefore, the trial court was barred from taking cognizance under Section 16 of the UAP Act. Consequently, the order of cognizance dated 27.05.2016 passed by the trial court in

Case No. 940 of 2015 in so far the offence under Section 16 of the UAP Act was concerned as well as the charge to the extent of Section 16 of the UAP Act were quashed. The trial court was directed to proceed with the trial only with respect to the rest of the offences under Sections 489B and 489C IPC against the appellant.

12. State of U.P. assailed the order of the High Court dated 08.10.2021 before this Court by filing Special Leave to Appeal (Criminal) No. 861 of 2022. This Court by order dated 11.02.2022 issued notice and in the meanwhile directed stay of the order of the High Court dated 08.10.2021.

13. On 20.02.2024, this Court on perusal of the materials placed before the Court, noted that subsequent development had taken place whereby sanction was granted *vide* order dated 15.12.2021 after the order of the High Court. In view of the subsequent development, this Court declined to examine the issue on merit leaving it open to the State Government to apply before the High Court seeking permission to proceed in the matter for the offence under the UAP Act on the basis of the subsequent development. It was clarified that on filing of such proceedings, the High Court would be at liberty to consider the issue and decide the same affording due opportunity to all concerned without being influenced by the observations made in the order of the High Court dated 08.10.2021. Consequently, the Special Leave to Appeal (Criminal) No. 861 of 2022 was disposed of.

14. In the meanwhile, appellant moved the High Court for regular bail under Section 439 Cr.P.C. which came to be registered as Criminal Miscellaneous Bail Application No. 2282 of 2021. By the impugned order dated 03.04.2023, the High Court observed that the charges levelled against the appellant are grave. Though the appellant is in jail since the last eight years and evidence of only two witnesses had been recorded, appellant could not be released on bail since he belongs to Nepal and that there is a strong probability of the appellant evading trial by absconding. Accordingly, the bail application has been rejected.

15. Mr. M.S. Khan, learned counsel for the appellant submits that appellant is in custody for more than nine years now. There is no possibility of the criminal trial being concluded in the near future. Therefore, the appellant should be enlarged on bail.

16. On the other hand, Ms. Garima Prasad, learned Additional Advocate General for the State of U.P. submits that the charges against the appellant are very serious in nature. Besides, he being a foreign national, there is an attendant flight risk. Therefore, appellant may not be released on bail; instead the trial court may be directed to expedite the trial. Referring to the counter affidavit filed on behalf of the State of U.P., she submits that appellant is an accused under the UAP Act and is, therefore, not entitled to bail. In this connection, she has referred to a recent decision of this Court in *Gurwinder Singh Vs. State of Punjab*.[1]

17. Submissions made by learned counsel for the parties have been duly considered.

18. We have already noticed that the appellant is in jail since 23.02.2015. Now we are in July 2024. Nine years have gone by in the meanwhile. As per the impugned order, evidence of only two witnesses have been recorded. In the course of hearing, the Bench had queried learned counsel for the parties as to the stage of the trial; how many witnesses the prosecution seeks to examine and evidence of the number of witnesses recorded so far. Unfortunately, counsel for either side could not apprise the Court about the aforesaid. On the contrary, learned state counsel sought for time to obtain instructions. Having regard to the fact that appellant is in custody for more than nine years now, we declined the prayer of the learned state counsel seeking further time. Learned counsel for the parties were also unable to tell us as to whether the State has moved the High Court after the order of this Court dated 20.02.2024 and whether any order has been passed by the High Court on the same.

19. As already noted above, appellant is in custody for more than nine years now. The impugned order says that evidence of only two witnesses have been recorded. In such circumstances, a reasonable view can be taken that the trial is likely to take considerable time.

20. Before proceeding further, let us briefly look at the sections invoked against the appellant. Section 489B IPC deals with the offence of using forged or counterfeit currency notes or bank notes as genuine despite knowing the same to be forged or counterfeit. Conviction

1 [2024] 2 SCR 134 : (2024) SCC Online SC 109

for such an offence would result in punishment of imprisonment for life or with punishment of either description for a term which may extend to ten years and shall also be liable to fine. Offence under Section 489C IPC is committed when one is found in possession of any forged or counterfeit currency notes or bank notes despite knowing the same to be forged or counterfeit and intending to use the same as genuine. Punishment for such an offence is imprisonment of either description for a term which may extend to seven years or with fine or with both.

20.1. Section 16 of the UAP Act provides for punishment for committing a 'terrorist act'. 'Terrorist act' is defined in Section 15. For the present case, the definition which would be relevant is that a person commits a 'terrorist act' if he does any act with the intention to threaten or likely to threaten the economic security of India i.e. damage to the monetary stability of India by way of production or smuggling or circulation of 'high quality counterfeit Indian paper currency', coin or of any other material. Explanation (b) explains 'high quality counterfeit Indian currency'. In such a case, the punishment under Section 16 would be imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

20.2. Section 43D of the UAP Act says that there shall be modified application of certain provisions of the Cr.P.C. As per sub-Section (5) of Section 43D, which starts with a *non-obstante* clause, notwithstanding anything contained in the Cr.P.C, no person accused of an offence punishable under Chapters IV (which includes Section 16) and VI of the UAP Act shall, if in custody, be released on bail or on his own bond unless the public prosecutor has been given an opportunity of being heard on the bail application. The proviso says that such accused person shall not be released on bail or on his own bond if the court on a perusal of the case diary or the report made under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima-facie* true. Sub-Section (6) clarifies that the restrictions on granting of bail specified in sub-Section (5) would be in addition to the restrictions under the Cr.P.C. or any other law for the time being in force on granting of bail.

21. It is true that the appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.

22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra,* Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

> 9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

> 19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the

> Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.
>
> 20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.
>
> 21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

24. Earlier, in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India*,[2] this Court had issued a slue of directions relating to undertrials in jail facing charges under the Narcotic Drugs and Psychotropic Substances Act, 1985 (briefly, the 'NDPS Act' hereinafter) for a period exceeding two years on account of the delay in disposal of the cases lodged against them. In respect of undertrials who were foreigners, this Court directed that the Special Judge should impound their passports besides insisting on a certificate of assurance from the concerned Embassy/High Commission of the country to which the foreigner accused belonged and that such accused should not leave the country and should appear before the Special Court as required.

25. Similarly, in *Shaheen Welfare Association Vs. Union of India*,[3] this Court was considering a public interest litigation wherein certain reliefs were sought for undertrial prisoners charged with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) languishing in jail for considerable periods of time. This Court observed that while liberty of a citizen must be zealously

2 [1994] Supp. 4 SCR 386 : (1994) 6 SCC 731

3 [1996] 2 SCR 1123 : (1996) 2 SCC 616

safeguarded by the courts but, at the same time, in the context of stringent laws like the TADA Act, the interest of the victims and the collective interest of the community should also not be lost sight of. While balancing the competing interest, this Court observed that the ultimate justification for deprivation of liberty of an undertrial can only be on account of the accused-undertrial being found guilty of the offences for which he is charged and is being tried. If such a finding is not likely to be arrived at within a reasonable time, some relief(s) becomes necessary. Therefore, a pragmatic approach is required.

26. *Angela Harish Sontakke Vs. State of Maharashtra*[4] is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

27. More recently, a three Judge Bench of this Court in *Union of India Vs. K.A. Najeeb,*[5] considered an appeal filed by the Union of India through the National Investigation Agency (NIA) against an order passed by the High Court of Kerala granting bail to an accused-undertrial facing trial for allegedly committing offences, amongst others, under Sections 16, 18, 18B, 19 and 20 of the UAP Act.

    27.1. This Court noted that the appellant in *K.A. Najeeb* (supra) was in jail for more than five years. Charges were framed only on 27.11.2020 and there were 276 witnesses still left to be examined. This Court emphasized that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. No undertrial can be detained indefinitely pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for

4 (2021) 3 SCC 723

5 (2021) SCC Online SC 50

a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

27.2. Referring to the decision of this Court in *NIA Vs. Zahoor Ahmad Shah Watali*,[6] this Court opined that the High Court in that case had virtually conducted a mini trial and determined admissibility of certain evidence which clearly exceeded the limited scope of a bail proceeding. Not only was it beyond the statutory mandate of *prima-facie* assessment under Section 43D(5) of the UAP Act, it was premature and possibly would have prejudiced the trial as well. It was in these circumstances that this Court in *Zahoor Ahmad Shah Watali* (supra) had to intervene leading to cancellation of the bail granted.

28. We are in respectful agreement with the reasoning given in *K.A. Najeeb* (supra) regarding the decision in *Zahoor Ahmad Shah Watali* (supra). This decision i.e. *Zahoor Ahmad Shah Watali* (supra) has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an accused-undertrial suffering long incarceration with no end in sight of the criminal trial.

29. Going back to *K.A. Najeeb* (supra), this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail. This Court also distinguished Section 43D(5) of the UAP Act from Section 37 of the NDPS Act. It has been held as follows:

> **17**. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA *per se* does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood

6 (2019) 5 SCC 1

of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that *prima-facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.

29.1. Declining to interfering with the order of the High Court, this Court in *K.A. Najeeb* (supra) dismissed the appeal of the Union of India.

30. Recently, this Court dealt with a matter where the appellant, a foreign national, is being prosecuted for offences punishable under Sections

8, 22, 23 and 29 of the NDPS Act. The appellant was arrested on 21.05.2014. The High Court had granted bail to the appellant *vide* the order dated 31.05.2022 but had incorporated certain conditions in the bail order because of which the appellant remained in custody despite having a bail order in his favour. One of the conditions was that the appellant, a Nigerian national, should obtain a certificate of assurance from the High Commission of Nigeria to the effect that the appellant would not leave the country and would appear before the trial court on the dates fixed. Another condition imposed was that the accused should drop a pin on the google map to ensure that his location is available to the investigation officer at all times. This Court as an interim measure had granted bail to the accused-appellant and thereafter passed a detailed judgment in *Frank Vitus Vs. Narcotics Control Bureau,* Criminal Appeal No. 2814-15 of 2024, decided on 08.07.2024. This Court after referring to earlier decisions of this Court held that conditions of bail cannot be arbitrary and fanciful. The expression 'interest of justice' finding place in Section 437(3) Cr.P.C. means only good administration of justice or advancing the trial process. It cannot be given any further broader meaning to curtail the liberty of an accused granted bail. Courts cannot impose freakish conditions while granting bail. Bail conditions must be consistent with the object of granting bail. While imposing bail conditions, the constitutional rights of an accused who is ordered to be released on bail can be curtailed only to the minimum extent required. Even when an accused is in jail, he cannot be deprived of his right to life which is a basic human right of every individual. This Court held that bail conditions cannot be so onerous so as to frustrate the order of bail itself.

30.1. Thereafter, this Court held as follows:

> **7.1**. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21. The Courts must show restraint while imposing bail conditions. Therefore, while granting bail, the Courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Bail conditions cannot be so onerous as to frustrate the order of bail itself. For example, the Court may impose a

condition of periodically reporting to the police station/Court or not travelling abroad without prior permission. Where circumstances require, the Court may impose a condition restraining an accused from entering a particular area to protect the prosecution witnesses or the victims. But the Court cannot impose a condition on the accused to keep the Police constantly informed about his movement from one place to another. The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail.

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9. A condition cannot be imposed while granting bail which is impossible for the accused to comply with. If such a condition is imposed, it will deprive an accused of bail, though he is otherwise entitled to it.

30.2. In so far the condition that the accused should drop a pin on the google map, this Court referred to the affidavit filed Google LLC wherein it was stated that the user has full control over sharing of pin with other users; pin location does not enable real time tracking of the user or a user's device. Therefore, this Court found that such a condition was completely redundant. Thereafter, this Court held that imposing any bail condition which enables the police/investigating agency to track every movement of the accused released on bail by use of technology or otherwise would undoubtedly violate the right to privacy of the accused guaranteed under Article 21.

30.3. Distinguishing the decision of this Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* (supra), this Court observed that an accused-undertrial has no control over the Embassy or High Commission of his country. On failure of the Embassy or High Commission to issue a certificate that the accused-undertrial would not flee from the country and would attend the trial proceedings regularly, he cannot be continued to be kept in detention despite a bail order. Instead of the same, other practical and pragmatic conditions may be imposed. This Court clarified that it is not necessary that in every case where bail is granted to the accused in an NDPS case who is a foreign national, the condition of obtaining a certificate of assurance from the Embassy or the High Commission should be incorporated. Consequently, in *Frank Vitus* (supra), this Court while confirming the bail granted to the appellant, set aside the two impugned conditions.

31. In *Gurwinder Singh* (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished *K.A. Najeeb* (supra) holding that the appellant in *K.A. Najeeb* (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in *Gurwinder Singh*, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in *Gurwinder Singh* observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say

that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K.A. Najeeb* (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

33. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant.

34. Consequently, we pass the following order: -

(i) The impugned order dated 03.04.2023 of the High Court is set aside and quashed;

(ii) Appellant is directed to be released on bail subject to fulfilment of the following conditions: -

(a) Trial court shall impound the passport and/or citizenship document(s) of the appellant. If those are in the custody of the prosecution, those shall be handed over to the trial court.

(b) Appellant shall not leave the territorial jurisdiction of the trial court; he shall furnish his address to the trial court.

(c) He shall appear before the trial court on each and every date of the trial.

(d) In addition to the above, the appellant shall mark his attendance before the police station which the trial court may indicate once in every fortnight till conclusion of the trial.

(e) He shall not tamper with the evidence and shall not threaten the witnesses.

(iii) If there is any violation of the bail conditions as above, it would be open to the prosecution to move the trial court for cancellation of bail.

35. The appeal is, accordingly, disposed of.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Divya Pandey

[2024] 7 S.C.R. 1071 : 2024 INSC 515

Uniworld Logistics Pvt. Ltd.
v.
Indev Logistics Pvt. Ltd.

(Civil Appeal No. 7308 of 2024)

10 July 2024

[Vikram Nath* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

Whether a second suit for arrears of rent and damages would be maintainable or barred under Order II Rule 2 Civil Procedure Code (CPC) if a prior suit was filed seeking a permanent injunction and the handover of vacant possession, especially after the plaintiff explicitly reserved the right in the first suit to pursue claims regarding arrears of rent and damages separately and was granted leave to file a separate suit.

Headnotes†

Leave and Licence Agreement – Entered between the Appellant and Respondent – Superseded by another licence agreement whereby Appellant became a licensee concerning the warehouse – Appellant defaulted in paying storage charges – Respondent instituted a suit for permanent injunction and to hand over vacant possession – Respondent specifically pleaded that it reserves its rights to claim arrears of rent and damages – Appellant filed counter suits – Respondent sought and was granted leave to file a separate suit vide an application under Order II Rule 2(3) CPC – Respondent filed a second suit claiming arrears of rent and damages – Appellant filed an application under Order VI Rule 11(d) read with Order II Rule 2 CPC – High Court dismissed revision petition challenging order granting leave to file a separate suit and application under Order VI Rule 11(d) read with Order II Rule 2 CPC.

Held: The Supreme Court upheld the High Court's decision in light of the ruling in *Bharat Petroleum Corporation Ltd. v. ATM Constructions Pvt. Ltd.*, 2023 SCC Online SC 1614 – The Supreme Court held that the case was on a better footing because: (1) the plaintiff/respondent reserved the right to claim arrears of rent and damages separately, and (2) the two suits arise from separate causes of action. [Paras 16-18]

* Author

Case Law Cited

Bharat Petroleum Corporation Ltd. v. ATM Constructions Pvt. Ltd., [2023] 16 SCR 859 **: 2023 SCC Online SC 1614 – relied upon.**

Shankar Lal Laxminarayan Rathi & Ors. v. Gangabisen Manik Lal Silchi and another, **AIR 1972 Bom. 326 (FB) – referred to.**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Rejection of plaint; Leave and License agreement; Termination of agreement; Permanent injunction; Arrear of rent; Damages; Separate cause of action; Separate suit; Maintainability; Order II Rule 2 CPC; Order VI Rule 11(d) CPC; Section 151 CPC.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7308 of 2024

From the Judgment and Order dated 24.11.2016 of the High Court of Judicature at Madras in CRPPD No. 1872 of 2016

Appearances for Parties

Shyam Divan, Sr. Adv., K. K. Mani, Rathina Asohan, Ms. T. Archana, Rajeev Gupta, Advs. for the Appellant.

Aditya Kumar Choudhary, Sandeep Pandey, Gurmehar Vaan Singh, M.V. Shreedhar, Mrs. Rosetta Veena Ekka, Rajesh Singh Chauhan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Delay, if any, is condoned.

2. Leave granted.

3. This appeal assails the correctness of the judgment and order dated 24.11.2016 passed by the High Court of Judicature at Madras whereby, it dismissed the civil revision registered as CRP(PD) No.1872 of 2016 and also an application under Order VII Rule 11

CPC registered as Application No.3666 of 2016 in Commercial Suit No.323 of 2016. Aggrieved by the same, the defendant in both the proceedings is before this Court.

4. Brief facts giving rise to the present appeal is as follows:

A Leave and License agreement was originally entered into between the appellant and the respondent on 25.11.2008. This agreement was superseded by another agreement dated 01/12/2010 whereby the appellant became a licensee in respect of a warehouse on a monthly license fee of Rs.30 lakhs with an escalation clause. As there was default in payment of storage charges, the respondent gave a legal notice dated 27.11.2014 terminating the license, claiming dues towards storage charges, damages and directing the appellant to vacate the warehouse premises within two months. The appellant replied to the said notice on 18.12.2014 denying the dues and also raising some objections regarding extent of the building mentioned in the notice. The respondent instituted a suit for permanent injunction and also to hand over vacant possession in the Court of District Munsif, Sriperumbudur registered as O.S. No.101 of 2015. The respondent in the plaint of the above suit had clearly mentioned that there were outstanding dues and arrears of storage charges of Rs.2,04,68,464/-. It was further specifically mentioned that respondent-plaintiff reserves its rights to claim against the defendant-appellant for recovery of arrears and also damages due to the illegal use and occupation of the Schedule-B property.

5. After about seven months, the appellant filed a commercial suit before the Madras High Court registered as C.S. No.914 of 2015 against the respondent and also Small Industries Promotion Corporation of Tamil Nadu for the relief of declaration that the respondent had given only 1,03,522 sq. ft. area of the factory shed and not 1,50,000 sq. ft. under the Leave and License agreement dated 25.11.2008.

6. On 24.11.2015, the respondent filed an application under Order II Rule 2(3) read with Section 151 CPC in its pending O.S. No.101 of 2015 seeking leave to sue the appellant by way of a separate suit claiming arrears of storage charges, warehouse charges and damages for illegal use and occupation beyond the period allowed in the notice dated 27.11.2014. The said application registered as IA No.2001 of 2015, was allowed by the District Munsif Court on the same day. However, the High Court, upon revision by the appellant,

set aside the said order and remanded the matter back to the Trial Court for a fresh decision after affording due opportunity of hearing to the defendant to the suit i.e. the appellant. This order was passed by the High Court on 28.01.2016. After remand, the District Munsif Court, by a detailed reasoned order dated 15.04.2016, again granted leave under Order II Rule 2(3) CPC to the respondent to file a separate suit against the appellant. Aggrieved, the appellant challenged the same before the High Court under Article 227 of the Constitution, which was registered as CRP (PD) No.1872 of 2016.

7. In the meantime, the respondent filed a Commercial Suit No.323 of 2016 before the Madras High Court against the appellant for recovery of arrears of storage charges, warehouse charges and damages for an amount of Rs.8,42,88,761/-. In the said C.S. No.323 of 2016, the appellant filed an application being IA No.3666 of 2016 under Order VII Rule 11(d) read with Order II Rule 2 of CPC for rejection of the said claim. This application was filed on 21st July, 2016.

8. The civil revision as also the application under Order VII Rule 11 CPC were heard together by the High Court and vide judgment and order dated 24.11.2016, the High Court dismissed both the civil revision as also the application. Aggrieved by the same, the present appeal has been filed.

9. In the meantime, the appellant vacated the warehouse and handed over the keys to the respondent on 30th September, 2016. Accordingly, the respondent on 11.04.2017 withdrew its O.S. No.101 of 2015 as possession had already been delivered to it.

10. Further, the appellant filed another Commercial Suit No.160 of 2017 before the Madras High Court claiming refund of security deposit, additional deposit, penalty paid to the University Board, cost of improvements and damages amounting to Rs.5,77,03,621/- against the respondent.

11. From the above, it is noticeable that both the sides preferred two suits each, however, one of the suits i.e. Suit No.101 of 2015 has already been withdrawn by the respondent and, as such, three suits remain pending which are all commercial suits pending before the Madras High Court *inter se* parties.

12. It would be worthwhile to mention here before proceeding any further that the Trial Court as also the High Court had found that both the

suits were filed based upon different causes of action. The High Court had further found that the respondent had taken leave for instituting the second suit against the appellant under Order II Rule 2(3) CPC. It also found that the respondent had specifically stated in the plaint of the first suit that there were claims for damages and warehouse charges to be recovered for which, it reserved its claim for recovery of the same. At no stage had the respondent given up its claim, nor was there any omission to claim the relief of recovery. It was neither a case of relinquishment of claim or omission. The High Court has dealt with in great detail the object of Order II Rule 2(3) CPC. It has also discussed the law on the point. It had thereafter arrived at the conclusion that neither there was infirmity in the order of the Trial Court granting leave to file the second suit for recovery of arrears, nor was there any merit in the application under Order VII Rule 11 CPC filed by the appellant.

13. We have heard Sri Shyam Divan, learned Senior Counsel for the appellant and Sri Aditya Kumar Choudhary, learned counsel appearing for the respondent and have also perused the material on record.

14. The submissions advanced on behalf of the appellant by the learned Senior Counsel are summarized as under:

    (i) The commercial suit bearing C.S. No.323 of 2016 was clearly barred by Order II Rule 2(2) CPC.

    (ii) The Courts below failed to distinguish between relinquishment of claims and omissions of relief. The High Court wrongly relied upon the Full Bench Judgment of the Bombay High Court in the case of **Shankar Lal Laxminarayan Rathi and Ors. Vs. Gangabisen Manik Lal Silchi and another**[1] as the said judgment had no applicability in the facts of the case.

15. On the other hand, Shri Choudhary, learned counsel for the respondent submitted that the judgment and order of the High Court does not suffer from any infirmity warranting any interference by this Court. Further, strong reliance was placed upon a judgment of this Court in the case of **Bharat Petrolium Corporation Ltd. And another Vs. ATM Constructions Pvt. Ltd.**,[2] wherein under similar facts, this

1 AIR 1972 Bom.326 (FB)

2 [2023] 16 SCR 859 : 2023 SCC Online SC 1614

Court held that a second suit for arrears of rent and damages would not be barred under Order II Rule 2 CPC.

16. Para 18 of the above said judgment is reproduced hereunder:

> "18. In view of the enunciation of law, as referred to above, suit for possession and suit for claiming damages for use and occupation of the property are two different causes of action. There being different consideration for adjudication in our opinion, second suit filed by the respondent claiming damages for use and occupation of the premises was maintainable. The application filed by the appellants for rejection of the plaint was rightly dismissed by the Courts below. However, the appellants are well within their right to raise the issue, if any part of the claim in the suit is time-barred but the entire claim cannot be said to be so."

17. The case in hand stands on a better footing, inasmuch as, the plaintiff-respondent had specifically reserved its rights in the first suit regarding claim against warehousing charges, damages for illegal use and occupation etc. and further had applied for leave before the Trial Court for filing a separate suit, which leave had been granted. There was neither any relinquishment at any stage, nor omission to claim relief. Both the causes of action being separate, the second suit was clearly maintainable. The appellant, who is facing recovery of more than Rs.8 crores, is unnecessarily trying to delay the progress in the suit, which is pending since 2016.

18. In view of the above discussion, we are of the firm view that the impugned order does not suffer from any infirmity. The judgment in the case of **Bharat Petroleum Corporation Ltd. (supra)** relied upon by the respondent squarely applies in the facts of the present case and we do not find any reason to take a different view.

19. The appeal lacks merit and is, accordingly, dismissed.

20. Pending applications, if any, are disposed of.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Aishani Narain
(*Verified by:* Shadan Farasat, Adv.)

[2024] 7 S.C.R. 1077 : 2024 INSC 544

S. Tirupathi Rao
v.
M. Lingamaiah & Ors.

(Civil Appeal No. 7920-7921 of 2024)

22 July 2024

[Sanjiv Khanna and Dipankar Dutta,* JJ.]

Issue for Consideration

1. Whether the High Court has, in the impugned judgment, exercised the jurisdiction of review in accordance with the parameters set out in Order XLVII Rule 1 of the Civil Procedure?

2. Whether the High Court has, in the impugned judgment, erroneously entertained contempt petition which was barred by limitation?

Headnotes†

Civil Procedure Code – Order XLVII Rule 1 – Power to review, not an inherent power, it has to be specifically conferred by law – Contours and extent of review jurisdiction – Explained:

Held: The exercise of review jurisdiction is not an inherent power given to the court; the power to review has to be specifically conferred by law – In civil proceedings, review jurisdiction is governed by Section 114 read in conjunction with Order XLVII of the CPC and the court has to be certain that the elements prescribed therein are satisfied before exercising such power – The provisions therein relating to review of an order or decree are mandatory in nature and any petition for review not satisfying the rigours therein cannot be entertained *ex debito justitiae*, by a court of law. [Paras 11, 12]

Civil Procedure Code – Order XLVII Rule 1 – Order cannot be reviewed merely because it is erroneous on merits – An error apparent on the face of the record has to be self-evident:

Held: A decision cannot be reviewed merely because it is erroneous on merits, since that would fall squarely within the province of a court exercising appellate jurisdiction – To succeed in a motion for review, viewed through the prism of 'error apparent on the face of the record', it does neither require long-drawn arguments nor

* Author

an elaborate process of reasoning as these may be required, in a given case, when exercising the power of merit review – An error apparent on the face of the record has to be self-evident – Where, conceivably, two opinions can be formed in a given set of facts and circumstances and one opinion of the two has been formed, there is no error apparent on the face of the record. [Paras 20, 25]

Constitution of India – Article 129 & 215 – Inherent power of contempt – Explained:

Held: The purpose of the law of contempt is to secure public respect and confidence in the judicial process – The power of the Supreme Court and a High Court to punish for breach of its orders is expressly recognised by Articles 129 and 215 of the Constitution, respectively – It is an inherent power, distinguishable from a power derived from a statute. [Paras 28, 29]

Contempt of Courts Act – Bounden duty on the contemnor to comply with the court's order without any delay – Punishment for proved contempt must be in accordance with the procedure prescribed by the Contempt of Courts Act:

Held: There lies a bounden duty on the contemnor to comply with the court's order without any delay, in a case where legal recourse has not been taken to set aside/review/vacate the order which is alleged to have been breached – A public official against whom an allegation of contempt is levelled, upon being noticed either by issuance of a rule for contempt or by court notice, must work out his remedy in accordance with law if he wishes not to comply with the court's direction – Not only any order imposing punishment for proved contempt must be in accordance with the procedure prescribed by the Act but initiation of the proceedings too has to be in accordance with the three modes that the Act envisages. [Paras 39, 40]

Contempt of Courts Act – Role of contempt petitioner is only as an informer – The endeavour of the court in contempt petition is to uphold the majesty, dignity and prestige of the courts:

Held: The role of a party, who brings a petition for contempt and activates the court's machinery, is merely that of an informer – Whether or not to take the assistance of the petitioning informer is a question which invariably must be left entirely to the discretion of the court seized of the proceedings – In exercising its jurisdiction to punish for contempt, the courts in India do keep in mind the

benefit that could accrue to the petitioning informer (if he is a party to the parent proceedings out of which the contempt arises) upon implementation of the order alleged to have been wilfully disobeyed; but more than anything else, the endeavour is to uphold the majesty, dignity and prestige of the courts. [Paras 45, 46]

Contempt of Courts Act – Section 20 – Civil Procedure Code – Order VII Rule 6 – Condonation of Delay in approaching the High Court for contempt – The contempt petitioner cannot choose a time convenient to him to approach the Court:

Held: Even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court – The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the High Court – In an appropriate case, it would be open to the party who has not petitioned the court within the period of one year, as stipulated in Section 20 of the Act, to seek exemption from the law of limitation in line with the principle flowing from Order VII Rule 6, CPC, by showing the ground upon which such exemption is claimed – Applicability of the principle underlying Order VII Rule 6, CPC for granting exemption would only be just and proper having regard to the object and purpose for which the jurisdiction to punish for contempt is exercised by the courts if, of course, the court is satisfied that benefit of such an exemption ought to be extended in a given case. [Para 55]

Contempt of Courts Act – Section 20 – Limitation period for filing contempt petition – Interpretation thereof – Explained:

Held: Stale claims of contempt, camouflaged as a "continuing wrong/breach/offence" ought not to be entertained, having regard to the legislative intent for introducing section 20 in the Act which has been noticed above – Contempt being a personal action directed against a particular person alleged to be in contempt, much of the efficacy of the proceedings would be lost by passage of time – Even if a contempt is committed and within the stipulated period of one year from such commission no action is brought before the court on the specious ground that the contempt has been continuing, no party should be encouraged to wait indefinitely to choose his own time to approach the court. [Para 56]

Single & Continuing cause of action – Difference explained:

Held: When an act is final and complete and becomes a cause of action for injury to the plaintiff, it is single, and the plaintiff is entitled to sue, for the wrongful act – But if there is repetition of a wrongful act or omission, it will comprise a continuing cause of action – Neither do repeated breaches of continuing obligations constitute a continuing wrong nor intermittent breaches of a continuing obligation; rather there has to be present an element of continuance in both, the breach and the obligation. [Paras 74,75]

Legal Maxim – *Secundum allegata* et probate – Court can arrive at its decision only on the basis of the claims and proof led by the parties – Even if a point of "continuing wrong/breach/ offence" is traceable in the pleadings, the court ought not to accept it mechanically:

Held: The court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim *secundum allegata et probate*, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties – The assertion of the contumacious conduct being in the nature of a "continuing wrong/breach/offence" is factual and has to be borne from the pleadings on record – Law is well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new case being made out for the party – Even if a point of "continuing wrong/breach/offence" is traceable in the pleadings, the court ought not to accept it mechanically; particularly, in entertaining an action for contempt, which is quasi-criminal in nature, the court should be slow and circumspect and be fully satisfied that there has indeed been a "continuing wrong/breach/ offence". [Paras 71, 72]

Case Law Cited

Pallav Seth v. Custodian [2001] Supp. 1 SCR 387 **: (2001) 7 SCC 549;** *Kamlesh Verma v. Mayawati* [2013] 11 SCR 25 **: (2013) 8 SCC 320;** *Moran Mar Basselios Catholicos and another v. Most Rev. Mar Paulose Athanasius* [1955] 1 SCR 520 **: AIR 1954 SC 526;** *State (NCT of Delhi) v. K.L. Rathi Steels Ltd.* [2024] 5 SCR 949 **: 2024 SCC OnLine SC 1090;** *State of West Bengal v. Kamal Sengupta* [2008] 10 SCR 4 **: (2008) 8 SCC 612;** *Aribam*

Tuleshwar Sharma v. Aribam Pishak Sharma **(1979) 4 SCC 389;** *Meera Bhanja v. Nirmala Kumari Choudhury* [1994] Supp. 5 SCR 503 **: (1995) 1 SCC 170;** *R.L. Kapur v. State of Tamil Nadu* [1972] 3 SCR 417 **: (1972) 1 SCC 651;** *Aligarh Municipal Board v. Ekka Tonga Mazdoor Union* **(1970) 3 SCC 98;** *Jhareswar Prasad Paul v. Tarak Nath Ganguly* [2002] 3 SCR 913 **: (2002) 5 SCC 352;** *In Re: Vinay Chandra Mishra* [1995] 2 SCR 638 **: (1995) 2 SCC 584;** *L.P. Misra (Dr.) v. State of U.P.* **(1998) 7 SCC 379;** *Ashok Kumar Aggarwal v. Neeraj Kumar* [2013] 12 SCR 457 **: (2014) 3 SCC 602;** *State of Uttar Pradesh v. Association of Retired Supreme Court & High Court Judges* [2024] 1 SCR 211 **: (2024) 3 SCC 1;** *Om Prakash Jaiswal v. D.K. Mittal* [2000] 1 SCR 1064 **: (2000) 3 SCC 171;** *Advocate General v. A.V. Koteswara Rao,* **1984 Cri. LJ. 1171;** *High Court of Karnataka v. Y.K. Subanna,* **1989 SCC OnLine Kar 404;** *Arthur Branwell & Company Ltd. v. Indian Fibres Ltd.,* **1993 (2) CLJ 182;** *Commissioner, Karnataka Housing Board v. C. Muddaiah* [2007] 9 SCR 784 **: (2007) 7 SCC 689;** *Hadkinson v. Hadkinson,* **1952 (2) All ER 567;** *X Ltd. v. Morgan Grampian Ltd.,* **1990 (2) All ER 1;** *In the Matter of Anil Panjwani* [2003] 3 SCR 1179 **: (2003) 7 SCC 375;** *High Court of Judicature at Allahabad v. Raj Kishore Yadav* [1997] 2 SCR 429 **: (1997) 3 SCC 11;** *State of West Bengal v. Kartick Chandra Das* [1996] Supp. 2 SCR 373 **: (1996) 5 SCC 342;** *Maqbul Ahmad v. Onkar Pratap Narain Singh,* **AIR 1935 PC 85;** *National Coal Board v. Galley* **[1958] 1 All ER 9;** *Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan* [1959] Supp. 2 SCR 476 **: AIR 1959 SC 798;** *M. Siddiq v. Suresh Das* **(2020) 1 SCC 1;** *Meghmala v. G. Narasimha Reddy* [2010] 10 SCR 47 **: (2010) 8 SCC 383;** *K. Jayaram v. BDA* **(2022) 12 SCC 815 – referred to.**

Firm Ganpat Ram Rajkumar v. Kalu Ram [1989] Supp. 1 SCR 223 *:* **(1989) Supp. 2 SCC 418 – distinguished.**

S.P. Chengalvaraya Naidu v. Jagannath [1993] Supp. 3 SCR 422**: (1994) 1 SCC 1 – relied on.**

List of Acts

Constitution of India; Contempt of Courts Act, 1971; Civil Procedure Code, 1908.

