V.S. DREAM COACHING

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Indirapuram Ghaziabad

For

H.J.S. P.C.S. (J) A.P.O. & CLAT

Year- 2022

Secret of success is to know something

nobody else knows

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For Judicial Service Aspirants

In the service of Judicial Fraternity

V.S. DREAM COACHING

1. Study Material-Law

A. Further Investigation and Re-investigation

The police had the statutory right and duty to 'register' every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence.

As per Section 2(h) of the 1973 Criminal Procedure Code " investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

As explained by the Division Bench of Hon'ble Supreme Court in **Vinay Tyagi Vs. Irsahd Ali @ Deepak 2013 AIR SCW 220,** investigation can be of the following kinds:
(i) Initial Investigation.
(ii) Further Investigation.
(iii) Fresh or de novo or re - investigation.

Normally an investigation begins with the registration of First Information Report (Section 154) and ends with the filing of a final report under Section 173 of Code of Criminal Procedure.

When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non- cognizable offence, he shall not investigate it without the order of a competent Magistrate.

Hon'ble Supreme Court in **H. N. Rishbud and Inder Singh Vs. State of Delhi, AIR 1955 SC 196,** states that investigation consists generally of the following steps:
(1) Proceeding to the spot,

(2) Ascertainment of the facts and circumstances of the case,
(3) Discovery and arrest of the suspected offender,
(4) Collection of evidence relating to the commission of the offence which may consist of

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
(b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.

The terms **'investigation', 'further investigation' and 're-investigation'** are conceptually different. Sub-section (1) of Section 173 of Cr.P.C. makes it clear that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government mentioning the name of the parties, nature of information, name of the persons who appear to be acquainted with the circumstances of the case and further particulars such as the name of the offences that have been committed, arrest of the accused and details about his release with or without sureties. Among other sub-sections, we are very much concerned about sub-section (8) of Sec. 173, which reads as under:-

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

A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed.

In **Rama Chaudhary Vs. State of Bihar (2009) 6 SCC 346,** the Supreme Court held that further investigation is permissible under Section 173(8), however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation

without prior permission is prohibited. On the other hand, further investigation is permissible.

The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.

'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency.

The Apex Court in **Ramachandran Vs. R Udhayakumar and Others AIR 2008 SC 3102** held as follows:
"The dictionary meaning of 'further' (when used as an adjective) is 'additional; more; supplemental'. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports - and not fresh report or reports - regarding the 'further' evidence obtained during such investigation."

Hon'ble Supreme Court in **Ram Lal Narang Etc. Etc Vs. State of Delhi (Admn.) (1979) 2 SCC 322,** held that;

> "It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the

involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case.

Is it necessary for the Police to take formal permission from the Magistrate for further investigation?

In Ram Lal Narang (Supra), the Supreme Court held that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

In **Rama Chaudhary Vs. State of Bihar (2009) 6 SCC 346,** the Supreme Court held that law does not mandate taking prior permission from the Magistrate for further investigation.

Can further investigation be ordered by the Magistrate after taking Cognizance?

Yes, as held by Hon'ble Supreme Court in **Vinubhai Haribhai Malaviya Vs. State of Gujarat AIR 2019 SC 5233, decided on 16-10-2019,** that a Magistrate has power to order further investigation into an offence, even at a post cognizance stage, until the trial commences.

"To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to ensure in such

Magistrate at all stages of the criminal proceedings until the trial itself commences".

Supreme Court observed "It is thus clear that the Magistrate's power under Section 156(3) of the Cr.P.C. is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the Cr.P.C. would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the Cr.P.C.".

It further observed "When Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)".

It also observed "Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun".

Hon'ble Supreme Court in **Vinubhai Haribhai Malaviya (Supra)** overruled following six rulings, by holding that a Magistrate has power to order further investigation into an offence, even at a post cognizance stage, until the trial commences:-

1. Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Ors. (2004) 5 SCC 347
2. Amrutbhai Shambubhai Patel Vs. Sumanbhai Kantibai Patel (2017) 4 SCC 177
3. Athul Rao Vs. State of Karnataka and Anr. (2018) 14 SCC 298
4. Bikash Ranjan Rout Vs. State (GNCT) of Delhi (2019) 5 SCC 542
5. Randhir Singh Rana Vs. State (Delhi Administration) (1997) 1 SCC 361
6. Reeta Nag Vs. State of West Bengal and Ors. (2009) 9 SCC 129

Re-investigation

The concept of re-investigation is alien to Criminal Procedure Code. There is no provision in the Code of Criminal Procedure which enables the Magistrate to order re-investigation, or the police to conduct re-investigation. Re-investigation is where the Court directs de novo or fresh investigation into the case. This is not a supplemental proceeding like further investigation. It is an altogether fresh proceeding. However High Court under its inherent power under Sec. 482 Cr.P.C. can order re-investigation, as has been held by the Hon'ble Apex Court in case **State of Punjab Vs. CBI AIR 2011 SC 2962.**

Further Hon'ble Supreme Court in case **Vinay Tyagi Vs. Irsahd Ali @ Deepak 2013 AIR SCW 220** considering the power of High court and Superior Courts on reinvestigation has held as under:-

> "Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

In **Pooja Pal Vs. Union of India, AIR 2016 SC 1345,** the Supreme Court ordered fresh investigation by CBI in a murder case of a politician, despite the fact that the trial on the basis of final report filed by the state police was pending.

Certain features of re-investigation are :

- Re-investigation can be ordered only by superior courts such as High Courts or the Supreme Court. Magistrate cannot order re-investigation.
- Police cannot conduct re-investigation on their own. There has to be a definite order of the Court for re-investigation. However, the police has power for further investigation under Section 173(8) CrPC, even without an order of the Court.
- The Code of Criminal Procedure does not mention 're-investigation'. I
- It can be ordered only in exceptional circumstances, where the unfairness of the investigation is such that it pricks the judicial conscience of the Court.

It was held in **Vinay Tyagi (Supra)** that re-investigation can be ordered when the Court is satisfied that the investigation ex facie is unfair, tainted, mala fide and smacks of foul play.

In **Babubhai Vs. State of Gujarat and Others, 2010 AIR SCW 5126** the Hon'ble Supreme Court held that fair investigation is a part of the constitutional rights

guaranteed under Art.20 and Art.21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasized that where non - interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.

In **Rubabbuddin Sheikh Vs. State of Gujarat 2007 Cr.L.J. 3206 (Guj.) and Gudalure M. J. Cherian** Vs. Union of India, (1992) 1 SCC 397, the Hon'ble Supreme Court said that ordinarily, after the investigation is completed by the police and charge sheet is submitted to the court, the investigation ought not to be re - opened by entrusting the same to a specialized agency like CBI. Nevertheless in a given situation, to do justice between the parties and to instill confidence in the public mind, reinvestigation by another agency can be ordered. The overriding imperative of permitting transfer of investigation to the CBI was thus acknowledged to be in the advancement of the cause of justice and to instill confidence in the mind of the victims as well as the public.

It was ruled in **Samaj Parivartan Samudaya and Ors. Vs. State of Karnataka AIR 2013 SC 3217** that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

No reinvestigation on same charges after the accused is acquitted in trial

After an accused is acquitted in a trial, there is a bar to reinvestigation on the same charges. This is due to the rule against double jeopardy, which is a constitutional protection enshrined under Article 20(2) of the Constitution of India. Any further investigation against the accused on the same charges for which he was tried and found guilty or innocent will amount to double jeopardy. Also, Section 300(1) of the Code of Criminal Procedure states that a person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, cannot be tried again for the same offence while the order of conviction of acquittal remains in force. Re-investigation is possible only on fresh charges, which were not earlier raised against the accused, which are based on a fresh set of facts and substantial evidence.

B. Important Cases Full Report

IN THE SUPREME COURT OF INDIA

Sukhpal Singh Khaira

Vs.

State of Punjab

[Criminal Appeal No. 885 of 2019 SLP (Crl.) No. 6960/2021]

[Criminal Appeal No. 886/2019 & SLP (Crl.) No. 5933/2019]

HEADNOTE – Sec. 319 Cr.P.C. power has to be exercised before pronouncement of sentence in case of conviction.

JUDGMENT

A.S. Bopanna, J.

1. In the above appeal, the order dated 17.11.2017 passed by the High Court of Punjab and Haryana in Criminal Revision No.4070 of 2017 and Criminal Revision No.4113 of 2017 are assailed.

Through the said order, the High Court has dismissed the Criminal Revision Petitions and upheld the order dated 31.10.2017 passed by the Trial Court summoning the appellant as an additional accused by exercising the power under Section 319 of the Criminal Procedure Code, 1973 ('CrPC' for short). For the purpose of narration of facts the case in Criminal Appeal No.885 of 2019 is noted.

2. The position which led to the appellant being summoned is that on 05.03.2015 a First Information Report was lodged in the Police Station Sadar, Jalalabad against 11 accused for the offence under Sections 21, 24, 25, 27, 28, 29 and 30 of Narcotic Drugs and Psychotropic Substance Act, 1985 ('NDPS' for short), Section 25-A of Arms Act and Section 66 of the Information Technology Act, 2000 ('IT Act' for short). In the charge sheet dated 06.09.2015, 10 accused were summoned and put to trial in Sessions Case No. 289 of 2015. Though the second charge sheet was filed by the police, the same did not name the appellant herein as an accused.

3. In the trial conducted before the learned Sessions Judge also, initially the name of the appellant was not mentioned by the witnesses. After the initial recording of evidence, the prosecution filed an application dated 31.07.2017 under Section 311 of CrPC for recalling PW-4 and PW-5, which was allowed.

In the further examination of the said recalled witnesses, they named the appellant herein. The prosecution thereafter filed an application on 21.09.2017 invoking Section 319 of CrPC in the said Sessions Case No.289 of 2015 for summoning additional 5 accused, including the appellant herein. The summoning of additional accused was sought based on the evidence tendered by PW-4, PW-5 and PW-13.

4. It is to be noted that out of the 11 accused, the proceedings in Sessions Case No.289 of 2015 were against the 10 accused and since one of the accused was not available, the case in that regard was split up (bifurcated) and was subsequently numbered as Sessions Case No.217 of 2019 on 03.09.2019.

In that background, it is seen that as on the date when the application under Section 319 CrPC was filed on 21.09.2017, the only proceeding pending was Sessions Case No.289 of 2015. In that regard, in respect of the proceedings against the 10 accused, the learned Sessions Judge pronounced the judgment on 31.10.2017 whereby one of the accused was acquitted, while the remaining 9 accused were convicted and sentence was imposed on 31.10.2017.

The learned Sessions Judge, also allowed the application filed under Section 319 of CrPC on the same day i.e., 31.10.2017 and summoned the appellant to face trial. It is in that backdrop the appellant assailed the order dated 31.10.2017 summoning him to face trial, since according to him such order is not sustainable in law as the same was not passed in a proceeding pending before the learned Sessions Court as at the stage when the power to summon was exercised by learned Sessions Judge, the judgment of conviction and sentence had already been passed earlier on 31.10.2017. The said order assailed in Revision Petition No.4070 and 4113 of 2017 was dismissed by the High Court, which has led to the present proceedings.

5. The instant petition was heard before a bench consisting of two Hon'ble Judges of this Court on 10.05.2019 wherein, in the course of assailing the summoning order, the decisions of this Court in the case of Shashikant Singh vs. Tarkeshwar Singh (2002) 5 SCC 738 and the decision in the case of Hardeep Singh vs. State of Punjab (2014) 3 SCC 92 rendered in the context of the power exercisable under Section 319 of CrPC were noted.

In that context, the Bench of two Hon'ble Judges of this Court was of the opinion that the question with regard to the actual stage at which the trial is said to have concluded is required to be authoritatively considered since the power under Section 319 of CrPC is extraordinary in nature.

6. In that view, the following substantial questions of law were raised for further consideration and the matters were placed before Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength to consider the questions raised.

Hon'ble the Chief Justice has accordingly constituted this Bench to consider the questions raised, which read as hereunder:-

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?"

7. In order to answer the above questions, we have heard Shri P.S. Patwalia, learned senior counsel for the appellant and also Shri Puneet Singh Bindra, learned counsel who appeared on behalf of the appellant in the tagged matter. Shri S. Nagamuthu, learned senior counsel has assisted this Court as Amicus Curiae.

Shri Vinod Ghai, Advocate General appeared for the State of Punjab while Shri A.K. Prasad, learned Additional Advocate General appeared for the State of U.P. Shri S.V. Raju, Additional Solicitor General has appeared for the Union of India since a case is said to have also been registered against the appellant under the Prevention of Money Laundering Act, 2002. We have also heard Shri Ashish Dixit, learned counsel who appeared for the Intervener-Prosecutors Association.

8. The gist of the contention put forth by Shri P.S. Patwalia, learned Senior Counsel is as hereunder: -

Order summoning a person (appellant herein) as an accused under Section 319 of CrPC was passed at a stage when the trial had already concluded and even judgment and order on sentence had been pronounced. It is contended that the said order is, therefore in violation of Section 319 of CrPC and Hardeep Singh (supra), wherein in Para 47 it was held that power has to be exercised before pronouncement of judgment.

It can only be exercised during the pendency of the trial, which is a stage anterior to the date of pronouncement of judgment. In fact this is also consistent with Section 353(1) of CrPC, which states that after perusal of the evidence, the judgment is to be pronounced after termination of trial, and therefore, Section 319 of CrPC mandates that the power can be exercised only during trial and it follows that once trial is

concluded and judgment is pronounced, the Court cannot exercise power under Section 319 of CrPC at that stage.

Contending that it can be simultaneous is also equally violative of Section 319 of CrPC and the law laid down is clear that it has to be done before judgment. In a nutshell, if an accused is to be summoned, it has to be done when the trial is alive. The moment trial is concluded and the matter is kept for judgment, then the stage for exercising power under Section 319 of CrPC goes and the Court thereafter becomes functus officio.

When the trial is pending, the Court can add an accused under Section 319 of CrPC but the moment the trial concludes and judgment is pronounced, then no proceedings remain before the Court. When the Court pronounces the judgment acquitting or convicting the accused, thereafter, no proceedings which commenced with the filing of the original charge sheet remain pending. It is also contended that it is not a mere procedural violation, rather, substantive violation since the power is circumscribed by the stage during which it can be exercised, i.e. inquiry/trial.

9. The gist of the contentions urged by Shri S. Nagamuthu, learned Amicus Curiae is as follows:-

Before taking cognizance under Section 190 of CrPC and after pronouncement of judgment, Court has no power under Section 319 of CrPC and in view of Hardeep Singh (supra) the trial court does not have the power for summoning additional accused when trial with respect to other co-accused has ended and judgment of conviction has been rendered on the same date.

