ISSN: 3048-4839 (Online)

DIGITAL SUPREME COURT REPORTS

The Official Law Report
Fortnightly

2024 | Volume 8 | Part 3

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

Digitally Published by
Supreme Court of India

DIGITAL SUPREME COURT REPORTS

The Official Law Report
Fortnightly

2024 I Volume 8 I Part 3

Digitally Published by
Supreme Court of India

Editorial Board

Digitally Published by
Supreme Court of India

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

Contents

[2024] 8 S.C.R. 633 : 2024 INSC 604

Jalaluddin Khan
v.
Union of India

(Criminal Appeal No. 3173 of 2024)

13 August 2024

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

Issue for Consideration

Factors to be taken into consideration, under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, while deciding Bail Applications for offences falling under Chapters IV and VI of the Act.

Headnotes†

Bail is the Rule and jail is an exception – Principle – Statutes with Stringent condition – Applicability of:

Held: The Court while deciding an application of bail falling under the provisions of Section 43D (5) is not required to conduct a mini-trial – Only a prima facie case has to be established – The Court has to examine the material forming a part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are prima facie true – While doing so, the court must take the charge sheet as it is – When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail – The allegations of the prosecution may be very serious – But, the duty of the Courts is to consider the case for grant of bail in accordance with the law – "Bail is the rule and jail is an exception" is a settled law – Even in cases of statutes where there are stringent conditions for the grant of bail, the same rule holds good with only a modification that the bail can be granted if the conditions in the statute are satisfied – The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail – If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of the Constitution of India. [Para 15, 21]

---

* Author

Case Law Cited

Shoma Kanti Sen v. State of Maharashtra and Another [2024] 4 SCR 270 **: (2024) 6 SCC 591 : 2024 INSC 269;** *Gurwinder Singh v. State of Punjab and Another* [2024] 2 SCR 134 **: (2024) 5 SCC 403 : 2024 INSC 92;** *National Investigation Agency v. Zahoor Ahmad Shah Watali* [2019] 5 SCR 1060 **: (2019) 5 SCC 1 : 2019 INSC 456 – referred to.**

Thwaha Fasal v. Union of India [2021] 8 SCR 797 **: (2022) 14 SCC 766 : 2021 INSC 688 – relied upon.**

List of Acts

Unlawful Activities (Prevention) Act, 1967.

List of Keywords

Bail is the Rule and Jail is the exception; Prima facie; Mini-trial.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3173 of 2024

From the Judgment and Order dated 28.11.2023 of the High Court of Judicature at Patna in CRADB No. 514 of 2023

Appearances for Parties

Ms. Mukta Gupta, Sr. Adv., Shaikh Saipan Dastgir, Rizwan Ahmad, Ms. Nitya Gupta, Paras Nath Sing, Himanshu Gupta, Advs. for the Appellant.

Ms. Aishwarya Bhati, A.S.G., Mrigank Pathak, Rajat Nair, Ms. Shagun Thakur, Ms. Chitrangda Rastvara, Ms. Neelakshi Bhadauria, Arvind Kumar Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant is being prosecuted for the offences punishable under Sections 121, 121A and 122 of the Indian Penal Code (for short, 'the IPC') and Sections 13, 18, 18A and 20 of the Unlawful Activities

(Prevention) Act, 1967 (for short, 'the UAPA'). A charge sheet was filed on 7th January 2023. He is shown as accused no.2 in the charge sheet. The appellant applied for bail before the Special Court under the UAPA, which was rejected. Hence, the appellant and some co-accused applied for bail before the High Court. By the impugned judgment, the prayer for bail made by the appellant was rejected, while bail was granted to a co-accused.

SUBMISSIONS

2. The submission of Ms Mukta Gupta, learned senior counsel, is that there is absolutely no material to link the appellant with the offences under the UAPA. She pointed out that, at highest, the allegation is that the appellant's wife was the owner of a building known as Ahmad Palace and that the appellant had clandestinely shown that premises on the first floor of the said building were given on rent to one Athar Parwez – Accused no. 1. The allegation is that, the first floor premises are being used for objectional activities of an organisation called Popular Front of India (PFI). She submitted that taking the charge sheet as it is, no connection has been established between the activities of PFI and the appellant. Even *prima facie* material for connecting the appellant with PFI is not available. She submitted that various people occupy other premises in the building. The building has a pathology laboratory, a clinic, and shops. She pointed out that, therefore, CCTV cameras were fixed on the property. She submitted that if the activities of PFI were really being carried out in the building with the connivance of the appellant, he would not fix CCTV cameras inside the property. She would submit that the appellant's case satisfies the tests laid down by Section 43D (5) of the UAPA, as there are no reasonable grounds for believing that the accusations against the appellant are *prima facie* true. Learned senior counsel relied upon a decision of this Court in the case of ***Shoma Kanti Sen v. State of Maharashtra and another***.[1]

3. Ms Aishwarya Bhati, learned Additional Solicitor General of India, invited our attention to statements of the protected witnesses V, Y, and Z, tendered on record, in a sealed cover. She pointed out that CCTV footage seized by the Investigating Agency of the building Ahmad Palace shows that on 6th and 7th July 2022, the appellant

1 [2024] 4 SCR 270 : (2024) 6 SCC 591

and accused no. 1 were seen shifting certain items from the first floor of the building. When the police conducted a raid on 11th July 2022, those items were not found, and therefore, the appellant tampered with the evidence. Relying upon paragraph 17.16 of the charge sheet, she submitted that protected witness Z disclosed that on 29th May 2022, the appellant attended a meeting-cum-training on the first floor of the building Ahmad Palace along with several other accused who were associated with PFI. During this meeting, the subjects relating to the expansion of the organisation, basic and advanced training of PFI members, Muslim empowerment, and future plans for PFI were discussed. She pointed out that the protected witness Z stated that after considering the remarks made by one Nupur Sharma on the Prophet Mohammed, directions were issued to the trained PFI members to attack and kill the selected targets who were involved in making derogatory remarks against the religion. Learned ASG pointed out that paragraph 17.26 of the charge sheet shows that on 12th May 2022, a sum of Rs. 25,000/- was transferred to the account of the appellant's son, from an account of an absconding accused. She submitted that the rent agreement was bogus and was made to mislead the police, and the appellant had knowingly allowed the first floor premises to be used for PFI's activities. She would submit that there was enough material in the documents produced along with the charge sheet, which shows that a strong *prima facie* case is made about the appellant's involvement in the offences punishable under Sections 13, 18, 18A and 20 of the UAPA. She pointed out that accused no.1, in whose name the tenancy of the first floor was shown, had been an active member of a banned terrorist organisation-the Student Islamic Movement of India (SIMI).

CONSIDERATION OF SUBMISSIONS

4. The appellant was arrested on 12th July 2022. The Trial has not made any progress. The building Ahmad Palace stands in the name of the appellant's wife. The appellant is a retired police constable. The allegation is that on 11th July 2022, in the evening, the police carried out a raid on the first floor premises of Ahmad Palace. At that time, there was a recovery and seizure of incriminating articles and documents relating to PFI. Paragraph 17.1 of the charge sheet reads thus:

> **"**17.1 Bihar Police had received information about a plan to disturb the proposed visit of Hon'ble Prime Minister to Bihar by some suspected persons who had assembled in Phulwarisharif area. On 11.07.2022 at about 1930 hrs, on secret information, a raid was carried out by the Police Officers of PS Phulwarisharif, Patna at the rented house/premises of Athar Parvej (A-1) and recovered 05 sets of document "India 2047 Towards Rule of Islamic India, Internal Document: Not for circulation", Pamphlets "Popular front of India 20 February, 2021"- 25 copies in Hindi and 30 copies in Urdu, 49 cloth Flags, 02 magazines "Mulk ke liye Popular front ke saath" and one copy of rent agreement on non Judicial Stamp by Farhat Bano w/o Md Jalaluddin Khan (A-2) with tenant Athar Parvej (A-1) son of Abdul Qayum Ansari. The recovered articles and a Samsung mobile phone having SIM card of accused Mohammed Jalaluddin (A-2) were seized in the instant case. They were related to anti-India activities.**"**

5. Following are the other paragraphs in the charge sheet relied upon by the respondent:

> **"**17.16 Protected witness-"Z" further stated that on 29th May 2022, a meeting cum training was organized in Ahmad Palace, Phulwarisharif Parna, a rented accommodation arranged by Athar Parvej (A-1) and others in this criminal conspiracy. This meeting was chaired by Riyaz Firangipet (A-20) of Karnataka and approximate 40-45 persons including Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Riyaz Mourif (A-4), Mehboob-Ur-Rehman (A-11), Ehsan Parvez (A-7), Ansarul Huque (A-21), Riyaz Ahmed (A-17), Perwez Alam (A-26), Tausif Alam (A-6), Athar Parvej (A-1), Md. Jalaluddin (A-2) and others, who are associated with PFI, attended this meeting. During this meeting, the points related to expansion of organisation, basic and advance training of PFI members, Muslim empowerment and future plan of PFI were discussed. Protected Witness-Z also stated that after the remark of Nupur Sharma on Prophet Mohammad, directions were given to the trained PFI cadres to attack and kill selected targets who were involved in making derogatory remarks against Islam.**"**

"15.5 During the investigation, Hard Disk/DVR of the CCTV installed in Ahmad Palace was seized by the investigating officer of police station Phulwarisharif, Patna. The mirror images of CCTV footages have been received from CDAC, Thiruvananthapuram, Kerala. The CCTV footage confirmed the presence of FIR named accused persons including Athar Parvej (A-1) in the Ahmad Palace, Phulwarisharif, Patna on 6th and 7th July, 2022. The CCTV footage also confirmed that the Police of PS Phulwarisharif carried out raid at the first floor of Ahmad Palace Phulwarisharif on 11.07.2022 at around 7 PM in presence of Athar Parvej (A-1) and Md. Jalaluddin (A-2). It also established that Md Jalaluddin (A-2) tampered the evidence by shifting of items from the first floor of Ahmad Palace, Phulwarisharif, Patna before raid of Police dated 11.07.2022."

"17.2 Investigation brought out that during preliminary questioning by Police of PS Phulwarisharif, Patna, Md. Jalaluddin (A-2), owner of the house, revealed that the first floor of his house was taken on rent by Athar Parvej (A-1) for imparting training. On 6th and 7th July 2022, the training was conducted here, in which participants from other states were also present.

……."

"17.26 During the investigation, the account statement of SBI account No. 33767976372 was sought from the State Bank of India, Branch Walmi, Patna and analysed. On analysis it revealed that on 12.05.2022, Rs. 25000/- were transferred into the account of Aamir Jalal s/o Md. Jalaluddin (A-2) from the Punjab National Bank, Bharwara, Distt-Muzaffarpur account no. 0772010316309 of Saqeeb Ahmad, s/o Md. Nayaj Ahmad Ankhuli Bhandhpur Katra, Muzaffarpur, Bihar. On analysis of the call data records of mobile number 9262711612 of said Saqeeb Ahmad, it was found that this mob no. was connected with accused Sanaullah (A-3) on the relevant dates which corroborated that the said amount was transferred on the direction of Sanaullah (A-5)."

6. Regarding giving the first floor of the building on rent, the prosecution's case is that though the land and the building stand in the name of the appellant's wife, she is merely a name lender. The appellant purchased the property on 19th April 2005 for the consideration of Rs. 1,25,000/-. In the counter, the respondent has relied upon the appellant's disclosure /confessional statement. Whether such a statement is admissible in evidence or not is another thing. In the statement of the appellant relied upon by the respondent, it is stated that accused no.1, Athar Parvez, met his elder son – Aamir Jalal Khan, in April 2022 and discussed renting the first floor of the building to him. The appellant's elder son – Aamir Jalal Khan, quoted rent of Rs 25,000/- per month. After that, there were negotiations, and finally, the rent was fixed at Rs. 16,000 per month. Accused no.1 gave Aamir Jalal Khan an advance of Rs. 5,000/-. Thereafter, a sum of Rs. 25,000/- was transferred by accused no.1 to the account of Aamir Jalal Khan and the remaining amount of Rs. 2,000/- was paid at the time of execution of the lease. In the appellant's statement, it is stated that this amount of Rs. 32,000/- was paid as advance rent for two months. In the statement, the appellant stated that accused no.1 gave him information about the PFI organisation. The appellant stated that people from Bihar and other States used to visit the premises taken on rent by accused no.1. He stated that as he suspected that there would be a police raid, he removed items kept on the first floor premises, like gas cylinders, etc. Even the statement of accused no.1 relied upon in the counter gives the same facts. Thus, the material on record, including the so-called discovery statement of the appellant and co-accused, shows that the premises on the first floor of the building Ahmad Palace were let out to accused no.1, who agreed to pay rent of Rs. 16,000/- per month and gave an advance of Rs. 32,000/- towards rent for two months. We may note here that, assuming that the appellant knew that co-accused Athar Parvez was associated with PFI, it is not listed as a terrorist organisation within the meaning of Section 2(m) of UAPA. Moreover, the charge sheet does not contain any material to show any connection of the appellant with PFI before letting out first floor premises to accused no.1.

7. About the sum of Rs. 25,000/- received by the appellant's son in his account, there is an explanation in the so-called discovery statement of the appellant relied upon by the respondent. Therefore, what is brought on record is that after the appellant's son negotiated with

accused no.1, the premises on the first floor were let out to accused no.1 at the monthly rent of Rs. 16,000/- per month, and the amount received by appellant's son in his account was towards the part payment of the advance of rent for two months.

8. Now, we come to the other circumstances against the appellant. In paragraph 15.5 of the charge sheet, it is alleged that the appellant shifted certain items from the first floor before the raid was conducted on 11th July 2022. In the discovery statement of the appellant relied upon by the respondent in its counter, the appellant stated that he had kept items like gas cylinders, etc., in the first floor premises, which he removed.

9. In the raid on the first floor premises on 11th July 2022, certain documents were recovered as stated in paragraph 17.1 of the charge sheet. No recovery has been shown from the appellant. The charge sheet describes in detail the contents of the document styled "India 2047 Towards Rule of Islamic India". It is alleged in the charge sheet that the scrutiny of the said documents revealed that the said documents were about establishing Islamic rule in India. It is pertinent to note that there is no mention in the charge sheet about the nature of the articles allegedly shifted earlier by the appellant from the first floor premises. If the appellant intended to shift incriminating material circulated by PFI, he would have shifted the material mentioned in paragraph 17.1 of the charge sheet. A statement by Syed Abu Monawwar discloses that there were commercial premises, such as shops, pathology labs, etc., on the ground floor of the said building. If the appellant intended to allow the conduct of the objectionable activities of PFI by giving first floor premises on rent, he would not have installed CCTV cameras.

10. Now, we turn to the circumstance relied upon by learned ASG, which is in paragraph 17.16. Paragraph 17.16 purports to reproduce what protected witness Z stated. We again reproduce the said paragraph, which reads thus:

> **"**17.16 Protected witness-"Z" further stated that on 29th May 2022, a meeting cum training was organized in Ahmad Palace, Phulwarisharif Parna, a rented accommodation arranged by Athar Parvej (A-1) and others in this criminal conspiracy. This meeting was chaired by Riyaz Firangipet (A-20) of Karnataka and approximate 40-45 persons

> including Mahboob Alam Nadvi (A-7), Sanaullah (A-5), Riyaz Mourif (A-4), Mehboob-Ur-Rehman (A-11), Ehsan Parvez (A-7), Ansarul Huque (A-21), Riyaz Ahmed (A-17), Perwez Alam (A-26), Tausif Alam (A-6), Athar Parvej (A-1), Md. Jalaluddin (A-2) and others, who are associated with PFI, attended this meeting. During this meeting, the points related to expansion of organisation, basic and advance training of PFI members, Muslim empowerment and future plan of PFI were discussed. Protected Witness-Z also stated that after the remark of Nupur Sharma on Prophet Mohammad, directions were given to the trained PFI cadres to attack and kill selected targets who were involved in making derogatory remarks against Islam."

Thus, paragraph 17.16 purports to reproduce the statement of protected witness Z. In terms of our earlier order, the translated version of the statement of protected witness Z, recorded before the Additional Chief Judicial Magistrate, Patna, has been produced in a sealed envelope. We find that the statement substantially differs from what is narrated in paragraph 17.16 of the charge sheet.

11. The perusal of the statement shows that protected witness Z did not expressly state that the appellant participated in the meeting held on 29th May 2022. He has set out the names of several persons who attended the meeting. The appellant's name is not included in the names set out. In fact, the statement of protected witness Z indicates that after the meeting, the appellant was introduced as the owner of the building. Paragraph 17.16 alleges that protected witness Z stated that in the meeting, subjects such as the expansion of the organisation, basic and advanced training of PFI members and future PFI plans were discussed, and a direction was given to trained PFI cadre to eliminate one Nupur Sharma. In the statement of protected witness Z, all that is not found. In fact, protected witness Z stated that during the meeting, emphasis was given on strengthening the status of Muslims, imparting them basic and advanced training and strengthening the status of education, politics and administration of Muslims and Muslim empowerment. Going by the witness's version, we find that there was no discussion about the activities of PFI in the meeting held on 29th May 2022. According to the witness, the direction to kill Nupur Sharma was issued in June 2022 and not in the meeting of 29th May 2022. We are not reproducing the statement

of the protected witness Z as it has been kept in a sealed cover. Suffice it to say that what is reproduced in paragraph 17.16 is not correct. The material portion of witness Z's actual statement has been completely distorted in paragraph 17.16 of the charge sheet. Several things which protected witness Z did not state have been incorporated in paragraph 17.16. Unfortunately, paragraph 17.16 attributes certain statements to protected witness Z, which he did not make. NIA owes an explanation for that. The investigating machinery has to be fair. But, in this case, paragraph 17.16 indicates to the contrary.

12. Now, we come to the provision relating to bail under the UAPA, which is sub-Section 5 of Section 43D of the UAPA, which reads thus:

> "43-D. Modified application of certain provisions of the Code.—
>
> ……..
>
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:
>
> Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.
>
> ……"

13. Learned ASG relied upon a decision of this Court in the case of ***Gurwinder Singh v. State of Punjab and Another***.[2] This Court extensively considered its earlier decision in the case of ***National Investigation Agency v. Zahoor Ahmad Shah Watali***,[3] which deals with interpretation of Section 43D(5). Paragraph 32 of the said decision reads thus:

2 [2024] 2 SCR 134 : (2024) 5 SCC 403

3 [2019] 5 SCR 1060 : (2019) 5 SCC 1

"32. In this regard, we need to look no further than *Watali case* [*NIA* v. *Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] which has laid down elaborate guidelines on the approach that courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paras 23 to 24 and 26 to 27, the following 8-point propositions emerge and they are summarised as follows:

32.1.*Meaning of "prima facie true"* :

On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

32.2. *Degree of satisfaction at pre charge-sheet, post charge-sheet and post-charges — compared* :

"*26*. … once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 of CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case."

32.3. *Reasoning, necessary but no detailed evaluation of evidence* :

"*24*. … the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of

the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage."

32.4. *Record a finding on broad probabilities, not based on proof beyond doubt* :

"The Court is merely expected to record a finding on the basis of *broad probabilities* regarding the involvement of the accused in the commission of the stated offence or otherwise."

32.5. *Duration of the limitation under Section 43-D(5)* :

"*26*. … the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof."

32.6. *Material on record must be analysed as a "whole"; no piecemeal analysis*

"*27*. … the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance."

32.7. *Contents of documents to be presumed as true* :

"*27*. … The Court must look at the contents of the document and take such document into account as it is."

32.8. *Admissibility of documents relied upon by prosecution cannot be questioned* :

The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report *must prevail until contradicted and overcome or disproved by other evidence*…. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

(emphasis added)

14. There is one more decision of this Court in the case of ***Thwaha Fasal v. Union of India***,[4] which again deals with the scope of Section 43D(5) of UAPA. After considering the decision in the case of ***Zahoor Ahmad Shah Watali***,[3] in fact, in paragraph 24, the case has been extensively reproduced. Thereafter, in paragraph 26, this Court held thus:

> **"26.** Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. **If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is.**"
>
> (emphasis added)

15. As held in the case of ***Thwaha Fasal***,[4] the Court has to examine the material forming part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are *prima facie* true. While doing so, the court must take the charge sheet as it is.

4 [2021] 8 SCR 797 : (2022) 14 SCC 766

16. Now, we come to the offences alleged against the appellant. Offences punishable under Sections 13, 18, 18A, and 20 of the UAPA have been alleged against the appellant. Section 13 reads thus:

> **"13. Punishment for unlawful activities.**—
>
> (1) Whoever—
>
> (a) takes part in or commits, or
>
> (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.
>
> (2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.
>
> (3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

The term unlawful activity has been defined in Section 2(o), which reads thus:

> **"2 Definitions.**—.....
>
> (o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—
>
> (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

……."

Sections 18 and 18A of UAPA read thus:

> **"18. Punishment for conspiracy, etc**.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with 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.
>
> **18A. Punishment for organising of terrorist camps.**—Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with 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."

There is nothing in the charge sheet which shows that the appellant has taken part in or has committed unlawful activities as defined in the UAPA. There is no specific material to show that the appellant advocated, abetted, or incited commission of any unlawful activities. A terrorist act is defined in Section 15(1). Assuming that the co-accused were indulging in terrorist acts or were making any act preparatory to the commission of terrorist acts, there is absolutely no material on record to show that there was any conspiracy to commit any terrorist act to which the appellant was a party. There is no material produced on record to show that the appellant advocated, abetted, advised, or incited the commission of terrorist acts or any preparatory activity.

17. We must note here that the appellant's son conducted the negotiations for giving the first floor on rent. Taking the charge sheet as correct, it is not possible to record a *prima facie* finding that the appellant knowingly facilitated the commission or preparation of terrorist acts

by letting out the first floor premises. Again, there is no allegation in the charge sheet against the appellant that he organised any camps to impart training in terrorism.

18. Now, we come to Section 20 of UAPA, which reads thus:

> **"20. Punishment for being member of terrorist gang or organisation**.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine."

Terrorist gang has been defined in Section 2(L), which reads thus:

> **"2 Definitions.**—.....
>
> (L) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;
>
> ....."

There is not even an allegation in the charge sheet that the appellant was a member of any terrorist gang. As regards the second part of being a member of a terrorist organisation, as per Section 2(m), a terrorist organisation means an organisation listed in the first schedule or an organisation operating under the same name as the organisation was listed. The charge sheet does not mention the name of the terrorist organisation within the meaning of Section 2(m) of which the appellant was a member. We find that the PFI is not a terrorist organisation, as is evident from the first schedule.

19. Therefore, on plain reading of the charge sheet, it is not possible to record a conclusion that there are reasonable grounds for believing that the accusation against the appellant of commission of offences punishable under the UAPA is *prima facie* true. We have taken the charge sheet and the statement of witness Z as they are without conducting a mini-trial. Looking at what we have held earlier, it is impossible to record a *prima facie* finding that there were reasonable grounds for believing that the accusation against the appellant of commission of offences under the UAPA was *prima facie* true. No antecedents of the appellant have been brought on record.

20. The upshot of the above discussion is that there was no reason to reject the bail application filed by the appellant.

21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

22. Hence, the impugned orders are set aside. The appeal is allowed. The appellant is directed to be enlarged on bail on the terms and conditions as may be fixed by the Special Court. For that purpose, the appellant shall be produced before the Special Court within a maximum of 7 days from today. The Special Court shall enlarge the appellant on bail until the conclusion of the trial on appropriate terms and conditions. The Special Court shall hear the counsel for the respondent before fixing the terms and conditions.

23. We make it clear that the tentative findings recorded in this judgment are only for considering the prayer for bail. The reasons are confined to the case of the appellant. The same will have no bearing on the trial and cases of the co-accused.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Vidhi Thaker, Hony. Associate Editor
(*Verified by:* Mr. Kanu Agrawal, Adv.)

[2024] 8 S.C.R. 650 : 2024 INSC 635

New Delhi Municipal Council and Another
v.
Manju Tomar and Others

(Civil Appeal No(s). 7440-7441 of 2012)

28 August 2024

[Hima Kohli and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter as regards, the Delhi Sikh Gurdwara Management Committee-DSGMC, challenging the order passed by the High Court, whereby the NDMC was directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and then to recover the same from DSGMC.

Headnotes†

Delhi School Education Rules, 1973 – rr. 46, 47 – Closing down of a school or any class in a school – Absorption of surplus [employee] – School being run by Delhi Sikh Gurdwara Management Committee-DSGMC receiving 95% grant from NDMC, and remaining 5% contribution made by the DSGMC towards the budget of the school, closed down without due approval of Director, NDMC – Issue as regards, re-employment and payment of salaries of the surplus teachers and non-teaching staff upon closure of the school – Order passed by the High Court, whereby the NDMC directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and then to recover the same from DSGMC – Challenge to:

Held: r.47 cannot be invoked by DSGMC so as to claim that the burden of re-employment and payment of salaries of the surplus teachers and the non-teaching staff upon closure of the school would be that of the NDMC – Absorption only arises when the closure of the school is done in accordance with law, which requires a full justification and prior approval of the Director as per r.46 – Since the closure of the school was undertaken de hors r.46, the submission that the onus to absorb the surplus

* Author

teaching and non-teaching staff would be that of the NDMC, has no legal sanction and cannot be sustained – Bar of limitation would not come in the way of the NDMC in seeking reimbursement of the amounts paid to the staff of the school from the DSGMC – Principal amount having already been paid by NDMC, the direction given by the High Court for payment of interest to the staff of the school, in terms of the impugned judgment does not call for interference – NDMC to pay all remaining dues including interest to the staff of the school, within the stipulated period – NDMC entitled to seek reimbursement of the amounts paid to staff of the school from the DSGMC, in case the DSGMC voluntarily fails to reimburse the said amount. [Paras 18, 19, 21-26]

List of Acts

Delhi School Education Act, 1973; Delhi School Education Rules, 1973.

List of Keywords

Closure of the school; Re-employment; Payment of salaries of surplus teachers and non-teaching staff; Unaided minority school; Absorption; Legal sanction; Reimbursement; Arrears of the salary/pension; Retiral benefits; Payment of principal amount; Limitation; Payment of interest.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7440-7441 of 2012

From the Judgment and Order dated 09.12.2009 of the High Court of Delhi at New Delhi in LPA No. 441 and 442 of 2009

With

Civil Appeal Nos. 7442-7444 of 2012

Appearances for Parties

Yoginder Handoo, Ashwin Kataria, Garvit Solanki, Ms. Medha Gaur, Ritesh Khatri, Advs. for the Appellants.

Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Anupama Ngangom, Ms. Rajkumari Divyasana, Ritesh Khatri, M. C. Dhingra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. These appeals filed by New Delhi Municipal Council[1] (hereinafter being referred to as 'NDMC') and Delhi Sikh Gurdwara Management Committee[2] (hereinafter being referred to as 'DSGMC') arise out of a common judgment dated 9th December, 2009 passed by the High Court of Delhi in Letters Patent Appeal Nos. 441 and 442 of 2009 and hence, they have been heard and are being decided together.

Civil Appeal Nos. 7442-7444 of 2012

3. Facts in a nutshell relevant and essential for disposal of the appeals are noted hereinbelow.

4. The appellant-DSGMC was managing and operating a school, namely, Khalsa Boys Primary School (in short 'school'), constructed by it in the premises of the Gurudwara Bangla Sahib, New Delhi. The school was initially started with 130 students, five teachers including the Headmistress, 2 peons and one helper. The school was receiving 95% grant from the NDMC and remaining 5% contribution was made by the appellant-DSGMC towards the budget of the school. Respondents No. 1, 5, 6, 7 and 8 were employed as the Headmistress, Assistant Teacher, Water Women, Sweeper-cum-Chowkidar, Chowkidar, respectively in the school.

5. It is claimed that over a period of time, the building of the school became old and dilapidated and also, considering the growing number of devotees visiting the Gurudwara, the appellant-DSGMC was finding it difficult to run the school on a day-to-day basis. The appellant-DSGMC, therefore, decided to shift the school from its existing location to a new premises i.e. at Mata Sundari College, Old Building, New Delhi. Since the school was receiving 95% grant from the NDMC, the appellant-DSGMC moved the NDMC seeking permission to shift the school.

1 Civil Appeal No(s). 7440-7441 of 2012

2 Civil Appeal No(s). 7442-7444 of 2012

6. Upon receiving information about the proposed shifting of the school by the appellant-DSGMC, the Headmistress and other staff of the school challenged the said proposal by filing Writ Petitions[3] in the High Court of Delhi. An *ex-parte* stay order dated 30th May, 2005 was passed by the learned Single Judge of High Court of Delhi, staying the proposed shifting of the school. However, in spite of the stay order being granted and having been communicated, the appellant-DSGMC demolished a substantial part of the school building thereby, making it non-functional. Consequent to the demolition of the school building, the NDMC stopped the grant-in-aid under Rule 69 of the Delhi Education Act and Rules, 1973 (hereinafter after being referred to as 'Delhi Education Rules') on the reasoning that it was under an obligation to provide grant-in-aid to schools which fell within its territorial jurisdiction and that the alternate location selected by the appellant-DSGMC, i.e., Mata Sundari College was outside the jurisdiction of the NDMC.

7. The High Court of Delhi disposed of the above writ petitions *vide* order dated 6th October, 2005 with a direction to the NDMC to consider and decide within four weeks as to whether *ex-post facto* sanction could be granted to the appellant-DSGMC to close down the school since the same was being shifted to an area which was outside the jurisdiction of the NDMC, thus, the shifting could lead to the closure of the school. Following the direction given by the High Court, the NDMC issued an order dated 14th February, 2006 whereby, it invoked Rule 55(1) of the Delhi Education Rules and noted that *ex-post facto* sanction could not be granted for running the school at the Mata Sundari College because it fell beyond its jurisdiction and consequently, it was decided to withdraw the recognition and to stop the grant-in-aid to the school being run by the appellant-DSGMC.

8. The teaching as well as non-teaching staff of the school filed fresh writ petitions[4] in the High Court of Delhi, seeking a direction for absorption in a NDMC/Government aided school and also to command the appellant-DSGMC to pay them the salaries and other service benefits.

---

3 WP(C) Nos. 9951-52/2005

4 WP(C) Nos. 13044-55/2006

9. The said writ petitions were later amended and the order of the NDMC dated 14th February, 2006 was also assailed by the teaching as well as non-teaching staff of the school. The writ petitions were disposed of by the learned Single Judge *vide* order dated 13th July, 2009 in the following manner:-

(i) NDMC was directed to pass a speaking order afresh within four weeks from the date of receipt of the decision reflecting as to whether *ex-post facto* sanction in terms of Rule 46 of Delhi Education Rules could be granted to the appellant-DSGMC to close down the school and if not why;

(ii) The appellant-DSGMC would continue to pay the salaries to the serving staff and pensionary benefits to petitioners No. 6 to 12(respondents No. 8 to 14 herein) w.e.f. March, 2006, till the NDMC passed a fresh order in terms of the decision.

10. The above order of the learned Single Judge was assailed by the then serving teachers/staff and the retired teachers of the school before the Division Bench of the High Court by filing two Letters Patent Appeals,[5] which were allowed *vide* order dated 9th December 2009, with the following directions:

(i) Pay the arrears of salary;

(ii) Employ the petitioners No. 1-5(respondents No. 1-5 herein) in a Government or Government-aided school within twelve weeks of the order dated 9th December, 2009 i.e. by 8th March, 2010;

(iii) Otherwise, the DSGMC would be required to pay the petitioners No. 1-5(respondents No. 1-5 herein) the full pay and all perquisites from 4th March, 2010 onwards;

(iv) NDMC was directed to pay to petitioners No. 6 to 12(respondents No. 8 to 14 herein) the entire arrears of salary/retiral benefits with simple interest @ 9% per annum within twelve weeks. NDMC was further directed to regularly transfer pensionary amounts directly to the bank accounts of the petitioners No. 6 to 12(respondents No. 8 to 14 herein). However, NDMC was given liberty to seek reimbursement of the entire amount, as

5 LPA No. 441 of 2009 in Ms. Manju Tomar & Ors. v. NCT & Ors. & LPA No. 442 of 2009 in Ms. Santosh Kaur & Ors. v. NCT & Ors.

directed above, from the appellant-DSGMC which had closed the school without prior approval of the appropriate authority;

(v) After re-employment, the tenure, seniority, pay scales and perquisites of the in-service staff i.e. the petitioners No. 1 to 5(respondents No. 1 to 5 herein) would not be adversely affected just because of closure of the school;

(vi) Since the petitioners No. 1 to 5(respondents No. 1 to 5 herein) had not worked during the period 2006-2009, they would be entitled to receive only 50% of their pay and perquisites but this period would be counted for the purposes of their seniority and for computing their pensionary and other statutory benefits.

11. The said common order of the Division Bench of the High Court is assailed in these appeals preferred by the NDMC and the appellant-DSGMC, respectively.

12. We have heard and considered the submissions advanced by learned counsel for the parties and have gone through the impugned judgments and the material placed on record.

13. The following facts as emerging from the record are not in dispute:-

(i) That appellant-DSGMC demolished a substantial part of the school building without seeking permission from the competent authority, i.e., NDMC, leading to the closure of the school.

(ii) That the demolition was undertaken in spite of an interim stay order passed by the High Court of Delhi on 30th May, 2005 in Writ Petition(Civil) Nos. 9951-52 of 2005, staying the proposed shifting of the school.

(iii) The recognition and grant extended to the school was withdrawn by the NDMC *vide* order dated 14th February, 2006, and as a corollary thereto, the appellant-DSGMC was no longer entitled to receive 95% grant which was provided by the NDMC for running the school in the premises of the Gurudwara. Thus, the obligation to reimburse the pay and other service benefits accruing to the teaching and non-teaching staff of the school fell upon the appellant-DSGMC.

(iv) That the appellant-DSGMC did not challenge the decision of the NDMC dated 14th February, 2006, withdrawing the recognition and the grant-in-aid, before any forum.

(v) That the employees of the school have filed a Contempt Petition[6] before the High Court of Delhi wherein, the learned Single Judge *vide* order dated 1st October, 2019 observed as below: -

"In effect, the respondent no. 4 in the LPA namely: Delhi Sikh Gurdwara Management Committee, Guru Gobind Singh Bhawan, Gurdwara Rakabganj, New Delhi-110001, was required to do the following:

i) pay the arrears of salary;

ii) employ the petitioners in a Government or Government-aided school within twelve weeks of the order dated 09.12.2009 i.e. by 08.03.2010.

iii) otherwise, the DSGMC would be required to pay the petitioners the full pay and all perquisites from 04.03.2010 onwards.

Admittedly, the employment was not done till 30.01.2018. There is a delay of roughly eight years, short of 36 days. Respondent no. 4-DSGMC had offered employment to the petitioners by its letter dated 17.08.2010 calling upon them to join Guru Tegh Bahadur International School, Fatehabad, Haryana. The petitioners declined to join the said school, because the said offer was not in accordance with the directions of this Court i.e. the school was neither Government owned nor Government-aided. Furthermore, it was situated in Haryana and not in Delhi.

Keeping the said response in mind, the DSGMC offered yet another employment at their various schools in Delhi, however, yet again none of these schools were either Government owned or Government-aided. Hence, the petitioners expressed their reservations in joining the said schools. Their concern primarily was that their service conditions and employment benefits should not be affected, which indeed, had been secured by the order of the Division Bench dated 09.12.2009 and 08.02.2010.

6 Contempt Petition (Civil) No. 805 of 2016 in Manju Tomar & Ors. v. Manjit Singh GK & Ors.

The petitioners replied to the DSGMC on the same date on which they received the offer i.e. 28.08.2010. Their reply reads as under:

> "The job offered to us is not as per the judgment of the Delhi High Court dt. 9/12/09 & 8/2/10, in which Para 15, 17 & 20 clearly says that job should be on same terms & conditions on which they were employed when Primary school was owning in the NDMC area. So Please give us job in Govt/Govt-Aided School as per High Court judgement to avoid contempt of Supreme Court dt 9/8/10. We have also filed Affidavit in this connection. In The Supreme Court dt 27/8/10."

Subsequent to this reply, there was no communication to any of the petitioners by DSGMC. In the absence of such communication, the offer from the DSGMC did not exist. Hence, DSGMC is in breach of the orders of the Division Bench and the orders which had directed that all the five petitioners be re-employed within twelve weeks of the order dated 09.12.2009. The said time got over on 08.03.2010.

Due to the non-compliance the second limb of the order becomes operative. Resultantly, the petitioners are entitled to full pay and all perquisites from 04.03.2010 onwards till 30.01.2018. Respondent no. 4-DSGMC shall, therefore, pay the petitioner nos. 1 to 5 their full pay and all perquisites in terms of the order of the Division Bench dated 08.02.2010. The said monies shall be paid to them within four weeks from the date of receipt of this order. The interest on the delay will be considered thereafter.

The due amounts shall be credited directly into the bank accounts of the petitioners, who shall supply their respective bank account details, to Respondent no.4-DSGMC directly as well as through counsel. Respondent no. 4 shall furnish the computation of the amounts due to each of the petitioners within the next two weeks and shall pay the due amounts by 13.12.2019."

(emphasis added)

14. The appellant-DSGMC assailed the aforesaid order passed by the learned Single Judge by filing a Letters Patent Appeal[7] which was dismissed *vide* order dated 15th March, 2023 for want of prosecution. Hence, the order dated 1st October, 2019 has attained finality.

15. A bare perusal of the above order would clearly indicate that the offer of re-employment made by the appellant-DSGMC to the teaching and non-teaching staff of the school was not found to be *bona fide* as the same was not in conformity with the directions given by the High Court.

16. Thus, in the present appeals, the only issue which requires adjudication is as to whether the appellant-DSGMC has any valid ground so as to assail the impugned judgment of the High Court dated 9th December, 2009, whereby the NDMC was directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and **"then to recover the same from the appellant-DSGMC".**

17. Shri Ritesh Khatri, learned counsel representing the appellant-DSGMC, while referring to Rule 47 of the Delhi Education Rules, urged that where as a result of closure of a recognised school, or withdrawal of the recognition, the staff of the school becomes surplus, they may be absorbed as far as possible in a Government school or aided school. As per learned counsel, the teachers and other staff of the school who became surplus on account of closure of the school would be entitled to the benefit under Rule 47 of the Delhi Education Rules. Thus, in sum and substance, the contention of learned counsel representing the appellant-DSGMC is that the NDMC and the Director (Education), NDMC are primarily responsible for absorption and payment of salary and other service benefits to the staff, which became surplus on account of closure of the school. However, we find it difficult to sustain this argument which is fallacious on the face of record. The closure which is contemplated in Rule 47 of the Delhi Education Rules has to be a valid closure, i.e., having been carried out with the prior approval of the Director as provided under Rule 46 of the Delhi Education Rules which reads as under:-

7 LPA No. 732 of 2019 in Majinder Singh Sora & Anr. v. Manju Tomar & Ors.

> **"Rule 46. Closing down of a school or any class in a school-**
>
> No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board."

18. A bare perusal of the above Rule concludes beyond the pale of doubt that no recognised school or an existing class in the school, except an unaided minority school, shall be closed without offering full justification and without the prior approval of the Director.

19. Admittedly, the school in question being run by the appellant-DSGMC was receiving 95% grant from NDMC, and the same was closed down without due approval of the Director (Education), NDMC. As a consequence, the appellant-DSGMC cannot be allowed to take the shield of Rule 47 of the Delhi Education Rules so as to claim that the burden of re-employment and payment of salaries of the surplus teachers and the non-teaching staff upon closure of the school would be that of the NDMC. The question of absorption only arises when the closure of the school is done in accordance with law, which requires a full justification and prior approval of the Director as per Rule 46 *supra*. Since the closure of the school in question was undertaken *de hors* Rule 46, the argument advanced on behalf of the appellant-DSGMC that the onus to absorb the surplus teaching and non-teaching staff would be that of the NDMC, has no legal sanction and cannot be sustained.

20. As a result, we do not find any merit in Civil Appeal Nos. 7442-7444 of 2012 preferred by the appellant-DSGMC, which are hereby dismissed. No costs.

Civil Appeal Nos. 7440-7441 of 2012

21. The NDMC, being the appellant in these appeals, is primarily aggrieved of the direction given by the Division Bench in the impugned judgment dated 9th December, 2009, that it should bear the burden of the pay and other service benefits accruing to the surplus school staff including the pension pursuant to the illegal closure of the school by the DSGMC. However, we may note that a clear direction was given by the High Court in the impugned judgment that the appellant-

NDMC would be entitled to seek reimbursement of the entire amount from the DSGMC, because it illegally closed the school without prior approval of the appropriate authority.

22. This Court, while entertaining the special leave petitions, *vide* order dated 7th July, 2010 had directed the appellant-NDMC to make payment of the entire arrears of the salary/pension and other retiral benefits to the respondents, i.e., staff of the school within three weeks. During the course of submissions, learned counsel representing the appellant-NDMC apprised the Court that the NDMC has already paid the principal amount to the staff of the school and now the only issue which survives is regarding the interest component which was kept open for further consideration.

23. During the course of his submissions, learned counsel for the appellant-NDMC urged that since the reimbursement was made in the year 2010, DSGMC might take a defence of the recovery being barred by limitation. However, we are of the firm view that since this Court, while passing the order dated 7th July, 2010 has left the question of reimbursement of the amount being paid by the appellant-NDMC open, the apprehension expressed by the learned counsel representing the appellant-NDMC that its endeavour to seek reimbursement of the amount may be opposed with a plea of being barred by limitation, is unfounded by this Court. Since the issue of seeking reimbursement was left open with a specific observation being made in this regard in the order dated 7th July, 2010, the bar of limitation would not come in the way of the appellant-NDMC in seeking reimbursement of the amounts paid to the staff of the school from the DSGMC.

24. Since the principal amount has already been paid by the appellant-NDMC, there is no reason for this Court to interfere with the direction given by the Delhi High Court for payment of interest to the respondents, i.e., staff of the school, in terms of the impugned judgment.

25. Hence, we direct that appellant-NDMC shall pay all remaining dues including interest to the respondents-staff of the school, within a period of eight weeks from today.

26. It is clarified and reiterated that the appellant-NDMC shall be entitled to take recourse of the appropriate remedy for reimbursement of the amounts paid to respondents-staff of the school from the DSGMC, in case the DSGMC voluntarily fails to reimburse the said amount.

27. We also grant leave to the appellant-NDMC to seek impleadment in the pending Contempt Petition No. 805 of 2016 before the High Court of Delhi so as to seek a direction for reimbursement of these amounts.

28. The Civil Appeal Nos. 7440-7441 of 2012 are accordingly disposed of in the above terms. No costs.

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

Result of the case: Civil Appeal Nos. 7440-7441 of 2012 disposed of.
Civil Appeal Nos. 7442-7444 of 2012 dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 662 : 2024 INSC 567

Sudeep Chatterjee
v.
State of Bihar & Anr.

(Criminal Appeal No. 3210 of 2024)

02 August 2024

[Prashant Kumar Mishra and C.T. Ravikumar,* JJ.]

Issue for Consideration

Whether the High Court erred by putting onerous conditions on accused-appellant while granting provisional pre-arrest bail.

Headnotes†

Code of Criminal Procedure, 1973 – s.438 – Whether the High Court erred by putting onerous conditions on accused-appellant while granting provisional pre-arrest bail:

Held: Courts have to be very cautious in imposing conditions while granting bail upon finding pre-arrest bail to be grantable – Conditions should be put warily, especially when the couple concerned who are litigating in divorce proceedings, jointly though lukewarmly, agreed to attempt to reconcile and re-unite – When the couple who are trying to bridge their emotional differences putting one among them under such an onerous condition would deprive a dignified life not only to the grantee but to both – The need to put compliable conditions while granting bail, recognizing the human right to live with dignity and with a view to secure the presence of the accused as also unhindered course of investigation, ultimately to ensure a fair trial – Conditions provided in the impugned order for the release of the appellant on the provisional bail cannot be sustained – The order granting the bail is made absolute and the appellant in the event of his arrest be released on bail – '*Lex non cogit ad impossibilia*' means 'the law does not compel a man to do what he cannot possibly perform' – The impugned order stands set aside to the extent of putting onerous condition on pre-arrest bail. [Paras 8, 9, 10]

Bail – Marital dispute – Whether the conditions imposed on husband while granting provisional bail would ultimately benefit the couple going through a marital dispute:

* Author

Held: Putting conditions as has been done in this case, requiring a person to give an affidavit carrying a specific statement in the form of an undertaking that he would fulfill all physical as well as financial requirements of the other spouse so that she could lead a dignified life without interference of any of the family members of the appellant, can only be described as an absolutely improbable and impracticable condition – Such conditions will only be counterproductive as it makes one spouse dominant over the other – In respect of matters relating to matrimonial cases, conditions shall be put in such a way to make the grantee of the bail as also the griever to regain the lost love and affection and to come back to peaceful domesticity. [Paras 7, 8, 9]

Case Law Cited

Shri Gurbakash Singh Sibbia & Ors. v. State of Punjab [1980] 3 SCR 383 **: (1980) 2 SCC 565;** *Parvez Noordin Lokhandwalla v. State of Maharashtra & Anr.* [2020] 11 SCR 117 **: (2020) 10 SCC 77 – referred to.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Onerous condition on pre-arrest bail; Matrimonial disputes; *Lex non cogit ad impossibilia.*

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3210 of 2024

From the Judgment and Order dated 30.08.2023 of the High Court of Judicature at Patna in CRLM No. 57492 of 2023.

Appearances for Parties

Nitish Banka, Lakshay Manchanda, Aadesh Punjabi, Sunny Sharma, Chetna Mourya, Ms. Kiritika Singh, Lokesh Baimad, Dr. Ram Kishor Choudhary, Chand Qureshi, Advs. for the Appellant.

Anshul Narayan, Addl. Standing Counsel, Prem Prakash, Divyanshu Kumar Srivastava, Karan Verma, Ashwini Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

Leave granted.

1. *'Lex non cogit ad impossibilia'* means 'the law does not compel a man to do what he cannot possibly perform'. The said maxim is being followed as an adage and with alacrity. We are constrained to refer to the said maxim on being pained to see that despite a catena of decisions deprecating the practice of putting onerous conditions for pre-arrest bail such orders are being passed without giving due regard to the binding precedents.

2. The case on hand arises from an order dated 30.08.2023 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No.57492 of 2023 whereby and whereunder the High Court granted provisional pre-arrest bail in Complaint Case No.1100 of 2021 registered against the appellant herein, alleging commission of offences punishable under Section 498A of the Indian Penal Code, 1860 (for short 'the IPC') and Section 4 of the Dowry Prohibition Act, 1961.

3. Heard the learned counsel appearing for the appellant, learned counsel appearing for the State and also the learned counsel appearing for the second respondent. The second respondent filed reply affidavit and resisted the prayer for interfering with the conditions put in the impugned order. The counsel for the State endorsed the view and contentions raised on behalf of the second respondent.

4. Complaint Case No.1100 of 2021, produced in this proceeding as Annexure P-1, would reveal that distrust and discordancy among the couple viz., the appellant and the second respondent led to disputes and then divorceable situation. In fact, the appellant moved a petition for dissolution of their marriage before the Court of learned Principal Judge, Family Court, Bhagalpur. Complaint Case No.1100 of 2021 has been filed by the second respondent-wife alleging commission of the aforesaid offences against the appellant. Earlier, in connection with the aforesaid Complaint Case, the appellant moved an application for pre-arrest bail before the Court of Sessions Judge, Katihar. On

its dismissal vide order dated 24.05.2023, the above-mentioned application for an anticipatory bail was moved before the High Court which culminated in the impugned order. The relevant paragraphs in the impugned order that compelled us to make the opening remarks read thus: -

> *"6. Considering the desire of the parties, both the parties are directed to file a joint affidavit before the Court below to the effect that the parties have agreed to live together and petitioner must give specific statement in the said joint affidavit that he undertakes to fulfill all physical as well as financial requirement of the complainant so that she can lead a dignified life without any interference of any of the family members of the petitioner.*
>
> *7. If such affidavit is filed within a period of four weeks, petitioner, above named, is directed to be released on* ***Provisional Bail,*** *in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned C.J.M, Katihar in connection with Complaint Case No.1100 of 2021, subject to the condition as laid down under Section 438(2) of the Cr.P.C.*
>
> *8. It is made clear that Provisional bail shall continue till four weeks from the date of passing of this order to enable him to file joint affidavit along with withdrawal order of the divorce case."*

5. Before scanning the conditions as mentioned above, we think it appropriate to refer to some of the relevant decisions of this Court, in the contextual situation. A Constitution Bench of this Court in ***Shri Gurbakash Singh Sibbia & Ors. v. State of Punjab***[1] held thus: -

> *"26. We find a great deal of substance in Mr.Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the*

1 [1980] 3 SCR 383 : (1980) 2 SCC 565

imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248], that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

(emphasis supplied)

6. In ***Parvez Noordin Lokhandwalla v. State of Maharashtra & Anr.***[2] this Court held: -

"…The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court

2 [2020] 11 SCR 117 : (2020) 10 SCC 77

must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case."

7. We do not think it necessary to burden this judgment by multiplying the authorities on this subject as the constant and consistent view of this Court on matters granting a prayer for bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is that after forming an opinion, taking note of all relevant aspects, that bail is grantable, conditions shall not be put to make it impossible and impracticable for the grantee to comply with. As held by this Court in ***Parvez Noordin's*** case (*supra*), the ultimate purpose of putting conditions while granting pre-arrest bail is to secure the presence of the accused and thus, eventually to ensure a fair trial and also for the smooth flow of the investigating process.

8. In view of the unfortunate instances imposing very onerous conditions, especially in cases which are nothing but an off-shoot of matrimonial discordance, we would reiterate the view that courts have to be very cautious in imposing conditions while granting bail upon finding pre-arrest bail to be grantable. This is to be done warily, especially when the couple concerned who are litigating in divorce proceedings, jointly though lukewarmly, agreed to attempt to reconcile and re-unite. The impugned order itself would reveal that the parties who were about to part company, rethought and expressed their readiness to bury the hatchet and to re-unite and the appellant has also agreed to withdraw the divorce case. One should not be oblivious of the fact that a boy or girl, will be bonded to kith and kins besides parents and siblings and such bonded relationships cannot be severed solely due to affine and affinity towards the affinal as also cognate relationships has to be taken forward with same cordialness. Relation through marriage *sans* support from both the families may not flourish but may perish. Viewed from any angle, putting conditions as has been done in this case, requiring a person to give an affidavit carrying a specific statement in the form of an undertaking that he would fulfil all physical as well as financial requirements of the other spouse so that she could lead a dignified life without interference of any of the family members of the appellant, can only be described as an absolutely improbable and impracticable condition. The second respondent may

not misuse such a condition. However, giving such a *carte blanche*, is nothing but making one dominant over the other, which in no way act as a catalyst to create a comely situation in domesticity. On the contrary, such conditions will only be counter-productive. There can be no doubt that a re-union after a marital discord is possible only if the parties are put to a conducive situation to regain the mutual respect, mutual love and affection. No doubt putting a condition that one of the parties should undertake to fulfil all physical as well as financial requirements of the other party could not bring about such a situation. It may compel one among the couple to be susceptive and turn the other supercilious. When the couple who are trying to bridge their emotional differences putting one among them under such an onerous condition would deprive a dignified life not only to the grantee but to both. It is to be noted that with the said conditions the appellant was granted only a provisional bail. In short, we stress upon the need to put compliable conditions while granting bail, recognizing the human right to live with dignity and with a view to secure the presence of the accused as also unhindered course of investigation, ultimately to ensure a fair trial. In respect of matters relating to matrimonial cases, conditions shall be put in such a way to make the grantee of the bail as also the griever to regain the lost love and affection and to come back to peaceful domesticity. In this case, the parties, obviously, expressed their desire and willingness to live together and in that regard the appellant-husband, expressed his willingness to withdraw the divorce case.