List of Keywords

Review; Review jurisdiction; Contempt of court; Contempt jurisdiction; Continuing wrong.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7920-7921 of 2024

From the Judgment and Order dated 27.04.2022 of the High Court for the State of Telangana at Hyderabad in RIA Nos. 1 and 3 of 2020

With

Civil Appeal Nos. 7922-7923 of 2024

Appearances for Parties

C. S. Vaidhyanathan, Sr. Adv., M/s. Venkat Palwai Law Associates, Vinayak Goel, Gunnalan, Nitish Raj, Vineet George, Ms. Devina Sehgal, Advs. for the Appellant.

Ranjit Kumar, Neeraj Kishan Kaul, Vipin Singhi, C A Sundaram, R Anand Padmanabhan, Sr. Advs., S. Udaya Kumar Sagar, Ms. Bina Madhavan, Krishna Kumar Singh, Tushar Singh, Praseena Elizabeth Joseph, Rajiv Kumar Choudhry , E Venkata Siddhartha, A.V.V. Bhaskar, Ms. Ruchi Arya, Adith Memon, R. Sharath, Ms. Ruchi, Shwetank Sailakwal, Mayank Suryan, Shashi Bhushan Kumar, G. Seshagiri Rao, Gaichangpou Gangmei, Ms. Nisha Pandey, Maitreya Mahaley, Yimyanger Longkumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

CIVIL APPEAL NOS. _____ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19647-48 OF 2022]

Leave granted.

2. These appeals assail the common judgment and order dated 27th April, 2022[1] of the High Court for the State of Telangana at Hyderabad[2] allowing Review I.A. No. 1/2020 in LPA 1/2018 and Review I.A. No. 3/2020 in CA 33/2017[3] preferred by the first respondent. The impugned

1 impugned order, hereafter

2 High Court, hereafter

3 review petitions, hereafter

order of the High Court recalled the order under review and dismissed a contempt appeal as well as a letters patent appeal of the appellant.

3. The present dispute emerges from a complex and interwoven set of legal proceedings, involving myriad parties and decisions rendered by both judicial and quasi-judicial authorities. The factual matrix, to the extent relevant for adjudication of these civil appeals, is noticed hereunder:

I. Ms. Sultana Jahan Begum, daughter of Nawab Moin-ud-Dowla Bahadur, instituted Original Suit 130/1953[4] (since renumbered as Civil Suit 07/1958 upon its transfer to the High Court) before the City Civil Court, Andhra Pradesh, seeking partition of her father's properties known as 'Asman Jahi Paigah'.

II. On 06th April, 1959, a preliminary decree was passed by the High Court on the basis of a compromise entered into by and between the parties to the civil suit. The schedule of properties included within it Raidurg village.[5]

III. Notably, it is recorded therein that the plaintiff chose to withdraw her claim against, *inter alia*, the defendant no. 48 in the suit, i.e., the Secretary, Finance Department of the Government of Andhra Pradesh. Resultantly, the suit stood dismissed against the State unconditionally.

IV. During the pendency of the civil suit, Nawab Zaheer Yar Jung, son of Nawab Moin-ud-Dowla Bahadur, filed a claim petition before the Nazim-e-Atiyat, claiming the subject land as jagir land. This claim was negatived by the Nazim-e-Atiyat *vide* an order dated 28th October, 1968 upon verification of sanad, which revealed that there did not exist any document granting paigah with respect to the subject land to the claimant's father.

V. The order passed by the Nazim-e-Atiyat, upon appeal, was confirmed by the Board of Revenue *vide* an order dated 29th December, 1976, which held that the subject land stood escheated to the Government.

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4 civil suit, hereafter

5 subject land, hereafter

VI. Meanwhile, on 01st October, 2003, the decree holders in the civil suit executed a deed of assignment in favour of the first respondent herein in respect of land measuring more or less Ac 143.00 guntas forming part of certain survey numbers of the subject land.

VII. On 26th December, 2003, the High Court passed the final decree and judgment in the civil suit in favour of the first respondent, with respect to land measuring more or less acres 84.30 guntas[6] forming part of Survey No. 46 of the subject land.

VIII. Pursuant thereto, the first respondent had approached the Tahsildar with a prayer for mutation of his name in respect of the decretal property in the revenue records which proved abortive. Consequently, the first respondent invoked the writ jurisdiction of the High Court by preferring Writ Petition 1729/2009,[7] seeking direction for effecting mutation in terms of the final decree in the civil suit. The respondent's writ petition was heard with a connected matter being Writ Petition 581/2009.

IX. On 05th March, 2009, a Single Judge of the High Court *vide* a common order disposed of both the writ petitions at the admission stage itself, with the following order:

> "A partial final decree was passed by this Court on 26.12.2003 in Application No.1409 of 2003 in C.S. No. 7 of 1958, directing several steps. One of the steps is that the names of the decree holders be mutated in respect of the property mentioned in the decree. It appears that the persons, who have purchased part of the property from the parties to the decree, have also approached the respondents for mutation of their names. Having regard to the fact that there was a specific direction in the decree, Acviving (sic, requiring) authorities first to implement the decree by effecting mutation in the only (sic) after the initial step is complied with.

6 decretal property

7 writ petition, hereafter

> Hence, the writ petitions are disposed of, directing that the Deputy Collector / Tahsildar, Serilingampally Mandal, Ranga Reddy District, shall effect necessary mutations in the revenue records strictly in accordance with the decree, dated 26.12.2003, in Application No.1409 of 2003 in C.S.No.7 of 1958 passed by this Court, after issuing notices to the affected parties. The subsequent purchasers, if any, shall be entitled to pursue their remedies after this step. There shall be no order as to costs."

X. Thereafter, one Syed Azizulla Husaini challenged only the decision in Writ Petition 581/2009. In exercise of appellate jurisdiction, a Division Bench of the High Court, *vide* order dated 18th August 2009, modified the order dated 05th March, 2009 as follows:

> "Heard the learned advocates. The learned advocates appearing for the respondents have no objection if the objections which have been filed by the appellant before the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District are also considered along with the other objections which have been filed by the affected parties.
>
> In the circumstances, the order dated 05-03-2009 passed in Writ Petition No. 581 of 2009 is modified to the effect that while considering the objections of the affected parties, the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District shall also consider the objections which have already been filed by the present appellant viz. Syed Azizullah Hussaini."

XI. However, the appellant (the Tahsildar) did not carry the order of disposal of the writ petition of the first respondent in appeal and, thus, between the appellant and the first respondent, the order dated 05th March, 2009 became final and binding.

XII. In view of the Tahsildar's inaction in effecting mutation, as ordered, the first respondent instituted Contempt Case 217/2014[8] before the High Court on 10th February, 2014.

8 contempt petition, hereafter

XIII. The Single Judge, *vide* order dated 04th October, 2017, allowed the contempt petition. The State's contention that the petition was barred by limitation was rejected on the ground that the Tahsildar's failure to obey the order of the Court, till mutation was effected, would constitute a continuing wrong. Consequently, the Tahsildar was directed to mutate the name of the first respondent in terms of the final decree, and was also sentenced to simple imprisonment for a term of two months, together with a fine of Rs 1500/- (Rupees fifteen hundred only).

XIV. This decision of the Single Judge was challenged by the appellant in two separate appeals – (i) Contempt Appeal 33/2017,[9] presented against the punishment imposed on the appellant and (ii) Letters Patent Appeal 01/2018,[10] presented against the direction for mutation of the name of the first respondent in the revenue records qua the decretal property.

XV. A Division Bench of the High Court,[11] *vide* a detailed judgment and order dated 16th August, 2018, allowed both the appeals and set aside the order under challenge for two primary reasons – (i) the contempt petition was barred by limitation, the failure of the Tahsildar to effect the mutation constituting a single act and not a continuing wrong; and (ii) the preliminary decree recorded that the civil suit was withdrawn as against the State Government. Thus, there did not exist any decree which could have been executed against the Government by the civil court. Thus, as a legal and logical corollary, the State could not be bound to effect mutation in the revenue records in terms of a decree which was unenforceable against it. Consequently, the first respondent's attempt to seek a direction of mutation against the State, on the strength of such a decree, was held to be fraudulent in nature.

XVI. Challenge laid by the first respondent to the judgment and order dated 16th August, 2018 by presenting special leave petitions[12] before this Court was not entertained resulting in its dismissal

9 contempt appeal, hereafter

10 letters patent appeal, hereafter

11 Division Bench (original), hereafter

12 SLP (C) 24646-24647/2018

vide order dated 29th October, 2018. A petition seeking review[13] of such order of dismissal was also dismissed by this Court *vide* order dated 08th January, 2019.

XVII. This Court having spurned his aforesaid challenges, the first respondent knocked the doors of the High Court once again by filing review petitions against the common judgment and order dated 16th August, 2018 (allowing the letters patent appeal and the contempt appeal).

XVIII. As noted at the beginning of this judgment, *vide* the impugned order, another Division Bench[14] of the High Court allowed the review petitions.

IMPUGNED ORDER

4. The Division Bench (review) noted at the outset that the merits of the matter need not be looked into, and then went on to undertake an exhaustive examination of precisely the same.

4.1 The High Court adversely observed that the State had not yet obtained any decree against the first respondent or his predecessors-in-interest to the effect that the subject land belonged to it. The State was noted to have filed OSA (Sr) No. 2116/2011, challenging the final decree proceedings dated 26th December, 2003 but the same stood dismissed *vide* order dated 24th August, 2011, with an observation that the State ought to initiate separate proceedings in accordance with law. However, no such proceedings were thereafter initiated by the State.

4.2 The High Court further observed that the State sought to set up title to the subject land based on the concept of escheat without invoking the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974. This led to admonition of the State authorities for taking mutually inconsistent pleas of 'absolute title' and 'right by escheat'.

4.3 The State was further held to have suppressed material information and approached the Court with unclean hands inasmuch as the stand taken by them was not supported by any documentary evidence.

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13 R.P. (C) 3973/2018

14 Division Bench (review), hereafter

4.4 The State, on its part, had argued that the contempt action was itself barred by limitation, as per section 20 of the Contempt of Courts Act, 1971[15] read with rule 21 of the Andhra Pradesh High Court Writ Proceedings Rules, 1977.[16] Such argument was rejected by the Division Bench (review) by relying on the decision in ***Pallav Seth v. Custodian***,[17] wherein it was held that the period of limitation would only commence upon the date from the discovery of fraud played by the party on the Court/opposite party; the State having acted fraudulently by suppressing information, the contempt petition would not be barred by limitation.

4.5 With respect to the contempt alleged, the Division Bench (review) examined the conduct of the State in remaining silent on the matter of mutation and held that such silence could not be interpreted to be a refusal on the part of the State to act upon the representations. In view thereof, coupled with the State's periodic representations made before the Court that they would implement the direction for mutation, it was held that such acts constituted a continuing wrong so as to ensconce the contempt petition within the ambit of the period of limitation.

4.6 In such review proceedings, the first respondent had brought on record additional documents in the nature of sale deeds, orders by revenue authorities and governmental memos, to which allegedly access was obtained only after the disposal of the contempt appeal, to argue that the subject land was the self-acquired private property of the first respondent's predecessor-in-interest. The Division Bench (review) undertook a detailed examination of the same to definitively conclude, with the aid of section 79 of the Indian Evidence Act, 1872, that the property belonged to the predecessor-in-interest of the first respondent. The State's objection to such documents was overruled as the same were held to come within the purview of "new and important matter or evidence" as provided in Order XLVII Rule 1 of the Code of Civil Procedure.[18]

15 the Act, hereafter

16 the Writ Rules, hereafter

17 [2001] Supp. 1 SCR 387 : (2001) 7 SCC 549

18 CPC, hereafter

4.7 In summation, the Division Bench (review) reviewed and reversed the judgment and order dated 16th August, 2018 and confirmed the order dated 04th October, 2017 of the Single Judge passed on the writ petition. The appellant's sentence of imprisonment was modified to four months, and a direction was issued to implement the order passed in the writ petition within a period of four weeks.

SUBMISSIONS

5. Mr. C.S. Vaidyanathan, learned senior counsel for the appellant, while seeking our interference with the impugned order, submitted as under:

a) The Division Bench (review) of the High Court erred in allowing the review petitions, without affording a hearing to the appellant on merits.

b) The Division Bench (review) set aside the reasoned judgment of the Division Bench (original) in the contempt appeal and while substituting its own reasoning for that in the order under review, did not disclose the error that was apparent on the record; instead, it proceeded to decide the review as if it were sitting in appeal over the earlier decision.

c) The Division Bench (review) placed undue reliance on the additional documents produced by the first respondent, which were accepted on face value, without giving an opportunity to the appellant to rebut the same.

d) The Division Bench (review), in exercise of its review jurisdiction, went beyond the order of the Single Judge passed in the writ petition. It is settled law that a writ court cannot adjudicate on title, since the same falls within the exclusive jurisdiction of a civil court.

e) The Division Bench (original) had rightly set aside the order of the Single Judge, as the order had been obtained by playing fraud on the Court and the proceedings in the suit were itself fraudulent in nature.

f) The civil suit was dismissed as against the State Government and, thus, there could not have been an executable decree as against the State.

g) The Division Bench (original) had rightly allowed the appellant's appeal on the ground that the failure to mutate the names of

the first respondent was not a continuing wrong and, therefore, the contempt petition was barred by limitation.

6. Mr. C. A. Sundaram, learned senior counsel appearing for an intervenor, who disputed the title of the first respondent, adopted the submissions of Mr. C.S. Vaidyanathan. In addition, he contended that there cannot be a more egregious mistake as the one committed by the Division Bench (review) in exercise of its review jurisdiction. He invited our attention to the grounds of review forming part of the review petition and contended that none of the grounds can be said to be within the parameters of section 114 read with Order XLVII Rule 1 of the CPC; hence, the Division Bench (review) assumed a jurisdiction which it could not have more particularly after the unsuccessful misadventures of the first respondent before this Court.

7. Mr. Ranjit Kumar, Mr. Neeraj Kishan Kaul, Mr. Vipin Sanghi and Mr. R. Anand Padmanabhan, learned senior counsel appearing for the various respondents, in support of upholding the impugned order, submitted as under:

a) The appellant had not approached this Court with clean hands since the Government Pleader, during the pendency of the contempt proceedings, had avowed that the process of mutation had already commenced, while the counter affidavit filed in the same proceedings stated that the contempt petition itself was barred by limitation.

b) The State had submitted in the contempt proceedings that there was serious dispute with respect to the question of title which could only be adjudicated in a civil suit; however, during the course of the review proceedings, the senior counsel appearing for the State categorically stated that no civil suit had been filed till date.

c) During the period 1968 to 2022, the appellant had consistently taken the plea of absolute title having been escheated to the Government, but in course of consideration of the review petitions, undertook a mutually inconsistent plea of the subject land being Government land on the basis of revenue entries.

d) The appellant did not raise objections with respect to fraud and fabrication when the additional documents were produced by the first respondent before the High Court; having acquiesced to the same, the appellant was now estopped from raising such pleas.

e) The first respondent relied on a multitude of orders by both judicial and administrative authorities to prove that the subject land was privately purchased, and constituted self-acquired lands of the first respondent's predecessor in interest.

ANALYSIS

8. The present *lis* confronts us primarily with two inter-related legal issues. The first one requires us to examine whether the parameters set out in Order XLVII Rule 1 of the CPC for exercising the power of review, as interpreted by this Court in its numerous judgments, were at all satisfied for the High Court to embark on an exercise of review. The second issue requiring our consideration is the *terminus a quo* for commencement of the point of limitation in matters of contempt, in the light of provisions of section 20 of the Act read with Article 215 of the Constitution and rule 21 of the Writ Rules. This would, in turn, require us to examine whether the contempt petition could have been held to be maintainable by the High Court on the ground of the appellant having continued to observe the order (directing mutation to be effected) in the breach; in other words, whether there was a continuing wilful breach of the order of the Single Judge dated 5th March, 2009, amounting to civil contempt. These being preliminary legal issues are proposed to be dealt with at the outset. Needless to observe, hardly any other issue would survive for decision should any of these issues be answered in favour of the appellant and against the first respondent.

9. We are not too inclined to examine the contention raised on behalf of the appellant that he was not extended reasonable and adequate opportunity of hearing, once the Division Bench (review) allowed the review petitions and proceeded to reverse the decision of the Division Bench (original) on merits. There are other formidable grounds of challenge, which would necessarily fall for our examination and succeeding on one of such grounds would render the contention raised redundant.

10. The Division Bench (review) extensively discussed the grounds which need to exist so as to validate the invocation and exercise of the Court's power of review. In the impugned order, it held that the State suppressed certain title documents, which were for the first time produced before the Court by the first respondent as additional documents. The additional documents constituted, *inter alia*, an order of the Board of Revenue, Andhra Pradesh dated 19th November, 1959,

which confirmed that the subject land is private land and not *inam* or Government land. The first respondent justified the production of these documents on the ground that access to such documents was obtained only after the Division Bench (original) had rendered the judgment and order dated 16th August, 2018. It was argued that if the Division Bench (original) had the benefit of examination of such additional documents, it would not have set aside the order dated 04th October, 2017 passed on the contempt petition. The Division Bench (review) held that since the first respondent had discovered new evidence which was unavailable at the earlier stage of proceedings, the threshold for maintainability of a review petition was satisfied.

11. While proceeding to determine the correctness of the impugned order vis-à-vis the exercise of review jurisdiction, we ought to remind ourselves of certain cardinal principles. The exercise of review jurisdiction is not an inherent power given to the court; the power to review has to be specifically conferred by law. In civil proceedings, review jurisdiction is governed by section 114 read in conjunction with order XLVII of the CPC and the court has to be certain that the elements prescribed therein are satisfied before exercising such power. This Court in ***Kamlesh Verma v. Mayawati***[19] has succinctly observed that:

> "19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC."
>
> (emphasis ours)

12. That the provisions contained in section 114 and Order XLVII of the CPC relating to review of an order or decree are mandatory in nature and any petition for review not satisfying the rigours therein cannot be entertained *ex debito justitiae*, by a court of law, is trite.

13. There is a plethora of decisions analysing the statutory provisions governing the exercise of review jurisdiction; however, we would be referring to a few of them for the purpose of the present exercise. Suffice it to note that despite legal proceedings having commenced with institution of the civil suit as far back as in 1953, the present controversy has, as its source, a writ petition between the first respondent and the Tahsildar preferred in 2009. Although the explanation to section

19 [2013] 11 SCR 25 : (2013) 8 SCC 320

141 of the CPC makes it clear that provisions of the CPC would not apply to proceedings under Article 226 of the Constitution, there is authority in abundance that the principles flowing from the CPC may safely be taken as a guide to decide writ proceedings but to the extent the same can be made applicable.

14. To put it plainly, Order XLVII Rule 1 of the CPC provides three grounds for review:

1) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by the applicant at the time when the decree was passed, or order made; or

2) mistake or error apparent on the face of the record; or

3) for any other sufficient reason, which must be analogous to either of the aforesaid grounds.

15. In ***Moran Mar Basselios Catholicos and another v. Most Rev. Mar Paulose Athanasius***,[20] this Court approved the view that the third ground – "any other sufficient cause" must mean a reason sufficient on grounds, at least analogous to the first two grounds. The same view has been reiterated in a recent decision of this Court in ***State (NCT of Delhi) v. K.L. Rathi Steels Ltd.***[21] This Court affirmed that the scope of the third ground had to be narrowly construed so as to not traverse beyond the orbit of the first two grounds.

16. Since the Division Bench (review) invoked the first clause, we hasten to emphasize that an applicant seeking review on the basis of discovery of new evidence has to demonstrate: first, that there has been discovery of new evidence, of which he had no prior knowledge or that it could not be produced at the time the decree was passed or the order made despite due diligence; and secondly, that the new evidence is material to the order/decree being reviewed in the sense that if the evidence were produced in court when the decree was passed or the order made, the decision of the court would have been otherwise. Ultimately, it is for the court to decide whether a review sought for by an applicant, if granted, would prevent abuse of the process of law and/or miscarriage of justice.

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20 [1955] 1 SCR 520 : AIR 1954 SC 526

21 [2024] 5 SCR 949 : 2024 SCC OnLine SC 1090

17. When the ground for review sought is that of discovery of new evidence, this Court in ***State of West Bengal v. Kamal Sengupta***[22] has clarified that the same must be evidence which should be materially important to the decision taken. The following passage is instructive:

> **"21.** At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier."
>
> (emphasis ours)

18. In the light of the legal position crystalised by the above discussion, we proceed to discern the rationale of the High Court in allowing the review petition.

19. The proceedings of these civil appeals, as noted, have the writ petition as its genesis and not the civil suit, which was decreed in 2003. It is of utmost importance to bear in mind that the Division Bench (review) was called upon to review the judgment and order dated 16th August, 2018 of the Division Bench (original), which allowed the contempt appeal and the letters patent appeal and not any other final decree or order. The Division Bench (review), in our opinion, has fundamentally confused both its remit and the subject matter of the review; whilst passing the impugned order, it has merged the two proceedings (the civil suit and the writ petition) into one to ostensibly create necessary grounds of review. The additional documents discovered by the first respondent could have constituted a ground to review any other decree/order but, most certainly, were of no consequence for the purpose of the review petitions, which were decided by the impugned order. This, we hold, for the reasons that follow.

22 [2008] 10 SCR 4 : (2008) 8 SCC 612

20. This Court in ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma***[23] while clarifying the ambit of the review jurisdiction has categorically held that a decision cannot be reviewed merely because it is erroneous on merits, since that would fall squarely within the province of a court exercising appellate jurisdiction.

21. In ***Meera Bhanja v. Nirmala Kumari Choudhury***,[24] this Court affirmed the ratio in ***Aribam Tuleshwar Sharma*** (supra) and further expounded that review proceedings were not by way of an appeal, and would have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the CPC. It was further held that an error apparent on the face of the record must be such an error which must strike one on mere looking of the record, obviating the need for long-drawn reasonings on two possible opinions. This Court in ***Haridas Das v. Usha Rani Banik***,[25] while reiterating the decisions in ***Meera Bhanja*** (supra) and ***Aribam Tuleshwar Sharma*** (supra), drew out the narrow contours within which review jurisdiction of this Court had to be exercised and held that Order XLVII, CPC does not allow for the rehearing of a dispute merely because a party had not highlighted all aspects of the case.

22. The Division Bench (original) had held that the decree was not enforceable against the State; this, because the State, though a party defendant originally, did not suffer any decree owing to the dismissal of the civil suit against the State *vide* judgment and preliminary decree dated 06th April, 1959. The said Division Bench in its judgment and order dated 16th August, 2018 categorically noted that the first respondent committed fraud on the Court by obtaining a direction of mutation in the writ proceedings on the strength of a final decree rendered in a suit which had been given up against the State Government. The Division Bench (original) set aside the direction to mutate the name of the first respondent in the revenue records on three technical but fundamental grounds – first, that a non-party to a suit could not be bound by the decree; secondly, the decision on the title of the subject land not having been rendered upon hearing the version of the State, no direction of the nature made by the Single Judge could have validly been made; and thirdly, that the contempt petition was barred by limitation.

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23 (1979) 4 SCC 389

24 [1994] Supp. 5 SCR 503 : (1995) 1 SCC 170

25 (2006) 4 SCC 78

23. In the light of the present controversy, the additional documents purporting to validate the title of the subject land [even if obtained by the first respondent belatedly and not in course of the proceedings before the Division Bench (original) and howsoever clinching the same might appear to be for the *lis* to be decided in his favour] can neither be considered material nor relevant to the central issue, i.e., contempt, if any, of the direction contained in the order of disposal of the writ proceedings.

24. As noted earlier, the Division Bench (original) *inter alia* proceeded to dismiss the contempt petition as time-barred. We propose to consider the averments made in the contempt petition in greater depth a little later. However, what stands out is that a decision having been rendered by the Division Bench (original) upon consideration of the pleadings in the contempt petition vis-à-vis the law relating to limitation contained in the Act, such decision was not open to a review on the basis of alleged discovery of new evidence since the same did not have any relation with the finding that the contempt petition was time-barred. The first respondent failed to present any new evidence countering the reasoning of the Division Bench (original) that a time-barred contempt petition had been entertained by the Single Judge; furthermore, the title documents or orders of the Board of Revenue had no bearing on either the factum of the State not being a party to the civil suit, or on the question of limitation. Quite apart the ground of discovery of new evidence, the decision of the Division Bench (original) which was rendered upon an exhaustive analysis of the materials on record including the pleadings did not suffer from any error, much less any error apparent on the face of the record, warranting a review. Even if any error were present, such error could have been rectified only in exercise of the court's appellate jurisdiction and not the review jurisdiction.

25. The grounds of review that the first respondent had urged in the review petition have been meticulously looked into by us. They numbered in excess of 90 (ninety). The general impression is that more the number of grounds, less the likelihood of existence of a case for review. To succeed in a motion for review, viewed through the prism of 'error apparent on the face of the record', it does neither require long-drawn arguments nor an elaborate process of reasoning as these may be required, in a given case, when exercising the power of merit review. An error apparent on the face of the record has to be self-evident. Where, conceivably, two opinions can be formed in a given set of facts and

circumstances and one opinion of the two has been formed, there is no error apparent on the face of the record. However, disabusing our mind of such an impression, we have looked into each of the grounds. Not a single ground deserved consideration to embark on an exercise to review the judgment and order dated 16th August, 2018 even on the basis of discovery of new and important matter or evidence. We are constrained to observe that there has been usurpation of the power of review by the Division Bench (review) to overturn a well-considered and well- crafted decision of the Division Bench (original).

26. No other legitimate cause for review having been made out in the review petition before the High Court as well as before us by the first respondent and bearing in mind the above, we unhesitatingly hold that there was no valid, legal and/or proper ground for the Division Bench (review) to reverse the judgment and order under review on the basis of the additional documents brought on record by the first respondent during the review proceedings.

27. The first legal issue is, thus, answered in favour of the appellant.

28. Having held that the review jurisdiction was not available to be exercised by the Division Bench (review), reversal of the impugned order is the solitary conceivable outcome. However, the importance of the second legal issue cannot be over-emphasized. The purpose of the law of contempt is to secure public respect and confidence in the judicial process. We have found the law on the question of applicability of the principle of "continuous wrong/breach/offence" for the purpose of section 20 of the Act not too certain; hence, we feel it expedient to give a brief overview of the law of contempt and how such law has evolved and developed as well as chart out the course of action to be followed by the high courts while exercising contempt jurisdiction not only generally but also on the face of an objection as to maintainability of a time-barred action initiated by a party for civil contempt.

29. The power of the Supreme Court and a high court to punish for breach of its orders is expressly recognised by Articles 129 and 215 of the Constitution, respectively. It is an inherent power, distinguishable from a power derived from a statute. In ***R.L. Kapur v. State of Tamil Nadu***,[26] this Court pointed out that the inherent power

26 [1972] 3 SCR 417 : (1972) 1 SCC 651

or jurisdiction was neither derived from the statutory law relating to contempt nor did such statutory law affect such inherent power or confer a new power or jurisdiction. In view of the recognition of such power by the Constitution itself, they partake the character of constitutional power and consequentially no law made by legislature could take away the jurisdiction conferred on the Supreme Court and the high courts.

30. In ***Aligarh Municipal Board v. Ekka Tonga Mazdoor Union***,[27] this Court observed as follows:

> "5. *** Contempt proceeding against a person who has failed to comply with the Court's order serves a dual purpose: (1) vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes. ***"

31. This Court in ***Jhareswar Prasad Paul v. Tarak Nath Ganguly***,[28] held that:

> 11.*** It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed

27 (1970) 3 SCC 98

28 [2002] 3 SCR 913 : (2002) 5 SCC 352

> deliberate default in complying with the directions in the judgment or order.
>
> (emphasis ours)

32. ***In Re: Vinay Chandra Mishra***[29] is a decision where, referring to Article 129, this Court observed that the jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute.

33. Despite such a power being conferred by the Constitution, what would constitute contempt – civil and criminal – and also, what would be the procedure for initiating action and how to punish for contempt is provided by the Act. The source of power to enact the Act can be traced to Items 77 and 14 of Lists I and III, respectively, of the Seventh Schedule appended to the Constitution.

34. In ***L.P. Misra (Dr.) v. State of U.P.***,[30] this Court set aside the order under challenge (punishing the appellant for criminal contempt committed on the face of the court but without extending to him any opportunity to show cause). In the process, a three-Judge Bench of this Court had the occasion to observe that it *"is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law"*.

35. In ***Pallav Sheth*** (supra) too, a three-Judge Bench of this Court noticed ***L.P. Misra (Dr.)*** (supra) and reiterated that *"the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law"*.

36. Yet again, this Court in ***Ashok Kumar Aggarwal v. Neeraj Kumar***[31] overturned the decision of the high court under challenge which passed an order in contempt proceedings solely on merits disregarding the procedural objections (including that of limitation). This Court reiterated that high courts were obliged to examine whether procedure prescribed by law had been complied with when a petition under Article 215 was presented before the court. Such examination

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29 [1995] 2 SCR 638 : (1995) 2 SCC 584

30 (1998) 7 SCC 379

31 [2013] 12 SCR 457 : (2014) 3 SCC 602

would also include a scrutiny of whether limitation, as prescribed by section 20, was attracted to the facts of the case.