In Sessions Trial, accused can be acquitted by an order of acquittal and if accused is acquitted either under Section 232 or 235 of CrPC, by passing an order or pronouncing a judgment, the proceeding gets terminated. While, if the accused is convicted, proceeding still continues because he is to be heard on sentence and he is entitled to lead evidence at that stage.

Therefore, when accused is convicted, trial is terminated after sentence is passed. Section 353 of CrPC should be understood in this background and so, it cannot be argued that after arguments are heard, trial gets terminated. Evidence which have been brought on record during inquiry/trial including evidence collected during investigation such as FIR, Section 161, Section 164 statements, cannot be treated as evidence for the purpose of Section 319 of CrPC. Applying this, it will emerge that the evidence recorded in a separate trial held against the other accused cannot be considered as evidence in the present case.

But, in the split up case (bifurcated) where there is a separate trial, and during the course of that trial, if any evidence comes on record against a person who is not

already an accused, based on that evidence alone, he can be arrayed as an accused under Section 319 of CrPC. When a person is summoned as an additional accused, it is the discretion of the Court whether to charge and try two or more persons together in the same trial. As per Section 319(4) of CrPC, as against the newly added accused, trial should be a fresh trial.

However, if there is joint trial, fresh trial should be conducted against all the accused including the existing accused. In such an event, evidence already recorded is no evidence against the added accused in view of Section 273 of CrPC. In a case, there cannot be two sets of evidence, one against the existing accused and the other against the added accused. As a consequence, evidence already recorded is no evidence against any accused including the existing accused. Fresh trial is to be conducted.

10. The gist of the contentions put forth by Shri Vinod Ghai, learned Advocate General for the State of Punjab is as follows:-

The intent behind the legislature in introducing Section 319 of CrPC is to check that no culprit should go scot-free and to bring home the guilt of actual accused. It is in this context that the Courts have been empowered to summon any person, who appears to have committed an offence, for which the already charge-sheeted accused are facing trial. Giving a narrow interpretation to such a provision and putting unwarranted restrictions would circumvent the very purpose of this power and would only result in travesty of justice. It is with the said object in mind that a constructive and purposive interpretation should be adopted which advances the cause of justice and does not dilute the intention of the statute conferring powers on the Court to carry out the above-mentioned avowed object and purpose to try the person to the satisfaction of the Court as an accused in the commission of the offence that is the subject matter of the trial.

Section 319(1) of CrPC explains as to who/which type of person can be summoned as an additional accused to face trial. The word "could be tried together with other accused" has been used to identify the person who can be summoned and tried as an additional accused. Conclusion of main trial during pendency of revision/appeal before the Higher Courts against Section 319 of CrPC order will not make the order inoperative/ineffective merely because the trial in which such order was passed has been concluded. The Court has exercised the power under Section 319 of CrPC for summoning additional accused when the trial in respect of other absconding accused is ongoing/pending having been bifurcated from the main trial.

The trial qua accused who were earlier absconding, is pending and some evidence has come which necessitates the summoning of additional accused by the Court. When application under Section 319 of CrPC is decided simultaneously on the same day when trial is concluded, then the Court below does not become functus officio

and is competent to exercise power under Section 319 of CrPC in view of Section 354 of CrPC which expressly provides that an order on quantum of sentence is an integral part of the judgment and any judgment of conviction without such order would be referred as incomplete.

11. The gist of the contention put forth by Shri A.K. Prasad, learned Additional Advocate General for the State of U.P. is essentially in the same line as contended by the learned Advocate General for the respondent-State of Punjab. Insofar as the aspect relating to the power that could be exercised under Section 319 of CrPC, with the connotation of such power being exercised before completion of trial it was contended by the learned counsel that the trial does not conclude with the pronouncement of conviction, since sentence also being a part of the judgment. The court becomes functus officio only after the sentence is imposed. It is contended that it will have to be held that the power can be exercised till the sentence is pronounced, which is the point at which the judgment is complete in all respects and trial gets concluded.

12. Shri S.V. Raju, learned Additional Solicitor General though argued in similar lines as put forth by the learned Advocate General and Additional Advocate General for the respective States, he, in fact, went a step further to contend that the power under Section 319 of CrPC can be invoked at any stage even after the sentence is pronounced since the involvement of an accused may come to light at a later stage and in that circumstance if the recommendation of the Law Commission to bring in the provision is kept in view, the only objective is that no accused should go scot-free and therefore steps can be taken at any stage to bring the accused to book. Shri Ashish Dixit, the learned counsel for the intervenor has complemented the arguments on behalf of States by putting forth similar contentions.

13. In the background of the rival contentions, in order to determine the question referred to us, it would be appropriate for us to at the outset, take note of the provision as contained in Section 319 of CrPC, which reads as hereunder: -

"319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

14. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

15. In that regard, the object of incorporating the provision in the CrPC and bestowing such power to the Court was based on the recommendation made by the Law Commission of India in its Forty-First Report to which all the learned senior counsel have made extensive reference, read as hereunder:-

24.80. It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in section 351 for summoning such a person if he is not present in Court. Such a provision would make section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.

24.81. Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in section 190, and are, apparently, exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under section 190(1)(c), or only in the manner in which cognizance was first taken of the offence against the other accused.

In concrete terms, if the original case was instituted on a police report, i.e. under section 190(1)(b), will cognizance against the new accused be supposed to have been taken in the same manner, or under section 190(1)(c)? The question is important, because the methods of enquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear.

It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner as against the other accused. We, therefore, propose to re-cast section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must be re-heard in the presence of the newly added accused.

24.82 The offence for which the newly added accused can be tried is not indicated in precise terms in the section. Obviously, that offence should be connected with the one for which the original accused is under trial. To bring that out, a small verbal amendment is recommended.

16. In the above backdrop, the issue relating to the power to be exercised under Section 319 of CrPC had arisen for detailed consideration in Hardeep Singh (supra) wherein the scope, procedure and the stage at which such power was to be exercised was considered and summarised as follows:-

12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

15. It would be necessary to put on record that the power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The word "court" in our hierarchy of criminal courts has been defined under Section 6 CrPC, which includes the Courts of Session, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The Court of Session is defined in Section 9 CrPC

and the Courts of the Judicial Magistrates have been defined under Section 11 thereof.

The Courts of the Metropolitan Magistrates have been defined under Section 16 CrPC. The courts which can try offences committed under the Penal Code, 1860 or any offence under any other law, have been specified under Section 26 CrPC read with the First Schedule. The Explanatory Note (2) under the heading of "Classification of offences" under the First Schedule specifies the expression "Magistrate of First Class" and "any Magistrate" to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.

40. Even the word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial.

The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time : duration and not a fixed point of time.

42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word "inquiry" by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim a verbis legis non est recedendum which means, "from the words of law, there must be no departure" has to be kept in mind.

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre- trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

(emphasis supplied)

17. In view of the reference contained in the order passed by the Bench consisting of two Hon'ble Judges seeking clarity in the matter due to the view taken by another Bench of two Hon'ble Judges in Shashikant Singh (supra) where, purportedly the summoned accused was proceeded against after the judgment was passed against the accused who were originally charged, it is necessary to take note of the situation that had arisen therein and the conclusion reached in that case. It is noted that in a case under Section 302/34 of IPC wherein Shivakant Singh, the brother of Shashikant Singh (supra) was murdered, the trial proceeded against one Chandra Shekar Singh.

When the evidence was recorded it was found that Tarkeshwar Singh and two others had also committed the offence of murder of Shivakant Singh. The learned Additional Sessions Judge by order dated 07.04.2001 exercised the power under Section 319 of CrPC and ordered to issue a warrant of arrest so that they may be tried together with Chandra Shekar Singh, the accused against whom the trial was proceeding. The said order dated 07.04.2001 summoning the accused came to be assailed by Tarkeshwar Singh before the High Court in Criminal Revision No.269 of 2001.

During the pendency of the said Revision Petition before the High Court the learned Additional Sessions Judge concluded the pending trial against the originally charged accused Chander Shekar Singh and convicted him by the judgment dated 16.07.2001. The question which therefore arose in that context was as to whether the trial in the case in which additional accused were summoned under Section 319 of CrPC including Tarkeshwar Singh can proceed in view of the phrase "could be tried

together with the accused" contained in Section 319(1) of CrPC after the trial against other accused had concluded with the order of conviction.

18. In that context the Bench of two Hon'ble Judges which allowed the trial to proceed against the summoned accused, Tarkeshwar Singh and others held as hereunder:

"9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him.

The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be".

The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court."

(emphasis supplied)

19. Thus, to put the matter in perspective, a perusal of the recommendation of the Law Commission would indicate the intention that an accused who is not charge sheeted but if is found to be involved should not go scot-free. Hence, Section 319 of CrPC was incorporated which provides for the Court to exercise the power to ensure the same before the conclusion of trial so as to try such accused by summoning and being proceeded along with the other accused.

In Shashikant Singh (supra), a Bench of two Hon'ble Judges, on holding that the joint trial is not a must has held the requirement as contained in Section 319(1) of CrPC as only directory, and as such the judgment of conviction dated 16.07.2001

against the charge-sheeted accused was considered not to be an impediment for the court to proceed against the accused who was added by the summoning order dated 07.04.2001, which in any case was prior to the conclusion of the trial which in our view satisfies the requirement since the summoning order was before the judgment.

In the case of Hardeep Singh (supra) also the power of the Court under Section 319 of CrPC has been upheld, reiterated, and it has been held that such power is available to be exercised at any time before the pronouncement of judgment. Therefore, there is no conflict or diverse view in the said decisions insofar as the exercise of power, the manner and the stage at which power is to be exercised. However, a certain amount of ironing the crease is required to explain the connotation of the phrase "could be tried together with the accused" appearing in sub-section (1) read with the requirement in sub-section 4(a) to Section 319 of CrPC and to understand the true purport of exercising the power as per the phrase "before the pronouncement of judgment".

20. A close perusal of Section 319 of CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court.

Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh (supra) since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court.

21. In that context, the rival contentions are to be analysed to arrive at the conclusion as to which is the stage at which it can be said that the trial has concluded. Is it at the stage when the judgment is pronounced and the conviction is ordered or is it when the sentence is imposed and the trial is complete in all respects?

In order to arrive at a conclusion on this aspect the provision in the code relating to judgment is required to be noted. In Chapter XVIII regulating the trial before a Court of Session the procedure to be adopted and the conclusion of trial is indicated. What is relevant for our purpose is Section 232 and 235 of CrPC which read as hereunder:-

"232. Acquittal.- If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge

considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."

"235. Judgment of acquittal or conviction.-

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."

Further Chapter XXVII deals with regard to judgment as contained in Section 353 of CrPC, while Section 354 of CrPC relates to the language and contents of the judgment. They read as hereunder:-

"353. Judgment.-

(1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted: Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

"354. Language and contents of judgment.-

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted, and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the

judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision."

22. From a perusal of the provisions extracted above, it is seen that if the Sessions Court while analysing the evidence recorded finds that there is no evidence to hold the accused for having committed the offence, the judge is required to record an order of acquittal. In that case, there is nothing further to be done by the learned Judge and therefore the trial concludes at that stage.

In such cases where it arises under Section 232 of CrPC and an order of acquittal is recorded and when there are more than one accused or the sole accused, have/has been acquitted, in such cases, that being the end of the trial by drawing the curtain, the power of the court to summon an accused based on the evidence as contemplated under Section 319 of CrPC will have to be invoked and exercised before pronouncement of judgment of acquittal. There shall be application of mind also, as to whether separate trial or joint trial is to be held while trying him afresh. After such order it will be open to pronounce the judgment of acquittal of the accused who was tried earlier.

23. However, if the learned Judge arrives at the conclusion that the accused is to be convicted, the conviction shall be ordered through the judgment as contemplated under Section 235 of CrPC. Sub-section (2) thereto provides that if the learned Judge does not proceed to give the benefit to the accused of being released on probation under Section 360 of CrPC, the learned Judge shall hear the accused on the question of sentence and then impose a sentence on him according to law.

Therefore it is seen that Section 235 of CrPC, is divided into two parts, firstly to record the conviction and if the conviction is recorded the sentence is to be imposed only after providing an opportunity of being heard. While hearing on sentence if it is found that the accused was previously convicted and if the accused does not admit the same, the learned Judge is required to record a finding on that aspect as

contemplated under Section 236 of CrPC. Further, Section 353 of CrPC provides for the manner in which the judgment is required to be pronounced and Section 354 of CrPC refers to the language and contents of the judgment.

Sub-section 1(c) and sub-section (2) to (6) to Section 354 CrPC indicate that even after the conviction is ordered, the specified procedure is required to be followed by the learned Judge to impose the sentence and the reason for the severity of the punishment which shows that it is a continuation of the process requiring the learned Judge to apply her/his mind to the evidence available on record to assess the nature of involvement in committing the offence, gravity of the same and impose the sentence, unlike in a civil proceeding where drawing up the decree is a ministerial act though based on the judgment.

24. The above aspects would indicate that even after the pronouncement of the judgment of conviction, the trial is not complete since the learned Sessions Judge is required to apply her/his mind to the evidence which is available on record to determine the gravity of the charge for which the accused is found guilty; the role of the particular accused when there is more than one accused involved in an offence and in that light, to award an appropriate sentence.

Therefore, it cannot be said that the trial is complete on the pronouncement of the judgment of conviction alone, though it may be so in the case of acquittal as contemplated under Section 232 of CrPC, since in that case there is nothing further to be done by the learned Judge except to record an order of acquittal which results in conclusion of trial.

25. In this regard, it would be apposite to refer to the decision in Rama Narang vs. Ramesh Narang and Others (1995) 2 SCC 513 wherein a bench consisting of three Hon'ble Judges has held as hereunder:-

"12. Chapter XVIII relates to trial before a Court of Session. Sections 225 to 227 relate to the stage prior to the framing of charge. Section 228 provides for the framing of charge against the accused person. If after the charge is framed the accused pleads guilty, Section 229 provides that the Judge shall record the plea and may, in his discretion, convict him thereon. However, if he does not enter a plea of guilty, Sections 230 and 231 provide for leading of prosecution evidence.

If, on the completion of the prosecution evidence and examination of the accused, the Judge considers that there is no evidence that the accused committed the offence with which he is charged, the Judge shall record an order of acquittal. If the Judge does not record an acquittal under Section 232, the accused would have to be called upon to enter on his defence as required by Section 233. After the evidence-in-defence is completed and the arguments heard as required by Section 234, Section 235 requires the Judge to give a judgment in the case.

If the accused is convicted, sub-section (2) of Section 235 requires that the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law. It will thus be seen that under the Code after the conviction is recorded, Section 235(2) inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, comes to an end only after the sentence is awarded to the convicted person.