9. The above discussions tend us to hold that the conditions as mentioned above contained in paragraph 6 of the impugned order for the release of the appellant on the provisional bail cannot be sustained and as such the said conditions to give undertaking that the appellant would fulfil all physical and financial requirements by way of an affidavit are set aside. However, this shall not be understood to have an order releasing both of their marital obligations and duties and we hope and trust that the couple will continue to strive to restore their domesticity.

10. The order granting the bail is made absolute and the appellant in the event of his arrest be released on bail subject to the same terms stipulated by the High Court under the impugned order regarding suretyship as also the liability to comply with conditions as laid down

under Section 438(2), Cr. P.C. Needless to say, that this will further be subject to the final outcome of the pending complaint case. The impugned order stands set aside only to the aforesaid extent and accordingly, the appeal stands disposed of.

11. Pending application(s), if any, stands disposed of.

Result of the case: Appeal disposed of.

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

[2024] 8 S.C.R. 670 : 2024 INSC 626

Delhi Race Club (1940) Ltd. & Ors.
v.
State of Uttar Pradesh & Anr.

(Criminal Appeal No. 3114 of 2024)

23 August 2024

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

Issue for Consideration

High Court, if justified in declining to quash and set aside the summoning order passed by the Magistrate, against the appellants-company and its office bearers, for offence punishable u/ss. 406 and 420 IPC.

Headnotes†

Penal Code, 1860 – ss.406, 420 and 120B – Criminal breach of trust and cheating – Private complaint filed by the respondent No. 2 in the court of Magistrate against the appellants for the offence punishable u/ss.406, 420 and 120B, alleging that certain amount was due and payable to him by the appellants towards the sale of horse grains and oats over a period of time – Trial court issued process for the offence punishable u/s.406 – Application u/s.482 CrPC by the appellants seeking quashing of the summoning order passed by the Additional Chief Judicial Magistrate – Rejected by the High Court – Correctness:

Held: There was total non-application of mind by the High Court – Magistrate failed to pose unto himself the correct question as to whether the appellant Nos. 2 and 3-office bearers of the appellant No. 1 Company, were personally liable for any offence – Penal Code does not contain any provision for attaching vicarious liability on the part of the appellant Nos. 2 and 3 – Vicarious liability of the office bearers would arise provided any provision exists in that behalf in the statute – Furthermore, at the stage of pre-cognizance, the Magistrate is obliged to look into the complaint threadbare so as to reach to a prima facie conclusion whether the offence is disclosed or not, then he is expected to be more careful when he is actually taking cognizance upon a private complaint and ordering issue of process – High Court completely

* Author

lost sight of the said aspect while rejecting the application u/s.482 CrPC – Issuance of summons is a serious matter and, thus, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry – Plain reading of the complaint fails to spell out any of the ingredients of ss. 406 and 420 – At the most, the Magistrate could have issued process for the offence punishable u/s.420-cheating but in any circumstances no case of criminal breach of trust made out, because there was no entrustment of any property – Not even the case of the complainant that any property was lawfully entrusted to appellants and that the same has been dishonestly misappropriated – Case of the complainant is that the price of the goods sold by him has not been paid – Once there is a sale, s. 406 goes out of picture – Even if the Magistrate would have issued process for the offence punishable u/s.420-cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating disclosed from the materials on record – If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants – But he could not have gone to the court of the Judicial Magistrate by filing a complaint of cheating and criminal breach of trust – Till date, the complainant has not filed any recovery suit – Continuation of the criminal proceeding nothing but abuse of the process of law – Thus, the impugned order passed by the High Court as also the order passed by the Additional Chief Judicial Magistrate taking cognizance upon the complaint, set aside. [Paras 11, 12, 14, 18, 19, 21, 26, 27, 31, 32, 39, 40, 45]

Penal Code, 1860 – u/ss.406, 420 – Criminal breach of trust and cheating – Specific ingredients – Difference between:

Held: In both the sections, ss. 406 and 420, mens rea-intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception – Distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one – In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test –

Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed – Thus, it is this intention, which is the gist of the offence – Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it – Said property must be either of some person other than the accused or beneficial interest in or ownership' of it must be of some other person – Accused must hold that property on trust of such other person – Although the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept – There is a distinction between criminal breach of trust and cheating – For cheating, criminal intention is necessary at the time of making a false/misleading representation since inception – In criminal breach of trust, mere proof of entrustment is sufficient – Thus, in case of criminal breach of trust, offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, whereas, in case of cheating, offender fraudulently or dishonestly induces a person by deceiving him to deliver any property – In such a situation, both the offences cannot co-exist simultaneously. [Paras 25, 26, 30]

Code of Criminal Procedure, 1973 – s.202 – Magistrate issuing process – Inquiry under – Scope and ambit of – Discussed. [Paras 6, 7]

Judicial deprecation – Offences of criminal breach of trust and cheating – Courts below not been able to understand the fine distinction between criminal breach of trust and cheating:

Held: IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita-BNS in December 2023 which came into effect on 01.07.24 – Even after these many years, the courts below have not been able to understand the fine distinction between criminal breach of trust and cheating – Casual approach has been adopted by the courts below – In contrast, when a case arises from a FIR, responsibility is of the police to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust – Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed

to register FIR for both the offences, criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind – Police officers across the country to be imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust – Both offences are independent and distinct – Two offences cannot coexist simultaneously in the same set of facts – They are antithetical to each other – Two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other. [Paras 41-43]

Case Law Cited

D.N. Bhattacharjee v. State of West Bengal [1972] 3 SCR 973; **(1972) 3 SCC 414 : AIR 1972 SC 1607 : (1972) Cri LJ 1037;** *Smt. Nagawwa v. Veeranna Shivalingappa Kanjalgi* [1976] Supp. 1 SCR 123 **: (1976) 3 SCC 736;** *Pepsi Foods Ltd. v. Special Judicial Magistrate* [1997] Supp. 5 SCR 12 **: (1998) 5 SCC 749;** *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [2015] 4 SCR 841 **: (2015) 12 SCC 420;** *Sunil Bharti Mittal v. C.B.I.* [2015] 1 SCR 377 **: (2015) 4 SCC 609;** *S.W. Palanitkar & Ors. v. State of Bihar & Anr.* [2001] Supp. 4 SCR 397 **: (2002) 1 SCC 241;** *Harmanpreet Singh Ahluwalia v. State of Punjab* [2009] 7 SCR 563 **: (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC);** *Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another,* **2024 SCC OnLine SC 171 – relied on.**

Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another, **2023 SCC OnLine Jhar 301 – approved.**

Legal Remembrancer, West Bengal v. Abani Kumar Banerji, **AIR 1950 Cal 437;** *R.R. Chari v. State of U.P* [1951] 1 SCR 312**: AIR 1951 SC 207;** *Tilak Nagar Industries Ltd. & Ors. v. State of A.P.* **(2011) 15 SCC 571;** *Bhushan Kumar v. State (NCT of Delhi)* [2012] 2 SCR 696 **: (2012) 5 SCC 424;** *Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors.* **(1973) 2 SCC 823;** *State of Gujarat v. Jaswantlal Nathalal* [1968] 2 SCR 408**;** *Velji Raghvaji Patel v. State of Maharashtra;* [1965] 2 SCR 429**;** *Jaswantrai Manilal Akhaney v. State of Bombay* [1956] 1 SCR 483**;** *Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta* [1996] Supp. 3 SCR 360 **: (1996) 5 SCC 591 – referred to.**

List of Acts

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

List of Keywords

Summoning order by Magistrate; Criminal breach of trust; Cheating; Quashing of summoning order; Vicarious liability; Pre-cognizance stage; Entrustment of property; Abuse of the process of law; Mens rea; Bharatiya Nyaya Sanhita.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.3114 of 2024

From the Judgment and Order dated 03.04.2024 of the High Court of Judicature at Allahabad in A482 No. 15453 of 2023

Appearances for Parties

Suhail Dutt, Sr. Adv., Sankalp Goswami, Azhar Alam, Ms. B. Vijayalakshmi Menon, Advs. for the Appellants.

Rajat Singh, Neeraj Kumar Sharma, Sarthak Chandra, Raghav Garg, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.B. Pardiwala, J.

1. This appeal arises from the order passed by the High Court of Judicature at Allahabad dated 03.04.2024 in Application No. 15453 of 2023 filed by the appellant herein by which, the High Court rejected the same and thereby declined to quash and set aside the summoning order dated 28.02.2023 passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar in Complaint Case No. 547 of 2021.

2. Facts giving rise to this appeal may be summarised as under:

(i) The respondent No. 2 herein is the original complainant. He lodged a private complaint in the court of Additional Chief Judicial Magistrate, Khurja, Bulandshahar against the appellants herein for the offence punishable under Sections 406, 420 & 120B respectively of the Indian Penal Code, 1860 (for short, "**IPC**").

The complaint reads thus:

> *"It is most respectful that the Applicant Vipin Kumar Agarwal, son of Late Shri Bhagwat Swaroop Agarwal, who is the owner of a firm Agarwal Udyog, New Mandi, Khurja. The applicant's firm used to supply horse feed, barley and oats to Delhi Race Club 1940 Limited, New Delhi since 1990. In the year 1995, the then head of the Race Club, Shri PS Vedi and the then Secretary Sehgal told the applicant that from now on the bills for the supply of horse grain and oats would be made in the name of Delhi Horse Trainers Association, Race Course Road, New Delhi. And the Head and Secretary of the same association have now been made separate, they will pay you for the goods supplied. Till the year 2017, the payment of the applicant's firm continued to be regular and now at present Delhi Horse Trainers Association President Kazim Ali Khan and Secretary Sanjeev Charan owe a payment of Rs 9,11,434/- to the applicant's firm. Whenever the applicant makes demands, they keep evading when the applicant tried to talk to the current President of the Race Club, J. S. Vedi and the current Secretary about this. Then the Secretary GS Vedi said that you should demand your dues from Delhi Horse Trainers Association only, we have no relation with them, then the applicant tried to meet Kazim Ali Pradhan along with Manish Kumar Sharma, son of Mahesh Kumar Sharma, resident of Nawalpura Khurja and Chirag Agarwal, son of Vijay Agarwal, resident of Malpura, Khurja but they refused to talk to the applicant and threatened that if he came here again, it would be very bad and started a scuffle. The applicant feels that both the above mentioned officials of Delhi Race Club 1940 Limited, New Delhi and Delhi Horse Trainers Association, in connivance with each other, cheated the applicant and dishonestly obtained the goods from the applicant's firm in bad faith and they used it for their club and association and now they do not want to pay for the goods given by the applicant.*

All of them under conspiracy want to grab the money of the applicant's firm, after which the applicant had given a legal notice to the above mentioned people through his advocate on 18th June 2020 but even after receiving the notice, the above people neither gave any reply to the notice nor was the applicant's outstanding amount paid. In this context, the applicant gave an application to Inspector-in-charge of Kotwali Khurja Nagar on 25.07.2021 and on 06.08.2021, an application letter was sent to SSP Sir Bulandshahar through postal registry, but till date no action has been taken nor has the applicant's report been registered.

Therefore, it is prayed that after the investigation, please summon the accused along with evidence to the court and punish them for the crime committed by them.

Date 27.08.2021"

(ii) The plain reading of the complaint would indicate that the appellant No. 1 is a legal entity. The appellant No. 2 is the Secretary of the appellant No. 1 Company, and the appellant No. 3 is the Honorary President and Non-Executive Director of the appellant No. 1 Company. They used to purchase grains and oats from the complainant meant to be fed to the horses maintained by the appellant No. 1 Company. According to the complainant, an amount of Rs. 9,11,434/- (Rupees Nine Lakh Eleven Thousand Four Hundred Thirty Four) is due and payable to him by the appellants towards the sale of horse grains and oats over a period of time. It is alleged that as the appellants failed to make the payment, he thought fit to file the complaint as according to him he has been cheated by the appellants.

(iii) The court concerned initially took cognizance upon the complaint but postponed the issuance of process as it thought fit to initiate magisterial inquiry under Section 202 of the Code of Criminal Procedure, 1973 (for short, "CrPC"). The statement of the complainant recorded by the Additional Chief Judicial Magistrate in the course of the magisterial inquiry under Section 202 of the CrPC reads thus:

"Name of the witness Ankit Agarwal S/o Vipin Agarwal aged about 34 years, Occupation-Businessman, resident of 13, Malpura, Subhash Road, Khurja, PS-Khurja Nagar, District Bulandshahar today on 08.3.22 on oath gave statement that:- Vipin Kumar Agarwal is the owner of a firm Agarwal Udyog which is located in New Mandi Khurja. Delhi Race Course Club 1940 Limited has been purchasing horse feed from the above mentioned firm for a long time and payment for the same has been done on time After the year 2017, Delhi Horse Trainers Association President Kazim Ali and Secretary Sanjeev Charan kept paying the goods. Since thereafter, the above mentioned people owe Rs 9,11,434/- to the above firm. After repeated requests, both the above mentioned firms have been telling to make payment to each other but the opposite party has also not made the payment.

Delhi Race Course Club President JS Bedi and Secretary HK Uppal are delaying the payment of horse feed purchased by them. The people of the above two firms have colluded with each other and do not want to pay for the goods taken. Vipin Agarwal, proprietor of Agarwal Udyog, is my father hence I am aware of the entire matter"

(iv) The Magistrate also recorded the statement of one Manish Kumar in course of the inquiry under Section 202 of the CrPC. The statement reads thus:

"Witness name Manish Kumar Sharma father's name aged 33 years occupation labourer resident of Nawalpura, Khurja Police Station Khurja Nagar District Bulandshahar today on 08.03.22 on oath gave statement that:-

I have been working as a bookkeeper for the last 17 years at Vipin Kumar Agarwal's firm Agarwal Udyog, which is located in New Mandi Khurja. From the above mentioned firm, Delhi Race Course Club 1940 Limited which is a New Delhi based firm. Have been buying

horse grain and oats. President of this firm J S Bedi and Secretary H K Uppal have been coming to our firm to buy horse feed and oats and the firm has been paying for the purchased goods. It was said by the above two that now the bills for horse feed and oats will be made in the name of Delhi Horse Trainers Association Delhi and the Head of this firm, Kazim Ali and Secretary Sanjeev Charan will pay it. On the request of the above people, horse grain and oats continued to be supplied from our firm. The above mentioned people owes Rs. 9,11,434/- to our firm, upon being repeatedly asked for payment, the above mentioned people are evading. Once Chirag Agarwal and I went to their office in New Delhi, they refused to talk to Vipin Agarwal and us and they threatened that if they come here again, it will be very bad and they started scuffle. The outstanding amount of Rs. 9,11,434/- has not yet been paid by the officials of the above two firms. The above mentioned people have fraudulently obtained the goods from our firm in bad faith and do not want to pay for the same. They have used the supplied goods. Certified after reading and listening."

(v) At the end of the magisterial inquiry, the court issued process for the offence punishable under Section 406 of the IPC. The order issuing process reads thus:

"Date:- 28.02.2023

The file was presented for orders. The complainant has been heard on the question of summons on an earlier date.

On behalf of the complainant Vipin Kumar Aggarwal, the above complaint was presented against the opposite parties Delhi Race Club etc. to the effect that the firm of the complainant was supplying horse grain, barley and oats to Delhi Race Club since the year 1990. In the year 1995, the President of the Race Club, Mr. P.S. Vedi and the then Sachin Sehgal

ji said that the bill would be made in the name of Delhi Horse Trainers Association, Race Course Road, New Delhi and the Head and Secretary of the same association have now been made separately. They will make the payment for the goods given by you. Till the year 2017, the applicant's firm's payment continued to be regular and now at present the payment of Rs 9,11,434/- is outstanding from the applicant's firm when the applicant talked about this to the current President of the Race Club, J.S. Vedi and the current Secretary then the secretary said that you should demand your dues from Delhi Horse Trainers Association only. Then the applicant tried to meet Kajim Ali but he refused to talk to the applicant and got into a scuffle. The above two associations and officials unanimously cheated the applicant and obtained goods from the applicant's firm and do not want to pay for the goods given by the applicant. The applicant had given a legal notice to the above people through his advocate on 18 June 2020 but even after receiving the notice, the above people neither gave any reply to the notice nor paid the outstanding amount of the applicant. In this context, the applicant gave an application to Khurja Nagar police station and on 06.08.2021 an application was given to SSP Bulandshahar but no action has been taken till date.

On behalf of the complainant, he got himself examined under Section 200 of the Code of Criminal Procedure and under Section 202 CrPC, the statement of witnesses Ankit Aggarwal as PW-1 and Manish Kumar Sharma as PW-2 was recorded. In which they supported the statements mentioned in the complaint. One copy of the application sent by the complainant to the Senior Superintendent of Police as documentary evidence in support of his statements, a photocopy of the registry receipt, one copy of the net receipt postal registry, five copies of the bill book, one true

copy of the remaining balance, one copy of receipt of goods, one copy of remaining balance, one copy of legal notice were filed per receipt.

The complainant has stated in his statement under Section 200 CrPC, "after five years of 1990, these people said that we will not make the payment. A separate organization has been formed for payment, which will do it. An organization named Delhi Trainers Association has been formed. Now I owe these people nine lakh eleven thousand four hundred thirty-four rupees. When we asked for money several times, we did not receive it. The President of Delhi Race Course is not ready to talk. I am suffering from cancer. Business is seen by children only. We also gave them legal notice but nothing happened."

Perused the entire evidence material available on file.

On the basis of the evidence presented by the complainant under section 200 CrPC and section 202 CrPC, there is prima facie basis for summoning the opposition parties Delhi Race Course Club, Delhi Race Horse Trainers Association, JS Bedi, HK Uppal, Kazim Ali Khan and Sanjeev Charan for consideration under section 406 IPC. There are sufficient grounds for summoning for trial of a punishable offense under Section 406 IPC.

ORDER

The opposite parties Delhi Race Course Club, Delhi Race Horse Trainers Association, JS Bedi, HK Uppal, Kazim Ali Khan and Sanjeev Charan are summoned for trial for the offense under section 406 of the Indian Penal Code. The complainant should process the summons against the opposition parties within a week, every summons should be issued along with a copy of the complaint letter, the complainant list should be filed and the witnesses should be filed.

The case file be put up on 27.04.2023 for appearance."

3. In such circumstances referred to above, the appellants preferred an application under Section 482 of the CrPC in the High Court, praying for quashing of the summoning order dated 28.02.2023 passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar.

4. The High Court rejected the application filed by the appellants herein, observing as under:

> *"15. On the basis of averments made in the complaint, it is a case of the complainant who was regularly supplying Oats, used for horses. In the year 1995, the complainant was asked to raise invoice in favour of the 'Association'. The complainant agreed and continued to raise invoice in favour of the 'Association'. After 2017, an amount of Rs. 9,11,434/- became due upon the applicants. He contacted Delhi Race Club (1940) Ltd. and he was directed to contact the 'Association'. The applicant Delhi Race Club (1940) Ltd. and 'Association' are not separate legal entity. The applicants and the 'Association' were in collusion and committed fraud with complainant. The goods supplied by complainant were received but its payment was not made.*
>
> *16. Admittedly, no civil proceedings are pending for the amount in question between the parties. It is not the case of the applicants that transaction was a commercial transaction whereas the case of opposite party No. 2 is for the supply made by him. He is bound to raise his payment on the direction of the Delhi Race Club (1940) Ltd. He raised invoices in favour of the 'Association' from 1995. There is no change in the manner of raising invoices by the complainant. Delhi Race Club (1940) Ltd. continued to make payment upto the year 2017. The complainant was not being paid Rs. 9,11,434/- by the applicants who instead transferred their responsibility to the 'Association'.*
>
> *17. Suffice to mention here that the copies of the invoices are brought on record through counter affidavit by the complainant and the same are not controverted by the applicants. Prima facie, it reflects that the invoices were raised by complainant in accordance with the advice received by him and he continued to receive payment on*

the basis of such invoices and when the payment of Rs. 9,11,434/- was not paid to the complainant he contacted Delhi Race Club (1940) Ltd. which averted him to the 'Association'. It appears that Delhi Race Club (1940) Ltd. and the 'Association' are not separate entity.

18. On the face of record, it appears that originally complainant was supplying oats to the 'Company'. In the year 1995, the complainant was directed to raise invoices in favour of the 'Association'. The Company continued to receive supply of Oats made by the complainant even after 1995, whereas invoices were raised in favour of the 'Association'. This direction of the company goes to show that there was some mala fide intention on the part of the Company. The complainant bona fide continued to make supply under the direction of the Company. The invoices were raised by the complainant in similar manner since 1995 to 2017 and thereafter. It appears that there was an oral direction to raise invoices in favour of 'Association' made by the Company, which indicates mala fide of the Company.

19. After hearing the learned counsel for the parties and after perusing the impugned order, this Court is of the opinion that impugned order has been passed on the basis of facts and circumstances of the case after considering the evidence on record. There is no legal infirmity in the impugned orders, which may call for any interference by this Court in exercise of powers conferred under Section 482 Cr.P.C."

5. Thus, according to the High Court, the intention on the part of the company was *prima facie mala fide* and the payment of Rs. 9,11,434/- could be said to be intentionally withheld.

SCOPE OF INQUIRY UNDER SECTION 202 OF THE CRPC

6. It is by now well settled that at the stage of issuing process it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere

existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only. What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : ***D.N. Bhattacharjee v. State of West Bengal :*** (1972) 3 SCC 414 : AIR 1972 SC 1607 : (1972 Cri LJ 1037)].

7. Further it is also well settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202 of the CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact in proceedings under Section 202 of the CrPC, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or

in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 of the CrPC which culminates into an order under Section 204. [See : ***Smt. Nagawwa v. Veeranna Shivalingappa Kanjalgi*** : (1976) 3 SCC 736]. It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under :—

> *"(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.*
>
> *(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> *(4) Where the complaint suffers from fundamental legal defects, such as want of sanction or absence of a complaint by legally competent authority and the like."*

8. Each Penal Section of the Indian Penal Code or of the other laws can be subjected to an analysis by posing and answering the following questions: -

I. What is the overt act stipulated in the Section, which overt act has resulted in an injury?

II. What is the state of mind stipulated in respect of the accused and which state of mind must precede or accompany the act of the accused?

ANALYSIS

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

10. The case at hand is one of an unpaid seller. It is the case of the complainant that he used to regularly supply consignments of grains & oats meant for horses at the Delhi Race Club. The complainant used to raise invoices in favour of the Club and the Club used to pay the requisite amount. However, according to the complainant after 2017, the Club stopped making the payment. It is the case of the complainant that an amount of Rs. 9,11,434/- is due and payable by the appellants towards the supply of the consignment of oats.

11. The impugned order passed by the High Court is a fine specimen of total non- application of mind. Although the complaint was filed for the offence punishable under Sections 406, 420 and 120B respectively of the IPC yet the Additional Chief Judicial Magistrate thought fit to take cognizance and issue process only for the offence of criminal breach of trust as defined under Section 405 of the IPC and made punishable under Section 406 of the IPC.

12. We are of the view that even if the entire case of the complainant is accepted as true no offence worth the name is disclosed.

13. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the

complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused. [See: ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** : **(1998) 5 SCC 749**]

14. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the appellant Nos. 2 and 3 respectively herein who are none other than office bearers of the appellant No. 1 Company. When the appellant No. 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practiced by the office bearers. The Magistrate failed to pose unto himself the correct question *viz.* as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the appellant Nos. 2 and 3 herein were personally liable for any offence. The appellant No. 1 is a body corporate. Vicarious liability of the office bearers would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

15. In ***Legal Remembrancer, West Bengal v. Abani Kumar Banerji*** reported in **AIR 1950 Cal 437**, a Division Bench of the Calcutta High Court speaking through Justice K.C. Das Gupta (as he then was) held that a magistrate is not bound to take cognizance of an offence merely because a complaint is filed before him. He is required to

carefully apply his mind to the contents of the complaint before taking cognizance of any offence alleged therein. The relevant observations read as under: -

> *"… As I read s. 190 of the Code of Criminal Procedure and the subsequent sections, it seems to me to be clear that a magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr. Mukherji's argument is that a magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the magistrate's mind is applied to the petition. Consequently Mr. Mukherji argues, whenever a magistrate takes the action, say, of issuing search warrant or asking the police to enquire and to investigate, he has taken cognizance of the case. In my judgment, this is putting a wrong connotation on the words "taking cognizance". What is "taking cognizance" has not been defined in the Code of Criminal Procedure, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any magistrate has taken cognizance of any offence under s. 190(1)(a) of the Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,—proceeding under s. 200, and thereafter sending it for enquiry and report under s. 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under s. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed."*
>
> (Emphasis supplied)

16. The aforesaid observation of the Calcutta High Court was referred to and relied upon with approval by this Court in its decision in ***R.R. Chari v. State of U.P.*** reported in **AIR 1951 SC 207**.

17. In ***Tilak Nagar Industries Ltd. & Ors. v. State of A.P.*** reported in **(2011) 15 SCC 571**, this Court held that the power under Section 156(3) of the CrPC can be exercised by a magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offences and if the complaint does not disclose commission of cognizable offences, such an order of the magistrate directing investigation is liable to be quashed. The relevant observations read as under: -

> *"11. After considering the rival submissions, we are of the view that the contentions of Mr Luthra are correct in view of Section 155(2) of the Code as explained in Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . We are of the opinion that the statutory safeguard which is given under Section 155(2) of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation.*
>
> ***12.*** *The order of the Magistrate dated 21-6-2010 does not disclose that he has taken cognizance. However, power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence. Since in the instant case the complaint does not do so, the order of the Magistrate stated above cannot be sustained in law and is accordingly quashed."*

18. The aforesaid decision was in context with the power of the Magistrate to order police investigation under Section 156(3) of the CrPC. What is sought to be conveyed in the said decision is that when the Magistrate orders police investigation under Section 156(3) of the CrPC he does not take cognizance upon the complaint. It is only upon receipt of the police report that the Magistrate may take cognizance. If at the stage of pre-cognizance, the Magistrate is expected to be careful or to put it in other words, the Magistrate is obliged to look into the complaint threadbare so as to reach to a *prima facie* conclusion

whether the offence is disclosed or not, then he is expected to be more careful when he is actually taking cognizance upon a private complaint and ordering issue of process.

19. The aforesaid aspect could be said to have been completely lost sight of by the High Court, while rejecting the application filed by the appellant herein under Section 482 of the CrPC, seeking quashing of the summoning order.

20. In ***Mehmood Ul Rehman v. Khazir Mohammad Tunda*** reported in **(2015) 12 SCC 420**, this Court held thus: —

> *"22… The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court…In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction…To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*
>
> (Emphasis supplied)

21. The Principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

22. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482, CrPC. In the decisions in ***Bhushan Kumar v. State (NCT of Delhi)*** reported in **(2012) 5 SCC 424** and ***Pepsi Foods Ltd.*** (supra), this Court held that a petition filed under Section 482, CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that *sine qua non* for exercise of the power to issue summons is the subjective satisfaction "*on the ground for proceeding further*" while exercising the power to consider the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context, we think it appropriate to state that one should understand that 'taking cognizance', empowered under Section 190, CrPC, and 'issuing process', empowered under Section 204, CrPC, are different and distinct. [See the decision in ***Sunil Bharti Mittal v. C.B.I.*** **: (2015) 4 SCC 609**].

23. In ***Sunil Bharti Mittal*** (supra), this Court interpreted the expression "*sufficient grounds for proceeding*" and held that there should be sufficiency of materials against the accused concerned before proceeding under Section 204 of the CrPC. It was held thus: —

> *"53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*
>
> (Emphasis supplied)

DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING

24. This Court in its decision in ***S.W. Palanitkar & Ors. v. State of Bihar & Anr.*** reported in **(2002) 1 SCC 241** expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) *viz-a-viz* the offence of cheating (Section 420). The relevant observations read as under: -

> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
>
> *10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see: ***S.W.P. Palanitkar*** (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: ***Harmanpreet Singh Ahluwalia v. State of Punjab***, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, *mens rea* i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act

of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a *mens rea*, gives rise to a criminal prosecution as well. It has been held in ***Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors.***, reported in **(1973) 2 SCC 823** as under:

> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."*

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

31. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid.

Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.

32. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

33. It has been held in ***State of Gujarat v. Jaswantlal Nathalal*** reported in **(1968) 2 SCR 408**, *"The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see* ***Velji Raghvaji Patel v. State of Maharashtra*** *[(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see* ***Jaswantrai Manilal Akhaney v. State of Bombay*** *[1956 SCR 483]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment"".*

34. Similarly, in ***Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta*** reported in **(1996) 5 SCC 591** this Court held that the expression "*entrusted with property*" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. [...]"

(Emphasis supplied)

35. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the

property in the goods passes on delivery as per Sections 20 and 24 respectively of the Sale of Goods Act, 1930.

> ***"20. Specific goods in a deliverable state.*** *— Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.*
>
> *xxx xxx xxx*
>
> ***24. Goods sent on approval or "on sale or return".*** *— When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—*
>
> *(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;*
>
> *(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time."*

36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : ***Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another*** : **2024 SCC OnLine SC 171** & ***Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another*** : **2023 SCC OnLine Jhar 301**]

37. The case at hand falls in category No. 1 as laid in ***Smt. Nagawwa*** (supra) referred to in para 7 of this judgment.

38. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust.

39. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have *prima facie* lost the period of limitation for filing such a civil suit.

40. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law.

FINAL CONCLUSION

41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("**BNS**") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.

44. In view of the aforesaid, the appeal succeeds and is hereby allowed.

45. The impugned order passed by the High Court is set aside so also the order passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar taking cognizance upon the complaint.

46. Pending applications, if any, shall stand disposed of.

47. We direct the Registry to send one copy each of this judgment to the Principal Secretary, Ministry of Law & Justice, Union of India and also to the Principal Secretary, Home Department, Union of India.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 700 : 2024 INSC 642

K. Ravi
v.
State of Tamil Nadu & Anr.

(Criminal Appeal No. 3598 of 2024)

29 August 2024

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Matter pertains to the right of the accused to file a fresh application u/s.216 Cr.P.C. seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 Cr.P.C. has already been dismissed; and as regards the maintainability of the revision application u/s.397 Cr.P.C. against the order dismissing application seeking modification of charge framed which would be an interlocutory order.

Headnotes†

Code of Criminal Procedure, 1973 – s.216 – Alteration of charge – s.227 – Discharge – On facts, in a murder trial, accused filed application u/s.227 seeking discharge from the case – Dismissal of application by the Sessions court as well as the High Court – Accused then filed application u/s.216 seeking alteration of the charge – Application dismissed by the Sessions court, however, revision application allowed by the High Court – Legality of:

Held: s. 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 has already been dismissed – Order dismissing application seeking modification of charge would be an interlocutory order and in view of the express bar contained in s.397(2), the revision application itself is not maintainable – Accused miserably failed to get himself discharged from the case in the first round of litigation, when he had filed the application u/s.227, still however he filed another vexatious application seeking modification of charge u/s.216 to derail the criminal proceedings – High Court, on an absolutely extraneous consideration and in utter disregard

* Author

of the settled legal position, allowed the revision application filed by the accused, though legally untenable, and set aside the charge framed by the Sessions Court against the accused – Said order being ex facie illegal, untenable and dehors the material on record, is set aside – Order passed by the Sessions Court is restored – Accused having sufficiently derailed the proceedings by filing frivolous and untenable applications one after the other misusing the process of law, cost of Rs. 50,000/- to be paid by the accused to the appellant – s.397 – Costs. [Paras 8, 10-13]

Code of Criminal Procedure, 1973 – s.216 – Alteration of charge – Accused filing a fresh application u/s.216 for alteration of charge, when his application seeking discharge u/s.227 has already been dismissed – Correctness:

Held: s.216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein – s.216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 has already been dismissed – Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings – Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed – Such practice is highly deplorable, and if followed, should be dealt with sternly by the courts – Judicial deprecation. [Para 11]

Code of Criminal Procedure, 1973 – s.397 – Calling for records to exercise powers of revision – Scope of s.397:

Held: Scope of interference and exercise of jurisdiction u/s.397 is extremely limited – Apart from the fact that s.397(2) prohibits the Court from exercising the powers of revision, even the powers u/s.397(1) thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely

by framing the charge – Court exercising revisional jurisdiction u/s.397 should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the trial court dismissing the application for modification of the charge u/s.216 CrPC, which order otherwise would fall in the category of an interlocutory order. [Para 10]

Case Law Cited

Amit Kapoor v. Ramesh Chander and Another [2012] 7 SCR 988 : **(2012) 9 SCC 460 – referred to.**

List of Acts

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

List of Keywords

Application u/s.216 Cr.P.C.; Framing of charge by the court; Maintainability of the revision application u/s.397 Cr.P.C.; Modification of charge; Interlocutory order; Alteration of charge; Discharge; Vexatious application; Extraneous consideration; Frivolous and untenable applications; Enabling provision; Ignorance of law; Practice highly deplorable; Powers of Revision; Revisional Jurisdiction.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3598 of 2024

From the Judgment and Order dated 27.07.2017 of the High Court of Judicature at Madras in CRLRC No. 1268 of 2016

Appearances for Parties

V. Elanchezhiyan, V. Rama Krishnan, Padhmanabha Raja K.R., Shafik Ahmed, Nasim Anwar, Ms. Anju, Manoj Kumar, Ms. Anupama Singh, Ms. Parul Priya, Tushar Pahwa, Ms. Apsana Khatoon, Advs. for the Appellant.

Sidharth Luthra, Siddharth Bhatnagar, Sr. Advs., Sabarish Subramanian, C. Kranthi Kumar, Vishnu Unnikrishnan, Naman Dwivedi, Danish Saifi, Sarathraj B, Ms. Shakun Sharma, Ms. Pracheta Kar, Aditya Sidhra, Nadeem Afroz, Dharmendra Kumar Pandey, Ms. Aarjoo Rawat, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. The instant appeal filed by the Appellant – Defacto Complainant arises out of an extremely unusual and untenable Judgment and Order dated 27.07.2017 passed by the High Court of Judicature at Madras in Criminal Revision being Crl.R.C. No.1268 of 2016 filed by the Respondent No. 2 (originally Accused No. 2) under Section 397 and 401 of Cr.P.C., whereby the High Court while allowing the said Revision Application set aside the order dated 18.10.2016 passed by the Principal Sessions Judge, Dharmapuri framing charge in SC No.90 of 2015, and directed the further investigation in Crime No.2074 of 2009 under Section 173(8) of Cr.P.C.

3. The brief facts leading to the present appeal are that an FIR being No. 2074 of 2009 came to be registered on 24.11.2009 at Police Station, Dharmapuri against 9 accused including the Respondent No. 2 (A-2) for the offences under Section 147, 148, 323, 324, 307 and 302 of IPC. The said FIR was registered at the instance of the defacto complainant ADMK Ravi i.e., the present appellant. It was alleged *inter alia* in the said FIR that on 24.11.2009, the accused no. 1 S.R. Vetrivel, AIADMK Town Secretary along with his group prevented the complainant and his group from filing the nomination at AIADMK Party Office at Dharmapuri and also started threatening the complainant. The Accused Vetrivel thereafter shouted to bring weapons that were kept in a vehicle parked at the ground floor of the Dharmapuri District Party Office and the Accused Baskar son of Mathikonpalayam Pachiyappan (the Respondent No. 2 herein) brought the weapons kept in his Tata Safari White Car. Thereafter, the accused Vetrivel holding the knife ran towards the brother of the complainant i.e. Veeramani, who was running towards the complainant. Thereafter the accused Mathikonpalayam Annadurai caught hold of Veeramani and the accused Vetrivel stabbed Veeramani with knife on his chest and the accused Baskar (R-2) gave a blow on the head of Veeramani repeatedly and also beat the complainant with the iron pipes. The other accused also assaulted the complainant and others as narrated in the said FIR. Thereafter the complainant and

his brother Veeramani were taken to the Dharmapuri government hospital by some people for treatment, where his brother Veeramani expired during the course of treatment.

4. The Investigating Officer after collecting sufficient evidence against all the accused submitted chargesheet implicating 31 accused before the Court of Judicial Magistrate, who committed the case to the Court of Sessions for trial.

5. The Respondent No. 2 filed an application before the Sessions Court seeking his discharge from the case under Section 227 of Cr.P.C. in the said Sessions case, which came to be dismissed by the Sessions Court vide the order dated 01.07.2016. The said order came to be challenged by the Respondent No. 2 before the High Court by filing a Revision Application being No. Crl.R.C. No. 953 of 2016. The said Revision Application came to be dismissed by the High Court vide the order dated 05.08.2016 specifically holding that there were sufficient incriminating materials available against the Respondent No.2 to frame the charge and that the Sessions Court had rightly dismissed the application filed by the Respondent No. 2 under Section 227 of Cr.P.C.

6. It appears that thereafter the Sessions Court framed charge against all the accused. The Respondent No. 2 (A-2) was charged for the offence under Section 302 r/w 149, 147, 148 and 324 of IPC. The Respondent No.2 along with other accused again filed a vexatious application being CRMP No. 1679/2016 in SC No. 90/2015, under Section 216 of Cr.P.C seeking alteration of the charge on the ground that the accused no. 2 and others were not present at the scene of offence on 24.11.2009. The said application came to be dismissed by the Sessions Court vide the order dated 18.10.2016 specifically observing that there were statements of eye witnesses available on record to show that the Respondent No.2 (A-2) was present at the scene of occurrence. From the statements of LW-1 Ravi, LW-2 Govindam, LW-3 Tamilarasu, LW-4 Dhandapani and LW-5 Andiappan the role of the accused no. 1 and 2 was also revealed. It was also observed that the charge was framed against all the accused based on material on record available with the Court, and that as per the settled legal position the charge could be altered at any stage of the proceedings. Being aggrieved by the said order the Respondent

No.2 preferred the Revisional Application being Crl.R.C. No.1268 of 2016, wherein the High Court passed the impugned order as stated hereinabove.

7. From the above conspectus of events, it clearly transpires that the Respondent No.2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr.P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No.2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr.P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. The High Court utterly failed to realise that the order impugned against it was the order passed by the Sessions Court rejecting the application of the Respondent No. 2 seeking modification of the charge framed against him under Section 216 of Cr.P.C., and the said order was an order of interlocutory in nature.

8. It is pertinent to note that the order dismissing application seeking modification of charge would be an interlocutory order and in view of the express bar contained in sub-section (2) of Section 397 Cr.P.C., the Revision Application itself was not maintainable.

9. At this juncture, it would be apt to refer to the observations made by this Court in ***Amit Kapoor vs. Ramesh Chander and Another***,[1] explaining the scope of Section 397 Cr.P.C. It was held that -

> **"12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for

1 [2012] 7 SCR 988 : (2012) 9 SCC 460

the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

10. Thus, the scope of interference and exercise of jurisdiction under Section 397 Cr.P.C. is extremely limited. Apart from the fact that sub-section 2 of Section 397 prohibits the Court from exercising the powers of Revision, even the powers under sub-section 1 thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely by framing the charge. The Court exercising Revisional Jurisdiction under Section 397 should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the Trial Court dismissing the application for modification of the charge under Section 216 Cr.P.C., which order otherwise would fall in the category of an interlocutory order.

11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.

12. So far as the facts of the present case are concerned, as stated here in above the Respondent No.2 had miserably failed to get himself discharged from the case in the first round of litigation, when he had filed the application under Section 227 Cr.P.C, still however he filed another vexatious application seeking modification of charge under Section 216 of Cr.P.C. to derail the criminal proceedings. The said Application also having been dismissed by the Sessions Court, the order was challenged before the High Court by filing Revision Application under Section 397 Cr.P.C. The High Court, on an absolutely extraneous consideration and in utter disregard of the settled legal position, allowed the Revision Application filed by the Respondent No. 2, though legally untenable, and set aside the charge framed by the Sessions Court against the Respondent No. 2. The said order being *ex facie* illegal, untenable and dehors the material on record, the same deserves to be set aside.

13. In that view of the matter, impugned order is set aside. The order passed by the Sessions Court is restored. The Respondent no. 2 (A-2) having sufficiently derailed the proceedings by filing frivolous and untenable applications one after the other misusing the process of law, the present Appeal is allowed with cost of Rs. 50,000/- to be paid by the Respondent No. 2 to the Appellant within two weeks. The Respondent No. 2 shall first deposit the cost in the office of this Court, which shall be permitted to be withdrawn by the Appellant.

14. The Sessions Court is directed to proceed further with the trial against all the accused including the Respondent No. 2 (A-2) in accordance with law and as expeditiously as possible. All the parties are directed to cooperate the trial court to conclude the trial as expeditiously as possible. It is further directed that non-cooperation of any of the accused in proceeding with the trial shall entail cancellation of their bail.

15. The Appeal stands allowed, with cost as directed. The office shall ensure compliance of the order of payment of cost by the Respondent No. 2, and report to the Court in case of non-compliance.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 709 : 2024 INSC 641

Mhabemo Ovung & Ors.
v.
M. Moanungba & Ors.

(Civil Appeal No. 9927 of 2024)

28 August 2024

[J.K. Maheshwari and Rajesh Bindal,* JJ.]

Issue for Consideration

Issue arose as regards inter-se seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer.

Headnotes†

Service law – Seniority – Members of the cadre of Junior Engineers – Inter-se seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer – Direct recruitment of the Junior Engineers in 2003 – Circulation of tentative seniority list, however its finalization remained pending – During the interregnum 47 posts of Sectional Officer, Grade-I, working in the Department upgraded to Junior Engineer (Class-II Gazetted) and thereafter, seniority list finalized – Appellants-direct recruitees shown in the beginning of the seniority list, however, the respondents who were upgraded as Junior Engineer in 2007 were shown much below – Aggrieved thereagainst, writ petitions filed by the incumbents upgraded as Junior Engineers – Single Judge of the High Court dismissed the same as the Sectional Officer, Grade-I, whose post was upgraded only in 2007 as Junior Engineers could not be treated to be senior to the Junior Engineers, directly recruited in 2003 and the impugned seniority list was upheld – However, the Division Bench set aside the order passed by the Single Judge – Correctness:

Held: Division Bench of the High Court totally misdirected itself while examining the 1997 Rules; the date of appointment of the respondents as Sectional Officer, Grade-I and the date

* Author

of their regularization as such – Said facts were not of any relevance – Date on which they became members of the cadre of Junior Engineers coming from two different sources is to be considered – Dates on which the Sectional Officer, Grade-I, were promoted as such either on officiating basis or their promotions were regularlised as per the order of 2007 will not have any bearing to the instant case – Even if the Sectional Officer, Grade-I, are treated to be working from the date they were officiating as such, nothing hinges on that as far as the seniority in the cadre of Junior Engineers is concerned – Post of Sectional Officer, Grade-I, on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted) in 2007 – Pay-scales of Sectional Officer, Grade-I, was ₹4500- 7000 and of Junior Engineer was ₹6000-9750, meaning thereby that the respondents were working on a lower non-gazetted post – Division Bench committed blatant error that upgraded Sectional Officer, Grade-I, are directed to be given seniority in the cadre of Junior Engineers from a date on which they were not even born in the cadre as it was only after 2007 upgradation order that they became Junior Engineers, which was much after the direct recruitment made in 2003 – Impugned order passed by the Division Bench of the High Court set aside – Seniority list of the Junior Engineers upheld – Nagaland Engineeing Services Rules, 1997. [Paras 9-16]

Case Law Cited

State of Uttaranchal and Another v. Dinesh Kumar Sharma [2006] Supp. 10 SCR 1 **: (2007) 1 SCC 683 : 2006 INSC 944;** *P. Sudhakar Rao and Others v. U. Govinda Rao and Others* [2013] 13 SCR 540 **: (2013) 8 SCC 693 : 2013 INSC 420;** *Ganga Vishan Gujrati and Others v. State of Rajasthan and Others* [2019] 11 SCR 444 **: (2019) 16 SCC 28, 2019 INSC 938 – referred to.**

List of Acts

Nagaland Engineeing Services Rules, 1997.

List of Keywords

Seniority; Post of Junior Engineer on direct recruitment basis; Posts of Sectional Officer, Grade-I, upgraded to Junior Engineer; Tentative seniority list; Direct recruits; Regularization; Promotions; Pay-scales; Lower non-gazetted post.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9927 of 2024

From the Judgment and Order dated 09.09.2021 of the Gauhati High Court in WA No. 4 of 2020

With

Civil Appeal No. 9928 of 2024

Appearances for Parties

P.S. Patwalia, Ranji Thomas, K N Balgopal, Rana Mukherjee, Sr. Advs., Sudarsh Menon, Shine P. Sasidhar, Manish Kumar Tiwari, Ms. Tatini Basu, Byrapaneni Suyodhan, Kumar Shashank, Ms. Nitya Nambiar, Avijit Roy, Samarth Mohanty, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. Leave granted.

2. The issue under consideration in the present appeals is regarding *inter se* seniority of the incumbents appointed to the post of Junior Engineer on direct recruitment basis and those whose posts of Sectional Officer, Grade-I, were upgraded to Junior Engineer.

3. Final seniority list of Junior Engineers was circulated on 26.03.2018 showing the seniority position of the incumbents manning the posts from two different sources. Aggrieved against the seniority list, Sectional Officers, Grade-I, who were redesignated/upgraded as Junior Engineers challenged the same by filing W.P.(C)No.264(K) of 2018 and W.P.(C) No.74(K) of 2019 filed by the respondent Nos.1 to 16 herein. The Learned Single Judge vide order dated 07.02.2020 dismissed both the writ petitions. Aggrieved against the judgment of the learned Single Judge in W.P.(C)No.74(K) of 2019, an intra-court appeal, W.A. No.4 of 2020 was filed. The Division Bench of the High Court set aside the judgment of the learned Single Judge. As a consequence, the impugned seniority list circulated on 26.03.2018 was set aside and the department concerned was directed to refix the seniority of the Junior Engineers in terms of the directions given in the judgment.

3.1 Aggrieved against the aforesaid judgment, the directly recruited Junior Engineers in Civil Appeal arising out of S.L.P.(C)No.17102 of 2021 and the State in Civil Appeal arising out of S.L.P.(C) No.1136 of 2022 are before this Court.

4. Mr. P.S. Patwalia, learned senior counsel appearing for the directly recruited Junior Engineers/appellants in C.A. @ S.L.P.(C)No.17102 of 2021 submitted that they were selected as such after qualifying the exam conducted by the Nagaland Public Service Commission and appointed in the pay-scale of ₹6000-9750, vide Notification dated 01.05.2003. Their selection and appointment were strictly in terms of the Nagaland Engineering Service Rules, 1997.[1] Ever since their appointment they have been performing their duty diligently.

4.1 The contesting private respondents are incumbents who were earlier working in the cadre of Sectional Officers, Grade-I in the pay-scale of ₹4500-7000. Their posts were upgraded to that of Junior Engineers by the Government of Nagaland vide Communication dated 11.10.2007. It was only thereafter that they entered in the cadre of Junior Engineer. Prior to that they were working in a lower grade as compared to the direct recruits/Junior Engineers.

4.2 After the selection of the direct recruits, a number of tentative seniority lists were circulated starting from 31.05.2004. However, none of them were finalized. It was only on 26.03.2018 that the seniority list was finalized. The appellants herein were shown above the incumbents/respondents who entered in the grade of Junior Engineers after their post of Sectional Officer, Grade-I, was upgraded to Junior Engineer. It was for the reason that the appellants have been working as Junior Engineer ever since their appointment vide Notification dated 01.05.2003 whereas the post of the Sectional Officer, Grade-I, was upgraded to that of Junior Engineers only vide Communication dated 11.10.2007. Prior to that they were working on non-gazetted lower post of Sectional Officer, Grade-I.

4.3 Even otherwise if considered in terms of the 1997 Rules, the manner in which post of Sectional Officer, Grade-I, has been

1 The 1997 Rules

upgraded to Junior Engineer, is not the manner provided in which the post of Junior Engineer can be filled up. Be that as it may, the appellants are not aggrieved with that action of the State, in case they are granted proper position in the seniority list. The result of the judgment of the Division Bench of the High Court is that the private respondents have been assigned seniority in the cadre of Junior Engineers from the date on which they were not even born in the cadre, which is legally impermissible. In support of the arguments reliance was placed upon the judgments of this Court in **State of Uttaranchal and Another v. Dinesh Kumar Sharma**,[2] **P. Sudhakar Rao and Others v. U. Govinda Rao and Others**[3] and **Ganga Vishan Gujrati and Others v. State of Rajasthan and Others**.[4]

5. As the State is also aggrieved by the Judgment of the Division Bench of the High Court, in furtherance to the arguments raised on behalf of the directly recruited Junior Engineers, Mr. K.N. Balgopal, learned senior counsel appearing for the State in C.A. @ S.L.P.(C)No.1136 of 2022, submitted that the judgment of the Division Bench is based on certain wrong facts/premise. The Learned Judge had tried to trace out the history from 1997 onwards, which was not relevant for the lis to be examined. It is a case in which *inter-se* seniority was to be determined after the first ever direct recruitment to the post of Junior Engineer was made on 01.05.2003. Prior to that Junior Engineers were being appointed by upgrading different posts.

5.1 There is no dispute that the private contesting respondents herein were not Junior Engineers as on the date when the direct recruitments were made. The private contesting respondents were promoted on an officiating basis as Sectional Officers, Grade-I, on different dates. The Departmental Promotion Committee (DPC) was held on 16.03.2007 to consider regularization of their officiating promotion. Officiating promotion of Sectional Officers, Grade-I, in the pay-scale of ₹4500-7000 was regularized vide Office Order dated 31.03.2007. Even if they had been working as Sectional Officer, Grade-I, from any

2 [2006] Supp. 10 SCR 1 : (2007) 1 SCC 683 : 2006 INSC 944

3 [2013] 13 SCR 540 : (2013) 8 SCC 693 : 2013 INSC 420

4 [2019] 11 SCR 444 : (2019) 16 SCC 28 : 2019 INSC 938

date prior to 16.03.2007, the same does not come to their rescue for the reason that they were working on a lower post. Sectional Officer, Grade-I, is a promotional post from Sectional Officer, Grade-II.

6. In response, Mr. Rana Mukherjee, learned senior counsel appearing for the contesting private respondents, who were the writ petitioners before the High Court in W.A.No.4 of 2020 submitted that Office Order dated 31.03.2007 clearly shows that the private contesting respondents were deemed to be promoted from various dates as Sectional Officers, Grade-I, as their officiating promotion was regularized. The dates as are available in the aforesaid Office Order in most of the cases was prior to the date of appointment of the appellants in C.A.@S.L.P.(C)No.17102 of 2021. Hence, they were rightly granted seniority from that date as it was that post which was subsequently upgraded to Junior Engineer. There is no error in the order passed by the Division Bench of the High Court and both the appeals deserve to be dismissed.

7. Heard learned counsel for the parties and perused the relevant referred record.

8. The undisputed facts in the case fall in a very narrow compass. There are two sets of employees working as Junior Engineers. The appellants in C.A.@S.L.P.(C)No.17102 of 2021 are the incumbents who were selected by the Nagaland Public Service Commission and were appointed as Junior Engineers vide Notification 01.05.2003. The private contesting respondents who were the writ petitioners and appellants before the Division Bench of the High Court in W.A.No.4 of 2020 were working as Sectional Officer, Grade-I and the post on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted), vide letter dated 11.10.2007. The pay-scales on which the Sectional Officer, Grade-I, were working was ₹4500-7000 whereas the pay-scales on which Junior Engineer (Class-II Gazetted), were working was ₹6000-9750.

9. As stated before us, the post of Junior Engineer was governed by the 1997 Rules in terms of which 90% recruitment is to be done by direct recruitment and 10% by way of promotion. As stated before us, prior to 2003 selection by the Nagaland Public Service Commission no direct recruitment was made. Any seniority list of Junior Engineer which may have been circulated earlier will not have any bearing in

the case in hand. After the direct recruitment of the Junior Engineers a tentative seniority list was circulated on 31.05.2004. Its finalization remained pending for years. During the interregnum 47 posts of Sectional Officer, Grade-I, working in the Nagaland Public Works Department were upgraded to Junior Engineer (Class-II Gazetted) vide Letter dated 11.10.2007. After considering claims and objections of all the incumbents working in the cadre of Junior Engineers, the seniority list was finalized on 26.03.2018.