37. The 'procedure prescribed by law' or a 'validly enacted law' referred to in the aforementioned decisions is the one the Act envisages. Proceedings for contempt being quasi-criminal in nature, no punishment can be ordered by any court without strictly adhering to the stringent provisions therefor, however needless they may appear to be when a contempt is committed on the face of a high court and such court has no two opinions that following the course prescribed by the Act to punish for contempt would eventually turn out to be a useless formality.

38. Much water has flown under the bridge since the aforesaid decided cases. Having regard to some extreme cases of exercise of contempt power increasing over a period of time, a three-Judge Bench of this Court in ***State of Uttar Pradesh v. Association of Retired Supreme Court & High Court Judges***[32] speaking through the Hon'ble the Chief Justice of India had to devise a Standard Operating Procedure[33] for being followed by the high courts while summoning public officials, alleged to be in contempt, to be physically present in court. Deeply concerned with the lack of self-restraint shown in the exercise of contempt power in certain cases, the Bench directed framing of rules by all the high courts in terms of the SoP, as devised. This Court noted in such decision that mandating the physical presence of a contemnor, specifically in the case of public officials, comes at a cost to the public interest and efficiency of public administration, and thus ought not to be resorted to at the drop of a hat.

39. We wish to add to this by way of clarification that concomitantly, there lies a bounden duty on the contemnor to comply with the court's order without any delay, in a case where legal recourse has not been taken to set aside/review/vacate the order which is alleged to have been breached. A public official against whom an allegation of contempt is levelled, upon being noticed either by issuance of a rule for contempt or by court notice, must work out his remedy in accordance with law if he wishes not to comply with the court's direction. He must not wait for compliance to be secured only upon all the phased steps to be taken by the high courts in terms of paragraph 44 of ***State***

32 [2024] 1 SCR 211 : (2024) 3 SCC 1

33 SoP, hereafter

of Uttar Pradesh (supra), forming part of the SoP, are complete. A public official who is arrayed as a contemnor is as much bound by an unchallenged order of a high court as a private party is, and cannot consider himself not bound by the law by virtue of the office he holds. Being under a duty to comply with a final and binding order of a high court, the contemnor ought not to drag his feet in doing the same until the coercive measure of summoning the contemnor to be physically present is resorted to by the high court. We are reminded at this stage of what this Court in ***Aligarh Municipal Board*** (supra) said:

> "5. *** It must also be clearly under stood in this connection that to employ a subterfuge to avoid compliance of a court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt.***"
>
> (emphasis ours)

Deliberate delay in effecting compliance with an order could be seen as aggravating the contempt resulting in a degree of punishment higher than what the court earlier thought of imposing. Be that as it may.

40. Axiomatically, not only any order imposing punishment for proved contempt must be in accordance with the procedure prescribed by the Act but initiation of the proceedings too has to be in accordance with the three modes that the Act envisages. One of these is by presentation of a petition for civil contempt before a high court complaining of wilful and deliberate refusal by a person obliged to comply with its final and binding order – a situation with which we are concerned.

41. In ***Pallav Sheth*** (supra), a three-Judge Bench of this Court had the occasion to consider whether the view taken by a two-Judge Bench in ***Om Prakash Jaiswal v. D.K. Mittal***[34] was correct. In ***Om Prakash Jaiswal*** (supra), the Bench had taken the view that filing of an application or petition for initiating proceedings for contempt does not amount to initiation of proceedings by the court and initiation under section 20 of the Act can only be said to have occurred when the court forms the *prima facie* opinion that contempt has been committed and issues notice to the contemner to show cause why he should not be punished. Such view did not find favour with the Bench in ***Pallav Sheth*** (supra). It was observed that a provision like section 20 has to be interpreted having regard to the realities

34 [2000] 1 SCR 1064 : (2000) 3 SCC 171

of the situation, and that, too narrow a view of section 20 had been taken in ***Om Prakash Jaiswal*** (supra) which did not seem to be warranted; the view taken would not only cause hardship but would perpetrate injustice. Relevant passages from the decision in ***Pallav Sheth*** (supra) read thus:

> **"39.** … When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.
>
> **40.** In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.
>
> **41.** One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts

> nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.
>
> **42.** … if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.
>
> **43.** ***
>
> **44.** Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

42. Interpretation of section 20 of the Act, which formed the crux of the discussion in ***Pallav Sheth*** (supra), has the marginal note 'limitation for actions for contempt'. Section 20 ordains that:

> "20. No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of

a period of one year from the date on which the contempt is alleged to have been committed."

43. The *vires* of section 20 of the Act has been upheld by Division Benches of the High Court of Andhra Pradesh, High Court of Karnataka and the High Court at Calcutta in ***Advocate General v. A.V. Koteswara Rao,***[35] ***High Court of Karnataka v. Y.K. Subanna***[36] and ***Arthur Branwell & Company Ltd. v. Indian Fibres Ltd.***,[37] respectively.

44. In upholding the *vires* of section 20, the High Court of Karnataka in ***Y.K. Subbanna*** (supra) traced the legislative history of section 20 of the Act. It is considered profitable to read the relevant passages therefrom, which are as follows:

> **"79.** The Act for the first time, by enacting Section 20, introduced a period of limitation. The Sanyal Committee examined the question as to whether any period of limitation should be prescribed in respect of contempt proceedings and observed in Paragraph 8 of Chapter X of its Report, as under:
>
> > '8. Limitation:— Contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be over looked but such cases should be very rare indeed. From this point of view we considered whether it is either necessary or desirable to specify a period of limitation in respect of contempt proceedings. The period, if it is to be fixed by statute, will necessarily have to be very short and provision may also have to be made for condoning delay in suitable cases. We feel that on the whole instead of making any hard and fast rule on the subject the matter may continue to be governed by the discretion of the Courts as hithertofore.'
>
> **80.** The Joint Select Committee of Parliament on Contempt of Court (Bhargava Committee) after examining the Report

35 1984 Cri. LJ. 1171

36 1989 SCC OnLine Kar 404

37 1993 (2) CLJ 182

of Sanyal Committee on the question of limitation, thought that the contempt procedures by their very nature should be initiated and dealt with as early as possible and considered it necessary and desirable that period of limitation should be specified in respect of actions for contempt and, therefore, laid down in the new clause (Clause 20) a period of one year at the expiration of which no proceedings for contempt should be initiated. The reasons given by the Joint Select Committee for introducing Clause 20 in the Bill, as reported by it are these:

> 'The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings have been initiated long after the alleged contempt had taken place. The Committee therefore consider it necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated.'

81. This is the legislative history of Section 20."

45. We can safely affirm, drawing from our joint experience on the Bench, that in the vast majority of cases seeking invocation of the provisions of the Act for an alleged civil contempt, institution of proceedings is through a petition or an application containing information made available by a party alleging that the facts disclosed by him do constitute contempt of court and, thus, provide the court the premise for initiating proceedings to commit for contempt. The role of such a party, who brings a petition for contempt and activates the court's machinery, is merely that of an informer. Despite such a party figuring in the memo of parties as a petitioner, the matter relating to entertainment of his petition and the punishment to be imposed, in case of a proved contempt, relate to the exclusive jurisdiction and authority of the high courts to punish for contempt and is substantially a matter between the court and the alleged contemnor. Whether or not to take the assistance of the petitioning informer is a question which invariably must be left entirely to the discretion of the court seized of the proceedings.

46. In exercising its jurisdiction to punish for contempt, the courts in India do keep in mind the benefit that could accrue to the petitioning informer (if he is a party to the parent proceedings out of which the contempt arises) upon implementation of the order alleged to have been wilfully disobeyed; but more than anything else, the endeavour is to uphold the majesty, dignity and prestige of the courts. Indubitably, the jurisdiction to punish for contempt is exercised when the alleged contemnor, by his action(s), shows extreme lack of solicitude in complying with an order of court, which has attained finality and is binding on him. So long a final order passed by a court is not set aside in appeal/revision or recalled in exercise of review jurisdiction or an interim order is vacated at a subsequent stage of the proceedings, it continues to bind the parties to the proceedings and it would amount to subversion of the rule of law if any party, in breach, were encouraged to continue such breach. An order of a court has to be complied with and it would not amount to a valid defence that in the contemnor's own understanding or because of legal opinion tendered to him, the order did not warrant compliance being erroneous. This Court in ***Commissioner, Karnataka Housing Board v. C. Muddaiah***[38] has held that once a direction has been issued by a competent court, it has to be obeyed and implemented without reservation; the order of the court cannot be rendered ineffective on the specious plea that no such direction could have been given by the court. A party, though perceiving an order to be erroneous, allowing it to attain finality by reason of acceptance thereof cannot escape the rigours of compliance. He has to pursue his appellate or other remedy to escape the consequences that can visit him, should the high court hold him guilty of contempt. Such a compliance is insisted upon for securing the majesty, dignity and prestige of the court.

47. Insofar as an interim order is concerned, despite an element of contempt being involved, if a defence appearing to be valid in law and having substance is raised before the high court by a party in default which shakes the very foundation of the order alleged to have been violated and upon the high court reaching a satisfaction of such a defence being valid to the extent that the subject order ought not to have been passed, it would always be open to the said court, depending on the nature of order and the breach alleged, to first

38 [2007] 9 SCR 784 : (2007) 7 SCC 689

secure compliance of the order by allowing the contemnor to purge the contempt without prejudice to his rights and contentions and, after such compliance, to revisit the order as per law and the circumstances present before it and then pass appropriate orders. There could be exceptional situations where the consequences of complying with an interim order, apparently erroneous or without jurisdiction and which has attained finality, could bring about irretrievable consequences. In such a case, where the high court is satisfied that securing compliance of its order would cause more injustice than justice, notwithstanding the finality attached to such order, the high court's authority ought to be conceded to pass such order as the justice of the case before it demands.

48. Lord Denning in ***Hadkinson* v. *Hadkinson***[39] had observed:

> "The court would only refuse to hear a party to a cause when the contempt impeded the course of justice by making it more difficult for the court to ascertain the truth or to enforce its orders and there was no other effective means of securing his compliance. The court might then in its discretion refuse to hear him until the impediment was removed or good reason was shown why it should not be removed."

49. This decision was followed by the House of Lords in ***X Ltd.* v. *Morgan-Grampian Ltd.***[40] which also observes that the court will proceed with the contempt where a contemnor not only fails willfully and contumaciously to comply with an order of the court, albeit makes it clear that he will continue to defy court's authority. The courts in such circumstances may decline to entertain an appeal or hear a party unless they purge themselves.

50. It will be appropriate here to also quote from ***Halsbury's Laws of England***,[41] which states:

> "Thus a party in contempt may apply to purge the contempt, he may apply with a view to setting aside the order in which his contempt is founded, and in some cases he may be entitled to defend himself when some application

39 1952 (2) All ER 567

40 1990 (2) All ER 1

41 Volume 8, Third Edition

> is subsequently made against him. Even the plaintiff in contempt has been allowed to prosecute his action, when the defendant had not applied to stay the proceedings. Probably the true rule is that the party in contempt will not be heard only on those occasions when his contempt impedes the course of justice and there is no other effective way of enforcing his obedience."

51. This Court ***In the Matter of Anil Panjwani***[42] has observed that it is no rule of law and certainly not a statutory rule that a contemnor cannot be heard unless the contempt is purged. It has only developed as a rule of practice for protecting the sanctity of the court proceedings and the dignity of the court that a person who is *prima facie* guilty of having attacked the court may be deprived of the right of participation in the hearing lest he should misuse such an opportunity unless he has agreed to disarm himself. The court would not be unjust in denying hearing to one who has shown his lack of worth by attacking the court unless he has agreed to beat a retreat and the court is convinced of the genuineness of such retreating. It lies within the discretion of the court to tell the contemner charged with having committed contempt of court that he will not be heard and would not be allowed participation in the court proceedings unless the contempt is purged. This is a flexible rule of practice and not a rigid rule of law. The discretion shall be guided and governed by the facts and circumstances of a given case. Where the court may form an opinion that the contemner is persisting in his behaviour and initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemner is such that so long as it continues it impedes the course of justice and/or renders it impossible for the court to enforce its orders in respect of him, the court would be justified in withholding access to the court or participation in the proceedings from the contemner. On the other hand, the court may form an opinion that the contempt is not so gross as to invite an extreme step as above, or where the interests of justice would be better served by concluding the main proceedings instead of diverting to and giving priority to hearing in contempt proceeding the court may proceed to hear both the matters simultaneously or independently of each other or in such as it may deem proper.

42 [2003] 3 SCR 1179 : (2003) 7 SCC 375

52. Therefore, it would be correct to state that the court's power when dealing with the question of contempt, in a sense, is discretionary. It cannot be gainsaid that even in cases where disobedience of the order of the court is not disputed, the court may also accept a defence, if raised, of impossibility to comply with an order and come to the conclusion that since it is impossible to enforce its order, action to punish may not be initiated. That apart, refusal may be justified by grave concerns of public policy. Much would depend on the facts and circumstances of the case, the nature of the contempt under enquiry, etc., which would enable the court to exercise its discretion either way. However, to demonstrate his *bona fide*, the contemnor ought to bring any valid defence for his disability to comply with the court's direction to its notice without wasting any time. Whatever be the position before it, nothing stands in the way of the high court from passing an order to ensure that nothing impedes the course of justice.

53. Reverting to the point of limitation, even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court. The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, as laid down in ***Pallav Sheth*** (supra), that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the high court.

54. An action for contempt - though instituted through a petition or an application – is essentially in the nature of original proceedings, as held by this Court in ***High Court of Judicature at Allahabad v. Raj Kishore Yadav***;[43] a *fortiori*, a prayer for condonation of delay in presenting the petition/application alleging contempt would not be maintainable. The express negative phraseology used in section 20 of the Act, as a legislative injunction, places a fetter on the court's power to initiate proceedings for contempt unless the petition/application is presented within the time-frame stipulated therein. However, since section 20 also uses the expression "date on which the contempt is alleged to be committed" as the starting point of the period of one year to be counted for reckoning whether the petition/application has been presented within the stipulated period, the high courts ought

43 [1997] 2 SCR 429 : (1997) 3 SCC 11

to be wary of crafty and skilful drafting of petitions/applications to overcome the delay in presentation thereof.

55. The Act, which is a special law on the subject of contempt, does not expressly or by necessary implication exclude the applicability of sections 4 to 24 of the 1963 Act. This Court, in ***State of West Bengal v. Kartick Chandra Das***[44] has held that in terms of section 29(2) of the 1963 Act, provisions contained in section 5 of the 1963 Act can be called in aid by a party who seeks condonation of delay in presentation of an appeal under section 19(1) of the Act. Similarly, in exceptional cases, provisions like sections 12, 14, 17, 22, etc. of the 1963 Act could be invoked to seek exemption from the law of limitation, which is distinct from condonation of delay. In an appropriate case, it would be open to the party who has not petitioned the court within the period of one year, as stipulated in section 20 of the Act, to seek exemption from the law of limitation in line with the principle flowing from Order VII Rule 6, CPC,[45] by showing the ground upon which such exemption is claimed. We have no hesitation to hold that in a case where a civil contempt is alleged by a party by referring to a "continuing wrong/breach/offence" and such allegation *prima facie* satisfies the court, the action for contempt is not liable to be nipped in the bud merely on the ground of it being presented beyond the period of one year as in section 20 of the Act. Applicability of the principle underlying Order VII Rule 6, CPC for granting exemption would only be just and proper having regard to the object and purpose for which the jurisdiction to punish for contempt is exercised by the courts if, of course, the court is satisfied that benefit of such an exemption ought to be extended in a given case. At the same time, it must be remembered that the court cannot grant exemption from limitation on equitable consideration or on the ground of hardship. Inspiration in this regard may be drawn from the decision of the Privy Council in ***Maqbul Ahmad v. Onkar Pratap Narain Singh***.[46] However, as observed earlier, contempt proceedings being in the nature of

44 [1996] Supp. 2 SCR 373 : (1996) 5 SCC 342

45 Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law limitation, the plaint shall show the ground upon which exemption from such law is claimed:
Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

46 AIR 1935 PC 85

original proceedings, akin to a suit, application of section 5 of the 1963 Act to seek condonation of delay is excluded.

56. A caveat needs to be added here. For a "continuing wrong/breach/ offence" to be accepted as a ground for seeking exemption in an action for contempt, the party petitioning the court not only has to comprehend what the phrase actually means but would also be required to show, from his pleadings, the ground resting whereon he seeks exemption from limitation. Should the party fail to satisfy the court, the petition is liable to outright rejection. Also, the court has to be vigilant. Stale claims of contempt, camouflaged as a "continuing wrong/breach/offence" ought not to be entertained, having regard to the legislative intent for introducing section 20 in the Act which has been noticed above. Contempt being a personal action directed against a particular person alleged to be in contempt, much of the efficacy of the proceedings would be lost by passage of time. Even if a contempt is committed and within the stipulated period of one year from such commission no action is brought before the court on the specious ground that the contempt has been continuing, no party should be encouraged to wait indefinitely to choose his own time to approach the court. If the bogey of "continuing wrong/breach/offence" is mechanically accepted whenever it is advanced as a ground for claiming exemption, an applicant may knock the doors of the Court any time suiting his convenience. If an action for contempt is brought belatedly, say any time after the initial period of limitation and years after the date of first breach, it is the prestige of the court that would seem to become a casualty during the period the breach continues. Once the dignity of the court is lowered in the eyes of the public by non-compliance of its order, it would be farcical to suddenly initiate proceedings after long lapse of time. Not only would the delay militate against the legislative intent of inserting section 20 in the Act (a provision not found in the predecessor statutes of the Act) rendering the section a dead letter, the damage caused to the majesty of the court could be rendered irreparable. It is, therefore, the essence of justice that in a case of proved civil contempt, the contemnor is suitably dealt with, including imposition of punishment, and direction as well is issued to bridge the breach.

57. Having thus held, we move on to examine the objection as to maintainability of the contempt action initiated by the first respondent upon the inaction of the appellant in effecting mutation of the decretal property in his favour in the revenue records and also as to whether

a case of "continuing wrong/breach/ offence" was at all shown by the first respondent in the contempt petition.

58. To recapitulate, the Single Judge had allowed the writ petition of the first respondent on 05th March, 2009 with a direction to the Tahsildar to effect the necessary mutation in the revenue records in accordance with the final decree dated 26th December, 2003. Pertinently, the direction issued to the appellant *vide* the order of disposal of the writ petition did not specifically mention a time-frame within which the order was to be implemented.

59. In view of the absence of a time-frame in the order, much would turn on rule 21 of the Writ Rules.[47] Having read the relevant rule, we presume that the learned Single Judge was aware of such a rule and, hence, refrained from stipulating a time-frame for compliance of the Court's order. Irrespective of any time-frame fixed in an order, the direction contained therein would require compliance within the period stipulated in rule 21 if the person responsible for such compliance has notice of it even *aliunde*.

60. The question of the contempt petition being barred by limitation has to be decided keeping section 20 of the Act and rule 21 of the Writ Rules in mind together with what constitutes a "continuing wrong/ breach/offence". Undisputedly, the contempt petition was instituted on 04th October, 2014, more than 5 (five) years after the order (of which contempt had been alleged) was passed, i.e., on 05th March, 2009. Notably, the appellant had not carried the order dated 05th March, 2009 (disposing of the writ petition) in appeal. Therefore, question of operation of the said order remaining suspended did not arise and the principle embodied in section 15 of the 1963 Act was not attracted. The said order required the appellant to effect mutation in terms of the decree of the civil court. No time-frame for compliance of such order having been stipulated by the Single Judge, it would stand to reason that the same required compliance at least by the end of the time-frame stipulated by rule 21.

61. The appellant has asserted before us that the contempt action was time-barred in view of the fact that limitation for initiation of contempt action commenced on 04th May, 2009, i.e., when the two-month period

47 Unless the court otherwise directs, the direction or order made or the rule absolute issued by the High Court shall be implemented within two months of the receipt of the order.

stipulated by rule 21 expired and ended on 03rd May, 2010, i.e., in accordance with section 20 of the Act. However, the first respondent has contended that the contempt petition was not barred by limitation since the act of the appellant in not implementing the direction for effecting mutation was in the nature of a continuing wrong.

62. The date on which service of the order dated 05th March, 2009 disposing of the writ petition was effected on the appellant is not stated anywhere in the contempt petition by the first respondent. No such date is also reflected in the representations that the first respondent claims to have made on 11th May, 2009, 12th September, 2009, 22nd October, 2010, 16th August, 2012 and 05th February, 2014. It is also not seen from the appellant's counter affidavit that he pleaded non-service of such order. We are, thus, inclined to the view that the appellant had notice *aliunde* of the order dated 05th March, 2009. Proceeding on the premise that the order must have been served immediately after the same was passed by the Single Judge and in the light of rule 21 of the Writ Rules, the appellant had 2 (two) months' time from receipt of the order dated 05th March, 2009, i.e., say till the end of May, 2009 to implement the direction. The appellant failed to effect mutation, as directed, within the aforesaid time-frame and was, thus, in breach of the said order dated 05th March, 2009, say from June, 2009. There does not appear to be any explanation proffered in the contempt petition worthy of consideration as to why the contempt petition was delayed and not presented within the period of a year of commission of the breach when it first occurred, i.e., at least by the end of May, 2010.

63. The learned Single Judge deciding the contempt petition, *vide* order dated 04th October, 2017, was impressed by the arguments advanced by the first respondent and while holding that there has been a continuing wrong and also that the appellant is in contempt, allowed the contempt petition.

64. The Division Bench (review) held in favour of the first respondent observing that the inaction of the Government officials was a continuing wrong since they did not outrightly refuse to implement the order, rather, till as late as 2017, assured that they would implement it but failed to do so. Furthermore, what weighed with the High Court was the alleged misrepresentation with respect to the title of the subject land; such misrepresentation being in the nature of fraud, would entitle the High Court to recall the primary order on merits. The State

authorities were held to have misrepresented the title of the suit land inasmuch as they took mutually contradictory stands, i.e., on the one hand it was argued that the subject land was escheated land, and on the other, it was argued, on the strength of revenue entries, that the subject land always belonged to the State. The High Court then went on to examine and interpret documents produced by the respondents for the first time and accorded title in favour of the respondents.

65. For reasons more than one, the impugned order allowing the contempt petition is indefensible.

66. First, having read the impugned order, we are quite convinced that submissions that were advanced before the Division Bench (review) of the order dated 05th March, 2009 being in the process of implementation had the undesirable effect of shifting the focus of the High Court from adjudging the maintainability of the contempt petition as on date the same was presented, i.e., 04th October, 2014, to the unacceptable fact of actual non-compliance of the order of 05th March, 2009 despite indication of compliance. No doubt, compliance of an order of the court has to be insisted upon but within the four corners of the contempt petition. Non-compliance coupled with an assurance in court to comply, after the court has issued notice on the contempt petition, is not sufficient to attract the principle of "continuing wrong/ breach/offence". A contemnor on pain of suffering consequences for contempt may well give up available defences before the court and proceed to obey the order/direction, of which he is alleged to be in contempt; but if the jurisdiction to punish is otherwise barred, there is no law that prohibits the court from first proceeding to ascertain whether the jurisdiction is at all available to be exercised; and, when an objection of maintainability based on limitation is raised, it becomes all the more essential for the court to decide the objection leaving aside other considerations. The Division Bench (review), unfortunately, missed the woods for the tree.

67. Proceeding ahead, we find that as complex as the issues surrounding the title of the subject land are, the impugned order of the Division Bench (review) is unsustainable in law, for, it has exceeded its contempt jurisdiction, which indubitably is limited and finite in the sense that every court exercising power to punish for contempt ought to keep itself within the boundaries specified by the Act and the judicial pronouncements in this behalf. The laborious exercise undertaken to unravel the web of deeds and documents so as to determine the

question of title was akin to an exercise undertaken by a court of first instance or first appeal and, thus, wholly unwarranted. It is of the utmost importance to remember that none of the documents produced by the first respondent answered the question as to whether the contempt petition was barred by limitation, which is the question the Division Bench (review) ought to have confined itself to, since it was only tasked with exercising review, and not appellate, jurisdiction.

68. In our considered view, it further becomes imperative to undertake an examination of the contempt petition itself. This exercise reveals that the primary grounds taken for the contempt petition being filed belatedly, *inter alia*, were the pendency of collateral proceedings and the continuous filing of representations before the Tahsildar by the applicants. Law is well-settled that the issue of limitation has to be considered with reference to the original cause of action. The period of limitation does not stand extended to the last of repeated representations made by a party, if filing of representation is not statutorily provided. The contempt petition is, however, entirely bereft of any pleading to the effect that the breach committed by the Tahsildar is in the nature of a continuing wrong or breach or offence, so as to overcome the bar of limitation set by section 20 of the Act read with rule 21 of the Writ Rules.

69. Despite the absence of any pleading as to "continuing wrong/breach/offence", the Single Judge by placing reliance on the decision in ***Firm Ganpat Ram Rajkumar v. Kalu Ram***[48] proceeded to hold that the Tahsildar's inaction constituted a continuing wrong, thereby saving the petition from being barred by limitation. The Division Bench (review) approached the matter in a similar manner, and concluded that the contumacious conduct alleged was in the nature of a continuing wrong.

70. While we are not in disagreement with the view expressed in ***Firm Ganpat Ram Rajkumar*** (supra) because of the special facts and circumstances obtaining therein, the decision of the Division Bench (review) affirming that of the Single Judge is wholly unsustainable in law for a few other reasons.

71. First, it is trite that the court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim s*ecundum*

48 [1989] Supp. 1 SCR 223 : (1989) Supp. 2 SCC 418

allegata et probate, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties. The assertion of the contumacious conduct being in the nature of a "continuing wrong/breach/offence" is factual and has to be borne from the pleadings on record. Law is, again, well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new case being made out for the party. Absent such pleading of there being a "continuing wrong/breach/offence", the finding returned by the Single Judge, since affirmed by the Division Bench (review), cannot be sustained in law.

72. Even if a point of "continuing wrong/breach/offence" is traceable in the pleadings, the court ought not to accept it mechanically; particularly, in entertaining an action for contempt, which is quasi-criminal in nature, the court should be slow and circumspect and be fully satisfied that there has indeed been a "continuing wrong/breach/offence".

73. This takes us to the other infirmity in the decision of the High Court inasmuch as it held that the disobedience of the mutation order by the appellant was in the nature of a continuing wrong. A reference to section 22 of the 1963 Act would be prudent at this stage. It reads:

> "22. Continuing breaches and torts - In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

74. While proceeding to examine the nature of the contumacious conduct in question, it is considered apposite to commence the discussion with a reference to ***Halsbury's Laws of India (Damages; Deeds and Other Instruments)***[49] reading thus:

> "[115.032] *When cause of action is single and continuing* - A cause of action may be either single or continuing. When an act is final and complete and becomes a cause of action for injury to the plaintiff, it is single, arises once and for all and the plaintiff is entitled to sue for compensation at one time, for all past, present and future consequences of the

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> wrongful act. But if there is repetition of a wrongful act or omission, it will comprise a continuing cause of action, and if an action is brought by the plaintiff, it will be restricted to recovery of damages which have accrued up to the date of suit. In such cases the cause of action is said to arise 'de die in diem' (from day to day). It is inaccurate strictly to speak of a 'continuing cause of action', but the phrase refers to a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

75. The English Court of Appeals in ***National Coal Board v. Galley***[50] distinguished between the two scenarios by observing that neither do repeated breaches of continuing obligations constitute a continuing wrong nor intermittent breaches of a continuing obligation; rather there has to be present an element of continuance in both, the breach and the obligation.

76. This Court too, as far back as in 1958, with reference to the Limitation Act of 1908, discussed in ***Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan***[51] what would constitute a continuing wrong. The relevant passage reads thus:

> "20. *** s. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.***

50 [1958] 1 All ER 9

51 [1959] Supp. 2 SCR 476 : AIR 1959 SC 798

> As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of s. 23 in such a case.***"

(emphasis ours)

77. The decision of this Court in ***Balkrishna Savalram Pujari*** (supra) was endorsed by this Court in ***M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das***[52] wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows:

> "343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist

52 (2020) 1 SCC 1

> from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. …
>
> …
>
> Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation."
>
> (emphasis ours)

78. The order on the writ petition directed the appellant to effect mutation in the revenue records in favour of the first respondent, in accordance with the final decree. The direction for mutation having been issued on 05th March, 2009, the appellant had a period of 2 (two) months therefrom to effect such mutation, as stipulated by the Writ Rules, which we shall assume the appellant failed or neglected to comply without just reason. From 04th May, 2009, i.e., the starting point for the limitation period for initiation of contempt action to commence, till 10th February, 2014, i.e., the date of the filing of the contempt petition, the appellant failed to effect mutation, as ordered by the Single Judge. Could it be said that every day thereafter that the appellant did not effect mutation gave rise to a fresh cause of action so as to constitute a "continuing wrong/breach/offence"? To our minds, the answer is a clear and unequivocal 'NO'. Upon application of the test laid down by this Court in ***Balkrishna Savalram Pujari*** (supra) and ***M. Siddiq*** (supra), it is evident that when, by 04th May, 2009, the appellant failed to implement the direction of the High Court, the act of disobedience was complete as on that date itself. Every day thenceforth, the name of the first respondent continued to be absent from the revenue records but

such absence could not be characterised as the injury or wrongful act itself; it was merely the damage which flowed from the standalone act of breach committed by the appellant – that of not effecting the mutation. The injury was not repetitive or in other words, did not arise *de die in diem*, but rather, it was the effect of the injury which continued till the date the first respondent presented the contempt petition on 10th February, 2014.

79. Having held that the nature of breach or offence committed by the appellant was not in the nature of a "continuing wrong/breach/offence", the bar of limitation was rightly pressed by the Division Bench (original) to halt the claim of the first respondent at the threshold itself, since the period of limitation to initiate the contempt action ended at least by May end of 2010. The decision of the Division Bench (original) in dismissing the first respondent's contempt petition as time-barred was unexceptionable and the Division Bench (review) acted illegally in reversing the same assuming the jurisdiction to review which, on facts and in the circumstances, was not available to be exercised.

80. The contempt petition was, thus, barred by limitation and no case for claiming exemption having been set up, the same deserved outright dismissal.

EPILOGUE

81. Having answered the two legal issues and before recording our conclusion, we cannot resist reflecting on the point of fraud having vitiated the proceedings. This point, in turn, emerges because the Division Bench (review) erroneously held the State to have practised fraud; and this discussion is necessitated since, to the contrary, there seems to be sufficient reason to hold the first respondent responsible therefor. The writ petition, in the form the same had been presented by the first respondent, does evince clear suppression of a material fact bordering on fraud on court and having the potential to render it not maintainable. But to this too, there is a caveat. This question, though quite fundamental in nature, does not appear to have been argued by the appellant before the High Court and also before us. Thus, argument on the issue of maintainability of the writ petition not having been advanced before us by the parties, whatever we observe and record hereafter is merely an indication of the direction our decision would have taken, if such point were raised or argued. We may not be misunderstood of having decided a point without calling upon the parties to address on it.

82. The effect of suppression of a material fact on maintainability of a writ petition is too well known. But what is important is, whether suppression of a material fact in a writ petition amounts to fraud on court and whether an issue of maintainability based on suppression can be examined if the judgment and/or order of disposal of the writ petition has attained finality by reason of no appeal being carried therefrom.

83. This Court in ***Meghmala v. G. Narasimha Reddy***[53] observed that suppression of any material fact/document amounts to a fraud on the court and every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

84. Quite recently, in ***K. Jayaram v. BDA***,[54] this Court held:

> "10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced."
>
> (emphasis ours)

85. It is also settled law that fraud is an extrinsic collateral act, which vitiates the most solemn of proceedings including judicial acts and that a plea of fraud can be set up even in a collateral proceeding. We are reminded of what this Court said in ***S.P. Chengalvaraya Naidu v. Jagannath***:[55]

> "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants."