13. Chapter XXVII deals with judgment. Section 354 sets out the contents of judgment. It says that every judgment referred to in Section 353 shall, inter alia, specify the offence (if any) of which and the section of the Penal Code, 1860 or other law under which, the accused is convicted and the punishment to which he is sentenced. Thus a judgment is not complete unless the punishment to which the accused person is sentenced is set out therein. Section 356 refers to the making of an order for notifying address of previously convicted offender.

Section 357 refers to an order in regard to the payment of compensation. Section 359 provides for an order in regard to the payment of costs in non-cognizable cases and Section 360 refers to release on probation of good conduct. It will thus be seen from the above provisions that after the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code."

(emphasis supplied)

26. Similarly while considering the purport of what constitutes a judgment to provide finality to trial, a bench consisting of two Hon'ble Judges in Yakub Abdul Razak Memon vs. State of Maharashtra (2013) 13 SCC 1 has held as hereunder:-

"106. It is clear that a conviction order is not a "judgment" as contemplated under Section 353 and that a judgment is pronounced only after the award of sentence.

113. It is also clear from the judgment that detailed submissions were made by the appellant (A-1) during the pre-sentence hearing and these submissions were considered and, accordingly, reasons have been recorded by the Designated Judge in Part 46 of the final judgment in compliance with the requirement of Section 235(2) and Section 353 of the Code. It is also relevant to mention that Section 354 makes it clear that "judgment" shall contain the punishment awarded to the accused. It is therefore, complete only after the sentence is determined."

(emphasis supplied)

27. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 of CrPC.

Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of Section 319 of CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

28. In that view of the matter, if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319 of CrPC.

From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319 of CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273 of CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held.

However while considering the application under Section 319 of CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319 of CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319 of CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

29. Though Section 319 of CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in

view the power available to the Court under Section 223 of CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319 of CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused.

If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused.

However, what is important is that the decision to summon an additional accused either suo-moto by the Court or on an application under Section 319 of CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the Court will get divested of the power under Section 319 of CrPC. Since a power is available to the Court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1) of CrPC, to be directory as held in Shashikant Singh (supra) which in our opinion is the correct view.

30. One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319 of CrPC or the order of Court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused.

This is so, since such power is to be exercised by the Court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated) case, on securing the presence of the absconding accused the trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated in Section 319 of CrPC, such power to summon the accused can certainly be invoked in the split up (bifurcated) case before conclusion of the trial therein.

31. In analysing the issue and making the above conclusion on all aspects, we are also persuaded by the view taken by this Court, among others, in the case of Rajendra Singh vs. State of U.P. and Another (2007) 7 SCC 378 wherein it is concluded with regard to the object of Section 319 of CrPC as hereunder:-

"20. The power under Section 319 of the Code is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence.

One of the aims and purposes of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that the Code has specifically conferred a power on the court to proceed against others not arrayed as accused in the circumstances set out by this section. It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime.

21. Exercise of power under Section 319 of the Code, in my view, is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319 of the Code. There is no reason to assume that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. There is no rationale in fettering that power and the discretion, either by calling it Page extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises."

32. We have also kept in view the point by point analysis of the object and power to be exercised under Section 319 of CrPC, as has been indicated in para 34 of Manjit Singh vs. State of Haryana and Others (2021) SCC Online SC 632.

33. For all the reasons stated above, we answer the questions referred as hereunder:-

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?"

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

34. Having answered the questions referred, in the above manner, we direct the Registry to obtain orders from Hon'ble the Chief Justice and place before the appropriate Bench to take a decision on the factual aspects arising in the case in the background of the legal position and contentions on merits.

35. Before parting, we place on record our appreciation for the assistance rendered by all the learned Senior Counsel/Counsel including Shri S. Nagamuthu, learned Senior Counsel who assisted the Court as an Amicus Curiae.

.....J. (S. Abdul Nazeer)

.....J. (B.R. Gavai)

.....J. (A.S. Bopanna)

.....J. (V. Ramasubramanian)

.....J. (B.V. Nagarathna)

New Delhi,

December 05, 2022

IN THE SUPREME COURT OF INDIA

Kalicharan and Ors.

Vs.

State of Uttar Pradesh

[Criminal Appeal No. 122 of 2021]

HEADNOTE – Questioning an accused under Sec. 313 Cr.P.C. is not an empty formality. Accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 Cr.P.C., he is entitled to take a call on the question of examining defence witnesses and leading other evidence.

JUDGMENT

Abhay S. Oka, J.

Factual Details

1. Mainly two issues arise in this appeal. The first issue is regarding the omission to frame a proper charge in accordance with Section 213 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'). The second issue is of the consequence of the failure of the learned Trial Judge to put material circumstances brought on record in the prosecution evidence to the accused in their statements under Section 313 of CrPC. In short, this Court will have to examine whether there is a failure to comply with the requirements of Sections 213 and 313 of CrPC. If the answer to the said question is in the affirmative, the next question will be whether prejudice has been caused to the accused due to failure to comply with the aforesaid provisions and whether it has caused a failure of justice.

2. The present appeal arises out of the judgment and order of the Fast Track Sessions Court at Bulandshahr. The Fast Track Court convicted the accused Bangali who is not before this Court for the offences punishable under Section 148 of the Indian Penal Code (for short, 'IPC'), Section 302 of IPC as well as Section 307 read with Section 149 of IPC. The Fast Track Court convicted Kalicharan (accused no.1), Yaad Prakash (accused no.2), Diwan Singh (accused no.3), and Smt. Shakuntala Devi (accused no.4) for the offences punishable under Section 148 of IPC, Section 302 read with Section 149 of IPC and Section 307 read with Section 149 of IPC. Yaad Prakash (accused no.2) was also convicted for the offence punishable under Section 25 of the Arms Act, 1959. Two separate appeals were preferred before the High Court of Judicature at Allahabad. One appeal was preferred by the accused

Bangali and the other one was preferred by accused nos.1 to 4. By the impugned judgment, the appeals were dismissed.

3. Accused Bangali did not challenge the impugned Judgment. Accused nos.1 to 4 have preferred this appeal. We must note here that appellant no.3 Diwan Singh (accused no.3) raised a plea in the present appeal that on the date of the commission of the alleged offence, he was a juvenile in conflict with law. Accordingly, by the order dated 8th February 2021, this Court directed the learned District and Sessions Judge to hold an inquiry into the said plea. A finding was rendered by the learned District and Sessions Judge holding that on the date of commission of the offence, appellant no.3 Diwan Singh (accused no.3) was a juvenile in conflict with law. Therefore, by the order dated 1st July 2021, the conviction of appellant no.3 was set aside and the present appeal to that extent was allowed.

4. We may note here that for the same incident, two separate First Information Reports (FIRs) were registered. The first FIR was against all the five accused for all the IPC offences and the second FIR was against appellant no.2 (accused no.2) for the offence punishable under Section 25 of the Arms Act.

5. The prosecution case, in brief, is that on 6th December 2000 at about 1.30 pm, the informant Atar Singh (PW-1) was carrying soil for levelling a lane by his bullock cart. When he reached near the house of Shankar, accused no.1 Kalicharan and his sons, Yaad Prakash (accused no.2), and Diwan Singh (accused no.3) resisted PW-1 and forced him to turn back his bullock cart. There was an altercation between accused nos.1 to 3 and PW-1. The said three accused went back to their house and came back with weapons. The allegation is that the accused Bangali came with a chura (razor). Accused no.1 was carrying a lathi. Accused no.2 Yaad Prakash was carrying a country-made pistol of 315 bores.

Accused no.3 Diwan Singh and accused no.4 Shakuntala Devi were carrying axe in their hands. Accused no.4 Shakuntala Devi is the wife of accused no.1 and mother of accused nos. 2 and 3. The allegation made in the FIR is that accused no.2 fired four to five shots from his country-made pistol which hit deceased Harpal Singh who died on the spot. As a result of this incident, the conflict started and the accused Bangali who was armed with a razor attacked PW-1's sister Rani, who succumbed to the injuries caused by Bangali. Malkhan Singh, Ram Autar, Smt. Saroj, Smt. Rajni and Smt. Rani Devi came to rescue the deceased Rani. However, the said persons were attacked by accused nos.1,3 and 4 with weapons in their hands. These persons suffered injuries at the hands of the said three accused.

The accused nos. 2 and 4 also sustained injuries in the fight. It must be noted here that though in the FIR, a case was made out that deceased Harpal Singh died to bullet injuries caused by bullets fired by accused no.2 Yaad Prakash, in the evidence, the prosecution witnesses and in particular PW-1, deposed that due to commotion

caused by firing of shots by accused no.2, Harpal Singh fell down and later on he was attacked by the other accused. The injuries caused by sharp weapons led to his death. Apart from the evidence of recovery, the prosecution mainly relied upon the evidence of eye-witnesses of PW-1 Attar Singh and PW-2 Malkhan Singh who were allegedly injured at the hands of the accused.

SUBMISSIONS

6. Shri Rakesh Khanna, the learned senior counsel appearing for the appellants pointed out at the outset that one of the five accused, Diwan Singh has been acquitted by this Court and therefore, only four accused were involved in the incident. He, therefore, submitted that the allegation of unlawful assembly made by the prosecution cannot be accepted as there was no assembly of five or more persons. He, therefore, submitted that Sections 148 and 149 of IPC could not be invoked. He invited our attention to the fourth charge framed against the accused. He pointed out that the said charge alleges that accused no.2 Yaad Prakash opened fire with a country-made revolver and the bullet injury sustained by Harpal Singh caused his death.

He pointed out that there was no charge framed that the accused killed Harpal Singh after he fell down by using weapons in their hands. He submitted that as can be seen from the judgments of the Sessions Court and High Court, it has been held that Harpal Singh did not receive any firearm injury but he suffered injuries due to the assault made by the accused nos.1,2 and 4 by weapons in their hands. He submitted that the accused were misled due to the failure to frame proper charge. He submitted that though PW-1 and PW-2 deposed that Harpal Singh is not the victim of bullet injury caused by the firearm used by accused no.2, while recording statements of the accused under Section 313, the only circumstance put to the accused is that Harpal Singh died due to four to five shots fired by accused no.2, Yaad Prakash. He pointed out that the circumstance that the accused attacked Harpal Singh with the weapons in their hands which ultimately cause the death of Harpal Singh has not been put to the accused persons.

He submitted that a serious prejudice has been caused to the accused due to the failure to frame proper charge and by failure to put material circumstances to the accused in their statement under Section 313 of CrPC. He, therefore, submitted that the conviction of the appellants nos.1,2 and 4 is vitiated and they deserve to be acquitted. He also pointed out that the applications for a grant of exemption from surrendering made by the appellants were rejected by this Court by order dated 29th July 2019. The custody certificates show that appellants nos.1,2 and 4 are in custody since 19th August 2019.

7. Shri Vinod Diwakar, learned Additional Advocate General for the State of Uttar Pradesh firstly submitted that the advocate for the accused had cross-examined the

material prosecution witnesses including the two eye-witnesses on the prosecution case that Harpal Singh died due to assault made by the appellant nos.1,2 and 4 by the weapons in their hands.

Therefore, there was no prejudice caused to them on account of the failure of the Court to frame a proper charge. Moreover, the appellants were aware of the prosecution case as reflected in the evidence of PW-1 and PW-2 and therefore, the failure of the learned Trial Judge to put the circumstance to them in their statement under Section 313 is not at all fatal. He submitted that both the Courts have believed the testimony of PW-1 and PW-2. He submitted that injuries on the person of deceased Harpal Singh and injuries found on the injured persons including PW-1 and PW-2 were consistent with the prosecution case. He would, therefore, submit that no interference is called for in this appeal as two persons have been brutally murdered and several others were injured.

CONSIDERATION OF SUBMISSIONS

APPLICABILITY OF SECTIONS 148 AND 149 OF IPC

8. We have given careful consideration to the submission. As pointed out earlier, the present appellants were convicted for the offence punishable under Section 148 of IPC. All of them were convicted for the offences punishable under Sections 302 and 307 with the aid of Section 149. The condition precedent for attracting offences punishable under Sections 148 and 149 is that there should be an unlawful assembly as provided in Section 141 of IPC. Section 141 of IPC defines "unlawful assembly" to mean an assembly of five or more persons. In this case, the four appellants and accused Bangali were named in the charge sheet. As noted earlier, appellant no.3 - accused no.3 Diwan Singh was acquitted by this Court by order dated 1st July 2021 by setting aside the conviction as against him. Therefore, for considering the question whether there was an unlawful assembly, appellant no.3 Diwan Singh will have to be kept out of consideration. Then only four accused remain. Hence, the charge under Sections 148 and 149 of IPC cannot be sustained.

EFFECT OF OMISSION TO FRAME PROPER CHARGE AND OMISSION TO PUT RELEVANT CIRCUMSTANCES TO ACCUSED IN THEIR STATEMENT UNDER SECTION 313 OF CRPC.

9. Now, we turn to the charge framed by the Trial Court against the accused. The only charges framed for the offence under Section 302 of IPC in relation to deceased Harpal Singh were the third and fourth charges. The official English translation of the said two charges made by the High Court reads thus:

"Third : That on the above said date, time and place, you the accused Yaad Prakash opened 45-5 gunshots with the country pistol holding in your hand at the

complainant Atar Singh and his family members with intention to kill them that hit to the cousin brother of complainant namely Harpal Singh. Thus, you the accused Yaadram committed the murder of Harpal Singh. Thus, you have committed offense punishable under Section 302 IPC which is within the cognizance of this Court.

Fourth : That on the above said date, time and place, you the accused Yaad Prakash out of the accused persons, had opened fire with country pistol at Harpal Singh in furtherance of your common object and committed murder of Harpal Singh on the spot which is punishable offense u/s 302/149/IPC and is within the cognizance of the Court."

(emphasis added)

10. Thus, both the charges allege that appellant no.2 Yaad Prakash (accused no.2) fired 4-5 gunshots with his countrymade pistol which hit Harpal Singh and therefore, Harpal Singh was killed by accused no.2. That is the third charge framed by the Trial Court. The fourth charge was again on the basis of the allegation that it was the injury caused by bullets fired from the country-made pistol of accused no.2 which caused the death of Harpal Singh. The fourth charge indicates that the other accused were roped in only with the aid of Section 149 of IPC.