10. The appellants in C.A.@S.L.P.(C)No.17102 of 2021 were shown at Serial Nos.71, 72, 74, 75, 76, 77, 78 & 80 in the aforesaid seniority list; they being the direct recruits. Respondent Nos.1 to 16 who were earlier working as Sectional Officer, Grade-I, the post which was subsequently upgraded as Junior Engineer vide letter dated 11.10.2007 were shown at Serial Nos.156, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 157, 158, 159, 174 & 179.

11. Aggrieved against the aforesaid seniority list, two writ petitions were filed before the High Court. W.P.(C) No.74(K) of 2019 was filed by the respondent Nos.1 to 16 herein whereas W.P.(C)No.264(K) of 2018 was filed by 29 other incumbents who were earlier working as Sectional Officer, Grade-I, the post which was upgraded to Junior Engineer vide order dated 11.10.2007.

12. Learned Single Judge rightly dismissed both the writ petitions as the Sectional Officer, Grade-I, whose post was upgraded only on 11.10.2007 as Junior Engineers could not be treated to be senior to the Junior Engineers who were directly recruited on 01.05.2003. The impugned seniority list as circulated on 26.03.2018 was upheld.

13. A perusal of the impugned order of the Division Bench of the High Court shows that it had totally misdirected itself while examining the 1997 Rules; the date of appointment of the private contesting respondents as Sectional Officer, Grade-I and the date of their regularization as such. The aforesaid facts were not of any relevance for the decision of the question of seniority amongst the members of the cadre of Junior Engineers. All what was required to be considered was the date on which they became members of the cadre of Junior Engineers coming from two different sources. As to whether the upgradation of the post was right or wrong is not an issue canvassed before this Court. The Division Bench of the High Court has further gone wrong in considering the upgradation of post

of Sectional Officer and certain other posts to that Junior Engineers prior to 01.05.2003 when direct recruitment to the post of Junior Engineers was made for the first time. That historical background did not have any relevance for the reason that prior to 2003 never before in the cadre of Junior Engineers there was recruitment from two different sources. The dispute arose only thereafter.

14. The dates on which the Sectional Officer, Grade-I, were promoted as such either on officiating basis or their promotions were regularlised though as per the Order dated 31.03.2007 effective from the date when the DPC was held i.e. 16.03.2007 will not have any bearing on the case in hand. Even if the Sectional Officer, Grade-I, are treated to be working from the date they were officiating as such, nothing hinges on that as far as the seniority in the cadre of Junior Engineers is concerned. It is for the reason that the post of Sectional Officer, Grade-I, on which they were working was upgraded to that of Junior Engineer (Class-II Gazetted) vide letter dated 11.10.2007.

15. The pay-scales of Sectional Officer, Grade-I, was ₹4500-7000 and the Junior Engineer was having pay-scales of ₹6000-9750. Meaning thereby that they were working on a lower non-gazetted post. The dispute in the present appeals is only pertaining to the Sectional Officer, Grade-I, whose posts were upgraded on 11.10.2007 and not those whose posts were upgraded prior to the direct recruitment vide Notification dated 01.05.2003. The blatant error committed by the Division Bench of the High Court is that upgraded Sectional Officer, Grade-I, are directed to be given seniority in the cadre of Junior Engineers from a date on which they were not even born in the cadre as it was only after 11.10.2007 upgradation order that they became Junior Engineers, which was much after the direct recruitment made on 01.05.2003.

16. For the reasons mentioned above, appeals are allowed. The impugned order passed by the Division Bench of the High Court is set aside. The seniority list of the Junior Engineers as circulated on 26.03.2018 is upheld. There shall be no order as to costs.

Result of the case: Appeals allowed.

[†]*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 717 : 2024 INSC 632

Kalvakuntla Kavitha
v.
Directorate of Enforcement

(Criminal Appeal No. 3522 of 2024)

27 August 2024.

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Matter pertains to the grant of the benefit of the proviso to s.45(1) of the PMLA to the applicant being a well educated and accomplished woman, who has remained Member of Parliament and a Member of Legislative Council.

Headnotes†

Prevention of Money Laundering Act, 2002 – s.45 proviso – Beneficial treatment under s.45 proviso – Entitlement – Applicant-well educated and accomplished woman, has remained Member of Parliament, Member of Legislative Council, was one of the chief conspirators in the entire conspiracy relating to formulation and implementation of new Excise Policy of Delhi – CBI case and ED case against her – Bail application – Rejected by the trial court as also the Single Judge of the High Court – Correctness:

Held: Proviso to s.45(1) would entitle a woman for special treatment while her prayer for bail is being considered – Proviso permits certain category of accused including woman to be released on bail, without the twin requirement u/s.45 to be satisfied – Entitlement to the benefit is not automatic, it would all depend upon the facts and circumstances of each case – However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied – On facts, the Single Judge of the High Court totally misdirected itself while denying the benefit of the proviso to s.45(1) to the applicant – Single Judge erroneously observed that the proviso to s.45(1) is applicable only to a "vulnerable woman" and that the applicant could not be equated to a "vulnerable woman" – Courts, while deciding such

* Author

matters, should exercise the discretion judiciously using their prudence – Furthermore, it cannot be said that merely because a woman is highly educated or sophisticated or Member of Parliament or Member of Legislative Assembly, she is not entitled to the benefit of the proviso to s.45(1) – Also, in CBI case charge sheet has been filed and in ED case complaint has been filed, as such the custody of the appellant not necessary for investigation – Appellant has been behind the bars for the last five months – There are about 493 witnesses to be examined and voluminous documents to be considered, the likelihood of the trial being concluded in near future is impossible – Prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial – Bail is the rule and refusal is an exception – Fundamental right of liberty provided Art.21 is superior to the statutory restrictions – Thus, the impugned judgment passed by the Single Judge quashed and set aside – Appellant to be released forthwith on bail on furnishing bail bonds – Constitution of India – Art.21. [Paras 10-14, 16, 17-22, 24, 25, 27-29]

Case Law Cited

Manish Sisodia v. Directorate of Enforcement, **2024 SCC OnLine SC 1920 : 2024 INSC 595;** *Saumya Chaurasia v. Directorate of Enforcement* **[2023] 15 SCR 848 : (2024) 6 SCC 401 : 2023 INSC 1073 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Benefit of the proviso to s.45(1) PMLA; Bail; Special treatment for women u/s.45(1) PMLA; Vulnerable woman.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3522 of 2024

From the Judgment and Order dated 01.07.2024 of the High Court of Delhi at New Delhi in BA No. 1675 of 2024

With

Criminal Appeal No. 3523 of 2024

Appearances for Parties

Mukul Rohatgi, Vikram Chaudhri, Dama Seshadri Naidu, Sr. Advs., Nitesh Rana, P. Mohith Rao, Ms. J. Akshitha, Ms. Arveen Sekhon, Deepak Nagar, Somanadri Goud .k, Shaik Sohil Akthar, Ms. Muskaan Khurana, Eugene S Philomene, Ashish Jacob Mathee, Varun Varma, Hitesh Kumar Sharma, Shubam Rajhans, Nikhil Kohli, Nikhil Rohatgi, Keshav Sehgal, Shashank Khurana, Ms. Kalyani Bhide Gharote, Advs. for the Appellant.

Suryaprakash V Raju, A.S.G., Zoheb Hussain, Mukesh Kumar Maroria, Annam Venkatesh, Arkaj Kumar, Vivek Gurnani, Arvind Kumar Sharma, Samrat Goswami, Hitarth Raja, Ms. Shweta Desai, Ms. Abhi Priya Rai, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. These appeals challenge the judgment and order dated 01.07.2024 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Application Nos.1675 and 1739 of 2024, vide which the learned Single Judge has refused to grant bail to the appellant herein.

3. Though the matter has been argued at length by Shri Mukul Rohatgi, learned Senior Counsel along with Shri D.S. Naidu and Shri Vikram Chaudhri, learned Senior Counsel appearing on behalf of the appellant, and Shri S.V. Raju, learned Additional Solicitor General of India (for short, 'ASG') for the respondent(s), at length; learned ASG has suggested that this Court should avoid elaborate discussions on the merits, inasmuch as any observations may prejudice the rights of either of the parties at the trial.

4. We appreciate the fairness of the learned ASG in suggesting the Court not to record the detailed elaborations on the merits of the case. It has been a consistent view of this Court that the Courts should avoid elaborate discussion at the stage of considering application for bail. We would therefore avoid any discussion on the merits of the present case inasmuch as the same may prejudice the rights of either of the parties at the trial.

5. Shri Rohatgi, learned Senior Counsel submits that there is no material on record so as to implicate the appellant herein with the offences charged with. In any case, he submits that insofar as the appeal arising out of SLP(Crl.) No.10778 of 2024 is concerned, the complaint has been filed by the prosecution and insofar as the appeal arising out of SLP(Crl.) No.10785 of 2024 is concerned, the charge-sheet has already been filed. It is submitted that since the investigation is complete, further custody of the appellant would not be required.

6. Shri Rohatgi, relying on the judgment of this Court in the case of ***Manish Sisodia v. Directorate of Enforcement***,[1] submits that inasmuch as both the said case and the present case arise out of the same set of facts and so in the present case also there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages. He further submits that no proceeds of crime have been recovered from the appellant. Shri Rohatgi further submits that the appellant is a woman and is therefore entitled to special treatment under *proviso* to Section 45(1) of the Prevention of Money-Laundering Act, 2002 (for short, 'PMLA').

7. Shri S.V. Raju, learned ASG vehemently opposed these appeals. He submits that the statements of various witnesses as well as co-accused would clearly show that the present appellant was a kingpin in arranging the deal between the co-accused-Arvind Kejriwal and the south lobby. He submits that the statements of the witnesses clearly show that the proceeds of the crime have passed through, or at least at her instance. Learned ASG further submits that not only the statements recorded under Section 50 of the PMLA but also the statements recorded under Section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate would clearly implicate the present appellant in the trial.

8. Learned ASG further submits that the learned Trial Judge has rightly refused to grant the benefit of the *proviso* to Section 45(1) of the PMLA on the ground that the appellant is a woman, inasmuch as she has indulged herself into tampering with the evidence and influencing the witnesses. He submits that the appellant has formatted her mobile set in order to destroy the evidence which was against her.

1 2024 SCC OnLine SC 1920 : 2024 INSC 595

9. Learned ASG further submits that the sequence as to in what manner the accused Arun Pillai has retracted his statement would clearly show that it is the present appellant, who has a role to play. He submits that though the statement of Arun Pillai under Section 50 of the PMLA was recorded on 10.11.2022 after a period of more than three months, he has retracted the statement on 09.03.2023. He further submits that it is relevant to note that the first summons were issued to the present appellant on 07.03.2023 i.e., two days prior to the day Arun Pillai retracted his statement. He therefore submits that the Court will have to draw an inference that the appellant is indulging in influencing the witnesses.

10. On perusal of the record, we find that in CBI case charge-sheet has been filed and in ED case complaint has been filed. As such, the custody of the appellant herein is not necessary for the purpose of investigation.

11. The appellant has been behind the bars for the last five months. As observed by us in the case of ***Manish Sisodia*** (supra), taking into consideration that there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages, the likelihood of the trial being concluded in near future is impossible.

12. Relying on the various pronouncements of this Court, we had observed in the case of ***Manish Sisodia*** (supra) that the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

13. We had also reiterated the well-established principle that "*bail is the rule and refusal is an exception*". We had further observed that the fundamental right of liberty provided under Article 21 of the Constitution is superior to the statutory restrictions.

14. We are further of the view that the *proviso* to Section 45(1) of the PMLA would entitle a woman for special treatment while her prayer for bail is being considered.

15. The said *proviso* to Section 45(1) of the PMLA reads thus:-

> "Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-

laundering a sum of less than one crore rupees, may be released on bail, if the special court so directs:"

16. A perusal of the above *proviso* would thus reveal that the *proviso* permits certain category of accused including woman to be released on bail, without the twin requirement under Section 45 of the PMLA to be satisfied. No doubt that, as argued by the learned ASG, in a given case the accused even if a woman may not be automatically entitled to benefit of the said *proviso* and it would all depend upon the facts and circumstances of each case.

17. However, when a statute specifically provides a special treatment for a certain category of accused, while denying such a benefit, the Court will be required to give specific reasons as to why such a benefit is to be denied.

18. The order of the learned Single Judge, which denies the special treatment to the present appellant makes for an interesting reading. The learned Judge observed thus:-

> "**65.** As mentioned in the contents of the application itself, the applicant Smt. K. Kavitha, is a member of the Telangana Legislative Council from the Nizamabad Local Bodies Constituency and has held significant political positions, including Member of Parliament (MP) for Nizamabad formerly. During her tenure in the Lok Sabha, she served on several committees. She had initiated a 'Free Meal Initiative' in her constituency, providing meals at state hospitals and during the pandemic. She is also the founder of the Telangana Jagruti Skill Centre, offering vocational training to youth, and as per her pleadings has been involved in educating poor children in the Nalgonda district since 2006. It is claimed in the pleadings that she is a prominent figure in the Telangana statehood movement. She holds a Bachelor's degree in Engineering and a Master's degree in Sciences. She has also served as the National Commissioner of Bharat Scouts and Guides since 2005 amongst many other achievements mentioned in the pleadings.
>
> **66.** It is heartening to note that the applicant Smt. K. Kavitha, is a highly qualified and well-accomplished

person, having made significant contributions to politics and social work as enlisted by her in her pleadings. The same were not disputed by the investigating agencies. Her educational qualification and the activities, she has enlisted for the betterment of society in the State of Telangana are essentially, one side of herself and is impressive. However, while deciding the present bail applications, though this Court may appreciate these accomplishments, it cannot lose sight of serious allegations levelled by the prosecution and the evidences collected during the course of investigation and presented before this Court, which prima facie reveal her role in the offence in question.

67. Furthermore, as far as benefit of proviso to Section 45 is concerned, when it is the case of applicant herself that she is a well educated and accomplished woman, who has remained Member of Parliament, Member of Legislative Council, etc., this Court is bound to keep in mind the observations of the Hon'ble Apex Court in case of Saumya Chaurasia (supra). The material collected by the Directorate of Enforcement, which has been discussed in the preceding paragraphs has pointed out that the applicant herein was one of the chief conspirators in the entire conspiracy relating to formulation and implementation of new Excise Policy of Delhi. In fact, some other accused persons were working on behalf of the applicant and as per her instructions, as noted in the preceding discussion.

68. Thus, Smt. K. Kavitha cannot be equated to a vulnerable woman who may have been misused to commit an offence, which is the class of women for whom the proviso to Section 45 of PMLA has been incorporated, as held by the Hon'ble Apex Court in case of Saumya Chaurasia (supra). Accordingly, this Court is of the considered opinion that Smt. K. Kavitha is not entitled to the benefit of proviso to Section 45 of PMLA."

[emphasis supplied]

19. Day in and day out it is argued before us on behalf of the prosecution that merely because an accused has a special status in terms of he/she being a Member of Parliament or a Member of Legislative Assembly or a Minister or a Chief Minister, etc., they should not be given a special treatment and should be treated equally as any other accused.

20. However, the learned Single Judge in the present case, while denying the benefit of the *proviso* to Section 45(1) of the PMLA, comes to a "heartening conclusion" that the appellant is highly qualified and a well-accomplished person. The learned Single Judge further observed that the appellant has made significant contributions to politics and social work. The learned Single Judge further observed that while deciding her bail application, the Court may appreciate her accomplishment, however, it cannot lose sight of the serious allegations levelled by the prosecution and the evidence collected during the course of the investigation and presented before the Court.

21. The learned Single Judge thereafter proceeds to observe that the present appellant cannot be equated to a "vulnerable woman".

22. We find that the learned Single Judge erroneously observed that the *proviso* to Section 45(1) of the PMLA is applicable only to a "vulnerable woman".

23. We further find that the learned Single Judge totally misapplied the ratio laid down by this Court in the case of ***Saumya Chaurasia v. Directorate of Enforcement***.[2]

24. A perusal of the judgment of this Court in the case of ***Saumya Chaurasia*** (supra) would show that this Court has observed that the Courts need to be more sensitive and sympathetic towards the category of persons included in the first *proviso* to Section 45 of the PMLA and similar provisions in the other Acts. The Court observes that the persons of tender age and women who are likely to be more vulnerable may sometimes be misused by unscrupulous elements and made scapegoats for committing such crime.

25. No doubt that this Court observes that nowadays the educated and well-placed women in the society engage themselves in commercial

2 [2023] 15 SCR 848 : (2024) 6 SCC 401 : 2023 INSC 1073

ventures and enterprises and advertently or inadvertently engage themselves in the illegal activities. The Court therefore puts a caution that the Courts, while deciding such matters, should exercise the discretion judiciously using their prudence.

26. This Court in the case of ***Saumya Chaurasia*** (supra), while paraphrasing *proviso* to Section 45(1) of the PMLA stated in paragraph 23 as follows:

> "**23.** ….. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements ……."

27. This Court, in the carefully couched paragraph extracted above used the phrase "*persons of tender age and woman who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements*". This is vastly different from saying that the *proviso* to Section 45(1) of the PMLA applies only to "vulnerable woman". Further, this Court in the case of ***Saumya Chaurasia*** (supra) does not say that merely because a woman is highly educated or sophisticated or a Member of Parliament or a Member of Legislative Assembly, she is not entitled to the benefit of the *proviso* to Section 45(1) of the PMLA.

28. We, therefore, find that the learned Single Judge of the High Court has totally misdirected herself while denying the benefit of the *proviso* to Section 45(1) of the PMLA.

29. In the result, we allow these appeals, in the following terms:-

(i) The impugned judgment and order dated 01.07.2024 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Application Nos.1675 and 1739 of 2024 are quashed and set aside;

(ii) The appellant is directed to be released forthwith on bail in connection with Complaint Case No.31 of 2022 arising out of ECIR/HIUII/14/2022 dated 22.08.2022, P.S. HIU, Directorate of Enforcement and RC-0032022A0053 dated 17.08.2022, P.S. CBI, ACB, on furnishing bail bonds in the sum of Rs.10,00,000/- in each of the cases;

(iii) The appellant shall not make any attempt to tamper with the evidence or influence the witnesses;

(iv) The appellant shall deposit her passport with the learned Trial Judge; and

(v) The appellant shall regularly attend the Trial Court and cooperate with the expeditious disposal of the trial.

30. Though we have not observed anything on the merits of the matter, any observation in this judgment would not prejudice the trial.

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

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 727 : 2024 INSC 644

Rama Kt. Barman (Died) Thr. Lrs.
v.
Md. Mahim Ali & Ors.

(Civil Appeal No. 3500 of 2024)

21 August 2024

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court in second appeal wherein it created a new case for the party, framed the issues and decided them without following the procedure contemplated u/Ord. XLI.

Headnotes†

Code of Civil Procedures, 1908 – Ord. XLI – Appeals from appellate decree – Procedure contemplated u/Ord. XLI – Compliance – High Court in second appeal framed additional substantial questions of law, which were not raised by any of the parties before the courts below and allowed the appeal without giving any opportunity of leading the evidence on the additional issues framed – Correctness:

Held: Ord. XLI would apply to the appeals from the appellate decrees also, as contemplated in r. 1, Ord. XLII – As per Ord. XLI r. 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required – Furthermore, as per r. 27 Ord. XLI, the appellate court may allow evidence or document to be produced or witness examined, after recording the reasons for such admission of evidence – However, the appellate court cannot create a new case for the party, frame the issues and decide the issues without following the procedure contemplated u/Ord. XLI – On facts, the High Court in the second appeal had framed one substantial question of law and thereafter, three more substantial question of law, and in all framed four additional questions of law – None of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court as also none of parties were given

* Author

any opportunity of leading the evidence on the said issues – Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties – In view thereof, without examining the merits of the case, the impugned judgment and decree passed by the High Court in the Second Appeal set aside, and matter remanded to the High Court for deciding the same afresh and in accordance with law. [Paras 11-16]

List of Acts

Code of Civil Procedure, 1908; Assam (Temporary Settled Areas) Tenancy Act, 1971.

List of Keywords

Appeals from appellate decree; Procedure contemplated u/Ord. XLI CPC; Appellate court; Create new case for the party; Second appeal; Substantial question of law; Additional questions of law; Opportunity of leading the evidence; Appellate stage; Pleadings of the parties.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3500 of 2024

From the Judgment and Order dated 07.04.2015 of the High Court of Gauhati in RSA No. 74 of 2006.

Appearances for Parties

Ms. Kavya Jhawar, Ms. Nandini Rai, Ms. Sneha Kalita, Advs. for the Appellants.

Azim H. Laskar, Bikas Kar Gupta, Ms. Anamika Pandey, Chandra Bhushan Prasad, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. The appellants – original plaintiffs have assailed the Judgment and Decree passed by the High Court of Gauhati in Regular Second Appeal No.74/2006, whereby the High Court had allowed the appeal preferred by the respondents – defendants, holding that the

appellants – plaintiffs were not entitled to get the recovery of khas possession of the suit land by evicting the respondents – defendants therefrom.

2. The broad facts leading to the present appeal are that the appellants – plaintiffs had filed the Title Suit No.5/2002 in the Court of Civil Judge (Junior Division) No.2, Barpeta seeking declaration with regard to the right, title and interest over the scheduled land and for evicting the respondents – defendants from the suit land in question, as also seeking permanent injunction. The said suit was contested by the respondents – defendants by filing the written statement. From the pleadings of the parties, the Trial Court had framed the following issues: -

> "1. Whether the suit is barred by limitation?
>
> 2. Whether the plaintiff has right, title and interest over the suit land?
>
> 3. Whether the plaintiffs allowed the defendants to cultivate one portion of the suit land in "Adhiar system" and on 19.11.2001 the defendant encroached into the rest portion of suit land and constructed a thatched chali?
>
> 4. Whether the defendants have been under the possession of the suit land since 30 years?
>
> 5. Whether the plaintiff is entitled to get a decree as prayed for?"

3. The Trial Court decided the issue Nos.1 and 4 against the defendants and issue Nos.2 and 3 in favour of the plaintiffs, and consequently issue No.5 was also decided in favour of the plaintiffs. Accordingly, the Trial Court vide the Judgment and Decree dated 19-5-2004 had decreed the suit of the appellants – plaintiffs.

4. Being aggrieved by the same, the respondents - defendants had preferred an appeal before the Court of Civil Judge (Senior Division) being Title Appeal No.35/2004, which came to be dismissed by the Appellate Court vide the Judgment and Order dated 21-11-2005.

5. The aggrieved respondents – defendants preferred the Second Appeal being Regular Second Appeal No.74/2006. The said Second Appeal was admitted by the High Court on 16-3-2007, by framing the following substantial question of law: -

> "1. Whether the annual patta holder has the right to transfer the land for which he has only possessory right to another person?"

6. Thereafter, the High Court again framed two additional substantial questions of law on 05-02-2015 which are as follows:-

> "1. In view of the admissions contained in Paragraph 4, 5 and 6 of the plaint, whether the defendants can be said to have acquired the status of non-evictable tenants under the Assam (Temporary Settled Areas) Tenancy Act, 1971?
>
> 2. Whether the suit itself was not maintainable due to non-compliance of Section 51 and 54 of the Assam (Temporary Settled Areas} Tenancy Act, 1971?"

7. Again, the High Court framed one additional substantial question of law on 25.03.2015, which reads as follows: -

> "1. Whether the declaration of right, title and interest by the Courts below is at all legally justified in view of the position that the same was granted on the basis of Exhibit 1, i.e., the Annual Petta."

8. As transpiring from the impugned Judgment, the appeal was partly heard on 25-03-2015 and again was concluded on 27-03-2015, however, on both the occasions, none had appeared on behalf of the appellants - plaintiffs, and the High Court vide the impugned Judgment dated 07-04-2015 allowed the said second appeal and set aside the Judgment and Decree passed by the two courts below. It has been held by the High Court inter alia that though the Courts below had dismissed the appeal of the respondents (defendants) on the ground that they had failed to prove adverse possession of the suit land, however, as per the legal position, the appellants – plaintiffs could succeed only on the strength of their own case, irrespective of the question whether the respondents – defendants really proved their case or not. The High Court further held that the courts below had not considered the provisions of Assam (Temporary Settled Areas) Tenancy Act, 1971 and had committed gross error in decreeing the suit of the appellants – plaintiffs holding the defendants to be the encroachers.

9. It is sought to be submitted by Ms. Kavya Jhawar, learned Advocate appearing for the appellants – plaintiffs that the High Court has grossly

erred in not giving proper opportunity of hearing to the appellants, more particularly when the High Court had framed as many as four additional substantial questions of law, which were not raised by any of the parties before the Courts below. She further submitted that the respondents – defendants had claimed the ownership over the suit land by the adverse possession, and had not claimed tenancy rights over the same, however, the High Court has created a new case for the respondents – defendants by framing additional substantial questions of law and allowing the Second Appeal without giving any opportunity of leading the evidence on the additional issues framed by it.

10. Mr. Azim H. Laskar, the learned counsel appearing for the respondents has fairly submitted that the High Court having not given the proper opportunity to the parties to lead evidence on the additional substantial questions of law framed by it, he has no objection if the matter is remanded to the High Court for fresh consideration.

11. It is needless to say that Order XLI of the Code of Civil Procedure, 1809 would apply to the appeals from the appellate decrees also, as contemplated in Rule-1, Order XLII of the said Code.

12. As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. However, the Appellate Court can not create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under Order XLI of CPC.

13. In the instant case, the High Court in the second appeal had framed one substantial question of law on 16-3-2007, and framed two another substantial questions of law on 5-2-2015 and one more substantial question of law in 2015. Thus, in all framed four additional questions of law.

14. Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of

leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties.

15. In view of the above, without examining the merits of the case, we deem it appropriate to set aside the impugned judgment and decree passed by the High Court in the Second Appeal, and remand the same to the High Court for deciding the same afresh and in accordance with law. While deciding the Second Appeal afresh, the High Court may reconsider the substantial questions of law framed by it earlier and decide the same in accordance with law.

16. Accordingly, the impugned judgment and decree passed by the High Court is set aside and the Appeal stands allowed accordingly.

17. Since the decree was passed by the trial court in 2004, the High Court is requested to decide the Second Appeal as expeditiously as possible.

18. It is directed that till the Second Appeal is decided by the High Court, both the parties shall maintain status-quo as regards to the possession of the suit land.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 733 : 2024 INSC 677

State Project Director, UP Education for All Project Board & Ors.
v.
Saroj Maurya & Ors.

(Civil Appeal No. 3465 of 2023)

21 August 2024

[Hima Kohli and Sandeep Mehta, JJ.]

Issue for Consideration

Matter pertains to the sustainability of the order passed by the Division Bench of the High Court, upholding the order passed by the Single Judge and the conclusions arrived at, without furnishing any reasons therefor.

Headnotes†

Judgment/order – Reasoned order – Requirement of – Division Bench of the High Court while upholding the order passed by the Single Judge of the High Court, concluded with an observation that it is in agreement with the approach and view of the Single Judge without furnishing any reasons therefor – Sustainability:

Held: Concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law – Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision – Reasons are the real live links to the administration of justice – There is a rationale, logic and purpose behind a reasoned judgment – Reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court – Absence of reasons thus would lead to frustrate the very object – On facts, in the absence of any reasoning in the impugned judgment, the same cannot be sustained – Matter remanded back to the Division Bench for the parties to appear and address arguments afresh – Impugned judgment quashed and set aside. [Paras 3-5]

Case Law Cited

CCT v. Shukla & Bros. **[2010] 4 SCR 627 : (2010) 4 SCC 785 – relied on.**

List of Keywords

Reasoned order; Judge-made law; Concept of reasoned judgment; Rule of law; Procedural law; Clarity of thoughts; Just and fair decision; Administration of justice; Absence of reasons.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3465 of 2023

From the Judgment and Order dated 18.04.2022 of the High Court of Judicature at Allahabad in SPLA No. 222 of 2022

Appearances for Parties

Ms. Garima Prashad, Sr. A.A.G., Krishnanand Pandeya, Divyanshu Sahay, Yash Kirti Kumar Bharti, Advs. for the Appellants.

Sanjoy Ghose, P.S. Patwalia, Sr. Advs., Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Akanksha Rathore, Mohnish Nirwan, Ashok Kumar, Abhishek Pratap Singh, Sahil Baraik, Yash Tewari, Shashank Rai, Jacob Benny, Piyush Singh, Umesh Dubey, Dushyant Parashar, R.K. Singh, Mrs. Neeraj Singh, Tom Joseph, R. Krishnaraj, Kumar Gaurav, Arjun Singh, Ramandeep Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. The appellant-State of Uttar Pradesh has assailed the Judgment and Order dated 18th April, 2022 passed by the Division Bench of the High Court of Judicature at Allahabad in an intra court appeal[1] directed against the common judgment and order dated 21st December, 2021 passed by the learned Single Judge in a batch of writ petitions. We have perused the impugned judgment and find that except for placing on record the case of the writ petitioners and the respondents followed by the findings returned by the learned Single Judge and the conclusions arrived at, on its own the Division Bench has not expressed its view on the issues raised before it. The judgment simply concludes with an observation that the Division Bench is in agreement with the approach and view of the learned Single Judge without furnishing any reasons therefor.

1 Special Appeal No.222 of 2022

2. Ms. Garima Prashad, learned Additional Advocate General appearing for the appellants submits that there were various Government Orders[2] issued by the State of Uttar Pradesh including G.O. dated 11th December, 2020 that was brought to the notice of the Division Bench but has not been dealt with at all. She states that much water has flown under the bridge by now and there are further G.Os. and Circulars issued by the appellants which ought to have been taken into consideration and without any application of mind, the impugned judgment has been passed simply upholding the order passed by the learned Single Judge without dealing with the submissions made by the either side. She further states that in the meantime, in view of the order passed by this Court on 02nd September, 2022 when notice was issued and it was directed that there shall be a stay on the impugned order as well as any directions passed in the contempt petition during the pendency of the matter, which order was subsequently made absolute on 02nd May, 2023 with a clarification that the appointments made by the appellants will be subject to final orders in the appeal, the appellant-State has made subsequent appointments of teachers and is continuing to do so.

3. We are of the opinion that in the absence of any reasoning in the impugned judgment, the same cannot be sustained. In this regard, we are benefitted by the following observations made by this Court in ***CCT v. Shukla & Bros.***[3] The relevant paragraphs of the judgment are extracted hereinbelow: -

> *"23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons,*

2 For short 'the G.Os.'

3 [2010] 4 SCR 627 : (2010) 4 SCC 785

reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts.

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/ orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of

the judgment, which in turn would be the basis for writing a decree of the court.

27. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. [1974 ICR 120 (NIRC)] there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove."

4. The matter is remanded back to the Division Bench for the parties to appear and address arguments afresh. Liberty is granted to the parties to place on record the subsequent developments in the matter so that the Division Bench is apprised of the larger perspective in the case and take an objective view in the matter. Liberty is granted to both sides to address arguments on law as also on facts afresh by additionally referring to the subsequent developments, if any besides the issues raised before the Division Bench in the light of the common judgment passed by the learned Single Judge.

5. Accordingly, the impugned judgment is quashed and set aside and the appeal filed by the appellant in the High Court is restored to its original position. The parties are directed to appear before the Roster Bench on 20th September, 2024. The interim orders passed by this Court shall continue to operate till the appeal is disposed of by the Division Bench.

6. Needless to state that liberty is granted to the respondents and/or the Intervenors to seek modification/vacation of the interim orders passed by this Court. If such an application is moved, the same shall be considered and appropriate orders passed in accordance with law.

7. The High Court is requested to try and expedite the hearing in the appeal that has been restored. As regards the Impleadment/ Intervention applications filed by various private parties, learned AAG states that the State proposes to move before the Division Bench for impleading the Intervenors/applicants so that a comprehensive view can be taken in the matter. Liberty is granted to the impleaders/ intervenors to participate in the proceedings before the Division Bench.

8. The appeal is disposed of along with pending application(s), if any.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 739 : 2024 INSC 639

Mulakala Malleshwara Rao & Anr.
v.
State of Telangana & Anr.

Criminal Appeal No. 3599 of 2024

29 August 2024

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

Issue for Consideration

The complaint, which set in motion the Criminal Law, was at the instance of Respondent No.2-complainant, who filed the same against the former in-laws of his elder daughter, for not returning the ornaments (gold) which he had given at the time of her marriage with their son. The sum and substance of the present dispute lie in the father's right over the gifts, i.e.,'stridhan' given by him to his daughter at the time of marriage.

Headnotes†

Penal Code, 1860 – s.406 – Dowry Prohibition Act, 1961 – s.6 – Hindu Succession Act, 1956 – s.14 – Power of Attorney Act, 1882 – s.5 – The complainant lodged FIR under Section 406 IPC pertaining to the return of the jewellery which he had given to his daughter at the time of her marriage as 'stridhan', but entrusted it to her-in laws (present-appellants) – Whether the father i.e., the complainant herein, had any locus to file the First Information Report which has led to the present proceedings keeping in view that the same was affected by delay and laches, thereby expressly being non-maintainable – Whether the High Court was correct in refusing to exercise its inherent power in quashing the proceedings under the CrPC:

Held: The jurisprudence as has been developed by Supreme Court is unequivocal with respect to the singular right of the female (wife or former wife) as the case may be, being the sole owner of 'stridhan' – It has been held that a husband has no right, and it has to then be necessarily concluded that a father too, has no right when the daughter is alive, well, and entirely capable of making decisions such as pursuing the cause of the recovery of

* Author

her 'stridhan' – As noted, the FIR was registered under Section 406 IPC which prescribes a punishment for a criminal breach of trust – The very first ingredient itself is not made out, for there is no iota of proof on record to show that the complainant had entrusted the 'stridhan' of his daughter to the appellants which allegedly was illegally kept by them – That apart, the second ingredient, i.e., the dishonest misappropriation or conversion for own use, also stands unfulfilled, for there is nothing on record to substantiate that the complainant's daughter's former in-laws converted the 'stridhan' allegedly kept in their custody, for their own use, more so, when the parties in matrimony had never ever raised 'stridhan' as an issue either in the subsistence of the marriage or thereafter, especially during the time of settlement of all issues – Apart from a statement of the complainant that the 'stridhan' is with the former in-laws of his daughter, there is nothing on record to substantiate the factum of possession actually being with the appellants – Furthermore, the action being initiated more than 5 years after the divorce of the complainant's daughter and also 3 years after her second marriage had taken place, demonstrates the same to be hopelessly belated in time – The FIR, which culminated in the present proceedings, was lodged in 2021, whereas the matrimonial relations between the complainant's daughter and her former husband ended in 2015 – She subsequently got remarried in 2018 – Then, on what grounds does the complaint file the subject FIR in the year 2021, is entirely unexplained – That apart, these proceedings have been initiated in the face of the Separation Agreement entered into by the parties to the marriage at the time of dissolution, that too, without any express authorization by the daughter of the complainant – Thus, the charge under Section 6 of the Dowry Prohibition Act, is not made out and therefore, fails – Consequently, the only conclusion that can be drawn is that the proceedings initiated by the complainant (CC No.1369/2022) against the present appellants have to be quashed and set aside. [Paras 7, 13, 14, 15, 16, 18, 19, 20]

Case Law Cited

Pratibha Rani v. Suraj Kumar [1985] 3 SCR 191 **: (1985) 2 SCC 370;** *Rashmi Kumar v. Mahesh Kumar Bhada* [1996] Supp. 10 SCR 347 **: (1997) 2 SCC 397;** *Prof. R.K. Vijayasarathy & Anr. v. Sudha Seetharam & Anr.* [2019] 2 SCR 185 **: (2019) 16 SCC 739;**

Kishan Singh (Dead) through LRs. v. Gurpal Singh & Ors. [2010] 10 SCR 16 **: (2010) 8 SCC 775 – relied on.**

Maya Gopinathan v. Anoop S.B. **2024 SCC OnLine SC 609;** *Mala Kar v. State of Uttarakhand* **2024 SCC OnLine SC 1049;** *State of Haryana v. Bhajan Lal* [1992] Supp. 3 SCR 735 **: (1992) Supp. 1 SCC 335;** *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [1988] 2 SCR 930 **: (1988) 1 SCC 692;** *Neeharika Infrastructure v. State of Maharashtra* [2021] 4 SCR 1044 **: (2021) 19 SCC 401;** *Peethambaran v. State of Kerala* [2023] 4 SCR 1144 **: 2023 SCC OnLine SC 553;** *Bobbili Ramakrishna Raja Yadad & Ors. v. State of Andhra Pradesh* [2016] 1 SCR 103 **: (2016) 3 SCC 309;** *Rohtash & Anr. v. State of Haryana* [2019] 16 SCR 861 **: (2019) 10 SCC 554 – referred to.**

List of Acts

Penal Code, 1860; Dowry Prohibition Act, 1961; Hindu Succession Act, 1956; Power of Attorney Act, 1882.

List of Keywords

Section 406 of Penal Code, 1860; Section 6 of Dowry Prohibition Act, 1961; Section 14 of Hindu Succession Act, 1956; Section 5 of Power of Attorney Act, 1882; Father's right over the gifts, i.e., 'stridhan'; Delay and laches; Entrustment of property; Dishonest misappropriation or conversion for own use; Divorce; Matrimonial relations; Re-marriage.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3599 of 2024

From the Judgment and Order dated 22.12.2022 of the High Court for the State of Telangana at Hyderabad in CRLP No. 11528 of 2022

Appearances for Parties

D. Mahesh Babu, Shishir Pinaki, Dhanaeswar Gudapalli, Ms. Mallika Das, Amber Jain, Devjee Mishra, Advs. for the Appellants.

Ms. Devina Sehgal, Dhananjay Yadav, Vikas Mehta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

2. The present appeal is directed against an order of the High Court for the State of Telangana at Hyderabad dated 22nd December, 2022 passed in Criminal Petition No.11528 of 2022, whereby the High Court refused to quash proceedings arising out of C.C.No.1369 of 2022 on the file of XXVIth Metropolitan Magistrate, Cyberabad at Hayathnagar, under Section 406 of the Indian Penal Code, 1860[1] and Section 6 of the Dowry Prohibition Act, 1961.

3. Brief facts giving rise to the present appeal are as follows :

   3.1 The complaint, which set in motion the Criminal Law, was at the instance of one Padala Veerabhadra Rao (Respondent No.2 referred to as the complainant herein), who filed the same against the former in-laws of his elder daughter, namely, Padala Sujana Sheela Kumar (referred to as the daughter) for not returning the ornaments (gold) which he had given at the time of her marriage with their son. The marriage was solemnized on 22nd December, 1999.

   3.2 Undisputably, the marriage was unsuccessful and after a period of approximately 16 years, the complainant's daughter on 14th August, 2015 filed for divorce in the United States of America. The decree of divorce was granted by mutual consent by the Circuit Court of St. Louis County, Missouri, on 3rd February, 2016. At that time, all possessions, material and financial, were settled between the parties by way of the Separation Agreement. Hence, all issues arising out of matrimony stood closed as the daughter got remarried in the U.S.A. in May, 2018.

   3.3 Much thereafter, the complainant lodged FIR No.32 of 2021 dated 15th January, 2021, under Section 406 IPC pertaining to the return of the jewellery which he had given to his daughter at the time of her marriage as '*stridhan*', but entrusted it to her-in laws (present-appellants)

1 'IPC' for brevity

3.4 It is necessary to record the complainant's version of events. At the time of getting his daughter married in the year 1999, he had given 40 *Kasula* gold and other articles. Thereafter, the newly married couple migrated to the U.S.A where the complainant's daughter was continually tortured, due to which the complainant's wife was severely disturbed and eventually passed away on 6th June, 2008. His daughter and son-in-law got their divorce in the year 2016, after 16 years of marriage. Such articles given to his daughter during the marriage were entrusted at that time to the in-laws i.e., the appellant Nos.1 and 2.

3.5 Whereafter, the complainant's daughter got remarried in the year 2018 for which purpose the complainant had travelled to the U.S.A. Upon returning therefrom, allegedly he made requests to the former in-laws of his daughter (appellants herein) to return the articles entrusted to them. Such requests remained unheeded with the articles yet to be recovered.

3.6 In the course of investigation, notice dated 16th June, 2022, under Section 41(a) of the Code of Criminal Procedure, 1973[2] was sent to Mulakala Malleshwara Rao (Appellant No.1, the father-in-law of the complainant's daughter). He denied all allegations and contended that the complaint has been filed with an intent to cause harassment.

3.7 Upon completion of the investigation, the final report under Section 173 Cr.P.C. was filed under the Sections noted above.

3.8 The appellant No.1, aggrieved thereby filed a petition for quashing of the charges, under Section 482 Cr.P.C.

4. The High Court found the allegations made in the charge-sheet, *prima facie* to be triable. As such, the prayer to exercise such powers was rejected.

5. In the above context, the short point for consideration is whether the father i.e., the complainant herein, had any *locus* to file the First Information Report which has led to the present proceedings keeping in view that the same was affected by delay and laches, thereby expressly being non-maintainable? Contingent to the answer to this

2 'Cr.P.C.' for brevity

question would be, whether the High Court was correct in refusing to exercise its inherent power in quashing the proceedings under the Cr.P.C.

6. The sum and substance of the present dispute lie in the father's right over the gifts, i.e., *'stridhan'* given by him to his daughter at the time of marriage. The generally accepted rule, which has been judicially recognized, is that the woman exercises an absolute right over the property. We may refer to ***Pratibha Rani*** v. ***Suraj Kumar,***[3] wherein a Bench of three Judges observed :

> "6. To the same effect is Maine's Treatise on Hindu Law at p.728. The characteristics of Saudayika have also been spelt out by Mulla's Hindu Law at p. 168 (Section 113) which gives a complete list of the stridhan property of a woman both before and during coverture, which may be extracted thus:
>
> "113. Manu enumerates six kinds of stridhana :
>
> 1. Gifs made before the nuptial fire, explained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (adhyagni).
>
> 2. Gifts made at the bridal procession, that is, says Katyayana, while the bride is being led from the residence of her parents to that of her husband (adhyavanhanika).
>
> 3. Gifts made in token of love, that is, says Katyayana, those made through affection by her father-in-law and mother-in-law (pritidatta), and those made at the time of her making obeisance at the feet of elders (pada-vandanika).
>
> 4. Gifts made by father.
>
> 5. Gifts made by mother.
>
> 6. Gifts made by a brother.
>
> 7. It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute

3 [1985] 3 SCR 191 : (1985) 2 SCC 370

> owner of such property and can deal with it in any manner she likes — she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt."
>
> (Emphasis supplied)

The position of the wife or woman being the sole authority in respect of '*stridhan*' stands emphatically stated in ***Rashmi Kumar*** v. ***Mahesh Kumar Bhada***[4] in the following terms:

> "*9*. A woman's power of disposal, independent of her husband's control, is not confined to saudayika but extends to other properties as well. Devala says: 'A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress….' In N.R. Raghavachariar's *Hindu Law — Principles and Precedents* (8th Edn.), edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law, at para 468 deals with 'Definition of Stridhana'. In para 469 dealing with 'Sources of acquisition' it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage, etc. Para 470 deals with 'Gifts to a maiden'. Para 471 deals with 'Wedding gifts' and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at p. 426, it is stated that ornaments presented to the bride by her husband or father constitute her stridhana property. In para 487 dealing with 'powers during coverture'

4 [1996] Supp. 10 SCR 347 : (1997) 2 SCC 397

> it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.
>
> *10*. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."
>
> (Emphasis supplied)

Pratibha Rani (supra) stands followed recently in ***Maya Gopinathan*** v**. *Anoop S.B.***[5]

Noticeably, the position of law has remained consistent throughout since 1985, till date, regarding the sole authority of the woman in respect of her *'stridhan'* as has also been held recently in ***Mala Kar*** v. ***State of Uttarakhand*** *,*[6] wherein a decree of divorce stood passed *inter se* the parties on 18th October 2014, and FIR was filed on 6th April 2015, the appellant's request for the respondent to pay a sum of Rs.10 Lakhs in full and final settlement of all claims, including *'stridhan'* was accepted, and the former husband was directed to pay such amount.

7. As evidenced from the above, the jurisprudence as has been developed by this Court is unequivocal with respect to the singular right of the female (wife or former wife) as the case may be, being the sole owner of '*stridhan*'. It has been held that a husband has no right, and it has to then be necessarily concluded that a father too,

5 2024 SCC OnLine SC 609

6 2024 SCC OnLine SC 1049

has no right when the daughter is alive, well, and entirely capable of making decisions such as pursuing the cause of the recovery of her '*stridhan*'.

8. We also notice Section 14 of the Hindu Succession Act, 1956 which talks about a Hindu female being the absolute owner of property. It reads:

> **"14. Property of a female Hindu to be her absolute property.—**(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> *Explanation*.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act. …"
>
> (Emphasis Supplied)

9. It is undisputed that action was initiated for securing possession of the articles and ornaments after a passage of more than 20 years since the date of marriage and five years after the settlement of all marital issues at the time of divorce and that too, not by the former wife, i.e., the complainant's daughter, but by the complainant himself. This coupled with the fact that there is no authorization on the part of the complainant's daughter in his favour to initiate proceedings for recovery of *'stridhan'* exclusively belonging to her, beckons the question on the basis of which the complainant has initiated the present proceedings.

10. We find that the law provides for a situation where a woman may, in law, grant a person of her choosing the authority to do any act which she may herself execute. Section 5 of the Power of Attorney Act, 1882, provides as under:-

> **"5. Power-of-attorney of married women**.—A married woman, of full age, shall, by virtue of this Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney shall apply thereto.
>
> This section applies only to instruments executed after this Act comes into force."

It cannot be disputed that no such power of attorney, within the meaning of this Act, stood executed by the complainant's daughter, in favour of her father, respondent No.2.

11. At this stage, it would be apposite to refer to the grounds under which the exercise of the power under Section 482 Cr.P.C. has been held to be justified. The *locus classicus* on this issue is ***State of Haryana*** v. ***Bhajan Lal***[7] which considers ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre***,[8] and has been subsequently referred to and relied upon in ***Neeharika Infrastructure*** v. ***State of Maharashtra***;[9] and ***Peethambaran*** v. ***State of Kerala***.[10] The factors to be considered are well enumerated requiring no reiteration here.

12. In particular, the second factor enumerated in ***Bhajan Lal*** (supra) is that the FIR or any other document enclosed therewith does not disclose a cognizable offence; and the seventh factor, which stipulates that where a criminal proceeding is initiated with manifest *mala fides,* ulterior motives or with a view to spite, are important in the present facts.

13. As noted above, the FIR was registered under Section 406 IPC which prescribes a punishment for a criminal breach of trust. Section 405 defines the said offence and provides for the ingredients that are required to be fulfilled for the offence to be made out.

---

7 [1992] Supp. 3 SCR 735 : (1992) Supp. 1 335

8 [1988] 2 SCR 930 : (1988) 1 SCC 692

9 [2021] 4 SCR 1044 : (2021) 19 SCC 401

10 [2023] 4 SCR 1144 : 2023 SCC OnLine SC 553

This Court in ***Prof. R.K. Vijayasarathy & Anr.*** v. ***Sudha Seetharam & Anr.***[11] identified the ingredients required for a charge under Section 406 to be justified:

> "13. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:
>
> 13.1. A person should have been entrusted with property, or entrusted with dominion over property;
>
> 13.2. That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and
>
> 13.3. That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

14. In view of the facts of this case, the very first ingredient itself is not made out, for there is no *iota* of proof on record to show that the complainant had entrusted the *'stridhan'* of his daughter to the appellants which allegedly was illegally kept by them.

    That apart, the second ingredient, i.e., the dishonest misappropriation or conversion for own use, also stands unfulfilled, for there is nothing on record to substantiate that the complainant's daughter's former in-laws converted the *'stridhan'* allegedly kept in their custody, for their own use, more so, when the parties in matrimony had never ever raised *'stridhan'* as an issue either in the subsistence of the marriage or thereafter, especially during the time of settlement of all issues.

15. Another ground on which the charge fails is that, apart from a statement of the complainant that the *'stridhan'* is with the former in-laws of his daughter, there is nothing on record to substantiate the factum of possession actually being with the appellants. In ***Bobbili Ramakrishna Raja Yadad & Ors. v. State of Andhra Pradesh***,[12]

11 [2019] 2 SCR 185 : (2019) 16 SCC 739

12 [2016] 1 SCR 103 : (2016) 3 SCC 309

this Court has held that giving dowry and traditional presents at the time of the wedding does not raise a presumption that such articles are thereby entrusted to the parents-in-law so as to attract the ingredients of Section 6 of the Dowry Prohibition Act, 1961.

16. As such, insofar as Section 406 IPC is concerned, the instant case would fall under the second factor enumerated in ***Bhajan Lal*** (supra), where no cognizable offence is visible on the face of the record. Furthermore, the action being initiated more than 5 years after the divorce of the complainant's daughter and also 3 years after her second marriage had taken place, demonstrates the same to be hopelessly belated in time.

17. We may further observe that the object of criminal proceedings is to bring a wrongdoer to justice, and it is not a means to get revenge or seek a vendetta against persons with whom the complainant may have a grudge. The principle in law that delay in filing the FIR has to be satisfactorily explained and does not need any reiteration. In the present case, the record is entirely silent on that aspect. It is also to be noted, in the FIR the authorities are requested to take action against the appellant for not returning the gifts given by the complainant to his daughter at the time of the marriage, however, in the charge-sheet such a complaint turns into a demand of dowry and being pressured into incurring expenses for marriage related functions. The question that is to be answered is that when the point of genesis is separate and distinct, how does the end result turn into something that is entirely foreign to the point of genesis?

18. An additional aspect is to be taken note of. The FIR, which culminated in the present proceedings, was lodged in 2021, whereas the matrimonial relations between the complainant's daughter and her former husband ended in 2015. She subsequently got remarried in 2018. Then, on what grounds does the complaint file the subject FIR in the year 2021, is entirely unexplained. It has been observed in ***Kishan Singh (Dead) through LRs.*** v. ***Gurpal Singh & Ors.***[13] that:

> "…. Chagrined and frustrated litigants should not be permitted to give vent by cheaply invoking the jurisdiction of the criminal Court. The Court proceedings ought not to

13 [2010] 10 SCR 16 : (2010) 8 SCC 775

> be permitted to degenerate into a weapon of harassment or prosecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of that case".

Kishan Singh (supra) was recently referred to and followed in ***Rohtash & Anr. v. State of Haryana.***[14]

19. That apart, these proceedings have been initiated in the face of the Separation Agreement entered into by the parties to the marriage at the time of dissolution, that too, as already recorded supra without any express authorization by the daughter of the complainant. It categorically records as under:

> "3. …
>
> e. Personal Belongings, Furniture & Household Goods:
>
> The parties have agreed upon a division of their furniture, furnishings, household goods, appliances, equipment, silverware, china, glassware, books, works of art and other household and personal property items presently held by one or both of the parties.
>
> Each party hereby relinquishes all right, title and interest in and to all household goods, furniture and personal properties awarded to the other party."

Clause 6 of the Separation Agreement is of import in the present controversy:

> "6. RELEASES
>
> Each of the parties hereto does hereby release and discharge the other from any and all other claims, causes of action whether at law or in equity, dower, both in real and personal property, both under the statutes and common law, and all other charges of every kind, character or nature which either of the parties does now or might have against

14 [2019] 16 SCR 861 : (2019) 10 SCC 554

> the other arising in any manner whatsoever, except as are herein specifically reserved to the parties, or as may be derived by either party to effectuate and maintain the terms of this Agreement."