53 [2010] 10 SCR 47 : (2010) 8 SCC 383

54 (2022) 12 SCC 815

55 (1994) 1 SCC 1

86. The Division Bench (original) noted that the civil suit having been withdrawn against the State, the first respondent could not have validly attempted to obtain a direction, through the medium of the writ petition, on the strength of a decree passed in such a suit where the State was no longer a party, yet, the Division Bench (review) held the State to have practised fraud.

87. A perusal of the averments in the writ petition do not reveal any mention of the civil suit having been withdrawn against the State Government. Suppression of a material fact on the part of the first respondent is indeed discernible which, if pleaded, could have altered the outcome of the writ petition. A very innocuous prayer was, however, made for effecting mutation in terms of the final decree, without disclosing that mutation was being asked for in respect of a piece of land over which the State itself had been claiming title and that the civil suit was withdrawn faced with such a claim of the State. A writ court being a court of equity, it is needless to observe that the parties are bound to approach the court with clean hands. Inasmuch as the aforesaid fact of withdrawal was not brought to the writ court's notice, an egregious breach of such principle is noticed. Suppression of such a material fact, as in the present case, could legitimately be argued to amount to a fraud on court. There can hardly be two opinions that such breach would strike at the very root of the matter and since a point of fraud can be raised even collaterally, if the point of fraud had been raised, the writ petition itself could have been held non-maintainable.

88. However, since our decision is premised on the reasons assigned while answering the issues formulated in paragraph 8 (supra), we wish to say no more.

CONCLUSION

89. For the foregoing reasons, we conclude that the High Court exceeded both its review and contempt jurisdiction. The impugned order is, thus, set aside, and the judgment and order of the Division Bench (original) in the contempt appeal and the letters patent appeal is restored.

90. The appeals succeed and are allowed. All pending applications stand disposed of. Parties shall, however, bear their own costs.

91. Determination of the title to the subject land, adjudication on the validity of the decrees in favour of the respondents, or decision on any other contentious issue are left open for a forum of competent jurisdiction to embark upon, if approached by any of the parties. None

of the observations of this Court, or of the High Court in the impugned order should be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever.

CIVIL APPEAL NOS. _____ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19748-19749 OF 2022]

92. Leave granted.

93. These appeals assail the common judgment and order dated 26th September, 2022 of the High Court dismissing petitions[56] preferred by the appellant, seeking recall of the judgment and order dated 27th April, 2022 of the Division Bench (review). The High Court held that the recall petitions were review petitions in disguise; thus, the impugned judgment and order was upheld in view of the specific statutory bar of Order XLVII Rule 9, CPC.

94. The judgment and order 27th April, 2022 having been set aside for the reasons assigned above while allowing the civil appeals arising out of SLP (Civil) Nos. 19748-19749 of 2022, the order of the High Court dated 26th September, 2022 assailed in these appeals upholding the same can no longer stand. Resultantly, the impugned order is set aside. The present appeals succeed and are allowed on the same terms as the appeals decided hereinabove.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Mukund P Unny, Hony. Associate Editor
(Verified by: Shadan Farasat*)*

56 I.A. No. 3/2022 in Review I.A. No. 1/2020 in LPA 1/2018 and I.A. No. 10/2022 in Review I.A. No. 3/2020 in CA No. 33/2017

[2024] 7 S.C.R. 1124 : 2024 INSC 579

Kishorchandra Chhanganlal Rathod
v.
Union of India & Ors.

(Civil Appeal No. 7930 of 2024)

23 July 2024

[Surya Kant and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether exercise of statutory powers under the Delimitation Act, 2002 are insusceptible to powers of judicial review under Article 226 of the Constitution of India.

Headnotes†

Constitutional law – Limitations on judicial scrutiny on electoral matters under Article 329 of the Constitution of India and scope of judicial review under Article 226 of the Constitution of India over exercise of power under the Delimitation Act:

Held: Although Article 329 of the Constitution of India undeniably restricts the scope of judicial scrutiny regarding the validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies, it cannot be construed to have been imposed for every action of delimitation exercise – If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission – As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and principle of separation of powers – Reliance placed on the Judgment of this Hon'ble Court in Dravida Munnetra Kazhagam (Dmk) v. Secretary Governors Secretariat and Ors. [2019] 14 SCR 704 : (2020) 6 SCC 548 : 2019 INSC 1326 and State of Goa v. Fouziya Imtiaz Shaikh [2021] 2 SCR 770 : (2021) 8 SCC 401 : 2021 INSC 179, where this Hon'ble Court held that a Constitutional Court can intervene for facilitation of elections, or where a case of malafide or arbitrary exercise of power is made out. [Paras 5 and 6]

Constitutional Law – Nothing precludes a Constitutional Court from deciding validity of orders passed by Delimitation Commission:

Held: While Courts shall always be guided by settled principles of scope, ambit and limitation on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by Delimitation Commission on the touchstone of the Constitution – If the Order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation – A Constitutional Court can undertake the exercise of judicial review within the limited sphere at an appropriate stage. [Paras 8 and 9]

Case Law Cited

Dravida Munnetra Kazhagam (Dmk) v. Secretary Governors Secretariat and Ors. [2019] 14 SCR 704 **: (2020) 6 SCC 548;** *State of Goa v. Fouziya Imtiaz Shaikh* [2021] 2 SCR 770 **: (2021) 8 SCC 401 – relied on.**

Meghraj Kothari v. Delimitation Commission & Ors. [1967] 1 SCR 400 **: 1966 SCC OnLine SC 12 : 1966 INSC 171 – referred to.**

List of Acts

Constitution of India, 1950; Delimitation Act, 2002.

List of Keywords

Scope of judicial interference under Delimitation Act; Judicial review of electoral matters.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7930 of 2024

From the Judgment and Order dated 21.09.2012 of the High Court of Gujarat at Ahmedabad in SCA No. 10136 of 2012

Appearances for Parties

Mrs. Christi Jain, Ms. Pratibha Jain, Puneet Jain, Mann Arora, Ms. Akriti Jain, Harsh Jain, Advs. for the Appellant.

K M Natraj, A.S.G., Kanu Agarwal, Ms. Swati Ghildiyal, Ms. Bani Dikshit, Kartikay Aggarwal, Abhishek Kumar Pandey, Raman Yadav, Mukesh Kumar Singh, Ms. Ameyavikrama Thanvi, Chitvan Sinhal, Arvind Kumar Sharma, Sidhant Kumar, Sahil Tagotra, Ms. Manyaa Chandok, Sujay Jain, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The appellant is aggrieved by the judgment dated 21.09.2012, passed by a Division Bench of the Gujarat High Court in terms whereof the Writ Petition, filed by the appellant, challenging the delimitation exercise, which resulted into reservation of Bardoli Legislative Assembly Constituency, Gujarat for Scheduled Caste community was dismissed. The said constituency was reserved by the Delimitation Commission in exercise of its powers under the Delimitation Act, 2002.

3. The High Court, vide the impugned judgment, relied upon Article 329 of the Constitution and held that there is a bar to interference by the Court in electorate matters and as such, the appellant's challenge to the Delimitation Commission's Order No. 33, dated 12.12.2006, which had received the assent of the President of India, could not be called in question in any court of law. In this manner, the High Court dismissed the writ petition at the threshold on the anvil of Article 329(a) of the Constitution, which states:

> *"329. Bar to interference by courts in electoral matters — Notwithstanding anything in this Constitution:*
>
> (a) *the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court."*

4. As regards to the factual dispute and/or merits of the appellant's claim is concerned, we do not deem it necessary to go into the validity of Commission's order as the controversy pertains to the delimitation exercise, which was undertaken way back in the year 2006. It is not in dispute that much water has flown under the bridge since then, including the undertaking of a fresh delimitation exercise by the competent authority.

5. We, however, do not approve the view taken by the High Court that the order of delimitation of constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible

to the powers of judicial review exercisable under Article 226 of the Constitution. Although Article 329 undeniably restricts the scope of judicial scrutiny re: validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, it cannot be construed to have imposed for every action of delimitation exercise. If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers.

6. This understanding is supported by a three-judge bench decision of this Court in *Dravida Munnetra Kazhagam v. State of T.N.*[1] where the Court was called upon to interpret Articles 243O and 243ZG of the Constitution, which mirror the aforementioned Article 329. Rejecting the contention that these provisions place a complete bar on judicial intervention, it was noted that a constitutional Court can intervene for facilitating the elections or when a case for *mala fide* or arbitrary exercise of power is made out. Using this, the Court directed delimitation to be conducted for nine new districts. Recently, a three-judge bench of this Court in *State of Goa v. Fouziya Imtiaz Shaikh*,[2] affirmed the ratio of the above-cited decision while discussing principles on Article 329(a), and rejected the contention which sought to prove it as *per incuriam*.

7. Therefore, while the Courts shall always be guided by the settled principles regarding scope, ambit and limitations on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by Delimitation Commission on the touchstone of the Constitution. If the order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation.

8. In order to prove that any kind of judicial intervention is fully prohibited, the respondents relied upon a Constitution Bench decision of this Court in *Meghraj Kothari vs. Delimitation Commission and others*[3] A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when

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1 [2019] 14 SCR 704 : (2020) 6 SCC 548, para 14

2 [2021] 2 SCR 770 : (2021) 8 SCC 401, para 67

3 [1967] 1 SCR 400 : 1966 SCC Online SC 12

the same would unnecessarily delay the election process. This is writ large from the following paragraph, where the Court explicated the reason behind adopting the hands-off approach:

> "*20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court."*
>
> [emphasis supplied]

9. Hence, the aforementioned judgement does not support the respondents' contention regarding complete restriction on judicial review. A constitutional court can undertake the exercise of judicial review within the limited sphere at an appropriate stage.

10. Consequently, the appeal is allowed in part, and para 3 of the impugned judgment—to the extent it held that there is a bar to challenge the order of delimitation of constituencies is set aside. The appellant, if so advised, may approach the High Court keeping in view the subsequent events. However, at present, no ground has been made out to interfere with the exercise of delimitation of constituencies and consequential reservation thereof, which was undertaken in the year 2006.

Result of the case: Appeal partly allowed.

†*Headnotes prepared by:* Prastut Mahesh Dalvi, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)

[2024] 7 S.C.R. 1129 : 2024 INSC 539

M/s Rewa Tollway P. Ltd.
v.
The State of Madhya Pradesh & Ors.

(Civil Appeal No. 8985 of 2013)

19 July 2024

[Vikram Nath* and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

In view of the subsequent change of policy by the state legislature in light of larger public interest, the appellants were required to pay stamp duty on the Concession Agreement executed under the Build, Operate & Transfer (BOT) Scheme. Plea of the appellants that in view of the previous executive decision that the agreement would not require stamp duty, but was to be executed only on stamp paper of Rs.100/-, the appellants entered into the agreement with legitimate expectation that no stamp duty was required to be paid. Whether the appellants had any enforceable legal right in light of the previous policy and executive action which was subsequently changed in light of larger public interest; whether the Concession Agreement was a lease or a bond or a license; when the stamp duty was payable on the amount spent by the lessee, whether the demand raised on the whole amount was unjustified.

Headnotes†

Legitimate expectation – Promissory estoppel – When not applicable – Transfer of Property Act, 1882 – Indian Stamp Act, 1899 – Indian Stamp (M.P.) Act, 2002 – High Court held that the Concession Agreement was a lease as defined u/s.105 of the TP Act as also u/s.2(16) of the IS Act and also rejected the challenge made by the appellants to the validity of the amendment made in proviso (c) to Clause (C) of Article 33 of Schedule 1(A) as amended by the Indian Stamp (M.P.) Act, 2002 – Correctness:

Held: Concession Agreement was a lease – Definition of lease as given under the IS Act covers any instrument by which tolls of any description are let and also u/s.105 of the TP Act, all the ingredients of a lease are fulfilled – No infirmity in the judgment of

* Author

the High Court warranting any interference – Validity of the M.P. Act No.12 of 2002 inserting the proviso (c) to Clause(C) to Entry 33 of Schedule 1-A of the IS Act, upheld – It is only a statutory provision as to what would be the rate of stamp duty payable on lease deeds of a particular type – But for the insertion of the proviso which was challenged, the stamp duty payable on the lease would be 8% of the market value as provided to be charged on the conveyance under Entry-22 of Schedule 1-A – By inserting the proviso, the stamp duty chargeable on a lease under BOT Project for tolls/bridges, construction of roads etc. would be 2% of the amount spent by the lessee – In fact, insertion of this proviso reduced the rate of stamp duty to be charged to 2% instead of 8% and that too on the amount to be spent by the lessee – Principle of promissory estoppel cannot be invoked against the exercise of legislative power – A prior executive decision does not bar the State legislature from enacting a law or framing any policy contrary to or in conflict with the previous executive decision in furtherance of larger public interest – Law laid down by the legislature would not be hit by principle of promissory estoppel or legitimate expectation because earlier the executive expressed its view differently – If the previous executive decision is withdrawn, modified or amended in exercise of legislative power in larger public interest, then the earlier promise upon which the party acts, cannot be enforced as a right and neither can the authorities be estopped from withdrawing its promise, as such an expectation does not give any enforceable right to the party – Appellants did not have any enforceable legal right in light of the previous law or policy and executive action, which was subsequently changed by the state legislature in light of larger public interest Thus, principles of legitimate expectation and promissory estoppel are not applicable – Stamp duty would be chargeable @ 2% on the amount likely to be spent under the agreement by the lessee – Lessee had no liability to pay any stamp duty on the amount not spent by the lessee but by the lessor or any other stake-holder – The amount spent by the lessee as per the agreement generally was 50% of the total cost of the project – Once, the stamp duty was payable on the amount spent by the lessee, the demand raised on the whole amount would be unjustified – Demand set aside to that extent – Revenue Officer/Collector (Stamps) to re-calculate the same and raise the demand accordingly. [Paras 18, 19, 24, 25, 27, 28, 32, 34]

M/S Rewa Tollway P. Ltd. v. The State of Madhya Pradesh & Ors.

Legitimate expectation – Promissory estoppel – Principles of – Discussed.

Case Law Cited

State of Uttarakhand and Ors. v. Harpal Singh Rawat **(2011) 4 SCC 575;** *Nasiruddin and another v. State of Uttar Pradesh Thr. Secretary and Ors.* [2017] 12 SCR 1073 **: (2018) 1 SCC 754;** *Union of India & Ors. v. Hindustan Development Corporation & Ors.* [1993] 3 SCR 128 **: (1993) 3 SCC 499;** *Ram Pravesh Singh & Ors. v. State of Bihar & Ors.* [2006] Suppl. 6 SCR 512 **: (2006) 8 SCC 381;** *P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India & Ors.* [1996] Suppl. 2 SCR 662 **: (1996) 5 SCC 268;** *M/s Hero Motocorp Ltd. v. Union of India* [2022] 13 SCR 592 **: (2023) 1 SCC 386 – relied on.**

Navjyoti Co-op. Group Housing Society v. Union of India [1992] Supp. 1 SCR 709**;** *Food Corporation of India v. Kamdhenu Cattle Feed Industries* [1992] Supp. 2 SCR 322**;** *The State of Jharkhand and Ors. v. Brahmputra Metallies Ltd. Ranchi and Anr.* [2020] 14 SCR 45**;** *State of Bihar and Ors. v. Shyama Nandan Mishra* [2022] 11 SCR 1136**;** *State of Gujarat and another v. Raman Lal Keshav Lal Soni and Ors.* [1983] 2 SCR 287**;** *B.S. Yadav and Ors. etc. v. State of Haryana and Ors. Etc.* [1981] 1 SCR 1024**;** *Kunnathat Thathunni Moopil Nair v. The State of Kerala and another* [1961] 3 SCR 77 **– held inapplicable.**

Associated Hotels of India Ltd. v. R.N. Kapoor [1960] 1 SCR 368 **: AIR 1959 SC 1262 – referred to.**

List of Acts

Transfer of Property Act, 1882; Indian Stamp Act, 1899; Indian Stamp (M.P.) Act, 2002.

List of Keywords

Concession Agreement; Subsequent change of policy/law; Previous law or policy subsequently changed; Stamp duty; Lease deeds; Bond; License; Legitimate expectation; Promissory estoppel; Previous policy; Executive decision; Tolls/bridges; Roads; Executive action subsequently changed in light of larger public interest; Stamp duty payable on lease deeds; Recovery of deficit stamp duty; Recovery notice.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8985 of 2013

From the Judgment and Order dated 11.02.2010 of the High Court of M.P. at Jabalpur in WP No. 2219 of 2004

With

Civil Appeal Nos. 8989, 8986, 8990, 8988, 8987, 8991, 8992, 8993, 8995, 8996 and 8994 of 2013

Appearances for Parties

Prafulla Kumar Behera, S. S. Nehra, Vikrant Nehra, Ms. Sundari Rawat, Kunal Verma, Mrs. Yugandhara Pawar Jha, Ms. Lavanya Dhawan, Shivraj Pawar, Ritik Gupta, Sanjay Kapur, Arjun Bhatia, B. K. Satija, Advs. for the Appellant.

Saurabh Mishra, A.A.G., Sunny Choudhary, Ms. Aarushi Singh, Ashiesh Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. By the impugned judgment and order dated 11.02.2010, the High Court of Madhya Pradesh at Jabalpur decided a group of twelve petitions wherein the question involved was whether a transaction where the right to collect tolls is given in lieu of the amount spent by the Concessionaire in the construction of roads, bridges etc. under the Build, Operate & Transfer (BOT) Scheme amounts to a "lease" as contemplated under Section 105 of the Transfer of Property Act, 1882[1] and Section 2(16) of the Indian Stamp Act, 1899.[2] Further challenge made in the said writ petitions was with regard to the validity of the amendment made in proviso (c) to Clause (C) of Article 33 of Schedule 1(A) as amended by the Indian Stamp (M.P.) Act, 2002, and a further prayer was made to declare Section 48 and 48(B) of IS Act, 1899, as amended by M.P. Act 24 of 1990 as *ultra vires*.

1 TP Act

2 IS Act

2. The Division Bench of the High Court, after considering the submissions and the material on record came to the conclusion that the writ petitions were without any merit and accordingly dismissed the same. Aggrieved by the same, these twelve appeals have been preferred.

3. For the sake of convenience, we are referring to the facts of Civil Appeal No.8985 of 2013, which are briefly stated hereunder:

   (i) Madhya Pradesh Rajya Setu Nirman Nigam Ltd.,[3] (respondent no.3) is a Company incorporated and registered under the Companies Act, 1956. The State of Madhya Pradesh, vide order dated 01.02.2001, authorized MPRSNN for reconstruction, strengthening, widening and rehabilitation of a section of road on Satna-Maihar-Parasimod-Umaria Road Project to be executed through Concession on Build, Operate and Transfer Scheme.

   (ii) MPRSNN, vide Advertisement dated 22.04.2002, invited tenders against the aforesaid project pursuant to which the bid of the appellant was accepted. On 8th August, 2002, Letter of Acceptance was issued by the MPRSNN to the appellant for execution of the Concession Agreement within 30 days.

   (iii) The IS Act was amended in the State of Madhya Pradesh vide Amendment Act No.12 of 2002 and proviso (c) to Clause(C) was inserted to Entry No.33 of Schedule-1(A), which provided that there shall be levy of stamp duty @ 2% on the amount likely to be spent on the project, on the agreement to lease and right to collect the toll is given. The State of Madhya Pradesh notified the said amendment on 12.08.2002.

   (iv) A Concession Agreement was signed on 15.09.2002 on a stamp paper of Rs.100 between MPRSNN and the appellant. A show cause notice dated 26.03.2004 was issued to the appellant intimating that the matter between State of M.P. and the Rewa Tollway Private Ltd. would be listed for hearing on 29.03.2004 before the Collector of Stamps, Bhopal and the appellant was required to produce the original copy of the agreement dated 15.09.2002. The appellant filed a detailed reply dated 25.04.2004 stating that the agreement executed was a

3 MPRSNN

Concession Agreement and, as such, it cannot be treated as a lease but as a license at best. The Collector (Stamps), Bhopal vide order dated 30.04.2004 passed an order exercising power under Section 48-B of the IS Act directing recovery of deficit stamp duty amounting to Rs.1,08,00,000/-(Rupees one crore eight lakhs) said to be payable on the Concession Agreement dated 15.09.2002. Thereafter, a recovery notice was issued on 29.05.2004 by the Collector (Stamps), Bhopal to deposit the aforesaid amount within seven days of the receipt of the said recovery notice.

(v) On 6th June, 2004, the appellant challenged the order dated 30.04.2004 by way of a writ petition under Article 226 of the Constitution which was registered as Writ Petition No.2219 of 2004. The High Court vide order dated 03.08.2004 granted interim stay of recovery of any amount pursuant to the impugned order dated 30.04.2004. The High Court, vide judgment and order dated 11.02.2010, dismissed the said writ petition along with eleven other matters and upheld the demand raised by the Collector of Stamps by the order dated 30.04.2004.

(vi) Aggrieved by the impugned judgment of the High Court, the appellant preferred the instant appeal with connected matters before this Court on 3rd May, 2010, in which notices were issued on 14th May, 2010 and, thereafter, interim order was passed on 7th January, 2011. Later on, vide order dated 13.09.2013, this Court granted leave and further directed the interim stay granted earlier to continue.

4. We have heard Shri Dushyant Dave, learned Senior Counsel appearing for the appellants in nine (9) appeals and other learned counsels appearing for the appellants in the other three (3) appeals and Shri Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh on behalf of the respondents.

5. Before we proceed further with the submissions, it would be relevant to refer to three other dates which have been referred to by Shri Dave in support of his submissions on legitimate expectation and promissory estoppel. According to Shri Dave, after the tender was invited vide Advertisement dated 22nd April, 2002, the Chief Secretary issued a Clarification dated 01.07.2002 with respect to the agreements executed under BOT Scheme stating that stamp duty would not

be payable on such agreements in the State of Madhya Pradesh also and further reiterating that in order to avoid any doubts to be raised in future, it is necessary to clarify that no stamp duty shall be payable on the agreements being executed under BOT Scheme. A further clarification was issued vide letter dated 21.07.2002 by the Chief Secretary of the State with respect to the Resolution dated 01.07.2002, that no stamp duty would be levied on BOT Projects in future and such agreements would be signed on stamp paper of Rs.100/-. Shri Dave further referred to the Notification of the State Government dated 10th March, 2008 whereby the stamp duty on toll was reduced from 2% to Rs.100 i.e. the position which existed prior to the Amendment of 2002 and as clarified in the notification and the letters of 1st July of 2002 and 21st July, 2002. It was, thus, submitted that the charge of 2% stamp duty was only applicable in the State of Madhya Pradesh between August, 2002 till March, 2008 and, thereafter, again all such Concession Agreements under BOT Scheme are to be executed on stamp paper of Rs.100. It was throughout the intention of the State of Madhya Pradesh to not charge stamp duty @ 2% and treat the Concession Agreement under BOT Scheme to be a license but unfortunately for the period referred to above, it was treated as a lease and the appellants are the victims of this period, whereas all subsequent Concession Agreements under BOT Scheme executed after 10th March, 2008 are exempt from such stamp duty.

6. Further continuing his submissions Mr. Dave, learned Senior Counsel submitted that in view of the Clarification dated 01.07.2002 and subsequent circulation vide letter dated 21.07.2002 throughout the State, once it was clarified that the Concession Agreements under the BOT Projects would be executed on stamp paper of Rs.100/-, the appellants entered into the agreement with the same impression and having calculated their project cost and also their tenders without factoring in 2% stamp duty, had legitimate expectation that the agreement would not require stamp duty @ 2% of the value, but was to be executed only on stamp paper of Rs.100/-. The subsequent demand was contrary to the legitimate expectations of the appellants and, therefore, liable to be set aside.

7. It was next submitted that the Circular of the Chief Secretary dated 1st July, 2002 and its subsequent circulation vide letter dated 21st July, 2002, estopped the State Government from amending the IS

Act and, further raising the demand @ 2% treating the Concession Agreement to be a lease, the same would be hit by principle of promissory estoppel. The State was estopped from demanding such stamp duty by treating the Concession Agreement to be a lease.

8. In support of his submissions, Shri Dave has placed reliance upon the following judgments:

(1) **Navjyoti Co-op. Group Housing Society Vs. Union of India;**[4]

(2) **Food Corporation of India Vs. Kamdhenu Cattle Feed Industries;**[5]

(3) **The State of Jharkhand and Ors. Vs. Brahmputra Metallies Ltd. Ranchi and Anr.;**[6]

(4) **State of Bihar and Ors. Vs. Shyama Nandan Mishra;**[7]

(5) **M/S Hero Moto Corp Ltd. Vs. Union of India and Ors.;**[8]

9. Shri Dave, learned Senior Counsel next submitted that the insertion of proviso (c) to Clause(C) under Article 33 of Schedule 1-A by the 2002 Amendment Act was *ultra vires* as it violates the mandate of Article 14 of the Constitution of India. It was submitted that the said amendment was illegal, arbitrary and bad in law as it nullified the promise made by the Chief Secretary, vide Circular dated 01.07.2002, and has taken away the vested right of the appellants of not factoring in 2% stamp duty and ultimately resulting into a demand of a huge amount of Rs.1,08,00,000/- (Rupees one crore eight lakhs) approximately. In support of his submission, he has relied upon the following two judgments:

(1) **State of Gujarat and another Vs. Raman Lal Keshav Lal Soni and Ors.;**[9]

(2) **B.S. Yadav and Ors. etc. Vs. State of Haryana and Ors. Etc.;**[10]

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4 [1992] Supp. 1 SCR 709 : (1992) Supp.1 SCR 709

5 [1992] Supp. 2 SCR 322 : (1992) Supp.2 SCR 322

6 [2020] 14 SCR 45 : (2020) 14 SCR 45

7 [2022] 11 SCR 1136 : (2022) 11 SCR 1136

8 [2022] 13 SCR 592

9 [1983] 2 SCR 287 : (1983) 2 SCR 287

10 [1981] 1 SCR 1024 : (1981) 1 SCR 1024

10. The next point raised by Shri Dave is that the aforesaid amendment was *ultra vires*, inasmuch as, the State had no legislative competence to bring in this amendment. Further, it was submitted that it was a colourable and excessive legislation and was a fraud on the Constitution of India, inasmuch as, the State itself in 2008 withdrew the Amendment of 2002. In support of his submission, he has relied upon the following judgment:

    (1) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and another;[11]

11. The next submission of Shri Dave is that the Concession Agreement dated 15.09.2002 is not an instrument of lease and, as such, the demand of 2% stamp duty was totally uncalled for and illegal. According to him, the ownership of the project land has not been transferred by the State to the MPRSNN and, as such, MPRSNN could not transfer any ownership or interest to the appellants. The Concession Agreement was on the concept of public, profit, partnership (PPP mode). He has further elaborated his submissions by referring to Section 105 of the TP Act. According to him, in a lease, the following three ingredients must pre-exist:

    (1) There is a transfer of a right to enjoy such property.

    (2) It is made for a fixed time, express or implied or in perpetuity.

    (3) There has to be consideration of a price paid or promised.

12. According to Shri Dave, learned Senior Counsel for the appellants, lease means transfer of interest in the property to enjoy the property whereas, license means transfer of property but no interest in the property. According to him, in the present case, there was no transfer of interest in the property, as such, it would not fall within the definition of lease. He has further referred to various clauses of the Concession Agreement in support of his submission.

13. It was next submitted that MPRSNN is a 50% partner in the construction of the project which indicates that the Concession Agreement is a mutual contract and, as such, would not levy 2% stamp duty as imposed by the impugned orders. According to him, out of a total project cost, 50% was to be paid by the MPRSNN.

11 [1961] 3 SCR 77 : (1961) 3 SCR 77

According to him, respondent no.3, MPRSNN being a 50% partner in the entire road project meant that the appellant and respondent no.3 are equal stake holders and, as such, the unilateral imposition of 2% stamp duty of the entire project cost on the appellant was illegal and unwarranted. He has further criticised the judgment of the Collector (Stamps), Bhopal whereby he held that the total project cost was Rs.110 crores whereas actually it was 54 crores, out of which, MPRSNN (respondent no.3) had granted subsidy and invested Rs.29.10 crores and the remaining Rs.24.90 crores, was invested by the appellant. As such, even if he was liable to pay 2% stamp duty, the amount would be much less, approximately Rs.48 lakhs and odd and not Rs.1.08 crores, which was 2% stamp duty on the entire project cost.

14. The last argument raised is that once the IS Act had been re-amended on 10th March, 2008, the earlier Amendment of 2002 should be held to be illegal and arbitrary. On such submissions, Shri Dave, learned senior counsel urged the Court to allow the appeal and set aside the impugned orders imposing deficiency in stamp duty of Rs.1.08 crores.

15. On the other hand, Shri Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh representing all the three respondents including 'MPRSNN' submitted that the High Court had dealt with all the above arguments in great detail and had rejected them for good reasons based on statutory provisions as also the law on the point. It did not suffer from any infirmity, much less any perversity warranting interference by this Court.

16. According to Shri Mishra, all the ingredients of a document constituting a lease as defined under the TP Act were existing in the Concession Agreements under the BOT Scheme. He has also referred to various clauses of the Concession Agreement to show that possession was actually transferred to the appellants in order to recover the toll, the period of such possession was defined to be fifteen years. It was for a consideration which was also mentioned in the agreement. Therefore, all the three ingredients were fulfilled and, as such, the Collector (Stamps), Bhopal and the High Court rightly held the Concession Agreements to be a lease. He also referred to definition of 'lease' under the IS Act, as laid down in Section 2(16), which includes any instrument by which tolls of any description are let. He also referred to the definition of 'immovable property' as defined under Section

3(26) of the General Clauses Act, 1897, which would include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. He further referred to various findings recorded by the High Court. He further placed reliance upon three judgments of this Court:-

(1) Associated Hotels of India Ltd. Vs. R.N. Kapoor;[12]

(2) State of Uttarakhand and Ors. Vs. Harpal Singh Rawat;[13]

(3) Nasiruddin and another Vs. State of Uttar Pradesh Thr. Secretary and Ors.;[14]

17. Shri Mishra, further referred to the various provisions of the Indian Tolls (MP) Amendment Act, 1972. Insofar as to the challenge of the amendments as being *ultra vires* is concerned, Shri Mishra submitted that the insertion of proviso (c) to Clause(C) to Entry-33, is only for determining the rate of charging stamp duty and, as such, the challenge was totally irrelevant. The Concession Agreement is a lease as defined under Section 105 of the TP Act as also under Section 2(16) of the IS Act and, therefore, would be chargeable to stamp duty, for which rate is provided under Schedule 1-A. It was further submitted that the submission relating to Promissory Estoppel and Legitimate Expectation are unwarranted and without any merit, inasmuch as, prior to the execution of the concession agreement, the amendment had been brought in. The communication by the Chief Secretary cannot have any overriding effect over the statutory amendments brought in by the State legislature. It is also submitted that there can be no Legitimate Expectation or application of Promissory Estoppel against statute. It is also submitted that the State was fully competent to carry out the amendments. It was next submitted that as the 2002 amendment had been reversed in 2008, cannot by itself draw any kind of presumption that 2002 amendment was illegal. It was submitted that the appeals lack merit and are liable to be dismissed.

18. Having considered the submissions advanced and having perused the material on record, we have no hesitation in holding that the judgment

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12 [1960] 1 SCR 368 : AIR 1959 SC 1262

13 (2011) 4 SCC 575

14 [2017] 12 SCR 1073 : (2018) 1 SCC 754

of the High Court impugned in these appeals does not require any interference. We do not find any infirmity, much less any perversity warranting any interference by this Court. The High Court has dealt with all aspects of the matter considering not only the stipulations in the Concession Agreement but has also dealt with in detail with the respective arguments advanced by the petitioners before the High Court (the appellants herein) at the same time referring to the statutory provisions, the constitutional provisions as also the case-laws relied upon by the counsel for the parties. However, there is one aspect of the matter which requires clarification which we shall deal with at the end of this judgment.