11. FIR was lodged on the basis of a written report made by PW-1 Attar Singh which was reduced in writing by one Murari Lal, a police constable. The official translation of the material part of the allegations in the said written report reads thus:

"....Thereafter, the accused persons went to their home and then Kalicharan armed with lathi, his sons namely Yad Prakash armed with country made pistol (315), Bangali armed with chhura and Diwan Singh armed with knife and Kalicharan's wife Smt. Shakuntala Devi armed with an axe came on the spot with common object. On the noise, Harpal S/o Shriram, Smt. Rani Devi daughter of Mahipal, Malkhan Singh, Ram Autar S/o Mahilal, Smt. Saroj w/o Dhawal Singh, Smt. Rajni wife of Ved Prakash, Smt. Rani Devi wife of Atar Singh, Shriram s/o Mewaram, Ved Prakash s/o Mahipal, Satpal S/o Chhitar? Singh and Amar Singh s/o Shriram of our family arrived there. Thereon, accused Kalicharan exhorted saying, 'DEKHTE KYA HO SALO KO JAAN SE MAAR DAALO (what are you looking for, kill the bastard)." Thereupon, accused Yad Prakash fired 4-5 shorts on us with his country made pistol with intention to kill, which hit my cousin Harpal Singh. Due to it, Harpal Singh died on the spot...."

(emphasis added)

12. As noted earlier, only two eye-witnesses, namely, PW-1 Attar Singh, the informant and PW-2 Malkhan Singh were examined by the prosecution. PW-1 in his deposition before the Court proved his written statement on the basis of which FIR

was registered. The English translation of the material part of his examination-in-chief reads thus: "Kalicharan had lathi in his hand, Yaad Prakash had country made pistol, Bengali had dagger (chura). Diwan Singh had knife and Shakuntala Devi had axe. As they arrived, Kalicharan exhorted them to open fire. Thereupon, accused Yaad Prakash opened 4-5 fires and hearing the noise of fire, my family members namely Malkhan Singh, Ramavtar, Saroj, Rajni, my sister Rani Devi and my wife Rani, Harpal Singh and others had come. When stampede ensued due to fire then Harpal Singh fell down and the aforesaid accused persons assaulted Harpal with their respective weapons as a result of which Harpal died on spot."

13. In the cross-examination, PW-1 stated that as accused no.2 had fired 4-5 gunshots, a stampede ensued. He stated that Harpal fell down but he was not aware whether bullets hit him or not. However, he accepted that in the First Information Report, he had stated that the gunshots fired by the accused no.2 hit Harpal Singh who died on the spot.

14. PW-2 Malkhan Singh is the only other eyewitness. He also came out with the same version in his examination-in-chief. He stated in the cross-examination that he was not aware whether Harpal Singh fell down due to a bullet injury.

15. We have quoted the third charge above which is based on the allegation in the FIR that Harpal Singh suffered injuries due to bullets fired by accused no.2 and that he died due to the bullet injuries. There is no charge framed that the death of Harpal Singh was caused due to assault made by accused nos.1,2 and 4 (present appellants). As noted by both the Courts, PW 3 Dr. R.K. Daware who performed the post-mortem on the body of deceased Harpal Singh stated that he suffered injuries caused by sharp-edged weapons like knives and chura. Neither he deposed that there were bullet injuries nor did post-mortem notes record such injuries.

16. There are provisions made in CrPC in Chapter XVII regarding the framing of charge. The object of the said provisions is obviously to make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him. The object of the provisions regarding the framing of charge is that accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. That is why there are elaborate provisions in CrPC in that behalf. Subsection (1) of Section 212 is material for our consideration which reads thus:

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

What is more important for this case is Section 213 which reads thus:

"213. When manner of committing offence must be stated.-When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."

17. The emphasis is on giving details of the manner of committing offence. Unless the particulars such as specific Sections of the penal statute as well as the time and place of the commission of the alleged offence are incorporated in the charge, the accused will not be in a position to properly defend himself. Even these particulars may not be enough in many cases to enable the accused to properly defend himself.

That is why there is a specific requirement incorporated in Section 213 that if the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Illustration (e) to Section 213 provides that when the charge contains an allegation that 'A' is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'. Going by the charge framed in this case, it is alleged therein that it was accused no.2 who murdered deceased Harpal Singh by firing bullets from his pistol.

Though the case of the prosecution as can be seen from the evidence is that accused nos.1, 3 and 4 committed the murder of Harpal Singh by using sharp weapons in their hand, there is no charge framed against accused nos.1, 3 and 4 alleging that they murdered Harpal Singh. As there is no charge framed against accused nos.1,3 and 4 of committing the murder of Harpal Singh, Illustration (e) will not apply. Therefore, it was necessary to frame a charge in terms of Section 213 by stating the manner of committing the offence of murder by accused nos. 1,3 and 4.

18. There are two provisions in CrPC that deal with errors or omissions in framing charge. The said provisions are Sections 215 and 464 which reads thus:

"215. Effect of errors.- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

464. Effect of omission to frame, or absence of, or error in, charge.-(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any

error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,-

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

19. Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with the effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

20. When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.

21. At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-

"313. Power to examine the accused.-(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed. [(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]"

The questions in separate statements of the accused nos. 1 to 4 recorded by the Trial Court are almost identical. Question no.5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question no.5 put to accused no.3 reads thus:-

"Ques 5 - That it has come up in prosecution evidence that on being exhorted by accused Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his country made pistol with intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot. What do you have to say in this regard?"

(emphasis added)

22. Such a case was not at all made out by the prosecution in the evidence before the Court. The material brought on record by the prosecution witnesses (PW-1 and PW-2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by accused nos.1,3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh.

It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons. Questioning

an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself. In paragraph 21 of the decision of this Court in the case of Jai Dev v. State of Punjab1, it was held thus:-

"21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad.

The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his crossexamination.

The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342.

Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."

(emphasis added)

In paragraph 145 of the well known decision of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra2, it was held thus: "145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration."

(emphasis added)

23. Now coming to the facts of the case, not only that a charge was not framed on the allegation that the death of Harpal Singh was caused due to assault physically made by the accused and in particular accused nos. 1,2 and 4 by use of sharp weapons, a misleading charge was framed that Harpal Singh died due to bullet injuries sustained by the bullets fired by the accused no.2 with a pistol in his hand. There is every possibility of the accused getting misled due to the framing of such a charge and omission to frame the correct charge.

What is more serious is that though the prosecution case made out during the trial clearly indicated that the death of Harpal Singh was not caused due to any bullet injury, the circumstance put to all the accused under Section 313 was that the death of Harpal Singh was caused due to four to five shots fired by accused no.2 by a country-made pistol. In fact, question no.5 in the statement of the accused under Section 313 clearly records that the bullets fired by accused no.2 hit Harpal Singh and he died on the spot. As can be seen from the oral evidence, the post-mortem reports and examination of the doctor, Harpal Singh did not receive any bullet injury. Still, the said allegation was put to all the accused in the examination under Section 313.

Thus, not only that the charge framed was misleading, but most material circumstance brought on record against the accused in the evidence that Harpal Singh died due to injuries caused by the attack made by accused nos.1,3 and 4 was not put any of the accused. Thus, not only that the charge was misleading but the accused had no opportunity to explain the circumstance in which Harpal Singh was

allegedly killed which was brought on record during the trial. Therefore, in the facts of the case, by reason of omission to frame a proper charge in terms of Section 213 of CrPC, and by reason of not putting important circumstances appearing in the evidence in the statement under Section 313 caused serious prejudice to the accused. The prejudice, in the facts of the case, has occasioned a failure of justice.

24. Therefore, we considered whether the case can be remanded for framing of a proper charge and for recording additional statements of the accused under Section 313. But the incident is of December 2000. Therefore, it will be unfair to the accused if they are called upon to answer the circumstances appearing against them in evidence about the incident which has taken place more than 22 years back. In fact, such a course will cause serious prejudice to the accused.

25. In the circumstances, the charge of committing the murder of Harpal Singh against accused nos. 1,2 and 4 cannot be substantiated. The accused nos. 1,2 and 4 were convicted for the offences under Section 307 of IPC with the aid of Section 149. However, Section 149 will not apply in this case. We may also note that the accused nos. 1,2 and 4 were in jail from 19th August 2019. Therefore, all of them had undergone a sentence for more than three years and four months. Accused no.2 was sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 25 of the Arms Act which he has already undergone.

26. Accused Bangali has not preferred any appeal. We may note here that the accused Bangali was convicted under Section 302 of IPC for committing the murder of Rani without the aid of Section 149 of IPC.

27. Hence, the appeal must succeed. We set aside the impugned judgments of the Sessions Court as well as the High Court to the extent to which accused no.1 Kalicharan, accused no.2 Yaad Prakash and accused no.4, Smt. Shakuntala Devi were convicted. They shall be forthwith set at liberty unless they are required to be detained in connection with any other offence. As noted earlier, accused no.3 Diwan Singh has already been acquitted under the order dated 1st July 2021.

28. The appeal is, accordingly, allowed.

.....J. (Sanjay Kishan Kaul)

.....J. (Abhay S. Oka)

New Delhi;

December 14, 2022.

1 (1963) 3 SCR 489

2 (1984) 4 SCC 116

Item No.1502 Court

Kalicharan & Ors. Vs. State of Uttar Pradesh

[Criminal Appeal No. 122/2021]

[Heard by: Hon. Sanjay Kishan Kaul and Hon. Abhay S. Oka, JJ. IA No. 24769/2022 - Grant of Bail]

Date: 14-12-2022

This matter was called on for pronouncement of Judgment today.

For Appellant(s)
Mr. Rajesh Prasad Singh, AOR
Mr. Rakesh K. Khanna, Adv.
Ms. Shefali Jain, Adv.
Mr. Samant Singh, Adv.
Mr. Aditya Pushkal Khanna, Adv.
Ms. Ramya Khanna, Adv.
Mr. Preeja Nair, Adv.
Mr. Rajeev Singh, AOR

For Respondent(s)
Mr. Vinod Diwakar, AAG
Mr. Sarvesh Singh Baghel, AOR
Mr. B.N. Dubey, Adv.

Hon'ble Mr. Justice Abhay S. Oka pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Sanjay Kishan Kaul.

The appeal is allowed in terms of signed reportable judgment. The operative part of the Judgment reads as under:

"....the appeal must succeed. We set aside the impugned judgments of the Sessions Court as well as the High Court to the extent to which accused no.1 Kalicharan, accused no.2 Yaad Prakash and accused no.4, Smt. Shakuntala Devi were convicted. They shall be forthwith set at liberty unless they are required to be detained in connection with any other offence. As noted earlier, accused no.3 Diwan Singh has already been acquitted under the order dated 1st July 2021.

Pending applications, if any, stand disposed of.

(NEETA SAPRA) (POONAM VAID)
COURT MASTER (SH) COURT MASTER (NSH)

IN THE SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs.

Karunesh Kumar & Ors.

[Civil Appeal Nos. 8822-8823 of 2022

arising out of S.L.P. (C) Nos. 10386-10387 of 2020]

HEADNOTE – A candidate who has participated in the selection process adopted under a specific set of rules is estopped and has acquiesced himself from questioning it thereafter. However, the court has further pointed out a distinction between rules in the context of qualification/eligibility versus rules regarding the change in the selection process.

JUDGMENT

M.M. Sundresh, J.

1. The decision of the Division Bench of the High Court of Judicature at Allahabad in allowing the writ petition filed by the private Respondents, setting aside the order passed by the learned Single Judge is assailed before us. Candidates who waited in the wings, observing the legal journey, filed applications for impleadment seeking extended benefit of the impugned Judgment and Order.

2. The present appeals are filed by the State of Uttar Pradesh inter alia contending that the candidates who are not part of the list forwarded by the Uttar Pradesh Subordinate Services Selection Commission (hereinafter referred to as 'the Commission') were also directed to be considered in the vacancies arising pursuant to the selected candidates approved by the appointing authority, not taking up the jobs offered to the post of Gram Panchayat Adhikari, Single Cadre, Group (C).

The learned Single Judge dismissed the Writ Petition filed by the private Respondents, which was overturned by the Division Bench on the premise that Rule 15 of the Uttar Pradesh Gram Panchayat Adhikari Service Rules, 1978 (hereinafter referred to as "1978 Rules"), if given due interpretation, would facilitate consideration of persons waiting in the queue based upon their performance. An application for review was filed by the appellant inter alia stating that the relevant rule to be applied is the Uttar Pradesh Direct Recruitment to Group 'C' Posts (Mode

and Procedure) Rules, 2015 (hereinafter referred to as "2015 Rules"). The said application was dismissed without taking note of the aforesaid contentions. The State seeks to assail both the aforesaid orders in the present proceedings.

3. Heard Ms. Ruchira Goel, learned counsel for the Appellant and Mr. V.K. Shukla, learned senior counsel for the Respondent Nos. 1 to 3 and Mr. M.R. Shamshad for the Respondent No.

4. ON FACTS:

4. An advertisement was made for the purpose of filling up of 3587 Group 'C' Posts of Gram Panchayat Adhikari on 22.06.2015. The selection process was completed in accordance with the 2015 Rules, by duly conducting a written examination followed by an interview. By way of abundant caution, though not necessitated, the 1978 Rules were also amended on 22.11.2016. The final result was declared on 24.12.2016 and appointment letters were issued during the months of April and May, 2017. During the pendency of the writ petition, the process for the next selection was commenced by taking note of the carry-forward vacancies. At that point of time, the impugned orders were passed by the Division Bench of the High Court of Allahabad.

5. The private respondents and the impleading applicants willingly took part in the selection process. Obviously, they were not disqualified but along with others made to go through the recruitment process of written examination and the interview. It is to their misfortune that they did not find a place in the list sent by the Commission to the appointing authority. Though, the entire process was done in tune with the 2015 Rules and in exercise of the power conferred under the Uttar Pradesh Subordinate Services Selection Commission Act, 2014 (hereinafter referred to as the "2014 Act"), the reliance was made on the 1978 Rules which has found favour with the High Court.

RELEVANT RULES:

6. We shall first consider all the relevant rules and definitions, with specific reference to the provisions governing the recruitment process, to have a correct understanding of the issue involved.

A. Uttar Pradesh Gram Panchayat Adhikari Service Rules, 1978:

7. These rules exclusively dealt with the appointment to the post of Gram Panchayat Adhikari, introduced by the powers conferred under the proviso to Article 309 of the Constitution of India. It has undergone amendment in the year 1989. We are concerned with two amendments by which the earlier Group 'D' posts were converted into Group 'C' posts, with the change in the constitution of the committee.

The first amendment is to the rule providing for the aforesaid change and the second one is with respect to Rule 15(1).

8. Rule 15(1) changes the composition of the Selection Committee while the appointing authority remains the same. Rule 15(4), which was left untouched by the subsequent amendment, enabled the Selection Committee to prepare the list of candidates in order of merit as disclosed by the marks obtained in the interview. It further provides for the list to be enlarged by not more than 25% of the number of total vacancies.