Further, clause 8 of the Separation Agreement records the full division of the property between the parties in the following terms:

> "8. FULL DIVISION OF PROPERTY
>
> The parties represent to the Court that this Agreement fully disposes and divides all the marital property of the parties and that there is no further property which this Court must divide. Further, the parties represent and warrant that they have each disclosed to the other all of their respective property interests in their respective Statement of Property filed in this cause."

20. In view of the above, we also hold that the charge under Section 6 of the Dowry Prohibition Act, is not made out and therefore, fails. Consequently, the only conclusion that can be drawn is that the proceedings initiated by the complainant (CC No.1369/2022) against the present appellants have to be quashed and set aside. Any action commenced as a result thereof is bad in law. The questions raised in this appeal are answered accordingly.

21. The appeal is allowed in the above terms. The impugned judgment dated 22nd December 2022 in Criminal Petition No. 11528 of 2022 between the self-same parties, the complaint stands quashed and set aside. Pending applications, if any, are also disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 753 : 2024 INSC 636

Manik Madhukar Sarve & Ors.
v.
Vitthal Damuji Meher & Ors.

(Criminal Appeal No. 3573 of 2024)

28 August 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Respondent no.1 was released on bail by the High Court for offences punishable under Sections 409, 420, 467, 468, 471 and 120-B of the Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

Headnotes†

Code of Criminal Procedure, 1973 – s.439 – Bail – The case of the prosecution is that one accused viz. K (President of a Society), in connivance with the co-accused, misappropriated an amount of ₹79,54,26,963/- – Further case of the prosecution that respondent no.1 is a co-conspirator and a close friend of the alleged mastermind K – It was stated in the charge-sheet that respondent no.1 was paid an amount of ₹9,69,28,500/- which was withdrawn from the Society and paid to him as financial assistance – Thereafter, respondent no.1 purchased five immovable properties in name of K – During investigation, respondent no.1 was arrested – However, the High Court released him on bail – Correctness:

Held: The Courts while granting bail are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk etc. – The Single Judge of the High Court, in the impugned order, has simply proceeded on the premise that there were only allegations made by some persons against the respondent no.1 and he was not a member of the Society which had committed such financial irregularities – The impugned order goes on to state that respondent no.1 was not involved in the affairs of the Society nor was he responsible for the irregularities alleged – At the present stage, where the charge-sheet stands filed, it emerges that there is some

* Author

material indicative of the involvement of respondent no.1 in the withdrawal of ₹9,00,00,000/-, based on the records and cash-book entries and other book of accounts though he had invested amounts only to the tune of about ₹2,38,00,000/- – Even the Forensic Audit Report exhibits material to this effect – Investigation also indicates that out of the monies withdrawn from the Society's account by the respondent no.1, investments were later made in property in the name of his relatives – Further, the High Court has completely lost sight of the fact that the deposits in/to the Society were made by people having meagre earnings without anything else to fall back upon – Tentatively speaking, it seems that the President of the Society systematically siphoned off these funds, with the aid of other office-bearers as also through respondent no.1 – Upon circumspect consideration of the attendant facts and circumstances, the discretion exercised by the Single Judge of the High Court to grant bail to the respondent no.1 was not in tune with the principles that conventionally govern exercise of such power – Thus, the impugned order u/s. 439(1), CrPC granting bail to the respondent no.1 cannot be sustained. [Paras 18, 19, 22, 26]

Case Law Cited

Ajwar v. Waseem [2024] 5 SCR 575 **: 2024 SCC OnLine SC 974;** *State of Haryana v. Dharamraj* [2023] 11 SCR 705 **: 2023 SCC OnLine 1085 – relied on.**

Niranjan Singh v. Prabhakar Rajaram Kharote [1980] 3 SCR 15 **: (1980) 2 SCC 559;** *Vilas Pandurang Pawar v. State of Maharashtra* [2012] 8 SCR 270 **: (2012) 8 SCC 795;** *Atulbhai Vithalbhai Bhanderi v. State of Gujarat* [2023] 4 SCR 239 **: 2023 SCC OnLine SC 560 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

List of Keywords

Bail; Grant of bail; Rejection of bail; Misappropriation of funds; Financial irregularities; Conspiracy; Possibilities/chances of tampering with the evidence and/or witnesses; Nature of accusations; Role of accused; Supervening circumstances; Economic offence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3573 of 2024

From the Judgment and Order dated 13.10.2021 of the High Court of Judicature at Bombay at Nagpur in CRLA (BA) No. 867 of 2021

Appearances for Parties

Ms. Mrinal Gopal Elker, Ms. Shruti Verma, Advs. for the Appellants.

Manoj K. Mishra, Umesh Dubey, Jeevesh Prakash, Vishal, Ms. Madhulika, Amulya Dev, Samrat Krishanrao Shinde, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Leave granted.

2. The present appeal arises from the final judgment and order dated 13.10.2021[1] (hereinafter referred to as the "Impugned Order"), passed by a learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench (hereinafter referred to as the "High Court") in Criminal Application (BA) No.867/2021, whereby and whereunder respondent no.1 was released on bail in connection with Crime No.217/2019 registered with Police Station Kotwali, Nagpur for offences punishable under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act"). Be it noted, we have dismissed connected petitions *vide* common Order dated 07.05.2024 in S.L.P. (Crl.) Nos.3946/2022 and 3938/2022. On even date, judgment was reserved in the instant appeal.

1 Operative portion pronounced in Open Court on 13.10.2021, however the detailed Order was uploaded on the High Court's official website on 30.10.2021.

BRIEF FACTS:

3. The case of the prosecution is that one accused *viz*. Khemchand Meharkure is the President of Jai Shriram Urban Credit Co-operative Society Limited (hereinafter referred to as the "Society") and he, in connivance with the co-accused, misappropriated an amount of ₹79,54,26,963/- (Rupees Seventy Nine Crores Fifty Four Lakhs Twenty Six Thousand Nine Hundred and Sixty Three). Also, it is projected in the charge-sheet that statements of 798 depositors further revealed that their deposits aggregating ₹29,06,18,748/- (Rupees Twenty Nine Crores Six Lakhs Eighteen Thousand Seven Hundred and Forty Eight) were not returned and the amount was misappropriated. The appellants herein are some of the depositors, who purportedly fell victim to the Society. The financial irregularities have been categorized by the prosecution under twenty-three different heads.

4. It is the further case of the prosecution that the respondent no.1 is a co-conspirator and a close friend of the alleged mastermind, Khemchand Meharkure. Respondent No.1 deposited an amount of ₹2,38,39,071/- (Rupees Two Crores Thirty Eight Lakhs Thirty Nine Thousand and Seventy One) with the Society in his name and in the names of his family members. As stated in the chargesheet, the respondent no.1 was paid an amount of ₹9,69,28,500/- (Rupees Nine Crores Sixty Nine Lakhs Twenty Eight Thousand Five Hundred) which was withdrawn from the Society and paid to him as financial assistance, upon the directions of the alleged mastermind, Khemchand Meharkure. It is further alleged that the respondent no.1 purchased five immovable properties for approximately ₹10,00,00,000/- (Rupees Ten Crores) in the name of Khemchand Meharkure.

5. During investigation, respondent no.1 was arrested on 28.04.2021. The High Court *vide* the Impugned Order has released him on bail noting that the material on record is not sufficient to establish his complicity.

SUBMISSIONS BY THE APPELLANTS:

6. Learned counsel for the appellants submitted that the High Court erred in not appreciating the role of the respondent no.1/accused as stated in the charge-sheet and record of the case. It is submitted that the respondent no.1 and his family members were the ones to whom the amount was given by the Society's office-bearers. Respondent

No.1 is the one who majorly benefitted from the scam, therefore, the High Court ought not to have released the respondent no.1.

7. It was submitted that as per the charge-sheet, amount worth ₹79,54,26,963/- (Rupees Seventy Nine Crores Fifty Four Lakhs Twenty Six Thousand Nine Hundred and Sixty Three) has been illegally disposed of by the perpetrators of the crime. Such huge amount was siphoned off by indulging in irregularities and illegal activities. Our attention was drawn towards the Forensic Audit Report wherein it has been revealed that the President of the Society colluded with the respondent no.1/accused and relatives of respondent no.1/accused invested an amount of ₹2,38,39,071/- (Rupees Two Crores Thirty Eight Lakhs Thirty Nine Thousand and Seventy One) against which he was given financial assistance of ₹9,69,28,500/- (Rupees Nine Crores Sixty Nine Lakhs Twenty Eight Thousand and Five Hundred), which amount was not refunded.

8. Learned counsel further pointed out that the impugned order did not take into consideration the statements of the Society's staff recorded during investigation. It was advanced that the High Court ought to have appreciated that the chances of the respondent no.1, as also the other co-accused enlarged on bail, influencing material witnesses such as the Society's staff etc. cannot be ruled out. Therefore, it was submitted that this was a fit case, where bail granted by the High Court ought to be cancelled by this Court.

SUBMISSIONS ON BEHALF OF RESPONDENTS NO. 2 AND 3/STATE:

9. Learned counsel for the State/official respondents adopted the arguments of the appellants and prayed for cancellation of the bail granted to the respondent no.1. Learned counsel drew our attention to the statements of the clerks employed with the Society. A perusal of the statement of one Prashant Savai would show that he worked as a Clerk with the Society since 2006 to 2014. He stated that the respondent no.1 in the year, 2013 deposited ₹2,38,00,000/- (Rupees Two Crores Thirty Eight Lakhs) with the Society. He received ₹3,25,000/- (Rupees Three Lakhs Twenty Five Thousand) as interest from the Society. The same was paid to the respondent no.1 by way of cash. No entry was recorded in the cashbook and/or other books of accounts maintained by the Society. But a note-sheet was prepared by the Society. He further stated that an amount of ₹3,50,00,000/- (Rupees Three Crores Fifty Lakhs) was paid to

the respondent no.1 by a witness. He also stated that he prepared receipts of the payment handed over to the respondent no.1 by way of cash. The Society also prepared a note-sheet in which an amount of ₹9,69,00,000/- (Nine Crores Sixty Nine Lakhs) is shown as having been paid to the respondent no.1.

10. It was submitted that the statement of one Anil Nagdeve would show that he prepared vouchers and also the Fixed Deposit and made necessary entries in the cash-book; however, no such entries are reflected in the books of accounts of the Society. Another witness, Arun Kathane has specifically stated that the respondent no.1 used to visit the Society and was in constant touch with the President.

11. It was submitted that the Bank Statements of the respondent no.1 came to be seized from the Vidarbh Konkan Gramin Bank. Entries of ₹37,50,000/- (Rupees Thirty Seven Lakhs and Fifty Thousand) and ₹5,00,000/- (Rupees Five Lakhs) are shown as credited in the account of the respondent no.1. As per the Forensic Audit Report, the said figure matches with the saving account. According to the Forensic Audit Report, cash deposit of the amount of ₹45,28,500/- (Rupees Forty Five Lakhs Twenty Eight Thousand and Five Hundred) is also shown in the name of the respondent no. 1. An amount of ₹85,75,150/- (Rupees Eighty Five Lakhs Seventy Five Thousand One Hundred and Fifty) and ₹32,90,850/- (Rupees Thirty Two Lakhs Ninety Thousand Eight Hundred and Fifty) is also shown in the name of the wife of the respondent no.1. It is further noted during investigation that the said amount is not reflected for the purposes of income-tax. Similarly, respondent no.1 and the Society's President executed Sale Deed(s) and purchased various properties in cash. It is averred that later on, they applied for correction in the Sale Deed by making modification that the amount was inadvertently shown to be paid in cash but in fact the payment(s) is/were made through cheque(s).

12. It was submitted that a money trail has been unearthed between the respondent no.1 and the Society. Therefore, it was prayed that the privilege of bail granted to him by the High Court be cancelled.

SUBMISSIONS BY RESPONDENT NO.1/ACCUSED:

13. At the outset, learned counsel for the respondent no.1 submitted that the said respondent is innocent and not involved in the alleged crime. It was stated that he has been falsely implicated by the police. It was submitted that there is absolutely no evidence to incriminate

Respondent No.1 in the subject-case. Therefore, in any event, on the basis of the allegations made, no case at all, as alleged *vide* Crime No.217/2019 is made out against respondent no.1.

14. It was submitted that there is no substantial material on record, except disclosure statements of witnesses in police custody, to prove any kind of agreement between respondent no.1 and the main accused/President of the Society. It was pointed out that the main accused, referred to as the President/Chairman of the Society in the charge-sheet, has been released on bail by the High Court *vide* order dated 22.08.2022. Referring to this order, it was urged that the High Court had raised doubts on the existence of material evidence relating to criminal conspiracy and held that "*considering the number of witnesses and voluminous charge sheet there is no point in keeping the applicant in jail for an uncertain period.*"

15. It was submitted that the alleged loan has never been transferred to the respondent no.1. There is no electronic evidence, except mere statements of the three witnesses. Learned counsel advanced that these statements could not be treated as gospel truth. It has not been proved that respondent no.1 was the beneficiary of the alleged scam. Moreover, there is no worthwhile evidence to suggest that respondent no.1/his family purchased the properties to the tune of the alleged loan amount or used the alleged loan amount to purchase any properties. Even according to the Forensic Audit Report, respondent no.1, including his family cumulatively, had received no more than a ₹1,28,00,000/- (Rupees One crore Twenty Eight Lakh) loan. Consequently, there are contradictions regarding alleged receipt of the loan amount in question.

16. It was further submitted that the authenticity of the aforesaid Forensic Audit Report is also under challenge as the handwriting/specimen of the respondent no.1 has been sent for forensic examination, report whereof is still awaited. Further, it was submitted that respondent no.1 was never associated in the affairs of the Society and had never held any position in the Society.

17. Lastly, it was submitted that respondent no.1 is a senior citizen and has complicated age-related medical issues, for which he is undergoing treatment due to the severity of the condition(s). Hence, it is submitted that there are no chances of his absconding. It was stated that investigation is complete and charge-sheet has been filed much prior in time to the grant of bail. Stating that no prejudice

has been caused to the smooth running of the trial so as to invoke the intervention of this Court, it was prayed that the instant appeal be dismissed.

ANALYSIS, REASONING AND CONCLUSION:

18. Having given our anxious thought to the controversy, we find that the exercise of discretion by the learned Single Judge in the impugned order under Section 439(1)[2] of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code"), granting bail to the respondent no.1 cannot be sustained.

19. Courts while granting bail are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk *et al*. Speaking through Hima Kohli, J., the present *coram* in ***Ajwar v Waseem*****, 2024 SCC OnLine SC 974**, apropos relevant parameters for granting bail, observed:

> "***26.*** *While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing*

2 "*439. Special powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct—*

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice: Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."

the accused on bail. (Refer: Chaman Lal v. State of U.P.;[3] Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra);[4] Masroor v. State of Uttar Pradesh;[5] Prasanta Kumar Sarkar v. Ashis Chatterjee;[6] Neeru Yadav v. State of Uttar Pradesh;[7] Anil Kumar Yadav v. State (NCT of Delhi);[8] Mahipal v. Rajesh Kumar @ Polia (supra).[9]

***27.** It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh (supra)[10] decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)of the CrPC in the following words:*

> *"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995*

3 [2004] Supp. 3 SCR 584 : (2004) 7 SCC 525

4 (2004) 7 SCC 528

5 [2009] 6 SCR 1030 : (2009) 14 SCC 286

6 [2010] 12 SCR 1165 : (2010) 14 SCC 496

7 [2014] 12 SCR 453 : (2014) 16 SCC 508

8 [2017] 11 SCR 195 : (2018) 12 SCC 129

9 [2019] 14 SCR 529 : (2020) 2 SCC 118

10 [2022] 15 SCR 211

SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.'"

(emphasis supplied)

20. In ***State of Haryana v Dharamraj*, 2023 SCC OnLine 1085**, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

"***7.*** *A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the relevant principles were restated thus:*

'9. … It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'

8. *In Mahipal v. Rajesh Kumar alias Polia, (2020) 2 SCC 118, this Court opined as under:*

'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. …'

9. *In Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 INSC 761, this Court, in view of Dolat Ram v. State of Haryana, (1995) 1 SCC 349; Kashmira Singh v. Duman Singh, (1996) 4 SCC 693 and X v. State of Telangana, (2018) 16 SCC 511, held as follows:*

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in Daulat Ram v. State of Haryana, (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and XXX v. State of Telangana (2018) 16 SCC 511.'

> ***10.*** *In XXX v. Union Territory of Andaman & Nicobar Islands, 2023 INSC 767, this Court noted that the principles in Prasanta Kumar Sarkar (supra) stood reiterated in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321.*
>
> ***11.*** *The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 and Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in Sushila Aggarwal (supra). We are cognizant that liberty is not to be interfered with easily. More so, when an order of pre-arrest bail already stands granted by the High Court.*
>
> ***12.*** *Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits.*"
>
> (emphasis supplied)

21. In ***Ajwar*** (*supra*), this Court also examined the considerations for setting aside bail orders in terms below:

> "***28.*** *The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that*

> *the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.*
>
> ***29.*** *In Jagjeet Singh (supra)[11], a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (Also refer: Puran v. Ram Bilas[12]; Narendra K. Amin (Dr.) v. State of Gujarat[13])*"
>
> (emphasis supplied)

22. The learned Single Judge, in the impugned order, has simply proceeded on the premise that there were only allegations made by some persons against the respondent no.1 and he was not a member of the Society which had committed such financial irregularities. Moreover, we find that the learned Single Judge, whilst noting that "*no positive finding need be recorded on the sufficiency of the said material to establish conspiracy, which issue will be addressed by the trial Court, after the evidence is adduced*", has without any basis thought it fit to record that in his "*prima facie opinion, it is extremely debatable whether such material is sufficient to establish conspiracy.*"

23. The impugned order goes on to state that respondent no.1 was not involved in the affairs of the Society nor was he responsible for the irregularities alleged. At the present stage, where the charge-sheet stands filed, it emerges that there is some material indicative of the involvement of respondent no.1 in the withdrawal of ₹9,00,00,000/- (Rupees Nine Crores), based on the records and cash-book entries and other book of accounts though he had invested amounts only

11 (2022) 9 SCC 321

12 (2001) 9 SCC 338

13 [2008] 6 SCR 1149 : (2008) 13 SCC 584

to the tune of about ₹2,38,00,000/- (Rupees Two Crores Thirty Eight Lakhs). Even the Forensic Audit Report exhibits material to this effect.

24. We bear in mind the submission that respondent no.1 was a close associate of the President of the Society with regular business/other dealings between the two. Investigation also indicates that out of the monies withdrawn from the Society's account by the respondent no.1, investments were later made in property in the name of his relatives. Further, the High Court has completely lost sight of the fact that the deposits in/to the Society were made by people having meagre earnings without anything else to fall back upon. Tentatively speaking, it seems that the President of the Society systematically siphoned off these funds, with the aid of other office-bearers as also through respondent no.1. We consciously refrain from elaborately discussing/detailing the evidence or our views thereon following the *dicta* in ***Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559**; ***Vilas Pandurang Pawar v State of Maharashtra*, (2012) 8 SCC 795** and ***Atulbhai Vithalbhai Bhanderi v State of Gujarat*, 2023 SCC OnLine SC 560**.

25. In cases where the allegations coupled with the materials brought on record by the investigation and in the nature of economic offence affecting a large number of people reveal the active role of the accused seeking anticipatory or regular bail, it would be fit for the Court granting such bail to impose appropriately strict and additional conditions. In the present case, even that has not been done as the High Court has imposed usual conditions *simpliciter*:

> "***8.*** *The applicant be released on bail in connection with Crime 217/2019, registered with Police Station Kotwali, Nagpur, for offences punishable under sections 409, 420, 467, 478, 471, 120-B of Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.*
>
> ***9.*** *The applicant shall attend Economic Offences Wing, Nagpur as and when required by the Investigating Officer.*
>
> ***10.*** *The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.*

> ***11.*** *The applicant shall not leave the country without the permission of the trial Court.*"
>
> (emphasis supplied)

26. The High Court, we have no hesitation in saying so, erred in law. *Ergo*, for reasons recorded above and upon circumspect consideration of the attendant facts and circumstances, we hold that the discretion exercised by the learned Single Judge of the High Court to grant bail to the respondent no.1 was not in tune with the principles that conventionally govern exercise of such power, a plurality of which stand enunciated in the case-law *supra*. Moreover, though respondent no.1 had already suffered incarceration for a period of about six months at the time when bail was granted, yet in view of the nature of the alleged offence, his release on bail can seriously lead to dissipation of the properties where investments have allegedly been made out of Society funds. At the end of the day, the interests of the victims of the scam have also to be factored in.

27. Accordingly, the appeal succeeds. The impugned order stands set aside. Respondent No.1 is directed to surrender within a period of three weeks from today, failing which the trial Court shall proceed in accordance with law. We clarify that the observations made hereinabove are limited to the aspect of testing the legality of the impugned order. They shall not be treated as definitive/conclusive regarding respondent no.1 or any other accused. The trial Court *in seisin* shall proceed uninfluenced and in accordance with law. Given the peculiar circumstances, where bail is being cancelled after a period of almost 3 years, it is deemed appropriate to grant liberty to the respondent no.1 to apply for bail at a later period or in the event of a change in circumstances. Needless to state, such application, if and when preferred, shall be considered on its own merits, without being prejudiced by the instant judgment. The authorities concerned are directed to render appropriate care and assistance as regards the medical condition of the respondent no.1.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 768 : 2024 INSC 627

Dr. Vijay Dixit & Ors.

v.

Pagadal Krishna Mohan & Ors.

(Civil Appeal No. 1970 of 2020)

&

New India Assurance Co. Ltd.

v.

Hilli Multipurpose Cold Storage Pvt. Ltd.

(Civil Appeal No(s). 10941-10942 of 2013)

22 August 2024

[Bela M. Trivedi and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the application(s) seeking condonation of delay to file written statement preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of *New India Assurance 2*, must be decided on merits; and ought not to be summarily dismissed.

Headnotes†

Consumer Protection Act, 1986 – s.13 – Statutory period to file written statement – Condonation of delay to file written statement – In the both civil appeals (C.A.No.1970 of 2020 and C.A.No.10941-10942 of 2013), the NCDRC closed the right from filing written statements on account of them exceeding the statutory period:

Held: In C.A. No.1970 of 2020, the appellants had to file its WS on or before 28.06.2015 (within a period of 30 days) – However, the appellant filed its WS together with an application seeking condonation of delay on 12.04.2016 before the NCDRC i.e., after a delay of 285 days beyond the 30 day period granted to appellant – In C.A.No.10941-10942 of 2013, the appellant company filed its WS together with an application seeking condonation of delay on 27.07.2013 before the NCDRC i.e., after a delay of 79 days beyond the 30 day period – In the both civil appeals, the

* Author

NCDRC forfeited the right from filing written statements on account of them exceeding the statutory period – In the present situation, the undisputed facts of the cases reveal that the impugned orders were passed by the NCDRC on 22.07.2016 (in Civil Appeal No. 1970 of 2020) and on 22.08.2013 (in C.A. No. 10941-10942 of 2013) i.e., prior to 04.03.2020-the date of pronouncement of the decision in New India Assurance 2 by the Constitution Bench – In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in *New India Assurance 2*; coupled with the finding(s) of a Bench of 3 Judges of this Court in *Diamond Exports* have authoritatively brought quietus to the underlying issue – The application(s) seeking condonation of delay preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of *New India Assurance 2*, must be decided on merits; and ought not to be summarily dismissed – Accordingly in both the civil appeals, the NCDRC directed to adjudicate the underlying application seeking condonation of delay in filing the WS in the Underlying Complaint on merits. [In C.A. No.1970 of 2020, Paras 2.3, 2.4, 4 and 5] [In C.A. No.10941-10942 of 2013, Paras 2.3, 4 and 5]

Case Law Cited

In Civil Appeal No. 1970 of 2020

New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.,(New India Assurance 2) [2020] 5 SCR 429 **: (2020) 5 SCC 757 – followed.**

Diamond Exports v. United India Insurance Co. Ltd. [2021] 9 SCR 993 **: (2022) 4 SCC 169 – relied on.**

J.J. Merchant (Dr) v. Shrinath Chaturvedi [2002] Supp. 1 SCR 469 **: (2002) 6 SCC 635;** *Kailash v. Nanhku* [2005] 3 SCR 289 **: (2005) 4 SCC 344;** *Salem Advocate Bar Association v. Union of India* [2005] Supp. 1 SCR 929 **: (2005) 6 SCC 344;** *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.,(New India Assurance 1)* [2015] 14 SCR 179 **: (2015) 16 SCC 20 ;** *Topline Shoes Limited v. Corporation Bank* [2002] 3 SCR 1167 **: (2002) 6 SCC 33;** *Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.* **(2021) 3 SCC 673;** *Daddy's Builders (P) Ltd. v. Manisha Bhargava* [2021] 1 SCR 548 **: (2021) 3 SCC 669 – referred to.**

In Civil Appeal No(s). 10941-10942 of 2013

New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.,(New India Assurance 2) [2020] 5 SCR 429 **: (2020) 5 SCC 757 – followed.**

Diamond Exports v. United India Insurance Co. Ltd. [2021] 9 SCR 993 **: (2022) 4 SCC 169 – relied on.**

J.J. Merchant (Dr) v. Shrinath Chaturvedi [2002] Supp. 1 SCR 469 **: (2002) 6 SCC 635;** *Kailash v. Nanhku* [2005] 3 SCR 289 **: (2005) 4 SCC 344;** *Salem Advocate Bar Association v. Union of India* [2005] Supp. 1 SCR 929 **: (2005) 6 SCC 344;** *Topline Shoes Limited v. Corporation Bank* [2002] 3 SCR 1167 **: (2002) 6 SCC 33;** *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.,(New India Assurance 1)* [2015] 14 SCR 179 **: (2015) 16 SCC 20;** *Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.* **(2021) 3 SCC 673;** *Daddy's Builders (P) Ltd. v. Manisha Bhargava* [2021] 1 SCR 548 **– referred to.**

List of Acts

Consumer Protection Act, 1986.

List of Keywords

Section 13 of Consumer Protection Act, 1986; Written Statement; Delay; Condonation of delay; Condonation of delay to file written statement.

Case Arising From

CIVIL APPELLATE JURISDICTION

1. Civil Appeal No. 1970 of 2020

From the Judgment and Order dated 22.07.2016 of the National Consumer Disputes Redressal Commission in Consumer Complaint No.280 of 2015

And

2. Civil Appeal Nos. 10941-10942 of 2013

From the Judgment and Order dated 22.08.2013 of the National Consumer Disputes Redressal Commission in Consumer Complaint No.52 of 2013

Appearances for Parties

Ms. Manjeet Chawla, Vishnu Mehra, Mrs. K.Radha, K.Maruthi Rao, Mrs. Anjani Aiyagari, Advs. for the Appellants.

Uday Gupta, Sr. Adv., Hiren Dasan, Narayan Chandra Das, Ms. Shivani M. Lal, Harish Dasan, Rajiv Ranjan, Ms. Yogamaya M.g., Mohammad Akbar Khan, M. T. George, Mrs. Susy Abraham, Johns George, Umesh Kumar Khaitan, Rahul Gupta, N. Rajaraman, Rajesh Kumar Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment[#]

Satish Chandra Sharma, J.

1. This appeal arises from an order dated 22.07.2016 in Consumer Complaint No. 280 of 2015 (hereinafter the "**Impugned Order**"), wherein the National Consumer Disputes Redressal Commission(herein after referred to as the"**NCDRC**") forfeited the right of the Appellant(s)to file its written statement on account of the Appellant(s) lapse in conforming to statutory period prescribed for filing its written statement, under Section 13 of the Consumer Protection Act, 1986 (the "**Act**").

2. The facts and proceedings germane to the contextual understanding of the present *lis* are as follows:

   2.1. The Respondent(s) filed a Consumer Complaint No. 280 of 2015 before the NCDRC on 12.05.2015, claiming a total amount of INR 47,36,25,000 (Indian Rupees Forty Seven Crore Thirty Six Lakh Twenty Five Thousand) as compensation on account of *inter alia* the death of his wife due to alleged medical negligence; and adoption of unfair trade practices by the Petitioner(s) herein whilst conducting a left thoracotomy

Ed. Note: Judgment in Dr. Vijay Dixit & Ors. v. Pagadal Krishna Mohan & Ors. (Civil Appeal No. 1970 of 2020)

i.e., mediastinal tumour excision under general anaesthesia (the "**Underlying Complaint**").

2.2. In this context, *vide* an order dated 14.05.2015, the NCDRC issued notice to the opposite party i.e., the Appellants herein.

2.3. The Notice was received by the Appellant(s) on 27.05.2015; and accordingly, the Appellant(s) ought to have filed its' WS within a period of 30 (thirty) days thereafter i.e., on or before 28.06.2015. However, the Appellant(s) filed its WS together with an application seeking condonation of delay on 12.04.2016 before the NCDRC i.e., after a delay of 285 (two hundred eighty-five) days beyond the 30 (thirty) day period granted to Appellant(s).

2.4. *Vide* the Impugned Order, the NCDRC closed the right of the Appellant(s) from filing their written statement on account of them exceeding the statutory period prescribed for filing such written statement, under Section 13 of the Act.

2.5. Aggrieved by the aforesaid, the Appellant(s) preferred the Special Leave Petition No. 36048 of 2016 i.e., now converted to this instant appeal.

2.6. *Vide* an order dated 16.12.2016, this Court issued notice in the instant appeal; and directed the Appellant(s) to pay a sum of INR 50,000 (Indian Rupees Fifty Thousand) as costs to the Respondent(s) pursuant to which upon receiving consent from the Respondents herein, the NCDRC was at liberty to proceed with the adjudication of the Underlying Complaint. Alternatively, the Respondents herein were free to seek a stay of proceeding(s) before the NCDRC pending disposal of the instant appeal.

2.7. *Vide* an order dated 01.11.2017, on account of the non-acceptance of the aforesaid cost(s) by the Respondents herein, the NCDRC kept further proceeding(s) in abeyance in terms of the order dated 16.12.2016 passed by this Court.

2.8. In the *interregnum*, a co-ordinate bench of this Court, noticed a conflict of opinion(s) in *inter alia* ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.***, *(2015) 16*

*SCC 20 ("**New India Assurance 1**")*; ***J.J. Merchant (Dr) v. Shrinath Chaturvedi****,(2002)6 SCC 635*; ***Kailash v. Nanhku****, (2005) 4 SCC 480;* ***Salem Advocate Bar Association v. Union of India****, (2005) 6 SCC 344; and* ***Topline Shoes Limited v. Corporation Bank****, (2002) 6 SCC 33*, and accordingly, placed similarly placed appeal(s) before a Constitution Bench of this Court *vide* an order dated 30.10.2017,with a view to bring a sense of finality *vis-à-vis* the manner of operation of Section 13 of the Act (the "**Constitution Bench**") .

2.9. Pertinently, the Constitution Bench *vide* its decision in ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.****, (2020) 5 SCC 757* (hereinafter "**New India Assurance 2**") categorically observed that the rigours of Section 13 of the Act needed to be complied with mandatorily; however, on account of various conflicting decision(s) of this Court, the Constitution Bench clarified that ***New India Assurance 2 (Supra)*** would operate prospectively.

2.10. Pertinently, during the pendency of ***New India Assurance 2 (Supra)***, a Division Bench of this Court in ***Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.****, (2021) 3 SCC 673* held that the *consumer fora* were permitted to accept written statements beyond the stipulated maximum 45 (forty- five) day period in an appropriate case on suitable terms. This position was followed by this Court pursuant to the ***New India Assurance 2 (Supra)*** in respect of application(s) seeking condonation of delay in filing the written statements/reply that either had been decided or were pending prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***.[1]

2.11. Despite the aforesaid, a divergent view came to be taken by a Division Bench of this Court in ***Daddy's Builders (A) Ltd. v. Manisha Bhargava****,(2021) 3 SCC 669* observed as under:

> *"7. As observed by the National Commission that despite sufficient time granted the written statement*

1 *Refer: A. Suresh Kumar v. Amit Agarwal, (2021) 7 SCC 466; and Bhasin Infotech & Infrastructure (P) Ltd. v. Neema Agarwal, (2021) 18 SCC 301*

was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in J.J. Merchant [J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635] and the subsequent authoritative decision of the Constitution Bench of this Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage(P) Ltd., (2020) 5 SCC 757:(2020) 3 SCC(Civ) 338] , Consumer Fora have no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order [Daddy's Builders (P) Ltd. v. Manisha Bhargava, 2020 SCC OnLine NCDRC 697] passed by the learned National Commission."

2.12. In this context, a 3 Judge Bench of this Court in ***Diamond Exports v. United India Insurance Co. Ltd.***, (2022) 4 SCC 169 were tasked with *inter alia* reconciling and authoritatively settling the divergent views taken by this Court in respect of underlying complaint(s) either pending or instituted prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2*** ***(Supra)***. Thus, in this context, this Court in ***Diamond Exports*** ***(Supra)*** categorically held that ***Daddy's Builders(P) Ltd.*** ***(Supra)*** would not affect applications seeking condonation of delay that were pending or decided on or before 04.03.2020, and accordingly,such application(s)seeking condonation of delay would be entitled to the benefit granted by this Court in ***Mampee Timbers (Supra)***. The relevant paragraph is reproduced as under:

"24....Thus, the decision in Daddy's Builders [Daddy's Builders (P) Ltd. v. Manisha Bhargava, (2021) 3 SCC 669 : (2021) 2 SCC (Civ) 319] would not affect applications that were pending or decided before 4-3-2020. Such applications for condonation would been titled to the benefit ofthe

position in Mampee Timbers & Hardwares [Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.,(2021) 3 SCC 673 : (2021) 2 SCC (Civ) 323] which directed Consumer Fora to render a decision on merits. We have expounded on the above principles in order to adopt a bright-line standard which obviates uncertainty on the legal position before the Consumer Fora and obviates further litigation."

3. Turning to the issue at hand, the undisputed fact(s) of the present *lis* reveal that the Impugned Order was passed by the NCDRC on 22.07.2016 i.e., prior to 04.03.2020 the date of pronouncement of the decision in ***New India Assurance 2*** ***(Supra)*** by the Constitution Bench. Accordingly, in this background it was contended by the Appellant(s) that on account of the prospective operation of the said decision, coupled with the observations of this Court in ***Diamond Exports*** ***(Supra)***, the instant appeal ought to be allowed with a direction to the NCDRC to render a decision on merits qua the underlying application seeking condonation of delay in filing the WS.

4. In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in ***New India Assurance 2*** ***(Supra)***; coupled with the finding(s) of a Bench of 3 Judges of this Court in ***Diamond Exports*** ***(Supra)*** have authoritatively brought quietus to the underlying issue. The application(s) seeking condonation of delay preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2*** ***(Supra)***, must be decided on merits; and ought not to be summarily dismissed.

5. Accordingly, on an overall consideration, we are convinced that the Impugned Order be set aside; and the instant appeal be allowed. The NCDRC is directed to adjudicate the underlying application seeking condonation of delay in filing the WS in the Underlying Complaint on merits.

6. The appeal is accordingly allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

Judgment[£]

Satish Chandra Sharma, J.

1. These appeal(s) arise from (i) an order dated 22.08.2013 in Consumer Complaint No. 52 of 2013, wherein the National Consumer Disputes Redressal Commission (hereinafter referred to as the "**NCDRC**") forfeited the right of the Appellant Company to file its written statement on account of the Appellant Company's lapse in conforming to statutory period prescribed for filing its written statement, under Section 13 of the Consumer Protection Act, 1986 (the"**Act**"); and (ii) an order dated 30.09.2013 wherein the NCDRC dismissed the Review Application bearing number 309 of 2013 filed against the aforementioned order dated 22.08.2013 (hereinafter (a) the order dated 22.08.2013; and (b) the order dated 30.09.2013, shall collectively be referred to as the "**Impugned Order**").

2. The facts and proceedings germane to the contextual understanding of the present *lis* are as follows:

   2.1. The Respondent filed a Consumer Complaint No. 52 of 2013 before the NCDRC on 27.02.2013, *vis-à-vis* the repudiation of claim made on the strength of 4 (four) insurance policies availed from the Appellant Company. Pertinently, the underlying claim emanated from losses arising out of an incident of '*sprouting of potatoes*' that took place at the factory of the Respondent (the "**Underlying Complaint**").

   2.2. In this context, *vide* an order dated 08.03.2013, the NCDRC issued notice to the opposite party i.e., the Appellant Company herein, and directed it to file its written submission ("**WS**") in response to the Underlying Complaint within 30 (thirty) days from the receipt of notice under Section 13 of the Act.

   2.3. Notice was received by the Appellant Company on 19.03.2013; and accordingly, the Appellant Company ought to have filed its' WS within a period of 30 (thirty) days there after. However, the Appellant Company filed its WS together with an application

---

£ Ed. Note: Judgment in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. (Civil Appeal No(s). 10941-10942 of 2013)

seeking condonation of delay on 23.07.2013 before the NCDRC i.e., after a delay of 79 (seventy-nine) days beyond the 30 (thirty) day period granted to Appellant Company.

2.4. *Vide* the Impugned Order, the NCDRC forfeited the right of the Appellant Company from filing its written statement on account of a contravention of the statutory period prescribed for filing such written statement, under Section 13 of the Act.

2.5. Aggrieved by the aforesaid, the Appellant Company preferred the instant appeal under Section 23 of the Act.

2.6. *Vide* an order dated 29.11.2013 this Court (i) admitted the underlying appeal(s) and took note of the difference of opinion *inter se* co-ordinate benches of this Court in ***J.J. Merchant (Dr) v. Shrinath Chaturvedi***, *(2002) 6 SCC 635* and ***Kailash v. Nanhku***, *(2005) 4 SCC 480* vis- à-vis limitation period for filing of a written statement under Section 13 of the Act; (ii) directed the Appellant to a sum of INR 45,00,000 (Indian Rupees Forty Five Lakh) i.e., the damage amount assessed by a surveyor under Section 64 UM of the Act, towards the claim of the Respondent (the "**Subject Amount**"); and (iii) stayed the operation of the Impugned Order.

2.7. Accordingly, incompliance with the aforesaid order, the Appellant Company deposited the Subject Amount before the Registry of this Court.

2.8. Thereafter, the instant appeal together with several similarly placed appeal(s) were placed for consideration before a Bench comprising of 3 Judges of this Court. The said Bench *vide* their decision in ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.***, *(2015) 16 SCC 20* (hereinafter "**New India Assurance 1**") held that the rigours of Section 13 of the Act were mandatory and accordingly, observed that the law laid down by this Court in ***J.J. Merchant (Supra)*** would prevail.

2.9. Subsequently, a co-ordinate bench of this Court, noticed a conflict of opinion(s) in *inter alia* ***New India Assurance 1 (Supra)***; ***J.J. Merchant (Supra)***; ***Kailash (Supra)***; ***Salem Advocate Bar Association v. Union of India***, *(2005) 6 SCC*

344; and ***Topline Shoes Limited v. Corporation Bank****, (2002) 6 SCC 33*, and accordingly, referred the matter to Hon'ble the Chief Justice of India for appropriate orders. In this context, *vide* an order dated 30.10.2017, the instant appeal came to be placed before a Constitution Bench of this Court, with a view to bring a sense of finality *vis-à-vis* the underlying legal question vis-à-vis the manner of operation of Section 13 of the Act (the "**Constitution Bench**"). Pertinently, the Constitution Bench *vide* its decision in ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (A) Ltd.****, (2020) 5 SCC 757* (hereinafter "**New India Assurance 2**") categorically observed that the rigours of Section 13 of the Act needed to be complied with mandatorily; however, on account of various conflicting decision(s) of this Court, the Constitution Bench clarified that ***New India Assurance 2*** ***(Supra)*** would operate prospectively.

2.10. Pertinently, during the pendency of ***New India Assurance 2*** ***(Supra)*****,** a Division Bench of this Court in ***Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd.****, (2021) 3 SCC 673* held that the *consumer fora* were permitted to accept written statements beyond the stipulated maximum 45 (forty-five) day period in an appropriate case on suitable terms. This position was followed by this Court pursuant to the ***New India Assurance 2*** ***(Supra)*** in respect of application(s)seeking condonation of delay in filing the written statements/reply that either had been decided or were pending prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2*** ***(Supra)***.[1]

2.11. Despite the aforesaid, a divergent view came to be taken by a Division Bench of this Court in ***Daddy's Builders (A) Ltd. v. Manisha Bhargava***, *(2021) 3 SCC 669* observed as under:

> *"7. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation.*

1 ***Refer****: A. Suresh Kumar v. Amit Agarwal, (2021)7 SCC 466; and Bhasin Infotech & Infrastructure (P) Ltd. v. Neema Agarwal, (2021) 18 SCC 301*

> *Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case,in view of the earlier decision of this Court in J.J. Merchant [J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635] and the subsequent authoritative decision of the Constitution Bench of this Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage(P) Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage(P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] , Consumer Fora have no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order [Daddy's Builders (P) Ltd. v. Manisha Bhargava, 2020 SCC OnLine NCDRC 697] passed by the learned National Commission."*

2.12. In this context, a 3 Judge Bench of this Court in ***Diamond Exports v. United India Insurance Co. Ltd.***, (2022) 4 SCC 169 were tasked with *inter alia* reconciling and authoritatively settling the divergent views taken by this Court in respect of underlying complaint(s) either pending or instituted prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2 (Supra)***. Thus, in this context, this Court in ***Diamond Exports (Supra)*** categorically held that ***Daddy's Builders (P) Ltd. (Supra)*** would not affect applications seeking condonation of delay that were pending or decided on or before 04.03.2020, and accordingly, such application(s) seeking condonation of delay would be entitled to the benefit granted by this Court in ***Mampee Timbers (Supra)***. The relevant paragraph is reproduced as under:

> *"24….Thus, the decision in Daddy's Builders [Daddy's Builders (P) Ltd. v. Manisha Bhargava, (2021) 3 SCC 669 : (2021) 2 SCC (Civ) 319] would not affect applications that were pending or decided before 4-3-2020. Such applications for condonation would be entitled to the benefit of the position in Mampee Timbers & Hardwares [Reliance General Insurance*

Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd., (2021) 3 SCC 673 : (2021) 2 SCC (Civ) 323] which directed Consumer Fora to render a decision on merits. We have expounded on the above principles in order to adopt a bright-line standard which obviates uncertainty on the legal position before the Consumer Fora and obviates further litigation."

3. Turning to the issue at hand, the undisputed fact(s) of the present *lis* reveal that the Impugned Order was passed by the NCDRC on 22.08.2013 i.e., prior to 04.03.2020-the date of pronouncement of the decision in ***New India Assurance 2*** ***(Supra)*** by the Constitution Bench. Accordingly, in this background it was contended by the Appellant(s) that on account of the prospective operation of the said decision, coupled with the observations of this Court in ***Diamond Exports*** ***(Supra)***, the instant appeal ought to be allowed with a direction to the NCDRC to render a decision on merits qua the underlying application seeking condonation of delay in filing the WS.

4. In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in ***New India Assurance 2*** ***(Supra)***; coupled with the finding(s) of a Bench of 3 Judges of this Court in ***Diamond Exports*** ***(Supra)*** have authoritatively brought quietus to the underlying issue. The application(s) seeking condonation of delay preferred before the *consumer fora* prior to 04.03.2020 i.e., the date of pronouncement of ***New India Assurance 2*** ***(Supra)***, must be decided on merits; and ought not to be summarily dismissed.

5. Accordingly, on an overall consideration, we are convinced that the Impugned Order be set aside; and the instant appeal be allowed with the following directions(s):

   5.1. The NCDRC is directed to adjudicate the underlying application seeking condonation of delay in filing the WS in the Underlying Complaint on merits; and

   5.2. The Registry is directed to transmit the Subject Amount and all accrued interest thereon to the NCDRC, which in turn shall deposit the Subject Amount together with all accrued interest in an interest-bearing fixed deposit account. The aforesaid

amount shall remain deposited subject to the final outcome of the Underlying Complaint before the NCDRC.

6. The appeals are accordingly allowed. Pending application(s), if any, stand disposed of. No order as to cost(s).

Result of the cases: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 782 : 2024 INSC 661

Suraj Singh Gujar & Anr.
v.
The State of Madhya Pradesh & Ors.

(Criminal Appeal No. 3731 of 2024)

30 August 2024

[Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Appellants were convicted by the Trial Court u/ss.323, 324 and 325 r/w. s.34 of IPC. It is stated by the appellants that they have settled the dispute with the injured persons *vide* compromise deed dated 29.01.2024. In the instant appeal, they are seeking permission of the Court for compounding the offence.

Headnotes†

Penal Code, 1860 – ss.323, 324 and 325 r/w. s.34 – Constitution of India – Art.142 – Incident between relatives – Conviction under non-compoundable offences set aside:

Held: On perusal of affidavits filed, this Court found that since the appellants are the cousin of respondents no.2 and 3 and have tendered an unconditional apology regarding the incident, these respondents have agreed to compound the offence – A similar stand has been taken by respondent no. 4, who is the uncle of the appellants – As far as Sections 323 and 325 of the IPC are concerned, offences under these provisions are compoundable but the offence under Section 324 of the IPC is a non-compoundable offence – In a series of cases, considering that the incident occurred between relatives and the incident is of such a nature which did not have much impact on society, this Court had set aside the conviction by invoking its power under Article 142 of the Constitution in matters involving non-compoundable offences – However, this is to be done only in exceptional cases after considering various factors including the nature of injuries, relation between parties and the impact of crime on society, etc – In instant case, the incident occurred on 20.05.2011 relating to a minor issue where respondent no.2 was trying to tie bullocks to which the appellants objected by saying that it was their land – As is clear from the compromise, the appellants and complainant side are close relatives and

after settling their disputes, both sides have agreed to maintain peace and harmony in the society – Taking all of this into account, the powers under Article 142 of the Constitution are invoked and the conviction of appellants in the present case are set aside. [Paras 4, 5, 6, 7]

Case Law Cited

Ramgopal & Anr. v. State of M.P [2021] 6 SCR 249 **: (2022) 14 SCC 531 – relied on.**

Murali v. State [2021] 1 SCR 201 **: (2021) 1 SCC 726;** *Manjit Singh v. State of Punjab & Anr.* **(2020) 18 SCC 777;** *Kailash Chand v. State of Rajasthan* **(2021) 18 SCC 534;** *Srinivasan Iyenger & Anr. v. Bimla Devi Agarwal & Ors.* **(2019) 4 SCC 456;** *Ramawatar v. State of M.P* [2021] 10 SCR 499 **: (2022) 13 SCC 635 – referred to.**

List of Acts

Penal Code, 1860; Constitution of India.

List of Keywords

Section 323 of Penal Code, 1860; Section 324 of Penal Code, 1860; Section 325 of Penal Code, 1860; Settlement of dispute; Compromise between the parties; Compoundable offence; Non-compoundable offence; Nature of injuries; Incident between relatives; Article 142 of the Constitution.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3731 of 2024

From the Judgment and Order dated 26.12.2023 of the High Court of M.P. Principal Seat at Jabalpur in CRLA No. 1999 of 2013

Appearances for Parties

Ms. Deeksha Saggi, Abhishek Kumar, Rituparn Uniyal, K Anil Singh, Ram Lal Roy, Advs. for the Appellants.

D. S. Parmar, A.A.G., Ms. Mrinal Gopal Elker, Abhimanyu Singh-G.a., Saurabh Singh, Ms. Shruti Verma, Nayan Mishra, Shivang Jain, Satyajeet Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Leave granted.

2. The appellants have been convicted by the Trial Court under Sections 323, 324 and 325 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months, six months and one year for respective offences. Vide the impugned order dated 26.12.2023, Madhya Pradesh High Court disposed of the criminal appeal of appellants by maintaining their conviction and sentence as awarded by the Trial Court.

3. Now, the appellants have filed the present appeal stating that they have settled the dispute with the injured persons vide a Compromise Deed dated 29.01.2024 and thus, pray before us to grant permission for compounding the offence.

The relevant portion from paragraphs 12 to 17 of the Settlement Deed reads as follows:

> *"12. That the First Party and Second Party are Uncle and Nephew in relation, thereby with the interference of elders of the family members, the First Party and Second Party have agreed to settle their dispute amicably.*
>
> *13. That the First Party has tendered unconditional apology to the Second Party before the elder members of their families and the Second Party being the uncle and looking at the age of First Party has agreed to forgive the First Party on the unconditional apology tendered by the first party.*
>
> *14. That the Second Party and First Party have agreed to compound their offence with the leave of the Hon'ble Court.*
>
> *15. That the present MOU has been signed and executed by the SECOND PARTY out of his own free will without any fear, pressure, coercion and undue influence of others.*
>
> *16. That the FIRST PARTY and SECOND PARTY have also agreed that in future no such dispute will arise between the First Party and Second Party and further, they have also agreed that they will maintain peace and harmony in the society.*

17. That all the disputes in relation to above-mentioned FIR and Cases have been amicably settled by the parties and neither party shall file against the other, or against their family, relative successor or assign any criminal case in relation to the above-mentioned FIR and Cases."

4. When this matter came for hearing before this Court on 22.04.2024, we had directed the appellants to implead the injured persons as party respondents and thereafter, the impleaded private respondents were asked to file the affidavits regarding their stand on compounding of the offences. We have gone through the affidavits and found that since the appellants are the cousin of respondents no.2 and 3 and have tendered an unconditional apology regarding the incident, these respondents have agreed to compound the offence. A similar stand has been taken by respondent no. 4, who is the uncle of the appellants.

5. As far as Sections 323 and 325 of the IPC are concerned, offences under these provisions are compoundable but the offence under Section 324 of the IPC is a non-compoundable offence.

6. Courts cannot grant permission to compound the non-compoundable offences, on the basis of any sort of compromise between the parties, as it would be contrary to what has been provided by legislation, except the High Court under Section 482 of Cr.PC and the Apex Court in exercise of its powers under Article 142 of the Constitution of India.

The compromise between the parties in non-compoundable cases has been taken into consideration by this Court in various occasions to reduce the sentence of the convicts. (**See:** ***Murali v. State*** ***(2021) 1 SCC 726***; ***Manjit Singh*** *v.* ***State of Punjab & Anr. (2020) 18 SCC 777***) Also, in a series of other cases, considering that the incident occurred between relatives and the incident is of such a nature which did not have much impact on society, this Court had set aside the conviction by invoking its power under Article 142 of the Constitution in matters involving non-compoundable offences. (See: ***Kailash Chand*** *v.* ***State of Rajasthan*** **(2021) 18 SCC 534**; ***Srinivasan Iyenger & Anr.*** *v.* ***Bimla Devi Agarwal & Ors. (2019) 4 SCC 456***; ***Ramawatar v. State of M.P*** ***(2022) 13 SCC 635***)

However, this is to be done only in exceptional cases after considering various factors including the nature of injuries, relation between parties and the impact of crime on society, etc. While discussing the powers of Article 142 of the Constitution and Section 482 CrPC (in relation to High Courts) in quashing criminal proceedings in non-compoundable offences, this Court in ***Ramgopal & Anr. v. State of M.P*** ***(2022) 14 SCC 531*** observed as follows:

> **"19.** We thus sum up and hold that as opposed to Section 320 CrPC where the Court is squarely guided by the compromise between the parties in respect of offences "compoundable" within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 CrPC or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 CrPC. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind:
>
> **19.1.** Nature and effect of the offence on the conscience of the society;
>
> **19.2.** Seriousness of the injury, if any;
>
> **19.3** Voluntary nature of compromise between the accused and the victim; and
>
> **19.4** Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

Considering the aforesaid factors, we have no doubt that the present case, which we are dealing with, is a fit case to invoke our powers under Article 142 of the Constitution.