19. The arguments made on behalf of the appellants relating to the vires of inserting the proviso (c) to Clause (C) to Entry 33 of Schedule 1-A of the IS Act, 1899 by the M.P. Amendment of 2002 have no merits as it neither defines the word 'lease' nor does it in any way interfere with the definition of 'lease' in any manner, either by expanding or restricting its interpretation. It is only a statutory provision as to what would be the rate of stamp duty payable on lease deeds of a particular type. But for the insertion of the proviso which is sought to be challenged, the stamp duty payable on the lease would be 8% of the market value as provided to be charged on the conveyance under Entry-22 of Schedule 1-A. By inserting the proviso, the stamp duty chargeable on a lease under BOT Project for tolls/bridges, construction of roads etc. would be 2% of the amount spent by the lessee. In fact, insertion of this proviso reduced the rate of stamp duty to be charged to 2% instead of 8% and that too on the amount to be spent by the lessee.

20. The doctrine of legitimate expectation has been discussed and elucidated upon in several judgment by this Court. The doctrine provides a framework for judicial review of executive actions, policy changes, and legislative decisions. In **Union of India & Ors. v. Hindustan Development Corporation & Ors.,**[15] this Court emphasized that legitimate expectation primarily grants an applicant the right to a fair hearing before a decision that negates a promise or withdraws an undertaking from which an expectation of certain outcome or treatment arises. It does not, however, create an absolute

15 [1993] 3 SCR 128 : (1993) 3 SCC 499

right to the expected outcome. The protection of legitimate expectation is subject to overriding public interest, which means that even if an individual's expectation is reasonable and based on a past practice or representation by the executive or legislature, it can be denied if justified by a significant public necessity. The Court also highlighted that in matters of policy change, the judiciary typically refrains from interfering, unless the decision is arbitrary, unreasonable, or not in public interest.

21. The judgment in **Ram Pravesh Singh & Ors. v. State of Bihar & Ors.**[16] defines legitimate expectation as an expectation of a benefit, relief, or remedy that arises from a promise or established practice through administrative, executive or legislative action. This expectation must be reasonable, logical, and valid; but it in no way vests any enforceable legal right. The doctrine does not elevate legitimate expectation to the level of a right enforceable by law. Instead, it is a procedural concept that demands fairness in administrative action. When an expectation is deemed legitimate, it may entitle the individual to a chance to show cause before the expectation is denied or to receive an explanation for the denial. However, legitimate expectation does not always result in relief, particularly when public interest, policy changes, or other valid reasons justify the deviation from the expected course of action.

22. The decision in **P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India & Ors.**[17] further clarifies the limited role of legitimate expectation in the context of policy changes and legislative actions. This Court observed that the government retains the authority to revise policies in response to changing circumstances, such as potential foreign markets and the need to earn foreign exchange. Thus, the doctrine of legitimate expectation does not constrain the government from altering its policies, provided the changes are made in public interest and not through an abuse of power. The judiciary affords considerable leeway to the executive and legislature in matters of economic policy, recognizing their prerogative to prioritize different economic factors. Consequently, previous policies do not bind the government indefinitely; new policies can be adopted, if deemed

16 [2006] Suppl. 6 SCR 512 : (2006) 8 SCC 381

17 [1996] Suppl. 2 SCR 662 : (1996) 5 SCC 268

necessary, for the public good. This underscores the principle that while legitimate expectation warrants fair treatment, it does not preclude the government's flexibility in policy-making.

23. Therefore, the doctrine of legitimate expectation serves only as a procedural safeguard ensuring fairness in administrative decisions and policy changes. It grants the expectant party the right to a fair hearing and an explanation but does not guarantee the realization of the expected benefit. The government's authority to revise policies in public interest remains paramount, with the judiciary intervening only in cases of arbitrariness, unreasonableness, or lack of public interest. This balanced approach ensures that while individuals can expect consistent treatment based on past practices or promises, the government retains the flexibility to respond to evolving needs and priorities.

24. On the doctrine of promissory estoppel, since it is an equitable doctrine, it only comes into play when equity requires a party be estopped from withdrawing its promise. It has been well settled by this Court in several judgments that the principle of promissory estoppel cannot be invoked against the exercise of legislative power. In order to avoid burden on the present judgment, we are relying on the observations made by this Court in a recent judgment dealing with the doctrine of promissory estoppel. The Bench in ***Hero Motocorp Ltd vs Union of India***,[18] while relying upon other judgments of this Court in this regard, observed thus (SCC pp. 414-415, para 68)

> *"68. A common thread in all these judgments that could be noticed is that all these judgments consistently hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in the case of M. Ramanatha Pillai (supra) has approved the view in American Jurisprudence that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue would reveal*

18 [2022] 13 SCR 592 : (2023) 1 SCC 386

that it is a consistent view of this Court, reiterated again in Godfrey Philips India Ltd. (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions."

25. In light of the observations made by this Court in the above cited judgments and several others, it is an evident position of law that a prior executive decision does not bar the State legislature from enacting a law or framing any policy contrary to or in conflict with the previous executive decision in furtherance of larger public interest. Nor can it be canvassed that the law laid down by the legislature would be hit by principle of promissory estoppel or legitimate expectation because earlier the executive had expressed its view differently.

26. Promissory estoppel or legitimate expectation can be dealt with on the same status of the executive decision when the prior as well as the subsequent decisions are both taken by the same or similarly placed authorities. Where the executive takes a decision based upon which a party acts and, later on, the executive withdraws that decision to the detriment of the party acting upon the earlier decision, it can be said to be estopped from withdrawing its promise or depriving the party from its legitimate expectation of what had been promised.

27. In situations, such as the one before us, if the previous executive decision is withdrawn, modified or amended in any manner in exercise of legislative power in larger public interest, then the earlier promise upon which the party acts, cannot be enforced as a right and neither can the authorities be estopped from withdrawing its promise, as such an expectation does not give any enforceable right to the party. Applying the above discussion to the present facts, it is evident that the principles of legitimate expectation and promissory estoppel would not apply here, as the appellants cannot be said to have any enforceable legal right in light of the previous law or policy and executive action, which was subsequently changed by the state legislature in light of larger public interest. Thus, the submissions advanced on behalf of the appellants relating to the challenge to the M.P. Act No.12 of 2002 inserting the proviso (c) to Clause(C) to Entry 33 of Schedule 1-A of the IS Act has to be rejected. None of the case-laws relied upon on behalf of the appellants come to the rescue of the appellants and have no application in the facts and circumstances of the present case.

28. Now coming to the next submission on behalf of the appellants with regard to the question as to whether the Concession Agreement is a lease or a bond or a license. The definition of lease as given under the IS Act clearly covers any instrument by which tolls of any description are let and also under Section 105 of the TP Act, all the ingredients of a lease are fulfilled. In the present case, we need not reiterate and repeat the same reasoning and findings as given by the High Court in great detail after considering the various clauses of the Concession Agreement. We uphold the finding of the High Court to be clearly justified and based upon a clear understanding of the terms of the concession agreement. We do not find any perversity at all in the reasoning given by the High Court to uphold the Concession Agreement to be a lease.

29. After the judgment of the High Court which is of the year 2010, two further judgments have been delivered by this Court regarding interpretation of a lease, which have been relied upon by Shri Mishra on behalf of the respondents. Out of the three judgments relied upon by Shri Mishra, the judgment in the case of **Associated Hotels of India Ltd. (supra)** has already been considered by the High Court. Further, the judgments in the case of **State of Uttarakhand and others (supra)** and in the case of **Nasiruddin and another (supra)** further reiterated the view taken by **Associated Hotel of India Ltd. (supra)**. Paragraph 17 in the case of **Nasiruddin and another (supra)** is reproduced hereunder:

> *"17. The expression "lease" under the Stamp Act has a wider meaning as compared to its original meaning contained in Section 105 of the Transfer of Property Act (for short "the TP Act"). If "lease" under Section 2(16) of the Stamp Act includes therein four specified categories of documents set out in sub-clauses (a) to (d), we do not find any such inclusion in Section 105 of the Transfer of Property Act. It is for this reason, we are of the view that the definition of "lease" for the purpose of the Stamp Act is extensive in nature. It is also clear from the use of the expression and includes also "in Section 2(16) of the Stamp Act. So by fiction, "any instrument by which tolls of any description are let "is considered as "lease" for the purpose of payment of stamp duty under the Stamp Act."*

30. Thus, the view taken by the High Court further stands fortified by the above two judgments and the view that we are taking.

31. The only issue which requires to be considered afresh is with respect to determination of the amount spent under the agreement by the lessee. For the said purpose, we reproduce proviso(c) to Clause (C) of the proviso inserted in 2002:

> *"(c) an agreement to lease where the right to collect tolls is given **in lieu of the amount spent by the lesse**e in construction of roads, bridge etc. under the Build, Operate and Transfer (B.O.T.) scheme, shall be chargeable at the rate of two percent **on the amount likely to be spent under the agreement by the lessee.**"*

32. From a clear reading of the above proviso (c) to Clause (C), the stamp duty would be chargeable @ 2% on the amount likely to be spent under the agreement by the lessee. Thus, the lessee has no liability to pay any stamp duty on the amount not spent by the lessee but by the lessor or any other stake-holder. The amount spent by the lessee as per the agreement generally was 50% of the total cost of the project.

33. In the case of **Rewa Tollway**,[19] the total cost of the project was Rs.54 crores, out of which, approximately 50 % would be that of the lessee and 50% to be funded by the lessor i.e. MPRSNN, respondent no.3. However, further reading of the Concession Agreement reflects that the amount to be spent by the lessee was not exactly 50% but is slightly different figure. At some places, it is mentioned as Rs.24.10 crores and in other places a different amount is mentioned. We are not entering into this issue of what is the amount spent but we require that this be determined by the Collector (Stamps) / Revenue Officer of the concerned district.

34. Once, the stamp duty is payable on the amount spent by the lessee, the demand raised on the whole amount would be unjustified, as such, to the above extent, the demand needs to be set aside with a further direction to the Revenue Officer/Collector (Stamps) of the district concerned to re-calculate the same as observed above and, accordingly, raise the demand. In case, the appellants have deposited

19 Civil Appeal No. 8985 of 2013

the demand raised on the entire project cost then the amount lying in excess with the State would be refunded to them. However, in case of any deficit in stamp duty having not been deposited, the appellants would deposit the same within two months of the fresh demand being raised by the Revenue Officer/Collector (Stamps) of the district concerned. The Collector (Stamps)/Revenue Officer is further directed to calculate the said amount in each of the cases individually and communicate the same to the appellants within a period of two months from today and where the amount is lying in excess with the State, the same shall be refunded within a period of two months of such determination.

35. The appeals stand partly allowed as above. No costs.

Result of the case: Appeals partly allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 7 S.C.R. 1147 : 2024 INSC 633

Raju and Another
v.
State of Uttarakhand

(Criminal Appeal No. 1151 of 2010)

31 July 2024

[Surya Kant,* Dipankar Datta and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether the material on record unmistakably justifies the conviction of the appellant u/s. 307 IPC.

Headnotes†

Penal Code, 1860 – s. 307 – Attempt to murder – Prosecution case that appellants armed with knives and lathis inflicted injuries to the victims – Registration of FIR by complainant to whom the incident was narrated later – Trial court acquitted the appellant and his co-accused, however, the High Court sentenced the appellant and one of his co-accused to rigorous imprisonment for seven years and upheld acquittal of other two accused – Correctness:

Held: Conviction u/s. 307 may be justified only if the accused possessed intent coupled with some overt act in aid of its execution – Ascertaining the intention to kill or having the knowledge that death may be caused as a result of the overt act, is a question of fact and hinges on the unique circumstances that each case may present – Chain of evidence proffered by the prosecution has to be as complete as is humanly possible and it does not leave any reasonable ground for a conclusion consistent with the innocence of the accused and must instead, indicate that the act had indeed been singularly committed by the accused only – On facts, having analysed the evidence on record, there are several gaps in the prosecution story – Prosecution story has been demolished by the oral testimonies of the witnesses, including the medical experts, coupled with the contents of the FIR registered by a hearsay witness – There is no motive attributed to the appellant or his co-accused in order to justify their conviction u/s. 307 – It is not even the prosecution's case that this was a chance occurrence – High Court ought to have given due weightage to the glaring inconsistencies, before reversing a well-reasoned order of

* Author

acquittal – When the trial court has acquitted the accused based on a plausible understanding of the evidence, and such finding is not marred by perversity or due to overlooking or misreading of the evidence presented by the prosecution, the High Court ought not to overturn such an order of acquittal – Trial court, after reviewing the entire evidence on record, was correct in concluding that the totality of circumstances casts doubt on the alleged incident and suggests that the prosecution witnesses may have concealed the actual story – Thus, not safe to convict the appellant on the basis of such laconic evidence – Appellant is acquitted – Order of conviction by the High Court set aside, and that of the trial court restored in so far as the appellant is concerned. [Paras 7, 9, 14-17]

Case Law Cited

State of Maharashtra v. Balram Bama Patil **(1983) 2 SCC 28;** *Vasant Vithu Jadhav v. State of Maharashtra* [2004] 2 SCR 861 **: AIR 2004 SC 2678;** *Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy* **(2018) 7 SCC 623;** *Hanumant v. State of Madhya Pradesh* [1952] 1 SCR 1091**;** *Ram Gopal v. State of Maharashtra,* **AIR 1972 SC 656;** *Sharad Birdhi Chand Sarda v. State of Maharashtra,* **1984 AIR 1622;** *Darshan Singh v. State of Punjab* [2010] 1 SCR 642 **: (2010) 2 SCC 333;** *Ballu @ Balram v. The State of Madhya Pradesh* [2024] 4 SCR 48 **– referred to.**

List of Acts

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

List of Keywords

Attempt to murder; Intent coupled with some overt act; Oral testimonies of the witnesses; Hearsay witness; Chain of evidence; Reasoned order; Misreading of the evidence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1151 of 2010

From the Judgment and Order dated 10.12.2009 of the High Court of Uttarakhand at Nainital in GA No. 1458 of 2001

Appearances for Parties

Anuvrat Sharma, Ms. Alka Sinha, Advs. for the Appellants.

Advitiya Awasthi, Akshat Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

1. This appeal is directed against the judgment dated 10.12.2009 passed by the High Court of Uttarakhand at Nainital (**hereinafter, 'High Court'**) in Appeal No. 1458/2001, whereby the judgment and order dated 13.10.1995 of the Additional Sessions Judge-cum-Special Judge, Dehradun (**hereinafter, 'Trial Court'**) in S.T. No. 116/1994 was substantially set aside and the Appellant was convicted under Section 307 of the Indian Penal Code, 1860 (**hereinafter, 'IPC'**) and sentenced to undergo seven years of rigorous imprisonment, along with a fine of Rs. 1000/-.

Facts:

2. At this juncture, it is essential to outline the factual matrix as described in the FIR to clearly understand the context of the instant appeal.

   2.1. On 08.05.1994, Farzan Ali, the Complainant, filed an FIR being Case Crime No. 84/1994 at the Vikasnagar Police Station, Dehradun, recounting the events of the previous night. He reported that his son Imran, along with his friends Mathu, Irfan, and Jakir, had gone for a late-night cinema show in Vikasnagar. On their return around 12:30 a.m., they saw the Appellant and the other accused—Raju, Bhola Ram, Manoj, and Suresh — standing near Gopal's house. The Appellant and Bhola Ram were armed with knives, while Manoj and Suresh were carrying dandas/lathis. The accused were seen in the light of a singular bulb lit in front of Devdutt's house.

   2.2. The FIR states that Mathu and Imran inquired from the accused persons as to why they had assembled there, which allegedly infuriated them and they (accused) started hurling abuses at them and assaulted Imran, Mathu, Irfan and Jakir. Imran and Mathu were attacked with knives and lathis, whereas Irfan and Jakir suffered injuries as they tried to save them. Thereafter, presuming Imran and Mathu to be dead, the accused fled from the place of incidence. The Complainant further detailed that Jakir and Irfan came to his house and narrated the entire incident to him. This formed the basis for the Complaint at Vikasnagar Police Station and the said FIR was registered.

2.3. The investigating officer commenced the investigation, followed by a chargesheet. The Trial Court thereafter framed charges for offences punishable under Section 307 read with Section 34 of the IPC, against the Appellant and the other accused. The Trial Court, evaluated the statements of the prosecution witnesses, sought the medical opinion to be brought on record, analysed the statement of the investigating officer, recorded the statements of the accused under Section 313 of the CrPC, and decided to acquit the Appellant and his co-accused *vide* judgment dated 13.10.1995.

2.4. The State felt aggrieved and challenged the acquittal of the Appellant and other accused before the High Court. The High Court, as already mentioned in the opening paragraph, partially allowed the appeal, sentenced the Appellant and one of his co-accused to rigorous imprisonment for seven years and confirmed the acquittal of the other two accused.

2.5. We have heard Learned Counsel(s) for the parties at a considerable length and perused the trial record with their able assistance.

Contentions of Parties

3. Mr. Anuvrat Sharma, learned counsel representing the Appellant, while assailing the reversal of acquittal, contended that the High Court has failed to appreciate the evidence on record due to which it arrived at an erroneous finding. Mr. Sharma impressed that the Complainant, Farzan, was not an eye-witness to the alleged incident. He admittedly arrived at the scene only after being told about it. Learned counsel highlighted the glaring contradictions between the account provided in the FIR and the testimonies of the witnesses, as recorded by the Trial Court.

4. Mr. Sharma argued that the Trial Court, on the other hand, had considered the absence of discernible evidence to prove that the Appellant and another accused were holding knives and had caused stab injuries. In the same vein, he contended that the testimonies of the injured witnesses and medical experts, combined with the inconsistencies in the Complainant's account, have unfolded significant gaps in the investigation conducted.

5. *Per contra*, Mr. Advitiya Awasthi, learned State Counsel urged that the Appellant, along with the other accused, Bhola, voluntarily inflicted injuries upon Mathu and Imran with a knife, with the intention to cause death. He asserted that the injured witness Mathu, in his testimony, stated that at the time of the incident, both, the Appellant and Bhola were armed with knives. This testimony, he argued, aligned with the opinion of the medical expert, who had opined that Mathu's injuries had been caused by some sharp object.

6. The singular question that requires our deliberation is whether the material on record unmistakably justifies the conviction of the Appellant under Section 307 of the IPC?

Analysis

7. To begin with, it would be apposite to recount the settled proposition of law that a conviction under Section 307 of the IPC may be justified only if the accused in question possessed intent coupled with some overt act in aid of its execution.[1] Ascertaining the intention to kill or having the knowledge that death may be caused as a result of the overt act, is a question of fact and hinges on the unique circumstances that each case may present. Though these fundamentals have been established in a plethora of decisions across several decades, we have briefly mentioned the same to ensure a lucid understanding of the rationale behind the instant decision.

8. Keeping these principles in mind, the intention of the Appellant in this context may perhaps be ascertained through the material on record, consisting the testimonies of the witnesses; medical opinion and the very first version of events contained in the FIR itself.

9. Having analysed the evidence on record, we find that there are several gaps in the prosecution story. We say so for the reasons that, *firstly*, the testimonies of PW2 and PW3, Mathu and Imran, are inherently contradictory to the narrative of the prosecution, insofar as the sequence of events and the roles attributed to the accused persons are concerned. Mathu for instance, admitted during his cross examination that he could not identify as to who among the accused persons inflicted stab wounds and who used lathis.

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1 State of Maharashtra v. Balram Bama Patil (1983) 2 SCC 28; Vasant Vithu Jadhav v. State of Maharashtra, AIR 2004 SC 2678.

10. *Secondly*, the other injured witness, namely Imran, had initially testified that all the four accused persons were found standing near Gopal's house, with the Appellant and Bhola carrying knives and Manoj and Suresh holding lathis. However, upon being cross-examined, he changed his position, claiming that Bhola and the Appellant lashed them with lathis while the other two accused arrived at the place of incidence from the direction of their house. Given the incertitude in regards to the roles attributed to the accused persons, the conviction of the Appellant or his co-accused by the High Court becomes all the more questionable.

11. *Thirdly*, there seems to be consequential disparity in the oral evidence adduced by witnesses; the medical reports and the opinions, in terms of the nature of injuries suffered by Mathu and Imran. Specifically, it is undisputed that the injuries suffered by the victims were not caused by lathis or a blunt weapon. Similarly, the evidence regarding the placement and extent of knife injuries sustained by Mathu and Imran does not inspire confidence. Hence, the questions surrounding the use of lathis or knives have undermined the prosecution case, just as they have cast doubt on the extent and nature of injuries sustained by the injured witnesses.

12. *Fourthly*, and most importantly, what makes the circumstances entirely murky is the fact that the FIR itself was lodged by a hearsay witness, namely, PW1 Farzan, who is Imran's father. Notably, Farzan was not present at the scene and only learned about the incident through alleged eye-witnesses Jakir and Irfan, both of whom had accompanied Imran and Mathu when the latter were allegedly attacked by the Appellant and other accused persons. Ironically, there is not even a whisper about the alleged eye-witnesses, Jakir and Irfan joining the investigation. These persons were apparently ghost witnesses who neither had their statements recorded by the Investigating Officer under Section 161 of the CrPC nor were they produced by the prosecution before the Trial Court. Similarly, no attempt was made to record their version under Section 164, CrPC. The discrepancies elucidated above could have been clarified with ease had these eye-witnesses been produced or their statements recorded, shedding light on the sequence of events as they unfolded. The deafening absence of these two alleged eye-witnesses, in our considered opinion, has considerably weakened the prosecution case.

13. Usually in matters involving criminality, discrepancies are bound to be there in the account given by a witness, especially when there is conspicuous disparity between the date of the incident and the time of deposition. However, if the discrepancies are such that they create serious doubt on the veracity of a witness, then the Court may deduce and decline to rely on such evidence. This is especially true when there are variations in the evidence tendered by prosecution witnesses regarding the sequence of events as they have occurred. Courts must exercise all the more care and conscientiousness when such oral evidence may lean towards falsely implicating innocent persons.[2]

14. Undoubtedly, there are glaring interludes which severely enfeeble the case that the prosecution sought to present. The prosecution story has been demolished by the oral testimonies of the witnesses, including the medical experts, coupled with the contents of the FIR registered by a hearsay witness. It goes without saying that the chain of evidence proffered by the prosecution has to be as complete as is humanly possible and it does not leave any reasonable ground for a conclusion consistent with the innocence of the accused and must instead, indicate that the act had indeed been singularly committed by the accused only.[3]

15. To further fan the flames, there is no motive attributed to the Appellant or his co-accused Bhola, in order to justify their conviction under Section 307 of the IPC. Both the injured witnesses, Imran and Mathu, during their cross-examination, clearly explicated that there was no enmity or ill will between them and the accused persons. It is not even the prosecution's case that this was a chance occurrence. It seems that the accused and the alleged victims were familiar with each other and had some kind of association. There is thus more to this than meets the eye, and we are not entirely convinced of the narrative presented and perceived by the prosecution.

16. In our considered view, the High Court ought to have given due weightage to the glaring inconsistencies, before reversing a well-reasoned order of acquittal. It is a well-established canon of law

2 Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy (2018) 7 SCC 623.

3 Hanumant v. State of Madhya Pradesh [1952] 1 SCR 1091; Ram Gopal v. State of Maharashtra, AIR 1972 SC 656; Sharad Birdhi Chand Sarda v. State of Maharashtra, 1984 AIR 1622.

that when the Trial Court has acquitted the accused based on a plausible understanding of the evidence, and such finding is not marred by perversity or due to overlooking or misreading of the evidence presented by the prosecution, the High Court ought not to overturn such an order of acquittal.[4] We are inclined to hold that the Trial Court, after reviewing the entire evidence on record, was correct in concluding that the totality of circumstances casts doubt on the alleged incident and suggests that the prosecution witnesses may have concealed the actual story.

Conclusion and Directions

17. We, thus, find it quite unsafe to convict the Appellant on the basis of such laconic evidence. Rather, we deem it appropriate to allow this appeal and acquit the Appellant in FIR Case Crime No. 84/1994. Accordingly, the order of conviction by the High Court dated 10.12.2009 is set aside, and that of the Trial Court dated 13.10.1995 is restored in so far as the Appellant is concerned. The bail bonds, if any, furnished by the Appellant are hereby cancelled.

18. The present appeal is allowed in the above terms.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

4 Darshan Singh v. State of Punjab (2010) 2 SCC 333; Ballu@Balram v. State of Madhya Pradesh, Crl. Appeal No. 1167.2018.

[2024] 7 S.C.R. 1155 : 2024 INSC 522

Ram Prakash Chadha
v.
The State of Uttar Pradesh

(Criminal Appeal No. 2395 of 2023)

15 July 2024

[C.T. Ravikumar* and Sudhanshu Dhulia, JJ.]

Issue for Consideration

In the chargesheet, appellant was accused for commission of offences u/ss. 302, 343, 217, 218, 330, 120B and 34, IPC. An application for discharge u/s. 227 of Cr.PC was rejected by the Trial Court. Whether the findings of the trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution.

Headnotes†

Code of Criminal Procedure, 1973 – s.227 – Discharge – In the chargesheet, appellant was accused for commission of offences u/ss. 302, 343, 217, 218, 330, 120B and 34, IPC – Appellant sought discharge u/s. 227 of Cr.PC – The said application for discharge u/s. 227 of Cr.PC, was rejected by the court of Additional Sessions Judge/Special Judge (CBI) – The appellant filed an application u/s.482 of Cr.PC before the High Court, however, same was dismissed by the High Court – Propriety:

Held: In the final report filed in FIR No.371 of 1993 viz., in the custodial death case, the record revealed that the essence of the accusation is commission of custodial death owing to the torture to which victim-deceased was subjected to, from 17.07.1993 to 23.07.1993 – A scanning of the charge as also the other materials including the statements of the witnesses recorded u/s. 161, Cr.PC, would reveal that there is absolute absence of any accusation or even an insinuation that the appellant had played any role in torturing victim – The implication of the appellant in the crime is with the aid of s.120B and s.34, IPC – An agreement referred to in Section 120A, IPC may be expressed or implied or

* Author

in part express and in part implied – However, no record of the case or documents submitted therewith carry such an allegation/ accusation against the appellant – The findings of the Trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution – It is to be noted that it is nobody's case that the appellant was in the Police Station or informed of the sufferance from chest pain of accused – In another case, Crime No.351/1993 u/s. 392, IPC the deceased was only a witness and that the amount in cash and the draft involved was that of the appellant – It is also the case of the prosecution that the said case was registered, at the instance of the appellant against unknown persons – Hence, when the appellant who lost the money went to Police Station along with the witness thereof, how can it be presumed by the Court as a strong case for suspicion for commission of the offence of criminal conspiracy – When there is no case for the prosecution that the appellant pointed the fingers at deceased how the lodging of the complaint, apprehending custodial death of deceased who was appellant's clerk for about 13 years, which caused the registration of custodial death case under FIR No.371/1993 can be taken as a ground for framing charge against the appellant for the offences punishable u/s. 302, IPC, 120-B with the aid of s.34, IPC – These aspects were not considered by the High Court – Consequently, the order and judgment dated 21.04.2023 passed by the High Court in an application filed u/s. 482, Cr.PC, and the order dated 19.04.2007 passed by the Additional Sessions Judge/Special Judge (CBI) are set aside.[Paras 23, 24, 28, 30, 35]

Code of Criminal Procedure, 1973 – s.227 – Jurisdiction of the Court:

Held: It will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused concerned has been made out – This Court is of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction u/s. 227, Cr.PC, and entering into the scope of power u/s. 232, Cr.PC, cannot be ruled out as such instances are aplenty. [Para 19]

Code of Criminal Procedure, 1973 – s.227 – Framing of charge – Duty and obligation of the Court:

Held: The question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about the *prima facie* case revealing from "the record of the case and the documents submitted therewith" against the accused concerned – In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if 'the record of the case and the documents submitted therewith' discloses ground for proceeding against him – When that be so, in a case where an application is filed for discharge u/s. 227, Cr.PC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf – To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. [Para 22]

Code of Criminal Procedure, 1973 – s.227 – Application for discharge – Disclosure of reasons by the Court for rejection of application:

Held: When an application for discharge is filed under Section 227, Cr.PC, the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding *prima facie* case, as it will enable the superior Court to examine the challenge against the order of rejection. [Para 22]

Code of Criminal Procedure, 1973 – s.227 – Meaning of the expression "the record of the case and the documents submitted therewith" – discussed.

Case Law Cited

State of Orissa v. Debendra Nath Padhi [2004] Supp. 6 SCR 460 : **(2005) 1 SCC 568;** *P. Vijayan v. State of Kerala and Anr.* [2010] 2 SCR 78 : **(2010) 2 SCC 398;** *Union of India v. Prafulla Kumar Samal* [1979] 2 SCR 229 : **(1979) 3 SCC 4 – relied on.**

Yogesh alias Sachin Jagadish Joshi v. State of Maharashtra [2008] 6 SCR 1116 **: AIR 2008 SC 2991;** *State of Tamil Nadu v. N Suresh Rajan & Ors.* [2014] 1 SCR 135 **: (2014) 11 SCC 709;** *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia & Anr.* [1989] 1 SCR 560 **: (1989) 1 SCC 715;** *Om Parkash Sharma v. CBI* [2000] 3 SCR 188 **: (2000) 5 SCC 679;** *R. Venkatakrishnan v. CBI* [2009] 12 SCR 762 **: (2009) 11 SCC 737;** *Ajay Aggarwal v. Union of India & Ors.* [1993] 3 SCR 543 **: (1993) 3 SCC 609 – referred to.**

BK Sharma v. State of UP **(1987) SCC OnLine ALL 314;** *Kaushalya Devi v. State of MP* **(2003) SCC OnLine MP 672 – approved.**

K.S. Narayanan & Ors. v. G Gopinathan **1982 CriLJ 1611 (Madras) – referred to.**

List of Acts

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

List of Keywords

Section 227 of Code of Criminal Procedure, 1973; The record of the case and the documents submitted therewith; Discharge; Application for discharge; Suppositions and suspicions; Materials produced by the prosecution; Duty and obligation of the Court; Disclosure of reasons by the Court for rejection of discharge application.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2395 of 2023

From the Judgment and Order dated 21.04.2023 of the High Court of Judicature at Allahabad in A482 No. 21739 of 2007

Appearances for Parties

Siddhartha Dave, Sr. Adv., Ms. Pallavi Pratap, Ms. Prachi Pratap, Dr. Prashant Pratap, Akshay Singh, Gautam Mishra, Ms. Kinjal Aggarwal, Ms. Aakriti Priya, Ms. Muskan Jain, Advs. for the Appellant.

Ardhendumauli Kumar Prasad, A.A.G., Sarvesh Singh Baghel, Abhinav S. Agarwal, Arun Pratap Singh Rajawat, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

1. The dismissal of application under Section 482, No.21739 of 2007, essentially, filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.PC') against dismissal of an application for discharge by the appellant herein under Section 227 Cr.PC, as per order dated 21.04.2023 by the High Court of Judicature at Allahabad is under challenge in this appeal. The appellant moved the said application for discharge in Crime No.371/1993, the charge in essence there is about custodial death of one Ram Kishore who happened to be cashier/accountant of the appellant, which in fact was registered based on the complaint of the appellant.

2. Heard, learned senior counsel Siddharth Dave appearing for the appellant and Shri Ardhendumauli Kumar Prasad, Additional Advocate General appearing for the State of Uttar Pradesh.