9. Under the aforesaid rules, there was no written examination contemplated as against a mere interview by the Selection Committee. No waiting list as such has been provided expressly, though the list shall contain a larger number of names in comparison to the vacancies. We shall now place on record the aforesaid provision to have a better understanding.

"Rule 15 (4) The Selection Committee shall prepare a list of candidates in order to merit as disclosed by the marks obtained in the interview. The number of the names in the list shall be larger (but no larger by more than 25 per cent) than the number of the vacancies."

B. Government Order dated 15.11.1999:

10. The Government Order was passed by the Appellant to dispense with any concept of waiting list except in case of a selection to a single post, meaning thereby that if a selected candidate to a single particular post is not filled up by reason of the candidate not joining, the next in line would get a re-look on the premise that the entire exercise done shall not go down the drain. Therefore, the object is rather clear. Consequently, the said order hands over the selection and recruitment process to the Public Service Commission to be applied to all the posts spanning over the State. It was also passed in supersession of all the earlier orders.

C. Uttar Pradesh Subordinate Services Selection Commission Act, 2014:

11. By the 2014 Act, the need for an independent specialized agency for the timely selection of Group (C) posts was felt, as could be seen from the Statement of Objects and Reasons furnished hereunder:

"...In near past, selection on Group 'C' posts was being done under the direct supervision of the State Government but Head of Departments had to devote much time for the above selections which is severely affecting the Government works as well as the works of public interest. Due to all these reasons, it is quite necessary to establish an independent Subordinate Services Selection Commission consisting of the Chairperson and Members similar to that of the Uttar Pradesh Public Service

Commission for timely selection on certain Group 'C' posts. It has therefore, been decided to make a law to provide for the establishment of a Commission by the 6 name of the Uttar Pradesh Subordinate Services Selection Commission for the selection on certain Group 'C' posts in the State..."

12. This being an Act passed by the legislature, shall certainly override all the prevailing rules in conflict. The powers and duties of the Commission are defined with clarity under the 2014 Act. Suffice it is to state that the entire process of recruitment to the Group 'C' posts is entrusted to the Commission, as could be seen under Section 15 which enables the conduct of examinations, holding interviews leading to the selection of candidates.

D. The Uttar Pradesh Direct Recruitment to Group 'C' Posts (Mode and Procedure) Rules, 2015

13. The 2015 Rules are brought into the statute with effect from 11.05.2015. Rule (1) speaks of the application to Group 'C' posts, while Rule (2) highlights the fact that it will have an overriding effect, notwithstanding anything to the contrary contained in any other service rules made under the proviso to Article 309 of the Constitution of India. Under Rule 8(2), it is made clear that all Group 'C' posts would come under its purview, except those specifically excluded by the Government by way of a notification, and laid down the procedure of direct recruitment by way of a written examination followed by an interview. Thereafter, the Commission shall prepare a list of candidates on the basis of merit and forward it to the appointing authority. Thus, these rules do not provide for any waiting list. The only list required to be sent is based upon merit, subject to the rule of reservation.

ARGUMENTS OF THE PARTIES:

Arguments of the Appellant:

14. In view of the existence of a specific non-obstante clause, the 2015 Rules, being the later one, and despite being a general law would take precedence over the 1978 Rules, being the special service rules. Since the two sets of rules are completely inconsistent, in light of the fact that the authority who is to conduct the recruitment process is different in the two rules, so also the process of recruitment, as such, there is no possibility of any harmonious reading of the two sets of rules.

15. The amendment made to the special rules in the year 2016 would not change the position as it was done by way of abundant caution, being clarificatory in nature. There is no right vested with the private respondents and the impleading applicants to the post, and the waiting-list cannot be seen as a perennial source of recruitment. Having participated in the process of recruitment, they are estopped, having

acquiesced themselves. Even otherwise, in light of the 1999 GO, the Respondents or the impleadment applicants will not be entitled to appointment.

16. It is the sole prerogative of the Appellant and the Commission to prescribe any mode of selection. Despite the 2015 Rules having been brought to its notice, the High Court failed to duly consider the same. The impleadment applicants are fence-sitters and as such are even otherwise not entitled to any relief. Seeking to strengthen the aforesaid arguments, reliance has been made on the decisions of this Court in the following cases:

- Ajoy Kumar Banerjee v. Union of India (1984) 3 SCC 127,
- Mohan Karan v. State of U.P. (1998) 3 SCC 444,
- Surinder Singh v. State of Punjab (1997) 8 SCC 488,
- Anupal Singh v. State of U.P. (2020) 2 SCC 173,
- Union of India v. G.R. Prabhavalkar (1973) 4 SCC 183.
- S.S. Balu v. State of Kerala (2009) 2 SCC 479

Arguments of the Respondents

17. The 1978 Rules deal with a specified post, and therefore, the 2015 Rules, despite being a subsequent one will have to yield to it, the former being the special law governing the field. Rule 15(4) of the 1978 Rules clearly provides for a waiting list. A general rule will not have precedence over a special one, notwithstanding a non-obstante clause, unless there is a clear inconsistency between the two, in which case the two sets of rules will have to be harmoniously construed.

18. The 1978 Rules, governed the field until the 2016 amendment, which only came into force after the interviews in the impugned selection process, and as such, the rules of the game cannot be changed once the game has started. Even otherwise, there is a vested right of appointment against an advertised post which has remained unfilled due to non-joining of the more meritorious candidate.

19. It is not a case of mere operation of the waiting list to fill up the vacancies created due to the failure of the selected candidate to join. The arguments aforesaid are sought to be strengthened by the decisions of this Court in the following cases:

- Maya Mathew v. State of Kerala (2010) 4 SCC 498,
- V. K. Girija v. Reshma Parayil (2019) 2 SCC 347,
- Chief Information Commissioner v. High Court of Gujarat (2020) 4 SCC 702.
- State of U.P. & Anr. v. Rajiv Kumar Srivastava & Anr. SLP (C) CC No. 10604 of 2013 dated 26.07.2013
- K. Manjusree v. State of A.P. & Anr. (2008) 3 SCC 512
- Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Others (2019) 12 SCC 798

DISCUSSION:

20. We have already placed the relevant rules and considered their import. Clause 15(1) of the 1978 Rules deals with a Selection Committee, while we are concerned with the recruitment made by the Selection Commission statutorily created by an enactment, the 2014 Act. Under the 1978 Rules, no written examination was contemplated as against a mere interview. This was consciously given a go-by, to the knowledge of the candidates who willingly participated in the selection process by taking the written examination, and thereafter, the interview. This process was adopted in tune with the 2015 Rules, and in terms of the powers conferred to the Commission under the 2014 Act. Therefore, the 1978 Rules are put into cold storage qua a selection even at the time of conducting the written examination.

21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

"55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10- 2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

"9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73)

"73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper."

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19)

"19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127 : 2002 SCC (L&S) 830] ....

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It was further observed : (SCC p. 149, para 34)

'34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

59. Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under : (SCC pp. 645-46, para 59)

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] .... The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise."

22. In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in Union of India v. N Murugesan (2022) 2 SCC 25:

"Approbate and reprobate

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits.

One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

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27.2.State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under : (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10)

'10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.'

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25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

23. The aforesaid principle of law applies to the present case. It is not open to the candidate to contend to the contrary so that he can have the best of both sets of rules. Not only is there a difference in the mode of selection, but also in the constitution of recruiting authority as well. It is pertinent to note, that under the 2015 Rules, there is no such procedure for preparing a waiting-list, as the Respondents seek to contend.

24. We have considered the aforesaid submissions to appreciate the arguments made. Even under the 1978 Rules, we do not find the existence of any waiting-list in operation to be filled up at a later point of time, when a certain candidate does not join. Such a list has been provided under Rule 15(4) of the 1978 Rules only to facilitate the appointing authority to fill up the vacancies. Thus, after the vacancies are filled up, the door for the other candidates gets closed.

25. The same is the position under the 2015 Rules by which the Commission is required to send the merit list alone to the appointing authority which it actually did and in case of non-joining, the vacancies are carried forward to the next process of selection, as has been rightly done by the authority in the present case. An employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law, which we do not find to be the case in the present matter. The approach of the High Court is like a visually impaired person looking for a black cat in a dark room when the cat itself is not there.

26. Now we shall come to the question of repugnancy between the two Rules, namely, the 1978 Rules, being a special Rule, and the general Rule introduced in the year 2015. The 1978 Rules do not exist in the statute once the 2015 Rules came into

being. By the introduction of the 2014 Act, the legislature in its wisdom assigned the role of filling up the Class 'C' posts to the Commission. We have no difficulty in 15 appreciating the legal contentions raised by the Respondents, however, the decisions rendered do not have any application, considering the inconsistency between the two sets of rules. As we have already held the two sets of rules to be inconsistent with each other, it is clear that the later rules, even though general in nature, will govern the field. On this aspect, we wish to quote with profit the decision of this Court in the case of Ajoy Kumar Banerjee (supra),

"38....As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle "Generalia specialibus non derogant". The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are: (i) The Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edition, pages 196-198."

27. Merely because the Appellant sought to amend the 1978 Rules subsequently in 2016, it cannot be presumed that the 1978 Rules particularly with respect to Rule 15 continue to exist in the statute book, considering the fact that the 2016 amendment was only clarificatory in nature. We may hasten to add that both the Rules were made in the exercise of power conferred under Article 309 of the Constitution of India.

28. Much reliance has been made on the Government Order passed on 15.11.1999. The said order is very clear on two counts.

It speaks of the role being played by the Public Service Commission, and dispensing with the waiting-list except in case of selection to a single post. What is important to be noted is the selection and that too for a single post. It would only mean that selection of an individual to a post, which cannot be interpreted to mean a particular category of post or a single cadre post, as contended by the counsel for the Respondents. The object is very clear that the exercise done in selecting a suitable candidate shall not go waste if that person is not actually selected for any reason, in which case the next in line would get in. Otherwise, the entire process would go to waste, making the recruiting agency to redo it all over for a single post.

29. The learned counsel appearing for the respondents made a specific reference to the decision rendered in the case of Rajiv Kumar Srivastava (supra) to press home the contention that, when a post is not filled due to non-joining of a candidate, another one waiting in the wings merits consideration, as a vested right inures in his benefit.

30. The aforesaid decision, in our considered view, may not have any application to the case on hand. The effect of the relevant rules is not considered therein, as the select list shuts the door to everyone other than the selected candidates. The aforesaid decision was in the context of the 1999 GO, however, as we have held that the 1978 Rules do not apply to the present recruitment, the aforesaid decision would not be of any service. Further, it is settled law that there is no vested right of the unsuccessful candidate to insist upon their consideration, in the absence of any such rule requiring for the preparation of a waiting-list. This Court in the recent decision in Vallampati Sathish Babu v. State of A.P. (Civil Appeal No. 2473 of 2022) has held that:

"7.4 In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment.

7.5 The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. In absence of any specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post

remaining unfilled on any ground shall have to be carried forward for the next recruitment. The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.

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8.1 An identical question came to be considered by this Court in the case of Suresh Prasad and Ors. (supra). In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has 18 been subsequently followed by the Andhra Pradesh High Court in the case of Samiula Shareef and Ors. (supra)"

31. We do not wish to reiterate the situation when two Rules are sought to be pitted against each other, as we find no such repugnancy that has arisen. A court of law is expected to reconcile the rules, and therefore, not to foresee or presume conflicts, if any.

32. The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were nonsuited from participating in the recruitment process.

The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.

33. On a perusal of the judgment rendered by the High Court, as found earlier, the impugned decisions are made without considering the appropriate provisions despite an endeavour being made drawing its attention to the same. The High Court in our considered view did not take note of the grounds raised in the Review Petition. In a proceeding initiated under Article 226 of the Constitution of India, the scope of review has to be looked at differently, facilitating an enlarged view. We have already

discussed the scope of Rule 15 and the non-availability of any provision for a waiting list in the 2015 Rules.

34. Accordingly, the appeal stands allowed and the impugned judgments dated 09.08.2018 and 30.10.2019 are set aside and consequently the order passed by the learned Single Judge stands restored. No costs.

.....J. (M. R. SHAH)

.....J. (M.M. SUNDRESH)

New Delhi,

December 12, 2022

IN THE SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Gurbachan Singh & Others

[Criminal Appeal No. 2201 of 2011]

HEADNOTE - 'Common intention' for the purpose of Section 34 IPC can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available.

JUDGMENT

Sanjiv Khanna, J.

By the order dated 01.05.2009, notice in the special leave petition was confined to the first respondent - Gurbachan Singh. The special leave petition against other respondents was dismissed. Our attention is drawn to the order dated 17.12.2008, whereby Criminal Miscellaneous Petition No. 19754/2008 preferred against the acquittal of Manjeet Kaur, stands dismissed. The case and evidence relied by the prosecution against Manjeet Kaur and Jangir Kaur is identical. We are of the opinion and reiterate that the prosecution has not been able to establish its case against Jangir Kaur. Challenge to the acquittal of Jangir Kaur is dismissed.

2. The prosecution's case as per the charge sheet is that Teja Singh along with his brother Harbhajan Singh (PW-1) on one side, and Gurbachan Singh along with the co-convicts and brothers Darshan Singh, Balvir Singh, and Manjeet Singh, on the other side were embroiled in a dispute regarding partition of land. On 06.11.2000 at about 5 P.M., Gurbachan Singh and Balvir Singh were ploughing the plot which belonged to water works department. Teja Singh had objected to this, post which, a village meeting was held, in which both Gurbachan Singh and Balvir Singh had left for their home in anger. At about 7:30 P.M. on the same day, Harbhajan Singh (PW-1), and Jasveer Kaur (PW-2) were going to the Gurudwara in the village. At that time, Teja Singh was seen coming from the flour mill of Sohan Lal, which was near the Gurudwara. Thereupon, Gurbachan Singh and Balvir Singh, Manjeet Singh, and Darshan Singh, who hand come armed with 'lathi', 'toka', axe, and 'gandasi' respectively, had beaten and inflicted injuries on Teja Singh, which resulted in his death on the spot. Harbhajan Singh (PW-1) had also suffered injuries in the incident.

3. First Information Report1 was filed on the same day, mentions the names of Gurbachan Singh, Darshan Singh, Balvir Singh and Manjit Singh, and also the names of Jangir Kaur and Manjeet Kaur, who were statedly present at the place of occurrence. However, as per the FIR, no specific acts, verbal or physical in nature, were attributed to Jangir Kaur and Manjeet Kaur.