7. In our case, the incident occurred on 20.05.2011 relating to a minor issue where respondent no.2 was trying to tie bullocks to which the appellants objected by saying that it was their land. As is clear from the compromise, the appellants and complainant side are close relatives and after settling their disputes, both sides have agreed to maintain peace and harmony in the society. Taking all of this into

account, we invoke our powers under Article 142 of the Constitution and hereby, set aside the conviction of appellants in the present case. Appellants, who are already outside jail, need not surrender.

8. Accordingly, the present appeal stands disposed of along with the pending applications, if any.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 788 : 2024 INSC 648

Ravi Agrawal
v.
Union of India & Another

Writ Petition (Civil) No. 706 of 2020

20 August 2024

[B.V. Nagarathna and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Matter pertains to the issue that if the amendment to s.80DD of the Income Tax Act, 1961 can be given retrospective effect.

Headnotes†

Income Tax Act, 1961 – s.80DD (as amended) – Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability – As per amendment to s.80DD, on attaining the age of 60 years or more by an individual subscriber or a member of an HUF, the payment or deposit to the scheme envisaged u/s.80DD can be discontinued and the monetary benefit which would have accumulated can be made use of – Amendment, if can be given retrospective effect:

Held: Amendment to s.80DD cannot be given retrospective effect – Plea that the amendment to s.80DD be applied retrospectively to policies which were taken prior to 2014 so that the benefit of the amendment is given to those subscribers also, cannot be accepted – Plea for retrospective operation of the amendment not in the interest of the disabled persons – Whole object of Jeevan Adhar Policy is to benefit disabled persons by making provision by the subscriber post his demise – Concern and apprehension of a caregiver or subscriber of a policy for a disabled family member or other person for whose benefit the policy is taken after the demise of the caregiver is of utmost significance – It is only with that object that the caregiver or a subscriber would take such a policy so that he would not leave a disabled person in the lurch on his demise – Insurance contract is in a sense, a commercial contract, having certain terms and conditions and the sub-stratum of the contract cannot be removed by giving a retrospective operation to the amendment – Benefit u/s.80DD would have been availed by the subscribers at the time when they have subscribed to the policy. [Paras 7, 8]

Ravi Agrawal v. Union of India & Another

Case Law Cited

Ravi Agrawal v. Union of India [2019] 1 SCR 8 – **referred to.**

List of Acts

Income Tax Act, 1961; Finance Act, 2022; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Rights of Persons with Disabilities Act, 2016; Life Insurance Corporation Act, 1956.

List of Keywords

Amendment to s.80DD of the Income Tax Act; Retrospective operation of the amendment; Jeevan Adhar Policy; Benefit of disabled persons; Caregiver or subscriber of a policy for a disabled family member; Insurance contract.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 706 of 2020

(Under Article 32 of The Constitution of India)

Appearances for Parties

Partha Sil, Amicus Curiae.

Tavish Bhushan Prasad, Ms. Sayani Bhattacharya, Abhiraj Chowdhary, Anirudh Gupta, Chirag Joshi, Advs. for the Petitioner.

N Venkatraman, A.S.G., Mrs. Nisha Bagchi, Kailash Vasdev, Sr. Advs., Raj Bahadur Yadav, Mrs. Gargi Khanna, H. R. Rao, Mrs. Vimla Sinha, Mrs. Ruchi Gaur Narula, Shlok Chandra, Navanjay Mahapatra, R. Chandrachud, Dhuli Venkata Krishna, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

This writ petition is filed under Article 32 of the Constitution of India as a Public Interest Litigation seeking the following prayers to be granted in exercise of powers of this Court under Article 142 of the Constitution:

> "a. Issue a writ of Mandamus under Article 32 of the Constitution of India or any other appropriate writ, order or directions under Article 142 of the Constitution

of the India to the Respondents to execute/carry out the decision/directions of the Central Information Commission given on 27th June, 2019 in the Second Appeal No.CIC/LICOI/A/ 2018/611292-BJ of the Petitioner.

b. Issue a writ of Mandamus under Article 32 of the Constitution of India or any other appropriate writ, order or directions under Article 142 of the Constitution of the India to the Respondents to take cognizance of the judgment passed by the Apex Court in Writ Petition (Civil) No.1107 of 2017 dated January 03, 2019 and initiate suitable necessary action accordingly.

c. Issue order or directions to annul/strike down clause(a) of sub-section (2) of Section 88DD of the Income Tax which is against the objective of the legislation and violating the fundamental rights of the handicapped person provided under Article 14 of the Constitution of the India.

d. Pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case."

2. We have heard Mr. Partha Sil learned counsel who has been appointed to assist this Court and learned senior counsel Mr. Kailash Vasdev for Respondent No.2 and learned senior counsel Ms. Nisha Bagchi for Respondent-Union of India and perused the material on record.

3. Having heard learned counsel for the respective parties, we find that the concerns expressed by the petitioner in this writ petition have been assuaged to a certain extent inasmuch as the Parliament has amended Section 80DD of the Income Tax Act, 1961 (hereinafter referred to as the "Act" for the sake of brevity). The said provision deals with payment of annuity of a lump sum amount for the benefit of a dependant, being a person with disability, in the event of death of the individual or the member of a Hindu Undivided Family (HUF) in whose name the subscription to the scheme stipulated in the said provision has been made.

4. For easy reference, the said provision is extracted as under:

> "80DD. Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability.–
>
> (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year.-
>
> (a) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or
>
> (b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability,
>
> the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of seventy-five thousand rupees from his gross total income in respect of the previous year:
>
> Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "seventy-five thousand rupees", the words "one hundred and twenty-five thousand rupees" had been substituted.
>
> (2) The deduction under clause (b) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:-
>
> (a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;

(b) the assessee nominates either the dependant, being a person with disability or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed:

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income."

By virtue of the Finance Act, 2022, Section 80DD was amended with effect from 01.04.2023, in the following terms:

(I) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability,—

(i) in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made; or

(ii) on attaining the age of sixty years or more by such individual or the member of the Hindu undivided family, and the payment or deposit to such scheme has been discontinued;";

(II) after sub-section (3), the following sub-section shall be inserted, namely:–

"(3A) The provisions of sub-section (3) shall not apply to the amount received by the dependant, being a person with disability, before his death, by way of annuity or lump sum by application of the condition referred to in sub-clause (ii) of clause (a) of sub-section (2)."

5. Learned counsel for the petitioner submitted that having regard to the order passed by this Court in the case of ***Ravi Agrawal vs. Union of India,*** being Writ Petition (C) No.1107/2017 disposed of on 03.01.2019 and the observations made therein, the Parliament has amended Section 80DD of the Act in terms of Section 21 of the Finance Act, 2022. Consequently, on attaining the age of 60 years or more by an individual subscriber or a member of an HUF, the payment or deposit to the scheme envisaged under Section 80DD can be discontinued and the monetary benefit which would have accumulated can be made use of. It is submitted that the said amendment ought to be made retrospective as the same is with effect from 01.04.2023 to the existing policies as it will benefit a large number of subscribers who are interested in making use of the benefit of the such policies for the benefit of the disabled persons on turning 60 years of age. That an option could be reserved to the subscribers to have the benefit of the amendment in respect of policies which were made much prior to 2014 as in the said year such policies have been discontinued. He contended that if the amendment is given a retrospective effect, many subscribers as well as disabled persons would benefit and hence the concerns of the petitioner being purely in public interest may be considered and relief may be granted.

6. *Per contra,* learned senior counsel appearing for the respondent contended that Section 80DD refers to a situation where the benefit of the policy would be provided to a disabled person only on the death or demise of the caregiver or the subscriber. The event at which the benefit of the policy would be given to the disabled person is on the death of the subscriber. It is only then the policy would come to end and the monetary benefit would be given to the disabled person. That there is a salient object with which the terms and conditions of the policy have been devised. That having regard to the order of this Court on 03.01.2019, there has been an insertion of a clause under Section 80DD taking into consideration the concern expressed by the very same petitioner herein in the earlier writ petition and to that extent, amendment has been made. But it is too farfetched for the petitioner to seek retrospective operation of the said amendment to the existing policies. It was contended that the terms of the policies cannot be changed subsequent to their crystallization and the premiums being paid on the said terms. Therefore, there can be no retrospective operation of the amendments.

7. We have considered the submissions advanced at the Bar in light of the object of Section 80DD and the fact that pursuant to the order of this Court, the Parliament has taken note of the observations made in the said order and has amended Section 80DD as extracted above. We find it difficult to accept the plea made by the learned counsel for the petitioner to the effect that the said amendment be applied retrospectively to policies which were taken prior to 2014 so that the benefit of the amendment is given to those subscribers also. The reasons are not far to see. The whole object of Jeevan Adhar Policy is to benefit disabled persons by making provision by the subscriber post his demise. The concern and apprehension of a caregiver or subscriber of a policy for a disabled family member or other person for whose benefit the policy is taken after the demise of the caregiver is of utmost significance. It is only with that object that the caregiver or a subscriber would take such a policy so that he would not leave a disabled person in the lurch on his demise. If that is the object of the policy then we do not think the subscriber or the caregiver of the subscriber should be given the liberty to discontinue the policy during his lifetime on attaining 60 years of age. That would only go against the object with which the policy has been taken and against the interest of the beneficiary, namely, a disabled person.

8. In the circumstances, we do not think that the plea for retrospective operation of the amendment is in the interest of the disabled persons nor can this Court give a retrospective operation to the amendment. This is particularly having regard to the fact that an insurance contract is in a sense, a commercial contract, having certain terms and conditions and the sub-stratum of the contract cannot be removed by giving a retrospective operation to the amendment. The benefit under Section 80DD of the Act would have been availed by the subscribers at the time when they have subscribed to the policy.

9. It is also relevant to note that the order passed by this Court on 10.02.2023 in Contempt Petition (C) No.408/2024 arising from W.P.(C) No.1107/2017 (the earlier writ petition), this Court disposed of the contempt petition for the reason that the Respondent-Union of India had amended Section 80DD of the Act via Budget 2022-2023 Finance Act and therefore, the grievance of the persons like the petitioner had stood addressed though with prospective effect.

10. We have also considered the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, 1992; and the subsequent enactments, namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which has been substituted by the Rights of Persons with Disabilities Act, 2016, as well as the Convention on the Rights of Persons with Disabilities and Optional Protocol 2006; and, the provisions of the Life Insurance Corporation Act, 1956.

11. In view of the said observations, we are not inclined to take a different view of the matter and particularly having regard to the reasons assigned by us as aforesaid.

In the circumstances, the writ petition stands disposed of.

We place on record our sincere appreciation for the valuable assistance rendered by Mr. Partha Sil, learned counsel appointed to assist this Court.

Result of the case: Writ petition disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 796 : 2024 INSC 665

Chabi Karmakar & Ors.
v.
The State of West Bengal

(Criminal Appeal No.1556 of 2013)

29 August 2024

[Sudhanshu Dhulia and J.B. Pardiwala, JJ.]

Issue for Consideration

The appellants have been convicted u/ss.498A, 304B and 306 r/w.s.34 of the IPC. The Trial Court had convicted sister-in-law (appellant no.1), husband (appellant no.2) and mother-in-law of the deceased and sentenced them to suffer life imprisonment, 3 years R.I and 10 years R.I for offences u/ss.304B, 498A and 306 of IPC respectively, along with fine and other default stipulations. Both the conviction and the sentence of the present appellants have been upheld in appeal and the High Court.

Headnotes†

Penal Code, 1860 – s.498A, 304B and s.306 r/w. s.34 – Evidence Act, 1872 – s.113 – Victim-deceased committed suicide by hanging herself in her matrimonial house – The deceased was alone at the time of the incident and the appellant No. 2, the husband was not in the house at the time of the incident – The case of the prosecution is that there was a harassment of deceased which was connected to the demand of dowry, which led the deceased to commit suicide:

Held: During the pendency of the appeal, one of the appellants i.e. appellant no. 3 (mother-in-law of the deceased) had passed away and the case against her stands abated – From the evidence which has been placed by the prosecution, there are certain facts that have been proved beyond any doubt which are: (i) That the deceased died within seven years of marriage; (ii) The death was by suicide in her matrimonial house; and (iii) There was harassment at the hands of her in-laws and particularly by the husband; (iv) And that there was marital discord between husband and wife – As far as appellant no.1 (sister-in-law of deceased) is concerned, she is a married woman and at the relevant point of time, admittedly, she was residing with her

family at her matrimonial home – There is no specific evidence that has come in the form of any of the prosecution witnesses that may connect appellant no. 1 to the commission of the crime – After going through the evidence of PW-1, PW-3, PW-4 and P16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no.2) which compelled her to commit suicide – However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry – Trial Court raised a presumption u/s. 113B of Evidence Act to convict the appellants u/s. 304B of IPC – In the instant case, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence it is not a case of dowry death u/s.304B of the IPC – After having considered all the relevant aspects of the matter, and the evidence of the prosecution, this Court is of the opinion that a case of abetment of suicide u/s.306 of IPC and cruelty u/s. 498A of IPC is made out against the appellant No. 2, although the offence u/s.304B is not made out and consequently, the conviction of appellant no.2 u/s.304B of IPC is set aside – With respect to the offences u/ss.306 and 498A, the appellant No. 2 is convicted and sentenced to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count – Also, appellant no.1 is acquitted for all the offences. [Paras 4, 9]

Case Law Cited

Charan Singh alias Charanjit Singh v. State of Uttarakhand [2023] 3 SCR 511 **: 2023 SCC OnLine SC 454;** *Rajinder Singh v. State of Punjab* [2015] 2 SCR 835 **: (2015) 6 SCC 477;** *State of Madhya Pradesh v. Jogendra & Anr.* [2022] 2 SCR 295 **: (2022) 5 SCC 401 – referred to.**

List of Acts

Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Section 498A of Penal Code, 1860; Section 304B of Penal Code, 1860; Section 306 of Penal Code, 1860; Presumption u/s. 113B of Evidence Act; Matrimonial house; Marital discord; Cruelty; Suicide by hanging; Dowry; Harassment.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1556 of 2013

From the Judgment and Order dated 29.06.2012 of the High Court of Calcutta in CRA No. 414 of 2009

Appearances for Parties

Ms. Arundhati Katju, Ms. Shristi Borthakur, Ms. Ritika Meena, Ms. Pinki Aggarwal, Sailesh Kumar Gupta, Mrs. Priya Puri, Advs. for the Appellants.

Srisatya Mohanty, Ms. Astha Sharma, Abhijit Pattanaik, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. The appellants have been convicted under Sections 498A, 304B and 306 read with Section 34 of the Indian Penal Code. The Trial Court had convicted sister-in-law (appellant no.1), husband (appellant no.2) and mother-in-law of the deceased and sentenced them to suffer life imprisonment, 3 years R.I and 10 years R.I for offences under Sections 304B, 498A and 306 of IPC respectively, along with fine and other default stipulations. Both the conviction and the sentence of the present appellants have been upheld in appeal and the High Court has dismissed the appeal. During the pendency of the appeal, one of the appellants i.e. appellant no. 3 (Sova Rani Karmakar, the mother-in-law of the deceased) had passed away and the case against her stands abated.

2. The brief case of the prosecution is as follows:

   The deceased, Sonali Karmakar, and the appellant No. 2, Samir Karmarkar were married in March 2003, and out of the wedlock, there is a son who was born on 4.9.2004 (Now 20 years of age). On 2.5.2006 the deceased committed suicide by hanging herself in her matrimonial house. The deceased was alone at the time of the incident and the appellant No. 2, the husband was not even in the house at the time of the incident. The appellant no. 2 was informed and the deceased had been taken to the Krishnanagar hospital

where she was declared dead. An inquest report was conducted at the hospital and a post-mortem was conducted on 03.05.2006 by Dr. Ajit Kumar Biswas (PW-15). Post-mortem report shows that there were ligature marks around the neck of the deceased and the nature of the ligature marks shows that it is a case of suicide. Apart from the ligature marks, there were no other ante-mortem injuries on the body of the deceased. The report also showed that the deceased was 22 years of age at the time of her death.

An FIR was lodged by the brother of the deceased at Krishnaganj Police Station, Nadia on 07.05.2006 i.e. after 5 days of the incident, alleging that his sister i.e. the deceased was being harassed by her in-laws on demand of dowry made prior to her death. A case was registered under sections 498A/304B/34 and a chargesheet was filed. Thereafter, Trial Court vide order and judgment dated 5.6.2009 convicted the present appellants and mother-in-law under Sections 498A, 304B, 306 read with Section 34 of the Indian Penal Code. The case of the prosecution is that there was a harassment of deceased which was connected to the demand of dowry, which led the deceased to commit suicide.

3. Prosecution witnesses PW-1, 3 and 16 have all deposed that there was a demand of dowry about which they were informed when the deceased had come to her maternal house soon before her death. The learned counsel for the State would argue that there is evidence in the form of PW-4 that appellant no. 2 was also having an extramarital affair with another woman which led to frequent discord between the deceased and appellant no. 2 and this was another cause of her harassment.

The learned counsel for the appellants would, however, argue that this cannot be construed as a demand for dowry and would not come within the definition of dowry as defined under Section 2 of the Dowry Prohibition Act, 1961 which reads as under:

> "Definition of 'dowry' – In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly –
>
> (a) By one party to a marriage to the other party to the marriage; or

> (b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,
>
> At or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dowry or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat)* applies."

The point which is made by learned counsel for the appellants would be that although a demand can be made either before or "any time after the marriage", it should be in connection with the marriage of the said parties. The counsel for the appellants further argued that the demand for dowry has not been fully established by the prosecution hence the death as occurred on 02.05.2006 cannot be termed as a dowry death.

4. We have heard arguments and counterarguments from both parties and have gone through the material on record. From the evidence which has been placed by the prosecution, there are certain facts that have been proved beyond any doubt which are:

   (i) That the deceased died within seven years of marriage;

   (ii) The death was by suicide in her matrimonial house; and

   (iii) There was harassment at the hands of her in-laws and particularly by the husband;

   (iv) And that there was marital discord between husband and wife.

5. As far as appellant no.1 (sister-in-law of deceased) is concerned, we are of the view that the prosecution has failed to place any credible evidence for the involvement of appellant no. 1 i.e. the sister of appellant no. 2 and sister-in-law of the deceased. Moreover, appellant no. 1 is a married woman and at the relevant point of time, admittedly, she was residing with her family at her matrimonial home. There is no specific evidence that has come in the form of any of the prosecution witnesses that may connect appellant no. 1 to the commission of the crime and the Trial Court as well as the appellate Court have not considered this aspect as it should have been considered on the weight of the evidence which was placed by the prosecution.

Now, the only question left to be determined is regarding the guilt of appellant no.2 (husband).

6. After going through the evidence of PW-1, PW-3, PW-4 and P-16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no.2) which compelled her to commit suicide. However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry. With respect to the demand for dowry, they have just made some general statements which are not sufficient to convict the appellants under section 304B of IPC.

7. Trial Court raised a presumption under section 113B of Evidence Act to convict the appellants under section 304B of IPC. The High Court did not go into the question of whether the trial court was right in relying upon section 113B of the Evidence Act.

In *Charan Singh alias Charanjit Singh vs. State of Uttarakhand 2023 SCC OnLine SC 454,* where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and section 304B of IPC, had noted that:

> "21.....It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act.....
>
> 22. XXXXXXX
>
> 23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B and Section 113B of the Indian Evidence Act having not being fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC."

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304B of the Indian Penal Code. PW-1 and PW-3 had only stated that deceased used to tell them about her torture. PW-4 (mother of the deceased) did not speak about any demand of dowry after marriage. Moreover, this witness had said that appellant no.2 used to assault her deceased daughter as the deceased had objections to the illicit relation of appellant no.2 with another woman. PW-16, who is the cousin of the deceased, had deposed in court almost a year after the testimony of PW-1, 3 & 4 and his deposition regarding the physical assault of the deceased in connection with the demand of dowry is also not believable. Considering the aforesaid, in our view, the trial court erred in raising a presumption under Section 113B of the Indian Evidence Act, even though the demand for dowry was not established.

8. On the other hand, the learned counsel for the State of West Bengal would rely on two judgments of this Court, seeking appellants' conviction under Section 304B of IPC, both of which were decided by Three Judges' Bench of this Court: *Rajinder Singh vs. State of Punjab* (2015) 6 SCC 477 and *State of Madhya Pradesh v. Jogendra & Anr.* (2022) 5 SCC 401.

The facts in *Rajinder Singh (Supra)* were entirely different. In that case, the deceased had died due to consumption of poison and there were specific allegations against in-laws in the form of evidence from the deceased's father, who had given credible evidence that the in-laws were demanding money for the construction of the house. There was also evidence of giving a she-buffalo to pacify the in-laws. Father of the deceased therein further deposed how the Sarpanch and Ex-Sarpanch of their village went to the matrimonial home of the deceased for reconciliation where the father of deceased had promised to give money after harvest of crops.

Jogendra (Supra) was decided by taking into account the peculiar facts of that case where the evidence of PW-1 therein contained specific allegations of constant demand for dowry. It was stated that deceased was asked to raise Rs.50,000 for the construction of house.

He further stated that there was even an attempt by the 'people of society' to settle the matrimonial discord between the parties.

In paragraph 9 of *Rajinder Singh (Supra)*, this Court had discussed the ingredients of Section 304B of IPC as follows:

> "9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:
>
> (*a*) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
>
> (*b*) such death must have occurred within seven years of her marriage;
>
> (*c*) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
>
> (*d*) such cruelty or harassment must be in connection with the demand for dowry."

The evidence placed before us, in the case at hand, is not sufficient to prove the fourth ingredient i.e. cruelty or harassment in connection with the demand for dowry, as laid down by the abovementioned case.

9. All the same, having considered all the relevant aspects of the matter, and the evidence of the prosecution, we are also of the opinion that a case of abetment of suicide under Section 306 of IPC and cruelty under Section 498A of IPC is made out against the appellant No. 2, although the offence under Section 304B is not made out and consequently, we set aside the conviction of appellant no.2 under Section 304B of IPC. With respect to the offences under Section 306 and 498A, we convict the appellant No. 2 and sentence him to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count. Both the sentences shall run concurrently and in default of fine, he shall undergo further imprisonment of 3 months. Further, we direct that the fine payable shall be paid to the nearest relative of the deceased within a period of 3 months from today. The appellant no.2 shall surrender before the concerned Court within four weeks from today and undergo the remaining sentence.

Also, we allow the appeal with respect to appellant no. 1 by acquitting her for all offences in present case. As she is presently on bail, so she need not surrender.

The Appeal is disposed of accordingly.

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

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 805 : 2024 INSC 653

Steve Kanika
v.
New Okhla Industrial Development Authority (Noida) & Anr.

(Civil Appeal No. 9815 of 2024)

27 August, 2024

[Ahsanuddin Amanullah* and Ujjal Bhuyan,* JJ.]

Issue for Consideration

The appellant's father had applied for allotment of a plot under the Respondent No.1/New Okhla Industrial and Development Authority (NOIDA) in the year 2006. The father of the appellant had passed away on 08.11.2007. After an open lottery held on 01.10.2009, the father of the appellant was allotted a plot on 26.10.2009. However, NOIDA on 21.09.2011 cancelled the allotment on the ground that it was made in favour of a dead person on the day such draw of lots was held.

Headnotes†

Allotment – Allotment of plot/land – Appellant submitted that the application was made to NOIDA by the late father of the appellant in his individual capacity and there cannot be any denial of the fact that whatever civil right a person has passes on to the next generation/Legal Representatives upon his death:

Held: The fact remained that the father of the appellant had properly applied and was satisfying all the prerequisite conditions for allotment which was followed by actual draw of lots and issuance of allotment letter; undoubtedly though after his passing away – The demise of the appellant's father would not negate the right which stood vested in the appellant – The appellant is the Legal Representative and heir of his father – In the instant case, vide letter dated 10.11.2009, the appellant had intimated NOIDA about the demise of his father on 08.11.2007 – With the letter dated 23.11.2009, the appellant, alongwith documents, had also submitted a Demand Draft for Rs.7,46,825/-, which continues to be with NOIDA till date, as averred by the appellant – What prompted NOIDA to accept the Demand Draft in the first instance, and then retain the same even after cancelling the allotment has not been explained – Further, there

* Author

is no explanation as to why it took NOIDA two years to cancel the allotment, once, admittedly, it was in the know of the death of the appellant's father – Had the cancellation followed in close proximity to 10.11.2009 or had NOIDA refused to accept the Demand Draft or returned it soon thereafter, the fate of this case could have taken a different turn – On an overall circumspection, the appellant has made out a case for the Court's intervention – NOIDA directed to issue fresh allotment letter in the name of appellant. [Paras 8, 10, 11]

Case Law Cited

Greater Mohali Area Development Authority v. Manju Jain [2010] 10 SCR 134 **: (2010) 9 SCC 157 – distinguished.**

List of Keywords

Allotment; Allotment of plot; Death of original allottee; Draw of lots; Cancellation of allotment; Civil rights; Legal Representative; Intimation of death; Acceptance of demand draft; Fresh allotment letter.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9815 of 2024

From the Judgment and Order dated 21.10.2019 of the High Court of Judicature at Allahabad in WC No. 71420 of 2011

Appearances for Parties

P.S. Patwalia, Sr. Adv., Ms. Ayshwarya Chandar, Advs. for the Appellant.

Anil Kaushik, Sr. Adv., Ms. Arunima Dwivedi, Shashank Shekhar Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah & Ujjal Bhuyan, JJ.

Heard Mr. P.S. Patwalia, learned senior counsel for the appellant and Mr. Anil Kaushik, learned senior counsel and Mr. Shashank Shekhar Singh, learned counsel for the Respondents No.1 and 2 respectively. Leave granted.

2. The issue involved in this case is simple.

FACTUAL OVERVIEW:

3. The appellant's father had applied for allotment of a plot under the Respondent No.1/New Okhla Industrial and Development Authority (hereinafter referred to as 'NOIDA') in the year 2006. Be it noted, the appellant had been authorised to apply as such in his own behalf for a company, pursuant to consent and no-objection by the other Directors of the company. After an open lottery held on 01.10.2009, the father of the appellant was allotted a plot on 26.10.2009, for which an allotment letter of even date was issued in favour of the appellant's father. The allotment was of Plot No.144, Block-C, Sector-100, Noida, admeasuring 176.40 sqr. metres.

4. However, in the interregnum, the original allottee i.e. the father of the appellant had passed away on 08.11.2007.

5. In that view of the matter, NOIDA on 21.09.2011 cancelled the allotment on the ground that it was made in favour of a dead person on the day such draw of lots was held. Assailing the said action, the appellant filed a writ petition *viz*. Writ C No. 71420/2011 before the High Court of Judicature at Allahabad, which was dismissed on 21.10.2019 (hereinafter referred to as the 'Impugned Order') by a Division Bench.

SUBMISSIONS:

6. Learned senior counsel for the appellant submitted that the application was made to NOIDA by the late father of the appellant in his individual capacity and there cannot be any denial of the fact that whatever civil right a person has passes on to the next generation/Legal Representatives upon his death. Thus, in the present case, it was contended that the moment the father passed away, the appellant stepped into his shoes. As such, it was submitted that all rights which had accrued in favour of the late father of the appellant i.e., a right to be considered in the draw of lots devolved to the appellant. Upon subsequently succeeding in the draw of lots, the allotment letter was also issued. Mr. Patwalia contends that the allotment was wrongly cancelled by NOIDA.

7. *Per contra*, learned senior counsel for NOIDA submits that the law does not require the allotment of the plot to flow merely upon being successful in the draw of lots. Mr. Kaushik submitted that success in the draw of lots does not create any right. Further, it was contended that the person in whose favour the allotment having been made

being dead, such allotment in law could not be sustained and rightly NOIDA had cancelled the allotment, more so, for the reason that the appellant never chose to inform the NOIDA of the passing away of his father, doing so only after the allotment letter was issued. In support of his contentions, learned senior counsel referred to the decision of this Court in *Greater Mohali Area Development Authority v Manju Jain*, (2010) 9 SCC 157, the relevant being at Paragraphs No.21.[1]

ANALYSIS, REASONING AND CONCLUSION:

8. Having considered the matter, we find merit in the contentions urged by the appellant. The fact remained that the father of the appellant had properly applied and was satisfying all the prerequisite conditions for allotment which was followed by actual draw of lots and issuance of allotment letter; undoubtedly though after his passing away. In our view, the demise of the appellant's father would not negate the right which stood vested in the appellant. The appellant is the Legal Representative and heir of his father.

9. The objection taken by the learned senior counsel for NOIDA has been evaluated and the judgment *supra* relied upon by him has been examined by us. The objection cannot be accepted due to NOIDA's conduct which we deal with *infra*. We do not think the judgment is applicable in the extant facts and circumstances. *Manju Jain* (*supra*) is distinguishable for more reasons than one:

   (i) The respondent therein took a '*vague*' plea that the allotment letter was never communicated to her;

   (ii) The amounts sought for were never deposited by her, and;

   (iii) The ratio laid down was that '*if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated.*'[2]

10. In the case at hand, *vide* letter dated 10.11.2009, the appellant had intimated NOIDA about the demise of his father on 08.11.2007. Further,

---

1 '***21.*** *Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment. (See DDA v. Pushpendra Kumar Jain [1994 Supp (3) SCC 494: AIR 1995 SCC 1].)*'

2 Para 24 of ***Manju Jain*** (*supra*).

the appellant informed NOIDA that being a whole-time Director of the company, just like his father, he was competent to execute a contract with NOIDA. By way of letters dated 23.11.2009 and 18.10.2010, the appellant requested NOIDA to move forward with the allotment. With the letter dated 23.11.2009, the appellant, alongwith documents, had also submitted a Demand Draft for Rs.7,46,825/- (Rupees Seven Lakhs Forty-Six Thousand Eight Hundred and Twenty-Five only), which continues to be with NOIDA till date, as averred by the appellant. What prompted NOIDA to accept the Demand Draft in the first instance, and then retain the same even after cancelling the allotment has not been explained. What is also hard to comprehend is why it took NOIDA two years to cancel the allotment, once, admittedly, it was in the know of the death of the appellant's father since at least 10.11.2009. Had the cancellation followed in close proximity to 10.11.2009 or had NOIDA refused to accept the Demand Draft or returned it soon thereafter, the fate of this case could have taken a different turn.

11. On the first day of listing of the writ petition, the High Court on 13.12.2011 had directed NOIDA not to allot the plot in question in anybody else's favour. This order continued during the pendency of the writ proceedings. Before this Court, on the first day of hearing i.e., 02.06.2020, the parties had been directed to maintain *status quo* as on the said date. In the wake of the sequence of events, as has played out, and on an overall circumspection, the appellant has made out a case for the Court's intervention.

12. For the reasons aforesaid, NOIDA is directed to issue fresh allotment letter within four weeks from today in the name of the appellant on the same terms and conditions as was mentioned in the original letter of allotment dated 26.10.2009 with the modification that the time-limit would run from today.

13. The Impugned Order is set aside; the appeal is allowed accordingly.

14. I.A.s No. 42353/2020 and 42349/2020 are allowed. I.A. No. 42504/2020 is disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 810 : 2024 INSC 656

Navin Kumar & Ors.
v.
Union of India & Ors. Etc.

(Special Leave Petition (C) Nos. 20768-20770 of 2024)

28 August 2024

[Sudhanshu Dhulia and Pankaj Mithal, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court which quashed the appointment of the primary school teachers with B.Ed qualification.

Headnotes†

Right to Free and Compulsory Education Act, 2009 – Appointment to the post of Assistant teacher in a Primary School – Eligibility of B.Ed candidates – On facts, issuance of appointment orders in favour of the B.Ed candidates by the State of Chhattisgarh, which was after the judgment in Devesh Sharma's case wherein it was held that the candidates having B.Ed qualification were ineligible for the appointment and as such cannot be given any relief – Petitions filed by candidates holding Diploma in Elementary Education, challenging the eligibility of B.Ed. candidates – Interim order by the High Court whereby the recruitment process as regards B.Ed. candidates was directed to be kept in abeyance – Challenge to, by the B.Ed. candidates before Supreme Court – Clarificatory order by this Court that selection and appointment of B.Ed. candidates would be subject to the final decision of the High Court – Thereafter, petitions filed by the Diploma holders in Elementary Education before the High Court were allowed and service of teachers with B.Ed. Qualification terminated – Interference with:

Held: Not called for – B.Ed. qualified candidates were called by the State in the selection process, yet as they were held to be non-qualified by a judgment of this Court in **Devesh Sharma's** case, which is the law now and by logic has to be implemented, they were rightly held to be disqualified – B.Ed. is not a qualification for a teacher in a Primary School – Moreover, this aspect has already

been clarified in the order dated 08.04.2024, where only such candidates have been saved who were selected and appointed prior to the order dated 11.08.2023 in **Devesh Sharma's** Case – Since the instant petitioners were appointed post 11.08.2023 and their appointments were also subjected to the final outcome of the pending writ petition before High Court, they cannot get any benefit – Date of appointment which is certainly after the cut-off date, is important – They will stand disqualified, as they do not have the essential qualification for appointment as primary school teachers – Furthermore, r. 8(II) of the 2019 Rules placing B.Ed. as a qualification is again subsequent to the Notification of NCTE, which has already been quashed and set aside by the judgment in **Devesh Sharma's** case – Thus, by implication, qualification given in the Chhattisgarh Rules to the extent it makes B.Ed. a qualification also cannot be implemented, following the law laid down in **Devesh Sharma's** case – Also, order of NCTE whereby the judgment in **Devesh Sharma's** case was communicated to Chief Secretaries of all State Governments for further appropriate action has been shown to the Court – In spite of this, appointments were given to B.Ed. candidates which was illegal and has rightly been quashed by the High Court – Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019. [Paras 10-13]

Case Law Cited

Devesh Sharma v. Union of India **[2023] 11 SCR 167 : 2023 INSC 704 – relied on.**

List of Acts

Right to Free and Compulsory Education Act, 2009; Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019.

List of Keywords

Post of Assistant teacher in Primary School; Eligibility of B.Ed candidates; Diploma in Elementary Education; Recruitment process; Devesh Sharma's Case.

Case Arising From

CIVIL APPELLATE JURISDICTION : Special Leave Petition(C) Nos. 20768-20770 of 2024

From the Judgment and Order dated 02.04.2024 of the High Court of Chhattisgarh at Bilaspur in WPS No. 3541, 5788 and 7344 of 2023

With

Special Leave Petition (C) Nos. 10295, 20777-20779, 20776, 13756, 20811 and 20812 of 2024

Appearances for Parties

K.M. Natraj, A.S.G., Apoorv Kurup, A.A.G., Amit Anand Tiwari, Sanjay Hegde, Ravindra Shrivastava, Abhishek Manu Singhvi, Ranjit Kumar, Gopal Sankaranarayanan, Ms. Meenakshi Arora, U.K. Uniyal, Sr. Advs., Arjun D Singh, Ms. Ankita Sharma, Arjun Garg, Aakash Nandolia, Ms. Kriti Gupta, Shashank Shekhar Jha, Ms. Priyanka Thakur, Subhash Chandra Jha, Archit Kaushik, Vishhal Saxxenaa, Pramod Kumar Tripathy, Ms. Erika Yagnik, Diva Kant, Anil Kumar, Abhijeet Shrivastava, Ms. Naushina Afrin Ali, Anshuman Shrivastava, Abhishek Sharma, Aniket Singh Das, Ms. Devangna Singh, Ms. Sanya Shukla, Ms. Krati Dubey, Ieeshan Sharma, Ms. Rhea Rao, Ms. Selina Raj Mevati, P S Patwalia, Amit Pawan, Hassan Zubair Waris, Suchit Rawat, Abhishek Amritanshu, Ms. Aastha Shreshta, Ms. Aastha Sherstha, Mandeep Kalra, Ms. Anushna Satapathy, Ms. Chitrangada Singh, Yashas J, Vishal Sinha, Chandratanay Chaube, Rishi K Awasthi, Piyush Vatsa, Rahul Kumar Gupta, Punit Vinay, Rahul Raj Mishra, Avinash Ankit, Manoj Kumar, D.K. Garg, Abhishek Garg, Dhananjay Garg, Akshat Srivastava, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Order

1. In ***Devesh Sharma v. Union of India***[1] (delivered on 11.08.2023), there was before us a challenge to the judgement of the Rajasthan High Court dated 25.11.2021 where it was held that for appointment of primary school teachers (i.e., teachers of Class I to Class V), the essential qualification is D.El.Ed. (i.e., Diploma in Elementary Education) and not B.Ed. (i.e., Bachelor in Education), and B.Ed. qualified candidates were held to be disqualified.

1 [2023] 11 SCR 167 : 2023 INSC 704

2. Before the Rajasthan High Court, the National Council for Teachers Education (hereinafter referred to as **"NCTE"**) notification dated 28.06.2018, by which B.Ed. qualified candidates were held eligible was, *inter alia*, under challenge. In our judgment dated 11.08.2023, we have upheld the Division Bench order of Rajasthan High Court and affirmed the findings that the essential qualification for appointment as primary school teachers is Diploma in Elementary Education and not B.Ed. Consequently, the NCTE notification dated 28.06.2018 and the regulations made therein, by which B.Ed was made a qualification, were quashed and set aside.

3. The above judgment of ***Devesh Sharma*** (supra) was delivered on 11.08.2023 and thereafter review applications, clarifications, etc. kept coming up, mainly from such candidates who were having B.Ed. qualification and were selected and appointed by different States in the recent selection process for primary school teachers. We had heard all such applicants at length and clarified that such B.Ed. qualified candidates who were selected and appointed prior to our decision in ***Devesh Sharma*** ***(supra)*** i.e. prior to 11.08.2023, shall not be disturbed as there was a special equity in their favour. Therefore, our judgement would be prospective in nature, and will not disturb the appointments of such candidates who had already been appointed prior to the judgment in ***Devesh Sharma*** ***(supra***) i.e. prior to 11.08.2023. This is what was clarified in our order dated 08.04.2024:

> As it appears that a large number of candidates with B.Ed. degree had already been appointed on the basis of eligibility criteria specified by the educational authorities, we do not think it to be equitable to effect their removal. We, accordingly hold that the judgment delivered by this Bench on 11th August, 2023 shall have prospective operation. But prospective operation of this judgment shall be only for those candidates who were appointed without any qualification or conditions imposed by any Court of Law to the effect that their appointment would be subject to final outcome of the case which might have had been instituted by them and such candidates were in regular employment without any disqualification and were appointed in pursuance of a notice of advertisement where B.Ed. was stipulated to be valid qualification. Services of

> only such candidates shall not be disturbed because of this judgment. We make it clear that this benefit is only for the candidates who were appointed prior to the date our judgment was delivered, on 11th August, 2023. Mere selection of such candidates or their participation in the process will not entitle them for a benefit under our present order.
>
> …
>
> We also make it clear that the directions contained in this order shall not be confined to the applicant state only and shall cover all cases which may be pending in different judicial fora in any State or Union territory on the same point of law.
>
> (emphasis supplied)

After our clarifications, on 08.04.2024, there should not have remained any doubts, yet clarification and review applications, kept coming up in one form or the other which were all dismissed. Now, in the present batch of petitions, the same question has again come up before this Court, this time arising out of a judgment of Chhattisgarh High Court, which has only been passed following our order in ***Devesh Sharma*** ***(supra)***.

4. The High Court in its judgment dated 02.04.2024 declared all such candidates, having B.Ed. qualification to be ineligible and disqualified for selection to the post of primary school teachers, following the decision of this Court in ***Devesh Sharma*** ***(supra)***.

5. Admittedly in the present case, the appointment orders in favour of the B.Ed candidates were issued in September 2023 by the State of Chhattisgarh, that is after the date of our judgement in ***Devesh Sharma*** ***(supra)*** which was delivered on 11.08.2023. We have already held in our order dated 08.04.2024 that such candidates cannot be given any relief.

6. Before the Chhattisgarh High Court, petitions were filed by candidates holding Diploma in Elementary Education, challenging the eligibility of B.Ed. candidates on the grounds that they were not entitled to be appointed as primary school teachers. In their defence the B.Ed. candidates had argued that B.Ed. is one of the

qualifications for appointment of elementary school teachers under the applicable Rules i.e., Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 (**"2019 Rules"**), and thus, they have the necessary qualification.

7. All the same, apprised of the order of this Court in ***Devesh Sharma (supra)***, the Division Bench of Chhattisgarh High Court had passed an interim order on 21.08.2023 whereby the recruitment process was directed to be kept in abeyance as regards B.Ed. candidates. This is what was said:

> Considering the arguments advanced by learned counsel for the parties and also considering the law laid down by the Apex Court on the issue in question passed in Civil Appeal No. 5068 of 2023 (Devesh Sharma Vs. Union of India & Others decided on 11.08.2023), the further recruitment process with regard to the candidates having B.Ed. qualification for the post of Assistant Teachers shall be kept in abeyance with immediate effect and further no final decision would be taken by the respondents in respect of such candidates till the next date of hearing.

8. This interim order of High Court was then challenged by B.Ed. candidates before this Court, where a Division Bench of this Court passed the following order dated 29.08.2023:

> In the meantime, taking into consideration that the recruitment process which was in progress, is now interrupted by the ad-interim order dated 21.08.2023 and the aspect ultimately to be considered by the High Court is with regard to the manner in which the judgment in C.A. No. 5068 of 2023 passed by this Court is to be construed, at this stage interrupting the recruitment process would not be justified.
>
> Therefore, to the said extent, we hereby stay the order dated 21.08.2023 passed by the High Court and clarify that the recruitment process, which was in progress prior to the date of the said interim order passed by the High Court, shall continue and the appointments, if any, made thereunder will however remain subject to result of the

> consideration to be made by the High Court in W.P.S No. 5788 of 2023. The selected candidates shall be informed of the same by the Appointing Authority concerned.
>
> (emphasis supplied)

9. The above order of this Court has clarified that the selection and appointment of B.Ed. candidates would be subject to the final decision of the High Court in the writ petition. Later, when they were given appointments, their Appointment Order also clearly states that this appointment is subject to the decision of Chhattisgarh High Court in the pending writ petition. Ultimately, the petitions filed by the Diploma holders (in Elementary Education) were allowed vide the impugned judgement and the logical consequence of this is that the service of teachers, with B.Ed. qualification, are liable to be terminated. In the present batch of petitions, we have before us these teachers with B.Ed. qualification whose appointments have been quashed. The State of Chhattisgarh is also before us challenging the impugned judgement and order dated 02.04.2024 of the High Court.

10. One of the arguments of the learned senior counsel (Mr. Shrivastava) for the petitioners before this Court is that this Court in ***Devesh Sharma*** ***(supra)*** had opened a small window for B.Ed. candidates who were called for selection as B.Ed. was one of the qualifications in the 2019 Rules as also in the notification of NCTE and till it was set aside such candidates cannot be called as ineligible. All we had said in ***Devesh Sharma*** ***(supra)*** was that since the law, making B.Ed. as qualification, was not struck down by any Court (as was the position in Rajasthan when recruitment to the post of teachers were taking place in 2019) such candidates ought to have been called at least. This is exactly what was said:

> "Having made the above determination we, all the same, are also of the considered opinion that the State of Rajasthan was clearly in error in not calling for applications from B.Ed. qualified candidates, for the reasons that till that time when such an advertisement was issued by the Rajasthan Government, B.Ed. candidates were included as eligible candidates as per the statutory notification of NCTE, which was binding on the Rajasthan Government, till it was declared illegal or unconstitutional by the Court."

As we know when recruitment to the post of teachers was being made in Rajasthan, B.Ed. was a qualification for teachers as per the NCTE notification. The above observation made by us was only to affirm the findings of the Rajasthan High Court which had although held that B.Ed. was not a valid "qualification" for primary teachers, yet cautioned that the Government could not have ignored the notification of the NCTE till it was declared illegal by a Competent Court. That was all. In Chhattisgarh, this was not the case. B.Ed. qualified candidates were called by the State in the selection process, yet as they were held to be non-qualified by a judgment of this Court, which is the law now and by logic has to be implemented, they were rightly held to be disqualified. How does our observations in ***Devesh Sharma*** ***(supra)*** help the petitioners, we simply fail to understand. This argument is totally misconceived. B.Ed. is not a qualification for a teacher in a Primary School. Moreover, this aspect has already been clarified in the order dated 08.04.2024, where only such candidates have been saved who were selected and appointed prior to our order dated 11.08.2023 in ***Devesh Sharma*** ***(supra)***. Since the petitioners in the present case were appointed post 11.08.2023 and their appointments were also subjected to the final outcome of the pending writ petition before High Court, they cannot get any benefit. The completion of the selection process prior to 11.08.2023 is not material. What is important is the date of appointment which is certainly after the cut-off date. They will stand disqualified, as they do not have the essential qualification for appointment as primary school teachers.

11. We have also gone through the 2019 Rules of Chhattisgarh. In Rule 8 (II), the qualification of an Assistant Teacher reads as under: -

> **"Rule 8 (II): Educational qualifications and experience –** The candidate must possess the educational qualifications and experience as prescribed for the service as shown in column (5) of Schedule III. For Preliminary education, the prescribed qualification will be applicable as per provisions of the Right to Free and Compulsory Education Act, 2009."

Column 5 of Schedule III provides that the minimum educational qualifications required for the post of teachers shall be as per Annexure I of the Rules. This Annexure prescribes the minimum qualification for Assistant Teacher as follows:

"a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known) in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.EL.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and B.Ed. qualification (graduate from the institution recognised from NCTE) shall also be eligible for appointment as teacher for classes 1 to 5. Provided he / she undergoes, after appointment, a NCTE recognised 6-month special programme in Elementary Education.

And

(b) Passed the Teacher Eligibility Test (TET), to be conducted by the appropriate Government, in accordance with the guidelines framed by NCTE for this purpose."

(emphasis supplied)

The entire reliance of the petitioner is on the above provisions. We have already seen that Rule 8(II) while prescribing the qualifications of Assistant Teacher makes a reference to the qualifications as given

under the Right to Education Act, 2009. Not only this, the aforesaid provision placing B.Ed. as a qualification is again subsequent to the Notification of NCTE dated 28.06.2018, which has already been quashed and set aside by our judgement in ***Devesh Sharma*** ***(supra)***. Therefore, by implication, qualification given in the Chhattisgarh Rules to the extent it makes B.Ed. a qualification also cannot be implemented, following the law laid down in ***Devesh Sharma*** ***(supra).***

12. In fact, we have been shown today an order of NCTE dated 04.09.2023 whereby the judgement in ***Devesh Sharma*** ***(supra)*** was communicated to Chief Secretaries of all State Governments for further appropriate action. In spite of this, appointments were given to B.Ed. candidates which was illegal and has now rightly been quashed, by the Chhattisgarh High Court.

13. In view of the above, we see no reason to interfere with the impugned judgement passed by the Chhattisgarh High Court.

14. Accordingly, all the Special Leave Petitions are hereby dismissed.

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

Result of the case: Special Leave Petitions dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 820 : 2024 INSC 646

Union of India
v.
Bahareh Bakshi

(Civil Appeal No(S).4887-4888/2024)

22 August 2024

[Hrishikesh Roy, Sudhanshu Dhulia and S.V.N. Bhatti, JJ.]

Issue for Consideration

Issue arose as regards to the presence of the estranged husband, if mandatory to process an application by the wife-foreign spouse of a citizen of India for overseas Citizen of India Card, u/s.7-A of the Citizenship Act, 1955.

Headnotes†

Citizenship Act,1955 – s.7A(1) – Registration of Overseas Citizen of India Cardholder – Application for Overseas Citizen of India (OCI) Card by wife-foreign spouse of a citizen of India – Presence of the estranged husband, if mandatory to process the application u/s.7A:

Held: Presence of the spouse of the applicant either physically or through the virtual mode is mandatory for effective consideration of the application for an OCI Card – Central Government is empowered to register the foreign spouse of a citizen of India as an OCI holder subject to such conditions, restrictions and manner as may be prescribed – Prior security clearance' by the competent authority for eligibility is also required – Act clearly allows for supplementary procedures, such as an personal interview of the foreign applicant and his/her spouse separately as specified in the Visa Manual as well as the Checklist – In the absence of any challenge to the visa manual or the checklist, and ignoring the procedure in place, the High Court erred in granting the relief of dispensing with the requirement of physical/virtual presence of the spouse as also was unjustified in holding that mandating the physical presence of the husband is arbitrary – Having considered the process for verifying the genuineness, the direction issued in the impugned judgment to dispense with the presence of the applicant's spouse, has no legal basis – Moreover, apart from the physical/virtual presence of the spouse other conditions are also to be satisfied by an applicant

as is provided under the Act, the checklist and the Visa Manual for which even a declaration by the husband may be necessary – Impugned judgments of the Single Judge and the Division Bench of the High Court unsustainable and set aside. [Paras 14-18]

List of Acts

Citizenship Act, 1955; Visa Manual, 2021; Code of Criminal Procedure, 1973.

List of Keywords

Overseas Citizen of India; OCI holder; Application for OCI Card; Prior security clearance; Checklist issued for verification of applications seeking OCI category card; Presence of couple; Presence of the estranged husband; Personal interview; Genuineness of the marital status; Supplementary procedures; Interview; Visa Manual as well as Checklist; Dispensing with the requirement of physical/virtual presence of the spouse; Special circumstance.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4887-4888 of 2024

From the Judgment and Order dated 25.03.2022 and 22.07.2021 of the High Court of Delhi at New Delhi in LPA NO. 225 of 2022 and WP(C) No. 10807 of 2020 respectively

Appearances for Parties

Mrs. Aishwarya Bhati, A.S.G., B K Satija, Merusagar Samantaray, Mrs. Savita Singh, Ishaan Sharma, Parantap Singh, Mriyank Pathak, Arvind Kumar Sharma, Akshja Singh, Advs. for the Appellant.

Ankur Mahindro, Rohan Taneja, Mohit Dagar, Aditya Kapur, Soumil Gonsalves, Ankush Satija, Rohit Bishnoi, Ms. Vaishali S, Ms. Shubhangi Jain, Ms. Sugandha Anand, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

1. Heard Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the appellant – Union of India. Also heard Mr. Ankur Mahindro, learned counsel appearing for the respondent.

2. The consideration to be made in this matter is whether the presence of the estranged husband is mandatory to process an application for Overseas Citizen of India (OCI) Card, under Section 7-A of the Citizenship Act, 1955. The respondent had filed the WP(C) No.10807/2020 in the High Court of Delhi for dispensing with the presence of the husband of the respondent. The learned Single Judge dispensed with the presence of the husband of respondent and this view was affirmed by the learned Division Bench under the impugned order dated 25.03.2022. Hence the Civil Appeal at the instance of Union of India.

3. In the Writ Petition, the respondent claimed that she is an Iranian citizen and is married to Mr. Paul Fel-El-Dingo D'Silva, an Indian citizen. He had converted to Islam, on 30.11.2008 and thereafter the marriage was solemnized in Dubai, UAE on 13.05.2009. The marriage certificate issued to the couple was translated by an Authorised Translator and certified by the Consulate General of India at Dubai, UAE. However, the respondent claims that disputes arose between Mr. Paul and her, shortly after they consummated the marriage, which led to her initial return to Iran and her subsequent relocation to Bengaluru at his insistence. It is the respondent's case that Mr. Paul claimed to have financial difficulties which motivated her to pursue her Postgraduate degree in Biotechnology in Bengaluru and her Doctorate from Mysore University to contribute to the family income. However, in the meanwhile, the relationship soured between the respondent and Mr. Paul and he left her in Bengaluru, to reside with his family in Goa. Consequently, the respondent instituted a maintenance petition under *Section 125* of the *Criminal Procedure Code, 1973,* against her estranged spouse, before the learned Family Court in Bengaluru and was awarded a monthly maintenance amount of Rs.15,000/-. Mr. Paul appealed against this order before the High Court of Karnataka, but was unsuccessful. On 17.11.2020, the respondent applied on the website for Overseas Citizen of India(OCI) Card under Section 7(1)(d) of the *Citizenship Act,1955* and generated her application for an OCI card on the basis of her marriage to Mr. Paul, and went to submit it to the local FRRO in Bengaluru on 4.12.2020. However, the officials refused to accept the form stating that the presence of Mr. Paul was necessary for processing her application for registration. It is in this context that the petition before the Delhi High Court came to be filed. The Respondent is aggrieved by the Appellant's

insistence on the physical/virtual presence of her estranged spouse, who is admittedly an Indian citizen, for the purpose of processing her OCI card application.