Facts leading to the case:

3. Before narrating the facts, we should bear in mind that exercise of power under Section 227, Cr.PC, is legally permissible only by considering 'the record of the case and the documents submitted therewith'. Therefore, necessarily, the question is what is the meaning of the expression *'the record of the case and documents submitted therewith'?* According to us, it refers only to the materials produced by the prosecution and not by the accused. A three-Judge Bench of this Court considered this question in ***State of Orissa v. Debendra Nath Padhi***.[1] It was held that the said expression as postulated in Section 227, Cr.PC, relate to the case and the documents referred to under Section 209, Cr.PC. Section 209, Cr.PC, reads thus:-

> *"**209. Commitment of case to Court of Session when offence is triable exclusively by it.** — When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall —*

1 [2004] Supp. 6 SCR 460 : (2005) 1 SCC 568

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

In view of Section 209, Cr.PC, as extracted above, to know what exactly are the documents falling within the said expression Sections 207 and 208, Cr.PC, are also to be looked into.

4. We referred to the provisions under Section 227 and the decision in ***Debendra Nath Padhi's*** case (*supra*) only to conclude that even for the purpose of referring to the facts leading to the case, as also for consideration of the contentions for the purpose of Section 227, Cr.PC, we cannot refer to the grounds carrying or referring to the case of the appellant-accused, in view of the aforesaid provisions of law and position of law, requiring to confine such consideration only with reference to the materials produced by the prosecution.

5. Now, we will refer to the facts leading to the case, as per the prosecution and as per the materials falling within the purview of Section 227, Cr.PC.

6. The appellant, who is the owner of Goodwill Enterprises dealing with wood, registered Case Crime No.351 of 1993 under Section 392 of the Indian Penal Code, 1860 (for short '*the IPC*') at Police Station Modi Nagar, District Ghaziabad, alleging that his cashier/accountant-Ram Kishore and one Pappu Yadav went for collecting his business proceeds from shops at Meerut and Modi Nagar in the morning of 15.07.1993. On their way back from Meerut, after collecting such business proceeds, they stopped the car in front of Ginni Devi School in Modi Nagar and Ram Kishore went to Poonam Sales for collection

and Pappu Yadav remain seated in the car with the bag containing the collection and some documents. Soon, two persons came and snatched the said bag from Pappu Yadav after putting him at gun point and escaped on a motorcycle. The appellant was given such information over phone. Later, on that day itself the appellant got registered the above-mentioned FIR about robbery and asked for investigation and appropriate legal action, in the incident.

7. The materials on record and the counter affidavit filed in this appeal on behalf of the respondent based on such materials would reveal that the initial investigation in Case Crime No.351/1993 (hereinafter referred to as 'the robbery case') found it to be false. However, the Supervising Officer concerned viz., the Commanding Officer, Modi Nagar stopped the closure report and entrusted the case for investigation to another officer. Thereafter, on 17.07.1993, the appellant called Ram Kishore from his house through one of his employees viz., Jagannath and took him to the Modi Nagar Police Station for inquiry. It is only appropriate to extract from the chargesheet dated 21.02.2000 filed by CBCID, Lucknow, U.P., in FIR No. 371/1993 of Police Station, Modi Nagar, registered in connection with the custodial death of Ram Kishore unfolding further the case of the prosecution instead of narrating it. It in so far as relevant reads thus:-

> *"…Ram Kishore was illegally kept in the police station by Inspector of Police R.D. Pathak and Sub-Inspector of Police Jawahar Lal from 17.07.1993 to 23.07.1993 night and by subjecting him to the torture he was kept being interrogated about the said incident. In the night of date 23.07.1993 on Ram Kishore felling ill he was taken to M.M.G. Hospital Ghaziabad by Inspector R.D. Pathak through staffs and Jeep where on 3:20 in the morning he died. He was admitted by the police in the Hospital in the name of unknown. After death of the young man Ram Kishore on date 24.07.1993, a complaint regarding death was submitted by the complainant to the Circle Inspector Modi Nagar raising suspicion about death of Shri Ram Kishore having been caused by the Inspector of Modi Nagar by beating him on which Crime Case No.371/1993 was registered illegible. As per the post mortem report dated 24.07.1993 ante mortem redics cut incision were*

found on his both the buttocks and because of the cause of death not having been ascertained his internal organs were preserved which was examined on date 03.01.1995 poison etc. were ruled out. …"

8. In the chargesheet dated 21.02.2000 filed in Crime No.371/1993, the aforesaid Rameshwar Dayal Pathak, the then Inspector of Police and Jawahar Lal, the then Sub-Inspector of Police and the appellant were made accused Nos. 1 to 3 respectively, for commission of offences under Sections 302, 343, 217, 218, 330, 120B and 34, IPC. It is seeking discharge under Section 227, Cr.PC, in the aforesaid case viz., Crime No.371/1993 that appellant herein approached the court of Additional Sessions Judge/Special Judge, Ghaziabad by filing application dated 04.04.2007 contending absolute absence any ground to proceed against him. The said application for discharge under Section 227, Cr.PC, was rejected by the court of Additional Sessions Judge/Special Judge (CBI), as per order dated 19.04.2007. The impugned order dated 21.04.2023 was passed by the High Court in the petition filed under Section 482, Cr.PC, against the said order dated 19.04.2007.

Rival contentions:

9. The learned senior counsel appearing for the appellant would contend that the very charge filed by the CBCID dated 21.02.2000 in the custodial death case viz., FIR No. 371/2023 would reveal that the appellant herein is the informant. It is also submitted that the final report filed in the 'custodial death case', dated 21.02.2000 would further show that he was witness No.1 and also as accused No.3. The Learned Senior Counsel would further submit that there is absolute absence of any material to arraign the appellant herein as an accused with the aid of either Section 120B, IPC or Section 34, IPC. The next submission was that even if the statements of the witnesses recorded under Section 161, Cr.PC, including the witnesses related to the deceased Ram Kishore like Smt. Santosh, Shri Promod Kumar and Shri Bhim Singh, who are respectively the widow, son and brother of deceased Ram Kishore are taken as correct, they would not reveal anything to base an allegation of criminal conspiracy or sharing of common intention against the appellant. It is the further submission that virtually, the appellant's application for discharge was dismissed by the Court of the

Additional Sessions Judge taking two circumstances as suspicious circumstances (i) that it was he who had taken accused Ram Kishore to Police Station in connection with the investigation in Crime No.351/1993 (the robbery case) (ii) that immediately on the death of Ram Kishore from the hospital he filed the complaint which culminated in the registration of FIR No.371/1993 in connection with the murder of Ram Kishore, alleging that Inspector, Modi Nagar and 3-4 other police personnel had taken Ram Kishore with them for interrogation and apprehending the cause of his death due to torture by police personnel. It is submitted neither the statements of witnesses or the chargesheet carry any such accusation or insinuation and that suspicion was made only by the court in the order dated 19.04.2007 while rejecting the appellant's application for discharge. In short, the contention is that neither the trial court nor the High Court considered the application for discharge in the manner required under law.

10. *Per Contra*, the learned Additional Advocate General appearing for the State would submit the materials on record produced along with the chargesheet would *prima facie* show that it was the appellant who lodged the complaint resulting in registration of Crime No.351/1993, and that it was in connection with the investigation of the said crime that the appellant himself produced the deceased Ram Kishore before the Police Station after calling him from his house through another employee and as such his very action in filing another complaint leading to the registration of Crime No.371/1993 against the first accused, the then SHO, Police Station, Modi Nagar, for the death of Ram Kishore immediately on coming to know about the death of Ram Kishore, is sufficient to create a strong suspicion against the appellant. When such a strong suspicion is there, in the light of the statements made by the other witnesses under Section 161, Cr.PC, the concurrent finding resulted in dismissal of application for discharge filed by the appellant invites no interference, according to the learned Additional Advocate General.

11. For appreciating the aforesaid contentions, we are of the considered view that it is only appropriate to refer to the position of law with respect to the scope of exercise of power under Section 227, Cr.PC, as also the ingredients to attract Section 120B, IPC. Section 227, Cr.PC, reads thus:

> *"**227. Discharge**.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

12. We have already considered the meaning of the expression *"the record of the case and the documents submitted therewith"* relying on the decision in ***Debendra Nath Padhi's*** case (*supra*) only to re-assure as to what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227, Cr.PC. In the light of the same, there cannot be any doubt with respect to the position that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all. Once *"the record of the case and the documents submitted therewith"* are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.

13. The decision in ***Yogesh alias Sachin Jagadish Joshi v. State of Maharashtra***[2] this Court held that the words *"not sufficient ground for proceeding against the accused"* appearing in Section 227, Cr.PC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out. In the decision in **State of Tamil Nadu v. N Suresh Rajan & Ors.**[3] this Court held that at a stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true, and

2 [2008] 6 SCR 1116 : AIR 2008 SC 2991

3 [2014] 1 SCR 135 : (2014) 11 SCC 709

evaluate the materials to find out whether the facts taken at their face value disclose the existence of the ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

14. In the decision in ***BK Sharma v. State of UP***,[4] the High Court of judicature at Allahabad held that the standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion, based on the material on record, and would be sufficient to frame a charge.

15. We are in agreement with the said view taken by the High Court. At the same time, we would add that the strong suspicion in order to be sufficient to frame a charge should be based on the material brought on record by the prosecution and should not be based on supposition, suspicions and conjectures. In other words, in order to be a basis to frame charge the strong suspicion should be the one emerging from the materials on record brought by the prosecution.

16. In the decision *in* ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia & Anr.,***[5] this Court held that the word 'ground' in Section 227, Cr.PC, did not mean a ground for conviction, but a ground for putting the accused on trial.

17. In ***P. Vijayan v. State of Kerala and Anr.,***[6] after extracting Section 227, Cr.PC, this Court in paragraph No.10 and 11 held thus: -

> ***"10.***
>
> **** **** **** ****
>
> *…….If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused"*

4 1987 SCC OnLine ALL 314

5 [1989] 1 SCR 560 : (1989) 1 SCC 715

6 [2010] 2 SCR 78 : (2010) 2 SCC 398

clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

***11.** At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."*

18. In paragraph 13 in ***P. Vijayan's*** case (*supra*), this Court took note of the principles enunciated earlier by this Court in ***Union of India v. Prafulla Kumar Samal***[7] which reads thus: -

"10....

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge

7 [1979] 2 SCR 229 : (1979) 3 SCC 4

is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

19. In the light of the decisions referred *supra*, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227, Cr.PC, and entering into the scope of power under Section 232, Cr.PC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in ***Om Parkash Sharma v. CBI***.[8] Taking note of the language of Section 227, Cr.PC, is in negative terminology and that the language in Section 232, Cr.PC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227, Cr.PC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232, Cr.PC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused,

8 [2000] 3 SCR 188 : (2000) 5 SCC 679

on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232, Cr.PC, available only after taking the evidence for the prosecution and examining the accused.

20. Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in ***Kaushalya Devi v. State of MP.***[9] It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression 'legal evidence' has to be construed only as evidence disclosing *prima facie* case, *'the record of the case and the documents submitted therewith'*.

21. The stage of Section 227, Cr.PC, is equally crucial and determinative to both the prosecution and the accused, we will dilate the issue further. In this context, certain other aspects also require consideration. It cannot be said that Section 227, Cr.PC, is couched in negative terminology without a purpose. Charge sheet is a misnomer for the final report filed under Section 173 (2), Cr.PC, which is not a negative report and one that carries an accusation against the accused concerned of having committed the offence (s) mentioned therein.

22. In cases, where it appears that the said offence(s) is one triable exclusively by the Court of Session, the Magistrate shall have to commit the case to the Court of Session concerned following the prescribed procedures under Cr.PC. In such cases, though it carries an accusation as aforementioned still legislature thought it appropriate to provide an inviolable right as a precious safeguard for the accused, a pre-battle protection under Section 227, Cr.PC. Though, this provision is couched in negative it obligated the court concerned to unfailingly consider the record of the case and document submitted therewith and also to hear the submissions of the accused and the prosecution in that behalf to arrive at a conclusion as to whether or

9 2003 SCC OnLine MP 672

not sufficient ground for proceeding against the accused is available thereunder. Certainly, if the answer of such consideration is in the negative, the court is bound to discharge the accused and to record reasons therefor. The corollary is that the question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about the *prima facie* case revealing from *"the record of the case and the documents submitted therewith"* against the accused concerned. In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if *'the record of the case and the documents submitted therewith'* discloses ground for proceeding against him. When that be so, in a case where an application is filed for discharge under Section 227, Cr.PC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. We are not oblivious of the fact that normally, the Court is to record his reasons only for discharging an accused at the stage of Section 227, Cr.PC. However, when an application for discharge is filed under Section 227, Cr.PC, the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding *prima facie* case, as it will enable the superior Court to examine the challenge against the order of rejection.

23. By applying the laws enunciated and the principles laid, we will proceed to consider the case on hand. In the final report filed in FIR No.371 of 1993 viz., in the custodial death case, the afore-extracted portion from it revealed that the essence of the accusation is commission of custodial death owing to the torture to which Ram Kishore was subjected to, from 17.07.1993 to 23.07.1993. It reveals that going by the same, he was illegally kept in the Police Station by accused Nos.1 and 2. A scanning of the charge as also the other materials including the statements of the witnesses recorded under

Section 161, Cr.PC, would reveal that there is absolute absence of any accusation or even an insinuation that the appellant had played any role in torturing Ram Kishore. Therefore, the question is how he is arraigned as third accused in the aforesaid crime. In that regard, it is apposite to refer again to the final report dated 21.02.2000 filed in Crime No.371/1993. The relevant portion in the final report in this regard, reads thus: -

> *"…In this manner from this investigation, it was found that deceased Ram Kishore was kept in the Police Station from dated 17.07.1993 to 23.07.1993 in the Police Station under the criminal Conspiracy of the accused persons mentioned in the column no.3 during which he was tortured and interrogated regarding the incident of loot and knowingly with the intention of saving their skins no entry of the same was made in the records of the Police Station nor was the same mentioned by the complainant in its report. Charge under Section 341/217/218/201/330/34 /120B Indian Penal Code, 1860 was found to have been made out against all the accused persons. …"*

24. From the above extracted portion, it is evident that the implication of the appellant in the crime is with the aid of Section 120B and Section 34, IPC. Apart from using the expression "criminal conspiracy" there is absolute absence of anything whatsoever in the said final report as also in the statement of any of the witnesses, suggesting that the appellant herein conspired with the other accused or what exactly is the criminal conspiracy.

25. This Court in the decision in ***R. Venkatakrishnan v. CBI***,[10] held that criminal conspiracy, in terms of Section 120B, IPC, is an independent offence and its ingredients are:

(i) an agreement between two or more persons;

(ii) the agreement must relate to doing or causing to be done either –

(a) an illegal act;

(b) an act which is not illegal in itself but is also done by illegal means.

10 (2009) 11 SCC 737

26. An important facet of law of conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of conspiracy. A careful scanning of the provisions under Sections 120A and 120B, IPC, would reveal that the *sine qua non* for an offence of criminal conspiracy is an agreement to commit an offence. It consists of agreement between two or more persons to commit the criminal offence, irrespective of the further consideration whether or not the offence is actually committed as the very fact of conspiracy constitutes the offence (See the decision in ***K.S. Narayanan & Ors. v. G Gopinathan***[11]**)**.

27. There can be no doubt that conspiracy is hatched in privacy and not in secrecy, and such it would rarely be possible to establish conspiracy by direct evidence. A few bits here and a few bits there, on which the prosecution may rely, are not sufficient to connect an accused with the commission of the crime of criminal conspiracy. To constitute even an accusation of criminal conspiracy, first and foremost, there must at least be an accusation of meeting of minds of two or more persons for doing an illegal act or an act, which is not illegal in itself, by illegal means.

28. In ***Ajay Aggarwal v. Union of India & Ors.,***[12] this Court characterized the offence of criminal conspiracy as an agreement between two or more persons to do an illegal act or a legal through illegal means. Furthermore, it was held that commission of the offence would be complete as soon as, there is consensus *ad idem* and it would be immaterial whether or not the offence is actually committed. It is also held therein that necessarily there must be agreement between the conspirators on the design or object of the conspiracy. As held in ***R. Venkatakrishnan*** case (*supra*), the quintessential ingredient to attract the offence of criminal conspiracy is agreement between two or more persons. Therefore, the question is whether it spelt in the final report dated 21.02.2000 or in any of the records of the case and documents submitted therewith, so as to find a *prima facie* case of commission of criminal conspiracy against the appellant. True that an agreement referred to in Section 120A, IPC may be expressed or

11 1982 CriLJ 1611 (Madras)

12 [1993] 3 SCR 543 : (1993) 3 SCC 609

implied or in part express and in part implied. However, no record of the case or documents submitted therewith carry such an allegation/ accusation against the appellant.

29. What is the common plan or the common intention? This aspect is also conspicuously absent in the materials produced by the prosecution. In regard to all such aspects, referred above, none of the witnesses has spoken while giving statements under Section 161, Cr.PC. In this context it is also to be noted that according to the Trial Court, a very strong suspicion lingers on account of twin circumstances. In the order dated 19.04.2007, the Trial Court in this regard observed and held thus: -

> *"The learned Assistant District Government Counsel (Criminal) has argued that if the accused persons says that he had fell ill in the night and he was complaining of having pain in the chest then why his family members were not informed. The said condition is also very much suspicious. Besides these, the accused was handed over to the police by the accused Ram Prakash Chaddha himself and in the next day morning the report was lodged by him only.*
>
> *Keeping in view the abovementioned entire facts and circumstances sufficient evidences are available on the record for the framing of charge against the accused persons Rameshwar Dayal Pathak and Jawahar Lal and Ram Prakash Chaddha."*

30. In the light of the records of the case and the documents submitted therewith, it can only be found that the said finding of the Trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution. With respect to the first part of the above-extracted recital from the order of the Trial Court, it is to be noted that it is nobody's case that the appellant was in the Police Station or informed of the sufferance from chest pain. As relates the second suspicion, it is to be noted that the very Trial Court itself, in the very order dated 19.04.2007 itself, stated that in Crime No.351/1993 under Section 392, IPC the deceased Ram Kishore was only a witness and that the amount in cash and the draft involved was that of the appellant. It is also the case of the prosecution that the said case was registered, at the instance of the appellant

against unknown persons. Hence, when the appellant who lost the money went to Police Station along with the witness thereof, how can it be presumed by the Court as a strong case for suspicion for commission of the offence of criminal conspiracy, especially taking note of the very case of the prosecution that causative incident for the case occurred when Ram Kishore was returning after collecting the business proceeds of the appellant and that the appellant was informed of it over telephone by Ram Kishore. When there is no case for the prosecution that the appellant pointed the fingers at Ram Kishore how the lodging of the complaint, apprehending custodial death of Ram Kishore who was appellant's clerk for about 13 years, which caused the registration of custodial death case under FIR No.371/1993 can be taken as a ground for framing charge against the appellant for the offences punishable under Section 302, IPC, 120-B with the aid of Section 34, IPC.

31. These aspects were not at all considered by the High Court. To say the least, there was no consideration of the matter by the High Court in the manner required under law, in the given facts and circumstances of the case.

32. We are at a loss to understand, how in the absence of ground for a *prima facie* case revealed from the materials produced by the prosecution a person who lost his money and lodged a complaint based on the information furnished by his employee can be implicated in an offence, that too a grave allegation of commission of an offence of custodial death amounting to murder, merely because he caused the presence of the person concerned before the Police Station unless the ingredients to attract criminal conspiracy to commit any specific offence in relation to Ram Kishore is available. If the case of the prosecution and the materials produced along with the charge are taken as true, they would only suggest that Ram Kishore was under the control of the police in the Police Station. In fact, that exactly is the prosecution case revealed from the final report dated 21.02.2000 filed in Crime No.371/1993.

33. The aforesaid being the position revealed from the materials produced by the prosecution, the mere fact that rejection of the application of the appellant for discharge is concurrent cannot be a reason for confirming the impugned order of the High Court confirming the order of the Trial Court. Since the diallage on the matter constrain us to

come to the concrete conclusion of absence of ground for proceeding against the appellant based on final report dated 21.02.2000 in Crime No.371/1993 of CBCID, U.P. Lucknow, this appeal must succeed.

34. We clarify that the observations made in this judgment are made qua the appellant for the purpose of disposal of this appeal and we make it clear that we have not made any observation touching the merits of the case against the other accused in Crime No.371/1993 of CBCID, U.P. Lucknow.

35. For the reasons given as above, this appeal is allowed. Consequently, the order and judgment dated 21.04.2023 passed by the High Court of Judicature at Allahabad in application No.21739 of 2007 filed under Section 482, Cr.PC, and the order dated 19.04.2007 passed by the Additional Sessions Judge/Special Judge (CBI) are set aside. As a necessary sequel, the application filed by the appellant under Section 227, Cr.PC, dated 04.04.2007 for discharge in Crime No.351/1993 filed in Sessions Trial No.1532/2005 before Additional Sessions Judge/Special Judge (CBI), Prevention of Corruption Act U.P., East Ghaziabad is allowed and the appellant stands discharged.

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

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 7 S.C.R. 1175 : 2024 INSC 564

Delhi Transport Corporation
v.
Ashok Kumar Sharma

(Civil Appeal No. 290 of 2014)

18 July 2024

[Sandeep Mehta and R. Mahadevan, JJ.]

Issue for Consideration

High Court, if justified in upholding the order passed by the tribunal setting aside the dismissal of the charged officer.

Headnotes†

Administrative law – Disciplinary proceedings – Mandatory compliances by the disciplinary authority – On facts, memorandum of charge issued to the officer – Disciplinary enquiry held and seven out of the eight charges proved against the charged officer – Issuance of notice to the charged officer – Thereafter, the charged officer dismissed from service – Challenge to – Tribunal set aside the dismissal order – Said order upheld by the High Court – Correctness:

Held: Disciplinary Authority must indicate an independent application of mind to the findings in the enquiry report followed by opportunity of hearing to the charged officer and only thereafter, the order imposing a major penalty like dismissal from service can be passed against the charged officer – On facts, action of the Corporation in dismissing the charged officer from service suffered from fatal lacuna of having been arrived at with sheer non-application of mind in addition to being non-speaking – Neither of the two mandatory compliances carried out – Other than giving a blind approval to the show cause notice and the agenda item albeit referring to the reply of the charged officer, the Board's Resolution did not reflect any independent or objective application of mind by the members of the Board to the enquiry report either individually or collectively – Enquiry report sufferred from a fatal lacuna which goes to the root of the matter thereby vitiating the proceedings – No witness was examined on behalf of the prosecution during the course of departmental enquiry – Enquiry report nowhere records that any document was admitted by the charged officer – Since no evidence was led on behalf of the department in the enquiry

proceedings, the enquiry report was based on no evidence whatsoever – Thus, no error by the tribunal in allowing the application filed by the charged officer and the High Court rightly upheld the same. [Paras 3, 16, 19, 21, 22]

Case Law Cited

A.L. Kalra v. Project & Equipment Corporation of India Ltd. [1984] 3 SCR 646 **: (1984) 3 SCC 316;** *Roop Singh Negi v. Punjab National Bank and Others* [2008] 17 SCR 1476 **: (2009) 2 SCC 570 – referred to.**

List of Acts

DTC Meeting Regulations, 1981.

List of Keywords

Administrative law; Disciplinary proceedings; Disciplinary authority; Memorandum of charge; Disciplinary enquiry; Dismissal from service; Opportunity of hearing; Non-speaking order; Enquiry report.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 290 of 2014

From the Judgment and Order dated 12.03.2013 of the High Court of Delhi at New Delhi in WP(C) No. 7661 of 2010

Appearances for Parties

Dr. Monika Gusain, Avinash Ahlawat, Ms. Gyanvi, Avi Dhankhar, Advs. for the Appellant.

Respondent-in-person.

Judgment / Order of the Supreme Court

Order

1. This appeal by special leave has been preferred by the appellant-Delhi Transport Corporation (hereinafter being referred to as 'Corporation') for assailing the judgment dated 12th March, 2013 rendered by the learned Division Bench of the Delhi High Court dismissing the W.P.(C) No. 7661 of 2010 preferred by the appellant-Corporation questioning the legality and validity of the judgment and final order dated 1st July, 2010 passed by the Central Administrative Tribunal, Principal Bench,

New Delhi (hereinafter being referred to as 'Tribunal'). The Tribunal accepted the Original Application (for short 'OA') No. 1592 of 2009 filed by the respondent (hereinafter being referred to as 'charged officer') and set aside the order dated 24th April, 2009 passed by the Chairman-cum-Managing Director (hereinafter being referred to as the 'CMD') thereby, dismissing the respondent from service.

2. We have heard and considered the submissions advanced at bar and have gone through the impugned judgment and the material available on record.

3. *Ex facie*, we find that the action of the appellant-Corporation in dismissing the respondent from service suffered from fatal lacuna of having been arrived at with sheer non-application of mind in addition to being non-speaking.

4. Undisputed facts as available on record indicate that a memorandum of charge dated 19th December, 2006 was issued to the charged officer and a disciplinary enquiry was held by the Commissioner for Departmental Inquiries, Central Vigilance Commission who was appointed as the enquiry authority by the CMD, appellant-Corporation *vide* order dated 9th July, 2007. The Enquiry Officer conducted enquiry and held seven out of the eight charges proved against the charged officer. A show cause notice dated 15th April, 2009 was issued to the charged officer by the CMD.

5. The charged officer approached the Tribunal by filing OA No. 1054 of 2009 for assailing the show cause notice dated 15th April, 2009 on the ground that the CMD was neither the appointing authority nor the disciplinary authority of the charged officer.

6. The Tribunal, while disposing of OA No. 1054 of 2009, directed the Enquiry Authority to first decide the question of competence of the Enquiry Authority and thereafter, deal with the merits of the case. The charged officer was permitted to make a representation against the show cause notice. Accordingly, the charged officer submitted a detailed representation dated 27th April, 2009 to the appellant-Corporation. The charged officer was to retire from the services of the appellant-Corporation on 30th April, 2009.

7. It is averred on behalf of the appellant-Corporation that in view of the impending retirement of the charged officer, an agenda was circulated to the Board of Directors of the Corporation under Regulation 11 of

the DTC Meeting Regulations, 1981 incorporating a list of issues drafted by the CMD in the following terms: -

> "(viii) The CMD submitted the following issues for consideration of the Board of Directors:
>
> > "(i) To accord the approval for Show Cause Notice (Annexure-IV) proposing to impose the penalty of 'Dismissal from the services of the Corporation' as it was issued by the Chairman-cum-Managing Director in anticipation of the approval of the DTC Board due to paucity of time as the Charged Officer is to retire on 30-4-2009 on attaining the age of superannuation.
> >
> > (ii) To take a decision in the matter by considering the facts of the case and the reply submitted by the Charged Officer in response to Show Cause Notice dated 15-4-2009(Annexure-IV) with regard to the imposition of the penalty of 'Dismissal from the services of the Corporation'. List of Penalties is at Annexure-VI.
> >
> > (iii) To the Chairman-cum-M.D. to issue necessary Orders imposing the penalty as may be approved by the Board, upon Shri A.K. Sharma, Dy. CGM."

8. As a sequel to the above, a Resolution No. 14 of 2009 was drawn under the signatures of the CMD on 29th April, 2009, as per which the Board members considered the agenda item; the reply of the charged officer and accorded their approval to the show cause notice dated 15th April, 2009 issued earlier to the charged officer and recommended to dismiss him from service.

9. Resultantly, the order dated 29th April, 2009 dismissing the charged officer from service came to be passed by the CMD. The charged officer i.e. the respondent herein filed OA No. 1592 of 2009 before the Tribunal for assailing the afore-stated dismissal order which came to be allowed by the Tribunal *vide* judgment dated 1st July, 2010.

10. The appellant-Corporation unsuccessfully challenged the order passed by the Tribunal by filing W.P. (C) No. 7661 of 2010 before

the learned Division Bench of the Delhi High Court which dismissed the same *vide* order dated 12th March, 2013. Being aggrieved, the appellant-Corporation has preferred the instant appeal by special leave.

11. This Court issued notice to the respondent *vide* order dated 16th August, 2013. Leave in the matter was granted on 10th January, 2014.

Submission on behalf of the appellant-Corporation:-

12. Learned counsel, Ms. Monika Gusain, representing the appellant-Corporation vehemently and fervently contended that the agenda which contained the details of the charges attributed to the appellant was circulated amongst the Board members; who applied their mind to the agenda item; took a well considered decision approving the show cause notice dated 15th April, 2009; and also approved the proposed penalty of dismissal from services of the Corporation against the charged officer.

13. She urged that approval to impose the penalty of dismissal from services upon the charged officer was a collective decision of the Board members whereby, the entire material on record was considered including the reply of the charged officer. Hence, there is no reason to cast a doubt that the members of the Board of Directors failed to make an objective consideration of the agenda item with proper application of mind. She thus implored the Court to accept the appeal and reverse the impugned judgment.

Submissions on behalf of the respondent-in-person - Charged officer:-

14. *Per contra*, the respondent appearing-in-person contended that the minutes of meeting dated 29th April, 2009 reflect total non-application of mind. The minutes contain not even a whisper of expression of opinion by any of the members of the Board on the merits of the matter and thus, the resolution approving dismissal of the respondent from service is *ex facie* bad in the eyes of law and was rightly interfered with by the Tribunal. He further submitted that the High Court was perfectly justified in affirming the decision of the Tribunal and implored the Court to dismiss the instant appeal filed by appellant-Corporation.

15. We have given our thoughtful consideration to the submissions advanced on behalf of the appellant and the respondent appearing-

in-person and have gone through the impugned judgments and so also the contentious Resolution dated 29th April, 2009.

Discussion and Conclusions:-

16. We find that firstly, there is a serious question mark on *ex post facto* approval by the Board to the show cause notice dated 15th April, 2009 issued by the CMD to the charged officer. It is a settled principle of administrative law that the Disciplinary Authority must indicate an independent application of mind to the findings in the enquiry report followed by opportunity of hearing to the charged officer and only thereafter, the order imposing a major penalty can be passed against the charged officer. Law is also well settled that the Disciplinary Authority must afford an opportunity of hearing to the charged officer before proceeding to impose the major penalty like dismissal from service. Neither of these two mandatory compliances were admittedly made by the Board.

17. Furthermore, the agenda item which was circulated by the CMD for consideration of the Board (reproduced *supra*) clearly indicates that the Board was to take a decision in the matter while considering the facts of the case and the reply submitted by the charged officer in response to the show cause notice dated 15th April, 2009. However, other than giving a blind approval to the show cause notice and the agenda item *albeit* referring to the reply of the charged officer, the Board's Resolution dated 29th April, 2009 does not reflect any independent or objective application of mind by the members of the Board to the enquiry report either individually or collectively. In this regard, reference may be made to the judgment rendered by this Court in the case of ***A.L. Kalra v. Project & Equipment Corporation of India Ltd.***[1] the relevant paragraph thereof is reproduced hereinbelow for the sake of ready reference:-

> "**29.** The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the inquiry officer which itself was defective did not assign any reasons for accepting the report of the inquiry officer. After reproducing the findings

1 [1984] 3 SCR 646 : (1984) 3 SCC 316

> of the inquiry officer, it is stated that the Committee of Management agrees with the same. It is even difficult to make out how the Committee of Management agreed with the observations of the inquiry officer because at one stage while recapitulating the evidence the inquiry officer unmistakably observed that appellant was subjected to double punishment and at other place, it was observed that granting extension of time and acceptance of documents and balance advance would tantamount to extending the time which would make the affair look wholly innocuous. This shows utter non-application of mind of the Disciplinary Authority and the order is vitiated."