4. The trial court, vide judgment dated 07.11.2001 had tried and convicted Gurbachan Singh along with others namely, Balvir Singh, Manjeet Singh, Darshan Singh, and Jangir Kaur under the following provisions of the Indian Penal Code, 18602:

(a) Section 302 read with Section 149 of the IPC- Life imprisonment and fine of Rs. l000/- each, with default stipulation of 2 months simple imprisonment;

(b) Section 324 read with Section 149 of the IPC- One and half years' rigorous imprisonment and fine of Rs.500/- each, with default stipulation of one-month simple imprisonment;

(c) Section 323 read with Section 149 of the IPC- 3 months rigorous imprisonment and fine of Rs. l00, with default stipulation of 7 days simple imprisonment; and

(d) Section 148 of the IPC - one year rigorous imprisonment and fine of Rs.100/- each, with default stipulation of 7 days simple imprisonment.

Manjeet Kaur was tried separately in the year 2004, as she had absconded. She was convicted by the trial court, which conviction was set aside by the High Court. The judgment of acquittal in her case has become final.

5. On appeal preferred by Gurbachan Singh, Balvir Singh, Manjeet Singh, Darshan Singh, and Jangir Kaur, the Division Bench of High Court of Judicature for Rajasthan at Jodhpur, vide judgment dated 04.04.2008, allowed the appeal filed by Jangir Kaur and has acquitted her. The appeal of Gurbachan Singh was partly allowed as his conviction under Section 302 read with 149, Section 147, Section 148, Section 324 read with 149, and Section 323 read with 149 of the IPC was set aside, and he has been convicted under Section 323 of the IPC for the injuries caused to Teja Singh, and was directed to be released, as he had suffered the maximum punishment provided for the offence. Conviction of Balvir Singh, Manjeet Singh and Darshan Singh under Sections 149 and 148 of the IPC was set aside, albeit, their conviction under Section 302 was maintained with the aid of Section 34 of the IPC. Their conviction and sentence under Section 324 read with Section 34 of the IPC for injuries caused to Harbhajan Singh (PW-1) was maintained.

6. It appears that Balvir Singh, Manjeet Singh, and Darshan Singh have not challenged their conviction and sentence imposed, which has attained finality.

7. As such, the question before us, in this appeal by the State of Rajasthan is whether the High Court was justified in setting aside the conviction and sentence awarded to Gurbachan Singh under Section 302 read with other provisions of the IPC, by convicting him only under Section 323 of the IPC, in view of the finding that he did not share common intention with Balvir Singh, Manjeet Singh, and Darshan Singh to cause the death of Teja Singh, as he only inflicted wounds on his feet with a 'lathi'.

8. Pertinently, the High Court while partly accepting the appeal preferred by Gurbachan Singh, has held as under:

"Now the question remains about accused Gurbachan who as per ocular testimony was armed with 'lathi' and the same was recovered also. After he gave an information through Ex. P/41 and the same was covered through Ex.P/23 and the same was also smeared with human blood. Harbhajan Singh himself is injured whose injury report Ex. P/15 was prepared by Dr. Mohan Lal Gupta. As per injury report he has received as many as eight injuries on his person, out of which one is from sharp edged weapon and as per statement of Harbhajan Singh said injury was inflicted by accused Balvir Singh with 'toka', when he reached on the spot to save his brother. Gurbachan Singh gave 'lathi' blows on his person. From the testimony of ocular witnesses it can safely be inferred that accused Gurbachan Singh was not sharing the common intention as he was armed only with 'lathi' and whatever injuries on the person of the deceased which were given on vital part of the body of the deceased."

9. The aforesaid reasoning, accepts and in our opinion rightly that Gurbachan Singh was present at the place of the occurrence with Balvir Singh, Manjeet Singh, and Darshan Singh when the violence took place, which resulted in death of Teja Singh on 06.11.2000 at about 7:30 P.M. Harbhajan Singh (PW-1), the brother of Teja Singh, along with his wife, Jasveer Kaur (PW-2), who were going to the Gurudwara in the village, had seen Teja Singh coming from the flour mill of Sohan Lal, which was near the Gurudwara. Gurbachan Singh, Darshan Singh, Balvir Singh, and Manjit Singh had then accosted Teja Singh. Harbhajan Singh (PW-1) and his wife Jasveer Kaur (PW-2) have deposed that Gurbachan Singh had come with a 'lathi', whereas Darshan Singh were seen with an axe, Balvir Singh with a 'toka' and Manjeet Singh with a 'gandasi'. They had surrounded Teja Singh. Gurbachan Singh had then struck the feet of Teja Singh with 'lathi', who then fell-down.

Thereupon, Gurbachan Singh and the co-convicts had beaten and inflicted injuries and wounds to Teja Singh. Balvir Singh in particular had used a 'toka', a sharp-edged weapon, to inflict incised wounds on the head of Teja Singh. The motive and cause was the land dispute between the brothers, and the occurrence at 5 P.M on 06.11.2000, when Teja Singh had objected to Gurbachan Singh and Balvir Singh ploughing the plot of the water works department, and the village meeting where

tempers got flared with Gurbachan Singh and Balvir Singh leaving the meeting in anger. It is pertinent that Harbhajan Singh (PW-1) was also injured during the violence.

10. The post-mortem report marked as exhibit P-14 proved by Dr. Mohan Lal Gupta, (PW-9) had referred to 8 bone-deep injuries of different sizes on the head of Teja Singh. He had also deposed that these injuries could have been caused by sharp-edged weapons such as axe, 'toka', 'gandasi', 'lathi', and, etc., which were sufficient to cause death in ordinary course.

11. Given the aforesaid position, we are of the view that Section 34 of the IPC i.e., common intention, is clearly attracted in the case of Gurbachan Singh, whose case cannot be distinguished, so as to exclude him as one who did not share common intention with Darshan Singh, Balvir Singh, and Manjit Singh. Section 34 of the IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 of the IPC to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.

12. The impugned judgment observes that common intention cannot be inferred from the conduct of Gurbachan Singh, as he was only armed with 'lathi' and had struck only on the feet of Teja Singh. However, we are of the opinion that common intention to inflict injuries and cause the death of Teja Singh, can be gathered from the conduct and action of Gurbachan Singh. First, it is deductible from the quoted paragraph of the impugned judgment read with the depositions of Harbhajan Singh (PW-1) and Jasveer Kaur (PW-2), that Gurbachan Singh had come prepared with 'lathi' along with others who had carried 'toka', axe and 'gandasi'. This is corroborated by the fact that blood-smeared 'lathi' was recovered from the possession of Gurbachan Singh.

The evidence establishes the participation of Gurbachan Singh, in commission of the offence with co-participants/co-convicts. Secondly, Gurbachan Singh, was the first one to attack and inflict injury on Teja Singh, by hitting him on the feet with a 'lathi', who had then fallen down. Lastly, Gurbachan Singh along with co-convicts, had inflicted 8 incised wounds on head and other injuries on vital and other parts on the person of Teja Singh, as recorded in the post-mortem report (Ex.P.14). The statement of eye witnesses clearly reveal that Gurbachan Singh did not give just one

'lathi' blow, as it is being said by the defence, but he continued to give 'lathi' blows to the deceased, even when he fell down.

This he did along with the other co-convicts, Balvir Singh, Manjeet Singh and Darshan Singh, who had inflicted injuries with 'toka', axe and 'gandasi'. These facts establish that Gurbachan Singh had shared the common intention to cause injuries with other co-convicts, and the crime was committed in furtherance of the common intention, which led to the death of Teja Singh. Therefore, all of them, including Gurbachan Singh, would be responsible for the criminal act i.e., the offence under Section 302 of the IPC, irrespective of the part played by them.

13. Recording the aforesaid, we set aside the impugned judgment passed by the High Court acquitting Gurbachan Singh under Section 302 of the IPC, and he is convicted for murder of Teja Singh under Section 302 read with Section 34 IPC. Gurbachan Singh's conviction under Section 324 of the IPC for the injuries inflicted on Harbhajan Singh (PW-1) is also maintained. We restore the order of sentence passed by the trial court imposing punishment of life imprisonment on Gurbachan Singh, for the offence under Section 302 of the IPC albeit read with Section 34 of the IPC, along with a fine of Rs. 1,000/-, with the stipulation that in case of non-payment, he would undergo sentence of simple imprisonment for a period of two months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 will be given. We, however, accept the view taken by the High Court that the conviction under Section 149 read with Section 148 of the IPC cannot be sustained as the requirement of unlawful assembly to attract these provisions of the IPC, is not satisfied.

14. Gurbachan Singh will surrender within 21 days to undergo the remaining sentence. In case, Gurbachan Singh does not surrender within the said period, the authorities/court will take action in accordance with law to detain Gurbachan Singh, so as to undergo remaining sentence.

15. The appeal is allowed in the aforesaid terms.

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

.....J. (SANJIV KHANNA)

.....J. (SUDHANSHU DHULIA)

NEW DELHI;

DECEMBER 07, 2022.

C. Legal Article

UNIFORM CIVIL CODE

PARLIAMENTARY DEBATES

The debate on the UCC started with the framing of the Constitution and has been kept alive by judiciary as well as political class. The issue has again been brought at the forefront of public debate with the recent judgment in Shayara Bano case, which invalidated the triple talaq. This has also coincided with the Law Commission inviting public consultation on Uniform Civil Code in Oct 2016.

Ambedkar on the **4th of November, 1948** presented the Draft Constitution to the Constituent Assembly for deliberation. The uniform civil code provision found its place in the Directive Principles of State Policy as Draft Article 35. The text of Article 35 went like this

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India'

Ambedkar's speech was the last intervention in the Constituent Assembly. Soon after, Draft Article 35, was put to vote. The Constituent Assembly adopted the article which would later be re-numbered as Article 44 of the Constitution of India. Read the debate in detail herein below

Draft Article 35 (Now Article 44)

The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

The Honourable Members Participated

Mohamad Ismail Sahib (Madras: Muslim):

Shri Suresh Chandra Majumdar: (West Bengal

Mr. Naziruddin Ahmad

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim):

Shri M. Ananthasayanam Ayyangar:

Shri L. Krishnaswami Bharathi:

B. Pocker Sahib Bahadur (Madras:

Mr. Hussain Imam: (Bihar: Muslim

Shri K. M. *Munshi*

Shri Alladi Krishanaswami Ayyar (Madras: General

Law Minister

The Honourable Dr. B. R. Ambedkar:

Constituent Assembly Debates

Tuesday, the 23rd November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

Discussion on Draft

Mr. Mohamad Ismail Sahib (Madras: Muslim): Sir, I move that the following proviso be added to article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

"The Serb, Croat and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage."

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. **Now why do people want a uniform civil code, as in article 35?** Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar: (West Bengal: General): Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Mohamed Ismail Sahib: Article 35 reads thus:

"The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

That will include the personal law as well.

Mr. Vice-President: I hold that the Honorable Member is in order.

Mr. Mohamed Ismail Sahib: Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That to article 35, the following proviso be added, namely: -

`Provided that the personal law of any community which has been guaranteed by the statue shall not be changed except with the previous approval of the

community ascertained in such manner as the Union Legislature may determine by law'."

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that `subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.' Infect, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause(2) of the same article it has been further provided by way of limitation of the right that `Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), viz. financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered

with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under Article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under Article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to door was afraid to do, what the Muslims in the course of 500years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(***B. Pocker Sahib Bahadur rose to speak***.) **Mr. Vice-President:** When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): I have given notice of an amendment to article 35. It is No. 833.

Mr. Vice-President: That escaped my attention. I am glad you pointed that out.

Mahbood Ali Baig Sahib Bahadur: Sir, I move that the following proviso be added to article 35:

"Provided that nothing in this article shall affect the personal law of the citizen."

My view of article 35 is that the words "Civil Code" do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyangar: It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur: I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as contract, while the marriage amongst the Hindus is a ***Samskara*** and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practiced by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

Shri L. Krishnaswami Bharathi: It is sought to be done only by consent of all concerned.

Mr. Vice-President: Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible

freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

Shri L. Krishnaswami Bharathi: My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

Mr. Vice-President: It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadur: Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "**Civil code**". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "Civil code" include personal law of any community.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35: -

"Provide that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will not that one of the reasons why the Britishers, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean, which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words **"Civil Code"** are intended only to apply to matters procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feelings of the Mussalmans. In saying this, I am voicing forth the feelings of ever so many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I amusing, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the mitakshara and Dayabhaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis?

Is it open to us to do anything of this sort? By this one clause you are revolutionizing the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

Mr. Vice-President: That may be taken up at the proper time.

B. Pocker Sahib Bahadur: What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

Mr. Hussain Imam: (Bihar: Muslim): Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the

Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,-I know of Jharkhand and Santhal Parganas-we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

As regards article 19 the House accepted it and made it quite clear that-"Nothing in this article shall affect the operation of any existing law or preclude the State from

making any law (a) regulating or restricting"-I am omitting the unnecessary words- "or other secular activity which maybe associated with religious practices; (b) for social welfare and reforms". Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the

nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind-and I want my Muslim friends to realise this-that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors-and important factors-which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation". From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honorable Member who spoke last of a particular incident from Fereshta which comes to my mind, ***Allauddin Khilji*** made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was-"I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat." If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

Shri Alladi Krishanaswami Ayyar (Madras: General): Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this

country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker leveled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslims take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians, there are Jews, indifferent European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Koran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature

will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu Law. Therefore, there is no force to the objection that is put forward to article

The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have

article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all-not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathyam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindus, law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely

proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

Mr. Vice-President: The question is:

"That the following proviso be added to article 35:

`Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law'."

The motion was negatived.

Mr. Vice-President: The question is:

"That to article 35, the following proviso be added, namely, `Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law`."

The motion was negatived.

2. Study Material-G.K.

MUGHAL DYNASTIES (1526 – 1857 A.D.)

Rulers	Term	Notable Facts
Babur	1526 – 1530	➢ **Established Mughal Empire by defeating Ibrahim Lodi in First Battle of Panipat (Haryana) in 1526** ➢ Use Canon in India for the first Time ➢ **Babur defeated Rana Sanga of Mewar in the Battle of Khanwa (Rajasthan) in 1527** ➢ **Babur defeated Medini Rai in the Battle of Chanderi (M.P.) in 1528** ➢ **Babur defeated Afghans in the Battle of Ghaghra (Bihar) in 1529** ➢ **In 1527, Babar built Kabuli Bagh Masjid in Panipat, after his victory in First Battle of Panipat** ➢ 1528-1529 : Construction of Babri Masjid (Babur's Mosque) in Faizabad district of U.P. ➢ Death of Babur in 1530
	Humayun	1530 – 1540 1555 – 1556
SUR DYNASTY (1540 – 1555 A.D.)		
Sher Shah Suri	1540 – 1545	➢ Shershah Suri defeated Humayun in the Battle of Chausa in 1539 and in the Battle of Kannauj (Billgram) in 1540. ➢ He **abolished Zaimndari System** in India and introduce New Land Revenue System ➢ According to this New Land Revenue System farmers and peasants had to give one third of their total production as a tax to the ruler (the King) ➢ **He constructed the Grand Truck Road and extended it from Chittagong in the frontiers of the province of Bengal in North-East India to Kabul in Afghanistan.** ➢ Sher Shah last campaign was against Kalingar. He succeeded but died from an explosion in 1545.