4. The Single Judge of the Delhi High Court allowed the writ petition of the Respondent and directed the Union of India to accept her Overseas Citizen of India(OCI) Card without the presence of her spouse. It was held that it is not mandatory u/Clause 21.2.5(vi) of Chapter 21 of the Visa Manual for personal interview to be conducted for the spouse by the Indian Mission/Post/FRRO. In the absence of any rule or guideline mandating the presence of both spouses, the checklist should not have been formulated in such a manner so as to impose the condition.

5. On 25.3.2022, the Division Bench of the Delhi High Court upheld the order of the Single Bench with a clarification that there would be no bar on the Union of India from carrying out investigation on the claim of the respondent in her application for the Overseas Citizen of India(OCI) Card. It was noted that the object of the enquiry is to be satisfied that the application is genuine and not founded upon a false claim for marriage. There could be cases where the Indian spouse may die or go missing. In such situations, it may not be possible to produce the Indian spouse. The Division Bench was of the view that insisting on producing the husband at the time of personal interview was clearly arbitrary and is only one of the modes by which genuineness of the claim can be satisfied.

6. Before this Court, it was projected from the side of the appellant that the checklist for considering an OCI card requires both the spouses to be present for an interview with the authorities. The Visa Manual was also referred to in the course of the proceeding to argue that the presence (physical or virtual) of both the applicants is essential. The Counsel for the respondent however contended that on account of the estranged relationship with her husband, the Indian citizen spouse is not available to appear before the authorities either physically or by virtual mode in support of her application for OCI card. It was further contended that since various legal proceedings are pending with the Indian husband, he is unlikely to appear before the authorities and because of the impossibility, the application be processed without insisting for the presence of the applicant's spouse at the time of the personal interview.

7. In support of their respective contentions, both sides have relied on sub-Clause (d) Section 7A of the *Citizenship Act, 1955,* which requires that the applicant for OCI card must have solemnized a registered marriage with the Indian citizen and the marriage ought to have subsisted for not less than two years immediately preceding the presentation of the application. It was argued that the High Court failed to note that *Section 7(1)(d)* and *Section 7(1)(f)* of the *Citizenship Act,1955* and para 21.1.4 and 21.2.5(vi) of the Visa Manual read together, not only require the genuineness of marriage but also whether there is a re-marriage or death of spouse etc. The Visa Manual, 2021 prescribes that it is important to cross-question the spouses separately to ascertain the genuineness of marriage. On the other hand, the Learned Counsel for the Respondent would argue that under certain conditions, it may not be necessary to produce the spouse. It is argued that it is only to ascertain the genuineness of marriage that physical/virtual present may be needed.

8. The statutory provisions concerning Overseas Citizen of India(OCI) Card are contained in Section 7A, 7B,7C and 7D of the *Citizenship Amendment Act,1955*(as amended in 2015). Though OCI Card holders remain citizens of their country, they enjoy certain privileges such as multiple-entry lifelong visa for visiting India for any purpose, exemption from registrations with the FRRO and FRO, parity with Non-Residential Indians(NRIs) in some aspects etc. Section 7A pertains to the 'Registration of Overseas Citizen of India Cardholder' whereas Section 7B covers the conferment of certain limited rights on OCI Card Holders. Section 7C deals with 'Renunciation' whereas Section 7D contains provisions regarding the 'Cancellation of Registration' as OCI Cardholder. *Section 7A(1)(d)* which is relevant for our purpose, reads as under:

> "7A. Registration of Overseas Citizen of India Cardholder-
>
> (1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—
>
> (a) ….. …..
>
> (b) ….. …..

(c) ….. …..

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India"

9. It is essential to note that the Central Government is empowered to register the foreign spouse of a citizen of India as an OCI holder "subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf". The proviso to Clause 7A(1)(d) also provides for 'a prior security clearance' by the competent authority for eligibility.

10. Such special privilege of an OCI Card may be withdrawn under Section 7D(f) which reads thus:

"**7D.** The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that:

….. ….. ….. ….. …..

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnized marriage with any other person."

11. The relevant clause of the checklist issued for verification of applications seeking OCI category card which was part of the record before the High Court reads thus:-

> "In case of marriage to Indian national, registered marriage certificate and Spouse valid Indian Passport photo page and Address page (holding Indian citizenship. (Marriage certificates issued Outside India is to be affixed with Apostille or endorsed by the concerned Indian Mission abroad). On the day of submission of application the couple must present. (only those whose marriage is registered and has subsisted for a continuous period of not lessen two years are eligible for OCI on the basis of marriage to Indian)."

12. The above would indicate that on the day of submission of application, the couple must be present. For appreciating the requirement of physical/virtual presence projected by the learned ASG, we have also perused the Visa Manual issued by the Ministry of Home Affairs and the relevant Clauses in Chapter 21 of the Visa Manual have been considered.

13. Para 21.25(vi) of the Visa Manual provides thus:

> "With a view to curb practice of entering into marriage of convenience just to obtain OCI cards by foreign nationals, a mandatory verification step of personal interview (either physical or through video conference) of all OCI applicants who apply for registration as OCI cardholder under section 7A(1)(d) of Citizenship Act, 1955 (i.e. spouse basis) has been introduced. This personal interview shall be conducted by the Indian Mission/Post/FRRO concerned at the time of document verification stage itself and the OCI application on spouse basis shall be acknowledged on the online system only after the personal interview has been held and the Indian Mission/Post/FRRO concerned have satisfied themselves about the suitability of the applicant for the registration as OCI cardholder. *A report on the personal interview along with recommendation of the Indian Mission/Post/FRRO concerned shall also be uploaded on the online system.* During such personal interview, the Indian Mission/ Post/ FRRO *may put random questions to the foreign applicant and his/her spouse separately to elicit information which may help in ascertaining the*

> *genuineness of the marital status of the applicant. The information provided during the personal interview maybe tallied with the information, if any, provided in the application form with reference to similar questions*".
>
> [emphasis supplied]

14. Other provisions of the Visa Manual were also brought to our notice which, inter alia, provided that as a further step, a declaration should be given by the husband that in case of death or divorce, he would surrender the OCI Card to the authorities. As noted above, during the personal interview of the applicant, the concerned Officer may put random questions to the foreign applicant and his/her spouse separately, to elicit information which may help in ascertaining the genuineness of the marital status of the applicant. This suggests that the presence of the spouse of the applicant either physically or through the virtual mode is mandatory for effective consideration of the application for an OCI Card.

15. The Learned Counsel for the Respondent argued that the Visa Manual or even the checklist is only a delegated legislation and there is no such condition in *Section 7A(d)* of the *Citizenship Act,1955* mandating an interview. We are disinclined to accept this submission as Section 7A(1) specifically notes that the registration of OCI Card by the Central Government is 'subject to such conditions, restrictions and manner as may be prescribed'. Therefore, the Act clearly allows for supplementary procedures, such as an interview as specified in the Visa Manual as well as the Checklist. In the absence of any challenge to the visa manual or the checklist, and ignoring the procedure in place, the High Court in the impugned judgment erred in granting the relief of dispensing with the requirement of physical/ virtual presence of the spouse. This was done on the basis that there are other modes by which the concerned authority can satisfy themselves on the genuineness of the application.

16. If the above procedure dispensing with the presence of the spouse for considering the respondent's application is permitted to be adopted, it will firstly be a departure from the notified procedure. Moreover, the entire burden of verification would completely shift to the authorities. For the OCI card, it is for the applicant to satisfy the authorities in the manner prescribed, on the genuineness of her

application. In any case, the Division Bench was unjustified in holding that mandating the physical presence of the husband is arbitrary. In the absence of any challenge to the provisions of the *Citizenship Act 1955*, the Visa Manual, administrative instructions, or the checklist, such observations of the High Court were unmerited. In this regard, the prayer in the writ petition may be noted as under:

> "**a.** issue, a Writ of Mandamus or any other appropriate Writ directing the Respondent not to insist for the presence of husband of the Petitioner, for granting Overseas Citizen of India and/or
>
> **b.** Issue a Writ of Mandamus or any other appropriate Writ directing the Respondent to issue the Overseas Citizenship'. of India card to the Petitioner: and/or
>
> Any other relief that the Hon'ble Court may deem fit in the facts and circumstances of the instant case."

17. Having considered the process for verifying the genuineness, we are of the view that the direction issued in the impugned judgment to dispense with the presence of the applicant's spouse, has no legal basis. Moreover, apart from the physical/virtual presence of the spouse other conditions are also to be satisfied by an applicant as is provided under the *Citizenship Act 1955*, the checklist and the Visa Manual for which even a declaration by the husband may be necessary.

18. In consequence of our above discussion, the impugned judgments dated 22.07.2021 and 25.03.2022 of the learned Single Judge and the learned Division Bench of the High Court dispensing with the physical presence of the respondent's spouse during the process of interview for consideration of her application for OCI Card are found to be unsustainable and are set aside.

19. The Counsel for the Respondent attempted to make the submission that this is a peculiar case where the marriage is subsisting and the wife has been abandoned. In a case of estrangement, the applicant would fall under the category of a 'special circumstance' as the rules are silent for such a category. In this regard, *Section 7A(3)* of the *Citizenship Act,1955* was brought to our notice:

> "(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder."

20. Noticing this special provision, we may observe that the present order will not come in the way of the Central Government to consider if any special circumstances exists for consideration of the respondent's application and it will then be open for the respondent to make good her case. However, such discretion is entirely left to the Central Government and we are not expressing any opinion on whether the respondent deserves such consideration or not.

21. With the above, the appeals are allowed by interfering with the impugned judgments. Pending application(s), if any, stand closed.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 830 : 2024 INSC 630

K. Arumugam
v.
Union of India & Others Etc.

(Civil Appeal Nos. 2842-2848 of 2012)

08 August 2024

[B.V. Nagarathna* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Appellant-assessees purchased Kerala State Lotteries from the District Lottery Offices and other States' lotteries in bulk from registered promoters at a discounted rate. The appellant subsequently sold them to retailers on an outright sale basis. Whether the activity of the appellants-assessees would attract service tax within the scope and ambit of Section 65(19)(ii) read with Section 65(105)(zzb) of the Finance Act, 1994.

Headnotes†

Finance Act, 1994 – s.65(19)(ii) r/w. s.65(105)(zzb) – Appellant was directed by the Superintendent of Central Excise, Service Tax Range, to obtain registration and pay service tax under the heading 'business auxiliary service' in terms of the provisions of the Finance Act, 1994 – Correctness:

Held: It was opined in Sunrise Associates case that lottery tickets can be categorised as actionable claims – On a reading of clause (19) of Section 65 of the Finance Act, 1994 and on analyzing the same, it is evident that tax on a business auxiliary service is relatable to (i) any service concerning promotion or marketing or sale of goods, produced or provided by, or belonging to the client and (ii) promotion or marketing of service provided by the client – The definition of goods has also been noted in clause (50) of Section 65 of the Finance Act, 1994 which refers to clause (7) of Section 2 of the Sale of Goods Act, 1930 – The expression "goods" under the Sale of Goods Act expressly excludes actionable claims as well as money – Therefore, lottery tickets would not come within the meaning of the expression goods under clause (7) of Section 2 of the Sale of Goods Act, 1930, they would also

* Author

not come within the scope and ambit of clause (50) of Section 65 of the Finance Act, 1994 – If that is so, they would also not come within the scope and ambit of clause (19)(i) of Section 65 of the Finance Act, 1994 – Lottery tickets being actionable claims and not being goods within the meaning of sub-clause (i) of clause (19) of Section 65 of the Finance Act, 1994, would expressly get excluded from the scope of the said provision – As far as Explanation added with effect from 16.05.2008 under clause 19(ii) of section 65 is concerned, when lottery ticket is an actionable claim and not "goods" and is therefore outside the scope of sub-clause (i) of clause 19 of Section 65 of the Finance Act, 1994, it could not have been included as lottery per se in the Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994 – On a plain reading of the Explanation in light of the activity actually carried on by the appellant(s)-assessee(s) herein, it becomes clear that the outright purchase of lottery tickets from the promoters of the State or Directorate of Lotteries, as the case may be, is not a service in relation to promotion or marketing of service provided by the client, i.e., the State conducting the lottery – The conduct of lottery is a revenue generating activity by a State or any other entity in the field of actionable claims – The Explanation, cannot over-ride the main text of the provision as the Explanation which was sought to remove doubts is in fact contrary to the main provision which defines business auxiliary service and also contrary to the judgment of this Court in Sunrise Associates case and having regard to clause (50) of Section 65 of the Finance Act, 1994 – The said Explanation was omitted with effect from 01.07.2010 – However, these cases pertain to the period prior to 01.07.2010 – Therefore, either under sub-clause (i) of clause (19) of Section 65 or under the Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994, after it was introduced with effect from 16.05.2008 and until it was omitted, service tax could not have been levied on the promotion or marketing of sale of goods or service provided by the client, on the premise that it was a 'business auxiliary service'. [Paras 6.7, 6.8, 6.9, 6.10]

Case Law Cited

Sunrise Associates v. Govt. of NCT of Delhi [2006] Supp. 1 SCR 421 **: (2006) 5 SCC 603 – followed.**

List of Acts

Finance Act, 1994; Finance Act, 2008; Constitution of India; Lotteries Regulation Act, 1998; Kerala State Lotteries and Online Lotteries (Regulation) Rules, 2003; Lotteries Regulation Act, 1998; Kerala Tax on Paper Lotteries Act, 2005; Sale of Goods Act, 1930.

List of Keywords

Section 65(19)(ii) read with Section 65(105)(zzb) of the Finance Act, 1994; Clause (50) of Section 65 of the Finance Act, 1994; Lottery tickets; Actionable claim; Business auxiliary service; Service tax; Promotion or marketing of service provided.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2842-2848 of 2012

From the Judgment and Order dated 19.08.2011 of the High Court of Kerala at Ernakulam in WPC No.25131 and 26123 of 2009 and WPC No. 6263, 7618, 11585, 13443 and 29499 of 2010

With

Civil Appeal Nos. 2781, 2782, 2783, 2841, 2829-2840 of 2012, and Civil Appeal No. 9993 of 2024

Appearances for Parties

Vikramjit Banerjee, A.S.G., S. Ganesh, George Poonthottam, Arijit Prasad, Sr. Advs., B. Krishna Prasad, M/s. Parekh & Co., Gautam Narayan, Ms. Asmita Singh, Anirudh Anand, Tushar Nair, Ms. Rohini Musa, Mukunda Rao, Nipun Katyal, Atul Shankar Vinod, Dileep Pillai, Kannan Gopal Vinod, M. P. Vinod, Chirag M. Shroff, Dhananjay Kataria, Raj Bahadur Yadav, Mukesh Kumar Maroria, A.R. Madhav Rao, Arjun Garg, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Kriti Gupta, Arvind Kumar Sharma, Ms. Usha Nandini V., Biju P. Raman, John Thomas Arakal, Mrs. Nisha Bagchi, Shubhendu Anand, Meru Sagar Samantaray, Annirudh Sharma Ii, G. S. Makker, Mukunda Rao Angara, Raghvendra Kumar, Anand Kumar Dubey, Nishant Verma, Simanta Kumar, Maneesh Pathak, Ms. Harsha Sharma, Devvrat Singh, Jainendra Kumar, Varun Singh, Sameer Abhyankar, Kushagra Aman, Aakash Thakur, Rahul Kumar, Ms. Ayushi Bansal, M/s. Arputham Aruna And Co., C. K. Sasi, Ms. Meena K Poulose, Ms. Anupriya, Advs. for theappearing parties.

Judgment / Order of the Supreme Court

Judgment

Nagarathna, J.

Leave granted in SLP (Civil) No.21584 of 2012.

2. These appeals are filed by the assessees against the judgments of the High Courts of Sikkim and Kerala dated 03.07.2010 and 19.08.2011 respectively.

3. In *K. Arumugam vs. Union of India*, *C.A. No. 2842-2848 of 2012*, the facts are that the appellant is registered with the Directorate of State Lotteries in Thiruvananthapuram and has purchased Kerala State Lotteries from the District Lottery Offices and other States' lotteries in bulk from registered promoters at a discounted rate. The appellant contends that this purchase was made on an outright sale basis, meaning, they bought all tickets in bulk with no return policy ("all sold basis") and subsequently sold them to retailers, also on an outright sale basis. A profit was made from the difference between the amount received from retailers and the amount paid to the State Government or registered promoters. The sale of lotteries in Kerala was regulated by the Kerala State Lotteries and Online Lotteries (Regulation) Rules, 2003 framed under Section 12(3) of the Lotteries Regulation Act, 1998 and the Kerala Tax on Paper Lotteries Act, 2005.

3.1 Appellant was directed by the Superintendent of Central Excise, Service Tax Range, Palakkad Division, Mettuppalayam Street, Palakkad-1, Kerala, to obtain registration and pay service tax under the heading '*business auxiliary service*' in terms of the provisions of the Finance Act, 1994. Subsequently, the appellants were served notices by the Assistant Commissioner of Central Excise demanding details of their lottery purchase since the year 2003. In some instances, searches were conducted and items, including hard discs, were seized.

3.2 As a result, the appellant approached the Kerala High Court challenging the constitutionality of the Explanation added to Section 65 (19) (ii) of the Finance Act, 1994 and all consequential steps taken in pursuance thereto. The appellant argued that the profit made from the difference between the purchase price and the face value of the tickets did not constitute a '*taxable service*'

under the relevant provision. It was argued that the activities did not constitute a 'taxable service'. It was also conjunctively argued that the Explanation inserted in the year 2008 introduced a new concept inconsistent with the main provision and that no service tax could be imposed based on this Court's ruling in ***Sunrise Associates vs. Govt. of NCT of Delhi, (2006) 5 SCC 603 ("Sunrise Associates")*** wherein it was held that lottery tickets are not goods but actionable claims. However, the High Court of Kerala dismissed the petitions on 19.08.2011. Aggrieved by the aforesaid judgment, present appeals are preferred.

3.3 In the case of *Tashi Delek Gaming Sol. Pvt. Ltd. & Anr vs. Union of India & Ors., C.A. No.2781 of 2012,* the appellant has impugned the judgment of the Sikkim High Court, which dismissed the appellant's writ petition challenging the constitutional validity of the Explanation to Section 65(19)(ii) introduced by the Finance Act, 2008 with effect from 16.05.2008. The appellant in this case was appointed as the exclusive statutory marketing agent by the State of Sikkim on 24.08.2001, under Section 4(c) of the Lotteries Regulation Act, 1998, for the sale of online lottery tickets organized by the said State. According to the agreement between the appellant and the State of Sikkim, the appellant purchased lottery tickets in bulk from the Directorate of Lotteries at a price lower than the maximum retail price (MRP). The appellant then sold the tickets to distributors, adding a margin of 1%, who in turn sold the tickets to retailers, who ultimately sold them to the public at the MRP.

3.4 A letter dated 07.07.2009 was issued to the appellant herein by the Office of the Superintendent of Central Excise, Gangtok Range, Gangtok, Government of India requesting the appellant to submit an application Form ST-1 seeking service tax registration under the category "*business auxiliary service*" as the service rendered by the appellant came within the ambit of "business auxiliary service" in terms of the Explanation to Section 65(19)(ii) of the Finance Act, 2008 and therefore, the appellant was liable to pay service tax.

Aggrieved by the aforesaid communication dated 07.07.2009, a writ petition, being W.P.(C) No.21 of 2009 was filed by the petitioner before the High Court of Sikkim at Gangtok, challenging the constitutionality of the letter dated 07.07.2009 as well as the Explanation to Section

65(19)(ii) inserted by the Finance Act, 2008. *Vide* impugned judgment dated 03.07.2010, the High Court of Sikkim dismissed the writ petition filed by the appellant herein.

3.5 The appellant maintained that the sale of lottery tickets is, in fact, an outright purchase and does not involve any service to the State in terms of promotion or marketing under the Explanation to Section 65(19)(ii) of the Finance Act, 1994 as amended by the Finance Act, 2008. The tickets sold were mainly for lotteries organized by the States of Kerala and Sikkim as well as the Government of Bhutan.

3.6 The Union of India, on the other hand, argued that the appellants, in addition to selling the tickets, provided a service to the State by marketing and promoting lotteries, as evidenced by the Agreement, including modifications and additions thereto, between the appellant and the State of Sikkim dated 24.08.2001, 09.12.2003, and 18.11.2005. It was contended that the appellant was not merely engaged in outright sale of lottery tickets simpliciter but rendered expansive services. The Union sought to explain that the appellant herein issued advertisements, had a right to be consulted in respect of design of a lottery ticket, had a say in the matter of arranging and organizing the lottery, had been authorized to promote and market the online lottery and paid minimum assured revenue of rupees Ten crores per annum to the State of Sikkim.

3.7 It would be relevant to observe that these appellants were/are all carrying on the business of buying and selling of lottery tickets. They purchased the lottery tickets from the State Governments which organized the lotteries and sold the same in various other States or in the States where the lottery business was organized, through stockists and distributors.

3.8 The Central Government sought to levy service tax on the premise that the activity which the appellants were/are carrying on was a business auxiliary service within the definition of Section 65(19) of the Finance Act, 1994 and therefore, chargeable to service tax. The same was resisted by these appellants by filing writ petitions before the High Courts.

3.9 Both the High Courts of Sikkim as well as Kerala have held against these appellants and have opined that service tax is

leviable on their activity under the nomenclature of business auxiliary service. Hence these appeals.

4. We have heard learned senior counsel Sri S. Ganesh and learned counsel Sri A. R. Madhav Rao for the appellants and learned senior counsel Sri Arijit Prasad and learned counsel for the respondent – Union of India and perused the material on record.

Points for consideration:

5. Having heard learned counsel for the respective sides, the following questions arise for our consideration:

1. Whether the activity of the appellants – assessees would attract service tax within the scope and ambit of Section 65(19)(ii) read with Section 65(105)(zzb) of the Finance Act, 1994? If not, what relief(s) the appellants are entitled to?

2. What Order?

6. In order to better understand the controversy in these cases, it would be relevant to advert to the provisions of the Constitution as well as the provisions of the Finance Act, 1994 (which imposes service tax, pertinently on business auxiliary service).

6.1 Article 246 of the Constitution pertains to the division of subjects between the Central (Parliament) and State Legislatures in the form of three lists in the Seventh Schedule of the Constitution, namely List 1 – Union List, List 2 – State List and List 3 – Concurrent List. It would be useful to extract Article 246 of the Constitution as under:

> "246. Subject-matter of laws made by Parliament and by the Legislatures of States.
>
> (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to

make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

6.2 Article 248 deals with Residuary power of Legislatures and the same reads as under:

"248. Residuary powers of legislation.

(1) Subject to Article 246A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."

At this stage itself, it may be mentioned that the residuary power is reserved to the Parliament to legislate on any subject provided such power is not included in either the Concurrent List or the State List.

6.3 The Finance Act, 1994 was legislated by the Parliament in terms of Article 248 of the Constitution of India read with Entry 97 List 1 which reads as under:

"97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

It is also pertinent to mention that Entry 92-C of List I which deals with taxes on services was inserted by the Constitution (Eighty-eighth

Amendment) Act, 2003, but was not notified and was omitted by the Constitution (One Hundred and First Amendment) Act, 2016 with effect from 16.09.2016. In the circumstances, we observe that the Finance Act, 1994 is relatable to Entry 97 of List I of the Seventh Schedule of the Constitution. Subsequently, *vide* the same Constitution (One Hundred and First Amendment) Act, 2016, Article 246A was inserted as special provision with respect to goods and services tax.

6.4 For the sake of completion, it would also be relevant to refer to Entries 33 and 34 List II. Entry 62 List II (State List) as it stood then, deals with taxes on luxuries including taxes on entertainment, amusement, betting and gambling, etc. The said Entry has subsequently been amended with effect from 16.09.2016. However, it is not necessary to extract the amended Entry as these appeals pertain to the period prior to 01.07.2010. Entries 33 and 34 of List II are the regulatory Entries, which read as under:

> "33. Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
>
> 34. Betting and gambling."

6.5 Reverting to the Finance Act, 1994 and particularly Chapter V which deals with Service Tax, the following provisions, which are relevant for the purpose of this controversy, could be extracted as under:

> "65. **Definitions.—** In this Chapter, unless the context otherwise requires.—
>
> xxx
>
> 65(19) "**business auxiliary service**" means any service in relation to,—
>
> (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
>
> (ii) promotion or marketing of service provided by the client; or
>
> **Explanation**.- For the removal of doubts, it is hereby declared that for the purpose of this

sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

Explanation.- For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any activity that amounts to "manufacture" of excisable goods.

xxx

Section 65(50) "**goods**" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930)

xxx

> Section 66. **Charge of service tax** – There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses (a), (d), (e), (f), (g,) (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zh), (zi), (zj), (zk),(zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), **(zzb)**, (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzk), (zzl), (zzm), (zzn), (zzo), (zzp), (zzq), (zzr), (zzs), (zzt), (zzu), (zzv), (zzw), (zzx), (zzy), (zzz), (zzza), (zzzb), (zzzc), (zzzd), (zzze), (zzzf), (zzzg,) (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv), (zzzw), (zzzx), (zzzy), (zzzz), (zzzza), (zzzzb), (zzzzc), (zzzzd), (zzzze), (zzzzf), (zzzzg), (zzzzh), (zzzzi), (zzzzj), (zzzzk), (zzzzl), (zzzzm), (zzzzn), (zzzzo), (zzzzp),(zzzzq), (zzzzr), (zzzzs), (zzzzt), (zzzzu), (zzzzv) and (zzzzw)] of clause (105) of section 65 and collected in such manner as may be prescribed.
>
> xxx
>
> Section 65(105) "**taxable service**" means any service provided or to be provided,-
>
> (a) xxx
>
> (zzb) to a client, by any person in relation to business auxiliary service;"

6.6 It is relevant to note that Section 65(50) of the Finance Act, 1994 defines goods to have the same meaning assigned to it under Clause (7) of Section 2 of the Sale of Goods Act, 1930. Clause (7) of Section 2 of the Sales of Goods Act, 1930, reads as under:

> "**2. Definitions.—**In this Act, unless there is anything repugnant in the subject or context,—
>
> xxx
>
> (7) "**goods**" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things

attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;"

(underlining by us)

6.7 In the case of ***Sunrise Associates***, the Constitution Bench of this Court speaking through Ruma Pal, J., opined that lottery tickets can be categorized as actionable claims. The relevant paragraphs of the said judgment read as under:

"40. An actionable claim would include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability (see *Union of India* v. *Sri Sarada Mills Ltd.* [(1972) 2 SCC 877] , SCC at p. 880). A claim for arrears of rent has also been held to be an actionable claim (*State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh* [(1952) 1 SCC 528 : 1952 SCR 889 : AIR 1952 SC 252] , SCR at p. 910). A right to the credit in a provident fund account has also been held to be an actionable claim (*Official Trustee* v. *L. Chippendale* [AIR 1944 Cal 335 : ILR (1943) 2 Cal 325] ; *Bhupati Mohan Das* v. *Phanindra Chandra Chakravarty* [AIR 1935 Cal 756 : 40 CWN 102]). In our opinion a sale of a lottery ticket also amounts to the transfer of an actionable claim.

41. A lottery ticket has no value in itself. It is a mere piece of paper. Its value lies in the fact that it represents a chance or a right to a conditional benefit of winning a prize of a greater value than the consideration paid for the transfer of that chance. It is nothing more than a token or evidence of this right. The Court in *H. Anraj* [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] , as we have seen, held that a lottery ticket is a slip of paper or memoranda evidencing the transfer of certain rights. We agree.

42. *Webster's Words and Phrases*, Permanent Edn., Vol. 25-A Supplement defines a "ticket" as "a printed card or a piece of paper that gives a person a specific right, as to attend a theatre, ride on a train, claim

or purchase, etc." The Madras High Court in *Sesha Ayyar* v. *Krishna Ayyar* [AIR 1936 Mad 225 : ILR 59 Mad 562 (FB)] also held: (AIR p. 227)

> "Tickets of course are only the tokens of the chance purchased, and it is the purchase of this chance which is the essence of a lottery."

43. The sale of a ticket does not necessarily involve the sale of goods. For example, the purchase of a railway ticket gives the right to a person to travel by railway. It is nothing other than a contract of carriage. The actual ticket is merely evidence of the right to travel. A contract is not property, but only a promise supported by consideration, upon breach of which either a claim for specific performance or damages would lie (*Said* v. *Butt* [(1920) 3 KB 497 : 1920 All ER Rep 232]). Like railway tickets, a ticket to see a cinema or a pawnbroker's ticket are memoranda or contracts between the vendors of the ticket and the purchasers. Cases on whether the terms specified on such tickets bind the purchaser are legion. It is sufficient for our purpose to note that tickets are themselves, normally evidence of and in some cases the contract between the buyer of the ticket and its seller. Therefore a lottery ticket can be held to be goods if at all only because it evidences the transfer of a right.

44. The question is, what is this right which the ticket represents? There can be no doubt that on purchasing a lottery ticket, the purchaser would have a claim to a conditional interest in the prize money which is not in the purchaser's possession. The right would fall squarely within the definition of an actionable claim and would therefore be excluded from the definition of "goods" under the Sale of Goods Act and the sales tax statutes. This was also accepted in *H. Anraj* [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] when the Court said that to the extent that the sale of a lottery ticket involved a transfer of the right to claim a prize depending on chance, it was an assignment of an actionable claim. Significantly in *B.R. Enterprises* v.

State of U.P. [(1999) 9 SCC 700] construing *H. Anraj* [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] the Court said: (SCC p. 746, para 52)

> "*52*. So, we find three ingredients in the sale of lottery tickets, namely, (*i*) prize, (*ii*) chance, and (*iii*) consideration. So, when one purchases a lottery ticket, he purchases for a prize, which is by chance and the consideration is the price of the ticket."
>
> xxx
>
> 51. We are therefore of the view that the decision in *H. Anraj* [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] incorrectly held that a sale of a lottery ticket involved a sale of goods. There was no sale of goods within the meaning of Sales Tax Acts of the different States but at the highest a transfer of an actionable claim. The decision to the extent that it held otherwise is accordingly overruled though prospectively with effect from the date of this judgment."

6.8 On a reading of clause (19) of Section 65 of the Finance Act, 1994 and on analyzing the same, it is evident that tax on a business auxiliary service is relatable to (i) any service concerning promotion or marketing or sale of goods, produced or provided by, or belonging to the client and (ii) promotion or marketing of service provided by the client.

6.9 The definition of goods has also been noted in clause (50) of Section 65 of the Finance Act, 1994 which refers to clause (7) of Section 2 of the Sale of Goods Act, 1930. The expression "goods" under the Sale of Goods Act expressly excludes actionable claims as well as money. This Court in ***Sunrise Associates*** has held that lottery tickets are actionable claims. Therefore, as lottery tickets would not come within the meaning of the expression goods under clause (7) of Section 2 of the Sale of Goods Act, 1930, they would also not come within the scope and ambit of clause (50) of Section 65 of the Finance Act, 1994. If that is so, they would also not come within the scope and ambit of clause (19)(i) of Section 65 of the Finance Act, 1994. Lottery tickets being actionable claims and not being goods within the meaning

of sub-clause (i) of clause (19) of Section 65 of the Finance Act, 1994, would expressly get excluded from the scope of the said provision. In the circumstances, service tax on the promotion or marketing or sale of lottery tickets which are actionable claims could not have been levied under the said sub-clause.

6.10 In order to remove the doubt whether service tax could be levied on promotion or marketing or sale of lottery tickets under Clause 19(ii) of Section 65 of the Finance Act, 1994, an Explanation was added with effect from 16.05.2008. The Explanation has also been extracted above. Although the Explanation is for the purpose of removal of doubts, it is relevant to note that what is excluded in sub-clause (i) of clause (19) of Section 65 of the Act, namely lotteries being actionable claim and not goods, as analysed above, is sought to be mentioned as lottery *per se* in the Explanation. Thus, when lottery ticket is an actionable claim and not "goods" and is therefore outside the scope of sub-clause (i) of clause 19 of Section 65 of the Finance Act, 1994, it could not have been included as lottery *per se* in the Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994 as "service in relation to promotion or marketing of service provided by the client" including any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo.

The Explanation sought to bring the activity of sale of lottery tickets within sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994, when it was excluded from sub-clause (i) on account of the lottery tickets being interpreted as actionable claims and not goods on the premise that it was a service within the meaning of said sub-clause. On a plain reading of the Explanation in light of the activity actually carried on by the appellant(s)-assessee(s) herein, it becomes clear that the outright purchase of lottery tickets from the promoters of the State or Directorate of Lotteries, as the case may be, is not a service in relation to promotion or marketing of service provided by the client, i.e., the State conducting the lottery. The conduct of lottery is a revenue generating activity by a State or any other entity in the field of actionable claims. The client, i.e., the State is not engaging in an activity of service while dealing with the business of lottery. Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance

Act, 1994 cannot bring within sub-clause (ii) by assuming an activity which was initially sought to be covered under sub-clause (i) thereof but could not be by virtue of the definition of goods under the very same Act read with Section 2(7) of the Sale of Goods Act, 1930. The mere insertion of an explanation cannot make an activity a taxable service when it is not covered under the main provision (which has to be read into the said sub-clause by virtue of the legislative device of express incorporation). This is because sale of lottery tickets is not a service in relation to promotion or marketing of service provided by a client, i.e., the State in the instant case. Conducting a lottery which is a game of chance is *ex facie* a privilege and an activity conducted by the State and not a service being rendered by the State. The said activity would have a profit motive and is for the purpose of earning additional revenue to the State exchequer. The activity is carried out by sale of lottery tickets to persons, such as the assessees herein, on an outright basis and once the lottery tickets are sold and the amount collected, there is no further relationship between the assessees herein and the State in respect of the lottery tickets sold. The burden is on the assessees herein to further sell the lottery tickets to the divisional / regional stockists for a profit as their business activity. This activity is not a promotion or a marketing service rendered by the assessees herein to the State within the meaning of sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994. This is because, to reiterate, the States are not rendering a service but engaged in the activity of conducting lottery to earn additional revenue. Moreover, once the lottery tickets are sold by the Directorate of Lotteries—a Department of the State, there is transfer of the title of the lottery tickets to the appellants, who, as owners of the said lottery tickets, in turn sell them to stockists and others. Thus, there is no promotion of the business of the State as its agent. Thus, there is no 'principal—agent' relationship which would normally be the case in a relationship where a business auxiliary service is rendered. The relationship between the State and the appellants is on a *principal to principal* basis. Thus, there is no activity of promotion or marketing of a service on behalf of the State. Neither is the State, which conducts the lottery, rendering a service within the meaning of the Finance Act, 1994.

The Explanation, therefore, cannot over-ride the main text of the provision as the Explanation which was sought to remove doubts is in fact contrary to the main provision which defines business auxiliary service and also contrary to the judgment of this Court in ***Sunrise***

Associates and having regard to clause (50) of Section 65 of the Finance Act, 1994.

No doubt the Explanation was omitted with effect from 01.07.2010. However, these cases pertain to the period prior to 01.07.2010. Therefore, either under sub-clause (i) of clause (19) of Section 65 or under the Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994, after it was introduced with effect from 16.05.2008 and until it was omitted, service tax could not have been levied on the promotion or marketing of sale of goods or service provided by the client, on the premise that it was a 'business auxiliary service'.

7. The High Courts have lost sight of the definition of 'goods' in clause (50) of Section 65 of the Act while interpreting the expression "lottery". As already noted, the definition of 'goods' in clause (7) of Section 2 of Sale of Goods Act, 1930, that is expressly incorporated in clause (50) of Section 65 of the Act, which expressly excludes actionable claims. This Court has by the Constitution Bench in ***Sunrise Associates*** opined that lottery tickets are actionable claims. The High Courts have also lost sight of the fact that the sale of lottery tickets by the State is a privileged activity by itself and not rendering of a service for which the assessees are rendering promotion or marketing service.

8. In view of the above discussion, the appeals filed by the appellants-assessees are liable to be allowed and are ***allowed*** by setting aside the impugned judgments of the High Courts of Sikkim and Kerala.

9. Having regard to the mandate of Article 265 of the Constitution of India, the appeals are *allowed* with all consequential reliefs to the appellants.

10. It is needless to observe that if any representations are made seeking refund of the amounts paid, the same shall be considered expeditiously by the concerned departments of the respondents.

In the facts and circumstances of these matters, there will be no order as to costs.

Result of the case: Appeals by appellants-assessees allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 847 : 2024 INSC 657

Akshay & Anr.
v.
Aditya & Ors.

(Civil Appeal Nos. 3642-3646 of 2018)

29 August 2024

[Bela M. Trivedi and Satish Chandra Sharma, JJ.]

Issue for Consideration

Appellants-landowners executed a Joint Venture Agreement and an irrevocable power of attorney in favour of the Respondent No.2-builder for the development of the land and construction of flats. Respondent No.2 entered into sale agreements with the complainants-respondents for the units in question. Complaints filed by the respondents against the appellants and Respondent No.2 *inter alia* for declaration that they were guilty of deficiency in service and were jointly and severally liable to complete the construction as per the terms and conditions agreed between the parties and put the complainants in possession of the properties after completing the construction as also to execute the registered sale deeds in respect thereof. Complaints allowed by the State Commission. Order upheld by NCDRC. Whether the appellants were bound by the acts of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated.

Headnotes†

Consumer Dispute – Deficiency in service – Non-compliance of the terms and conditions of Joint Venture Agreement (JVA) by Respondent No.2-builder – Appellants-landowners and the Respondent No.2-builder, if were jointly and severally liable as held by State Commission and upheld by NCDRC:

Held: Yes – Though allegedly the power of attorney was revoked by the appellants by the letter of revocation, the JVA was not revoked and it continued to be in force – In the revocation letter, the appellants had stated to be not liable "Henceforth", i.e after the said letter was sent – Thus, the appellants were bound by the acts/deeds of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated, in accordance with law – Appellants liable for the acts of Respondent No.2 – Judgment of NCDRC not interfered with. [Paras 8, 9]

List of Acts

Consumer Protection Act, 1986.

List of Keywords

Consumer Dispute; Joint Venture Agreement; Power of attorney; Irrevocable power of attorney; Landowners; Development of the land; Construction of flats; Deficiency in service; Jointly and severally liable; Power of attorney revoked; Revocation letter; "Henceforth".

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3642-3646 of 2018

From the Judgment and Order dated 28.11.2017 of the National Consumers Disputes Redressal Commission, New Delhi in FA Nos. 1664-1668 of 2017

Appearances for Parties

Kailash Vasdev, Sr. Adv., R. Mohan, V. Balaji, Asaithambi MSM, B. Dhananjay, S. Devendran, Limrao Singh Rawat, Rakesh K. Sharma, Advs. for the Appellants.

Siddhartha Dave, Sr. Adv., Piyush Singhal, Bijnender Singh, Praveen Swarup, Alekhya Shastry, Ms. Arundati Mukherjee, Ms. Amita Singh Kalkal, Abhinav Ramkrishna, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

1. This set of five Appeals arises out of the common Judgment and Order dated 28-11-2017 passed by the National Consumer Disputes Redressal Commission, New Delhi (here-in-after, referred to as "NCDRC") in First Appeal Nos.1664-1668 of 2017, whereby the NCDRC has dismissed the said Appeals filed by the present appellants challenging the Judgment and Order dated 10-7-2017 passed by the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Nagpur (here-in-after, referred to as "State Commission") in a Consumer Complaint No. 85 of 2015.

2. The appellants – herein are the owners of the land in question. They entered into a Joint Venture Agreement with Respondent No.2 – Glandstone Mahaveer Infrastructure Pvt. Ltd. for the development of the land and for construction of flats as mentioned herein. It appears that the appellants also executed Irrevocable Power of Attorney dated 6-7-2013 in favour of Respondent No.2 with regard to the said land. The Respondent No.2 on the basis of the said documents, entered into the sale agreements with the respondents – complainants for the units in question.

3. The respondents – complainants filed the complaints before the 'State Commission' under Section 17 of the Consumer Protection Act, 1986 against the present appellants and Respondent No.2 seeking *inter alia* the declaration that the present appellants and the Respondent No.2 were jointly and severally involved in the unfair trade practices and were guilty of deficiency in service, that they were jointly and severally liable to complete the activities and construction as per the terms and conditions agreed upon between the parties and put the complainants in possession of the properties mentioned in Schedule 'D' after completing the construction as also to execute the registered sale deeds in respect thereof.

4. The 'State Commission' after considering the pleadings of the parties allowed the said complaints. The 'State Commission' holding opponent Nos.1 to 3 (the present appellants and Respondent No.2) liable for the completion of the construction of dwelling units as per the agreement with the complainants and passed the following order:-

> "i. The complaints as referred Nos. CC/15/85, CC/15/86, CC/15/99, CC/15/100 & CC/15/111 are partly allowed.
>
> ii. The OP Nos. 1,2&3 to provide the possession of the dwelling unit agreed in Agreement to Sell (SA) with each complainant in the span of six months from the date of the receipt of copy of this order and the complainants to pay the entire consideration of the dwelling unit as per the stages and the final amount at the time of sale deed and possession as per the agreement.
>
> iii. The OP Nos. 1,2,&3 after completion of construction of dwelling units as per agreement to sell & on

receiving full consideration as per agreement as above, shall execute sale deed of respective dwelling units as per agreement to respective complainant. The complainants shall bear expenses for execution and registration of sale deeds.

iv. The O.P. Nos.2&3 to cooperate with O.P. No.1 in the compliance of trhe agreement signed by the O.P. No.1 with the complainants as per the conditions of the Joint Venture Agreement (JVA) and (Irrevocable Power of Attorney (IPA).

v. The O.P. No.1 to provide the compensation of Rs.1,00,000/- to each of complainant for physical and mental harassment in the span of one month from the date of receipt of copy of this order and on failure, to pay interest at the rate of 9% p.a. upon it, till the final payment.

vi. The O.P.No.1 to provide the cost of Rs.10,000/- to each of the complainant in the span of 30 days from the date of the receipt of copy of this order & on failure to pay interest upon it at the rate of 9% p.a., till final payment.

vii. No order against O.P.No.4

viii. Copy of the order be provided to both the parties, free of cost."

5. Being aggrieved by the said order, the present appellants, preferred the First Appeals before the `NCDRC', which came to be dismissed by the `NCDRC' vide the impugned common order holding as under:-

> "8. The State Commission have brought out in their order that the Joint-Venture Agreement (JVA) and the Irrevocable Power of Attorney (IPA) were prepared on 06.07.2013. As per condition No.15 of the said agreement, the builder had been given the authority to sell the constructed Units on the property. The IPA also authorised the OP-1 builder to execute the registered sale deeds etc. and receive the consideration. The State Commission, further, observed that the present appellants/OP-2 and 3 had issued notice,

by which they claimed that they had cancelled the JVA and the IPA. However, the said notice was issued on 12.08.2014, which was much after the agreement made by the OP-1 with the complainants. The State Commission concluded that at the time of the agreement between the builder and the complainants, the JVA and IPA were very much operative. It is evident, therefore, that the appellants cannot wash their hands off from the matter, as it would result in grave injustice to the complainants consumers.

9. At the time of hearing also in these appeals, the learned counsel for the appellants was asked that in case the plea taken by them in the appeals were accepted, how shall it be possible to safeguard the interests of the consumer, who had invested in the said project, after looking at the agreement between them and the OP-1 builder. However, no satisfactory reply could be given by the appellants on that score. It is made out, therefore, that the interests of the complainants/ consumers shall be heavily jeopardised, if the plea of the appellants/OP-2 and 3 is accepted.

10. The appellants have referred to the orders made by the Hon'ble Supreme Court in the case, Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd. & Anr., (2008) 10 SCC 345 and in the case, Sunga Daniel Babu vs. Sri Vasudeva Constructions & Ors., (2016) 8 SCC 429, in support of their arguments before the State Commission as well as this Commission. I, however, agree with the contention of the State Commission that these two judgments are not applicable in the present cases. In the said judgments, it was concluded that a landowner, who was supposed to be provided a portion of the devloped property after the development made by the builder, was a consumer vis-a-vis the builder. The issue in the present case is, however, different, as the present complaints have been filed by the complainants against the builder as well as the land owners/appellants. The orders made by the Hon'ble Apex Court are, therefore not applicable in the present cases.

11. From the discussion above, it is held that the appellants/ OP-2 and 3 landowners cannot be allowed to escape their

responsibility/role in the matter of providing relief to the complainants/consumers in terms of the impugned order passed by the State Commission. It is held, therefore, that the impugned order does not suffer from any illegality, irregularity or jurisdictional error of any kind and the same is upheld. The present appeals are ordered to be dismissed in limine."

6. It is vehemently submitted by the learned Senior counsel – Mr. Kailash Vasdev that the appellants had already revoked the Power of Attorney executed by them in favour of Respondent No.2, by the letter of revocation dated 12-8-2014, coupled with Public Notice of the same date and hence the appellants could not be held liable for any act done by Respondent No.2, who had allegedly entered into agreements with the complainants. He also submitted that the Complaints as such are not maintainable under the Consumer Protection Act against the appellants, who were not privy to the agreement between the Respondent No.2 and the complainants. However, the learned Senior counsel – Mr. Siddhartha Dave for the Respondent No.2 submitted that the said respondent is still ready to honour the JVA entered into by the appellants and Respondent No.2 and ready to complete the construction work with the cooperation of the appellants. He further submitted that the Irrevocable Power of Attorney was executed by the appellants in favour of Respondent No.2 after receiving consideration of Rs.1.51 Crores, pursuant to which, the Respondent No.2 had entered into the agreement with the complainants.

7. The learned Senior counsel – Mr. Gopal Sankaranarayan drawing the attention of the Court to the alleged letter of revocation dated 12-8-2014, submitted that even as per the said letter, the appellants had stated that they could not be liable for the acts of the Respondent No.2 "henceforth" meaning thereby after the said letter, however, the Respondent No.2 had entered into the agreement with the complainants i.e consumers prior to the said letter and pursuant to the JAV executed between the appellants and Respondent No.2, which has not been cancelled so far.

8. Having regard to the submissions made by the learned Senior counsels for the parties, and to the impugned Judgments and orders passed by the `State Commission' as well as the `NCRDC', it

clearly transpires that undisputedly an irrevocable power of attorney dated 6-7-2013 was executed by the appellants in favour of the Respondent No.2 along the JAV of the same date, pursuant to which the Respondent No.2 had undertaken to develop the land in question. It further appears that though allegedly the said power of attorney was revoked by the appellants vide the letter dated 12-8-2014, the JAV has not been revoked so far and the same still continues to be in force. As rightly submitted by the learned counsel for the respondents, in the letter daeted 12-8-2014, the appellants had stated to be not liable "Henceforth", i.e. after the said letter was sent. The appellants therefore were bound by the acts/deeds of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated, in accordance with law. It is also not denied that the appellants have not taken any action whatsoever against the respondent No.2 with regard to the alleged non-compliance of the terms and conditions of JAV by the said Respondent. Under the circumstances, it does not lie in the mouth of the appellants to say that the appellants are not liable for the acts of Respondent No.2.

9. The 'NCDRC' having considered all the issues with regard to the joint liability of the appellants as well as the Respondent No.2, we do not find any good ground to interfere with the same.

10. In that view of the matter, the Appeals being devoid of merits and are dismissed.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 854 : 2024 INSC 616

Maitreyee Chakraborty
v.
The Tripura University & Ors.

(Civil Appeal No. 9730 of 2024)

22 August 2024

[J.K. Maheshwari and K.V. Viswanathan,* JJ.]

Issue for Consideration

An offer of appointment was made offering the Appellant the post of Assistant Professor in Law (UR) against lien vacancy. Whether the Respondent-University was justified in resolving on 13.12.2018 at the 32nd Meeting in Agenda No.18/32/2018, that the Appellant was not to be confirmed and that the post was to be re-advertised.

Headnotes†

Service Law – Lien Vacancy – Appointment not confirmed – Appellant was expecting her regularization since there was nothing adverse in her performance – In the 32nd Meeting of the Executive Council held on 13.12.2018, vide Agenda 18/32/2018, while other teachers working in their respective posts were confirmed, the appellant was not confirmed and the Executive Council resolved to re-advertise the post – Propriety:

Held: The Appellant went through the normal process of selection – The employment notice set out that appointments made to the posts against LIEN vacancies are likely to be regularized subject to vacation of lien and satisfactory performance – The lien admittedly got vacated – The performance has been satisfactory as nothing adverse had been pointed out and the Appellant is discharging the duties for more than seven years – While approving the panel of names also it was clearly mentioned that in case the candidate at Serial No.1 did not accept the offer, the Appellant was to be accommodated against the regular vacancy – This clearly demonstrates that all the applicants competed for the regular post also and no one from the open market could have been prejudiced – Most importantly, the offer of appointment also stated that in case the lien was vacated, the Appellant's service was to be continued further with the approval of the Executive Council of the University – In this background, the University was not

* Author

justified in denying her confirmation when all the contingencies were cleared with the vacation of the lien and the performance being satisfactory – The Respondent-University, being a statutory body, any such conduct would tantamount to an arbitrary and unreasonable exercise of power, apart from being unfair – The discretion vested in the Executive Council should be exercised in a fair and non-arbitrary manner – The representations in the employment notice, the Resolution of the Executive Council and the appointment order did give rise to a legitimate expectation to the Appellant that in the event of the lien being vacated, the appellant would be continued in service and regularized in the said post – The only condition was that it will need the approval of the Executive Council – Thus, the Resolution in Agenda No.18/32/2018 of the 32nd Meeting of the Executive Council held on 13.12.2018 insofar as it records that the Appellant is not confirmed in service and that the post should be re-advertised is set aside. [Paras 26, 27, 31]

Case Law Cited

Sivanandan C.T. and Others v. High Court of Kerala and Others **[2023] 11 SCR 674 : (2024) 3 SCC 799 – followed.**

Somesh Thapliyal & Anr. v. Vice Chancellor, H.N.B. Garhwal University & Anr. **[2021] 6 SCR 49 : (2021) 10 SCC 116;** *Meher Fatima Hussain v. Jamia Milia Islamia & Ors.,* **2024 INSC 303;** *Ram Pravesh Singh and Others v. State of Bihar and Others* **[2006] Supp. 6 SCR 512 : (2006) 8 SCC 381;** *Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries* **[1992] Supp. 2 SCR 322 : (1993) 1 SCC 71 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Service Law; Lien vacancy; Regularization; Arbitrary and unreasonable exercise of power; Legitimate expectation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9730 of 2024

From the Judgment and Order dated 20.06.2022 of the High Court of Tripura at Agartala in WA No. 5 of 2020

Appearances for Parties

Ghanshyam Joshi, Chirag Joshi, Advs. for the Appellant.

Sujeet Kumar, Rajeev K. Tiwari, Randhir Kumar Ojha, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment of the High Court of Tripura at Agartala dated 20.06.2022 in W.A. No. 5 of 2020. By virtue of the said judgment, the Division Bench of the High Court confirmed the judgment of the learned Single Judge dated 04.12.2019 dismissing the writ petition of the Appellant.

Brief facts:

3. The facts lie in a narrow compass. One Dr. Praveen Kumar Mishra was working as an Associate Professor in Law in the Respondent-University. On 27.11.2015, the Executive Council of the Respondent-University granted a lien for one year to Dr. Praveen Kumar Mishra to enable him to join the post of Associate Professor in Law in Sikkim University. On 02.12.2015, Dr. Praveen Kumar Mishra joined Sikkim University.