18. In addition thereto, we have gone through the enquiry report which has been placed on record with the appeal. We find that the very foundation of the impugned action i.e. the enquiry report suffers from a fatal lacuna which goes to the root of the matter thereby vitiating the proceedings. On going through the report, we find that the Enquiry Officer categorically noted (at page No. 39 of the paper-book) that the prosecution neither listed nor produced any witness during regular hearing and that the prosecution case was closed with the consent of the Presenting Officer.

19. Upon a pertinent query being put to Ms. Gusain in this regard, she candidly conceded that no witness was examined on behalf of the prosecution during the course of departmental enquiry which fact is also borne out from the enquiry report (Annexure P-1).

20. This Court in the case of ***Roop Singh Negi v. Punjab National Bank and Others*** [2] categorically held that even in a case of *ex parte* enquiry, it is essential that the department must lead evidence of witnesses to bring home the charges levelled against the delinquent employee.

21. Ms. Gosain feebly tried to convince the Court that the documents (Exhibits 51-53) which were marked in support of the department's case, conclusively establish the guilt of the charged officer for the charges framed against him. As per Ms. Gusain, these documents were admitted by the charged officer. However, the enquiry report

2 [2008] 17 SCR 1476 : (2009) 2 SCC 570

nowhere records that any document was admitted by the charged officer. Since no evidence was led on behalf of the department in the enquiry proceedings, there is no escape from the conclusion that the enquiry report is based on no evidence whatsoever.

22. Consequently, we are of the view that the Tribunal committed no error whatsoever while accepting the original application preferred by the respondent and the learned Division Bench of the High Court rightly refused to interfere in the judgment of the Tribunal.

23. As a result of the above discussion, the appeal is hereby dismissed as being devoid of merit. No order as to costs.

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

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 7 S.C.R. 1183 : 2024 INSC 547

M/s Navayuga Engineering Co. Ltd.
v.
Union of India & Anr.

(Civil Appeal No. 1024 of 2014)

23 July 2024

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

Issue for Consideration

(i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962; (ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act; (iii) What is the true and correct ratio of the decision in Jagdish Cancer case.

Headnotes†

Customs Act, 1962 – s.125 – Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962:

Held: The owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act – When confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it. [Paras 8.2, 8.4]

Customs Act, 1962 – Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act:

Held: The text of Section 125(2) clearly provides that, where any fine in lieu of confiscation of goods is imposed under sub-Section (1), the owner of such goods shall be 'liable to any duty and charges payable with respect to such goods'– The sub-section provides that the liability to any duty and charges, that are payable, shall be paid in addition to the fine – Section 28 would come into operation for assessing and determining the duty and other charges payable with

* Author

respect to goods redeemed under Section 125(2) – Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB – The said provision obligates payment of interest in addition to the duty – Thus, the question is answered by holding that the interest liability under Section 28 AB is also attracted. [Para 10.1]

Customs Act, 1962 – What is the true and correct ratio of the decision in Jagdish Cancer case:

Held: Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under Section 28. [Para 9.6]

Case Law Cited

Commr. of Customs (Import) v. Jagdish Cancer and Research Centre **[2001] Supp. 1 SCR 245 : (2001) 6 SCC 483;** *Union of India v. M/s Security and Finance (P) Ltd.* **[1976] 2 SCR 87 : (1976) 1 SCC 166;** *Fortis Hospital Ltd. v. Commr. of Customs, Import* **[2015] 4 SCR 456 : (2015) 12 SCC 715 – referred to.**

List of Acts

Customs Act, 1962.

List of Keywords

Custom duty; Liability to pay custom duty; Confiscated goods; Fine; Payment of fine; Redemption of confiscated goods after payment of fine; Section 125 of the Customs Act, 1962; Liability to pay interest on delayed payment; Section 28AB of the Customs Act, 1962; True and correct ratio of the decision in Jagdish Cancer case.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1024 of 2014

From the Judgment and Order dated 29.08.2009 of the High Court of Bombay in WP No. 1387 of 2009

Appearances for Parties

Ms. Charanya Lakshmikumaran, Ms. Apeksha Mehta, Ms. Neha Choudhary, Ms. Umang Motiyani, Ms. Jyoti Pal, Ayush Agrawal, Ms. Falguni Gupta, M. P. Devanath, Advs. for the Appellant.

N Venkataraman, A.S.G., V C Bharathi, Ms. Amritha Chandramoulli, S A Haseeb, Kritagya Kait, Udai Khanna, Mukesh Kumar Maroria, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

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Pamidighantam Sri Narasimha, J.

1. *Introduction*: The following two questions arose for our consideration; i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962?[1] ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act? Adjudication of these questions brought to light certain seemingly contradictory decisions on this question, and this

1 Hereinafter referred to as 'the Act'.

* Ed. Note: Pagination as per the original Judgment.

requires us to reflect on the correct ratio of the decision of this Court in *Commr. of Customs (Import)* v. *Jagdish Cancer and Research Centre*.[2] Therefore, the third question that fell for our consideration is; iii) What is the true and correct ratio of the decision in *Jagdish Cancer* case?

1.1. For the reasons to follow, we have held that the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine under Section 125 of the Act. Furthermore, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125 will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepts it. Liability to pay customs duty in such confiscation proceedings under Section 125(2) is distinct from the assessment and determination of duty, which can rise only under Section 28. The duty liability arising under Section 125(2) must be assessed under Section 28. Thus, we answered the second question by holding that once Section 28 applies for determination of duty, interest on delayed payment of duty under Section 28AB follows. We have also clarified that *Jagdish Cancer* case is not an authority for the proposition that when the liability to pay customs duty arises under Section 125(2), the calculation, determination or the assessment of such duty cannot be made under Section 28.

1.2. The facts relevant for consideration of the issues are as follows.

2. *Facts*: Between 30.11.2003 to 18.04.2007, the appellant availed the benefit of exemption from payment of customs duty under a notification dated 01.03.2002, as per which certain self-propelled hydraulic piling rigs were to be utilised exclusively for the construction of roads, bridges etc. for NHAI[3] and PWD.[4] When investigations revealed that the appellant has violated the import conditions, even before a show-cause notice was issued, the appellant deposited Rs.16,29,22,282/- and interest of Rs. 1,84,39,696/- between May,

2 [2001] Supp. 1 SCR 245 : (2001) 6 SCC 483, hereinafter referred to as Jagdish Cancer case.

3 National Highways Authority of India.

4 Public Works Department.

2007 to August, 2007. Thereafter, a show-cause notice[5] was issued on 23.01.2008 proposing confiscation under Section 111(o) with respect to goods that were valued at Rs. 48.55 crores involving duty liability of Rs. 17,37,57,039/- under Section 28, interest under Section 28AB and penalties under Sections 112(a) and (b) and 114A of the Act. The appellant filed an application under Section 127B of the Act before the Settlement Commission claiming that it has not violated any condition of the notification dated 01.03.2002 and further claimed that in order to avoid prolonged litigation, they had accepted the liability subject to further adjustments as may be approved by the Settlement Commission. The appellant also asserted that the claim for interest under Section 28AB is impermissible as the proceedings were initiated with show cause notice under Section 124 and not under Section 28.

2.1. The Settlement Commission upheld the duty liability and directed it to be recovered. The penalty and fine were waived in full in view of the finding that this is not a case of brazen defiance of law and also that there is no contumacious conduct such as misdeclaration or manipulation of documents to evade payment of duty. On payment of interest under Section 28AB, the Settlement Commission held that, for violation of post-importation conditions, imported goods become liable for confiscation but are redeemable on payment of fine in lieu of confiscation and the duty becomes payable under Section 125(2). Following the decision of this Court in *Jagdish Cancer* case, the Commission held that as Section 28 is inapplicable in confiscation proceedings, Section 28AB will also not be attracted. The interest deposited by the appellant was, therefore, directed to be refunded.

2.2. The writ petitions filed by the Customs Department were allowed by the order impugned before us. The High Court held that i) interest can be levied only when there is a substantive provision enabling it, ii) Section 125 has no such enabling provision, not even the procedure to assess duty, therefore, iii) assessment of duty must necessarily be done under Section 28 and iv) once Section 28 procedure is adopted, application of Section

5 The show cause notice is purportedly issued under Section 124 read with Section 28 of the Act.

28AB is inevitable. The High Court, therefore, distinguished *Jagdish Cancer* case and held that interest under Section 28AB is payable even for proceedings under Section 125 and remanded the matter to the Settlement Commission to calculate and recover interest under Section 28AB.

2.3. Ms. Charanya Lakshmikumaran and Mr. V C Bharathi appeared for the Appellant and the Custom Department respectively. They have not only enhanced our understanding of the subject and the issue, but have elevated the debate.

3. *Sections 11 and 12 of the Act:* Section 11 of the Customs Act[6] vests the power in the Central Government to prohibit absolutely or subject to such conditions, as may be specified in the notification, the import or export of goods into or out of India. Under Section 45 of the Act, all imported goods unloaded in a customs area shall remain in the custody of the customs authorities. The importer shall present a bill of entry under Section 46 and self-assess the duty under Section 17. Alternatively, under Section 47 the goods are provisionally assessed by the authority under Section 18 and cleared for home consumption. Goods are cleared for home consumption only after the customs officer is satisfied that the goods are not prohibited for home consumption and the import duty is paid. Duties of customs shall be levied under Section 12[7] on goods that are imported into or exported from India at such rates as are specified under the Customs Tariffs Act, 1975.

4. *Section 28 of the Act:* If duties are, i) not levied, ii) not paid, iii) short levied, iv) short paid, v) erroneously refunded, vi) interest not paid, vii) interest, part paid or viii) interest erroneously refunded, a distinct procedure is provided in Section 28 of the Act. This

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6 ***Section 11**: **Power to prohibit importation or exportation of goods**.—(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.*
(2) …
(3) …

7 ***Section 12: Dutiable goods**.—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.*
[(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]

very section provides a slightly varied procedure for recovery in sub-Section (4) for instances, where duties are not paid due to, i) collusion, ii) wilful misstatement or iii) suppression of facts. The distinction in the procedure includes different periods of limitation for initiation of recovery process. Section 28 to the extent, it is relevant for us is as under:

> "***Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded****.—(1) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—*
>
> *(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
>
> *[Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]*
>
> *(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—*
>
> *(i) his own ascertainment of such duty; or*
>
> *(ii) the duty ascertained by the proper officer,*
>
> *the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*
>
> *[Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]*
>
> *(2) […]*

(3) […]

(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

5. *Confiscation of goods under Chapter XIV of the Act:* The third circumstance where duty is collected is when goods are improperly imported into or exported out of India. Chapter XIV of the Act provides for confiscation of such goods and imposition of penalties under Sections 111[8] to 114. Section 111(o) is the specific instance for confiscation of goods for violation of conditions of exemption from payment of duty after the importation. These goods were not subjected to levy and collection of duty as they enjoyed the benefit of exemption. Upon detection of a violation, the legal consequences must and will follow and Chapter XIV provides for confiscations and penalties.

5.1. Confiscation of goods is appropriation of property by the revenue. The right, title and interest in the property, if any, is transferred and vested in the state under Section 126. Considering the

8 ***Section 111.Confiscation of improperly imported goods, etc.****—The following goods brought from a place outside India shall be liable to confiscation:—*

(a) …(n)

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

serious consequences of such an action, authority and process of law mandated Article 300A,[9] Parliament prescribed the procedure under Section 122A, adjudicatory authority under Section 122, obligated issuance of a show-cause notice under Section 124 before confiscation.

6. *Section 125 of the Act:* Alternatively, there is also the option of redemption of the confiscated goods under Section 125, the statute specifically empowers the owner of the goods to exercise an option of legitimising the importation by paying fine, duty and other charges. The procedure prescribed is simple; i) confiscation must be authorised, ii) those goods should not be prohibited goods, iii) the officer shall give an option to redeem the goods in lieu of fine, iv) the owner or the possessor must exercise the option and v) pay the fine vi) within 120 days. The purpose and object of Section 125 is to enable a transition from 'illegality' to 'compliance' of laws. It grants an opportunity to the owner or possessor of the confiscated goods to regularise the transaction by payment of fine. This provision is based on a public policy consideration that balances crime and punishment and achieves the twin objectives of enabling a citizen to remain on the right side of law by adopting a prescribed measure and amicable settlement of disputes through resolution. Section 125 is extracted herein below for ready reference:

> *"**Sec 125. Option to pay fine in lieu of confiscation.***
>
> *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.*
>
> *Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in*

9 ***Article 300A. Persons not to be deprived of property save by authority of law.*** *— No person shall be deprived of his property save by authority of law.*

respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

[Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending. Explanation.—……"]

7. *Issues:* It is in the above referred 'context' that we will now interpret the 'text' of Section 125 to examine the following issues:

   i) Whether there is a liability to pay customs duty when confiscated goods are redeemed after payment of fine under Section 125 of the Act?

   ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?

   7.1. While answering these questions, we will have to explain the decision of this court in *Jagdish Cancer* case as it is argued to have ruled that duty in confiscation proceedings is payable only under Section 125 and not under Section 28, and if Section 28 does not apply, Section 28AB also will not apply. Therefore, the third question is:

   iii) What is the true and correct ratio of the decision in Jagdish Cancer case?

8. *Re: Whether there is a liability to pay customs duty, when the confiscated goods are redeemed after payment of fine under section 125 of the Act?*

8.1. This issue is no more *res integra*. The uncertainty about the liability to impose and collect duties in confiscation proceedings was resolved in 1976 by a decision of this court in *Union of India v. M/s Security and Finance (P) Ltd.*[10] while interpreting identical provisions, as they stood under the Sea Customs Act, 1878. In this case, the court was dealing with confiscation of goods that were imported without a proper license which was and is prohibited by law. Though the goods were confiscated, they were released to the importer, who exercised the option to redeem them under Section 183 of the repealed Act. Consequently, Customs Department sought to collect the duty payable on such goods. The High Court accepted the importer's challenge to imposition and collection of duty on the ground that Section 183 proceedings authorised only a fine and not customs duty. This court allowed the appeal of the Custom Departments by drawing a distinction between the power to impose or recover duty under Section 20 (Section 12/28 of our Act) on one hand, and the power to impose penalty and/or fine under Section 183 (Section 125 of our Act). This Court held that they are distinct and operate independently. The relevant portion of the judgement is as under:

> *"5. Does the order under Section 183 preclude him from levying duty under Section 20? This is the short issue before us. A close study of the scheme of the relevant provisions, powers and levies discloses a clear dichotomy which has escaped the attention of the High Court. Import/Export duty is an obligation cast by Section 20 of the Act. It is a tax, not a penalty; it is an innocent levy once the exigible event occurs; it is not a punitive impost for a contravention of the law. Confiscation, penalty and fine provided for under Sections 167 (item 8) and 183 are of the species of punishment for violation of the scheme of prohibition and control. Once this distinction and duality are remembered, the interpretative process simplifies itself.*

10 [1976] 2 SCR 87 : (1976) 1 SCC 166, hereinafter referred to as *Security Finance* case.

8. ….In the present case, the Deputy Collector, the competent authority, has chosen to give the owner of the goods, the respondent, option to pay, in lieu of confiscation, a fine. He has not confiscated the goods and, therefore, Section 184 is not operational in this context. In short, the obligation under Section 20 is independent of the liability under Section 183. The order, dual in character, although clubbed together in a single document, is therefore valid in entirety. Even so, the confusion has been caused by the Deputy Collector failing to keep distinct the two powers and the two liabilities and thereby leading to avoidable jumbling.

10. However, we are prepared to gather from the order under attack two levies imposed in exercise of two distinct powers, as earlier explained. The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20. Likewise, the authority when it imposed a fine, was exercising its power under Section 183. We can readily see that he did not mean to confiscate the goods. He only proposed to confiscate and proceeded to fix a fine in lieu thereof. Non-felicitous and inept expressions used in the order are perhaps apt to mislead, but the intendment is clear that what was done was not confiscation but giving an option to pay a quantified fine in place of confiscation. The order was a composite one, when read in the sense we have explained, and is quite legal. Therefore, we reach the conclusion that the appellant is entitled to win and the High Court was in error."

8.2. The Act must always be read as a whole. Once the liability of confiscation is withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods to be subjected to duty. The power and the machinery provisions for imposition and collection of duty liability exist only under Section 12 and/or Section 28 and not under Section 125. The essence of the judgment in *Security Finance* case is in the following

sentence: *"The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by Section 20"*.

8.3. The scope of enquiry in this judgement was limited to answering whether there is a liability to pay customs duty in confiscation proceedings when goods are redeemed upon payment of fine. This judgment is not concerned with instances like in the present case where goods are imported without payment of duty under an exemption notification.

8.4. The above referred judicial interpretation has attained statutory recognition in 1985 when the Parliament introduced subsection (2) to Section 125 to clarify and declare that the owner of goods, in addition to payment of fine, shall also be liable to pay duty and other charges upon exercising the option to pay fine to redeem goods. *Thus, the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act. This is the first principle.*

8.5. In our view, this position gleaned from *Security Finance* case has remained consistent with amendments introduced to Section 125 in the year 1985. The customs duty obligation on once exempted goods, liable to be confiscated for violation of conditions, arises only after the option to redeem them is exercised under Section 125. Once the option is exercised, the acceptance is subject to the conditions specified in Section 125. The primary condition is payment of fine in lieu of confiscation. Thus, this duty obligation is inextricably connected to the option to redeem the confiscated goods. In other words, it is a precondition for redemption.

8.6. The decision of this court in *Fortis Hospital Ltd* v. *Commr. of Customs, Import*[11] affirms this position. In *Fortis Hospital* case, the owner of the confiscated goods chose not to exercise the option under Section 125. However, the revenue sought to recover the duty payable under Section 28 of the Act. Holding that this is impermissible, the court held that:

11 [2015] 4 SCR 456 : (2015) 12 SCC 715, hereinafter referred to as *Fortis Hospital* case.

"9…… It may be seen from the bare reading of the aforesaid Section that under Section 125(1) of the Act, option is given to the importer whose goods are confiscated, to pay the fine in lieu of confiscation and redeem the confiscated goods. Before this action is taken, show-cause notice is to be issued under the provision of Section 124 of the said Act. This provision pertains to confiscation of goods and provides procedural safeguards inasmuch as there cannot be any order of confiscating any goods or imposing any penalty on any person without complying with the procedure contained in Section 124. Section 124 mandates issuance of the show- cause notice before passing any such order and contemplates two actions: first, relating to confiscating of the goods and second, pertaining to imposition of penalty. Pertinently, this action does not deal with payment of import duty at all.

10. It is not in dispute that show-cause notice in the instant case was issued under Section 124 of the Act. Once such a show-cause notice was issued and as can be seen from the proposed action which was contemplated in this provision (as has been taken note of above), it was also confined to confiscation of the imported machinery and imposition of penalty. Nothing was stated about the payment of duty. However, in spite of the fact that show- cause notice was limited to confiscation of the goods and imposition of penalty, the final order which was passed included the direction to pay the customs duty as well. It is clear that when such an action was not contemplated, which even otherwise could not be done while exercising the powers under Section 124 of the Act, in the final order there could not have been direction to pay the duty.

11. Notwithstanding the aforesaid position, as pointed out above, the Department is taking shelter under the provisions of sub-section (2) of Section 125 of the Act. However, on a plain reading of the said provision, we are of the view that such a provision would not apply in case where option to pay fine in lieu of

confiscation is not exercised by the importer. Trigger point is the exercise of a positive option to pay the fine and redeem the confiscated goods. Only when this contingency is met, the duty becomes payable. In the present case, admittedly, such an option was not exercised and the confiscated machinery was not redeemed by the Institute. As a matter of fact, thus, no fine has been paid."

8.7. This judgment also explains the position when the Customs Department wants to recover duty through ways, other than confiscation at the Chapter XIV. Explaining the alternative modes of recovery of customs duty, the court observed as follows;

"16. It is not that the Department is without any remedy. We have gone through the provisions of notification No. 64 of 1988 dated 01.03.1988. As pointed out above, importer would be exempted from payment of import duty on hospital equipment only when the conditions contained in the said notification are satisfied. Some of the conditions, as pointed out above, are to be fulfilled in future. If that is not done and the importer is found to have violated those conditions, show-cause notice could always be given under the said notification on payment of duty, independent of the action which is permissible under Section 124 and Section 125 of the Act. It is also important to mention that under certain circumstances mentioned in the notification, the importer can be asked to execute a bond as well. In those cases, action can be taken under the said bond when the conditions contained therein are violated. Therefore, if the Department wanted the Institute to pay the duty, which may have become payable, it could have taken independent action; de hors Section 124 of the Act, for payment of duty, simultaneously with the notice under Section 124 of the Act or by issuing composite notice for such an action. No doubt, it could have waited for option to be exercised by the Institute under Section 125(1) of the Act as well and in that eventuality, duty would have automatically become

payable under Section 125(2) of the Act. But when such an option was not exercised, it could have taken separate and independent action by issuing a show-cause notice to the effect that the Institute had violated the terms of exemption notification and therefore, was liable to pay duty."

8.8. *We can thus conclude the second principle that, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it.*

8.9. An important principle that needs to be recognised is that, the customs duty obligation in confiscation proceedings does not occasion either under Section 12 or 28. It has arisen because of the option available and exercised under Section 125. This obligation should not be confused with the method and procedure by which that customs duty is assessed and determined, which is provided under Section 28. It is in this context that we need to consider and explain the decision of this court in *Jagdish Cancer* case.

9. *Re: What is the true and correct ratio of the decision in Jagdish Cancer case?*

9.1. The real contest in this case is about the correct ratio of the judgement in *Jagdish Cancer* case. According to the appellant, as this judgment holds that duty liability in confiscation proceedings arises because of Section 125 and not Section 28, there is no liability to pay interest on delayed payments under Section 28AB. The facts of this case are necessary to be recounted for a clear understanding of the ratio of this decision. In this case, the department issued a show-cause notice under Section 124 of the Customs Act demanding customs duty and proposed confiscation under Section 111(o) and penalty under Section 112.

9.2. The importer contended that as there is no notice under Section 28, the demand and collection of duty are impermissible. We will extract the submission as recorded by this court in para 9 of the judgment, as it is important to know what was argued and what was decided:

> "*9. […] Section 28 of the Act which falls in Chapter V provides for notice for payment of duties which has been demanded by the notice in this case. Therefore, it is submitted on behalf of the Centre that demand of customs duty and the order for payment of the same is relatable to only Section 28(1) of the Customs Act, as also found by the CEGAT. That being the position, the notice was beyond time and not by a competent officer authorised to issue the same. The argument, as advanced, though seems to be attractive but on scrutiny, we find no merit in it* […]"

9.3. On the other hand, the Department defended its position by submitting as follows:

> *"8. […] It is submitted that the copy of the notice, as annexed, does not mention Section 28(1) of the Customs Act, in any case if it is taken to be there, as contended, that would make no difference. The submission is that sub-section (2) of Section 125 of the Customs Act provides that where any fine in lieu of confiscation of goods is imposed, the importer shall also, in addition, be liable to any duty and charges payable in respect of such goods."*

9.4. It is in the context of the above-referred submissions, that the court considered the fact that an option under Section 125 was given and it was in fact exercised. Thus, the liability to pay customs duty arose under Section 125(2) and therefore, the court held that the separate notice under Section 28 is not required. This is exactly what the court ruled by holding:

> *"12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods" […]".*

9.5. Again, in the same paragraph, the court notes that the occasion, origin, or the circumstance in which the liability to pay duty arose in

the confiscation proceedings under Section 125 (2). In this case, the court was considering and rejecting the submission made on a misplaced premise that the proceedings have originated under Section 28. Payment of customs duty has not arisen either under Section 12 or Section 28, it has arisen because of Section 125(2). Therefore, a notice under Section 28 is not necessary. This is how the judgment needs to be understood, and it is in this perspective that the court has in fact rejected the importer's objection to the payment of duty.

> *"12. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods." A reading of sub-section (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short- levied or erroneously refunded etc. The order for payment of duty under Section 125(2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act."*

9.6. *We conclude by holding that Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under Section 28.*

10. *Re: Whether the liability to pay such duty will include the liability to pay interest on delayed payment under section 28AB of the Act?*

    10.1. The text of Section 125(2) clearly provides that, *where any fine in lieu of confiscation of goods* is imposed under sub-Section (1), *the owner of such goods shall be* '*liable to any duty and charges payable with respect to such goods*'. The sub-section provides that the liability to any duty and charges, that are *payable*, shall be paid in addition to the fine. We have held that Section 28 would come into operation for assessing and determining the duty and other charges payable with respect to goods redeemed under Section 125(2). *Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB.* The said provision obligates payment of interest in addition to the duty. We thus answer the last issue by holding that the interest liability under Section 28 AB is also attracted.

11. *Conclusion:* For the reasons mentioned hereinabove, we uphold the decision of the High Court in Writ Petition Lodging No. 1387 of 2009 dated 29.08.2009 and dispose of the present Civil Appeal No. 1024 of 2014. No order as to costs.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2024] 7 S.C.R. 1202 : 2024 INSC 516

Duni Chand
v.
Vikram Singh and Others

(Civil Appeal No. 8187 of 2023)

10 July 2024

[Vikram Nath* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the High Court erred in extending the benefit of Section 41 of the Transfer of Property Act, 1882, to the defendants despite the lack of specific pleadings, and no evidence to show consent of interested persons.

Headnotes†

Transfer of Property Act, 1882 – Section 41 – Transfer by ostensible owner – Consent of persons interested in the immovable property required – No specific pleading or evidence showing the consent, whether express or implied, of the interested persons – Relief granted in favour of defendants by the High Court relying on Section 41 was unwarranted.

Transfer of Property Act, 1882 – Proviso to Section 41 – requires that the transferees take reasonable care to ascertain the transferor's authority and act in good faith – Defendants failed to plead or prove these requirements – Hence, reliance on Section 41 by the High Court unwarranted.

Held: Plaintiff had a registered Will dated 12.12.1988 ('1988 Will') bequeathing the suit land to him – Defendant No. 1 based on Will dated 16.05.1994 ('1994 Will') got his name mutated in the revenue records and subsequently transferred the land to other defendants – High Court confirmed the first Appellate Court's finding that the 1988 Will was a valid and genuine document, and the 1994 Will was invalid and shrouded in suspicion – However, it extended the benefit of Section 41, TP Act, to the purchasers of the property from defendant No. 1 – Appeal against reliance on Section 41, TP Act, allowed.

Section 41, TP Act, requires the consent, express or implied, of persons interested in the immovable property – Plaintiff was

* Author

an interested person as the 1988 Will was in his favour, but no pleadings or evidence showed that the defendants had obtained consent from him – Furthermore, the proviso to Section 41 requires transferees to take reasonable care and act in good faith, which also was not pleaded by defendants 2, 4, and 5 – Thus, the relief granted by the High Court under Section 41 was unwarranted, misplaced, and against the pleading and evidence on record. [Paras 12, 13].

Wills – If vendor has no rights under the invalid Will, purchasers could not acquire any better rights.

Held: Once the High Court had determined the 1988 Will was genuine and the 1994 Will was invalid, no rights accrued to defendant no.1 under the invalid Will – Therefore, defendant no. 2, 4, and 5 could not obtain any better right, title, or interest than defendant no.1 – Appeal filed by the plaintiffs-appellants allowed. [Para 14].

Wills – Findings on validity of Will well-reasoned – A pure finding of fact – No interference

Held: Findings of the first Appellate Court and the High Court on validity of the 1994 Will being shrouded in suspicion are well-reasoned and based on evidence on record – It is a pure finding of fact, and no interference is merited – Appeal by defendant no.1 dismissed. [Para 15].

List of Acts

Transfer of Property Act, 1882.

List of Keywords

Ostensible owner; Section 41, Transfer of Property Act, 1882; Invalid will; Lack of pleadings; Better right.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8187 of 2023

From the Judgment and Order dated 29.03.2017 of the High Court of Himachal Pradesh at Shimla in RSA No. 392 of 2005

With

Civil Appeal No. 8188 of 2023

Appearances for Parties

Bimal Jad, Sr. Adv., Ms. Ridhi Jad, Shiv Sagar Tiwari, Ms. Aakanksha Tiwari, Hemant Sharma, Kshav Choudhary, Yash Pal Dhingra, Ravi Bakashi, Ms. Sayma Feroz, Manvendra Pratap Singh, Chander Shekhar Ashri, Ms. Riddhi Jad, Nirdosh Bhola Vishen, O.P. Singh, Atul Mahan, Ms. Purnima Jauhari, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Both the above appeals assail the correctness of the judgment and order dated 29.03.2017 passed by the High Court of Himachal Pradesh whereby the RSA No.392 of 2005 titled Vikram Singh and others Vs. Tota Ram (since deceased) through LRs was partly allowed and the judgment and decree passed by the First Appellate Court was partly upheld and partly set aside.

2. Relevant facts in brief giving rise to the present appeals are as under:

   (a). Beli Ram was the owner in possession of the land in dispute. Tota Ram, plaintiff is the nephew of Beli Ram, being his brother's son. According to the plaintiff, he had been cultivating the land in question for more than three decades and had also been taking care of Beli Ram. In 1988, out of natural love and affection, Beli Ram executed a registered Will dated 12.12.1988 bequeathing the suit land in favour of the plaintiff Tota Ram. Beli Ram died on 11.07.1994. As the plaintiff had continued in possession from the time when Beli Ram was alive, he remained in possession even after death of Beli Ram. However, as the defendant started interfering with the possession of the suit land, the plaintiff made enquiry and he came to know that defendant no.1, Vikram Singh, on the basis of another Will dated 16.05.1994 had got his name mutated in the revenue records vide mutation Entry No.201. Further, Vikram Singh had transferred the land in suit in favour of defendant no.2, Smt. Saroj Kumari and also defendant nos.4 and 5, Pankaj Kumar and Pawan Kumar respectively.

   (b). In view of the interference in possession, Tota Ram instituted a suit for a decree of declaration with consequential relief of

permanent prohibitory injunction that he was the owner in possession of land in dispute and that the defendants had no right or title to it. It was further prayed that the mutation Entry No.201 dated 17.01.1996 and Entry No. 207 dated 07.06.1996 should also be declared as false, fictitious and illegal.

(c). In the plaint, Vikram Singh was impleaded as defendant no.1., Smt. Saroj Kumari as defendant no.2, Pankaj Kumar and Pawan Kumar as defendant Nos.4 and 5. Defendant no.3, Smt. Dharni Devi, being daughter of Beli Ram was also impleaded but no relief was claimed against her as she had not put up any claim with respect to the property of Beli Ram including the land in suit. According to the plaint allegations, Beli Ram had executed the Will in sound mind and good health, out of love and affection on 12.12.1988 in favour of the plaintiff, who had been taking care of Beli Ram throughout and had also been cultivating the land in suit for the last more than 30 years. It was further stated that the second Will dated 16.05.1994, set up by defendant no.1 was forged and fictitious and surrounded with suspicion, as such, it did not confer any right, title or interest upon the defendant no.1 or the vendees through him i.e. Defendant nos.2, 4 and 5.

(d). The defendants contested the suit and filed their written statements and led evidence. Defendant Nos.4 and 5 filed a separate written statement. They denied the plaint allegations and stated that the Will dated 16.05.1994 was a genuine document voluntarily executed by Beli Ram in a healthy and disposing mind and the same was duly registered. The Will dated 12.12.1988 was denied. According to them, the entries in the revenue records were made after due verification. They also claimed to be in possession of the land purchased by them. Separate written statements were filed by defendant nos.1 and 2 on same lines as of defendants 4 and 5. Dharni Devi, Defendant no.3, filed a written statement admitting the claim of the plaintiff and also the Will dated 12.12.1988.

4. The Trial Court framed 12 issues which read as follows:

"1. Whether the plaintiff is the owner in possession of the suit land as alleged?