Islam Shah	1545 – 1554	➢ Son of Sher Shah Suri ➢ His original name was Jalal Khan
Sikandar Suri	1554 – 1555	➢ He was defeated by Humayun in 1555 in the Battle of the battle of Macchiwara
LATER MUGHALS AFTER HUMAYUN (1556 – 1858)		
Akbar	1556 – 1605	➢ Born to Humayun and Hamida Bano Begum and his guardian was Bairam Khan ➢ **Akbar was born in the Rajput Empire of Amarkot in Pakistan** of Mahraja Virasala ➢ **Akbar became the King in the age of 13 years in the year 1556. He was coronated at Kalanor in Punjab by Bairam Khan.** ➢ **Bairam Khan on behalf of Akbar defeated the Hemchandra in the Second Battle of Panipat in 1556.** ➢ Akbar became **an independent ruler at the age of 18 years in 1560, after dismissing Bairam Khan.** ➢ In 1563 – Akbar abolished the Pilgrim Taxes on Hindus ➢ In 1564, he abolished the religious tax Jizya. ➢ Jizya was imposed for the first time by the **Qutubuddin Aibak which was called 'Karaj-i-Jizya'** ➢ In 1572, Akbar captured Gujarat and in the memory of that he built a new capital city **'Fatehpur Sikri' (City of Victory)** near Agra. ➢ The early name of **Fatehpur Sikri** was city of Sikri ➢ **Buland Darwaza in Fatehpur Sikri was also built by Akbar** ➢ In 1575, Akbar constructed a prayer house in Fatehpur Sikri known as **'Ibadatkhana'** ➢ Akbar built – **Agra Fort, Allahabad Fort and Lahore Fort.** ➢ He started a new revenue system in India as **'Todarmal Bandobast' or 'Zabti system'.** ➢ In 1571, he started the famous

		'Mansabdari system' ➢ **1576 – Battle of Haldighati** between Man Singh and Maharana Pratap (King of Mewar) ➢ **1580** – The first Jesuit Missionaries arrived at the Court of Akbar ➢ **1583 –** Akbar founded a new religion for universal peace and monotheism known as **'Din-ilahi' means Divine Faith.** ➢ **1585 – Ralph Fitch –** First Englishmen to reach India in Akbar's Court ➢ **1600 –** Akbar was the Mughal emperor when the English East India Company was being founded in 1600 ➢ **1604 –** The **Portuguese introduced 'Tobacco'** for the first time in India in Akbar's Court ➢ The navratnas of Akbar were as follows: Raja Birbal, Miyan Tansen, Abul Fazal, Faizi, Raja Man Singh, Raja Todar Mal, Mullah Do Piazza, Fakir Aziao-Din, Abdul Rahim Khan-I-Khana ➢ Akbar gave Mughal India one official language – Persian ➢ He was died in 1605 ➢ **Akbar Conquests** (i) 1560-62 – Malwa (M.P.) (ii) 1561 – Chunar (U.P.) (iii) 1568 – Chittor (Rajasthan) (iv) 1569 – Rathanmbor (Rajasthan) (v) 1570 – Marwar (Rajasthan) (vi) 1572 – Gujarat (vii) 1574-76 – Bengal and Bihar (viii) 1576 – Haldighati (ix) 1581 – Kabul (x) 1585-86 – Kashmir (xi) 1590-91 – Sindh (xii) 1591-92 – Orissa (xiii) 1595 – Baluchistan (xiv) 1597-1600 – Ahmednagar (xv) 1601 – Asirgarh (M.P.)
Jahangir	1605 – 1627	➢ He was the son of Akbar and Harka Bai ➢ Early name of Jahangir was Salim. Akbar

		called him Sheiku Baba ➢ **He married Mehrunnisa, an Afghan widow later 1611 later he gave her the titles, Noor Mahal (light of the palace). Noor Jahan (light of the world) and Padusha Begum** ➢ In 1606, **Jahangir executed fifth Sikh Guru Arjun Dev,** because he helped Jahangir's son Prince Khusro to rebel against him. ➢ **In 1609, Jahangir received William Hawkins, an envoy of King James I of England, who reached India to start trading in India** ➢ He defeated Maharaja Amar Singh who was the son of Maharana Pratap in 1615. ➢ **He built Shalimar and Nishant Gardens in Sirnagar** ➢ **He hanged the chain of Justice known as Zndiri Adal in front of his court.** ➢ He was also married with a Rajput princess Jagat Gosain. ➢ Period of Jahangir is considered as the Golden Age of Mughal painting. Jahangir himself was a painter. Ustad Mansur and Abul Hassan were painters in the Court of Jahangir ➢ He prohibited the tobacco in India which was started by Akbar ➢ **He made Lahore as its capital city** ➢ **Famous Italian traveller Pietra Velle came during the period of Jahangir.** ➢ **He wrote his autobiography Tuzukh-i-Jahangiri in Persian Language.** ➢ He died in 1627 and was cremated at Shahdara in Lahore
Shahjahan	1628 – 1657	➢ He was born in 1592 at Lahore ➢ His mother name was Jagat Gossain and his childhood name was Khurram ➢ He married **Anjuma Bano Begum in 1612**. **She was the daughter of Asaf Khan, brother of Noor Jahan.** She later came to be known as Mumtaz Mahal

		which means beloved of the palace. ➢ Shahjahan destroyed the Portuguese settlements at Hubli in 1631 ➢ His period is considered as the Golden Age of Mughal Architecture and Shahjahan is known as the prince of builders ➢ **In 1631, he started the construction of Taj Mahal in the memory of his wife Mumtaz Mahal and completed in 1653.** ➢ It took 22 years to complete the structure. The main architect of the Taj Mahal was a **Persian Architect, Ustad Isa** ➢ **In 1639, started construction of Red Fort in Delhi on the model of Agra Fort built by Akbar. The construction of Red Fort was completed in 1648, the Diwan-i-am, Diwan-i-khas and the Moti Masjid are situated inside the Red Fort. The Moti Masjid in Agra was constructed.** ➢ He built the famous peacock throne (Mayur Aasan) on which the Kohinoor Diamond was mounted. ➢ In 1658, Shahjahan was imprisoned by his son Aurangzeb and he died in 1666 after eight years. His daughter Jahan Ara was also kept in prison along with at the Agra Fort. ➢ **French Traveler Bernier and Tavernier and Italian traveler Manucci visited India during his period.**
Aurangzeb	1658 – 1707	➢ Aurangzeb imprisoned his father Shahjahan and made **himself the Padushah (Ruler) in 1658 by defeating and killing his elder brother Dara Sikoh** at the **battle of Samugarh in 1658** ➢ Dara Sikoh is one of the most important names as he **converted the Gita in Persian Language** ➢ Aurangzeb is known as **'Zinda Pir'** ➢ He banned music and dance and wine ➢ He used to play Veena ➢ **Aurangzeb called Shivaji a 'mountain**

		rat' and gave him the title Raja because of his Guerilla tactics ➢ In 1660, he entrusted **Shaisthakhan** to defeat Shivaji. ➢ He defeated Shivaji in the battle of **Porbandar** in 1665 ➢ Later in 1665, the treaty of Purandar was signed between **Maharaja Jai Singh of Amber and Shivaji** ➢ **In 1675, he executed 9th Sikh Guru Teg Bahadur** because of his reluctance to accept Islam ➢ **Teg Bahadur was executed at the Chandni Chowk in New Delhi.** The Gurudwara built there is called Gurudwara Sis Ganj Sahib ➢ **He reimposed Jaziya upon all the non-muslims** which was earlier abolished by Akbar ➢ He also **abolished the Sati practice** the only good thing ➢ **Aurangzeb built the famous pearl mosque inside the Red Fort in Delhi** ➢ He was a temple breaker. ➢ Aurangzeb died in 1707 in Ahmednagar and his tomb is situated at Daulatabad in Maharashtra
Bahadur Shah I	1707 – 1712	➢ Bahadur Shah I came to the throne after the death of Aurangzeb. His real name was Muassam. ➢ **He built the famous Bibi ka Maqbara at Aurangabad in the memory of his mother Dilras Bano Begum**
Jahandar Shah	1712 – 1713	➢ He abolished the famous Jaziya taxes in 1713
Farukhsiar	1713 – 1719	➢ Assassinated on throne by Sayyid Brothers and Jaswant Singh, His Father in Law ➢ In 1717, he gave the permission to the Britishers to do tax free trade in India
Rafi ud-Darajat	1719 – 1719	Nothing important to note
Muhammad Shah	1720 – 1748	➢ Killed Sayyid Brothers ➢ Nadir Shah invasion in 1739 ➢ In 1739, **in the Battle of Karnal, Nadir**

		Shah defeated him and took away the Shahjahan's famous peacock throne and Kohinoor Diamond
Ahmad Shah	1748 – 1754	➢ During his period, Ahmad Shah Abdali of Afghanistan invaded India
Alamgir II	1754 – 1759	➢ **Battle of Plassey (23-06-1757)** between Bengal Nawab Siraj-ud-Daulah and Robert Clive. Robert Clive bribed Mir Jafar for help the Britishers
Alam Shah II	1759 – 1806	➢ **Third Battle of Panipat (14-01-1761) between Sadashivrao Bhau, Shuja-ud-Daula, Raja Surajmal on one side and Ahmad Shah Abdali on other side. Ahmad Shah Abdali won the third battle of Panipat** ➢ **In Battle of Buxar in 1764, British Army defeated Shah Alam II.** ➢ **Treaty of Allahabad on 12-08-1765 between Shah Alam II and Robert Clive. Shah Alam II gave the Diwani rights of Bengal, Bihar and Orissa to Robert Clive.**
Akbar II	1806 – 1837	➢ **Conferred the title of 'Raja' upon Ram Mohan Roy**
Bahadur Shah II	1806 – 1857	➢ During his period, **a great First War of Independence in 1857 took place** against Britishers. Britishers won in Mutiny of 1857 ➢ On 17 May 1857, Bahadur Shah II was declared the independent Emperor of India by the mutineers. ➢ He surrendered to **Lt. W.S.R. Hodson at Humayun's tomb in Delhi.** In **1859,** he **was deported at Rangoon in December where he expired in 1862** ➢ He was also a famous Urdu poet.

3. Study Material-Language

HOMONYMS- SIMILAR BUT WITH DIFFERENT MEANINGS

English can be confusing. A lot of words are similar but with different meanings, as a result it is almost impossible to avoid making mistakes in English, but if you can get your head around these explanations, you might be able to avoid making these ones or at least recognise them when you see them. Words marked with an asterisk * have confusing pronunciation

air	heir	loan	lone
ail	ale	made	maid
allowed	aloud	mail	male
arc	ark	main	mane
ate	eight	meat	meet
bad	bade	medal	meddle
bail	bale	missed	mist
bald	bawled	muscle	mussel
ball	bawl	none	nun
bare	bear	oar	ore
beach	beech	one	won
bean	been	pail	pale
bear	bare	pain	pane
beat	beet	pair	pear
bee	be	patience	patients
beet	beat	peace	piece
bell	belle	peal	peel
berry	bury	plain	plane
birth	berth	plane	plain
blue	blew	pore	pour

boar	bore	practice	practise
board	bored	praise	prays
bough	bow	pray	prey
bow	bough	principal	principle
boy	buoy	profit	prophet
brake	break	rain	reign
buy	by/bye	rap	wrap
ceiling	sealing	read	reed
cell	sell	read	red
cent	sent	right	write
cheap	cheep	ring	wring
check	cheque	road	rode
coarse	course	role	roll
cord	chord	root	route
dear	deer	rose	rows
die	dye	sale	sail
dun	done	scene	seen
Dye	die	sea	see
ewe	you	seam	seem
eye	I	sew	sow
fair	fare	sight	site
feat	feet	soar	sore
find	fined	sole	soul
flea	flee	son	sun
flew	flu	soot	suit
flour	flower	stair	stare
flower	flour	stake	steak
fool	full	steal	steel

fore	four	stile	style
forth	fourth	suite	sweet
foul	fowl	tail	tale
fur	fir	tear	tier
gait	gate	their	there
grate	great	threw	through
groan	grown	throne	thrown
hair	hare	tide	tied
hall	haul	to	two
heal	heel	told	tolled
hear	here	too	to, two
heard	herd	towed	toad
here	hear	urn	earn
higher	hire	vain	vein
him	hymn	vale	veil
hole	whole	vein	vane, vain
hour	our	waist	waste
idle	idol	wait	weight
key	quay	way	weigh
knew	new	weak	week
knight	night	wear	where
knot	not	whole	hole
know	no	witch	which
lain	lane	wood	would
lead	led	write	right
leak	leek	yoke	yolk
lessen	lesson	yore	your

4. Current Affairs

CURRENT AFFAIRS – MCQS
DECEMBER 2022

1. World AIDS Day is observed on?
a) December 1
b) December 5
c) December 15
d) November 30

2. Who has received 'The Emissary of Peace' Award in the US?
a) Dalai Lama
b) Sadhguru
c) Sri Sri Ravi Shankar
d) Ramdev

3. Hornbill Festival will be celebrated in which state?
a) Manipur
b) Nagaland
c) Assam
d) Meghalaya

4. BSF Raising Day Parade 2022 will be held in which state?
a) Haryana
b) Madhya Pradesh
c) Uttar Pradesh
d) Punjab

5. What is the Maternal Mortality Ratio (MTR) in India during 2018-20, as per the latest data?
a) 97 per lakh live births
b) 130 per lakh live births
c) 120 per lakh live births
d) 98 per lakh live births

6. 'Nai Chetna Campaign' has been launched by which Union Ministry?
a) Ministry of Home Affairs
b) Ministry of Health and Family Welfare
c) Ministry of Rural Development
d) Ministry of Women and Child Development

7. Digi Yatra Facility has been inaugurated for which mode of transport?
a) Bus
b) Air
c) Train
d) Taxis

8. National Pollution Control Day is observed every on?
a) December 5
b) December 2
c) December 7
d) December 9

9. Which country has assumed UNSC Presidency for December 2022?
a) India
b) Ireland
c) Mexico
d) United Arab Emirates

10. Who has been appointed as the new Executive Director of Punjab National Bank?
a) B.K. Mishra
b) S.M. Jha
c) M Paramasivam
d) S. Balachandran

11. Which Union Territory in India has the country's biggest International Yoga Centre?
a) Puducherry
b) Daman and Diu
c) Ladakh
d) Jammu and Kashmir

12. When is World Computer Literacy Day observed?
a) December 5
b) December 2
c) December 7
d) December 10

13. Indian naval fleets, Shivalik and Kamorta are going to visit which city?
a) Qingdao
b) San Diego Bay
c) Ho Chi Minh
d) Historic Port City of Mongla

14. Which country used steam to propel the moon spacecraft successfully?
a) China
b) Japan
c) Russia
d) India

15. When is Navy day celebrated in India?
a) 29 November
b) 4 December
c) 1 December
d) 22 November

16. Which among the duo won the mixed team pistol title at the National shooting championship?
a) Anjali and Sagar
b) Yashasvi and Abhinav
c) Manu Bhaker and Sarabjot
d) Divya and Imroz

17. The First G-20 Sherpa meeting under India's presidency is organized in which city?
a) Jaipur
b) Udaipur
c) New Delhi
d) Lucknow

18. Prakaram Diwas will be celebrated in which of the following state?
a) Gujarat
b) Himachal Pradesh
c) Rajasthan
d) Maharashtra

19. When is the international day of People with disabilities celebrated?
a) 1 December
b) 25 November
c) 16 November
d) 3 December

20. What's its position of India in the international aviation ranking?
a) 102
b) 48
c) 54
d) 63

21. Who won the best director award at New York Film Critics Circle?
a) Steven Spielberg
b) Sarah Polley
c) Gina Prince-Blythewood
d) SS Rajamouli

22. Who won silver at the weightlifting World Championship in Colombia?
a) Khumukcham Sanjita Chanu
b) Sukhen Dey
c) Ganesh Mali
d) Mirabai Chanu

23. When is Armed Forces Flag day celebrated in India?
a) 4 December
b) 24 November
c) 7 December
d) 1 December

24. World Bank to finance which country with USD 250 million for environmental management?
a) Japan
b) Bangladesh
c) India
d) Pakistan

25. Which movie won the Spotlight Award at the Hollywood Critics Association?
a) RRR
b) Bahubali
c) Sita Ramam
d) KGF

26. What is the name of the volcano that erupted in Indonesia on December 4, 2022?
a) Mauna Loa

b) Mount Semeru
c) Mount Etna
d) Mount Merapi

27. India's first real-time Gold ATM is established in which city?
a) New Delhi
b) Ahmedabad
c) Hyderabad
d) Bhopal

28. To what percent did the World Bank upgrade its forecast for the Indian economy for the fiscal year 2022-2023?
a) 6.5%
b) 6.3%
c) 6.7%
d) 6.9%

29. Who won the title of Time magazine's "Person of the year 2022?"
a) Greta Thunberg
b) Joe Biden
c) Volodymyr Zelensky
d) Elon Musk

30. What is the name of Peru's first female president?
a) Liz Truss
b) Dina Boluarte
c) Eda Rivas
d) Ana Jara

31. Who has been appointed as the Chairman and Managing Director of ONGC?
a) Arun Kumar Singh
b) Rajesh Kumar Srivastava
c) Pankaj Jain
d) B. Ashok

32. Where does India stands in the world's strongest passport list in 2022 published by Arton Capital?
a) 83
b) 87
c) 89
d) 77

33. Where did the 9th World Ayurveda Congress and Arogya Expo 2022 inaugurated?
a) Hyderabad
b) Bhopal
c) Goa
d) Pune

34. Which is India's first payment gateway to support credit cards on UPI?
a) Paytm
b) Google pay
c) Phone pay
d) Razor Pay

35. The "Climate Investment Opportunities in India's Cooling Sector" report was launched by which organization?
a) UNESCO
b) World Bank
c) World Economic Forum
d) NITI Aayog

36. Which organization organized an event to launch the "Toolkit on Enabling Gender Responsive Urban Mobility and Public Spaces in India"?
a) NITI Aayog
b) International Monetary Fund Show
c) World Bank
d) World Economic Forum

37. Who topped the Forbes 2022 list of the world's 100 most powerful women?
a) Michelle Obama
b) Mahsa Amini
c) Nirmala Sitharaman
d) Ursula von der Leyen

38. Which word has won the Oxford Word of the Year for 2022?
a) Metaverse
b) #IStandwith
c) Goblin mode
d) Slovenly

39. Which state has set up the first Divyang department in India?
a) Gujarat
b) Maharashtra
c) Madhya Pradesh

d) Karnataka

40. Mopa International Airport in Goa has been named after which minister?
a) Arun Jaitle
b) Manohar Parrikar
c) Pramod Sawant
d) Nilesh Cabral

41. Who has been elected as the 15th Chief Minister of Gujarat?
a) Bhupendra Patel
b) JP Nadda
c) Vijay Rupani
d) Anandiben Mafatbhai Patel

42. Which country launched the first-ever Arab-Built lunar spacecraft?
a) Qatar
b) Bahrain
c) UAE
d) Saudi Arabia

43. Who became the first women President of the Indian Olympic Association?
a) Sania Mirza
b) PV Sindhu
c) Saina Nehwal
d) PT Usha

44. Where will the first meeting of the G20 Finance Track agenda under the G20 Presidency take place?
a) Bangalore
b) New Delhi
c) Ahmedabad
d) Bhopal

45. When is UNICEF day celebrated every year?
a) 3 December
b) 7 December
c) 11 December
d) 13 December

46. Which state becomes the First State to launch its own Climate Change Mission in India?
a) Kerala
b) Gujarat

c) Himachal Pradesh
d) Tamil Nadu

47. Which city hosted the celebration of Universal Health Coverage (UHC) Day 2022?
a) Ahmedabad
b) Varanasi
c) Bhopal
d) Bengaluru

48. RBI signs Currency Swap Agreement with which country?
a) Japan
b) Sri Lanka
c) Maldives
d) Bangladesh

49. The 9th World Ayurveda Congress (WAC) and Arogya Expo 2022 was inaugurated in which state?
a) Goa
b) Gujarat
c) Bihar
d) West Bengal

50. Which player won the women's air pistol gold in the 65th National Shooting Championship, 2022?
a) Sanskriti Bana
b) Divya T.S
c) Manu Bhaker
d) Rhythm Sangwan

51. Which leader has been honoured with the SIES award on December 11, 2022?
a) Nirmala Sitaraman
b) Ram Nath Kovind
c) Piyush Goyal
d) Venkaiah Naidu

52. India's first mass-segment flex-fuel car is launched by which company?
a) Kia Motors
b) Maruti Suzuki
c) Tata Motors
d) Hyundai

53. Which cricketer broke the record of Chris Gayle of Gayle's record for the fastest to 200 in ODI innings?
a) Virat Kohli
b) K.L Rahul
c) Rohit Sharma
d) Ishan Kishan

54. Which country passed the tobacco law to ban smoking for the next generation?
a) United States of America
b) Japan
c) China
d) New Zealand

55. Which State/UT in India has been recognized as the first dark sky reserve?
a) Karnataka
b) Ladakh
c) New Delhi
d) Goa

56. Which country has been ousted from U.N. women's group after the U.S. campaign?
a) Russia
b) Ukraine
c) Japan
d) Iran

57. Which country has announced the historic Nuclear Fusion Breakthrough?
a) USA
b) China
c) Japan
d) India

58. Which state/UT in India has proposed to introduce a unique alpha-numeric identification number for all families?
a) Goa
b) Gujarat
c) Jammu and Kashmir
d) Karnataka

59. India International Science Festival 2022 will be held in which city?
a) Chennai
b) Bhopal
c) Varanasi
d) Mumbai

60. Who'll be the next Chief Scientist of WHO?
a) Dr Amelia Latu Afuhaamango Tuipulotu
b) Dr Tedros Adhanom Ghebreyesus
c) Dr. Jeremy Farrar
d) Soumya Swaminathan

61. 'International Climate Club' has been launched by which institution?
a) G-7
b) World Bank
c) G-20
d) SAARC

62. Which team won the FIFA World Cup 2022?
a) Japan
b) Argentina
c) France
d) England

63. Who won the title of Mrs. World 2022?
a) Sargam Koushal
b) Shaylyn Ford
c) Aditi Govitrikar
d) Caroline Jurie

64. Who has been awarded the Golden Ball Award in FIFA World Cup 2022?
a) Kylian Mbappe
b) Luka Modric
c) Enzo Fernandez
d) Lionel Messi

65. Who has been awarded the Golden Boot Award in FIFA World Cup 2022?
a) Kylian Mbappe
b) Luka Modric
c) Enzo Fernandez
d) Lionel Messi

66. Leo Varadkar, an Indian-origin leader has been elected as the prime minister of which country?
a) U.K
b) Italy
c) Ireland
d) Sri Lanka

67. "International Migrants Day" is celebrated on which day?
a) December 15
b) December 18
c) December 17
d) December 12

68. National Animal Resource Facility for Biomedical Research (ICMR-NARFBR) has been inaugurated in which city?
a) Mumbai
b) Chennai
c) Kolkata
d) Hyderabad

69. 'Rythu Bandhu' is a flagship scheme of which Indian state/UT?
a) Telangana
b) Goa
c) Madhya Pradesh
d) Karnataka

70. What is the name of the fifth Scorpene submarine of Project 75?
a) INS Kalavari,
b) INS Khanderi
c) INS Vagir
d) INS Kharanj

71. Which country is the host of the 'UN Biodiversity Conference- COP15'?
a) India
b) Australia
c) China
d) Canada

72. What is the name of the P15B stealth-guided missile destroyer commissioned into the Indian Navy?
a) INS Mormugao
b) INS Kolkata
c) INS Kochi

d) INS Chennai

73. Which is the only university in India to get an A grade by NAAC?
a) Delhi University
b) Maharshi Dayanand University
c) Guru Nanak Dev University
d) Chandigarh University

74. Which institution released the report titled 'Coal 2022: Analysis and Forecast to 2025'?
a) World Bank
b) IEA
c) UNEP
d) FAO

75. Which country has launched a 'Group of Friends' to promote accountability for crimes against peacekeepers?
a) Bangladesh
b) China
c) Sri Lanka
d) India

76. Which institution released the '2022 in Nine Charts' report?
a) IEA
b) UNEP
c) World Bank
d) IMF

77. Which Indian movie has been shortlisted for the "International Feature Film" category in Oscar 2023?
a) KGF
b) Chhello Show
c) RRR
d) Bahubali

78. Which athlete has been nominated to the Vice-chairman panel in Rajya Sabha?
a) P.T. Usha
b) Hima Das
c) Neeraj Chopra
d) Annu Rani

79. Who has been appointed as the new Chief of the New Delhi International Arbitration Centre?
a) Justice UU Lalit
b) Justice Hemant Gupta
c) Justice R Shubhash Reddy
d) Justice Jitendra Veer Gupta

80. Which Indian documentary movie has been shortlisted for the "Documentary short film category" in Oscar 2023?
a) All That Breathes
b) The Elephant Whisperers
c) The Last Film Show
d) Nothing Is Los

81. Which female wrestler has been nominated for the United World Wrestling Rising Star of the Year honour?
a) Anshu Malik
b) Vinesh Phogat
c) Sakshi Malik
d) Antim Panghal

82. Which state/UT has recently granted Industry status to its tourism sector?
a) Goa
b) Assam
c) Gujarat
d) Uttarakhand

83. Who has been appointed as the next ambassador of India to Saudi Arabia?
a) Sanjay Singh
b) Nipendra Mishra
c) Syed Akbaruddin
d) Dr. Suhel Ajaz Khan

84. Which company has got approval from the central government for nasal vaccines in India?
a) Bharat Biotech
b) Pfizer
c) Leefore
d) Biochem

85. Veer Bal Diwas is celebrated on which day?
a) December 23

b) December 26
c) December 22
d) December 25

86. Who has been elected as the new Prime Minister of Fiji?
a) Sitiveni Rabuka
b) Voreqe Frank Bainimarama
c) Naiqama Lalabalavu
d) Joko Widodo

87. The International Space Registry has named one star after whose name?
a) Mahatma Gandhi
b) Atal Bihari Vajpayee
c) Sushma Swaraj
d) Manohar Parrikar

88. Which country supplies the S-400 air defence missile system to India?
a) USA
b) Israel
c) Russia
d) France

89. Who has been elected as the Prime Minister of Nepal?
a) Pushpa Kamal Dahal "Prachand"
b) Rabi Lamichhane
c) Sher Bahadur Deuba
d) Rajendra Prasad Lingden

90. In which city did Union Minister Anurag Singh Thakur inaugurate Sports Science Centre?
a) Pune
b) Amravati
c) Udupi
d) Varanasi

91. Which institution has set up the 'Central Excise and Service Tax Settlement Commission'?
a) SEBI
b) CBIC
c) CBDT
d) Enforcement Directorate

92. Who has been appointed as the new chairman and CEO of the railway board?
a) V.K. Tripathi
b) Ashwani Sharan
c) Anil Kumar Lahoti
d) Pankaj Singh

93. In which state "Khelo India Youth Games 2022" will be held?
a) Gujarat
b) Goa
c) Madhya Pradesh
d) Haryana

94. What is the name of the new scheme announced under the station redevelopment drive of the Ministry of Railways?
a) Atmanirbhar Bharat Station Scheme
b) Amrit Bharat Station Scheme
c) Bharat Rail Station Scheme
d) Atal Station Scheme

95. The G20 digital innovation alliance campaign will be organized in which city?
a) Bangalore
b) New Delhi
c) Ahmedabad
d) Mumbai

96. Who has been appointed as Acting Central Vigilance Commissioner of India?
a) Praveen Kumar Srivastava
b) Ashwani Sharan
c) V.K. Tripathi
d) Pankaj Singh

97. Which state becomes the first state to pass Lokayukta Bill?
a) Karnataka
b) Delhi
c) Gujarat
d) Maharashtra

98. 'Daksh' is the payments fraud reporting module maintained by which institution?

a) SEBI
b) NITI Aayog
c) SBI
d) RBI

99. Who has been appointed as the Prime Minister of Israel?

a) Isaac Herzog
b) Benjamin Netanyahu
c) Amir Ohana
d) Esther Hyatt

100. Which cricketer has been shortlisted for the ICC Mains T20I cricketer of the year 2022?

a) Suryakumar Yadav
b) Hardik Pandya
c) Arshdeep Singh
d) Ishaan Kishan

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair. Subjects;-

1.General Knowledge	2.Law
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10.International Affairs and Institutions 11. Development in the field of: (a) Science and Technology (b) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
3.CLAT 1. General Knowledge 2. A Guide for CLAT	

6. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself

2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.

Library

Research wing