4. On 05.05.2016, the Respondent-University issued an advertisement through an employment notification for various posts by inviting applications from suitable candidates. In the Department of Law, for the post of Assistant Professor, three vacancies were advertised. One was an unreserved regular vacancy. One was a lien vacancy in the Open category and one was a lien vacancy for the OBC candidates. The pay-scale was Rs.15600-39100 and the Grade Pay was Rs.6,000/-. In the note appended in Clause 19, it was mentioned "*Appointment made to the posts against LIEN vacancy are likely to be regularized subject to vacation of lien and satisfactory performance.*" Importantly, it was a common advertisement for all the three vacancies. We say this, at the outset, because both the learned Single Judge and the Division Bench proceeded on the basis

that what was advertised was only a lien vacancy. No doubt, two of the vacancies were lien vacancies. However, there was one regular post also notified in the Unreserved category and hence it will be too much to assume that candidates would not have applied in full measure on the premise that only lien vacancies were advertised.

5. On 05.09.2016, pursuant to the Appellant's application for the post of Assistant Professor in Law in the Unreserved category (UR), she was asked to appear before the Selection Committee. On 09.09.2016, a list of shortlisted candidates called for interview for the post of Assistant Professor along with the date and time for the interview was published. Insofar as the post of Assistant Professor (Law) was concerned, the time fixed was 12.30 PM on 21.09.2016 and about 16 candidates including the Appellant and one Sri. Brij Mohan Pandey were called for the interview.

6. On 20.11.2016, the 26th Meeting of the Executive Council of the University was held and the Agenda for consideration of the panel and names of persons recommended by the concerned Selection Committee for various teaching posts was taken up and approved. Insofar as the Assistant Professor in Law was concerned, the following was mentioned.

4.	Assistant Professor in Law	2-UR (1 lien Vacancy)	21.09.2016	1. Brij Mohan Pandey
				2. Maitreyee Chakraborty

A note was appended below which reads as under :-

> "N.B. Candidate at Serial No 2 against the post of Assistant Professor in Law shall be given the offer of appointment against Lien Vacancy. In case the candidate at Serial No 1 does not accept the offer of appointment given to him against regular/ substantive vacancy, the post shall go to the candidate at Serial No 2 and Candidate at Serial No 3 on the approved panel shall be given the offer of appointment against the Lien Vacancy."

7. As would be clear, at Serial Number No.1 was Sri. Brij Mohan Pandey and he was taken against the regular vacancy. The Appellant was adjusted against the Unreserved lien vacancy. There was a clear stipulation that in case Mr. Brij Mohan Pandey did not accept the

offer of appointment given to him against the regular/substantive vacancy, the post was to go to the Appellant who was at Serial No.2. It is another matter that Mr. Brij Mohan Pandey took up the appointment. However, this is significant because this fact negates the reasoning of the University, the learned Single Judge as well as the Division Bench that, what was advertised was only a lien vacancy and, as such, many meritorious candidates would not have applied.

8. Be that as it may, on 07.12.2016, an offer of appointment was made offering the Appellant the post of Assistant Professor in Law (UR) against lien vacancy. Paras 1 and 2 of the appointment letter are crucial and reads as under:-

> "In accordance with the decision of the 26th meeting of the Executive Council of the University held on 20th November, 2016, I am to inform you that you have been selected for appointment to the post of Assistant Professor in Law (UR) against Lien vacancy in the Pay Band of Rs. 15600-39100 plus Academic Grade Pay (AGP) of Rs. 6000 and other admissible allowances subject to the terms and conditions as set out herein and as amended from time to time.
>
> 2. Your appointment is against Lien vacancy and hence liable to be terminated with the joining of the incumbent concerned back to the substantive post held by him in this University. In case the lien is vacated, your service may be continued further with the approval of the Executive Council of the University."

9. To summarize, the appointment order mentioned that a) the appointment was against the lien vacancy; b) it was liable to be terminated with the joining of the incumbent concerned back to the substantive post and c) in case the lien is vacated, the Appellant's service may be continued further with the approval of the Executive Council of the University.

10. The Appellant, after resigning her job from the Tripura Government Law College, joined the University in the post of Assistant Professor in Law with effect from 17.01.2017 (F/N) and has been continuously working for the last seven years and six months.

11. On 08.03.2017, the lien granted to Dr. Praveen Kumar Mishra was extended by six months with effect from 15.12.2016. When the

matter stood thus, in the 29th Meeting of the Executive Council of the University held on 14.11.2017 vide Agenda 12/29/2017, the resignation tendered by Dr. Praveen Kumar Mishra vide letter dated 18.09.2017 from the post of Assistant Professor, Department of Law, Tripura University was accepted. The situation then was that Dr. Praveen Kumar Mishra, who held the lien, forfeited any lien that may have existed. Ordinarily, by virtue of Note 19 of the employment notice, the Appellant was expecting her regularization since there was nothing adverse in her performance. However, that was not to be.

12. In the 32nd Meeting of the Executive Council held on 13.12.2018, vide Agenda 18/32/2018, while other teachers working in their respective posts were confirmed, the Appellant was not confirmed and the Executive Council resolved to re-advertise the post. On 28.12.2018, the Appellant was informed by the Registrar as follows:-

> "No.F.TU/REG/PF-T/201/17 Date 28.12.18
>
> To
>
> Smt. Maitreyee Chakraborty,
> Assistant Professor,
> Department of LAW,
> Tripura University
>
> Madam,
>
> You have joined this University to the Post of Assistant Professor, Department of LAW against lien Vacancy on 17.01.2016.
>
> As per resolution of 32nd Meeting of the Executive Council held on 13th December, 2018 your post has not been confirmed which will be re-advertised in time.
>
> This is for your information and doing the needful.
>
> (S.Debroy)
> Registrar (i/c)"

13. Here again, nothing was mentioned about any adverse performance. On the same day, the Appellant wrote a letter asking for the reasons and pointing out that the Minutes of the 32nd Executive Council Meeting which was circulated in the official mail merely mentioned: "*as per rules not confirmed*". In the 32nd Meeting of the Executive Council

dated 13.12.2018, at Agenda 18/32/2018, the issue was to consider the confirmation of services of the teachers of the University to their respective posts which are mentioned in the table as Annexure-II. The Resolution was :- "*as per rules not confirmed". Post to be re-advertised*."

14. On 06.02.2019, the Appellant was informed that (in continuation of the University's letter of 28.12.2018) her continuation in the post beyond 28.02.2019 was not possible and that the service against the lien was to expire on 28.02.2019. She was also asked if she was interested to work as a Guest Faculty and if so, she was asked to apply for the same, after observing all the formalities.

15. The Appellant represented to the Registrar, Tripura University, asking for reasons for the proposed discontinuance. The Appellant also sought a response to her letter of 28.12.2018 and further letters to the Vice-Chancellor and the Dean dated 24.01.2019. No reply was forthcoming.

Proceedings before the High Court:

16. The Appellant filed a Writ Petition No. 302 of 2019 before the High Court impugning the Resolution of the 32nd Meeting of the Executive Council dated 13.12.2018 and the letter of the Registrar dated 06.02.2019 and prayed that she be confirmed in the post of Assistant Professor in Law, Tripura University. An interim order of 28.02.2019 was passed suspending the Resolution of the 32nd Meeting of the Executive Council and the letter dated 06.02.2019 of the Registrar.

17. A counter affidavit came to be filed by the Respondent-University. A plea was set up that discretion lay with the authority about the continuance of the Appellant, even if the candidate holding the lien had vacated the lien. It was further averred that the issue about regularizing or re-advertising was in the larger interest of the candidates who had not applied (as the post was under lien). What is significant is that nothing adverse about the appellant was set out anywhere in the counter. By a judgment of 04.12.2019, a learned Single Judge, while rejecting the contentions of the Appellant and dismissing the writ petition held as follows:-

> "[9] The stand taken by the Tripura University one can find no fault. It can be appreciated that when a temporary vacancy is advertised which vacancy is created on account

> of the substantive holder of the post not being available for a temporary period, many eligible interested candidates may be persuaded not to apply. If a person is holding a permanent post or even a semi-permanent engagement under some other organization, he may not want to join a temporary vacancy, resign from his permanent or semi-permanent engagement at the risk of being told sometime later and since the lien holder has returned back and is likely to join his original position he should vacate the post. In that view of the matter, the decision of the Executive Council to re-advertise the post once the post became permanently vacant stands to reason. The decision therefore must be upheld."

18. Aggrieved by the order of the learned Single Judge, the Appellant preferred a Writ Appeal No. 5 of 2020 before the Division Bench of the High Court. The Division Bench of the High Court, by a judgment dated 20.06.2022, affirmed the order of the learned Single Judge and dismissed the Appeal.

Contentions:

19. We have heard Mr. Ghanshyam Joshi, learned counsel for the Appellant and Mr. Sujeet Kumar, learned counsel for the Respondent-University. We have also considered the written submissions filed by the Appellant.

20. Mr. Ghanshyam Joshi, learned counsel for the Appellant reiterated the submissions made before the courts below and contended that the decision of the Executive Council dated 13.12.2018 resolving not to confirm the Appellant and to readvertise the post was illegal and that it deserves to be quashed. Learned counsel also contended that the courts below have erred in appreciating the true nature and character of the advertisement issued. According to the learned counsel, the employment notice issued insofar as the unreserved category was concerned, advertised for two posts of Assistant Professor in Law. According to learned counsel, one was a full regular vacancy and the other was designated as a lien vacancy.

21. Learned counsel submits that it was an error to assume that all eligible candidates desiring to apply would not have applied since the vacancy was a lien vacancy as there was no separate method of

applying prescribed. Whoever applied was entitled to be considered for the regular vacancy also and as such until the final selection there was no way of knowing against which vacancy they would be selected. According to learned counsel, this erroneous assumption formed the basis of the judgment of the learned Single Judge and the Division Bench.

22. Learned counsel further made reference to Clause 19 in the employment notice as well as to the Minutes of the 26th meeting of the Executive Council dated 20.11.2016 and to the letter of offer of appointment, to contend that the absence of anything adverse being noticed in the performance of the Appellant, she ought to have been confirmed since she had undergone the normal process of selection. Learned counsel relied upon the judgment in ***Somesh Thapliyal & Anr. vs Vice Chancellor, H.N.B. Garhwal University & Anr.*** ***(2021) 10 SC 116*** and the judgment in ***Meher Fatima Hussain vs. Jamia Milia Islamia & Ors., 2024 INSC 303*** in support of his submissions. Mr. Sujeet Kumar supported the findings in the judgment of the courts below and contended that there was no scope for interference with the same.

Question for Consideration:

23. The question that arises for consideration is whether the Respondent-University was justified in resolving on 13.12.2018 at the 32nd Meeting in Agenda No.18/32/2018, that the Appellant was not to be confirmed and that the post was to be readvertised? If not, the further question would be as to what relief should the Appellant be entitled to?

Reasoning and Conclusion:

24. As explained earlier, the reasoning that many interested eligible candidates would not have been persuaded to apply is not correct because what was advertised was one regular vacancy and two lien vacancies, with one of the lien vacancies being unreserved. At least 16 candidates were shortlisted for the interview from the many applicants. In our view, it would not be correct to assume that because one of the unreserved vacancies was a lien vacancy many eligible candidates would not have applied. One vacancy advertised being a regular vacancy, it is fair to assume that the interested candidates would have definitely applied and as such no prejudice has been caused to any person. This fact is reinforced by a perusal

of the 26th Meeting of the Executive Committee dated 25.11.2016 whereby while offering Mr. Brij Mohan Pandey the regular vacancy, the Appellant at Serial No.2 was offered the lien vacancy which is for the Unreserved Category (UR) with a note that, in case the candidate at Serial No.1 did not take the regular vacancy, the Appellant was to be accommodated against the same. No doubt Mr. Brij Mohan Pandey took the regular vacancy but it could not be disputed that all the candidates were competing against the regular vacancy also.

25. Quite apart from that, Note 19 to the employment notice also indicated that, subject to satisfactory performance and on vacation of lien by the candidate holding the lien the appointee is likely to be regularized. No reasons have been given in the 32nd Meeting of the Executive Council dated 13.12.2018 or in the letter dated 28.12.2018 as to why the Appellant was not confirmed. The liberty reserved in the appointment order cannot be exercised in an arbitrary manner. There was no case made out by the University to deny the Appellant, her confirmation.

26. The Appellant went through the normal process of selection. The employment notice set out that appointments made to the posts against LIEN vacancies are likely to be regularized subject to vacation of lien and satisfactory performance. The lien admittedly got vacated. The performance has been satisfactory as nothing adverse had been pointed out and the Appellant is discharging the duties for more than seven years. While approving the panel of names also it was clearly mentioned that in case the candidate at Serial No.1 – Sri. Brij Mohan Pandey did not accept the offer, the Appellant was to be accommodated against the regular vacancy. This clearly demonstrates that all the applicants competed for the regular post also and no one from the open market could have been prejudiced. Most importantly, the offer of appointment also stated that in case the lien was vacated, the Appellant's service was to be continued further with the approval of the Executive Council of the University.

27. In this background, particularly when the Appellant was put through the fire test of a regular selection, was the University justified in denying her confirmation when all the contingencies were cleared with the vacation of the lien and the performance being satisfactory? We think not. The University cannot be heard to say:- '*may be the lien is vacated, and your performance is satisfactory, but we do not*

want to confirm your service'. The Respondent-University, being a statutory body, any such conduct would tantamount to an arbitrary and unreasonable exercise of power, apart from being unfair. The discretion vested in the Executive Council should be exercised in a fair and non-arbitrary manner. It cannot be based on the whim and caprice of the decision-making authority. If asked to justify, the Executive Council must have good reasons to defend the exercise of power. In this case, alas, there are none. The resolution of the Executive Council denying confirmation and preferring readvertisement is delightfully vague and offers no justification. The justification desperately attempted in the counter affidavit to defend the decision has, as demonstrated above, come a cropper.

28. In ***Somesh Thapliyal*** **(supra)** it was held as under:-

> *"49. In our considered view, once the Appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.*
>
> *50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present Appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes."*

29. ***Mehar Fatima Hussain (supra),*** while following ***Somesh Thapliyal (supra),*** held on the facts of that case that where appointment was after undergoing a regular selection process and the incumbents possess the relevant qualification, they should have been continued

on the posts merged with the regular establishment of the University instead of adopting a fresh selection procedure. Further in that case the University's action of not continuing the incumbents and starting a fresh selection process was held to be unjust, arbitrary and violative of Article 14 of the Constitution of India. Directions to continue the employment were given. On the facts of the present case too we are inclined to adopt a similar course.

30. Considering the facts obtaining in the present case, we are inclined to hold that, in the absence of any material indicating unsatisfactory performance, in the ordinary course of things, fair and just exercise of power would require that the Appellant be confirmed against the vacancy since there was no more a lien being exercised by Dr. Praveen Kumar Mishra. The reasoning given by the learned Single Judge and of the Division Bench, as demonstrated above, are fallacious. The Appellant has, after undergoing the regular selection process, been working since 17.01.2017, for the last seven years and approximately six months. Even in the impugned order, pending the proposed re-advertisement, she was continued in service.

31. The representations in the employment notice, the Resolution of the Executive Council and the appointment order did give rise to a legitimate expectation to the Appellant that in the event of the lien being vacated, the appellant would be continued in service and regularized in the said post. The only condition was that it will need the approval of the Executive Council.

32. In ***Ram Pravesh Singh and Others*** vs. ***State of Bihar and Others*** (2006) 8 SCC 381, this Court observed that the repository of the legitimate expectation is entitled to an explanation as to the cause for denial of the expected benefit flowing from the representation held out. ***Ram Pravesh Singh*** ***(supra)*** was recently followed by the Constitution Bench in ***Sivanandan C.T. and Others*** vs. ***High Court of Kerala and Others*** (2024) 3 SCC 799. Chief Justice D.Y. Chandrachud, speaking for the Constitution Bench, after felicitously tracing the entire history of the development of the doctrine of legitimate expectation, held in para 18 as under:-

> "18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past

> conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure."

33. In the said judgment of the Constitution Bench, it was further held following ***Food Corporation of India*** vs. ***M/s Kamdhenu Cattle Feed Industries*** (1993) 1 SCC 71 that public authorities have a duty to use their powers for the purpose of public good and that the said duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non- arbitrary manner. One of the exceptions recognized in the above judgment is that the doctrine of legitimate expectation will cede to larger public interest.

34. In the present case, the only explanation given in the counter affidavit of the State was that the University had a discretion and that the denial of regularization and the decision to re-advertise was in the larger interest of the candidates who had not applied as the post was under lien. This explanation found favour with the High Court. However, we have in our discussion above, demonstrated that one of the post of the Assistant Professor (Law) was clearly a regular post in the Unreserved Category. We have found that no prejudice to public interest could have been caused as eligible candidates desiring the appointment would have anyway applied to compete for the regular slot. In view of this, in the facts of the present case, we find that the legitimate expectation was not outweighed by any overriding public interest.

35. The mandate of ***Ram Pravesh Singh*** ***(supra)*** as reiterated in ***Sivanandan C.T.*** ***(supra)*** that the appellant was entitled to an acceptable explanation for the denial of the expectation remains unfulfilled. This is an additional ground on which the appellant should succeed.

36. In view of the aforesaid, we set aside the judgment of the learned Single Judge dated 04.12.2019 and of the Division Bench dated 20.06.2022. We also set aside the Resolution in Agenda No.18/32/2018 of the 32nd Meeting of the Executive Council held on 13.12.2018 insofar as it records that the Appellant is not confirmed in service and that the post should be readvertised. We also set

aside the letter of the Registrar dated 06.02.2019 directing that her services will not be continued beyond 28.02.2019. We further issue a writ of mandamus directing the Respondent-University to place the Appellant's case for confirmation before the Executive Council and that the Executive Council and the Respondent-University shall pass appropriate resolution/order(s), in accordance with the findings given in the present judgment. The said exercise is to be carried out within four weeks' time. The Appellant should also be given all consequential benefits.

37. The appeal stands allowed in the above terms. There shall be no order as to costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 868 : 2024 INSC 634

K. Nirmala & Ors.
v.
Canara Bank & Anr.

(Civil Appeal No(s). 9916-9920 of 2024)

28 August 2024

[Hima Kohli and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether a person who joined the services of a Nationalized Bank/Government of India undertaking based on a certificate that identified him/her as belonging to a Scheduled Caste/Scheduled Tribe in the State of Karnataka, pursuant to the State Government's notifications, would be entitled to retain the position after the caste/tribe was de-scheduled.

Headnotes†

Service Law – Appellants were employed by respondent No.1-bank in the Scheduled Castes Category based on Caste Certificates obtained following due process of law, certifying that they belonged to the 'Kotegara' community, a synonymous caste which was made equivalent to the caste called 'Kotegar Matri' (included in the Scheduled Castes list) by a Circular issued by the State of Karnataka – However, in view of the decision of the Constitution Bench in Milind case holding that any inclusion/exclusion in or from the list of Scheduled Castes can only be made through an Act of Parliament u/Articles 341 and 342 of the Constitution of India, the State of Karnataka de-scheduled the castes of the appellants – Show cause notices issued to the appellants to show cause as to why their services be not terminated – Writ petitions filed by appellants, rejected by High Court – Interference with:

Held: Impugned judgments quashed and set aside – Proposed action of the respondent banks in issuing show cause notices to the appellants, is unsustainable and quashed – Circulars dated 11.03.2002 and 29.03.2003 were issued by State Government

* Author

protecting the employment of those who benefited by these Caste Certificates obtained prior to issuance of the aforesaid circulars – Thus, appellants are entitled to protection of their services by virtue of the circular dated 29.03.2003, as ratified by communication dated 17.08.2005 issued by the Ministry of Finance, which specifically extended protection to various castes including those which were excluded in the earlier Government circular dated 11.03.2002 and covered the castes such as Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara and Sarvegara, ensuring that individuals of these castes holding Scheduled Castes Certificates issued prior to de-scheduling would be entitled to claim protection of their services albeit as unreserved candidates for all future purposes – The aforesaid communication dated 17.08.2005 reinforced the protective umbrella to the concerned bank employees and also saved them from departmental and criminal action. [Paras 35, 37]

Case Law Cited

State of Maharashtra v. Milind and Others **[2000] Supp. 5 SCR 65 : (2001) 1 SCC 4 – followed.**

Chairman and Managing Director Food Corporation of India and Others v. Jagadish Balaram Bahira and Others **[2017] 11 SCR 271 : (2017) 8 SCC 670 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Articles 341 and 342 of the Constitution of India; Government circular; De-scheduling of castes; Castes de-scheduled; State of Karnataka; Scheduled Caste (SC)/Scheduled Tribe (ST); Scheduled Castes Certificates; Castes redesignated under the list of SC/ST; Scheduled Castes Category; Caste Certificates; 'Kotegara' community, 'Kotegar Matri'; Synonymous caste; Scheduled Castes list; Show cause notices; Nationalized Bank/ Government of India undertaking; False or fake Caste Certificates; Government Circulars.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9916-9920 of 2024

From the Judgment and Order dated 24.04.2019 of the High Court of Karnataka at Bengaluru in WA Nos. 189, 190, 191, 192 and 193 of 2019

With

Civil Appeal Nos. 9922, 9923-9924 and 9921 of 2024

Appearances for Parties

K.V. Dhananjay, A Velan, Ms. Navpreet Kaur, Dheeraj SA, Vikash Chandra Shukla, Seetharaman Venkat, Aishvary Vikram, Tarun Gulia, Ajay Awasthi, Siddhartha Relan, Mukul Rathor, Anil Katarki, Ms. Veena Katarki, Anurag Katarki, Deva Vrat Anand, T. R. B. Sivakumar, Advs. for the Appellants.

Nishant Patil, A.A.G., Dhruv Mehta, Sr. Adv., Rajesh Kumar Gautam, Anant Gautam, Ms. Nishi Sangtani, Samir Mudgil, R.P. Daida, Ms. Kavitoli G Yeptho, Ms. Likivi Jakhalu, Kushagra Nilesh Sahay, Arvind Ray, Tridibe Bose, Karanveer Singh Anand, M/s. Khaitan & Co., Rahul Ranjan Verma, Ms. Ashmita Bisarya, Nirmal Kumar Ambastha, D. L. Chidananda, Vignesh Adithiya S, Ayush P Shah, V. N. Raghupathy, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. Leave granted.

3. This batch of appeals, which involves identical questions of fact and law, arises from the judgments delivered by the Division Bench of the High Court of Karnataka, as listed in the table below. Given the similarities, the appeals have been heard together and are being decided collectively.

SLP No(s).	**Writ Appeal No(s).**	**Date of Impugned Judgement**	**Concerned Respondents/ Employer**	**Community (Scheduled Caste/ Scheduled Tribe)**
Special Leave Petition(C) No. 13484-13488 of 2019	Writ Appeal No. 189-193 of 2019	24th April, 2019	The Canara Bank of India	Kotegara **(SC)**
Special Leave Petition(C) No. 19877 of 2019	Writ Appeal No. 2253 of 2018 (S-R)	3rd July, 2019	The Oriental Insurance Co. Ltd.	Kuruba **(ST)**
Special Leave Petition(C) No. 23500-23501 of 2019	Writ Appeal No. 3666 of 2016(S-DIS) c/w Writ Appeal No. 3483 of 2016	3rd July, 2019	The Hindustan Aeronautics Ltd.	Kuruba **(ST)**
Special Leave Petition(C) No. 13453 of 2019	Writ Appeal No. 316 of 2019	24th April, 2019	The Canara Bank of India	Kotegara **(SC)**

Civil Appeals arising out of SLP (C) No(s). 13484-13488 of 2019 shall be treated as the lead matter. The outcome of these appeals shall govern all the connected matters.

4. The common thread that runs through these matters is as to whether a person who joined the services of a Nationalized Bank/Government of India undertaking based on a certificate that identified him/her as belonging to a Scheduled Caste('SC')/Scheduled Tribe('ST') in the State of Karnataka, pursuant to the State Government's notifications,

would be entitled to retain the position after the caste/tribe has been de-scheduled. The situation has arisen on account of the State of Karnataka re-designating some castes under the list of SC/ST, inspite of the fact that this jurisdiction is exclusively conferred upon the Parliament by virtue of the scheme under Articles 341 and 342 of the Constitution of India.

5. In brief, the individual details of the appellants in the lead matter are detailed below: -

S. No.	Name of the Appellant herein	Date of Issuance of Caste Certificate	Date of Joining Service
1.	K. Nirmala/Appellant No. 1	6th February, 1978	26th December, 1978
2.	K.V. Shankar/ Appellant No. 2	17th March, 1978	20th July, 1981
3.	D.K. Prabhakar/ Appellant No. 3	17th March, 1978	24th March, 1981
4.	S. Suresh/Appellant No. 4	2nd March, 1981	23rd March, 1981
5.	Muktha S. Rao/ Appellant No. 5	30th November, 1987	30th November, 1987

6. As evident from the table above, appellant Nos. 1 to 5 in Civil Appeals @ SLP(C) Nos. 13484-13488 of 2019 were employed by the Canara Bank(hereinafter referred to as 'respondent No.1-bank') in the Scheduled Castes Category based on Caste Certificates, certifying that they belonged to the 'Kotegara' community, a synonymous caste which was made equivalent to the caste called 'Kotegar Matri' (included in the Scheduled Castes list) by a Government circular dated 21st November, 1977 issued by the State of Karnataka. It is undisputed that the appellants duly obtained these Caste Certificates in accordance with the prevailing Government circular.

7. A Constitution Bench of this Court in ***State of Maharashtra v. Milind and Others***,[1] held that the State Government has no authority to

1 [2000] Supp. 5 SCR 65 : (2001) 1 SCC 4

amend or modify the Scheduled Castes and Scheduled Tribes list published under Articles 341 and 342 of the Constitution of India. A caste can only be classified as a Scheduled Caste or a Scheduled Tribe or a Socially and Educationally Backward Caste when the Presidential Order is issued to that effect in exercise of the powers prescribed under Articles 341, 342, and 342A of the Constitution of India respectively. In ***Milind*** *(supra)*, this Court held as below: -

> **"15.** Thus, it is clear that **States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes.** Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. **Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard**. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and

machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one entry or the other although they are not expressly and specifically included. **A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.**

(emphasis supplied)

8. Pursuant to the judgment in the case of ***Milind*** (*supra*), the Ministry of Finance, Department of Economic Affairs(Banking Division), Government of India in consultation with the Ministry of Welfare *vide* letter dated 12th March 1987, declared the State of Karnataka circulars which included the 'Kotegara' caste in the list of Scheduled Castes in the State of Karnataka to be *non-est*. The letter addressed to the Chairman & Managing Director of the concerned authorities is reproduced herein below:-

".....Persons belonging to Kotegara, Kote-Kshatriya are not entitled to get benefits as scheduled castes in Karnataka. These communities have never been(sic) treated as

> scheduled castes in Karnataka. The State Government have no power to make any amendment in the existing lists of lists, of SCs/STs can be done only through an Act of Parliament in view of Articles 341(2) and 342(2) of the constitution. In view of this, the orders issued by the Govt. of Karnataka to this effect does not have any validity.
>
> In view of the position explained above, persons belonging to Kotegara and Kote-Kshatriya who have been appointed against the vacancy reserved for scheduled castes cannot be treated as scheduled castes even at the time of their initial appointment because these community have never been treated as synonymous of Kotegar-Matri(sic) by the Government of India which is in the list of SSC in Karnataka. It is infact, entirely the responsible of employer Department to have the matter verified through the State Government, before accepting the claim of the candidates who have been appointed against the reserved posts."

9. The Government of Karnataka issued a circular dated 11th March, 2002 providing protection to individuals employed in State services who had obtained Caste Certificates based on a synonymous caste under the Government circulars, issued by the State. These individuals were to be treated as having been appointed under the General Merit(GM) category, effective from 11th March, 2002. The said circular also provided that such candidates would not be eligible for future promotions or any other benefits as SCs/STs, although they could claim benefits under the respective Backward Classes to which they belonged. Although the 'Kotegara' community was not included in this circular, a subsequent circular dated 29th March, 2003 was issued by the Government of Karnataka, extending the benefits of the circular dated 11th March, 2002 to individuals belonging to the Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara, and Sarvegara communities, who had obtained Caste Certificates in accordance with the earlier Government circulars.

10. It is also undisputed that the Caste Certificates held by the appellants were cancelled by the Competent Authority, namely the District Caste Verification Committee, and this decision was communicated to their respective employers. Subsequently, criminal proceedings were initiated against some of the appellants at the concerned police

station; however, these proceedings were quashed by the High Court while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, 1973(hereinafter referred to as 'CrPC').

11. Respondent No. 2 i.e., Additional Director General of Police, Directorate of Civil Rights Enforcement Cell, intimated respondent No.1-bank to terminate the services of the appellants on the ground that they had secured employment based on fake Caste Certificates. In turn, respondent No.1-bank issued notices to the appellants calling upon them to show cause as to why their services should not be terminated. The appellants challenged the aforesaid notices by filing writ petitions before the High Court of Karnataka which came to be rejected.

12. Being aggrieved by the dismissal of their writ petitions, the appellants preferred intra-Court writ appeals before the learned Division Bench of the High Court against the order of the learned Single Judge. The Division Bench of the High Court dismissed the intra-Court appeals.

13. This batch of appeals by special leave has been preferred to assail the decisions of the learned Division Bench of the High Court of Karnataka, rejecting the writ appeals as indicated in the table above.

Submissions on behalf of the appellants: -

14. Learned counsel representing the appellants, vehemently and fervently contended that the very foundation of the case as presented by respondent No. 1-bank and the other employers, that the Caste Certificates held by the appellants are false/fake, is misplaced. They contended that the Caste Certificates were validly issued by the Competent Authority, affirming/certifying that the appellants belonged to the Scheduled Caste as their caste had been included in the Scheduled Castes list by virtue of the notifications/circulars issued by the Government of Karnataka. They further submitted that the effect of the cancellation of these Caste Certificates pursuant to the judgment in ***Milind*** *(supra)* would only deprive the appellants from claiming any additional/future service benefits including promotion etc. based on their reserved category status. None of the appellants had ever misrepresented themselves before the authorities regarding their caste and the contentious Caste Certificates were issued after following the due process of law, and thus the same cannot be questioned as false or fake Certificates.

15. Learned counsel further submitted that following the Government circulars dated 11th March, 2002 and 29th March, 2003 issued by the Government of Karnataka, the Ministry of Finance(Department of Financial Services)(Welfare Section), Government of India had also issued a letter dated 17th August, 2005, to the Chairman and Managing Director, State Bank of Mysore with the following directions: -

> "2. In para 2 of this Ministry's letter No.4(4)/2002-SCT(B) dated 30th April, 2003, it has been suggested that where the caste certificate is cancelled by the State Government after consideration of the matter by the Security Committee consisting of 3 members and where the concerned employee was given a chance to present his case before the Committee, no further disciplinary proceedings need be taken and the employee's services can be terminated forthwith.
>
> 3. It has, inter alia, been stated in your letter under reference that based on the Government of Karnataka's Order dated 29 March 2003, several employees whose caste certificates are no longer valid, are seeking their appointment to be considered in general category and withdrawal of pending cases against them to permitting them to surrender their original caste certificates to the competent authority for cancellation.
>
> 4. In this regard, it is clarified that where the scheduled caste has been de-scheduled/de-notified after appointment in the Bank, the concerned employee may be treated as a general category employee in the post based roster and the disciplinary case, if any pending against him/her may be withdrawn by permitting him/her to surrender the original caste certificate to the competent authority for cancellation."

Placing reliance on the letter dated 17th August, 2005, learned counsel submitted that the above communication clearly provides that when a Scheduled Caste has been de-scheduled or de-notified after an employee(s) appointment in the bank, such employee(s) may be reclassified as General category employee(s) in the post-based roster. Any pending disciplinary cases against the employee(s) should be withdrawn, requiring them to surrender the original Caste Certificate to the Competent Authority for cancellation.

16. Learned counsel contended that since the Ministry of Finance, Government of India, had also endorsed the views expressed in the circulars dated 11th March, 2002 and 29th March, 2003 issued by the Government of Karnataka, the learned Division Bench of the High Court fell in error while denying relief to the appellants and in refusing to protect their services by granting them the benefits of these circulars. He also asserted that the subsequent communication *via* Office Memorandum issued by the Ministry of Social Justice and Empowerment on 8th July, 2013 relied upon by the respondents cannot be read and employed to the detriment of the appellants because the same does not have retrospective application.

17. Learned counsel further submitted that the Division Bench of the Karnataka High Court erred in denying relief to the appellants by relying upon the judgment in the case of ***Chairman and Managing Director Food Corporation of India and Others v. Jagadish Balaram Bahira and Others***[2] because the ratio of the said judgment is based on the interpretation of *the* "Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes, and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000", which was a special enactment specific to the State of Maharashtra. No such enactment exists in the State of Karnataka, which, in contrast, had issued circulars dated 11th March, 2002 and 29th March, 2003, protecting those individuals who had obtained Caste Certificates on the basis of pre-existing circulars issued by the State by referring to the synonymous castes.

18. On these grounds, learned counsel for the appellants implored the Court to accept the appeals; set aside the impugned orders; and command the respondents to protect the services of the appellants.

Submissions on behalf of the respondents:-

19. *E-converso*, learned counsel representing the respondents, vehemently and fervently opposed the contentions advanced on behalf of the appellants. They urged that the appellants had procured employment against the reserved category seats based on false Caste Certificates and thus, they are not entitled to protect their services. It was submitted that the Government circulars dated 11th March,

2 [2017] 11 SCR 271 : (2017) 8 SCC 670

2002 and 29th March, 2003 issued by the Government of Karnataka provided protection only to the individuals employed in the State services and thus, the said circulars could not have enured to the benefit of individuals akin to the appellants who procured employment with the Central Government/Government of India Undertakings/ Autonomous Institutions over which the Government of India has deep and pervasive control.

20. Learned counsel for the respondents stressed upon the Office Memorandum dated 8th July, 2013 issued by the Ministry of Social Justice and Empowerment, Government of India referring to the Government of Karnataka circular dated 11th March, 2002 and urged that the synonymous castes, Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara, and Sarvegara, etc. are not mentioned in the Scheduled Castes list of the State of Karnataka and therefore, the members of these synonymous castes i.e., the appellants herein cannot claim the benefits of the Scheduled Caste category even in the State of Karnataka.

21. Learned counsel submitted that the controversy at hand is squarely covered by the Constitution Bench judgment of this Court in the case of ***Milind*** *(supra)*, wherein it has been laid down beyond the pale of doubt that the States have no power to amend the Presidential Orders issued under Article 341 of the Constitution of India. The power to include or exclude, amend or alter the Presidential Order is expressly and exclusively conferred on and vested with the Parliament, and that too by making law in this regard, and thus, the appellants were rightly denied relief by the Division Bench of the Karnataka High Court.

22. Learned counsel representing the respondent No.1-bank, urged that the appellants are not entitled to claim protection of their services which they procured against the reserved seats on the basis of false or fake Caste Certificates.

23. Learned counsel representing the other respondents-employers adopted the above submissions and implored the Court to dismiss the appeals and affirm the judgments rendered by the High Court.

24. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgments and the material placed on record.

Discussion and Conclusion: -

25. At the outset, it is to be noted that there is no dispute over the fact that the appellants obtained their Caste Certificates(under the Scheduled Castes category) by following the due process of law. When these Caste Certificates were issued, the synonymous caste, as of the appellants had been included in the list of Scheduled Castes by virtue of the circular issued by the Government of Karnataka, *albeit* by exercising powers that were not vested in the State.

26. As held by the Constitution Bench in ***Milind*** *(supra)*, any inclusion or exclusion in or from the list of Scheduled Castes can only be made through an Act of Parliament under Articles 341 and 342 of the Constitution of India. As a corollary thereto, neither the State Government nor the Courts have the authority to modify the list of Scheduled Castes as promulgated by the Presidential order under the above Articles.

27. For this precise reason, pursuant to the judgment in ***Milind*** (*supra*), the Government of Karnataka took the only permissible decision to de-schedule the castes to which the appellants herein belonged. However, considering the fact that the Caste Certificates issued to the appellants under the previous inclusions made by the State Government to the Scheduled Castes list, *albeit* under a legal misconception was not obtained through misrepresentation or fraud, the State Government took the pragmatic decision to protect the employment of those individuals who had been benefited by these Caste Certificates obtained prior to issuance of the Government circulars dated 11th March, 2002 and 29th March, 2003. There is no dispute on the fact that each of the appellants herein fall within this category. These Government circulars clearly stipulate that individuals who secured employment based on the Caste Certificates issued under the erroneous Government circulars/orders would no longer be entitled to claim future benefits under such certificates and would henceforth be treated as General Merit category candidates for all practical purposes.

28. The Ministry of Finance, Government of India, while referring to the Government of Karnataka's circular dated 29th March 2003, clarified and recommended that in cases where a Scheduled Caste employee(s) has been de-scheduled after an appointment in the Bank, the concerned employee(s) may be treated under the General

Merit category, and any disciplinary cases pending against him/her should be withdrawn, and such employee(s) would have to surrender the original Caste certificate to the Competent Authority.

29. There cannot be any two views on the proposition that with the issuance of the Government of Karnataka's circulars dated 11th March, 2002 and 29th March, 2003, the Scheduled Caste Certificates held by the appellants herein stood automatically revoked and they were brought under the unreserved category with effect from 12th March, 1987.

30. In the case of ***Milind*** *(supra)*, this Court was dealing with the issue regarding the State's power to amend the Presidential Order. It was held that the State has no jurisdiction to tinker with the Presential Orders issued under Article 341 of the Constitution of India. It was not even urged by the learned counsel for the appellants that the certificates held by the appellants based on the erroneous list of inclusion issued by the State Government were valid or should be protected. Their only prayer was to protect the services of the appellants while conceding that their Caste Certificates would be deemed invalid and that they would not be entitled to any future benefits under the reserved category.

31. Even in the case of ***Milind*** *(supra)*, while concluding the judgment, this Court saved the services of the respondents therein in the following manner:-

> **"38.** Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to

> belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. **Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.**"
>
> (emphasis added)

32. The circulars dated 11th March, 2002 and 29th March, 2003 were issued by the Government of Karnataka whereby, protection was extended to the persons who had taken advantage of the Caste Certificates issued prior to issuance of the letter dated 12th March, 1987, by the Ministry of Finance, Government of India. Subsequently, the Ministry of Finance, Government of India *vide* office memorandum dated 17th August, 2005 also ratified this decision of the State, and extended the protection granted by the Government of Karnataka to the employees of the respondent No.1-bank.

33. On a close scrutiny of the Office Memorandum dated 8th July, 2013, which was heavily relied upon by the learned counsel for the respondents, it transpires that the concerned authority in para 3 of the Office Memorandum referred only to the Government circular dated 11th March, 2002 issued by the Government of Karnataka for excluding certain castes from the umbrella of protection. It states that "*the Government Notification dated 11th March 2002 related to Parivara, Talwar, Maleru, Kuruba, Besta, and Koli communities, whose members had obtained Scheduled Tribe certificates. In the said order there is no mention of Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara, and Sarvegara, etc castes.*"

34. Apparently thus, the above Office Memorandum was issued in ignorance of the Government of Karnataka's circular dated 29th March 2003, which further extended the protection granted by the earlier Government circular dated 11th March, 2002 to the communities including Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara, and Sarvegara as well. This Government circular seems to have completely escaped the notice of the Ministry

of Social Justice and Empowerment, Government of India while issuing the Office Memorandum dated 8th July, 2013. Clearly thus, the Office Memorandum suffers from the vice of non-consideration of a vital document being the circular dated 29th March, 2003 issued by the Government of Karnataka. Hence, we have no hesitation in holding that the Office Memorandum dated 8th July, 2013, cannot supersede the communication dated 17th August, 2005 issued by the Ministry of Finance and the same cannot be read to the prejudice of the appellants.

35. In wake of the discussion made above, we conclude that the appellants are entitled to protection of their services by virtue of the Government circular dated 29th March, 2003 issued by the Government of Karnataka as ratified by communication dated 17th August, 2005 issued by the Ministry of Finance. The circular dated 29th March, 2003 issued by the Government of Karnataka specifically extended protection to various castes, including those which were excluded in the earlier Government circular dated 11th March, 2002. This subsequent circular covered the castes such as Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara, and Sarvegara, thus, ensuring that individuals of these castes, holding Scheduled Castes Certificates issued prior to de-scheduling, would be entitled to claim protection of their services *albeit* as unreserved candidates for all future purposes. Additionally, the communication issued by the Ministry of Finance dated 17th August, 2005 reinforced the protective umbrella to the concerned bank employees and also saved them from departmental and criminal action.

36. There is an additional feature in Civil Appeals @ SLP(C) Nos. 23500-23501 of 2019, that must be highlighted. The appellant, in the said appeals namely Smt. Hemavathy, contends that she secured 8th rank in the Bachelor of Engineering course with a specialization in Industrial Production from Mysore University in 1995. It was argued on her behalf that regardless of the Caste Certificate, the appellant would have secured a job at Hindustan Aeronautics Limited(hereinafter being referred to as 'HAL') based on her merit in engineering degree and that the show cause notice was issued as women employees are not welcome in the institution(HAL). This significant contention raised by the appellant has not been adequately traversed by the respondent-HAL in their counter affidavit.

37. Consequently, we hold that the proposed action of the respondent banks/undertakings in issuing notice(s) to the appellants to show cause as to why their services may not be terminated cannot be sustained and are hereby quashed.

38. As a result, the impugned judgments rendered by the Division Bench do not stand to scrutiny, and hence, the same are quashed and set aside.

39. The appeals are accordingly allowed in these terms. No costs.

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

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 885 : 2024 INSC 647

Salam Samarjeet Singh
v.
The High Court of Manipur at Imphal & Anr

(Writ Petition (Civil) No.294/2015)

22 August 2024

[Hrishikesh Roy, Sudhanshu Dhulia and S.V.N. Bhatti, JJ.]

Issue for Consideration

Can the executive instructions in form of a resolution of the Full Court (High Court) by prescribing minimum marks for interview, override statutory rules made under Article 234/309; whether the High Court's decision frustrates the legitimate expectation of the petitioner.

Headnotes†

Judicial Service – Manipur Judicial Service Rules, 2005 – Just before the interview test, the Full Court of the High Court on 12.01.2015 decided to fix 40% as the cut-off for the viva-voce examination and the petitioner's case is that this decision was never intimated to him – The petitioner who had secured 18.8 marks out of the total 50 marks in the interview segment, was held to be unsuccessful for not having the secured minimum prescribed benchmark of 40% – Correctness:

Held: The unamended Schedule 'B' of MJS Rules 2005 prescribes the mode of evaluating and grading the performance in the written and viva-voce examination – Those who secured below 40% are classified in the 'F' category with zero grade value – However, Sub clause (iv) clearly indicates that the final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination – The MJS Rules 2005 came to be amended on 09.03.2016, after conclusion of the present recruitment process whereby, 40% minimum qualifying marks in the viva-voce segment were prescribed – This would also indicate that the Rules as unamended, did not have the requirement of minimum 40% in the viva-voce segment and such qualifying marks came to be incorporated only vide Resolution adopted by the Full Court on 12.01.2015 – If the evaluation and selection of the petitioner would have been carried out on the basis of the unamended Rules, the petitioner having cumulatively secured 50.65% by combining both the written and the interview segment – The petitioner cannot be

placed in the category of failed candidates – In application of the MJS Rules 2005, it is quite certain that there was no cut-off marks or pass marks prescribed for the viva-voce examination in the present process when the recruitment advertisement was published – The subsequent amendment to the Rules with effect from 09.03.2016, cannot be applied to the present recruitment process where the petitioner participated – Moreover, the unamended Rules explicitly provided that the cut-off in the written test for SC/ST Candidates would be 50% – Even though prescribing minimum marks for interview may not be manifestly arbitrary, the present case is on the failure to make the selection, in accordance with the unamended MJS Rules, based on aggregate marks secured by the petitioner in the written examination and the viva-voce test – It is essential to note that while the intention for introducing a minimum cut-off through the High Court Resolution may be bona fide, in the present case, it is not grounded in legality as it cannot override the statutory rules – The minimum marks for interview was prescribed through a High Court Resolution without amending the rules – Therefore, the executive instructions cannot override statutory Rules where the method of final selection by combining the cumulative grade value obtained in the written and the viva voce examinations is specified categorically – In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview – Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules – The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended Rules is clearly violative of the substantive legitimate expectation of the petitioners – It also fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India. [Paras 14, 15, 16, 18, 25, 26, 31]

Case Law Cited

Sivanandan C.T. & Ors v. High Court of Kerala & Ors [2017] 13 SCR 226 – **followed.**

Dr.(Major) Meeta Sahai v. Union of India [2019] 15 SCR 273 – **relied on.**

Kavita Kamboj v. High Court of P&H [2024] 2 SCR 1136 – **distinguished.**

Salam Samarjeet Singh v.
The High Court of Manipur at Imphal & Anr

Abhimeet Sinha v. High Court of Patna [2024] 6 SCR 530**;** *All India Judges Assn. v Union of India* [2002] 2 SCR 712 **– referred to.**

List of Acts

Manipur Judicial Service Rules, 2005; Constitution of India.

List of Keywords

Judicial Service; Minimum marks for interview; Executive instruction in form of Full Court Resolution; Overriding statutory rules; Legitimate expectation; Viva voce examination.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 294 of 2015

(Under Article 32 of The Constitution of India)

Appearances for Parties

Rana Mukherjee, Ahanthem Romen Singh, Ms. Oindriala Sen, Mohan Singh, Aniket Rajput, Ms. Khoisnam Nirmala Devi, Rajiv Mehta, Advs. for the Petitioner.

Vijay Hansaria, Sr. Adv., Maibam Nabaghanashyam Singh, Ms. Kavya Jhawar, Ms. Nandini Rai, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

1. Heard Mr. Rana Mukherjee, learned Senior Counsel appearing for the petitioner. The respondents – High Court of Manipur and the Registrar General are represented by Mr. Vijay Hansaria, learned Senior Counsel.

2. While deciding this writ petition filed under Article 32 of the Constitution of India, there was a difference of opinion and having regard to the conflicting judgments rendered by the two learned Judges on 7.10.2016, the matter was directed to be placed before a three-judge Bench. Thereafter, when a similar question of law was found pending before the Constitution Bench i.e., in *Tej Prakash Pathak and Others vs. Rajasthan High Court and Others*[1] (for short "Tej Prakash

1 Tej Prakash Pathak And Ors. v. Rajasthan High Court And Ors. C.A. No. 2634/2013 & batch

Pathak"*),* this case was tagged with the said case. On 12.07.2023, however submission was made before the Constitution Bench by the learned counsel for the parties that reference to the Constitution Bench along the lines in *Tej Prakash Pathak (supra)* is unnecessary and therefore the difference of opinion between the two Judges in the present case should be resolved by a three-Judge Bench.

3. According to the learned Senior Counsel for the parties, this case can be segregated and the Court should, inter alia, consider the following aspects :-

> "I. Can executive instructions in the form of a resolution of the Full Court override statutory rules made under Article 234/309?
>
> II. Can the criteria of cut-off marks be introduced by a Full-Court Resolution without amending the rules after the written test is over without informing the candidate?
>
> III. Whether such a course of action amounts to procedural fairness/unfairness?"

4. Thereafter, an order was passed by the Constitution Bench on 12.07.2023 to place the present matter for hearing before a three-Judge Bench and that is how we are posted with this case.

RELEVANT FACTS

5. The petitioner, who was an aspirant for the post of District Judge (Entry Level) in the Manipur Judicial Service Grade-I, responded to the advertisement dated 15.05.2013. The petitioner belonged to the Scheduled Caste category and he appeared in the written examination conducted in July 2013 for all the applicants. The High Court of Manipur then issued a Notification on 17.10.2013 declaring that none of the candidates had secured the minimum qualifying marks in the written examination. A grievance was then raised by the petitioner and eventually a corrigendum came to be issued on 07.02.2014 declaring the petitioner to have been successful in the written examination having scored 52.8% marks which satisfied the required benchmark of 50% for the Scheduled Caste category.

6. Just before the interview test, the Full Court of the Manipur High Court on 12.01.2015 decided to fix 40% as the cut-off for the viva-

voce examination and the petitioner's case is that this decision was never intimated to him. The Full Court Resolution reflected that the 40% minimum qualifying marks for passing the interview was fixed by resorting to sub-Rule (3) of Schedule 'B' of the *Manipur Judicial Service Rules, 2005* (for short "MJS Rules,2005"), which reads as under:-

> *"All necessary steps not provided for in these rules for recruitment under these rules shall be decided by the recruiting authority."*

7. The petitioner who had secured 18.8 marks out of the total 50 marks in the interview segment, was held to be unsuccessful for not having the secured minimum prescribed benchmark of 40%. At this stage, it may be noted that the total marks allocated for the written examination for the three papers were 300 and for the interview segment, a total of 50 marks were prescribed. In his written examination, the petitioner had secured 158.50 marks and 18.8 marks in the interview, his total aggregate score in the written examination plus viva-voce was 177.3 marks, out of the total possible 350 marks. Thus, the percentage of marks scored by the petitioner cumulatively stands at 50.6 percent. It is also pertinent to note that the Manipur High Court subsequently on 9.3.2016 amended Schedule-B, Sub-rule(3) to prescribe 40% minimum cut-off for the viva voce.

8. In the split judgment, Justice Banumathi upheld the rejection of the petitioner for failing to secure minimum 40% in the viva voce. It was observed that the fixation of 40% minimum cut off for viva voce is in consonance with the *MJS Rules, 2005* as per Clause 1(3) of the General Instructions provided in Schedule-B. Under the Mode of Evaluation table, securing less than 40% marks has been graded as 'F', which carries a grade value of '0'. In Justice Banumathi's opinion, it was therefore implicit that for a 'pass' in exam, a minimum of 40% marks must be obtained. It was also noted that after participating in the viva voce, the petitioner cannot turn around and challenge the selection process.

9. On the other hand, Justice Shiva Kirti Singh, held that the rejection in viva voce test is wrongful as it violated the statutory mandate which provided for selection based on the cumulative grade value obtained in the written exam and viva voce. It was noted that Grade 'F' for marks below 40% as provided in the evaluation table, corresponds

to securing '0' marks and nothing beyond that. Grade 'F' is not an indicator of failure in the examination.

ARGUMENTS

10. Before this Court, Mr. Rana Mukherjee, learned Senior Counsel for the writ petitioner would argue that when no minimum marks were prescribed in the viva-voce segment at the time when the recruitment commenced through the advertisement dated 15.05.2013, the Full Court could not have fixed minimum qualifying marks in the viva-voce since the unamended *MJS Rules, 2005* never envisaged minimum marks in the viva-voce segment. According to the counsel, this is a case of midway change of rules of the game and therefore it is argued that the opinion expressed by Justice Shiva Kirti Singh should be accepted by this larger Bench. It was contended that the present case is covered by the decision of the five-judge Constitution Bench of this Court in *Sivanandan C.T. & Ors vs High Court of Kerala & Ors*[2] *(*for short "Sivanandan CT"*).*

11.1 On the other hand, Mr. Vijay Hansaria, learned Senior Counsel would refer to the General Instructions contained in Schedule 'B' to the *MJS Rules, 2005* to say that the petitioner was required to obtain 50% marks in the written examination to be eligible for the viva-voce segment which he did. The counsel however contends that those scoring below 40% in the interview, as per the mode of evaluation, should be considered in the 'Fail' category and here since the petitioner had secured less than 40% in the viva-voce segment, he was rightly held to be unsuccessful.

11.2 According to the counsel, the decision in *Sivanandan C.T.(supra),* can have no application in the present facts as in that case, the Rules were amended after the interview was over but in the present case, the requirement of minimum 40% in the interview segment was decided before the interview commenced.