2. *Whether late Shri Beli Ram executed a valid "Will" on 12.12.1988 in favour of the plaintiff as alleged? OPP*

3. *Whether the mutations No.201 and 207 are wrong and illegal as alleged? OPP*

4. *Whether the plaintiff is entitled to be injunction prayed for? OPP*

5. *Whether the plaintiff has a cause of action? OPP*

6. *Whether the plaintiff has the locus-standi to sue? OPP*

7. *Whether the suit is bad for non-joinder of the necessary parties? OPD*

8. *Whether the suit is time barred? OPD*

9. *Whether the suit is not maintainable in the present form? OPD*

10. *Whether late Shri Beli Ram executed a valid "Will" on 16.05.1994 in favour of the defendant no.1 as alleged. If so, its effect? OPD*

11. *Whether the defendants No.2, 4 and 5 Bona fide purchasers for consideration as alleged. If so, its effect? OPD*

12. *Whether the defendants are entitled to special costs u/s 35-A of CPC as claimed. If so, their quantum?*

13. *Relief."*

5. Before the Trial Court, the plaintiff-Tota Ram examined three witnesses and placed on record the Will dated 12.12.1988, which he duly proved and was marked as Ext. DW-2/(A).

6. On the other hand, the defendants examined five witnesses and also proved their Will dated 16.05.1994, which was marked as Ext. DW-3/(A). The Trial Court recorded the following findings on the issues as incorporated in paragraph 7 of the judgment, which are reproduced hereunder:

Issue no.1	:	No
Issue no.2	:	No

Issue no.3	:	No
Issue no.4	:	No
Issue no.5	:	No
Issue no.6	:	No
Issue no.7	:	No
Issue no.8	:	No
Issue no.9	:	No
Issue no.10	:	No
Issue no.11	:	No
Issue no.12	:	Not pressed
Relief	:	The suit of the plaintiff is dismissed as per operative part of the judgment.

7. On the above findings, the Trial Court, vide judgment dated 30.09.2004, dismissed the suit.

8. Aggrieved by the same, plaintiff-Tota Ram preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 before the District Judge, Hamirpur, which was registered as Civil Appeal No.110 of 2004. The appellate Court framed point for determination as to whether the judgment and decree under appeal is legally sustainable and to what relief if any, the appellant would be entitled to. The District Judge did not agree with the findings and the conclusions of the Trial Court and, accordingly, decreed the suit against defendants 1, 2, 4 and 5. It held that the Will dated 12.12.1988 was a valid and genuine document and plaintiff was entitled to a declaration on the basis of the same, that he was in possession of the land in question and accordingly injuncted the defendants 1, 2, 4 and 5 from interfering in his possession. It further found that the Will dated 16.05.1994 was surrounded with suspicious circumstances and as such could not be relied upon. It was held to be an invalid document. It also set aside the mutation Entry Nos.201 and 207.

9. Aggrieved by the judgment of the first appellate Court, the defendants preferred Second Appeal under Section 100 of CPC, which was registered as RSA No.392 of 2005 before the High Court of Himachal Pradesh. The High Court confirmed the finding of the First Appellate Court that the Will dated 12.12.1988 was a valid and genuine

document. It also found that the second Will dated 16.05.1994 in favour of defendant no.1, Vikram Singh was not a genuine document and was shrouded with suspicion. However, the High Court felt that the purchasers from defendant no.1 were entitled to benefit of Section 41 of the Transfer of Property Act, 1882[1] and, accordingly, saved the transactions in their favour. They were entitled to retain the land covered under their respective sale deeds and the remaining land covered under the Will, would stand declared in the ownership of the plaintiff, Tota Ram and that the defendant no.1, Vikram Singh would not be entitled to claim any such benefit over the remaining land. The High Court also set aside the mutation Entry No.201 but saved it with respect to the transfers made in favour of defendants 2, 4 and 5. It further restored the mutation Entry No.207 in favour of defendant Nos.2, 4 and 5.

10. Aggrieved by the same, the legal heirs of Tota Ram i.e. his three sons, three daughters and widow have filed Civil Appeal No.8187 of 2023 to challenge the judgment of the High Court to the extent it saved the transactions in favour of defendants 2, 4 & 5. The other Civil Appeal No.8188 of 2023 has been filed by Vikram Singh (defendant no.1) with respect to the declaration of his Will dated 16.05.1994 to be an invalid document shrouded with suspicion.

11. We have heard learned counsel for the parties. On behalf of the plaintiffs-appellants, the submission is that the High Court fell in serious error in extending the benefit of Section 41 of the TP Act to the defendants 2, 4 and 5. Neither there was any specific pleading, nor any issue framed, nor any evidence led with respect to such relief. None of the purchasers namely defendants 2, 4 and 5 entered the witness box. The High Court has carved out a completely new case which is unsustainable in law.

12. Section 41 of the TP Act reads as follows:

> **"41. Transfer by ostensible owner.**
>
> Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable

1 In short, TP Act

> on the ground that the transferor was not authorised to make it:
>
> provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

A plain reading of the above provision clearly requires the consent, be it express or implied, of the persons interested in the immovable property.

13. In the present case, the plaintiff, Tota Ram, was definitely interested in the immovable property having a registered will of 1988 in his favour and we do not find either in the pleadings or in the evidence, that he had given, his consent, expressly or impliedly, to Vikram Singh, defendant no.1, to transfer the property, in favour of defendant nos. 2, 4 and 5. Nowhere in the written statements filed by defendants 1, 2,4 and 5 have they pleaded, that defendant no. 1 had obtained the consent, either express or implied, from the plaintiff before making the transfers. Further the proviso to section 41 of the TP Act requires that the transferees to take reasonable care in ascertaining that the transferor had power to make the transfer and that they had acted in good faith. This again would require specific pleading and evidence by the transferees. As already recorded above, even at the cost of repetition, defendants 2,4 and 5, the purchasers, from defendant no. 1, neither pleaded such facts nor entered the witness box to prove such facts as required under the proviso. The relief granted by the High Court relying upon section 41 of the TP Act was thus completely unwarranted, misplaced and against the pleading and evidence on record.

14. Once the High Court had held that the Will dated 12.12.1988 was genuine and *bona fide* and duly proved and, further that the Will dated 16.05.1994 was not a valid document being shrouded with suspicious circumstances, there was no occasion for the High Court to have shown any kind of sympathy with the purchasers i.e. defendants 2, 4 and 5. Once the Will itself was held to be invalid, no right accrued in favour of defendant no.1, and if defendant no.1 did not receive any right, title or interest under the Will dated 16.05.1994, there was no question of defendants 2, 4 and 5 getting any better right, title or interest than defendant no.1 their vendor. We find substance in the aforesaid submission as from the pleadings, evidence and material

on record, we find that the submission on behalf of the plaintiffs-appellants is fully substantiated. As such, the appeal filed by the plaintiffs-appellants deserves to be allowed.

15. Insofar as the appeal filed by the defendant no.1 is concerned, we are more than clear that the findings recorded by the first Appellate Court and the High Court on the validity of the second Will dated 16.05.1994 being shrouded with suspicious circumstances, is well reasoned and based on evidence on record. The defendant no.1 had completely failed to dispel and clear the clouds surrounding the Will dated 16.05.1994. The first Appellate Court has dealt with in great detail on the said aspect, which finding has been affirmed by the High Court. The same being a pure finding of fact, we are not inclined to interfere with the same. As such, the appeal filed by the defendant no.1, Vikram Singh is liable to be dismissed.

16. In view of the above, the Appeal No.8187 of 2023 is allowed. The judgment of the High Court to the extent it extends benefit to the defendant nos.2, 4 and 5 is set aside and that of the first Appellate Court decreeing the suit in totality is affirmed. The Appeal No.8188 of 2023 is, hereby, dismissed.

Result of the case: Appeal No. 8187 of 2023 allowed.
Appeal No. 8188 of 2023 dismissed.

†*Headnotes prepared by:* Ankitesh Ojha, Hony. Associate Editor
(*Verified by:* Shibani Ghosh, Adv.)

[2024] 7 S.C.R. 1211 : 2024 INSC 551

Shri Gurudatta Sugars Marketing Pvt. Ltd.
v.
Prithviraj Sayajirao Deshmukh & Ors.

(Criminal Appeal Nos. 3070-3071 of 2024)

24 July 2024

[Vikram Nath* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the signatory of the cheque, authorized by the "Company", is the "drawer" and whether such signatory could be directed to pay interim compensation in terms of section 143-A of the Negotiable Instruments Act, 1881 leaving aside the company. The High Court answered the question in the negative.

Headnotes†

Negotiable Instruments Act, 1881 – ss.138, 141, 143-A – Appellant company entered into several agreements with C Ltd. and made advance payments for supply of sugar – C failed to supply – In order to discharge the liability, two cheques were issued by respondent nos.1 to 3 (directors of C) in favour of the appellant and the same were dishonoured due to insufficiency of funds – Appellant issued notice – Again payments were not made – Appellant preferred a complaint before the Judicial Magistrate – In the meantime, C was admitted into CIRP – Appellant filed an application u/s. 143-A, NI Act against respondent Nos. 1 to 3 seeking interim compensation – Judicial Magistrate directed each of the respondents to pay 4% of the total cheque amount as interim compensation – The said order was challenged by the respondent nos.1 to 3 before the High Court – The High Court allowed the application preferred by the respondent Nos. 1 to 3 herein and set aside the order of interim compensation passed by the Judicial Magistrate – Correctness:

Held: The High Court's interpretation of Section 7 of the NI Act accurately identified the "drawer" as the individual who issues the cheque – This interpretation is fundamental to understanding the obligations and liabilities u/s. 138 of the NI Act, which makes it

* Author

clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented – The appellants' argument that directors or other individuals should also be liable u/s. 143-A misinterprets the statutory language and intent – The general rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability – Section 141 of the NI Act is one such provision, extending liability to the company's officers for the dishonour of a cheque – The appellants' attempt to extend this principle to Section 143-A, to hold directors or other individuals personally liable for interim compensation, is unfounded – The High Court rightly emphasized that liability u/s. 141 arises from the conduct or omission of the individual involved, not merely their position within the company – The distinction between legal entities and individuals acting as authorized signatories is crucial – Authorized signatories act on behalf of the company but do not assume the company's legal identity – This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company – This distinction supports the High Court's interpretation that the drawer u/s. 143-A refers specifically to the issuer of the cheque, not the authorized signatories – The High Court's decision to interpret 'drawer' strictly as the issuer of the cheque, excluding authorized signatories, is well-founded – This interpretation aligns with the legislative intent, established legal precedents, and principles of statutory interpretation – The primary liability for an offence u/s. 138 lies with the company, and the company's management is vicariously liable only under specific conditions provided in Section 141 – The appellants' submissions are thus rejected, and the High Court's judgment is upheld – Thus, the question of law put before this Court is answered in negative. [Paras 28, 29, 30, 35]

Case Law Cited

Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. [2012] 5 SCR 503 : **(2012) 5 SCC 661 – held inapplicable.**

Nazir Ahmad v. King Emperor, **AIR 1936 Privy Council 253;** *Central Bank of India v. Ravindra* [2001] Supp. 4 SCR 323 : **(2002) 1 SCC 367;** *Noor Mohammed v. Khurram Pasha* [2022] 6 SCR 860 : **(2022) 9 SCC 23;** *N. Harihara Krishnan v. J. Thomas*

Shri Gurudatta Sugars Marketing Pvt. Ltd. v.
Prithviraj Sayajirao Deshmukh & Ors.

[2017] 9 SCR 324 : (2018) 13 SCC 663; *K.K. Ahuja v. V.K. Vohra*
[2009] 9 SCR 1144 : (2009) 10 SCC 48 – referred to.

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973; Insolvency and Bankruptcy Code, 2016.

List of Keywords

Section 138 of Negotiable Instruments Act, 1881; Section 141 of Negotiable Instruments Act, 1881; Section 143-A of Negotiable Instruments Act, 1881; Signatory of cheque; Dishonour of cheque due to insufficiency of funds; Interim compensation; Vicarious liability in criminal law; Distinction between legal entities and individuals acting as authorized signatories; Authorized signatories of company; Interpretation of 'drawer'; Primary liability u/s.138 lies with company.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 3070-3071 of 2024

From the Judgment and Order dated 08.03.2023 and 29.03.2023 of the High Court of Judicature at Bombay in CRLA No. 967 of 2022

Appearances for Parties

D.P. Singh, Manu Mishra, Ms. Shreya Dutt, Iman Khera, Ms. Sonam Gupta, Advs. for the Appellant.

Siddharth Dave, Sr. Adv., Ramchandra Madan, Ms. Tanisha Kaushal, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted.

2. The present Appeals are filed challenging the judgments and orders passed by the Bombay High Court, dated 08.03.2023 and 29.03.2023 in CRLA 967/2022, whereby the High Court allowed the Criminal Application filed by the present respondents thereby setting aside

the order of the Judicial Magistrate directing the interim payment under Section 143-A, Negotiable Instruments Act, 1881[1] to be paid by the respondents – directors of the company on whose account the dishonoured cheque was drawn.

3. Appellant company entered into several Agreements and Sale Orders with one Cane Agro Energy (India) Ltd. (Cane hereinafter) between September 2016 and June 2017. Under these Agreements and Sale Orders, the appellant made advance payments amounting to Rs.63,46,00,000/- (Rupees sixty three crores forty six lakhs) for supply of sugar by Cane. It is alleged by the appellant that Cane failed to supply the ordered quantities of sugar and also failed to discharge its other obligations as agreed upon. Cane agreed to refund the advance amount due and payable to the Appellant. In part discharge of liability, a sum of Rs.1,00,00,000/- (Rupees one crore) was refunded by Cane on 30.01.2018.

4. Subsequently, respondent Nos. 1 to 3 issued two cheques dated 30.03.2020 in favour of the appellant, one for Rs.45,00,00,000/- (Rupees forty five crores) and one for Rs.6,64,41,300/- (Rupees six crores sixty four lakhs forty one thousand and three hundred), amounting to a total amount of Rs.51,64,41,300/- (Rupees fifty one crores sixty four lakhs forty one thousand and three hundred). These two cheques were signed by respondent No.1, who is the Chairman of Cane.

5. The said cheques were presented to the Bank but were dishonoured due to insufficiency of funds, vide return memos dated 02.06.2020. Appellant issued notice date 18.06.2020 to respondent Nos. 1 to 3 against the dishonour of cheques demanding payment of dues. A notice was duly served on 30.06.2020. When the payments due were not made, the appellant preferred a complaint before the Judicial Magistrate, First Class, Kolhapur, which was registered as Summary Criminal Case No.2967 of 2020. On 11.08.2020, the Judicial Magistrate, First Class, Kolhapur issued process against respondent Nos. 1 to 3. In the meantime, Cane was admitted into Corporate Insolvency Resolution Process by order of National Company Law Tribunal, Mumbai.

1 In short, "NI Act"

6. Respondent Nos. 1 to 3 entered appearance before the Judicial Magistrate and subsequently preferred an application under Section 258, Code of Criminal Procedure, 1860,[2] seeking stoppage of proceedings in terms of the moratorium running against Cane. On 20.05.2021 an order imposing moratorium against Cane was passed under Section 14, Insolvency and Bankruptcy Code, 2016.[3] Respondent Nos. 1 to 3, along with Cane, preferred another application under Section 258, CrPC seeking stoppage of proceedings before the Judicial Magistrate.

7. The Judicial Magistrate partly allowed the above application and held that the complaint shall not proceed against Cane in view of Section 14, IBC till the order of moratorium is operative; but the complaint was ordered to proceed ordinarily against respondent Nos.1 to 3 herein. The Judicial Magistrate observed that as per the scheme of Section 14, IBC the proceedings for offences punishable under Section 138, NI Act is withheld by order of moratorium only for corporate debtors and not against other natural persons arrayed as respondents in representative capacity for the accused company.

8. Appellant filed an application under Section 143-A, NI Act against respondent Nos. 1 to 3 seeking interim compensation from the respondents during the pendency of the criminal proceedings before the Judicial Magistrate. Vide order dated 27.04.2022, the Judicial Magistrate directed each of the respondents to pay 4% of the total cheque amount as interim compensation to the appellant within 60 days. The respondents were granted an extension till 26.07.2022 to pay the interim compensation upon an application made by them.

9. Appellant preferred an application under Section 421, CrPC read with Section 143-A(5), NI Act seeking execution of order dated 27.04.2022 and thus recovery of interim compensation as if it were a fine. The respondents filed their response to the application, the same is pending before the Judicial Magistrate.

10. Respondent Nos. 1 to 3 preferred Criminal Application No. 967 of 2022 before the High Court challenging the order of interim compensation dated 27.04.2022 passed by the Judicial Magistrate. The High Court,

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2 CrPC

3 IBC

vide interim order dated 23.09.2022, stayed the operation of the order impugned therein.

11. During the pendency of the above application, the High Court, in a batch of Writ Petitions and Criminal Application dealing with the same issue and the question of law that whether the signatory of the cheque, authorized by the "Company", is the "drawer" and whether such signatory could be directed to pay interim compensation in terms of section 143A, NI Act leaving aside the company, vide its final judgment and order dated 08.03.2023 held that the signatory of the cheque is not a 'drawer' in terms of Section 143-A, NI Act and cannot be directed to pay interim compensation under Section 143A.

12. In light of the above judgment and order of the co-ordinate bench in Criminal Application No. 886 of 2022, the High Court vide order dated 29.03.2023, allowed the application preferred by the respondent Nos. 1 to 3 herein and set aside the order of interim compensation passed by the Judicial Magistrate on 27.04.2022.

13. The appellant has challenged the judgment and order of the High Court dated 29.03.2023 as well as the relied upon judgment and order dated 08.03.2023. The present Appeal is filed assailing the correctness of these orders *vis-à-vis* the larger question of law, as framed by the High Court:

> "Whether the signatory of the cheque, authorized by the "Company", is the "drawer" and whether such signatory could be directed to pay interim compensation in terms of section 143A of the Negotiable Instruments Act, 1881 leaving aside the company?"

14. The High Court, in its judgment dated 08.03.2023 in Criminal Application No.886 of 2022, answered the above question in the negative and upheld the same in its order dated 29.03.2023 in the case of the appellant before us. To answer the question of law and determine the correctness of its view it is imperative to look into the considerations before the High Court and its analysis.

OBSERVATIONS MADE BY THE HIGH COURT

15. The High Court, while answering the above question in the negative, made several observations based on the interpretation of the relevant statutes under the NI Act as well as on the judgments relied upon by the counsels in their arguments before the High Court.

15.1. Obligation of the Drawer of the Cheque

The High Court observed that under Section 7 of the NI Act, the maker of a bill of exchange or cheque is termed the "drawer," and the person directed to pay is called the "drawee." The drawer is the individual who issues the cheque. Sections 138, 143A, and 148 of the NI Act fall under Chapter XVII, which pertains to penalties for the dishonour of certain cheques due to insufficient funds. A plain reading of Section 138 highlights that the drawer must have an account with sufficient funds to cover the cheque. The primary liability under Section 138 is on the drawer, who must ensure that there are adequate funds in the account at the time the cheque is presented. Additionally, the offence under Section 138 is not complete until a demand notice is served on the drawer, emphasizing the drawer's responsibility. The drawer is considered the principal offender if the cheque is returned unpaid, subject to the fulfilment of the necessary conditions before and after the cheque is dishonoured.

15.2. General Rule of Criminal Liability

The High Court noted the general rule against vicarious liability in criminal cases, where individuals are typically not held criminally liable for acts committed by others. However, this principle is subject to exceptions created by specific statutory provisions extending liability to additional parties. Section 141, NI Act is one such provision that extends criminal liability for dishonour of a cheque committed by a company to its officers. The Court emphasized that liability under Section 141 arises from the conduct, act, or omission of the person involved, not merely their position in the company. The provision establishes vicarious liability for officers of the company, such as signatories of the cheque, managing directors, or those in charge of its affairs, by legal fiction. Thus, while the drawer of the cheque remains primarily liable, Section 141 broadens liability to include others associated with the company's management, ensuring accountability beyond the drawer alone.

15.3. Authorised signatory cannot be equated to the company

Further, the High Court delved into the distinction between legal entities and individuals acting as authorized signatories within the framework of the NI Act. The Court observed that while individuals may sign cheques as authorized representatives of companies, they do not assume legal identity of the company itself. It clarified that a

legal entity, such as a corporation or company, is an artificial creation of the law endowed with rights, duties, and the capacity to sue and be sued independently of the individuals who manage or represent it. The Court emphasized that an authorized signatory, despite acting on behalf of a company, remains distinct as an individual under the law. This distinction is crucial as it clarifies that the actions and obligations undertaken by an authorized signatory are attributable to the company they represent, but do not merge their legal status with that of the company itself. Thus, while an authorized signatory may bind the company through their actions, they do not transform into a legal entity in the eyes of law.

15.4. Interpretation of the Section 143-A and the legislative intent

Moreover, the High Court highlighted the principle of statutory interpretation, particularly in relation to Sections 143A and 148 of the NI Act, which are under consideration. It discussed the dichotomy between interpreting statutes based on their plain language versus applying purposive construction. According to the Court, when the statutory language is clear and unambiguous, it speaks for itself, and there is no need for further interpretation. The natural and ordinary meaning of words should prevail unless the legal context necessitates a different interpretation to align with the legislative intent or to avoid absurd outcomes.

15.4.1. The Court further elucidated that legislative intent should guide the interpretation of statutes, with all parts of a statute considered together to discern the overall purpose. It stressed that words and phrases within a statute must be construed in context, taking into account the legislative objectives and the broader framework of the law. This holistic approach ensures that statutory interpretation remains faithful to the lawmakers' intentions and avoids inconsistencies or injustices that may arise from a literal reading of isolated provisions.

15.4.2. The High Court emphasized that Section 143A should be interpreted plainly, without resorting to other rules of interpretation. It asserted that the term 'drawer' in Section 143A has a clear and unambiguous meaning, referring specifically to the person who issues the cheque. Referring to the Statement of Objects and Purposes of the Negotiable Instruments (Amendment) Act, 2018, the High Court noted that the purpose of Section 143A is to provide interim relief to payees of dishonoured cheques by imposing liability on the drawer. This, according to the High Court, aligns with the legislative

intent to curb frivolous litigations and expedite resolution of cheque dishonour cases.

15.4.3. The High Court rejected the inclusion of authorized signatories within the definition of 'drawer'. It pointed out that the legislature's choice of words in Section 143A specifically targets the drawer of the cheque, whether an individual or a company, and does not extend liability to authorized signatories. Drawing from established legal precedents, the High Court underscored that the term 'drawer' carries a specific legal meaning within the NI Act. It highlighted the cases where Courts consistently interpreted 'drawer' to refer strictly to the issuer of the cheque, reinforcing its decision to uphold this interpretation. The High Court relied on the following judgments to emphasise on the literal interpretation warranted in the present case:

i. ***Nazir Ahmad* v. *King Emperor***[4]

ii. ***Central Bank of India*** v. ***Ravindra***[5]

iii. ***Noor Mohammed*** v. ***Khurram Pasha***[6]

15.4.4. Contextually, the High Court stressed upon the finding that 'drawer' within the framework of the NI Act consistently refers to the party issuing the cheque. It dismissed the arguments seeking to expand this definition to include authorized signatories, citing the need for consistency in statutory interpretation.

15.4.5. The High Court also invoked principles of company law to support its interpretation. It affirms the separate legal identity of a company and its authorized signatories under the Companies Act, which prevents extending liability to signatories under Section 143A.

16. In conclusion, the High Court's analysis underscores the critical distinction between individuals acting as authorized signatories and the legal entities they represent under the NI Act.

17. Before we delve into the arguments presented by the counsels for the parties before us, it is imperative that we also look at the observations made by the High Court with respect to the two judgments heavily relied upon by the parties before it as well as before us.

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4 AIR 1936 Privy Council 253

5 [2001] Supp. 4 SCR 323 : (2002) 1 SCC 367

6 [2022] 6 SCR 860 : (2022) 9 SCC 23

18. The High Court while addressing the reliance placed upon ***Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.***[7] and ***N. Harihara Krishnan v. J. Thomas,***[8] observed that while **Aneeta Hada (supra)** underscored the necessity of involving the company as an accused to maintain a prosecution under Section 141 NI Act, **N. Harihara Krishnan (supra)** clarified that an authorized signatory is not considered the "drawer" under Section 138 of the NI Act. These judgments guided the High Court in interpreting provisions of the NI Act regarding vicarious liability and the definition of the term "drawer" within the statutory framework.

SUBMISSIONS OF THE APPELLANT

19. The learned counsel for the appellant submitted that if a director, managing director, chairman, promotor of a company can be arrayed as accused under Section 141, NI Act despite not being a signatory to the cheque, then it is only fair that one or more of such individuals be held liable to pay interim compensation.

20. Relying upon the object of Section 143-A, NI Act, it was submitted that for addressing the issue of undue delay and for providing relief to the payees of dishonoured cheque, it is only just and fair that this be done through payment of interim compensation by the director or any such person in charge of the company. This would be in alignment with the purposes and objectives of the provision.

21. Further, it was argued that in the present case the company is admitted to CIRP, thus being its alter ego, it is only the directors who can be directed to pay interim compensation in furtherance of the object of the provision in light of the CIRP proceedings against the company, the payees of the dishonoured cheque cannot be left with no interim relief, thereby defeating the purpose of Section 143-A and causing injustice to the payees already suffering due to the pending litigation.

22. Learned counsel for the appellant further submitted that any restrictive interpretation of the provision would defeat the purpose of providing interim compensation to the payee of a dishonoured cheque. To further strengthen their argument, they relied upon this Court's

7 [2012] 5 SCR 503 : (2012) 5 SCC 661

8 [2017] 9 SCR 324 : (2018) 13 SCC 663

judgment in ***Aneeta Hada* (Supra)**[9] and submitted that in para 20 of the judgment, this Court has observed that an authorised signatory of a company becomes a drawer as he has been authorised to do so in respect of the account maintained by the company.

23. Lastly, it was submitted that since the company is in moratorium and that it is admitted by the respondents that their case is not that they are unable to pay compensation, the grant of a meagre four percent of the cheque amount by each of them is just and fair. That even such an amount in the form of interim payment would serve the purposes of the provision and would also help the business of the appellant.

SUBMISSIONS OF THE RESPONDENTS

24. The learned senior counsel for the respondents, Mr. Siddharth Dave, vehemently argued that it is a well settled position of law that an authorised signatory of a company is not a drawer of the cheque. To substantiate this argument, he relied upon this Court's judgment in ***N. Harihara Krishnan* (Supra)** wherein it was held that, *"Every person signing the cheque on behalf of a company on whose account the cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque."*

25. Further rejecting the submissions made by the appellant with regard to the observations made in the case of ***Aneeta Hada* (Supra),** it was submitted by Mr. Dave that in this judgment this Court was dealing with the question of extending criminal liability on the officers of the company and it held that the criminal liability for the dishonour of cheque primarily falls on the drawer company and is thereby extended to those in charge of it only when the conditions provided under Section 141 are satisfied. Therefore, the Court did not hold that the authorised signatory becomes a drawer but only made a reference and an observation to this effect to elucidate that the criminal liability extends from the company to its directors and other officers by virtue of the cheque drawn on the company's account by such authorised signatory.

26. It was further submitted that with respect to the interpretation of the provision, the appellant's argument that the meaning of 'drawer' under

9 [2012] 5 SCR 503 : (2012) 5 SCC 661

Section 143-A must be read liberally and purposively is contrary to the position of law on interpretation of statutes. Further submission is that such an interpretation of penal statues is contrary to the settled principles of criminal law, as penal provisions are to be read strictly in order to determine the liability of a party, more so where vicarious liability is to be determined. To substantiate this, he relied upon the judgment of this Court in the case of ***K.K. Ahuja v. V.K. Vohra***.[10]

27. In conclusion, it was submitted that the primary liability for an offence under Section 138 is that of the company itself and the company's management is only subsequently and vicariously liable. Thus, it is only the company that is to be considered as the drawer of the cheque. Consequently, a strict interpretation of Section 143-A would mean that it is only the drawer-company's liability to pay the interim compensation as the provision does not provide for an interim compensation to be paid by the employees or the management or the signatory of the company.

ANALYSIS

28. The High Court's interpretation of Section 7 of the NI Act accurately identified the "drawer" as the individual who issues the cheque. This interpretation is fundamental to understanding the obligations and liabilities under Section 138 of the NI Act, which makes it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented. The appellants' argument that directors or other individuals should also be liable under Section 143A misinterprets the statutory language and intent. The primary liability, as correctly observed by the High Court, rests on the drawer, emphasizing the drawer's responsibility for maintaining sufficient funds.

29. The general rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability. Section 141 of the NI Act is one such provision, extending liability to the company's officers for the dishonour of a cheque. The appellants' attempt to extend this principle to Section 143A, to hold directors or other individuals personally liable for interim compensation, is unfounded. The High Court rightly emphasized that

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

liability under Section 141 arises from the conduct or omission of the individual involved, not merely their position within the company.

30. The distinction between legal entities and individuals acting as authorized signatories is crucial. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the High Court's interpretation that the drawer under Section 143A refers specifically to the issuer of the cheque, not the authorized signatories.

31. The principle of statutory interpretation, particularly in relation to Sections 143A and 148, was also correctly applied by the High Court. The Court emphasized that when statutory language is clear and unambiguous, it should be given its natural and ordinary meaning. The legislative intent, as discerned from the plain language of the statute, aims to hold the drawer accountable. The appellants' argument for a broader interpretation to include authorized signatories under Section 143A contradicts this principle and would lead to an unjust extension of liability not supported by the statutory text.

32. The High Court's reliance on established legal precedents further reinforces its interpretation. Judicial precedents relied upon in the impugned judgment underscore the need for a literal interpretation of the statutory provisions. These precedents support the High Court's decision to limit the definition of 'drawer' to the issuer of the cheque, excluding authorized signatories.

33. The appellants' reliance on the judgment in ***Aneeta Hada* (Supra),**[11] is misplaced and out of context. While this case underscored the necessity of involving the company as an accused to maintain a prosecution under Section 141, it does not support the extension of liability to authorized signatories under Section 143A. The judgment nowhere lays down that directors or authorised signatories would come under the ambit of 'drawer' for the purposes of Section 143A. The appellants' interpretation conflates the roles of authorized signatories and drawers, which are distinct under the NI Act. Appellants have relied upon a single paragraph, which does not

11 [2012] 5 SCR 503 : (2012) 5 SCC 661

form part of the ratio therein, to substantiate their argument. But in this relied upon paragraph, the Court only made an observation that the authorised signatory becomes a drawer for the company, for the limited purpose of extending the criminal liability as per Section 141.

34. The respondents correctly argued that an authorized signatory is not a drawer of the cheque, as established in ***N. Harihara Krishnan (Supra).***[12] This judgment clarified that a signatory is merely authorized to sign on behalf of the company and does not become the drawer. The respondents' interpretation aligns with the principle that penal statutes should be interpreted strictly, particularly in determining vicarious liability. The judgment in ***K.K. Ahuja (Supra),***[13] further supports this approach, emphasizing that penal provisions must be read strictly to determine liability.

35. In conclusion, the High Court's decision to interpret 'drawer' strictly as the issuer of the cheque, excluding authorized signatories, is well-founded. This interpretation aligns with the legislative intent, established legal precedents, and principles of statutory interpretation. The primary liability for an offence under Section 138 lies with the company, and the company's management is vicariously liable only under specific conditions provided in Section 141. The appellants' submissions are thus rejected, and the High Court's judgment is upheld. This decision maintains the clarity and consistency of the law regarding cheque dishonour cases, ensuring that liability is appropriately assigned to the responsible parties under the NI Act. Therefore, the question of law put before this Court is answered in the negative.

36. The appeals are accordingly dismissed. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan

12 [2017] 9 SCR 324 : (2018) 13 SCC 663

13 [2009] 9 SCR 1144 : (2009) 10 SCC 48