11.3 Mr. Hansaria also drew our attention to the subsequent decisions of this Court in *Kavita Kamboj v. High Court of P&H*[3] (for short "Kavita Khamboj") and *Abhimeet Sinha v High Court of Patna*[4] *(*for short

2 [2017] 13 SCR 226 : (2023) SCC OnLine SC 994

3 [2024] 2 SCR 1136 : (2024) 7 SCC 103

4 [2024] 6 SCR 530 : (2024) 7 SCC 262

"Abhimeet Sinha") to buttress his submission that the minimum marks for interview can be prescribed by the High Court and is not violative of the recommendations of the Shetty Commission and the decision of this Court in *All India Judges Assn. v Union of India*[5] (for short "All India Judges(2002))".

12. Going by the above submissions, the following issues arise for our consideration:

A. Can the executive instructions in form of a resolution of the Full Court by prescribing minimum marks for interview, override statutory rules made under Article 234/309?

B. Whether the High Court's decision frustrates the legitimate expectation of the petitioner?

Issue A

13. To answer the issue, a reference to the unamended Schedule 'B' of *MJS Rules 2005* is necessary:

"Schedule B to the MJS Rules of 2005

Clause 1:

Competitive Examination/Limited Departmental Examination

(i) Written examination of 3 papers for 100 marks each

(ii) Interview : Viva-voce of 50 marks

Clause 3:

General Instructions:

(i) All candidates who obtained 60% or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination, provided that SC/ST candidates who obtained 50% or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination.

(ii) Selection of candidate shall be made on the basis of cumulative grade value obtained in the written and viva-voce examination.

5 [2002] 2 SCR 712 : (2002) 4 SCC 247

(iii) All necessary steps not provided for in these rules for recruitment under these rules shall be decided by the recruiting authority.

(iv) Mode of evaluating the performance of Grading in the written and viva-voce examination shall as below:

Percentage of marks	Grade	Grade Value
70% & above	O	7
65% to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4
50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

Numerical marks obtained for each question in written examination are to be graded as per the above chart and thereafter all the grade values are to be added up and divided by total number of questions, thereby arriving at a Cumulative Grade value Average (CGVA), which inturn is to be again graded as per the above chart.

(v) The same vigorous and objective grade value exercise is also recommended for the viva-voce examination as well.

(vi) Final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination."

14. The unamended Schedule 'B' of *MJS Rules 2005* prescribes the mode of evaluating and grading the performance in the written and viva-voce examination. Those who secured below 40% are classified in the 'F' category with zero grade value. However, Sub clause (iv) clearly indicates that the *"final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination."*

15. Interestingly, the *MJS Rules 2005* came to be amended on 09.03.2016, after conclusion of the present recruitment process whereby, 40% minimum qualifying marks in the viva-voce segment were prescribed. This would also indicate that the Rules as unamended, did not have the requirement of minimum 40% in the viva-voce segment and such qualifying marks came to be incorporated only vide Resolution adopted by the Full Court on 12.01.2015.

16. If the evaluation and selection of the petitioner would have been carried out on the basis of the unamended Rules, the petitioner having cumulatively secured 50.65% by combining both the written and the interview segment and would have been awarded 'B' Grade as per the mode of evaluation prescribed under sub-Clause (iv) of Clause 3 under Schedule 'B' of the *MJS Rules 2005.* With 'B' Grade, the petitioner cannot logically be placed in the category of failed candidates.

17. As was noticed earlier, the relevant advertisement for filling up the vacancy in the entry-level post of District Judge was initiated through the advertisement published on 15.05.2013 which reflected that the recruitment shall be governed by the *MJS Rules 2005*. The duly filled application was presented by the petitioner and he secured the minimum benchmark of 50% marks as a Scheduled Caste category candidate, in the written examination. If the unamended Rules were to be made the basis for evaluation of the performance, the petitioner with his 18.8 marks in the interview out of the maximum permissible 50 marks would have qualified, as his cumulative score (written 158.50 and viva 18.8) would have been 177.3 out of total 350 marks. His percentage in aggregate will then be 50.6% and this would have ensured his success as per the unamended MJS Rules.

18. In application of the *MJS Rules 2005*, we are quite certain that there was no cut-off marks or pass marks prescribed for the viva-voce examination in the present process when the recruitment advertisement was published. The subsequent amendment to the Rules with effect from 09.03.2016, cannot be applied to the present recruitment process where the petitioner participated. Moreover, the unamended Rules explicitly provided that the cut-off in the written test for SC/ST Candidates would be 50% and the final list would be calculated by combining the cumulative grade value in both written and viva voce.

19. During the course of arguments, Mr. Hansaria, Learned Senior Counsel for the High Court relied on the decisions of this Court in

Kavita Khamboj(supra) and *Abhimeet Sinha(supra)* to emphasize the importance of interview for selection in the higher judiciary. In this regard, we must observe that it is well-settled that prescribing minimum marks for interview is not violative of the Shetty Commission report and the judgment of this Court in *All India Judges(2002) (supra).* This Court in a recent judgment in *Abhimeet Sinha(supra)* examined the following aspects:-

> "34.1. ((i) Whether the prescription of minimum marks for viva voce is in contravention of the law laid down by this Court in All India Judges (2002) [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] which accepted certain recommendations of the Shetty Commission?
>
> 34.2. (ii) Whether the prescription of minimum marks for viva voce is violative of Articles 14 and 16 of the Constitution of India?"

20. It was opined in the above judgment that the prescription of minimum marks for the viva voce is not violative of Articles 14 and 16 of the Constitution. Discussing the recommendations of Shetty Commission and the precedents of this Court, it was held that *All India Judges (2002)* is sub-silentio on the aspect of minimum marks for interview and cannot be said to have authoritatively pronounced on doing away with minimum marks for interview.

21. However, in our view, even though prescribing minimum marks for interview may not be manifestly arbitrary, the present case is on the failure to make the selection, in accordance with the unamended *MJS Rules,* based on aggregate marks secured by the petitioner in the written examination and the viva-voce test. This aspect was also discussed in *Abhimeet Sinha (supra)*:

> **"68.** The implications of the split judgment in *Salam Samarjeet Singh* v. *High Court of Manipur* [*Salam Samarjeet Singh* v. *High Court of Manipur*, (2016) 10 SCC 484 : (2017) 1 SCC (L&S) 147] will next bear consideration. Banumathi, J. in her judgment noticed that *All India Judges (2002)* [*All India Judges Assn. (3)* v. *Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] is *sub silentio* on the aspect of minimum cut-off marks for the viva voce test. In his dissenting judgment, Shiva Kirti Singh, J. had not

expressed any disagreement on the said *sub silentio* observation but left it open for determination in a future case. There again, the dissent of Singh, J. was based on the fact that minimum cut-off was not prescribed in the recruitment rules and were brought in midway through the recruitment process, just prior to the stage of interview, by resolution of the Court. Here however the prescription of minimum cut-off in the recruitment process was notified for information of the candidates well before the commencement of the selection process under the Patna High Court and also under the Gujarat High Court and this distinguishing feature will have to be borne in mind."

22. The judgment in *Abhimeet Sinha (supra)* reiterated the following position in case of inconsistency between the recommendations of Shetty Commission and the rules framed by the High Court as per the proviso to Article 309 of the Constitution of India:

"(i) In case of inconsistency between the recommendations and the Rules, primacy should be given to the existing statutory rules.

(ii) In the absence of existing Rules, the High Court should follow the directions of this Court.

60. For the sake of completeness, we may however clarify that even though the statutory rules can be supplemented to fill in gaps as held in Kavita Kamboj v. High Court of P&H [Kavita Kamboj v. High Court of P&H, (2024) 7 SCC 103] , ***the High Court cannot act contrary to the Rules*** [Sivanandan C.T. v. High Court of Kerala, (2024) 3 SCC 799 : (2024) 1 SCC (L&S) 67]."

[emphasis supplied]

23. Applying the above legal proposition, it is seen that in this matter, the mode of evaluation was provided for in the Rules. This is not a case where the Rules were silent. Mr. Hansaria, placed considerable reliance on the decision of this Court in *Kavita Khamboj(supra)*, where a three-judge bench of this Court while upholding the prescription of minimum 50% marks in interview for promotion as District Judges, observed that the rules can be supplemented to fill in the gaps. However, it particularly distinguishes the instances

where the Rules specifically provide for the mode of evaluation. In this regard, it is noteworthy that the Supreme Court speaking through DY Chandrachud CJI, itself notes that the matter would have been entirely different if the Rules specifically provided that the final merit list would be on the basis of aggregate marks:

> **"52.** Moreover, the Rules in the present case are entirely silent in regard to the prescription of a minimum eligibility for clearing a competitive test, on the one hand, and the *viva voce*, on the other hand. If the Rules were to specifically provide in a given case that the criterion for eligibility would be on the combined marks of both the written test and the viva voce, the matter would have been entirely different. [*P.K. Ramachandra Iyer* v. *Union of India*, (1984) 2 SCC 141, para 44 : 1984 SCC (L&S) 214] Rule 6(1)(*a*) and Rule 8 being silent as regards the manner in which merit and suitability would be determined, administrative instructions can supplement the Rules in that regard. This is not a case where the Rules have made a specific provision in which event the administrative instructions cannot transgress a rule which is being made in pursuance of the power conferred under Article 309 of the Constitution. For instance, if the Rules were to provide that there would be a minimum eligibility requirement only in the written test, conceivably, it may not be open to prescribe a minimum eligibility requirement in the *viva voce* by an administrative instruction. ***Similarly, if the Rules were to provide that the eligibility cut-off would be taken on the basis of the overall marks which are obtained in both the written test and the viva voce, conceivably, it would not be open to the administrative instructions to modify the terms***."
>
> [emphasis supplied]

24. In the present case, the Resolution (12.1.2015) prescribing qualifying marks for viva voce is not a case of supplementing the rules but appears to us as a case where the Rules pertaining to the final selection of candidates, have been substituted. Therefore, the decision in *Kavita Khamboj(supra)* is clearly distinguishable.

25. On the other hand, the decision in *Sivanandan C.T. (supra),* is squarely applicable to the facts of the present case. In that case, the

Court held that the Kerala High Court erred in fixing the minimum cut-off contrary to *Rule 2(c)(iii*) of *Kerala State Higher Judicial Service Special Rules,1961* which provided that the aggregate of the written test and the viva voce would be taken into consideration for appointment. There also, the Rules were subsequently amended in 2017 to prescribe minimum cut-off of 35% in the viva voce. It is essential to note that while the intention for introducing a minimum cut-off through the High Court Resolution may be bona fide, in the present case, it is not grounded in legality as it cannot override the statutory rules. The minimum marks for interview was prescribed through a High Court Resolution without amending the rules.

26. In view of the above discussion, we hold that the executive instructions cannot override statutory Rules where the method of final selection by combining the cumulative grade value obtained in the written and the viva voce examinations is specified categorically. Issue A is answered accordingly.

Issue B

27. The second issue that falls for our consideration is whether the High Court's decision frustrates the substantive legitimate expectation of the petitioner. In *Sivanandan CT (supra),* a constitution bench of five judges of this Court speaking through Chandrachud DYC J. succinctly explained the principle as under:

> **"40.** The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In *Nadarajah* [*R. (Nadarajah)* v. *Secy. of State for the Home Deptt.*, 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State

actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

"45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."

28. The Court therein observed that an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (*i*) the legitimacy of the expectation; and (*ii*) that the denial of the legitimate expectation led to a violation of Article 14.

29. Let us now apply the above principle to the present case. The unamended *MJS Rules, 2005* generated a legitimate expectation in the candidate that the merit list would be drawn based on the aggregate of the total marks secured both in the written examination and the viva voce examination. Moreover, the petitioner had no notice about the minimum cut-off for the viva-voce segment which was introduced just on the eve of the viva-voce test, well after the conclusion of written examination. If the candidate had been informed in advance, he could have prepared accordingly, ensuring a fair and predictable process.

30. The petitioner in this case, is on a similar footing as the petitioners in *Sivandandan CT (supra)* where it was noted as under:

"13. In the above backdrop, it is evident that when the process of selection commenced, all the candidates were put on a notice of the fact that : (i) the merit list would be drawn up on the basis of the aggregate marks obtained in the written examination and viva voce; (ii) candidates whose marks were at least at the prescribed minimum in the written examination would qualify for the viva voce; and (iii) there was no cut-off applicable in respect of the

> marks to be obtained in the viva voce while drawing up the merit list in the aggregate."

31. In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview. Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules. The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended Rules is clearly violative of the substantive legitimate expectation of the petitioners. It also fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India.

32. Before we conclude, we may also advert to the contention that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process.[6] We are of the view that it is equally well-settled that the principle of estoppel cannot override the law.[7] Such legal principle was reiterated by the Supreme Court in *Dr.(Major) Meeta Sahai Vs. Union of India*[8] where it was observed as under:

> "17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

---

6 Madan Lal v. State of J&K (1995) 3 SCC 486; Dhananjay Malik v. State of Uttaranchal (2008) 4 SCC 171; Ramesh Chandra Shah v. Anil Joshi (2013) 11 SCC 309 ; Anupal Singh v State of Uttar Pradesh (2020) 2 SCC 173

7 Krishna Rai v Banaras Hindu University (2022) 8 SCC 713

8 [2019] 15 SCR 273 : (2019) 20 SCC 17

33. In light of the above discussion, the opinion of Justice Shiva Kirti Singh is upheld. This Court is not in agreement with the opinion rendered by Justice Banumathi.

34. The petitioner, is therefore, entitled to be declared successful in the recruitment test. It is also noteworthy that despite getting more than 50% marks in the written exam, he was only called for the interview round after he filed a Right to Information (RTI) Application to know his marks. A corrigendum was later issued by the High Court in this regard.

35. It would be unjustified to deny the sole SC candidate, who successfully qualified both the written exam and the interview, in accordance with the then existing rules.

36. Following the above conclusion and to avoid disturbing the seniority of those who are already serving in the same cadre vis-à-vis the petitioner who is found entitled to recruitment, the following order is passed:

I. The High Court should declare the petitioner to be successful by virtue of his scoring 50.6% in aggregate marks in the recruitment tests. He be issued appointment order. However, the appointed petitioner will be entitled to seniority only from the date of his appointment. The petitioner shall not be entitled to any actual monetary benefits for any period prior to his appointment.

II. The appointee should be given notional seniority from the year 2015 when the interview was conducted. It is however made clear that this notional seniority is only for the purpose of superannuation benefits.

III. The above directions be implemented within four weeks from today.

37. The matter stands disposed of and answered on the above terms. Parties to bear their own cost.

Result of the case: Matter disposed of.

[†]*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 901 : 2024 INSC 620

Swati Priyadarshini
v.
The State of Madhya Pradesh & Ors.

(Civil Appeal No. 9758 of 2024)

22 August 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

An Order dated 30.03.2013 passed by the Respondent No.4 deciding not to extend the contract of the appellant as Assistant Project Coordinator from 31.03.2013 on the ground of dereliction of duty, as the work/performance of the appellant was found to be unsatisfactory.

Headnotes†

Service Law – Service on contract basis – Non-extension of contract – Appellant was appointed by the Respondent No.4 to the post of Assistant Project Coordinator (APC) under the Sarv Shiksha Abhiyan (SSA) on contract basis – By an order dated 30.03.2013, the respondent no.4 decided not to extend the contract of the appellant – Appellant contended that the order dated 30.03.2013 was stigmatic in nature and could not have been passed without giving her an opportunity of being heard – The Single Judge of the High Court quashed the order dated 30.03.2013, holding that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular enquiry – However, the Division Bench of the High Court decided in favour of the respondents – Correctness:

Held: While serving as such, complaint(s) against her, in brief, were that she was not performing her duties, primarily on two counts – (i) Not punctual in attending to her duties, and; (ii) Not correctly reported with regard to the events in the hostel – As borne out from the record, with regard to the hostel, charge was given to her for only 5/6 days – As such, it cannot be said that within such a short period, the appellant, without fully understanding the attendant issues, could have straightaway given any opinion/ report on the hostel – Clause 4 of the RGPSM's General Service

* Author

Conditions lays down that ordinarily, for inefficiency, one month's notice is sufficient – The Clause also makes it clear that if someone is found to have indulged in "undesirable activities", the Mission Director was competent to terminate such person's services "with immediate effect" – Respondents have placed themselves in a Catch-22 situation – If the order dated 30.03.2013 falls within the former part of Clause 4, as contended by the respondent, on the premise that it is a case of termination simpliciter and non-stigmatic, then one month's notice was required to be issued to the appellant, which admittedly was not done in the instant matter – *Arguendo*, were the order dated 30.03.2013 to be seen as falling under the latter part of Clause 4, it would be stigmatic, as made clear by the use of the words "indulged in undesirable activities amounting to degradation of dignity of Mission" – In view of the dictum laid down in Parshotam Lal Dhingra case, it is clear that the Respondents did not comply with Clause 4-either the first part or the second part thereof – The order dated 30.03.2013 does visit the appellant with evil consequences and would create hurdles for her further employment – Therefore, the impugned Judgment is quashed and set aside. [Paras 30, 32, 36]

Service Law – Non-extension of contract – Non-mention of of the background situation or the Show Cause Notice (SCN) in the order:

Held: The mere non-mention of the background situation or the SCNs in the order dated 30.03.2013 cannot, by itself, be determinative of the nature of the order – It is settled that the form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/ removing an employee – In the instant case, the impugned judgment also does not deal with Clause 4 of RGPSM's General Service Conditions. [Para 33]

Case Law Cited

Parshotam Lal Dhingra v. Union of India [1958] 1 SCR 828 **: (1957) SCC OnLine SC 5 – followed.**

Anoop Jaiswal v Government of India [1984] 2 SCR 453 **: (1984) 2 SCC 369;** *Gujarat Steel Tubes Ltd. v. Mazdoor Sabha* [1980] 2 SCR 146 **: (1980) 2 SCC 593;** *State Bank of India v. Palak Modi* [2012] 12 SCR 628 **: (2013) 3 SCC 607;** *State of Uttar Pradesh v. Ram Bachan Tripathi* [2005] Supp. 1 SCR 924 **: (2005) 6 SCC**

496; *Rajesh Kumar Shrivastava v. State of Jharkhand* [2011] 3 SCR 823 **: (2011) 4 SCC 447;** *State of Uttar Pradesh v. Ram Chandra Trivedi* [1977] 1 SCR 462 **: (1976) 4 SCC 52;** *Chandra Prakash Shahi v. State of Uttar Pradesh* [2000] 3 SCR 529 **: (2000) 5 SCC 152;** *Samsher Singh v. State of Punjab* [1975] 1 SCR 814 **: (1974) 2 SCC 831 – referred to.**

List of Acts

Rules of Rajiv Gandhi Prathmik Shiksha Mission; Constitution of India.

List of Keywords

Service Law; Service on contract basis; Non-extension of contract; Non-mention of the background situation in order; Termination order; Removal from service; True character of order.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9758 of 2024

From the Judgment and Order dated 03.02.2020 of the High Court of M.P. Principal Seat at Jabalpur in WA No. 956 of 2017

Appearances for Parties

Prashant Bhushan, Adv. for the Appellant.

Nachiketa Joshi, A.A.G., Pashupathi Nath Razdan, Nirmal Kumar Ambastha, Mirza Kayesh Begg, Ms. Maitreyee Jagat Joshi, Astik Gupta, Ms. Akanksha Tomar, Argha Roy, Ms. Ojaswini Gupta, Ms. Ruby, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

2. We are inclined to grant leave; hence, granted.

3. The present appeal has been filed against the Final Judgment and Order dated 03.02.2020 (hereinafter referred to as the "Impugned Judgment") passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur (hereinafter referred to as the "High Court") in

Writ Appeal No.956/2017, whereby it overruled the Judgment dated 20.06.2017 passed by the learned Single Judge in Writ Petition No.8404/2013.

FACTUAL MATRIX:

4. On 15.10.2012, the sole appellant was appointed by the Respondent No.4 to the post of Assistant Project Coordinator (hereinafter referred to as "APC") under the *Sarv Shiksha Abhiyan* (hereinafter referred to as "SSA") on contract basis, initially for one academic session (1 year), renewable in subsequent years for two years each "*subject to evaluation of work in the first year.*"

5. It was contended by the appellant that she received some information about alleged misconduct and immoral activity going on in the CWSN (abbreviation for "Children with Special Needs") Girls' Hostel, Sehore (hereinafter referred to as the "hostel") run by one Bright Star Social Society, a non-governmental organization (hereinafter referred to as "Bright Star"). The State Level Committee raided the hostel on a complaint made by the appellant. The State Level Committee found the allegations, made by the appellant to be true eventually leading to termination of the Memorandum of Understanding with Bright Star to run the hostel with effect from 08.01.2013.

6. On 09.01.2013, the appellant was made in-charge of the hostel. An order was issued by the Sub-Divisional Officer and Magistrate, Sehore on 10.01.2013 to the District Coordinator, State Education Centre, Sehore to lodge a First Information Report against the warden under whose supervision the alleged crime(s) was/were being committed in the hostel.

7. By order dated 14.01.2013, charge of the hostel was withdrawn from the appellant after 5/6 days of assigning the charge. The appellant received a Show-Cause Notice (hereinafter abbreviated to "SCN") issued by the Respondent No.5 which reads as under[1]:

> "*The attendance register was perused by the District Project Coordinator District Education Centre, Sihore under the above subject. Absent was marked on 4th and 5th January, 2013 by me in the attendance register.* (sic)

1 For convenience, English translation is used. The original SCN was issued in Hindi.

Signatures were made by you in the said dates in the attendance register and your coming in the office at 12:00 hours on 14.02.13 is a negligence on your part towards duties and is violation of orders of officer."

To the above, the appellant replied on 16.02.2013, stating that signatures have not been made by her on the attendance register. She stated that due to the arrival of her daughter from Bhopal on 14.02.2013, she was late on the said date. The appellant contended that whenever she comes late to work, she stays late in the office till evening 7-8 PM and completes all the work.

8. On 15.03.2013, another SCN was issued by the Respondent No.4 to the appellant with the following charges:

"i. Marking of disabled boys/girls and verification of the specified list prepared by Social Justice was to be done by you for the execution of several activities through Arushi Institution but marking and verification was not done by you.

ii. The proceedings of appointing volunteers and MRC are prevalent in the Arushi Institution. You are also nominated therein as representative of District Education Centre but due to your in-cooperative, obstruction and negligent attitude, the appointment on the said posts could not be made and due to this reason, the other activities including education is adversely being affected.

iii. No report was submitted when the monitoring of CWSN hostel was done and what improvements were made.

iv. Entry of unauthorized persons in the hostel is strictly prohibited and you being posted at a responsible post, it is your duty to ensure prohibition on the entrance of unwanted persons in the hostel but telling about this is very far and you yourself has tried to enter the hostel along with the crowd of outsiders. Further you put pressure on the senior officers to give entrance to the unauthorized persons in the hostel. The work done beyond your official duties, comes under the category of indiscipline.

v. Your head office is situated at Sihore, but you are not residing at the headquarter and come from Bhopal everyday

vi. You do not come in the office at right time also and in spite of being late,you made signature on the attendance register. It is indiscipline on your part."

(sic)

9. The appellant *vide* representation dated 20.03.2013 stated that all tricks were being adopted for removing her from the post of APC. She stated that SCNs were being issued to her even for small things. She alleged non co-operation from other officers and that she was being harassed as she had complained about the hostel.

10. The appellant replied to the SCN dated 15.03.2013 on 22.03.2013, *inter alia*, countering that she was being subjected to non-cooperation and mental harassment by the officers. She further alleged that her reputation was being spoiled by giving negative feedback to senior officers.

11. Order dated 30.03.2013 was passed by the Respondent No.4 deciding not to extend the contract of the appellant as APC from 31.03.2013 on the ground of dereliction of duty, as the work/performance of the appellant was found to be unsatisfactory. English translation of this order as annexed by the appellant with the paper-book reads as under:

"*Under the above subject matter and under the Sarv Shiksha Abhiyan on 30.03.2013 in the meeting of the District Appointment Committee after the consideration and determination is done and subsequent to the same this decision has been taken that as you work is not satisfactory and due to this reason from the end dated 31.03.2013 of the Education Session your contract service may not be increased.*

In the context of the above decision from dated 31.03.2013 furthermore your contract service is not increased."

(sic)

12. Aggrieved, the appellant/original writ-petitioner invoked Article 226 of the Constitution of India (hereinafter referred to as the "Constitution") to file Writ Petition No.8404/2013 before the High Court against the

order dated 30.03.2013 *supra* refusing to renew/extend her services. A learned Single Judge allowed this writ petition on 20.06.2017 and quashed the order dated 30.03.2013, holding that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular enquiry.

13. Aggrieved by the learned Single Judge's judgment dated 20.06.2017, the official respondents filed Writ Appeal No.956/2017 under Section 2 of The *Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam*, 2005 before the Division Bench, which was allowed on 03.02.2020, and now stands impugned by the appellant.

APPELLANT'S SUBMISSIONS:

14. Mr. Prashant Bhushan, learned counsel for the appellant submitted that the order dated 30.03.2013 was clearly stigmatic in nature and thus could not have been passed without giving her an opportunity of being heard. It was submitted that the learned Single Judge has rightly held so, and the Division Bench has gone only by the text of the order dated 30.03.2013 to erroneously hold that the same was "*simpliciter*".

15. It was contended that the rules stipulate that the minimum tenure of service of a contractual appointee will be at least one year in the first instance and two years each subsequently, subject to evaluation of work in the first year whereas in the present case, the appellant had put in only 5 months and 15 days. Further, it was submitted that the curtailment of the tenure of the appellant was in violation of the provisions of the rules of the *Rajiv Gandhi Prathmik Shiksha Mission*[2] (hereinafter referred to as "RGPSM") which provide that for persons working on contract, notice of one month is to be served, if their tenure is to be curtailed on the ground of inefficiency. Moreover, learned counsel submitted that the respondents were further bound by orders dated 09.03.2012 and 13.03.2012 issued by the Respondent No.2, which specifically provide that contractual workers in the SSA could not be terminated on the ground of inefficiency without affording them an opportunity of being heard, in accordance with the principles of natural justice.

2 Erstwhile name of the SSA.

16. It was pointed out by the learned counsel that the Division Bench also failed to take into consideration that the appellant was the victim of *malafide* counter-action by the Respondents No.4 and 5 as it was she who had brought to the notice of the authorities the misdeeds being committed at the hostel run by Bright Star, under the aegis of the State, which was sought to be buried by the respondents.

17. Learned counsel contended that the glaring fact was that the appellant was assigned the charge of the hostel on 09.01.2013, which was revoked on 14.01.2013 without giving any reason/ground for such action. Learned counsel submitted that this discloses that the respondents made an *ex-post-facto* justification for removing her and that during those 5/6 days, no incident had occurred, which may have justified such extreme action against the appellant.

18. Further, the stand of the learned counsel was that under the RGPSM, the Appointing Authority for the post of APC is the State Level Appointing Authority, whereas she had been removed by the District Level Committee, in contravention of Article 311(2)[3] of the Constitution.

19. In support of his contentions, Mr. Bhushan relied upon the following decisions of this Court:

    1. ***Anoop Jaiswal v Government of India*** **(1984) 2 SCC 369**

    2. ***Gujarat Steel Tubes Ltd. v Mazdoor Sabha*** **(1980) 2 SCC 593**

    3. ***State Bank of India v Palak Modi*** **(2013) 3 SCC 607**

    RESPONDENTS' SUBMISSIONS:

20. *Per contra*, Mr. Nachiketa Joshi, learned Additional Advocate General, for the respondents – the State of Madhya Pradesh and its functionaries – in support of the Impugned Judgment submitted that it was rightly held by the Division Bench that it was within the competence of the authority to determine as to whether the service of

---

3 "***311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.***
xxx
(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
xxx"

a person claiming continuation was satisfactory. For this proposition, reliance was placed on ***State of Uttar Pradesh v Ram Bachan Tripathi*, (2005) 6 SCC 496** and ***Rajesh Kumar Shrivastava v State of Jharkhand*, (2011) 4 SCC 447**.

21. It was submitted that the order dated 30.03.2013 was an order *simpliciter* without involving any stigma being basically an order of non-extension of the appellant's contractual services. He submitted that it does not involve any evil consequences nor is founded on any misconduct. The further submission was that the appellant, having been appointed on contractual basis, has no right of service as such.

22. Relying upon the terms of service, it was pointed out that the same clearly indicated that the appointment would be purely temporary in nature and subject to the contractual conditions stipulated in the contract. It was submitted the even the letter of appointment dated 15.10.2012, under "*Service Conditions*" stated that:

> "*1. This appointment will be absolutely temporary and will be under the contract conditions of Mission.*
>
> *2. If the work is not found satisfactory or if the post is not required, then the service can be terminated without any prior information.*
>
> *…*"

23. In the aforesaid light, it was submitted that in the present case despite the appellant having been issued SCNs seeking explanation for her non-performance, there was no improvement from her end and since her work was found to be unsatisfactory, the contract was not extended. In support of his contentions, learned counsel also relied upon the following:

    1. ***State of Uttar Pradesh v Ram Chandra Trivedi* (1976) 4 SCC 52**

    2. ***Chandra Prakash Shahi v State of Uttar Pradesh* (2000) 5 SCC 152**

24. It was submitted that the appellant was in the habit of remaining absent from work and neither discharged her duty of marking the names of specially-abled boys/girls and nor did verification of the specified list prepared by the Department of Social Justice for execution of several activities through the *Arushi* Institutions. Further, it was

contended that in the Committee constituted to appoint volunteers and MRC in the *Arushi* Institutions, the appellant was appointed as the representative of District Education Centre and due to her non-cooperative, obstructive and negligent attitude, such appointment were not made, leading to other activities, including education, being adversely affected.

25. Moreover, it was submitted that the appellant did not submit a report on the hostel when it was under her monitoring and she did not inform whether there was any improvement or not and if so, the details thereof and steps taken. It was submitted that only because the appellant had previously been issued some appreciation letters, future unsatisfactory conduct cannot be saved basis her past conduct.

26. Learned counsel further pointed out that initially the appellant was placed at Serial No.5 in the Provisional Merit List issued on 09.12.2011 which was because of non-submission of proper Certificate of Experience alongside her application for the post of APC. Later, when the Certificate of Experience was submitted, the Merit List was revised and rectified on 12.09.2012, whereupon she was placed at Serial No.1.

27. Apropos the appellant's allegations against Respondents No.4 & 5 to the effect that they were interested for the appointment of one Dheeraj Singh Dhakad, learned counsel submitted that in the Provisional Merit List, he was below the appellant, which would not have been the case had he been favoured. It is also submitted that had there been any *malafide* intent towards the appellant, Respondents No.4 & 5 would have rejected her application on the basis of her submitting an expired Certificate of Experience, but they chose to give time to her to submit a proper Certificate, which would demonstrate that the said respondents did not harbour any bias against her.

28. Learned counsel summed up by stating that the judgment impugned was well-considered and needed no interference under Article 136 of the Constitution.

ANALYSIS, REASONING AND CONCLUSION:

29. Having bestowed our anxious consideration to the *lis*, we find that the interference of the Division Bench with the judgment dated 20.06.2017 of the learned Single Judge, has to be interdicted at our hands.

30. A bird's eye views reveals thus. The appellant topped the revised Merit List, leading to her appointment as an APC. While serving as such, complaint(s) against her, in brief, were that she was not performing her duties, primarily on two counts – (i) not punctual in attending to her duties, and; (ii) not correctly reported with regard to the events in the hostel. As against these, the appellant's response, *via* her replies to the SCNs, is that she, *inter alia*, frankly admits to being late on occasion, but to compensate for her late-coming, she used to sit till late evening in the office for completion of work. On this count, the Respondents cannot be faulted. It is no justification for the appellant to contend that she was late, but worked late/ overtime such that the work did not suffer. However, as borne out from the record, with regard to the hostel, charge was given to her for only 5/6 days. As such, in our view, it cannot be said that within such a short period, the appellant, without fully understanding the attendant issues, could have straightaway given any opinion/report on the hostel. Be that as it may, this case turns on our findings *infra*.

31. Clause 4 of the RGPSM's General Service Conditions under the heading "*Resignation/Termination*" provides as below:

> "*Persons working on contract can be* ***terminated with one month notice if found inefficient.*** *In case of* ***persons found indulged in undesirable activities amounting to degradation of dignity of Mission, Mission Director shall reserve right to terminate him/her with immediate effect.***"
>
> (emphasis supplied)

32. Perusal of Clause 4 makes it clear that ordinarily, for inefficiency, one month's notice is sufficient. The Clause also makes it clear that if someone is found to have indulged in "*undesirable activities*", the Mission Director was competent to terminate such person's services "*with immediate effect*". We are afraid that the Respondents have placed themselves in a Catch-22[4] situation. If the order dated 30.03.2013 falls within the former part of Clause 4, as contended by the respondent, on the premise that it is a case of termination *simpliciter* and non-stigmatic, then one month's notice was required

4 Colloquially, when one is placed in a dilemma due to two contradictory conditions. The phrase was popularized by Joseph Heller's novel of the same name, first published in 1961.

to be issued to the appellant, which admittedly was not done in the instant matter. *Arguendo*, were the order dated 30.03.2013 to be seen as falling under the latter part of Clause 4, it would be stigmatic, as made clear by the use of the words "*indulged in undesirable activities amounting to degradation of dignity of Mission*".

33. In either of the above-noted eventualities, the Impugned Judgment would have to necessarily be set aside. Nevertheless, let us examine the reasoning of the Division Bench, which opined that the order is non-stigmatic and *simpliciter* non-renewal of contract. The order dated 30.03.2013 was, quite obviously, the culmination of the process set into motion by the two SCNs, which has been overlooked by the Division Bench. The mere non-mention of the background situation or the SCNs in the order dated 30.03.2013 cannot, by itself, be determinative of the nature of the order. As held by this Court in ***Samsher Singh v State of Punjab*** **(1974) 2 SCC 831**[5] and ***Anoop Jaiswal v Government of India*** **(1984) 2 SCC,**[6] the form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/removing an employee. Moreover, the Impugned Judgment also does not deal with Clause 4. Interestingly, this Clause also escaped the attention of or/and was not brought to the notice of the learned Single Judge either.

34. It is profitable to refer to what five learned Judges of this Court laid down in ***Parshotam Lal Dhingra v Union of India*****, 1957 SCC OnLine SC 5**:

> "***28.*** *The position may, therefore, be summed up as follows:* ***Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal****, as has been held by this Court in Satish Chander Anand v. Union of India [(1953)*

5 "***80.*** *…The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311 …*"

6 "***12.*** *It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.*"

1 SCC 420: (1953) SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh [(1955) 1 SCR 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, ***if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted.*** *But even* ***if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.*** *As already stated if the servant has got a right to continue in the post, then,* ***unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forefeiture of his right and he is***

visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. *A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment.* ***The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.*** *The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions,* ***the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to***

> ***his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.***"
>
> (emphasis supplied)

35. We would only be adding to verbosity by multiplying authorities. In view of the above dictum, it is clear that the Respondents did not comply with Clause 4 – either the first part or the second part thereof. The order dated 30.03.2013 does visit the appellant with evil consequences and would create hurdles for her *re* further employment.

36. In view of the discussions made hereinabove, the Impugned Judgment is quashed and set aside. The judgment of the learned Single Judge dated 20.06.2017 stands revived, however with a modification to the extent that the appellant shall be entitled to all consequential benefits including notional continuation in service at par with other similarly-situated employees, but with the back wages restricted to 50%. Further, in view of the long passage of time, we deny liberty to the respondents to proceed afresh against the appellant as was granted by the learned Single Judge. However, this will not preclude the respondents from taking action against the appellant in accordance with law *in futuro* apropos her official duties on the post in question, if the situation so arises. The exercise be completed within three months from the date of receipt of this judgment.

37. The appeal is allowed and disposed of on the above terms while leaving the parties to bear their own expenses.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 916 : 2024 INSC 611

Ramnaresh @ Rinku Kushwah and Others
v.
State of Madhya Pradesh and Others

(Civil Appeal No. 9628 of 2024)

20 August 2024

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Appellants-meritorious reserved candidates, who had passed from the Government Schools and on their own merit were entitled to be selected against the Unreserved Government School (UR-GS) quota were denied the seats against the open seats in the GS quota, on account of erroneous application of the methodology in applying the horizontal and vertical reservation. They were deprived admission in the Academic Session 2023-24 for MBBS Course against the UR-GS category. High Court whether justified in dismissing the writ petitions filed by the appellants.

Headnotes†

Reservation – Horizontal and vertical reservation – Misapplication – Madhya Pradesh Education Admission Rules, 2018 – NEET UG 2023 – Vacancies transferred from one category to other categories, out of 89 unreserved seats for Government School students, 77 were sent to the open category – Appellants filed writ petitions praying that the meritorious students of reserved category who had studied in Government Schools must be allotted MBBS seats of unreserved category government school quota before they are released to the open category – Dismissed – Sustainability:

Held: Not sustainable – Even in case of horizontal reservation, the candidates from the reserved categories like SC/ST/OBC, if they are entitled on their own merit in the GS quota, will have to be admitted against the GS quota (UR seats) – Horizontal as well as the vertical reservation would not be seen as rigid "slots", where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed – The open category is open to all, and the only condition for a candidate to

* Author

be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him – The methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of the meritorious reserved category candidates to the unreserved seats is unsustainable – Appellants were deprived of their legitimate claim of admission in the Academic Session 2023-24 for MBBS Course against the UR-GS category – Since the admission process for the said academic session is complete, respondents directed to admit the appellants in the next Academic Session 2024-25 for MBBS Course against the seats reserved for UR-GS category – Impugned judgments quashed and set aside. [Paras 12, 14, 16, 18, 20, 21]

Case Law Cited

Indra Sawhney and Others v. Union of India and Others [1992] Supp. 2 SCR 454 **: (1992) Supp 3 SCC 217 – followed.**

Saurav Yadav and Others v. State of Uttar Pradesh and Others [2020] 11 SCR 281 **: (2021) 4 SCC 542;** *S. Krishna Sradha v. State of Andhra Pradesh and Others* [2019] 15 SCR 93 **: (2020) 17 SCC 465;** *Sadhana Singh Dangi and Others v. Pinki Asati and Others* **(2022) 12 SCC 401;** *R.K. Sabharwal and Others v. State of Punjab and Others* [1995] 2 SCR 35 **: (1995) 2 SCC 745;** *Ritesh R. Sah v. Dr. Y.L. Yamul and Others* [1996] 2 SCR 695 **: (1996) 3 SCC 253 – relied on.**

Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar **(2020) SCC OnLine Guj 2592 – referred to.**

List of Acts

Madhya Pradesh Education Admission Rules, 2018.

List of Keywords

NEET UG; MBBS Course; Reservation; Horizontal reservation; Vertical reservation; Meritorious reserved candidates; Meritorious students of reserved category; Unreserved Government School (UR-GS) quota; Open seats; Open seats in the Government School quota; UR-GS category; UR-GS seats; Open category; General category; Open general category; Unreserved seats.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9628 of 2024

From the Judgment and Order dated 12.01.2024 of the High Court of M.P. at Gwalior in WP No. 23060 of 2023

With

Civil Appeal Nos. 9629-9630 And 9631 of 2024

Appearances for Parties

K Parameshwar, Siddhartha Iyer, Aditya Shanker Pandey, Mrs. Rekha Bakshi, Ms. Yoothica Pallavi, Himanshu Sehrawat, Avijit Mani Tripathi, Advs. for the Appellants.

Nachiketa Joshi, A.A.G., Sunny Choudhary, Sharad Kumar Singhania, Abhimanyu Singh, Padmesh Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeals challenge the judgments and orders dated 22nd December 2023 and 12th January 2024 passed by the High Court of Madhya Pradesh at Gwalior in Writ Petition Nos. 23998 and 23437 of 2023, and 23060 of 2023 respectively. By the said writ petitions, the writ petitioners (appellants herein) had challenged the decision of the Respondent-Department of Medical Education of not allotting MBBS Unreserved (UR) Category Government School (GS) quota seats to the meritorious reserved candidates, who had passed from the Government Schools. The appellants had also prayed for a direction to the Respondent-Department to allot the MBBS seats of Unreserved Category Government School quota to the appellants.

3. Writ petitioners in Writ Petition No. 23060 of 2023 before the High Court have approached this Court by way of appeals arising out of Special Leave Petition (SLP) (Civil) Nos. 2111 and 2285 of 2024, and writ petitioners in Writ Petition Nos. 23437 and 23998 of 2023

have approached this Court by way of appeals arising out of SLP(C) Nos. 2311-2312 of 2024.

4. Since the facts giving rise to the present appeals as given below are identical and same, the said appeals are decided by the common judgment and order.

4.1 On 19th June 2019, the amendment by the State Government to the Madhya Pradesh Education Admission Rules, 2018 (hereinafter referred to as the "Admission Rules, 2018") were notified. In place of sub-rules (1) and (u) of rule 2 and sub-rule (2) of rule 4, new sub-rules were established that defined "category" and the method to fill vacancies for category wise reservation was established.

4.2 On 7th May 2023, the NEET (UG) Examination was conducted in which the appellants had participated in.

4.3 On 10th May 2023, the State of Madhya Pradesh notified another amendment in the Admission Rules, 2018. Sub-rule (f) and (b) were added to Rule 2 that defined "Government School" and the students who could fall under the category of "Government School Students". A new table in existing clause (b) of Schedule-2 detailing the quantum of reservations was added in which 5% of the total seats were reserved for government school students.

4.4 Subsequently, the results of NEET (UG) were declared on 13th June 2023. Then, on 25th July 2023, an advisory was issued notifying that the Admission Rules, 2018 and the amendment thereto dated 10th May 2023 would apply to the counselling process.

4.5 A chart showing the names of the appellants, marks obtained by them in NEET UG – 2023, their categories and their details in the appeals, are as under:

S. No.	Name of Appellant	Marks obtained in NEET UG – 2023	Category	Party Details
1.	Ramnaresh Kushwaha	412	OBC	P1 in SLP(C) No. 2111/2024
2.	Sachin Baghel	390	OBC	P2 in SLP(C) No. 2111/2024

3.	Tapsya Kutwariya	244	SC	P3 in SLP(C) No. 2111/2024
4.	Tasmiya Khan	409	OBC	P in SLP(C) No. 2311/2024
5.	Muskan Hidau	395	OBC	P in SLP(C) No. 2312/2024
6.	Deepak Jatav	305	SC	P1 in SLP(C) No. 2285/2024
7.	Vikash Singh	297	EWS	P2 in SLP(C) No. 2285/2024

4.6 Thereafter, on 22nd August 2023, the State/Respondents issued the seat wise distribution of medical colleges at the end of the 2nd round of counselling. Since several seats remained vacant according to Rule 2 (g) of the Admission Rules, 2018, the vacancies were transferred from one category to other categories. In the instant case, out of 89 unreserved seats for Government School students, 77 were sent to the open category.

4.7 Being aggrieved by the fact that the vacant seats were going to be released to the unreserved category, the aforesaid writ petitions were filed by the appellants before the High Court, where it was prayed that the meritorious students of reserved category who have studied in Government Schools must be allotted MBBS seats of unreserved category government school quota before they are released to the open category.

4.8 The High Court, vide order dated 31st October 2023 dismissed a Writ Petition filed by another candidate seeking similar relief as aforementioned. The High Court in the Writ Petition being WP No. 23060 of 2023 filed by the appellants in an interim order dated 8th November 2023 took note of the earlier order dated 31st October 2023 and recorded that no *prima facie* case was made out and adjourned the matter to permit the appellants to make additional arguments. The said order dated 8th November 2023 was challenged before this Court vide SLP (C) No. 25963 of 2023, wherein this Court vide order dated 28th November 2023 directed the High Court to decide the petition on merits or the question of interim relief at the earliest, preferably within 2 weeks.

4.9 Ultimately, on 22nd December 2023, the Indore Bench and on 12th January 2024 the Gwalior Bench of the High Court vide the impugned judgments and orders dismissed the writ petitions finding the same *sans* merits.

4.10 The impugned judgments and orders came to be challenged before this Court and after hearing all the parties, this Court vide order dated 12th August 2024 reserved the judgment and by way of an ad-interim order directed the respondent/State to keep seven seats vacant in MBBS course, so that in the event the appellants succeed, they can be accommodated against the said seats.

5. We have heard Shri K. Parameshwar, learned Senior Counsel appearing on behalf of the appellants and Shri Nachiketa Joshi, learned Additional Advocate General (AAG) appearing on behalf of the respondents.

6. Shri Parameshwar, learned Senior Counsel appearing on behalf of the appellants submitted that the GS quota was introduced by the State of Madhya Pradesh on 10th May 2023. However, the procedure followed by the respondents in sub-classifying the candidates further into categories as UR-GS, SC-GS, ST-GS, OBC-GS and EWS-GS was totally illegal. It is submitted that, in view of the settled position of law as laid down by this Court in the case of ***Saurav Yadav and Others v. State of Uttar Pradesh and Others***,[1] even in case of horizontal reservation, the candidates from the reserved categories like SC/ST/OBC, if they are entitled on their own merit in the GS quota, will have to be admitted against the GS quota (UR seats). He submitted that, on account of erroneous application of policy, an anomalous situation has arisen wherein, in the UR-GS seats, the persons who are much less meritorious than the appellants, who have secured as low as 214, 150 marks, have secured admission, whereas the appellants, who are much more meritorious than the UR-GS candidates have been deprived the admission. It is submitted that the cut-off for UR-GS was 291, OBC-GS was 465, SC-GS was 314 and EWS-GS was 428. He therefore submitted that, on account of erroneous application of the policy, as many as 77 seats classified as UR-GS, were not

1 [2020] 11 SCR 281 : (2021) 4 SCC 542 : 2020 INSC 714

filled from the GS quota and had to be released to the open pool of candidates.

7. Shri Parameshwar further submitted that the State, realizing its mistake, has now carried out an amendment on 2nd July 2024 thereby intending to apply horizontal reservation correctly for this academic year in accordance with the judgment and decision of this Court in the case of ***Saurav Yadav*** (supra).

8. To meet the situation of the admission for the Academic Session 2023-24 which being already complete, the learned Senior Counsel, relying on the judgment of this Court in the case of ***S. Krishna Sradha v. State of Andhra Pradesh and Others***,[2] submitted that the Court should mould the relief and direct the admission to be granted to the appellants in the next academic session by issuing appropriate directions.

9. Shri Joshi, learned AAG appearing on behalf of the respondents submitted that, since the reservation in the GS category was horizontal, the State was justified in making a further sub-classification into OBC-GS, ST-GS, SC-GS, UR-GS and EWS-GS. He submitted that, since it was a case of horizontal reservation, it was not possible to shift the category of vertical reservation like the SC/ST/OBC/EWS to the horizontal category of UR-GS.

10. By now, it is a well-settled principle of law that a candidate belonging to any of the vertical reservation categories who on the basis of his own merit is entitled to be selected in the open or general category, will be selected against the general category and his selection would not be counted against the quota reserved for such vertical reservation categories. Reliance in this respect could be placed on the 9-Judge Bench judgment of this Court in the case of ***Indra Sawhney and Others v. Union of India and Others***,[3] and in the cases of ***R.K. Sabharwal and Others v. State of Punjab and Others***[4] and ***Ritesh R. Sah v. Dr. Y.L. Yamul and Others***.[5]

11. However, this Court, in the case of ***Saurav Yadav*** (supra), had

2 [2019] 15 SCR 93 : (2020) 17 SCC 465 : 2019 INSC 1362

3 [1992] Supp. 2 SCR 454 : 1992 Supp (3) SCC 217

4 [1995] 2 SCR 35 : (1995) 2 SCC 745 : 1995 INSC 108

5 [1996] 2 SCR 695 : (1996) 3 SCC 253 : 1996 INSC 258

an occasion to consider for the first time as to whether the said principle laid down in the case of ***Indra Sawhney*** (supra) and followed subsequently would also apply to the cases of horizontal reservation. Prior to the said judgment, there were conflicting views of different High Courts. This Court, after surveying various earlier pronouncements and considering the views as expressed by the High Courts, observed thus:

> "**43.** Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgment in *Tamannaben Ashokbhai Desai* [*Tamannaben Ashokbhai Desai* v. *Shital Amrutlal Nishar*, 2020 SCC OnLine Guj 2592] contemplate the correct and appropriate procedure for considering and giving effect to both *vertical* and *horizontal reservations*. The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No. 64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open/General category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes-Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs."

12. It could thus be seen that, this Court approved the steps indicated by the High Court of Gujarat in paragraph 69 of its judgment in the case of ***Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar***[6] for considering and giving effect to both vertical and horizontal reservations. In the said case, this Court was considering horizontal reservation for the female candidates. It was observed

6 2020 SCC OnLine Guj 2592

that a meritorious reserved category candidate who is entitled to the General category of the said horizontal reservation on his own merit, will have to be allotted a seat from the said General category of the horizontal reservation. Meaning thereby such a candidate cannot be counted in a horizontal seat reserved for the category of vertical reservation like SC/ST.

13. It will also be apposite to refer to the following observations made by S. Ravindra Bhat, J. in his concurring judgment:

> "**66.** I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. **These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him**."
>
> [emphasis supplied]

14. It could thus be seen that the learned Judge clearly observed that the horizontal as well as the vertical reservation would not be seen as rigid "slots", where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed. It was observed that by doing so, it would result in communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. It was observed that the open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.

15. The said view was reiterated by this Court in the case of ***Sadhana Singh Dangi and Others v. Pinki Asati and Others.***[7]

7 (2022) 12 SCC 401 : 2021 INSC 907

16. In view of the settled position of law as laid down by this Court in the case of ***Saurav Yadav*** (supra) and reiterated in the case of ***Sadhana Singh Dangi*** (supra), the methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of the meritorious reserved category candidates to the unreserved seats is totally unsustainable. In view of the law laid down by this Court, the meritorious candidates belonging to SC/ST/OBC, who on their own merit, were entitled to be selected against the UR-GS quota, have been denied the seats against the open seats in the GS quota.

17. It is to be noted that, in the present case, the cut-off for UR candidates was much less as compared to the cut-off for SC/ST/OBC/EWS candidates. As such, the respondents ought to have admitted the present appellants against the UR-GS categories. It is further to be noted that many seats from UR-GS category were required to be transferred to the General category.

18. Having held that the appellants were deprived of their legitimate claim of admission against the UR-GS category in the Academic Session 2023-24, and since the admission process for the said academic session is complete, we will have to consider as to what relief should be granted in favour of the appellants.

19. It will be apposite to refer to the observations made by this Court in the judgment of ***S. Krishna Sradha*** (supra), which read thus:

> "**13.** In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:
>
> **13.1.** That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.
>
> **13.2.** Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the

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

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

is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year."

20. Undisputedly, the appellants who were meritorious and who could have been admitted against the UR-GS category were denied admission on account of an erroneous application of the methodology in applying the horizontal and vertical reservation. It is also not in dispute that many of the students, who secured much less marks than the appellants, have been admitted against the UR-GS seats. This is totally in contravention of the law laid down by this Court in the cases of ***Saurav Yadav*** (supra) and ***Sadhana Singh Dangi*** (supra). We therefore find that as held by this Court in the case of ***S. Krishna Sradha*** (supra), it will be appropriate to issue directions to the respondents to admit the appellants in the next Academic Session 2024-25 against the UR-GS seats. Vide order dated 12th August 2024, we have already directed 7 seats to be kept vacant in the event the appellants succeed. The appellants can be very well accommodated against the said seats.

21. In the rest, we pass the following order:

(i) The appeals are allowed;

(ii) The impugned judgments and orders dated 22nd December 2023 and 12th January 2024 passed by the High Court of Madhya Pradesh at Gwalior in Writ Petition Nos. 23998 and 23437 of 2023, and 23060 of 2023 respectively are quashed and set aside; and

(iii) The respondents are directed to admit the appellants herein in the next Academic Session i.e. 2024-25 for MBBS Course against the seats reserved for UR-GS category.

22. Pending application(s), if any, shall stand disposed of. No costs..

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey