

# V.S. DREAM COACHING

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For

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

Year – 2023



Secret of success is to  
know something  
nobody else knows

**NO. 7 OF 2023**

**NEWSLETTER**

**July 2023**

**Index**

S.N.	Subject
1.	Study Material-Law
2.	Study Material-G.K.
3.	Study Material-Language
4.	Current Affairs July 2023
5.	Prelims and Mains Notes Preparation Scheme
6.	About Coaching
7.	About Director and faculty
8.	Resource Persons/Guest Speakers
9.	Library with Research Wing

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# V.S. DREAM COACHING

## 1. Study Material-Law

### **Interlocutory Applications and Orders under Civil Procedure**

#### **Introduction**

To meet the ends of justice and to render timely justice to the parties, the mechanism of filing Interlocutory applications is to an extent indispensable in civil proceedings.

**“Interlocutory application”** means an application to the Court in any suit, appeal or proceeding already instituted in such Court, other than a proceeding for execution of a decree or order. The orders which are passed in those applications are called as interlocutory orders.

Webster’s New World Dictionary defines ‘interlocutory’ as order other than a final decision. Once an action has been commenced all subsequent applications are referred to as interlocutory applications.

The prerogative of a court while dealing with an interlocutory application is not to delve into serious questions of law which demands detailed arguments and serious consideration and therefore the courts do not go into the facts the resolution of which might end up in the determination of the original suit.

The provision dealing with the incidental proceedings is contained under Part III of the Code of Civil Procedure from Secs. 75 to 78. But such applications are moved under various provisions of the Code of civil procedure, 1908 which include applications for appointment of Commissioner, Temporary Injunctions, Receivers, payment into court, security for cause, and etc. In fact, there are in total of 382 different nomenclature of interlocutory applications, as provided on the Hon’ble Supreme court’s website.

Sec 141 CPC provides, that the procedure provided in the Code of Civil Procedure, in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction, therefore the procedure with regard to such applications is the same as that of original suit, in matters like recording of evidence, examining witnesses etc.

## **Interlocutory applications for Amendment in pleadings**

Principles which govern the granting or disallowing of amendments under Order 6 Rule 17 CPC was discussed in **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (2008) 8 SCC 511**. The Hon'ble Apex Court, in this case, stated that Order 6 Rule 17 C.P.C postulates amendment of pleadings at any stage of the proceedings.

Further in **Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil AIR 1957 SC 363**, which still holds the field, it was held that;

*“all amendments ought to be allowed which satisfy the two conditions:*

- of not working injustice to the other side, and
- of being necessary for the purpose of determining the real questions in controversy between the parties.

*Amendments should, therefore, be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”*

Although Order VI Rule 17 permits amendment in the pleadings “at any stage of the proceedings”, but a limitation has been embedded by means of the proviso to the fact that no application for amendment shall be allowed after the trial is commenced. Reserving the Court’s jurisdiction to order for allowing the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. [**Mohinder Kumar Mehra vs Roop Rani Mehra AIR 2017 SC 5822**]

Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order the amendment of pleading. The second part is mandatory (shall) and prompts the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. [**Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. AIR 2006 SC 1647**]

The proviso, therefore, to an extent has curtailed absolute discretion to allow amendment at any stage as has been ruled in case **Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344**.

## **Interlocutory Application at the stage where a case is posted for judgment**

In **Laxminarayan Enterprises Vs. Laxminarayan Textile ILR 2000 KAR 820**, the learned single judge of Karnataka High court allowed the applications under Sub-Rule (4) of Order XVIII and Order IX Rule 6 C.P.C and observed that the Court may for the reasons to be recorded, direct or permit any party to examine any witness at any stage.

But after the CPC (Amendment) Act, 1999, Sec 17-A of Order 18 was omitted which allowed the production of evidence at any stage. The decision rendered by the division bench of the Karnataka High court in **Rabiya Bi Kassim M. Vs. The Country-Wide Consumer Financial Service Ltd., 2004 (4) KLJ 189**, has settled the position with respect to the production of evidence at any stage of the proceedings. Once the matter has been finally heard and posted for judgment, as held by the Supreme Court in **Arjun Singh Vs. Mohindra Kumar 1964 SCR (5) 946**, nothing is required to be done by the Court except to pronounce the judgment, and therefore the decision in Laxminarayan enterprises' has become a nullity.

### **Application of 'Res judicata' in interlocutory applications**

As an interlocutory application does not encroach upon the merits of the controversy between parties an order pursuant to such applications cannot be regarded as a matter affecting the trial of the suit.

An interlocutory order in like of an issue of injunction, or appointment of a receiver, or an order of attachment before judgment cannot be viewed as an issue affecting the trial of the suit. Therefore where the question arose that whether adding a defendant to suit by amending the pleadings was a matter affecting the trial of the suit, the Hon'ble Rajasthan High Court stated that "*Such an order could not be taken to be a step in the trial of the suit. Whether a party should or should not be impleaded did not encroach on merits of the controversy between parties. It is a matter of a formal nature and could not in any way determine their respective rights*" [**Surendra Sawhney Vs. Murlidhar and Ors. 2007 (3) ILR (Raj) 693**]

Until and unless the issue is not decided on merits, the plea of principles of res judicata has no application, as per the judgment reported in **Erach Boman Khavar vs Tukaram Sridhar Bhat & Ors. AIR 2014 SC 544**, wherein the Hon'ble Supreme Court held as follows:

*"It is clear as crystal that to attract the doctrine of res judicata it must be manifest that there has been a conscious adjudication of an issue. A plea of res*

*judicata cannot be taken the aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of res judicata is applicable between the two stages of the same litigation but the question or issue involved must have been decided at an earlier stage of the same litigation.”*

An order staying the suit under Section 10, C.P.C. does not prevent the Court from making interlocutory orders such as orders for a Receiver or an injunction or an order for attachment before judgment. As the interlocutory orders do not decide any matter in issue arising in the suit nor do they put an end to the litigation and do not decide the legal rights of the parties to the litigation, the principle of res judicata does not apply to the findings on which these orders are based. If a similar application is made for similar relief on the basis of same facts after the earlier application has been disposed of, the court would be justified in rejecting the application as an abuse of process of the court. But when there are changed circumstances the court is perfectly justified in entertaining a second application. [**Amita Kaushish and Ors. Vs. Sanjay Kaushish and Ors. JT 1995 (8) SC 50**]

### **Interlocutory orders**

Interlocutory orders are passed by the courts to prevent irreparable harm from occurring to a person or property during the pendency of a lawsuit or proceeding.

Rules 6 to 10 of Order 39 CPC mention certain interlocutory orders, which include the court's power to order the interim sale of movable property, to order the detention, preservation or inspection of any property which is the subject-matter of such suit. Similarly, when the land in the suit is liable to Government revenue or is tenure liable to the sale and the party in possession neglects to pay the revenue or rent, the court may order any other party to the suit in case of sale of the land to be put in immediate possession of the property.

### **Revision of Interlocutory orders**

The 1999 amendment to the CPC added a proviso to Section 115 which reads: *“Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favor of the party applying for revision, would have finally disposed of the suit or other proceedings.”*

In **Tek Singh Vs. Shashi Verma, AIR 2019 SC 1047**, the interlocutory application filed under Order 39 Rule 1 CPC was dismissed by Trial Court

holding that the relief asked for could not be granted as it would amount to decreeing the Suit itself. The Appellate Court dismissed the appeal and in the revision petition filed under Section 115 CPC, the High Court set aside the concurrent findings of fact and allowed it. The Supreme court set aside the ruling of the appellate court observing that “every legal canon has been thrown to the winds by the impugned judgment” and restored the judgment of the Courts below.

Therefore the position of law is well settled and hence, revision petitions can lie against an interlocutory order with the sole purpose to correct jurisdictional errors only. [**D.L.F. Housing & Construction Company Private Ltd. v. Sarup Singh and Others (1970) 2 SCR 368**]

Therefore an order granting or refusing to grant amendment of pleadings is not revisable under Section 115 of the Code of Civil Procedure, particularly after its amendment in the year 2002. [**Bhaskaran Nair Vs. Chandramathiyamma 2006 (1) KLT 533**]

### **Appeals against interlocutory orders**

Generally speaking, no appeal lies against an interlocutory order, but certain interlocutory orders can still be challenged in appeal against decree on the ground that such orders are of such character as would alter the decision of the court on merits and hence, can be challenged.

Section 105 CPC reads as:-

*“Save as otherwise expressly provided no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.”*

While the first part of the sub-section states that no appeal would lie against any order unless they fall into any of the provisions contained in Section 104 and Order 43, R. 1 the second part states that objections can be raised against the interlocutory order in the memorandum of appeal filed against the decree in the suit in which the interlocutory order was made, if the error, defect or irregularity in making the same affects the decision of the case on the merits.

The error, defect or irregularity within the meaning of Section 105, therefore, must mean an error, defect or irregularity in procedure in law and not in a matter of fact.

## **B. Important Cases Full Report**

### **IN THE SUPREME COURT OF INDIA**

**Bhim Rao Baswanth Rao Patil**

**Vs.**

**K. Madan Mohan Rao & Ors,**

**Special Leave Petition (C) No. 6614 Of 2023**

**HEADNOTE** – Voter has the right to know about the full background of a candidate.

### **JUDGMENT**

**S. Ravindra Bhat, J.**

1. Leave granted. The present appeal by special leave questions a judgment and order of the Telangana High Court<sup>1</sup> dismissing an application which sought rejection of the respondent's election petition. The appellant had contended that the election petition (hereafter "the petition") did not disclose any cause of action and was barred in law and was liable to be rejected.

2. The appellant was a successful candidate in the election conducted for the Zaheerabad Parliamentary Constituency on 11.04.2019. He was declared elected on 23.05.2019, defeating the respondent (hereafter referred to as "the election petitioner") by a margin of 6229 votes. The respondent preferred an election petition under Sections 81 and 84 read with Sections 100(1)(d)(i)(ii)(iii) & (iv) of the Representation of People Act, 1951 (hereafter "the Act").

The election petition alleged, amongst others, that the appellant had furnished false information in Form 26 (election affidavit); that the Returning Officer had not followed the Election Commission's guidelines dated 10.10.2018; that the appellant filed false information in C-4 report furnished to the District Election Officer and that there was no previous publication of papers, regarding pending cases against the appellant and those in which he was convicted.

Other allegations included failure to follow additional requirements such as the font size mentioned in the form for publication; listing of cases in separate rows; failure to have the pending cases disclosed in a widely circulated newspaper/news channels, and disclosure of information with respect to cases in which the appellant was convicted and lastly that his name was shown in a misleading manner in the newspaper publication.

3. After the election petition was filed, the appellant applied, under Order VII Rule 11 of the Code of Civil Procedure (hereafter "CPC") for its rejection. It was contended inter alia that the mandatory requirements under Sections 81 and 81 (3) of the Act were not followed; it was alleged that - there was no pleading as to how the nomination paper was improperly accepted; that there was no need to disclose the so-called criminal cases as they did not fall within Section 8 of the Act and Section 33A of the Act as the appellant had not been sentenced to imprisonment of more than one year.

As a result, non-disclosure of conviction under Payment of Wages Act, 1936 and Minimum Wages Act, 1948 was not required. It was further alleged that the offences pleaded against the appellant were not criminal and other allegations with respect to publication and font size etc. were not substantial and on the other hand, there was substantial compliance with the law and the guidelines. The election petitioner/respondent resisted the application after which the appellant filed a rejoinder.

4. During the course of the proceedings, on 15.11.2021, the appellant filed a memo<sup>2</sup> which stated that he had obtained certified copies of the order sheet dated 28.06.2013; regarding seizure of property in CF 97/2013, from the file of the Chief Judicial Magistrate Garhwa and related criminal case. Translations of those into English were made available.

These documents were filed in the election proceedings to contest the election petitioner's assertion. The appellant also applied under Section 340 of the Criminal Procedure Code (hereafter "CrPC") read with Section 195 of the CrPC, broadly alleging that the documents produced as true copies along with the election petition and the averments made were false, calling for appropriate criminal proceedings to be drawn up against the respondent.

5. The High Court had earlier heard the application<sup>3</sup> and reserved orders on 23.12.2021. The judgment was delivered on 15.06.2022, whereby the respondent's election petition was rejected, and the appellant's application was allowed. This court, however, set aside that order on 12.09.2024. This court observed in its order that even on the date it disposed of the special leave petition, i.e., 26.09.2022, the reasons for allowing the application for rejection had not been given by the learned Judge.

6. In the present case, the High Court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 CPC, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings.

The court was of the opinion that taking in the overall conspectus of the facts available on the record did not lead to a compelling reason for rejecting the election petition. Accordingly, the appellant's application was dismissed, and the contentions were kept open to be agitated during the trial.

7. The appellant's main contention was that though the appellant had urged several grounds with respect to its explanation for the alleged non-compliance of what were termed by the election petitioner as mandatory requirements, it was also alleged that Section 81(3) had not been complied with.

However, during the hearing, the arguments on behalf of the appellant, by Mr. C.S. Sundaram, Senior Advocate, were confined to submissions to the aspect regarding non-disclosure of criminal cases. The first related to a criminal case pending before the CJM, Garhwa bearing CR 96P; case No.CF 97/13 dated 20.03.2013 in Form 26, i.e., the election affidavit. The second case was with respect to non-disclosure in Form 26 of conviction.

It was alleged that the cases referred to in the election petition, i.e., Labour Enforcement Officer v. M/s. Patil Construction represented by (1) Mr. B.B. Patil (partner) and (2) Mr. M.B. Patil (partner) (Case No. 20/12), this case pertained to non-payment of minimum wages to workers under the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956.

The appellant was convicted on 30.07.2013; the second case pertained to State through Labour Enforcement Officer v. M/s. Patil Construction represented by B.B. Patil and M.B. Patil before Sub Divisional Judicial Magistrate registered under Section 22A of the Minimum Wages Act, 1948 for nonmaintenance of records of workers/employers. The appellant was convicted on 05.09.2017.

8. It was argued by Mr. Sundaram that the reference to the pending case before the CJM Garhwa District, in the documents filed along with the election petition, was an abuse of process and a clear case of interpolation. Learned counsel pointed out that this aspect has been acknowledged by the main judgment in para 27, whereby after considering the certified copy relating to that case, the court observed that there appeared to be some interpolation.

Learned counsel reiterated the submissions and referred to certified copies which were placed on record. He also referred to the original of the complaint which was summoned by this court during the present proceedings. It was further stated that the conclusion of the High Court with respect to the non-disclosure of two cases in respect of the Payment of Wages Act and Minimum Wages requiring them to be gone into during the trial is in error. Learned counsel contended that even upon conviction, the minimum threshold indicated in

Section 33A of the Act is not satisfied because, in either way, the maximum sanction is a penalty.

9. Dr. A.M. Singhvi, learned senior counsel for the election petitioner, urged that the impugned order correctly appreciated the law relating to Order VII Rule 11 and dismissed the appellant's application. Counsel reiterated that the suppression of the truth with respect to criminal cases, i.e., non-disclosure of cases where the petitioner was convicted and of pending cases, in Form- 26 affidavit were in relation to the following:

a) Pending cases: The appellant did not disclose the criminal case pending before the Chief Judicial Magistrate Garhwa relating to Forest Department cases.

b) Regarding cases in which the appellant was convicted (in section 6 of Form-26), there was a deliberate attempt to suppress the truth; the appellant had written "not applicable" when there were two cases in which he was convicted: firstly case No.20/2012 Labour Case relating to Payment of Wages and Minimum Wages Act, and secondly, Case No 1/ 2013, another case relating to Payment of Wages and Minimum Wages Act.

10. It was submitted that going into the merits of whether those cases actually existed, and related to the provisions of the Act, would amount to a mini-trial which is plainly impermissible while considering an application seeking rejection of the petition. It was submitted that the law on the subject is well settled.

Counsel stated that the judgments of this court, such as Saleem Bhai v. State of Maharashtra<sup>5</sup> and Mayar (H.K.) Limited v. Owners and Parties, Vessel M.V. Fortune Express<sup>6</sup> had, in no uncertain terms, ruled that while considering an application under Order VII Rule 11, CPC, only the averments in the pleadings (i.e., in the suit or petition) and the accompanying documents can be looked into. Therefore, reference to and reliance on any document which was not part of the petition, but produced as a part of the respondent/defendant's plea, cannot be considered.

11. It was next urged that while it is undoubtedly important to respect popular will and the courts ought to be slow in upsetting them, equally it important to maintain the purity of the election process. Courts are, hence, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and oblivious of the ground realities.

### **Analysis and Conclusions**

12. Section 33A of the Act, which requires disclosure of past criminal antecedents of every candidate, reads as follows:

**"33A. Right to information:**

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether-

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered."

Section 8 provides for disqualification of elected candidates, upon their conviction of specified offences. However, Section 33A, introduced through an amendment to the Act, in 2002, compels those holding out their candidature to disclose information about their criminal antecedents. The idea behind this provision is to ensure transparency and enable the voters to make an informed choice while casting the ballot.

The need for a detailed declaration by candidates was underlined by this court in *Public Interest Foundation & Ors v Union of India (UOI) & Ors.*,<sup>7</sup> which required the Election Symbols (Reservation and Allotment) Order, 1968 to be suitably amended. The court observed that:

"The best available people, as is expected by the democratic system, should not have criminal antecedents and the voters have a right to know about their antecedents, assets and other aspects. We are inclined to say so, for in a

constitutional democracy, criminalization of politics is an extremely disastrous and lamentable situation.

The citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless. The voters cannot be allowed to resign to their fate. The information given by a candidate must express everything that is warranted by the Election Commission as per law.

Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice.

If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are Accused of heinous offences. In the present scenario, the information given by the candidates is not widely known in the constituency and the multitude of voters really do not come to know about the antecedents. Their right to have information suffers.

116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers."

13. Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002, provided inter alia, that "no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the Rules made thereunder". This court, in its decision reported as *People's Union for Civil Liberties v Union of India*<sup>8</sup> held that provision to be invalid and unconstitutional.

The court ruled that Section 33B imposed a "blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate." This decisively ruled that providing information is vital for a vibrant and functioning democracy.

14. Pursuant to the decision and directions of this court, the Election Commission issued guidelines and also framed forms that were part of guidelines requiring declarations inter alia with respect to disclosure of pending criminal cases and those in which candidate(s) had been convicted. The relevant extract of the guidelines first issued by the Election Commission on 10.10.2018 inter alia reads as follows:

"2. In pursuance of the directions in the abovementioned judgment, the Commission, after due consideration, has given the following directions to be complied with by candidates at elections to the Houses of Parliament and Houses of State Legislatures, who have criminal cases against them, either pending cases or cases of conviction in the past, and to the political parties that set up such candidates.

(a) Candidates at elections to the House of the People, Council of States, Legislative Assembly or Legislative Council who have criminal cases against them, shall publish a declaration about their criminal cases, for wide publicity in newspapers with wide circulation in the constituency area. This declaration is to be published in Format C-1, attached hereto, at least on three different dates from the day following the last date for withdrawal of candidatures and up to two days before the date of poll.

3. The Political parties-recognized parties and registered un-recognized parties, which set up candidates with criminal cases, either pending cases or cases of past conviction, are required to publish declaration giving details in this regard, for wide publicity, on their website as well as in TV channels and newspapers having wide circulation in the State concerned.

Declaration in this regard shall be published in Format C-2, annexed hereto, and should be provided State wise with separate statements for each State/Union Territory. Publishing of the declaration in newspapers and TV channels is required to be done at least on three different dates during the period mentioned in Para-2(a) above. As specified above, the declaration in newspapers should appear in at least 12 font size, and should be placed suitable so that the directions for wide publicity are complied with in letter and spirit.

In the case of publishing of declaration in TV channels, the same should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll. All such political parties shall submit as report to the Chief Electoral Officer of the State/UT concerned confirming that they have fulfilled the requirements of these directions and enclosing therewith the paper cuttings containing the declarations published by the party in respect of the candidates in the State/UT concerned.

This shall be done within 30 days of completion of election. It may be noted that failure to abide by these directions would be treated as failure/refusal to carry out a lawful direction of the Commission for the purposes of paragraph-16A of the Election Symbols (Reservation & Allotment) Order, 1968.

4. It may also be noted that the provisions for the additional affidavit in respect of dues against Govt. accommodation, if any, that may have been allotted to the candidates, have now been incorporated in Form-26 itself under Item (8) relating to liabilities to Public Financial Institutions and Govt. Therefore, the candidates shall give the requisite declaration/particulars in this regard in Item (8) of Form-26. Accordingly, the candidates are now not required to file the additional affidavit prescribed under the Commissioner's Order No.509/11/2004-JS-1, dated 3rd February, 2016, as the provisions are not part of Form-26 itself.

5. These directions may be circulated to all formations of your party and also brought to the notice of candidates of the Party in future elections for guidance and for strict compliance of these directions."

15. The other requirements include submission of copies of newspapers in which declarations about criminal cases were furnished to the District Election Officer, publication of declaration on TV Channels at least on three different dates but which was to be completed before 48 hours, ending with the year fixed for completion of poll.

In the case of candidates with criminal cases set up by political parties, whether recognized parties or registered unrecognized parties, such candidates are required to declare before the Returning Officer concerned that they have

informed their political party about the criminal cases against them. Provision for such declaration has been made in Form-26 in the newly inserted item (6A) and other stipulations were framed.

The relevant form with respect to publication in newspapers was Form C-1; the report by the candidate "about publication of declaration regarding criminal cases" was in Form C-4 and Form 26 in terms of Rule 4A dealt with the election affidavit disclosing the description and details of income returns of the candidate.

Clause 5 of Form 26 contains the column for disclosure of pending criminal cases and those in which the candidate was convicted for any offence. In the present instance, the relevant form filed by the appellant along with the declaration (Clause 6A) of Form 26 reads as follows:

### **"FORM 26**

**(See Rule 4A)**

Affidavit to be filed by the candidate along with nomination paper before the Returning Officer for Election to the House of the People (Lok Sabha) (Name of the House) from 05-Aheerbad Parliamentary Constituency (name of the Constituency)

#### **PART-A**

I, BHEEMRAO BASWANTHRAO PATIL son of late BASWANTHRAO PATIL, aged 63 years, resident of H.No.1-9-, Shirpur village, Madnoor Mandal, Kamareddy District, Telangana-503309 a candidate at the above election, do hereby solemnly affirm and state on oath.

#### **(5) Pending Criminal cases**

i) I declare that there is no pending criminal case against me. (Tick this alternative if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative.

(ii) below) OR ii) The following criminal cases are pending against me:

(if there are pending criminal cases against the candidate, then tick this alternative and score off alternative (i) above, and give details of all pending cases in the Table

(a)	FIR No. with name and address of Police station concerned	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(b)	Case No. with Name of the Court	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(c)	Section(s) of concerned Acts/Codes involved (give no of the Section, e.g. Section of IPC, etc.)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(d)	Brief description of offence	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(e)	Whether charges have been framed (mention Yes or No)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(f)	If answer against (e) above is Yes, then give the date on which charges were framed	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(g)	Whether any Appeal/application for revision has been filed against the proceedings (Yes or No)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I

(6) Cases of conviction

(i) I declare that I have not been convicted for any criminal offence.

(Tick this alternative, if the candidate has not been convicted and write NOT

OR

(ii) I have been convicted for the offences mentioned below: NOT APPLICABLE (if the candidate has been convicted, then tick this alternative and score off alternative (i) above, and give details in the Table below):

**Table**

(a)	Case No.	Not applicable	Not applicable	Not applicable
(b)	Name of the Court	Not applicable	Not applicable	Not applicable
(c)	Sections of Acts/Codes involved	Not	Not	Not

	(give no. of the Section e.g. Section of IPC, etc.)	applicable	applicable	applicable
(d)	Brief description of offence for which convicted	Not applicable	Not applicable	Not applicable
(e)	Dates of orders of conviction	Not applicable	Not applicable	Not applicable
(f)	Punishment imposed	Not applicable	Not applicable	Not applicable
(g)	Whether any appeal has been filed against the conviction (Mention Yes or No)	Not applicable	Not applicable	Not applicable
(h)	above is Yes give details and present status of appeal	Not applicable	Not applicable	Not applicable

(6A) I have given full and up to date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6): Yes."

16. The election petitioner/respondent contends that the disclosure in this case was false because the appellant was earlier convicted in cases concerning violation of the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936.

The appellant counters this and, in his application, contended that no such disclosure was essential by reason of the fact that under Section 33A, a candidate who is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction has to furnish such information [Section 33A(1)(i)].

It is also contended that in cases of conviction, the requirement of disclosure is by reason of Section 33A(1)(ii) only where she or he is convicted of an offence and sentenced to imprisonment for one year or more, other than offences expressly mentioned in Section 8(1) or (2) or (3).

It is submitted that since the provisions of the Act, in fact, mandate disclosure only in respect of those classes of offences expressly stated, the non-disclosure of information with respect to criminal cases pending where the accused candidate can face punishment for less than two years or has not been convicted of an offence and sentenced to imprisonment for one year or more is not required.

17. The election petitioner had alleged in the election petition that with respect to withholding of vital information inasmuch as - as mentioned earlier -

particulars of offences under the Minimum Wages Act and Payment of Wages Act where the candidate had been convicted as well as where he was facing criminal trial under the Indian Forest Act, were not disclosed.

In support of this allegation, the election petitioner had annexed copies of a complaint and certain proceedings before the Magistrate at Garhwa. Likewise, the proceedings before the concerned Court in the cases relating to past convictions under the Payment of Wages Act and the Minimum Wages Act were mentioned.

The appellant's main contention is that the election petitioner's assertions are false inasmuch as they rely upon a document, i.e., copies of certain order sheets in the pending criminal case relating to offences under the Forest Act before the Court in Garhwa and that so far as the past convictions under the Minimum Wages Act and the Payment of Wages Act are concerned, there was no requirement at all.

18. To clear the air, this court had summoned the file pertaining to the pending criminal case before the Garhwa Court, the records of which show that the following were arrayed as accused:

1. Sri M.B. Patil, Director, M/s. Patil Construction, S/o Unknown, Sarget, Pune, Maharashtra
2. Sri Ramayan Singh, S/o Late Ram Chhabila Singh, Shastri Nagar, P.S.-Garhwa, District-Garhwa. [A.G.M., Patil Construction, Kutchery Road, P.S.-Garhwa, District- Garhwa.]
3. Santosh Sinha, S/o Radha Prasad Sinha, Bijli Colony, P.S.-Garhwa, District-Garhwa. [Worker, Patil Constrcution].
4. Dharmpal, S/o Unknown, Patil Construction, Sarget, Pune, Maharashtra.
5. Sri Ranjan Das, S/o Chakradhar Das, 1917 Pokhanput, B.B.S.R.

The complaint/intimation by the Forest Department with respect to seizure and the commission of the offences named - M/s. M.B. Patil B.B. Patil Construction Company and four others (Ramayan Singh, Santosh Sinha, Dharampal and Ranjan Das) is dated 19.03.2013. The order sheet dated 02.04.2013 named four persons [other than the present appellant] and stated that there was no need to issue warrants against the accused.

According to the allegations, the constructions were carried out by the company inside 1/3rd portion of the forest area and stones were broken and converted into

stone chips. The Forest Department Report was to the effect that 5000 cub. Ft of small and big boulders were seized on 20.03.2013. The order sheet for 28.06.2013 further discloses that Mr. Santosh Sinha, Ramayan Singh, Dharampal and only M.B. Patil were charged with committing the offence. This clearly shows the appellant was not charged for the offences alleged in the complaint under the Indian Forest Act.

19. So far as the past convictions are concerned, the allegations are not per se denied by the appellant, but rather the application for rejection of the petition contended that no disclosure of this kind was needed since they did not answer the description of the class of offences enumerated in Section 33A of the Act.

20. As far as criminal charges and offences go, the punishment for violating provisions of the Minimum Wages Act, 1948, is provided in Section 22, which prescribes a maximum prison term of 6 months or fine upto ₹ 500/-. Section 22A prescribes punishment for other offences imposing fine upto ₹ 500/-. As regards the Payment of Wages Act, 1936, the penalty provision is Section 20, which prescribes a maximum fine of ₹ 7500/-. A subsequent conviction under the same provision attracts a stiffer punishment: imprisonment of a month which may extend to six months.

21. The impugned order, as noticed earlier, is premised on the reasoning that any material brought on the record by the successful candidate who is a respondent in the election proceedings, ipso facto cannot be considered within the framework of Order VII Rule 11 CPC to reject the plea altogether.

That understanding in this Court's opinion is correct. At the same time, there could be circumstances when there is material on the record, the consideration of which may not be considered by Order VII Rule 11 CPC but may fall within the ambit of Order XII Rule 6 CPC (decree on admission), which reads as follows:

**"Judgement on admissions-** (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

22. It has been held by this Court that the expression "otherwise" mentioned in sub-rule 1 of rule 6 of the Order XII, CPC is not confined to pleadings but also

includes documents filed along with the complaint or main pleading or other materials subsequently brought on the record which are admitted by the other party. In other words, the matter of record that is not denied and contains facts that can lead the court to draw a decree is sufficient for the court to do so and, by its judgment, direct decree of the suit (in this case, petition) wholly or partly.

23. The appellant's argument with respect to using a document (i.e., a photocopy of the court related documents, and orders) in the case relating to Forest Act offences, not being true copies, but containing interpolations, as the title involving the appellant's name (i.e., "B.B. Patil) is merited. The appellant has sought to initiate proceedings before the High Court under Section 340 read with Section 195 of the Cr. PC.

This court is loath to express any opinion about whether annexing such photocopy amounts to an offence. The High Court indicated (in para 27 of the impugned judgment) that the "interpolation" alleged by the appellant appears to be borne out. The original trial court record, which this court had the benefit of considering, bears out the appellant's submission.

To that extent, therefore, the condition in Order XII Rule 6 CPC (i.e., admission on the basis of pleadings "or otherwise") is undeniably made out; which is that the appellant, BB Patil, was not indicted individually; the company of which he was a part, as director, was charged. In relation to and for the company, as its representative, Shri M.B. Patil was charged. The trial court record establishes these as undeniable facts. Yet, the consequence of such admission has to be considered keeping in mind that several other allegations need a trial.

24. It is a salutary position in law that there cannot be a partial rejection of the plaint (or petition, as in this case) in exercise of power under Order VII Rule 11, CPC. This court had stated this principle, in *Sejal Glass Ltd. vs. Navilan Merchants Pvt. Ltd*<sup>9</sup> in the following manner:

"This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order VII Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial."

This principle was stated clearly, in *D. Ramachandran v. R.V. Jankiraman*<sup>10</sup> which, in relation to an election petition, explained the position as follows:

"The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11 (a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some

of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition."

25. There is some authority for the proposition, that the court's power under Order XII Rule 6, CPC, is not only discretionary but requires exercise of caution and that unless an admission is unambiguous, enabling the court to draw a decree, the power would not be exercised. Thus, in *Himani Alloys Ltd. v. Tata Steel Ltd.*,<sup>11</sup> this court held that:

"It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits.

Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear 'admission' which can be acted upon. (See also *Uttam Singh Duggal and Co. Ltd. v. United Bank of India* 2000 [Supp 2] SCR 187; *Karam Kapahi v. Lal Chand Public Charitable Trust* 2010 (4) SCR 422 and *Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha* 2010) 6 SCC 526"

26. A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc.

The alleged noncompliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all

other particulars mandated by the Election Symbols orders) has to be considered after a full trial.

The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial, in *Virender Nath Gautam v Satpal Singh & Ors.*<sup>12</sup>:

"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."

27. Lastly, the right to vote, based on an informed choice, is a crucial component of the essence of democracy. This right is precious and was the result of a long and arduous fight for freedom, for Swaraj, where the citizen has an inalienable right to exercise her or his right to franchise.

This finds articulation in Article 326 of the Constitution which enacts that "every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election".

Article 325 embeds a non-discriminatory principle:

"325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them."

Democracy has been held to be a part of one of the essential features of the Constitution. Yet, somewhat paradoxically, the right to vote has not been recognized as a Fundamental Right yet; it was termed as a "mere" statutory right. However, in *Jyoti Basu v. Debi Ghosal*,<sup>13</sup> this court again pointed out that:

"a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right. With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. act.

That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met."

Similarly, in para 123 of the judgment, O. Chinnappa Reddi, J., held that:

"(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter."

28. The elector or voter's right to know about the full background of a candidate-evolved through court decisions- is an added dimension to the rich tapestry of our constitutional jurisprudence. Keeping this in mind, this court is of the opinion that if the appellant's contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgement that material facts were not suppressed.

Whether the existence of a criminal case, where a charge has not been framed, in relation to an offence which does not possibly carry a prison sentence, or a sentence for a short spell in prison, and whether conviction in a case, where penalty was imposed, are material facts, are contested.

This court would be pre-judging that issue because *arguendo* if the effect of withholding some such information is seen as insignificant, by itself, that would not negate the possibility of a conclusion based on the cumulative impact of withholding of facts and non-compliance with statutory stipulations (which is to be established in a trial). For these reasons, this court is of the opinion that the impugned judgment cannot be faulted.

29. In view of the foregoing discussion, there is no merit in the appeal; it is accordingly dismissed, with costs.

.....J. [S. Ravindra Bhat]

.....J. [Aravind Kumar]

New Delhi

July 24, 2023.

1 Election Petition No.34/2019, rejecting IA 01/2020

2 Registered as USR 69931/2021.

3 I.A. No. 1/2020 in E.P. No. 34/2019

4 SLP(C) 17247/2022

5 2002 [5] Suppl. SCR 491

6 2006 [1] SCR 860

7 2018 [10] SCR 141

8 (2003) 4 SCC 399

9 2017 [7] SCR 557

10 1999 [1] SCR 983

11 2011[7] SCR 60

12 2006 Supp SCR 413

13 1982 [3] SCR 318

## IN THE SUPREME COURT OF INDIA

**Yashodhan Singh**

**Vs.**

**State of UP**

**Civil Appeal No. 2186 of 2023**

**HEADNOTE** – It is not necessary to give opportunity of hearing to person summoned under Section 319 Cr.P.C. before adding him as accused

### JUDGMENT

1. Leave granted.
2. This appeal arises out of an Order dated 03.01.2023 passed by the High Court at Allahabad in Criminal Revision No.4235 of 2022.
3. Briefly stated, the facts of the case according to the Complainant-Respondent No.2 herein are that he got registered an FIR bearing No.186/2018 on 09.06.2018 at around 21.45 at P.S. Hathras Junction District Hathras Uttar Pradesh under Sections 147, 148, 149, 302, 452 307, 504 of the Indian Penal Code (for short, "IPC") against the appellants herein alleging that appellant Nos. 1-7 (summoned accused) went to the Complainant-Respondent No.2's house and started hurling abuses and firing, which consequently resulted in the Complainant's injuries and the death of his two brothers. A charge sheet was filed against the accused persons but the names of the appellants were not mentioned in it as their role was still under investigation.
4. The Complainant filed an application before the Additional Sessions Judge Court No.1, Hathras in Case Crime No.186 of 2018 under Section 319 Cr.P.C. to summon the appellants herein on the basis of his evidence pursuant to which the Additional Sessions Judge passed an Order dated 23.09.2022 summoning the accused to join the trial.
5. Aggrieved by the said Order of the Additional Sessions Judge Court No.1, Hathras, the appellants approached the High Court of Judicature at Allahabad by way of Criminal Revision No.4235 of 2022. The High Court by way of the impugned Order dated 03.01.2023 dismissed the same and affirmed the Order passed by the Additional Sessions Judge Court No.1, Hathras in Case Crime No.186 of 2018 dated 23.09.2022, to summon the appellants.
6. Hence, this appeal.

7. We have heard Shri S. Nagamuthu, learned senior counsel for the appellants and Dr. Sushil Balwada, learned counsel for appellant Nos. 1, 3 and 4; Shri Ratnakar Dash, learned senior counsel for the State and Shri Yatharth Singh, learned counsel for the complainant, at length.

8. Vide Order dated 08.05.2023, this Court issued notice and the matter was directed to be listed in the second week of July, 2023. For the sake of immediate reference, the said Order is extracted as under -

"We have heard Mr. S. Nagamuthu, learned senior counsel appearing for the petitioners. Delay condoned. This is a case where by the impugned order the High Court has dismissed the revision challenging the order passed under Section 319 of the Cr.P.C. summoning the petitioners. In the course of his submission, Mr. Nagamuthu drew our attention to the judgment of this Court in the case of Jogendra Yadav and Ors. vs. State of Bihar and Anr., reported in (2015) 9 SCC 244.

Therein, he pointed out that this Court has found that since a person who is added under Section 319 Cr.P.C. is necessarily heard before he was so added and often gets a further hearing if he challenges the summoning order he cannot avail the remedy of discharge. This Court may not have been inclined to interfere with the impugned order but would have been inclined to reserve the remedy of seeking discharge, if so advised at the appropriate stage.

We have the benefit of hearing Mr. Yatharth Singh, learned counsel appearing on behalf of the respondent no.2-complaint on caveat. We are of the view that this aspect must be gone into if the court is to take a view which is at variance with the view taken in the judgment of Jogendra Yadav and Ors. (supra). Issue notice. The petitioners may serve dasti also to the standing counsel for the State of Uttar Pradesh. List the matter in the second week of July 2023."

On a reading of the same, it is evident that this Court was inclined to issue notice to the respondent(s) having regard to the submission made by Shri S. Nagamuthu, learned senior counsel in the context of the judgment of this Court in the case of Jogendra Yadav and Ors. vs. State of Bihar and Anr., reported in (2015) 9 SCC 244 ('Jogendra Yadav').

9. Shri S. Nagamuthu, learned senior counsel, at the outset submitted that paragraph 9 of Jogendra Yadav has categorically recorded that when an accused is summoned in exercise of the power under Section 319 of the Criminal Procedure Code, 1973 ('Cr.P.C' for short), such an accused has to be heard before being added as an accused to face trial; that such an accused has a further

right of hearing if he challenges the summoning order before the High Court and further before this court.

In light of the observations of this Court in Jogendra Yadav, the right of an accused, who is summoned to be heard before being added as an accused has been recognised by this Court; that in the instant case because there was no such hearing that was provided to the appellants, who were added as accused, in light of the aforesaid judgment, the impugned order may be set aside and the matter may be remanded to the Sessions Court for giving an opportunity to the appellants of being heard before being added as accused.

10. In this context, learned senior counsel drew our attention to another Order of this Court in the case of Ram Janam Yadav & Ors. V/s. State of U.P. & Anr. in SLP (CrI.) No.3199/2021('Ram Janam Yadav'), wherein this Court had directed that an Amicus Curiae be appointed to consider the question which emanated from the judgment in Jogendra Yadav and to refer the matter to a larger Bench, to decide:

(1) as to, whether, an accused, who is impleaded under Section 319 of the Cr.P.C., is entitled to file an application for discharge and

(2) whether, a person before being impleaded as an accused is entitled to prior hearing or not. Of course, it was also pointed out that ultimately the said matter was not referred to answer the said questions as this Court found that in the said case the accused had, in fact, been given an opportunity of hearing and, therefore, held that the issues raised would be purely academic in nature.

11. Emphasising the importance of the principles of natural justice in a criminal trial, learned senior counsel Sri Nagamuthu, submitted that if such a hearing is not provided to the accused then the rights of the persons summoned to be added as an accused would be jeopardised.

In this regard, learned Senior Counsel also submitted that the invocation of power under Section 319 of the Cr.P.C. is one to proceed with the trial on the basis of the evidence already recorded and that the satisfaction of the Sessions Court/Trial Court in such a case would be an objective satisfaction and not a subjective one and, therefore, in order to ensure that the right of the persons summoned to be added as an accused is enforced, it is necessary that such a person is heard before his addition as an accused to be tried along with other accused already facing trial.

12. It was next contended that if ultimately the person summoned is not given a right to seek discharge which he is also entitled to seek, it becomes all the more crucial that on notice being issued to the person to be added as an accused, he is

heard in the first instance and, thereafter, an order is passed on his addition to the list of accused to be tried along with other accused.

According to him, though Section 319 Cr.P.C. is silent as to opportunity of hearing before being added as an accused, the same has to be read into the provision which would be in compliance to the principle of natural justices. In this connection, he has referred to the development of law regarding filing of protest petition against a closure report.

13. Learned counsel appearing for the other appellants also submitted that in the instant case, the appellants were named in the FIR but in the final report, their names were not mentioned. No protest petition was filed as against the said final report. It is only at the stage of trial that the summoning order was passed by the Sessions Court, which could not have invoked Section 319 of the Cr.P.C. to summon the appellants herein to be added to the list of accused when their names did not figure in the final report.

14. Therefore, it was contended on behalf of the appellants that either the judgment in Jogendra Yadav be complied with by granting an opportunity of hearing to the appellants herein or the matter may be referred to a larger Bench in case this Bench is not inclined to follow the said judgment.

15. Per contra, learned senior counsel appearing for the State and also learned counsel appearing for the complainant contended that the observations of this Court in Jogendra Yadav as well as the observations of this Court in Ram Janam Yadav have to be construed only from the perspective of the peculiar facts of the said cases.

16. Learned senior counsel appearing for the State drew our attention to paragraph 2 of Jogendra Yadav to contend that in the said case, the Additional Sessions Judge had in fact issued notice to the appellants therein to show cause as to why they should not be added as accused. After giving an opportunity to the appellants therein to file a reply, the Additional Sessions Judge summoned the appellants as accused for being added to the proceedings.

Therefore, it was a case where the accused therein had been heard before such summons was issued. It was contended that it is in the aforesaid context, that this Court had observed that the persons to be summoned as an accused would be heard before being added. The said observations of this Court in paragraph 9 must be read in the context of the facts of the said case and not taken out of its context and blown out of proportion.

In order to buttress this submission, it was pointed out that in the order passed by this Court subsequently in the case of Ram Janam Yadav, the reference to a

larger Bench was not taken forward by noticing that in the said case, it was not necessary to refer the questions of law to a larger Bench as in that case also, the persons who had been summoned as accused were in fact, given an opportunity of being heard and hence, the aforesaid two cases would turn on their own peculiar facts.

In other words, what was sought to be contended was that an opportunity of being heard to the persons summoned under Sections 319 of the Cr.P.C. was on the facts of those cases and that cannot be made a rule or principle, which is applicable to all cases having regard to the object and purpose of Section 319 of the Cr.P.C.

17. Learned counsel appearing for the complainant also supported the arguments of the learned senior counsel appearing for the State and contended that if the submissions of learned senior counsel for the appellants are to be accepted, then the entire trial of the accused would be disrupted and there would be a trial within the trial, a concentric circle, and there can be no conclusion of a trial on a timely basis which would vitiate the salutary principle of speedy trial which is recognized under Article 21 of the Constitution of India as well as the right of the victims to get justice.

According to the learned Counsel, if the submissions of learned Counsel for the appellants is to be accepted by this Court, it would not only jeopardise a criminal trial but also prejudice the rights of the accused already facing trial and who possibly may be in custody during their trial. In other words, the persons who are to be added as an accused and summoned under Section 319 of the Cr.P.C. may come out with their own pleas and contentions which would have to be first considered by the Trial Court/Sessions Court and this would not only cause delay in the progress of the main trial.

It was submitted that Section 319 of the Cr.P.C. is a wholesome provision which has to be invoked by the Sessions Court having regard to the evidence that has emerged in the trial and on the satisfaction derived by the trial court as has been envisaged by this Court in the case of Hardeep Singh V/s. State of Punjab & Ors. (2014) 3 SCC 92 ("Hardeep Singh"). Therefore, the said contentions of the learned counsel for the appellants may not be accepted was the joint plea of learned counsel for the respondents.

18. Having heard learned senior counsel and learned counsel for the respective parties, at the outset, we would refer to the Order dated 8.5.2023 passed by this Court and the context in which notice was issued to the respondent(s) herein. The said context can be clearly discerned by the fact that Mr. Nagamuthu, learned senior counsel contended that in paragraph 9 of the judgment in

Jogendra Yadav, it is clearly indicated that the right of hearing must be afforded to a person summoned before being added as an accused in the trial, and therefore, the impugned order stood vitiated.

19. Before we proceed, we would refer to Sections 227 and 319 of the Cr.P.C., which are extracted as under:

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

"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 the 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."

20. Section 227 Cr.P.C. provides for discharge of an accused if the court finds that there is no sufficient grounds or reasons for proceeding against him. Consequently, the proceeding against discharged person is dropped.

On the other hand, under Section 319 Cr.P.C., a person who has not been named as an accused is summoned to be tried along with other accused while section

227 Cr.P.C. results in conclusion of proceedings against a person who is an accused on his discharge. On the other hand, a person who is not an accused is summoned to be tried along with other accused under Section 319 Cr.P.C.

21. A reading of the said Section would clearly indicate that power is given to the Court to proceed against any other person appearing to be guilty of an offence. The expression 'proceed' as appearing in Section 319 Cr.P.C. is of significance. The exercise of power under Section 319 Cr.P.C. is not at the initial stage where cognizance is taken of the offence and the summoning order is passed before committal of the matter to the Sessions Court.

That power exercised under Section 190 of the Cr.P.C. is quite distinct from the power exercised by the Trial Court/Sessions Court under Section 319 of the Cr.P.C. In our view, much significance turns on the expression 'proceed' in Section 319 Cr.P.C. The said Section came up for consideration before this Court in innumerable cases.

However, it is of relevance to mention Constitution Bench judgments in Hardeep Singh; Sukhpal Singh Khair vs. State of Punjab, (2023) 1 SCC 289, ("Sukhpal Singh Khair") and in Brijendra Singh & Ors. v/s. State of Rajasthan (2017) 7 SCC 706, ("Brijendra Singh").

22. The relevant paragraphs in Hardeep Singh can be crystallised as under:-

(i) The Constitution Bench of this Court was concerned with three aspects: firstly, the stage at which powers under Section 319 Cr.P.C. can be invoked; secondly, the materials on the basis whereof the invoking of powers under Section 319 Cr.P.C. can be justified; and thirdly, the manner in which powers under Section 319 Cr.P.C. have to be exercised. While answering the five questions referred to the Constitution Bench in paragraph 117, it was concluded as under:

"117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii) - What is the stage at which power under Section 319 CrPC can be exercised?

AND - Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Answer

117.1. In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018] , the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)- Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)- What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially

took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge [Ed. : The conclusion of law as stated in para 106, p. 138c-d, may be compared:

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

See also especially in para 100 at p. 136f-g.] . The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)-Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.

(ii) While answering the questions aforesaid, this Court observed in Hardeep Singh that if 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 entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished.

It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the avowed

object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject matter of trial.

It was pertinently observed by this Court that the desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

(iii) While distinguishing a trial from an enquiry, it was observed by this Court that trial follows an inquiry and the purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led. Emphasising on the word "course" used in Section 319 Cr.P.C., it was observed that the said power can be invoked under the said provision against any person from the initial stage of inquiry by the court up to the stage of conclusion of the trial.

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. Thus, the power under Section 319(1) Cr.P.C. can be exercised at any time after the charge-sheet is filed before the pronouncement of judgment, except during the stage of Sections 207/208 Cr.P.C., committal, etc.

(iv) Elaborating the nuances of Section 319 Cr.P.C., it was further observed in Hardeep Singh that what is essential for the purpose of Section 319 Cr.P.C. is that there should appear some evidence against a person not proceeded against; the stage of the proceedings is irrelevant. Section 319 Cr.P.C. is an empowering provision particularly where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well.

(v) It was further observed that circumstances which lead to the inference being drawn up by the court for summoning a person under Section 319 arise out of the availability of the facts and material that come up before the court. The material should disclose complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence.

(vi) It was also observed by this Court in Hardeep Singh that apart from evidence in the strict legal sense recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C.

Holding that the expression "evidence" must be given a broad meaning, it was observed that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. Such material would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have been suppressed or had escaped the notice of the court.

Therefore, any material brought before the court even prior to the trial can be read within the meaning of the expression "evidence" for the purpose of Section 319 Cr.P.C. While considering the evidence that emanates during the trial, it was observed by this Court that evidence recorded by way of examination-in-chief and which is untested by cross-examination is nevertheless evidence which can be considered by the court for the exercise of power under Section 319 Cr.P.C. so long as, it would appear to the court that some other person who is not facing the trial, may also have been involved in the offence.

(vii) Further, Section 319 Cr.P.C. also uses the words "such person could be tried", which means not to have a mini-trial at the stage of Section 319 Cr.P.C. by having examination and cross-examination and thereafter coming to a prima facie conclusion on the overt act of such person sought to be added. Such a mini-trial will affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all.

As under Section 319 (4) Cr.P.C., such a person has the right to cross-examine the prosecution witnesses and examine the defence witnesses and advance his arguments. It was further observed that the power under Section 319 Cr.P.C. can be exercised even after completion of examination-in-chief and the court does not have to wait till the said evidence is tested on cross-examination, for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other persons, not facing the trial in the offence.

(viii) The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. Therefore, such satisfaction is *sina qua non* for exercise of power under Section 319 Cr.P.C. Ultimately, the exercise of power is for the trial of such persons summoned together with the accused already on trial and not for conviction with the accused. Therefore, at that stage, the court need not form any definite opinion as to the guilt of the accused.

(ix) This Court further observed that the difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Hence, the degree of satisfaction for summoning the original accused and the accused summoned subsequently during the course of trial is different.

(x) It was further observed by this Court that a person, whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

However, a person who has already been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person.

Therefore, the court must keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations.

(xi) This Court further observed that it has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

Section 398 Cr.P.C. is in the nature of a revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. However, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398 Cr.P.C. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 Cr.P.C. can be exercised.

23. From the aforesaid observations of the Constitution Bench of this Court in Hardeep Singh, it is noted that an inquiry is contemplated as against a person

who has been discharged prior to the commencement of the trial in terms of Section 227 Cr.P.C. as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319 Cr.P.C. can be exercised against such a discharged person.

This clearly would mean that when a person who is not discharged but is to be summoned as per Section 319 Cr.P.C. on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319 Cr.P.C. are not at all contemplated.

Such a right of inquiry would accrue only to a person who is already discharged in the very same proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319 Cr.P.C. has a right of being heard in accordance with the principles of natural justice before being added as an accused to be tried along with other accused.

24. Further, when a person is summoned as an accused under Section 319 Cr.P.C. which is based on the satisfaction recorded by the Trial Court on the evidence that has emerged during the course of trial so as to try the person summoned as an accused along with the other accused, the summoned accused cannot seek discharge.

It is necessary to state that discharge as contemplated under Section 227 Cr.P.C. is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised the under Section 319 Cr.P.C. to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319 Cr.P.C. based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

25. Learned senior counsel Sri S. Nagamuthu strenuously contended that a person summoned in exercise of power under Section 319 Cr.P.C. must be given an opportunity of being heard before being added as an accused to the trial to be tried along with the other accused and that such person must have an opportunity of filing an application seeking discharge. The same are clearly not envisaged in view of the judgment in Hardeep Singh and hence the said contentions are rejected. Moreover, there is no finality attached to Section 319 Cr.P.C.

It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on arrayed as an accused.

Reference to and reliance placed upon opportunity of hearing to a complainant in the form of protest petition when a closure report is filed in wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

26. In Sukhpal Singh Khair, a Constitution Bench of this Court of which one of us was a member (Nagarathna, J.), adumbrated on the meaning of the expression "conclusion of trial" in the context of Section 319 read with other allied Sections of the Cr.P.C. and after referring to several decisions of this Court including Hardeep Singh (supra) answered the question referred to as under:

"39.(I) Whether the trial court has the power under Section 319CrPC 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 319CrPC 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.

40.(II) Whether the trial court has the power under Section 319CrPC 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.

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

41.1. If the competent court finds evidence or if application under Section 319CrPC 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.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

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

41.4. 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.

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

41.6. 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.

41.7. If the proceeding paused as in para 41.1 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.

41.8. 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 319CrPC 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.

41.9. 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 319CrPC, the appropriate course for the court is to set it down for rehearing.

41.10. 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.

41.11. 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.

41.12. 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.

27. In Brijendra Singh, after referring to Hardeep Singh, this Court considered the question as to the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question, namely, as to, in what situations, this power should be exercised in respect of a person named in the FIR but not charge-sheeted.

This Court held that once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power under Section 319 Cr.P.C. It was observed that the evidence in this context means the material that is brought before the court during trial.

Insofar as the material or evidence collected by the Investigating Officer (IO) at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319 Cr.P.C. This Court distinguished between the degree of satisfaction arrived at while exercising power under Section 319 Cr.P.C. which is greater than the degree which is warranted at the time of framing of charges against others in respect of whom charge-sheet was filed.

Only where strong and cogent evidence occurs against a person from the evidence led before the court, that such power should be exercised. Such power should not be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of a person's complicity were the observations of this Court. Holding that in the said case there was no satisfaction, the order passed under Section 319 Cr.P.C. summoning the appellant therein was set aside by this Court.

28. It is in light of the aforesaid judgments, we have to consider the judgment of this Court in Jogendra Yadav which is the basis of the arguments of Sri Nagamuthu, learned senior counsel appearing for the appellants.

As already noted, in the said case, the Additional Sessions Judge had issued notice to the appellants therein under Section 319 of the Cr.P.C. to show cause as to why they should not be added as accused and an opportunity was provided

to the appellants therein to file their reply and after being heard, the summoned appellants therein were added as accused to the proceedings.

It was nobody's case that they were not heard before such summoning order was passed. Despite that, the said order was challenged and ultimately the matter came up before this Court. This Court in the course of its judgment referred to the object and purpose of Section 319 of the Cr.P.C. and distinguished it from Section 227, which provides for discharge by observing as under -

"6. On a perusal of Section 319 of the Cr.P.C., it is apparent that a person who is not an accused may be added as an accused only when it appears from the evidence that he has committed any offence for which he could be tried together with the accused. The Section says that in such an eventuality, the Court "may proceed against such person" for the offence which he appears to have committed. In other words, a person who is not an accused becomes liable to be added where he appears to have committed an offence. Thereupon, the effect is that the Court may proceed against such a person.

7. Section 227 of the Cr.P.C. on the other hand, provides that an accused may be discharged if the Judge construes that there is no sufficient ground for the proceedings against him. In other words, if the Judge is of the view that there are no sufficient grounds for the proceedings against the accused, he may be discharged, whereupon the proceedings against him are dropped.

8. It is apparent that both these provisions, in essence, have the opposite effect. The power under Section 319 of the Cr.P.C. results in the summoning and consequent commencement of the proceedings against a person who was hitherto not an accused and the power under Section 227 of the Cr.P.C., results in termination of proceedings against the person who is an accused."

29. The sheet anchor of the arguments advanced on behalf of the appellants is what has been observed by this Court in the said judgment in paragraph 9, which reads as under -

"9. It was, however, urged by learned counsel for the appellants that in order to avail of the remedies of discharge under Section 227 of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C. It is, however, not possible to accept this submission since there is a material difference between the two.

An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of

the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further.

It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court."

(emphasis by us)

Much emphasis has been laid on the expression "a person who is added as an accused under Section 319 of the Cr.P.C. is necessarily heard before being so added" as extracted supra. Therefore, it was contended on behalf of appellants that in the instant case, there being no opportunity to the appellants herein of being heard, the summoning order itself was vitiated and, therefore, the impugned order of the High Court may be set aside as also the order passed by the Sessions Court summoning the accused.

30. It is necessary to consider the contentions of the learned counsel for the appellants in the light of what has been observed in paragraph 9 extracted above and in light of what has been observed by this Court in the subsequent paragraphs and having regard to the earlier judgments of this Court referred to above in detail.

31. In paragraph 13 of Jogendra Yadav, it has been observed that the exercise of power under Section 319 of the Cr.P.C. must be placed on a higher pedestal. Needless to say, the accused summoned under Section 319 of the Cr.P.C. are entitled to invoke the remedy under law against an illegal or improper exercise of power under Section 319 of the Cr.P.C. but that cannot have the effect of the order being undone by seeking a discharge under Section 227 of the Cr.P.C.

Therefore, this Court categorically held that a person, who is summoned under Section 319 of the Cr.P.C. cannot avail the remedy of discharge under Section 227 of the Cr.P.C. In that context, this Court, as already noted, discussed the difference between Sections 227 and 319 of the Cr.P.C, as extracted above.

This Court in the subsequent paras of the said judgment has also not stated that if a person is to be summoned under Section 319 of the Cr.P.C. to be added as an accused, then an opportunity must be given to such a person and only after hearing him, he could be added as an accused in the trial. We do not find that the ratio of Jogendra Yadav turns on the said aspect.

However, it is contented by learned Senior counsel Shri Nagamuthu that what has been observed in paragraph 9 of the said judgment will make it a necessary mandate or a rule that a person who is to be summoned under Section 319 of the Cr.P.C. to be added as an accused will necessarily be heard before being so added.

Paragraph 9 cannot be considered to be the ratio of the said judgment. Further, the context in which the observations are made in paragraph must relate to the facts of the said case where an opportunity was in fact provided to the persons summoned therein. Similarly, in the case of Ram Janam Yadav, on facts, it was noticed that the person summoned was, in fact, provided an opportunity of hearing.

32. Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 of the Cr.P.C., he should be given an opportunity of being heard.

That is not the mandate of law inasmuch as Section 319 clearly uses the expression "to proceed" which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody.

A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date.

On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above.

Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 Cr.P.C. It is also observed by this Court in Hardeep Singh that such a summoned person can assail a summoning order

before a superior Court and will also have the right of cross examining the witnesses as well as can let in his defence evidence, if any.

33. Thus, the lateral entry of a person summoned in exercise of power under Section 319 Cr.P.C. is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 Cr.P.C. principles of natural justice which in any case would be followed during the trial. It is well settled that principles of natural justice cannot be applied in strait-jacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.

34. In view of the aforesaid discussion, we do not think that the judgment in Jogendra Yadav calls for any re-consideration and the said observation in paragraph 9 as extracted supra is relatable only to the facts of the said case. Thus, the principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C. Such a procedure is not at all contemplated therein. In the circumstances, we do not accept the contentions of the appellants herein.

35. At this stage, learned senior counsel and learned counsel for the appellants submitted that the appellants would appear before the Sessions Court on the next date of hearing, i.e., 31.07.2023 and would seek all remedies available to them in law.

The submissions of learned senior counsel and learned counsel for the appellants are placed on record. Thus, we find no merit in the appeal which is accordingly dismissed. Pending application(s) shall stand disposed of.

.....J. [B.V. Nagarathna]

.....J. [Ujjal Bhuyan]

New Delhi

July 18, 2023

## IN THE SUPREME COURT OF INDIA

**Raheem Shah**

**Vs.**

**Govind Singh**

**Civil Appeal No. 4628 of 2023**

**(Arising out of SLP (C) No.27901/2015)**

**HEADNOTE** – The courts should adopt the justice oriented approach rather than the 'iron- cast technical approach' while dealing with delay condonation applications.

### **JUDGMENT**

Leave granted.

1. Heard learned counsel for the parties and perused the appeal papers.
2. Respondent No.1 herein is the plaintiff in the original suit bearing Civil Suit No.3 A/02. The suit was decreed by the trial court through its judgment dated 01.10.2005. The appellants herein who were the defendants No. 1 and 2 in the suit filed a Regular First Appeal under Section 96 of the Civil Procedure Code assailing the said judgment. Since there was delay of 52 days in filing the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay. The lower Appellate Court through its judgment dated 08.10.2010 had dismissed the appeal bearing Civil Appeal No.35A/2005 on the ground of limitation holding that the delay has not been properly explained and had consequently dismissed the appeal. Against the said judgment, the appellants were before the High Court of Madhya Pradesh in a Second Appeal bearing No.1185/2010. The Second Appeal has been dismissed by the High Court through its judgment dated 16.04.2015 on the ground that there is no question of law for consideration.
3. It is in that light, the appellants are before this Court in this appeal. At the outset, having taken note that the contention in the appeal before the lower Appellate Court was that the judgment was not in the knowledge of the appellants herein, that aspect of the matter was required to be kept in view by the lower Appellate Court since the appellants in fact had not taken effective part except filing written statement. When there was delay of only 52 days in filing the appeal and furthermore when the parties were litigating with regard to the right over immovable properties, the substantial rights were to be decided between the parties. The delay could have been condoned and the appeal could have been decided on merits.

4. This Court in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107** has held as hereunder:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on `merits`. The expression `sufficient cause` employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but

because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

5. The above decision expressing the intention of justice oriented approach percolating down to all the courts was rendered nearly three decades ago but unfortunately the case on hand demonstrates the pervading insensitive approach, which apart from continuing the agony of the litigants concerned has also unnecessarily burdened the judicial hierarchy which after going through the entire process will have to set the clock back, at this distant point in time and prolong their agony. If only the court concerned had been sensitive to the justice oriented approach rather than the iron- cast technical approach, the litigation between the parties probably would have come to an end much earlier after decision on the merits of their rival contention.

6. If that be the position, the very manner in which the lower Appellate Court has dismissed the appeal on the ground of delay when the delay was not inordinate is not justified and the High Court was also not justified in dismissing the appeal only on the ground that there was no question of law.

7. Hence, the judgment dated 16.04.2015 passed by the High Court as also the judgment dated 08.10.2010 passed by the lower Appellate Court are set aside. The delay in filing the appeal before the lower Appellate Court is condoned. The Civil Appeal No. 35A/2005 is restored to the file of the lower Appellate Court i.e. First Additional District Judge, Nasrullaganj, District Sehorr, M.P. The parties shall put forth their contentions on merits. All contentions are left open.

8. The parties shall appear before the lower Appellate Court without issuance of fresh notice/summons on 23.08.2023 at 11.00 A.M as the first date for appearance. The lower Appellate Court may thereafter regulate its proceedings and dispose of the matter as expeditiously as possible on its merits and in accordance law.

9. The appeal is, accordingly, disposed of.

10. Pending application(s) shall also stand disposed of.

.....J. [A.S. Bopanna]

.....J. [Bela M. Trivedi]

July 24, 2023

New Delhi

**IN THE SUPREME COURT OF INDIA**

**Sandeep Kumar  
Vs.  
State of Haryana**

**Civil Appeal No. 2195 of 2023  
(Arising out of SLP (C) No. 6537 of 2022)**

**HEADNOTE** – Merits of the evidence has to be appreciated only during trial and not at the stage of Section 319 CrPC.

**JUDGMENT**

**Sudhanshu Dhulia, J.**

Leave granted.

2. Heard Shri Ram Naresh Yadav learned Counsel for the appellant/complainant, Shri Vishal Mahajan, Deputy Advocate General for the State/Respondent No.1 and Shri Shreeyash U. Lalit learned Counsel for Respondent No.2.

3. The appellant before this Court was the informant in Signature Not Verified the case and was a prosecution witness (PW-9), in Sessions Digitally signed by NEETA SAPRA Date: 2023.07.28 Trial No.8/2018, which is being held before the Additional 16:53:17 IST Reason:

Sessions Judge, Sirsa, Haryana, under Sections 458, 460, 323, 302, 148, 149 and 285 of IPC, 1860 read with Section 25 of Arms Act, 1959. The incident is of 12:30 mid night dated 07.09.2017 which occurred at Sirsa, Haryana. The First Information Report reveals that there were in total fifteen assailants which had broke open the complainant's house, in the middle of the night and had come in order to assault the inmates of the house. Out of these assailants seven have been named who were armed with lathi and three of the named assailants/accused namely Ramesh Gandhi, Kalu Jakhar and Pawan were armed with gun and pistols respectively. Police after investigation had filed chargesheet against nine persons, but not against Ramesh Gandhi, Kalu Jakhar or Pawan whose names were placed in column 2 of the chargesheet. After the trial had commenced and the complainant was being examined as PW-9, he disclosed the entire event as an eye witness in his examination-in-chief, where he has unambiguously assigned the roles to these three assailants as well, who were named in the FIR

but not made accused in the chargesheet, that is, Ramesh Gandhi (respondent No.2), Kalu Jakhar and Pawan.

4. Immediately thereafter an application was moved before the Court by the Appellant under Section 319 Code of Criminal Procedure, for summoning these three persons Ramesh Gandhi, Kalu Jakhar and Pawan as accused so that they may also face the trial. This application as we have already stated was allowed, but the order was set aside by the High Court in Revision.

Before we examine the scope of Section 319 of Code of Criminal Procedure, it would be relevant to go through the statement given by PW-9, complainant, in his examination in chief as that forms the basis for summoning the three persons. PW-9 states in his examination-in-chief that on 07.09.2017, he along with his younger brother Pradeep Kumar and his cousin Bijender was sleeping in the court yard of their house, after having dinner. His father, Hanuman (deceased), was also sleeping in the court yard. The main gate of the house was bolted. His uncle Subhash, Jaibir and Raj Kumar were also sleeping in their houses. At about 12:30 i.e. in the middle of the night fifteen persons entered their house having 'lathi' and 'danda' in their hands, from the adjacent room by breaking the chain. Two were having pistols in their hand which could be seen in the light of the bulb. He then goes on to say that while Ramesh Gandhi was having a gun, Kalu Jakhar and Pawan were armed with pistols and remaining were having lathis and dandas. They first exhorted and then started beating all of them and threatened that today they will teach them a lesson, for selling liquor. When they were inflicting blows on the three of them his father Hanuman came to their rescue, to whom Subhash gave a blow from his lathi. He then states that all the accused were inflicting injuries on his father, and when they finally left the house, they left after firing from their weapons. These are the essential details of his slightly longer narration.

Section 319 of Cr.PC reads as under:

“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 the 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.” Sub-section (1) of Section 319 leaves it to the judicial discretion of the Court, where the trial is proceeding to summon a person as an accused (who is so far not an accused in trial), if evidence has appeared before the Court that such a person has committed an offence for which he should be tried together with the other accused. This judicial discretion is extremely limited by the circumstances which have been stated in sub-section (1) of Section 319. We have already referred to the statement given by PW-9, (an eye-witness) in his examination-in-chief. To our mind the Court had no alternative here but to summon the accused persons, considering that now it had an evidence before it in the form of the statement of PW-9.

Pursuant to the summoning order out of the three accused who have been summoned only one of them, i.e., Ramesh Gandhi who is Respondent No. 2 had filed a Revision before the Punjab & Haryana High Court which was allowed by order dated 02.03.2022 In our considered opinion the High Court has not appreciated the matter in the true perspective of Section 319 Cr.P.C. The revision of Shri Ramesh Gandhi (one of the three accused who were summoned), was allowed for the reasons that he was found innocent during investigation and that he never used the gun and had actually fled from the spot. These observations are even factually incorrect, from what we have just seen in the examination-in-chief of PW-9, the revisionist had fled the scene only after the commission of the crime by an “unlawful assembly”. In his statement (PW-9), it has further come that while leaving the house firing was also done. Further, totally uncalled for presumption has been made by the High Court in favour of the revisionist, declaring him to be innocent.

The High Court has reasoned as follows :- “The petitioner was found innocent during investigation. It could not even be established on record whether the petitioner was attributed any injury and even as per the version of the complainant himself, the petitioner had allegedly fled away from the spot. Thus, the material on record, does not make it a fit case to summon the petitioner as an additional accused.

The matter can be looked from another angle. It is the case of the complainant that the petitioner armed with a gun had come to the place of occurrence along with other co- accused. However, it does not seem to the common prudence that

a person coming with a premediated mind at the spot with a gun, would flee without even firing or attempt a shot. This clearly points towards a false implication of the petitioner.” In our opinion, whereas the trial court was absolutely correct to have summoned the accused based on the evidence of PW-9, the High Court committed a grave error in allowing the revision of the accused. Under the facts and circumstances of the case and on the powers of the Court under Section 319 and based on the evidence of PW-9, it was absolutely necessary for the trial court to have summoned the three accused, including the revisionist.

The reasoning given by the High Court, cannot be accepted at the stage of consideration of application under Section 319 Cr.PC. The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319, though this is precisely what the High Court has done in the present case. Moreover, the High Court did not appreciate the important fact that the charges being faced by the accused were under Sections 458, 460, 323, 285, 302, 148 and 149 of IPC. Thus, one of the charges being Section 149, which is of being a member of an unlawful assembly, for attracting the offence under Section 149 IPC, one simply has to be a part of an unlawful assembly. Any specific individual role or act is not material. [See : 2021 SCC OnLine SC 632-Manjeet Singh v. State of Haryana & Ors., Para 38].

A plain reading of Section 149 IPC (read with Section 141 IPC), makes it clear that no overt act needs to be assigned to a member of an unlawful assembly. “Even if no overt act is imputed to a particular person when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction”. [See : Yunis alias Kariya v. State of Madhya Pradesh, AIR 2003 SC 539] The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of Hardeep Singh v. State of Punjab and Others reported in (2014) 3 SCC 92 where it said:

“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 Cr. PC.

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.”

5. In *Hardeep Singh* (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

In Para 106 it stated as under:

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” it is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.” In our considered opinion, the prosecution had fully made out its case for summoning the three as accused under Section 319, Cr.P.C., so that they may also face trial.

6. Under these circumstances, the appeal is allowed and the order of the High Court dated 02.03.2022, is hereby set aside. It is further directed that the trial shall proceed now in accordance with law, as expeditiously as possible.

.....**J. [C.T. RAVIKUMAR]** .

.....**J. [SUDHANSHU DHULIA]**

**New Delhi,**

**July 28, 2023.**

# IN THE SUPREME COURT OF INDIA

Anbazhagan

Vs.

The State represented by the Inspector of Police

[Criminal Appeal No. 2043 of 2023  
arising out of S.L.P. (Criminal) No. 9289 of 2019]

**HEADNOTE** - Explained the fine difference between the two parts of Section 304 of the Indian Penal Code.

## JUDGMENT

**J.B. Pardiwala, J.:**

1. Leave granted.

2. This appeal is at the instance of a convict accused and is directed against the judgment and order passed by the High Court of Judicature at Madras dated 04.04.2019 in Criminal Appeal No. 193 of 2019 by which the High Court dismissed the appeal filed by the appellant herein thereby affirming the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Namakkal in Sessions Case No. 41 of 2017.

3. It appears from the materials on record that the appellant herein and his father were put on trial in the Court of the Additional Sessions Judge, Namakkal in Sessions Case No. 41 of 2017 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC').

The Trial Court held the appellant herein guilty for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I of the IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years with a fine of Rs. 10,000/- and in default of payment of the amount of fine, further rigorous imprisonment of one year. The co-accused i.e. father of the appellant herein came to be acquitted by the Trial Court.

4. The appellant herein being dissatisfied with the judgment and order of conviction and sentence passed by the Trial Court went in appeal before the High Court. The High Court dismissed the appeal affirming the conviction of the appellant herein for the offence punishable under Section 304 Part I of the IPC.

5. At the outset, Mr. S. Nagamuthu, the learned senior counsel appearing for the appellant herein, submitted that he is not pressing this appeal on merits. He submitted that his only endeavour is to persuade this Court to alter the conviction of the appellant from the offence punishable under Section 304 Part I of the IPC to Section 304 Part II of the IPC and reduce the sentence accordingly.

### **FACTUAL MATRIX**

6. It appears from the evidence on record that the appellant is an agriculturist. He owns agriculture land in a village by name Sirukinathupalayam situated in Tamil Nadu. The deceased namely Balasubramaniam was also an agriculturist and had his own agriculture land adjacent to the agriculture land of the appellant herein.

There was a pathway leading to the agriculture land of the appellant over which the deceased had some issues. At the time of the incident, the appellant had cultivated Cassava plants (Tapioca) which was ready for harvesting. On 25.10.2015 at around 7 am, the appellant and his father were harvesting the crop and had also arranged for a lorry for transporting the same from their field.

At around 11 am, the deceased came at the place of the incident and threatened the driver of the lorry saying he should not drive his lorry through the pathway leading to the agriculture field of the appellant. At that point of time, the appellant and his father were in their field. The appellant is said to have asked the driver of the lorry to move the lorry to his field to load the crop. This was questioned by the deceased which resulted in a quarrel.

It is the case of the prosecution that after verbal altercation between the appellant and the deceased for quite some time, the appellant is alleged to have picked up a "Hoe" (Kalaikottu - in Tamil, a gardening tool with a small metal blade attached with a wooden handle used mainly for weeding) & inflicted a single blow on the head of the deceased as a result of which the deceased fell unconscious and later died in the hospital.

7. The FIR was lodged on 25.10.2015 at 19.30 Hrs. On completion of the investigation, police filed charge sheet for the offence of murder. The case was committed to the Court of Sessions as the offence was exclusively triable by the Sessions Court. The Additional Sessions Judge, Namakkal vide order dated 06.09.2017 framed the following charge:-

"Whereas the deceased Balasubramaniam has been living with his wife Baby and family members at Sevalkattu Moolai near Government High School in Pandamangalam; that the A1 is the son of A2; that both the accused were living in Poosaripalayam; in Sirukinathupalayan: both the accused and the deceased Balasubramaniam had their agricultural lands adjacent to each other's lands; that

there was a pathway between both these lands and that there has been a prior enmity for a longtime regarding the ownership of that pathway between both parties.

On 25.10.2015 at 07.30 hrs A1 and A2 were loading tapioca cultivated and harvested in their lands on to a lorry owned by one Mr. Palanival, having the registration number TN 33 AF 3114 by parking that lorry on the disputed pathway. At that time the deceased Balasubramaniam came there and told them that the lorry could not be led in and blocked it. Then A2 yelled at the deceased Balasubramaniam saying "You do not have a pathway here.

You may bring anyone you want" and then A1 and A2 pushed the deceased Balasubramaniam down and with an intention to murder him A1 had hit the head of the deceased Balasubramaniam with a "weed removing axe" (Kalaikothi) while A2 was pelting stones at him whereby the deceased Balasubramaniam sustained grievous injuries on his head.

Balasubramaniam was immediately carried to the Government Hospital in Velur, then taken to Government Hospital in Namakkal where he did not respond to treatment and was declared dead at 05.20 pm. Therefore you the accused have committed an offense punishable under 302 IPC and which can be tried by this court. I hereby issue an order that both of you A1 and A2 should be tried by this court for the commission of the above offense."

8. The appellant and the co-accused (father of the appellant) pleaded not guilty to the aforesaid charge and claimed to be tried. It appears that the prosecution examined many witnesses. However, PW 8 - Chidambaram and PW 9 - Jeeva are the main witnesses being the eye witnesses to the occurrence. Both the eye witnesses have deposed that on the date of the incident the appellant herein and the deceased picked up verbal altercation in regard to the pathway and the appellant is said to have inflicted one blow with the weapon of offence as enumerated above on the head of the deceased leading to his death.

### **ORAL EVIDENCE**

9. PW-8 namely Chidambaram in his examination in chief has deposed as under:-

"I am now residing in Indira Nagar, Thaathaiyangar Patti. I am working as Lorry Driver. I know the present accused. About 3 years back I took my lorry to Anbazhagan's field in Poosari Palayam for transporting harvest of tapioca. Subramani, Veerasamy, Raja Manikkam and Jeeva accompanied me. While Subramani, Veerasamy, Raja Manikkam and Jeeva were harvesting the tubers of tapioca the person belonging to the adjacent field told us that the lorry should

not move any further since he the accused have a dispute regarding the pathway in which the lorry was on.

I climbed into my lorry. At that time the accused Anbazhagan was plucking tapioca in his field. He then asked me to bring the lorry near his field. I told him about what the neighbor told me. But as I took my lorry ahead a verbal fight broke out between Anbazhagan and the neighbor. Then A2 came to that place. She was yelling too. With the axe M.O.1 in his right hand, A1 Anbazhagan hit the neighbor on his head. The neighbor suffered injuries on his mouth."

10. PW-9 namely Jeeva in his examination in chief has deposed as under:-

"I am now residing in Indira Nagar, Thaathaiyengar Patti. I I am a coolie. I know the accused present here. I went to pluck tapioca tubers in the garden of the accused Anbazhagan along with Chidambaram, Subramani, Veerasamy, Raja Manikkam between 07.30 & 08.00 am on 25.10.2015 at Poosari Palayam. We went inside the field with Anbazhagan to gather the tubers.

When we were clearing the plants after gathering the tubers Chidambaram drove the lorry inside the field. Immediately the deceased Balasubramaniam came inside. He was shouting at the driver and asked him as to who gave him the authority to enter inside. He told this to Anbazhagan. The deceased Balasubramaniam was standing on the road.

Both the accused present there were gathering tapioca. Incidentally the accused and the deceased started getting into a verbal quarrel. We are securing the plucked tubers. The fight became bigger. Hearing the louder sound we all came over to the road where the verbal fight was going on. At that time the accused hit the deceased at his head with the wedding axe causing injury. He fell down immediately."

11. PW-18 Dr. Anbumalar in her examination in chief has state as under:- "I am currently working as a Senior Doctor in Namakkal Government District Head Hospital. On 26.10.2015, while I was on duty then the body of one Balasubramaniam (57 years old) was brought by one Arunagiri, Head constable for post- mortem examination with permission letter and accordingly on 26.10.2015 at 2.15 PM, the post- mortem was performed.

The details of the post- mortem examination are as follows - External injuries respectively, There was bleeding from the ear and nose, above the left eye brow 3X2 cm cut injury. A cut injury measuring 4 X 2 cm was found on the left forehead. The front skull bone was fractured on both sides (Both parietal bone). Internal Inspection Details- The skull bone was broken and the inner lining was torn. Left Side Temporal Bone 7.5 cm. was broken. There was a blood clot at the

base of the skull. The inside of the sprout was red. Navicular bone was correct. Left ribs 3 and 4 were fractured."

12. The Trial Court, upon appreciation of the oral and documentary evidence on record and more particularly having regard to the genesis of the occurrence; the manner of assault and the nature of the weapon, took the view that the case was not one of murder punishable under Section 302 of the IPC but could be said one of culpable homicide not amounting to murder punishable under Section 304 Part I of the IPC and accordingly sentenced the appellant herein.

13. The High Court also came to the conclusion that the Trial Court was right in holding the appellant herein guilty of the offence punishable under Section 304 Part I of the IPC.

14. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

15. Mr. S. Nagamuthu, the learned senior counsel appearing for the appellant herein submitted that considering the manner in which the incident had occurred and the role attributed to the appellant, the conviction deserves to be altered from Section 304 Part I of the IPC to one under Section 304 Part II of the IPC. According to the learned senior counsel, the case does not fall within clause thirdly of Section 300 of the IPC. All that can be attributed to the appellant is 'knowledge' and 'not intention'.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE**

16. Dr. Joseph Aristotle S., the learned counsel appearing for the respondent State on the other hand, submitted that the Trial Court as well as the High Court rightly held the appellant herein guilty of the offence punishable under Section 304 Part I of the IPC.

According to the learned counsel, the case is not one falling within the ambit of Section 304 Part II of the IPC. He would submit that the case falls within clause thirdly of Section 300 of the IPC. He submitted that exception 4 to Section 300 of the IPC is attracted and therefore, the courts rightly convicted the appellant for the offence punishable under Section 304 Part I of the IPC.

### **ANALYSIS**

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration

is whether the conviction of the appellant herein for the offence punishable under Section 304 Part I of the IPC should be further altered to Section 304 Part II of the IPC.

18. We have given more than a fair idea as regards the genesis of the occurrence and the role attributed to the appellant herein. Dr. Karthikeyan (PW-15) was examined by the prosecution in his capacity as the Medical Officer who performed the post mortem of the deceased. In the post mortem report, the doctor has noted three injuries, (i) cut injury over 4 x 2 cm on the left eye, (ii) cut injury 4 x 3 cm on the left forehead, and (iii) 4 x 2 cm contusion around the left eye. The cause of death assigned in the post mortem report appears to be shock and haemorrhage due to head injury.

19. As the only argument canvassed before us is that the case does not travel beyond culpable homicide as the same falls within the third part of Section 299 of the IPC, the accused could only be said to have knowledge that he is likely by his act to cause death and not the intention to kill the deceased, we must explain the fine distinction between the terms 'intent' and 'knowledge'.

#### **INTENT AND KNOWLEDGE :-**

20. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man.

21. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:-

1. The nature of the weapon used.
2. The place where the injuries were inflicted.
3. The nature of the injuries caused.
4. The opportunity available which the accused gets.

22. In the case of Smt. Mathri v. State of Punjab, AIR 1964 SC 986, at page 990, Das Gupta J. has explained the concept of the word 'intent'. The relevant observations are made by referring to the observations made by Batty J. in the decision Bhagwant v. Kedari, I.L.R. 25 Bombay 202. They are as under:-

"The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken."

(Emphasis supplied)

23. In the case of *Basdev v. State of Pepsu*, AIR 1956 SC 488, at page 490, the following observations have been made by Chadracharya Aiyar J.:-

"6. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion."

(Emphasis supplied)

24. In para 9 of the judgment, at page 490, the observations made by Coleridge J. in *Reg. v. Monkhouse*, (1849) 4 COX CC 55(C), have been referred to. They can be referred to, with advantage at this stage, as they are very illuminating:-

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision.

It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered.

For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely; was he rendered by intoxication entirely incapable of forming the intent charged?"

(Emphasis supplied)

25. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our legislature has used two different terminologies 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that 'intent' and 'knowledge' cannot be equated with each other.

They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. 'Knowledge' will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

26. In the case *In re Kudumula Mahanandi Reddi*, AIR 1960 AP 141, also the distinction between 'knowledge' and 'intention' is aptly explained. It is as under:-

"Knowledge and intention must not be confused.

17. Every person is presumed to intend the natural and probable consequences of his act until the contrary is proved. It is therefore necessary in order to arrive at a decision, as to an offender's intention to inquire what the - natural and probable consequences of his acts would be. Once there is evidence that a deceased person, sustained injuries which were sufficient in the ordinary course of nature to cause death, the person who inflicted them could be presumed to have intended those natural and probable consequences. His offence would fall under the third head of sec. 300, I.P.C.

18. A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death, but which the - offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention.

19. Under sec. 299 there need be no proof of knowledge, that the bodily injury intended was likely to cause death. Before deciding that a case of culpable homicide amounts to murder, there must be proof of intention sufficient to bring it under Sec.300. Where the injury deliberately inflicted is more than merely

'likely to cause death' but sufficient in the ordinary course of nature to cause death, the higher degree of guilt is presumed."

(Emphasis supplied)

It has been further observed therein as under:-

"26. Where the evidence does not disclose that there was any intention, to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of sec. 304, I.P.C. The contention that in order to bring the case under the second part of sec. 304, I.P.C. it must be brought within one of the exceptions to sec 300, I.P.C. is not acceptable."

(Emphasis supplied)

27. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions.

The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (Russell on Crime, Twelfth Edition, Volume 1 at page 40).

28. This awareness is termed as knowledge. But the knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention.

Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end. This we may make it clear by referring to two passages from leading text-books on the subject. Kenny in his Outlines of Criminal Law, Seventeenth Edition at page 31 has observed:-

"To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed. Again, a man cannot intend to do a thing unless he desires to do it."

(Emphasis supplied)

29. Russell on Crime, Twelfth Edition, 1st Volume at page 41 has observed:-

"In the present analysis of the mental element in crime the word "intention" is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims.

Differing from intention, yet closely resembling it, there are two other attitudes of mind, either of which is sufficient to attract legal sanctions for harm resulting from action taken in obedience to its stimulus, but both of which can be denoted by the word "recklessness". In each of these the man adopts a line of conduct with the intention of thereby attaining an end which he does desire, but at the same time realises that this conduct may also produce another result which he does not desire.

In this case he acts with full knowledge that he is taking the chance that this secondary result will follow. Here, again, if this secondary result is one forbidden by law, then he will be criminally responsible for it if it occurs. His precise mental attitude will be one of two kinds-(a) he would prefer that the harmful result should not occur, or (b) he is indifferent as to whether it does or does not occur."

(Emphasis supplied)

30. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences.

For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act

with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

31. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

32. The important question which has engaged our careful attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction of the appellant herein for the offence under Section 304 Part I or we should further alter it to Section 304 Part II of the IPC?

### **SECTIONS 299 AND 300 OF THE IPC:-**

33. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death.

As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'.

Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see Rampal Singh v. State of U.P., (2012) 8 SCC 289)

34. In the case of State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382, this Court, while clarifying the distinction between these two terms and their consequences, held as under:-

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' is species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking

generally, 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is what may be called 'culpable homicide of the first degree'.

This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

(Emphasis supplied)

35. Section 300 of the IPC proceeds with reference to Section 299 of the IPC. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the IPC. When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the IPC, while in other cases, that is, where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

36. The principles stated in the case of *Virsa Singh v. State of Punjab*, AIR 1958 SC 465, are the broad guidelines for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the IPC they fall in. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the IPC, i.e. 'culpable homicide' and 'murder' respectively.

In *Phulia Tudu v. State of Bihar*, (2007) 14 SCC 588, this Court noticed that confusion may arise if the courts would lose sight of the true scope and meaning of the terms used by the legislature in these sections. This Court observed that the safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.

37. This Court in *Phulia Tudu* (supra) has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope

and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions.

The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

<b>Section 299</b>	<b>Section 300</b>
A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-
<b>INTENTION</b>	
(a) with the intention of causing death; or  (b) with the intention of causing such bodily injury as is likely to cause death; or	(1) with the intention of causing death; or  (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or  (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
<b>KNOWLEDGE</b>	
(c) with the knowledge that the act is likely to cause death	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

38. Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition.

It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the

offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

39. Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be.

If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used.

Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury.

To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

40. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of *Rajwant Singh v. State of Kerala*, AIR 1966 SC 1874, is an apt illustration of this point.

41. The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not?

If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted. Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

"15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

(Emphasis supplied)

It was further observed as under:-

"20. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

(Emphasis supplied)

42. Thus, it is clear that the ingredient of clause thirdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. In Emperor v. Sardarkhan Jaridkhan, AIR 1916 Bom 191, it was observed as under:-

"Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."

(Emphasis supplied)

43. Commenting upon the aforesaid observation of the Bombay High Court, Justice Bose, in Virsa Singh (supra), held thus:-

"23. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

44. As to how the intention is to be inferred even in a case of single injury, Justice Bose further held as under:-

"23. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Whether he knew of its seriousness, or intended serious consequences is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

(Emphasis supplied)

45. This question was again considered in *Jagrup Singh v. State of Haryana*, (1981) 3 SCC 616, by a Bench of this Court consisting of Justice D.A. Desai and Justice A.P. Sen and following the ratio laid down in *Virsa Singh (supra)* it was held as under:-

"6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death.

The whole thing depends upon the intention to cause death, and the case may be covered by either clause 1stly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

The aforesaid decision of this Court in *Jagrup Singh (supra)* has been strongly relied upon by the learned senior counsel appearing for the appellant.

46. However, the learned senior counsel did not seek to rely on the observations made in para 6 referred to above in the case of *Jagrup Singh (supra)*. The learned senior counsel relied on the observations which we shall refer to hereinafter, but after giving some factual background in the case of *Jagrup Singh (supra)*. On the fateful evening, the marriage of one Tej Kaur was performed.

Shortly thereafter, the appellant *Jagrup Singh* armed with a *gandhala*, his brothers *Billaur Singh* armed with a *gandasa* and *Jarmail Singh* and *Waryam Singh* armed with *lathies* emerged suddenly and made a joint assault on the deceased *Chanan Singh* and the three eyewitnesses, *Gurdev Singh*, PW 10, *Sukhdev Singh*, PW 11 and *Makhan Singh*, PW 12.

The deceased along with the three eyewitnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 pm by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9 cm X 1 1/2 cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased succumbed to the injuries.

The Doctor who performed an autopsy on the dead body of the deceased deposed before the Trial Court that the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death. In the background of this case, this Court held:-

"14. In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of Section 300 of the Code.

On the finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, the case was covered by Exception 4 to Section 300. It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. That being so, the conviction of the appellant Jagrup Singh, under Section 302 of the Code cannot be sustained.

15. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years."

(Emphasis supplied)

We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of Jagrup Singh (supra). What we are trying to highlight is that in Jagrup Singh (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC.

The question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all.

Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

47. In *Jawahar Lal v. State of Punjab*, (1983) 4 SCC 159, also the accused hit the deceased with a knife blow in front of left side of his chest and as per the autopsy report the injuries were found sufficient in an ordinary course of nature to cause death. This Court took a view that the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. The relevant paras of the said judgment is reproduced as under:

"17. we should also not further dilate on this point in view of the decision of this Court in *Jagrup Singh v. State of Haryana* : 1981 Cri LJ 1136. In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal.

The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code.

The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted; The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance attendant upon the death.

18. We may point out that decision in *Jagrup Singh's Case* 1981 Cri LJ 1136 was subsequently followed in *Randhir Singh @ Dhire v. State of Punjab* Decided on September 18, 1981 and in *Kulwant Rai v. State of Punjab* Decided on August 7, 1981 (Criminal Appeal No. 630 of 1981).

19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, I.P.C. cannot be sustained.

20. What then is the offence committed by the 1st appellant? Looking to the age of the 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the

occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine."

48. In *Camilo Vaz v. State of Goa* [(2000) 9 SCC 1 : 2000 SCC (Cri) 1128] the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the trial court and the Bombay High Court convicted the appellant under Section 302 IPC. This Court, however, converted the conviction to one under Section 304 Part II IPC and observed:- (SCC p. 9, para 14)

"14. When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304 IPC as in the present case."

(Emphasis supplied)

49. In *Jai Prakash v. State (Delhi Admin.)*, (1991) 2 SCC 32, this Court, after an exhaustive review of various decisions, more particularly, the principles laid down in *Virsa Singh's case* (supra), concluded as under:-

"18. In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result.

It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result.

We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if

the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be murder, unless one of the exceptions to Section 300 is attracted.

If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC."

(Emphasis supplied)

50. In the case of Rajwant Singh (supra), after referring to the relevant clauses of Section 300 of the IPC, the following observations have been made:-

"10. The mental attitude is thus made of two elements (a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death.

11. For the application of clause three it must first be established that the injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death, one test is satisfied. Then it must be proved that there was an intention to inflict that very Injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established."

(Emphasis supplied)

51. In the case of *Anda v. State of Rajasthan*, AIR 1966 SC 148, the two relevant Sections 299 and 300 respectively are brilliantly analysed and the relevant observations are made at page 151 in para 7. Before we refer to those observations, we would refer to certain observations made earlier. They are as under:-

"The offence of culpable homicide involves the doing of an act (which term includes illegal omissions) (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed. Intention and knowledge in the ingredients of the section postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence.

The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the death of the person. Sec. 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Sec. 300 begins by setting out the circumstances when culpable homicide turns out into murder which is punishable under sec. 302 and the exceptions in the same section tell us when offence is not murder but culpable homicide not amounting to murder punishable under sec. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder."

(Emphasis supplied)

52. We will now refer to the relevant observations made in para 10 at page 151. They are as under:-

"The third clause views the matter from a general stand-point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder.

Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less. The illustration appended to the clause 3rdly reads:

'(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.' The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder."

(Emphasis supplied)

53. This Court in Vineet Kumar Chauhan v. State of U.P., (2007) 14 SCC 660, noticed that the academic distinction between 'murder' and 'culpable homicide

not amounting to murder' had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382, where it was observed as under:-

"that the safest way of approach to the interpretation and application of Sections 299 and 300 of the Code is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of sections 299 and 300 of the Code and the drawing support from the decisions of the court in Virsa Singh v . State of Punjab , (AIR 1958 SC 465 : 1958 Cri LJ 818) and Rajwant Singh v . State of Kerala , (AIR 1966 SC 1874 : 1966 Cri LJ 1509) speaking for the court, Justice RS Sarkaria, neatly brought out the points of distinction between the two offences, which have been time and again reiterated.

Having done so, the court said that wherever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be that the accused has done an act by doing which he has caused the death of another.

Two, if such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether this second or the third clause of Section 299 is applicable.

If this question is found in the positive but the cases come within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 of the Code. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

(Emphasis supplied)

54. In the case of Tholan v. State of Tamil Nadu, AIR 1984 SC 759, the accused stood in front of the house of the deceased and used filthy language against some persons who were unconnected with the deceased. The deceased came out of his house and told the accused that he should not use vulgar and filthy language in front of ladies and asked him to go away.

The accused questioned the authority of the deceased to ask him to leave the place. In the ensuing altercation, the accused gave one blow with a knife which

landed on the (right) chest of the deceased which proved to be fatal. This Court came to the conclusion that the accused could not be convicted under Section 302, but was guilty under Section 304 Part II. The circumstances which weighed with this Court were:

(i) there was no connection between the accused and the deceased and the presence of the deceased at the time of the incident, was wholly accidental;

(ii) altercation with the deceased was on the spur of the moment and the accused gave a single blow being enraged by the deceased asking him to leave the place;

(iii) the requisite intention could not be attributed to the accused as there was nothing to indicate that the accused intended the blow to land on the right side of the chest which proved to be fatal.

55. In *Chamru, Son of Budhwa v. State of Madhya Pradesh*, AIR 1954 SC 652, in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death.

In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under Section 304, Part II of the IPC. In *Willie (William) Slaney v. The State of Madhya Pradesh*, AIR 1956 SC 116, there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on the head. The Court held that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II.

56. In *Kulwant Rai v. State of Punjab*, (1981) 4 SCC 245, the accused, without any prior enmity or premeditation, on a short quarrel gave a single blow with a dagger which later proved to be fatal. This Court observed that since there was no premeditation, Part 3 of Section 300 of the IPC could not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the facts and circumstances of that case, the conviction of the accused was altered from Section 302 to that under Section 304 Part II IPC and the accused was sentenced to suffer rigorous imprisonment for five years.

57. In *Jagtar Singh v. State of Punjab*, (1983) 2 SCC 342, the accused on the spur of the moment inflicted a knife-blow on the chest of the deceased. The

injury proved to be fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. This Court observed that: (SCC p. 344, para 8):-

"8. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death."

(Emphasis supplied)

This Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

58. In *Hem Raj v. State (Delhi Admn.)*, 1990 Supp SCC 291, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place on the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the ordinary course of nature to cause death. This Court observed as under: (SCC p. 295, para 14)"-

"14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death.

Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither clause I nor clause III of Section 300 IPC will be attracted."

(Emphasis supplied)

This Court while setting aside the conviction under Section 302 convicted the accused under Section 304 Part II and sentenced him to undergo rigorous imprisonment for seven years. 59. We may lastly refer to the decision of this Court in *Pulicherla Nagaraju v. State of A.P.*, (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500, wherein this Court enumerated some of the circumstances

relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed : (SCC pp. 457-58, para 29)

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases.

There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death.

It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

- (i) nature of the weapon used;
- (ii) whether the weapon was carried by the accused or was picked up from the spot;
- (iii) whether the blow is aimed at a vital part of the body;
- (iv) the amount of force employed in causing injury;
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;
- (vi) whether the incident occurs by chance or whether there was any premeditation;
- (vii) whether there was any prior enmity or whether the deceased was a stranger;
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;
- (ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

(Emphasis supplied)

60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused.

To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed.

Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304

of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC.

It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC.

But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool.

If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is - whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death.

We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.

63. In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.

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

.....**J. (J.B. Pardiwala)**

**New Delhi;**

**July 20, 2023**

## **C. Legal Article**

### **Conflict between law of sedition and freedom of speech**

#### **Introduction**

The term ‘sedition’ means doing some act or using some words which incite people to go against the government authorities or the rule of law. This law was introduced by Britishers to counter the freedom of speech and expression in the colonial-era. Many freedom fighters or leaders like Subhas Chandra Bose, Mahatma Gandhi, and Bal Gangadhar Tilak were charged under the law of sedition. The conflict between sedition and freedom of speech has always been a topic of debate. It is said that politicians use sedition as a political tool to violate the right to freedom of speech. Article 19(1)(a) of the Constitution of India provides freedom of speech & expression, and it’s a fundamental right that cannot be taken away.

#### **Sedition law in India**

Section 124A of the IPC defines sedition as an act *“whoever by words, either spoken or written, or by any signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India.”*

This is a non-bailable offence, and punishment can go from 3 years to a lifetime and a fine. Anyone charged under this law will also be prohibited from working for the government, and their passport will be confiscated by the government.

#### **Conflict between sedition and freedom of speech**

The conflict between sedition laws and freedom of speech has been going on since the colonial-era. Britishers implemented this law to stop freedom fighters or leaders from speaking against them and reduce the threat against them. In 1837, Thomas Babington Macaulay drafted the sedition law, and in 1870, this law was introduced in India by James Stephen through an amendment. Since then, on multiple occasions, this law has violated the freedom of speech and expression of common people, and later it transformed into a political tool to prevent anyone speaking against them. Ironically, the sedition law has now been abolished by the UK, New Zealand, and Ghana. But in India, this law is still intact. According to the National Crime Records Bureau (NCRB) report, 76 sedition cases were filed in 2021. In numerous instances, journalists or media have also been charged under this law. Mere criticism should not be charged

with sedition. In a democratic country, the value of freedom of speech and expression cannot be denied. Being able to express feelings freely makes a country truly democratic. But we should also keep in mind that the right vested in us under Article 19(1)(a) is not an absolute right and is subject to some restrictions.

These restrictions are imposed to-

- prevent the sovereignty and integrity of the country,
- to prevent incitement,
- to prevent hate-speech, etc.

### **Instances of conflict**

In the case of **Vinod Dua Vs. Union of India (2021)**, the Supreme Court dismissed a FIR against senior journalist Vinod Dua in Shimla, Himachal Pradesh, more than a year after local BJP officials had accused him of making disparaging remarks against Prime Minister Narendra Modi and the centre on his YouTube show. A bench made up of Justices UU Lalit and Vineet Saran said every journalist is entitled to protection under the Kedar Nath Singh case, which defined the breadth of the act of sedition under Section 124A of the IPC.

On 13th February 2021, a 22 year-old climate change activist named Disha Ravi was detained under sedition for her relation with a “toolkit” for the farmer’s protest. Delhi Court issued her release order within one week of her arrest. According to Court the sedition cannot be used as a bandage for the government’s injured ego.

Another important case is **Tara Singh Gopi Chand Vs. The State (1950)**, in this case the Punjab High Court held the sedition law to be constitutionally invalid because this law levied unreasonable restrictions on the freedom of speech and expression. This is an important case because it prompted the Jawaharlal Nehru led government to bring about reasonable restrictions to the freedom of speech and expression.

In 2010, Dr. Binayak Sen, a civil rights activist, was found guilty of sedition and given a life sentence by a Chhattisgarh Court because he was found guilty of conspiring with the Naxals. He tried to create a network to combat the government. The Supreme Court granted him bail in 2011. The judge said it’s a democratic country, and Dr. Sen might be a sympathiser, but that does not make him guilty of sedition.

In **Kedar Nath Singh Vs. State of Bihar (1962)**, the Supreme Court endeavoured to limit the potential for abuse of the sedition law while upholding its constitutional validity. The Court made it clear that criticism of the government cannot be classified as sedition unless it is an act or speech which disrupts public peace or initiates violence.

India is known as the biggest democratic country in the world. But in a democratic country, if freedom of speech is controlled by political agendas, it creates a disturbing image. In the 2022 press freedom index, India got 150th place out of 180 countries, but in 2023, India ascended to 161. The countries that occupied the first, second, and third positions are Norway, Finland, and Denmark, respectively. Sedition is not only a threat to freedom of speech; it is also a threat to democracy. It can be said that this law can be easily misused.

### **Conclusion**

Sedition law and freedom of speech are a never-ending debate. But for the first time, it may come to an end if this law is dropped. But at the same time, we cannot ignore the importance of a nation's security. This law should clearly mention that if someone tries to disturb public peace or incite violence, then only they should be punished under this law. Whether we need this law or not will always be a controversial matter. We just need to ensure that the fundamental right of being able to speak or express ourselves freely is not taken away by misusing sedition laws.

## **D. Legal News and Updates**

### **The Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023**

#### **Highlights of the Ordinance**

- The Ordinance amends the Government of National Capital Territory of Delhi (GNCTD) Act, 1991. It removes services from the legislative competence of the Delhi legislative assembly.
- It establishes the National Capital Civil Services Authority, which consists of the Chief Minister, Chief Secretary of Delhi, Principal Home Secretary of Delhi. The Authority will make recommendations to the Lieutenant Governor (LG) regarding transfers and postings of officials and disciplinary matters.
- The Ordinance empowers the LG to exercise his sole discretion on several matters including those related to National Capital Civil Services Authority, and the summoning, prorogation and dissolution of the Delhi Legislative Assembly.

#### **Key Issues and Analysis**

- The Ordinance excludes “Services” from the purview of the Delhi Assembly. The question is whether such a change can be made without a Constitutional Amendment under **Article 368**.
- Taking “Services” outside the purview of the Legislative Assembly may break the triple chain of accountability that links the civil services, ministers, the legislature and citizens. This may violate the principle of parliamentary democracy, which is a part of the basic structure doctrine.
- The LG has been granted sole discretion in several matters including when the Legislative Assembly will convene. This implies that the Chief Minister may be unable to convene a session needed for essential government business.

#### **HIGHLIGHTS OF THE ORDINANCE**

Union Territories (UTs) are directly governed by the President or an administrator appointed by the President. However, Delhi and Puducherry are UTs with a legislature, and a council of ministers. The Delhi Legislative Assembly has the power to legislate over subjects in the State List and Concurrent List, except for police, public order and land. The Delhi government has executive powers over the same subjects. Further, Parliament has the power

to legislate over all matters in the State and Concurrent Lists related to Delhi. The Lieutenant Governor (LG) is designated as Delhi's administrator, operating with the aid and advice of the council of ministers of Delhi. The Government of National Capital Territory of Delhi (GNCTD) Act, 1991 lays down the framework for the functioning of the Delhi Assembly and the Delhi government. It outlines the powers of the Assembly, the discretionary powers of the LG, and the Chief Minister's duty to provide information to the LG.

The question of power-sharing between the Delhi government and central government has been raised before the Supreme Court on several occasions. On May 11, 2023, the Supreme Court gave its verdict on the control of services between the central government and the Delhi government. The question before the Court was whether the Delhi government (headed by the elected Chief Minister) or the Lieutenant Governor (appointed by the central government) would have control over services and civil servants in Delhi. The central government claimed that the Delhi Assembly lacked the power to legislate over services due to Delhi's status as a Union Territory. However, the Delhi government contested this position. Under the Constitution, services fall under the State List. The Court ruled that the Delhi government will have control over services in Delhi. Such control will not extend to subjects of police, public order, and land, over which the central government has exclusive powers. The 2023 judgement also reaffirmed a 2018 judgement where the Supreme Court had ruled that the LG did not have independent decision-making powers and was bound to follow the aid and advice of the Council of Ministers. Please see Table 1 (page 4) for more details.

After the Supreme Court's judgment on control over services in Delhi, the GNCTD (Amendment) Ordinance, 2023 was promulgated on May 19, 2023. It amends the GNCTD Act, 1991 to remove services from the legislative competence of the Assembly. The Ordinance has been challenged in the Supreme Court, which has started hearing the petition.

### **Key Features**

#### **Powers to legislate over services**

The Ordinance specifies that the Delhi Legislative Assembly will not have the power to legislate on the subject of 'services', which comes under the State List. Services include matters related to appointments and transfers of employees of the Delhi government, and vigilance.

- The central government will notify the conditions of service of persons appointed to services including their tenure, qualification, salaries, powers and functions, and suspension.

## **National Capital Civil Services Authority**

The Ordinance establishes the National Capital Civil Services Authority to make recommendations to the Lieutenant Governor of Delhi (LG) on certain matters related to services. These include:

- (i) transfers and postings,
- (ii) matters related to vigilance,
- (iii) disciplinary proceedings, and
- (iv) prosecution sanctions of Group A of All India Services (except Indian Police Service), and DANICS.

The Authority will consist of the: (i) Chief Minister of Delhi as Chairperson, (ii) Principal Home Secretary of the Delhi government as Member Secretary, and (iii) Chief Secretary of the Delhi government as member. The central government will appoint both the Principal Home Secretary and Chief Secretary.

All decisions of the Authority will be based on a majority vote of the members present and voting. The quorum for a meeting is two people.

## **Powers of the Lieutenant Governor**

Under the Act, matters where the LG may act on his discretion are:

- (i) matters outside the legislative competence of the Delhi Legislative Assembly but which have been delegated to the LG, or
- (ii) matters where he is required by a law to act in his discretion or exercise any judicial or quasi-judicial functions.

The Ordinance specifies that in these matters, the LG will act in his sole discretion. It expands the discretionary role of the LG by giving him powers to approve the recommendations of the Authority, or return them for reconsideration. The LG's decision will be final in the case of a difference of opinion between him and the Authority.

## **Disposal of matters by Ministers**

A Minister of the Delhi government may issue standing orders concerning the disposal of matters brought to his attention. The order should be issued in consultation with the concerned Department Secretary. Certain matters must be submitted to the LG, through the Chief Minister, for their opinion prior to the issue of any order. These include proposals affecting:

- (i) the peace and tranquility of Delhi,
- (ii) relations between the Delhi government and the central government, Supreme Court, or other state governments,

- (iii) summoning, prorogation, and dissolution of the Legislative Assembly, and
- (iv) matters on which LG is to give an order in his sole discretion.

Additionally, the concerned Department Secretary must bring certain matters to the notice of the LG, the Chief Minister, and the Chief Secretary. These include matters which may bring the Delhi Government into controversy with the central or any state government, the Supreme Court, or High Court of Delhi.

**The Supreme Court** explained this principle in the recent 2023 judgement. It said that democratic government rests on a triple chain of accountability:

- (i) civil servants are accountable to ministers,
- (ii) ministers are accountable to legislatures, and
- (iii) legislatures are accountable to the electorate.

It observed that a democratically elected government must be able to have control over and hold accountable public officers posted in the service of their government. By severing the first link of the triple chain of accountability, the Ordinance may be contradicting the principles of parliamentary democracy.

The 2023 judgement re-iterates the principle spelt out by the 2018 judgement that ministers bear the responsibility before the legislature for every action undertaken by public officials in their respective department. However, under the Ordinance, a minister of Delhi will not be able to hold his public officials accountable for bureaucratic delays.

### **The LG may not be bound to act on the aid and advice of the Council of Ministers**

As per Article 239AA, the LG has to act on the aid and advice of the Council of Ministers, except when exercising his functions in his discretion.<sup>5,8</sup> The Transaction of Business Rules of the GNCTD, 1993 provides that certain matters must be submitted to the LG, through the Chief Minister and Chief Secretary, for his opinion prior to the issue of any order.

These matters include:

- (i) the peace and tranquillity of Delhi,
- (ii) relations of the Delhi government with any state government, the Supreme Court, and the High Court of Delhi, and
- (iii) summoning, proroguing, and dissolving of the Legislative Assembly.

The Ordinance expands the mentioned matters to include the relations of the Delhi government with the central government. Additionally, it expands the powers of the LG's opinion to have sole discretionary power on these matters. If

there is a difference of opinion between the LG and the Chief Minister, the LG's opinion will take precedence.

These provisions may violate the principle of the LG acting on the aid and advice of the Council of Ministers on matters within the executive competence of the latter. They also contradict the 2018 judgement of the Supreme Court which stated that the decision-making power lies with the elected government.

For example, under the 1991 Act, the LG has the power to summon, prorogue, and dissolve the legislative assembly. However, he is bound to act on the aid and advice of the Council of Ministers since the function is not within his discretionary powers. The Ordinance allows the LG to override the decision of the Council of Ministers and exercise sole discretionary powers on these matters.

This implies that the Chief Minister will not be able to convene a session of the Assembly for any essential government business.

## **E. Adjournment motion moved by Congress MPs in Parliament**

As Opposition parties demanded a discussion on the alleged sexual assault of at least two women in Manipur, amid the ongoing ethnic violence in the state, day two of the Monsoon Session of Parliament proceedings saw the Lok Sabha **being adjourned** on Friday (July 21).

The adjournment happened barely a few minutes after a brief statement on the issue by Defence Minister Rajnath Singh.

On the same day, Congress MPs Manickam Tagore and Hibi Eden moved adjournment motions in the Lok Sabha, citing the need for urgent discussions on the ethnic violence in Manipur. Writing to the Secretary-General of Lok Sabha, the MPs separately urged Prime Minister Narendra Modi to speak on the matter and for the government to “uphold its constitutional commitment to protect religious minorities and Scheduled Tribes”.

Adjournment motions and how do they differ from regular adjournments and the other motions raised in Parliament?

### ***What are the various motions raised in Indian Parliament?***

In both the houses of Parliament, Lok Sabha and Rajya Sabha, there are ways for Members of Parliament to draw the attention of the house to any relevant issue. For this, there are various procedures given.

MR Madhavan, the President and co-founder of PRS Legislative Research, wrote in The Indian Express in 2012, “There are four main procedures under which there could be a discussion in the Lok Sabha — a debate without voting under Rule 193, a motion (with a vote) under Rule 184, and an adjournment motion or a no-confidence motion.” Except the last one, similar measures also exist in the Rajya Sabha.

### ***Rule 193, Short Duration Discussion***

Short Duration Discussions can also take place in Lok Sabha under **Rule 193** of its rules and in Rajya Sabha under Rule **176** of its rules. On Thursday, disagreement over which rule shall be invoked for a discussion on Manipur led to the adjournment of Rajya Sabha for the day.

Under **Rule 176** of the Rules of Procedure and Conduct of Business in Rajya Sabha, “If the Chairman is satisfied... that the matter is urgent and is of sufficient public importance to be raised in the Council at an early date, he may admit the notice and in consultation with the Leader of the Council fix the date on which such matter may be taken up for discussion and allow such time for discussion, not exceeding two and a half hours...”

The government had agreed to this being invoked, while Opposition parties favoured a longer period for discussion. Leader of the Opposition and Congress leader Mallikarjun Kharge said, “We have also given notices under **267**.....you have to suspend all other business and take up this.”

The Opposition instead wanted Rule 267 to be invoked, under which Rajya Sabha MPs can give a written notice to suspend all listed business and discuss an issue of importance. You can read this explainer for more on that.

### ***Rule 184, a motion with a vote***

If a motion on a matter of general public interest satisfies certain conditions, such as that it “shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements”, “shall be restricted to a matter of recent occurrence”, and so on, then that motion can be admitted. Also, motions on a matter pending before any statutory authority (one established by law) or any commission or court of enquiry cannot be moved.

However, in Lok Sabha, the Speaker can allow for such a matter to be raised at his own discretion. It must be concerned with the “procedure or subject or stage of enquiry” of an issue, and if the Speaker is satisfied that it is not likely to prejudice the consideration of such matter by the relevant authority that takes it up.

The Speaker can then allot a time period for the discussion of any such motion. “Here, the debate is on a specific question, and this is followed by a vote to determine Parliament’s position on the issue. Passage of a motion would require the government to follow Parliament’s decision on the issue. Such motions are not very common. For example, in August 2011, opposition parties demanded a debate with voting on the issue of rising prices. However, the motion that was moved did not require any specific action and only called upon the government,” Madhavan wrote.

The Speaker, after being satisfied that there has been adequate debate, can put up a question afterwards. “Passage of an adjournment motion does not require the

government to resign. However, it is seen as a strong censure of the government,” Madhavan wrote.

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**F. THE FAMILY COURTS (AMENDMENT) ACT,**  
**2022**  
**ACT NO. 16 OF 2022**

[12th August, 2022.]

**An Act further to amend the Family Courts Act, 1984**

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

**1. Short title and commencement** – (1) This Act may be called the Family Courts (Amendment) Act, 2022.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Amendment of section 1 –**

In the Family Courts Act, 1984 (hereinafter referred to as the principal Act), in section 1, in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that it shall be deemed to have come into force in the State of Himachal Pradesh with effect from the 15th February, 2019 and in the State of Nagaland with effect from the 12th September, 2008.”.

**3. Insertion of new section 3A** – After section 3 of the principal Act, the following section shall be inserted, namely:

**“3A. Validation of certain actions** – (1) The establishment of Family Courts in the State of Himachal Pradesh with effect from the 15th February, 2019 and in the State of Nagaland with effect from the 12th September, 2008 shall be deemed to be valid and always to have been valid as if the notification for appointing the date for bringing this Act in force in the States of Himachal Pradesh and Nagaland, as required under sub-section (3) of section 1, had been issued by the Central Government with effect from such dates.

(2) Anything done, any action taken, any appointment made, any duty performed, any rules made, any notification issued or purported to have been done, taken, performed, made or issued under this Act in the States

of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to have been validly done, taken, performed, made or issued, as the case may be, under the provisions of this Act.

(3) Every order of appointment of a person as a Judge of a Family Court and every order of posting, promotion or transfer, as the case may be, made under this Act in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly made under the provisions of this Act.

(4) Every power exercised and function performed, every matter dealt with, every proceeding undertaken, every order, judgment, decree or sentence passed and every other act done by the Family Courts in the States of Himachal Pradesh and Nagaland prior to the commencement of the Family Courts (Amendment) Act, 2022 shall be deemed to be validly exercised, performed, dealt with, undertaken, passed or done under the provisions of this Act.”.

## 2. Study Material-G.K.

### U.P. in Indian History

- Proof of copper-stone age in Uttar Pradesh have been found at Meerut and Saharanpur.
- Evidence of Paleolithic civilization in Uttar Pradesh has been found the Belan Valley in Allahabad, Singrauli Valley of Sonbhadra and Chakia of Chandauli.
- The potholes of the Belan river valley were explored and excavated under the direction of Allahabad University Professor R. Sharma.
- Statue of a bone-built goddess along with stone equipment has also been obtained from the archaeological site 'Lohadanala' of the Belan Valley.
- Remains of Humans belonging to the medieval stone age have been obtained from Pratapgarh's Sarinahar Rai and Mahadeva.
- Based on the latest excavation, the oldest agricultural evidence in the Indian subcontinent is Lahuradev located in the city of Saint Kabir Nagar in Uttar Pradesh.
- From here evidence of, Rice belonging to 8000 BC-9000BC, has been discovered.
- The tools and weapons of Neolithic have been found in excavation by Sarai Nahar Rai (Pratapgarh), Mirzapur, Sonbhadra, Bundelkhand.
- Remains of Harrapa civilisation have been discovered from Alamgirpur. It also reveals the eastward extension of the Harappan civilization. Evidence of cotton cultivation has also been obtained from here.
- 8 Mahajanapadas of 16 were in Madhya Desh (Modern UP). They were Kuru, Panchal, Kashi, Koshal, Shurasen, Chedi, Vats and Malla.
- Evidence of the attack of the Hunas on Kushinagar has also been discovered
- In Kushinagar, Gautam Buddha attained Mahaparinirvana in 483 BC
- The fourteenth inscription of Ashoka has been found in Kalasi (present-day Uttarakhand).
- Most of the life of Gautam Buddha was spent in Uttar Pradesh.
- Gautam Buddha had spent most of the rainy seasons in the Kosala state.
- Shuktimati (Near Banda) was the capital of Chedi Mahajanapada.
- The ancient name of Ayodhya was Ayazsa (□□□□□□).
- According to Buddhist tradition, Ashoka built a stupa in Ayodhya.
- According to Jain texts, the birthplace of five Tirthankara including Adinath was Ayodhya.

- Repeated conflicts between Gujjar-Pratiharas, Palas and Rashtrakutas ensued for occupation Kannauj's.
- For a Long period, Kannauj was ruled by Gujjars-Pratahars.
- In 1018-1019, Mahmud Ghajnavi invaded Kannauj.
- Prayag pillar mentions donation made by Ashok's Queen Karaowaki. It has also been called 'Queen's Record'.
- Kashi's first mention is found in Atharva Veda. According to the Mahabharata, this city was founded by Divodas.
- The capital city of Kashi Mahajanapati was Varanasi.
- Two rock inscription of Kumargupta I and one of Skand Gupta have been found at Garhwa (Allahabad).
- Bhitari Column inscription of (Ghazipur) describes the war between Pushyamitran and the war of Skanda Gupta.
- In 1194 AD, Mohammad Ghori defeated Gaharwal Naresh Jayanchad (ruler of Kannauj) in the Battle of Chandavar.
- In 1018 AD, Mohammad Ghajnavi destroyed the temples of Mathura.
- In 1670 AD, Aurangzeb destroyed the Krishna Temple (built by Veer Singh Bundela) of Mathura.
- Ashok had built a lion pillar in Sarnath.
- Agra was founded by Sultan Sikander Lodhi in 1506.
- After Sikandar Lodi, Ibrahim Lodi ascended to the throne of Agra, who was defeated by Babur in the first battle of Panipat in 1526 and Babur established the Mughal Empire.
- Agra was the main centre of education during the Mughal period. Indigo was cultivated in the adjoining areas of Agra during the Mughal period.
- Mughal historians called Uttar Pradesh as Hindustan.
- The Agra fort was built by Akbar.
- Noorjahan got built the tomb of his father, I'timād-ud-Daulah in Agra.
- 'Tajmahal', Deewane Aam, Deewane Khas and 'Moti Masjid' of Agra was built during rein of Shah Jahan.
- By the end of the twelfth century, Qutbuddin Aibak captured Kalpi (Jalaun district) and made it part of Delhi Sultanate.
- Among Akbar's Navratanas Birbal and Todramal belonged to Uttar Pradesh.
- Birbal belonged to Kalpi, Where evidence of Birbal's Rang Mahal and the Mughal Mint has been found.
- Jaunpur was established by Firoz Shah Tughlaq.
- Jaunpur was known as Shiraz-e-Hind during the reign of Sharqi dynasty.

- Orchha ruler Beer Singh Bundela got Jhansi built in 1613.
- Rani Laxmibai, the wife of Gangadhar Rai, was the ruler of the independent state of Jhansi, who died while fighting against the British in the freedom struggle of 1857.
- Laxmibhai's palace, Mahadev Temple and Mehdi Bagh are in Jhansi.
- Because of Sheikh Salim Chishti, Akbar considered Fatehpur Sikri a sacred land.
- From 1573-1588, it was capital of the Mughal Empire.
- Shahjahan shifted Mughal capital to Delhi from Agra in the year 1638..
- The last Nawab of Lucknow was Wazid Ali Shah, who was removed from Lucknow by the British in 1856 by Lord Dalhousie.
- Mughal Emperor Akbar got his own tomb built in Sikandara (a suburb of Agra) which was later completed by Emperor Jahangir in 1613.
- Atala Mosque, Jama Masjid or Jama Mosque or Jami Masjid or Bari Masjid and Lal Darwaja are famous monuments of Shrqī dynasty.
- The Atala Mosque and Jhangari Mosque of Jaunpur were constructed by Ibrahim Shah Sharqi.
- Badaun's Jama Masjid was constructed by Iltutmish.
- From 1707 (From the death of Aurangzeb) to 1757 (Battle of Plassey) present Uttar Pradesh had five independent kingdoms.
- 'Treaty of Allahabad' was signed between the British and Mughal ruler Shah Alam II In 1765.
- After the death of Shuja-ud-Daulah, Asaf-ud-Daula was a Nawab of Awadh in 1775.
- Asaf-ud-Daula had handed over the area of the Benaras to the British by the Treaty of Faizabad (1775 ).
- Asaf-ud-Daula got constructed Imambara in 1784 in Lucknow to celebrate Muharram.
- The Sultan of Delhi Bahlol Lodi conquered Jaunpur in 1484 AD and annexed the Sharqi empire into the Delhi Sultanate.
- Panchmahal, Khas Mahal, Jodha Bai Mahal, Birbal Mahal, Jama Masjid, Buland Darwaza, Sheikh Salim Chishti's Tomb and Islam Khan's Tomb were built by Akbar in Fatehpur Sikri.
- Jahangiri Mahal built by Akbar in Agra.
- Jahangir built the mausoleum of Maryam Uj Zamani in Sikandra.
- Sher Shah Suri constructed a total of 4 roads, two of which are located in Uttar Pradesh, from Agra to Burhanpur and from Agra to Chittor.

- Babur defeated Rana Sanga in the Battle of Khanwa in 1527 AD and took control of Awadh and Kannauj.
- In 1529 AD, Babur defeated Mahmud Lodi and Nusrat Shah on the banks of Ghagra.
- Babur died in 1530 AD in Agra.
- Firoz Shah Tughlaq established Firozabad, another city besides Jaunpur.
- Awadh Suba became independent in 1722 AD under the leadership of Shaadat Khan Burhan-ul Mulk. Asaf-ud-Daula was made the capital of Awadh from Faizabad to Lucknow.
- Malik Sarwar (Sardar Khwajajahan) founded the independent Sharki state in Jaunpur.
- Mughal historians knew Uttar Pradesh by the name of Hindustan.
- Babar built Jama Masjid of Sambhal and Babri Masjid in Ayodhya

### **1857's Freedom struggle and Uttar Pradesh**

- Mangal Pandey (resident of Balia of Uttar Pradesh), 34th Indian Army of Barrackpore, near Calcutta, rebelled on March 29, 1857, and fired on his lieutenant. Mangal Pandey was hanged on April 8, 1857, in Barrackpore.
- On April 24, 1857, the native infantry of Meerut refused to touch the new cartridges, as a result, British officers dismissed Soldiers on 9th May 1857, as a result, on May 10, 1857, the soldiers of the whole camp Rebelled.
- The area most affected by this rebellion of 1857 was Awadh and Bundelkhand.
- In the rebellion of 1857, the rebel soldiers and landowners had established their governments at Aligarh, Bareilly, Lucknow, Kanpur, Allahabad etc.
- The 1857 revolt was extended to small towns and towns like Etawah, Mainpuri, Etah, Mathura, Shahjahanpur, Badayun, Azamgarh, Sitapur, Lakhimpur Kheri, Barabanki, Varanasi, Faizabad, Fatehpur, Hathras etc.
- Begum Hazrat Mahal of Awadh led the rebellion in Lucknow. Begum made her son Birzis Qadir Nawab of Awadh.
- Lucknow was recaptured by Colin Campbell on March 21, 1858.
- In 1857 AD, Nana Saheb had the right to administer the Kanpur (Bithoor) administration.
- The great warrior Taty Tope (original name-Ram Chandra) of the rebellion of 1857 AD had frightened the British with his 'Guinimikava tactics' (guerrilla strategy).

- He was arrested on April 7, 1859, and was tried in the Civil Court of Shivpuri and was hanged on 18 April 1859.
- By June 1858, the rebellion in the United Provinces (now U.P.) was completely exhausted.
- On 1 November 1858, Lord Kennen read out the declaration of Queen Victoria in Allahabad.
- In 1858, the Delhi division was separated from the northwestern part of the state and the capital of the state was shifted from Agra to Allahabad.

### **The modern period of Uttar Pradesh**

- In 1861, Shiv Dayal Saha had established Radha Swami Satsanga in Agra.
- Swami Dayanand Saraswati founded the Arya Samaj in Mumbai in
- Bharatendu Harishchandra published Kavi vachan Sudha (1867) and Harishchandra Magazine (1872) from Varanasi.
- The present name of 'Mohammedan Anglo-Oriental School' founded in 1875 by Sir Syed Ahmed Khan in Aligarh is 'Aligarh Muslim University'.
- Sir Syed Ahmed Khan launched the 'Aligarh movement' to improve the status of Muslims.
- Till 1947, 9 sessions of Indian National Congress were held in U.P.
- The most, three sessions of Indian National Congress were held in Allahabad and Lucknow each. Allahabad (1888- President: George Yule. 1892 - W.C: Banerjee. 1910 Chairman - Sir William Wedderburn), Lucknow (1899 AD, President- Romesh Chandra Dutt, 1916 AD, President- Ambika Charan Majumdar. 1936 AD, President - Pt. Jawaharlal Nehru).
- Apart from Allahabad and Lucknow, three other cities of U.P. had the convention of Indian National Congress - In 1905 Banaras (President- Gopal Krishna Gokhale), Kanpur (Chairman – Mrs Sarojini Naidu) in 1925 and Meerut (President-Acharya JB-Kripalani) in 1946.
- In 1916, the session of Congress and Muslim League was held simultaneously in Lucknow. This conference was the famous 'Congress-League Agreement'. This Congress convention was chaired by Ambika Charan Majumdar.
- In November 1928, 'Simon Commission' was boycotted in Lucknow. It was led by Pt. Jawaharlal Nehru.
- In 1918, Gaurishankar Mishra, Indranarayan Dwivedi and Madan Mohan Malviya formed Kisan Sabha.

- In 1923, Chittaranjan Das and Motilal Nehru founded the Swaraj Party in Allahabad.
- The first conference of the Communist Party of India was held in Kanpur, in December 1925 under the chairmanship of Periyar
- in United Provinces in the adjoining area of Lucknow, 'Eka Andolan' (1920-22) among farmers was led by a farmer named Madari Pasi.
- On August 8, 1942, the 'Quit India' resolution passed in the All India Congress Convention held in Bombay. In this Gandhiji gave a slogan 'Do or Die'.
- During the Quit India movement, Gandhiji was kept in Aga Khan Palace of Poona and Jawaharlal was held captive at Naini Central Jail of Allahabad.
- On August 16, 1942 masses struggle broke out in favour of 'Quit India Movement'. As a result, under the leadership of Chittu Pandey, a 'National Government' was formed in Ballia.

### **Change in the structure of the state**

- After the independence, on **12 January 1950** United Province was renamed as Uttar Pradesh.
- On **November 9, 2000**, Uttarakhand state was formed by separating 13 hill districts of the state.
- To this date, Uttar Pradesh has given 8 Prime Ministers to the country.
- After Independence, the first Governor of Uttar Pradesh was Mrs. Sarojini Naidu, the first Chief Minister was Govind Ballabh Pant and Purushottam Dass Tandon became the first Speaker of the Assembly.
- Current President Shri Ramnath Kovind is also from Uttar Pradesh.

### 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

**JULY 2023**

S.N.	Question	Answer
1.	Where is the 'Startup 20 Shikhar' summit being organized under the G20 presidency of India	Gurugram
2.	Who won the title of Austrian Grand Prix Formula One Championship 2023	Max Verstappen
3.	Who has been sworn in as the new Deputy Chief Minister of Maharashtra	Ajit Pawar
4.	Who has taken charge as Additional Secretary, Department of Military Affairs	Atul Anand
5.	Who has become the first country in the world to ban thin plastic bags	New Zealand
6.	Where has the commercial operation of India's first indigenously developed nuclear power reactor been started	Gujarat
7.	Who has been re-appointed as the Solicitor General of India	Tushar Mehta
8.	Who has taken charge as the new Chairman and MD of Coal India	PM Prasad
9.	Union Minister Nitin Gadkari has started the National Highway Project worth Rs 5600 crore in which state	Rajasthan
10.	Who is presiding over the 23rd summit of Shanghai Cooperation Organisation	Narendra Modi
11.	Who has resigned from the post of National Commission for Scheduled Tribes	Harsh Chauhan
12.	Which swimmer has set a new national record in the backstroke event in the National Swimming Championship	Mana Patel
13.	Who is the first player from Assam to make it to the Indian women's team	Uma Chhetri
14.	The 23rd summit of the Shanghai Cooperation Organization is being organized under whose chairmanship	India
15.	Which country won the title of South Asian Football Federation Championship 2023	India
16.	Which country has become the new permanent member of Shanghai Cooperation Organisation	Iran
17.	Who has been appointed as the chief selector of	Ajit Agarkar

	the Indian men's cricket team	
18.	Which Union Minister inaugurated the new campus of Canteen Store Department Depot in Ambala	Ajay Bhatt
19.	Who launched the 'Bharat 6G Alliance' in New Delhi	Ashwini Vaishnav
20.	Who has been appointed as the new CEO and MD of Bank of Baroda	Debdutt Chand
21.	DGCA has tied up with whom for drone technology	European Union Aviation Safety Agency (EASA)
22.	India has won the title by defeating which team in the final of SAFF Championship 2023	Kuwait
23.	In which country the first IIT campus will be established outside India	Tanzania
24.	According to the Global Peace Index 2023, which is the world's most peaceful country	Iceland
25.	Who won the gold medal in the men's 800 meter freestyle event at the National Swimming Championships	Aryan Nehra
26.	Who has been appointed as the President of Basketball Federation of India	Aadhav Arjun
27.	Who has been named AIFF Men's Players of the Year 2023	Lallianzuala Changte
28.	Who has won the AIFF Women's Players of the Year 2023 award for the second consecutive year	Manisha Kalyan
29.	Which pair won the junior mixed team compound gold medal in the World Archery Youth Championships 2023	Priyansh and Avneet Kaur
30.	Indian Navy organized an 11-day military exercise with which country in Kochi	USA
31.	What is India's rank in Global Peace Index 2023	126th
32.	When ISRO is going to launch Chandrayaan-3 mission	July 14 2023
33.	In which state did PM Modi inaugurate wildlife friendly highway projects	Chhattisgarh
34.	In which country is the Ubinas volcano, due to which emergency has been declared there	Peru
35.	India has signed MoU with which country for Electoral Corporation	Panama
36.	Who has been appointed as the new Executive	P. Vasudevan

	Director by the Reserve Bank of India	
37.	Who has become the champion of FIH Hockey Pro League 2022/23 season	Netherlands
38.	NCC has signed an MoU with which bank to open bank accounts of cadets	State Bank of India
39.	Who has been appointed as the chairman of the National Consumer Disputes Redressal Commission	Justice AP Sahi
40.	What is the position of Indian men's hockey team in FIH Pro League 2022-23	Fourth
41.	Who has become the first Indian to win gold in recurve category of Youth World Archery Championship	Parth Salunkhe
42.	At which airport in India, the country's first elevated cross taxiway service has been started	Indira Gandhi International Airport
43.	Under the G20 chairmanship of India, where is the third Trade and Investment Working Group meeting being held	Kevadia
44.	Which badminton player of India has won the title of Canada Open	Lakshya Sen
45.	Which Formula 1 racer won the British Grand Prix title	Max Verstappen
46.	Who has been appointed as the new chairman of the International Financial Services Centers Authority	K Rajaraman
47.	The meeting of G20 Culture Working Group is being organized in which city	Hampi
48.	External Affairs Minister S Jaishankar has nominated from which state for the upcoming Rajya Sabha elections	Gujarat
49.	Who is the most valuable franchise of the Indian Premier League	Chennai Super Kings
50.	In which country a national health emergency has been declared due to 'Guillain-Barre syndrome'	Peru
51.	With which country India has started bilateral trade in rupees	Bangladesh
52.	Who has been honored with the Best Member Federation Award by the Asian Athletics Federation	Athletics Federation of India
53.	With which country India has started bilateral trade in rupees	Bangladesh

54.	Which player has won gold medal in World Shooting Para Sports World Cup	Rudransh Khandelwal
55.	World Population Day is celebrated every year on which day	11 July
56.	Who has been appointed as the new Managing Director and CEO of SBI Card	Abhijeet Chakraborty
57.	According to the report of Global Firepower, what is the rank of India in the world's most powerful armies	Fourth
58.	Who has become the first Indian to be named the 'Best Asian Under-20 Male Athlete of the Year'	Selva Prabhu Thirumaran
59.	Who won the gold medal in the 40 kg category of the Commonwealth Weightlifting Championship	Jyotsna Sabar
60.	DGCA has recognized the first Flying Training Organization of which state	Tamil Nadu
61.	What percentage of GST has been fixed on 'online gaming' in the 50th meeting of the GST Council	28%
62.	JIMEX Maritime Exercise 2023 was organized between the Navy of India and which country	Japan
63.	When is World Malala Day celebrated every year	12 July
64.	Who has been appointed as the next Ambassador of India to Lithuania	Devesh Uttam
65.	Who has been selected as the ICC Men's Player of the Month for the month of June	Wanindu Hasaranga
66.	With whom has the Ministry of Defense tied up for safe and nutritious food for the armed forces	FSSAI
67.	Which state/UT has launched Mobile-Dost-App	Jammu and Kashmir
68.	Which two new judges have been appointed by President Murmu in the Supreme Court	Justice Ujjal Bhuiyan and Justice SV Bhatti
69.	The Ministry of Defense has approved the purchase of how many Rafale fighter jets for the Indian Navy	26
70.	Which Indian has won the silver medal in Para Athletics World Championship 2023	Nishad Kumar
71.	Who has been selected as the ICC Women's Player of the Month for the month of June	Ashley Gardner
72.	Which union minister has chaired the regional	Amit Shah

	conference on 'Drugs smuggling and national security'	
73.	Who won the men's title of Wimbledon Grand Slam 2023	Carlos Alcaraz
74.	Who has recently released the 'National Multidimensional Poverty Index'	NITI Aayog
75.	Who won bronze medal in ISSF Shotgun World Cup-	Prithviraj Tondaiman
76.	With which country India is participating in military exercise 'Nomadic Elephant- 2023'	Mongolia
77.	IIT Delhi is going to open its first global campus in which city	Abu Dhabi
78.	In which state of India the annual 'Bonalu Festival' was organized	Telangana
79.	Which player won the women's singles title of Wimbledon Grand Slam 2023	Marketa Vondrousova
80.	Which Indo-American artist was honored by Google on her 86th birthday through Doodle	Zarina Hashmi
81.	Which city of Australia has decided not to host Commonwealth Games 2026	Victoria
82.	India has recently tied up with which country to develop new generation military equipment	France
83.	Who has become the first unseeded female player to win the Wimbledon Grand Slam	Marketa Vondrousova
84.	PM Modi inaugurated the Integrated Terminal of Veer Savarkar International Airport, in which state/UT is it	Andaman and Nicobar Islands
85.	'Central Registrar - Sahara Refund Portal' has been launched by which ministry	Ministry of Cooperation
86.	Which state has secured the first position in NITI Aayog's Export Preparedness Index 2022	Tamil Nadu
87.	Which company has launched the world's first Generative AI tool for insurance	Simplify
88.	In which country 'International Defense Exhibition 2023' will be organized	South Korea
89.	Which two wrestlers have been exempted from the trials of the Asian Games by the Indian Olympic Association	Bajrang Punia and Vinesh Phogat
90.	On the occasion of 24th Kargil Vijay Diwas, the women's tri-services motorcycle rally was started from which city	New Delhi
91.	What is the rank of Indian passport according to	80th

	Henley Passport Index 2023	
92.	According to the Henley Passport Index 2023, which country has the world's most powerful passport	Singapore
93.	According to the Henley Passport Index 2023, which country has the world's weakest passport	Afghanistan
94.	When is International Chess Day celebrated annually	20 July
95.	Which Indian Grandmaster won the Super GM Chess tournament in Hungary	R. Praggnananda
96.	Who has been elected as the new Deputy Chairman of Rajya Sabha	S. Phangnon Konyak
97.	Who has been appointed as the new MD & CEO of SBI Capital Markets Limited	Ajay Kumar Sinha
98.	Reserve Bank of India has canceled the license of which co-operative bank	United India Co-operative Bank
99.	Who has been appointed as the 25th Director General of Indian Coast Guard-	Rakesh Pal
100.	Which Union Minister inaugurated the Global Food Regulators Summit 2023	Mansukh Mandaviya
101.	Which ministry has won the "Best Engagement" award for procurement through GeM portal	Ministry of Coal
102.	According to the Reserve Bank of India, how much is India's forex reserves	\$ 600 billion
103.	Ministry of Culture has tied up with which bank to provide financial assistance to experienced artists	Canara Bank
104.	Who has become the 10th cricketer to play 500 matches in international cricket	Virat Kohli
105.	In which country the Asian Surfing Championship was organized	Maldives
106.	India has signed an agreement with which country for joint development of semiconductor ecosystem	Japan
107.	Who has been appointed as the new Managing Director of Life Insurance Corporation	Satpal Bhanu
108.	In which state will the 69th edition of the Filmfare Awards be organized in the year 2024	Gujarat
109.	Elon Musk has changed the logo of which social media platform to 'X'	Twitter
110.	Which Indian pair won the men's doubles gold medal at the Korea Open	Satwiksairaj and Chirag Shetty

111.	'Semicon India 2023' will be organized in which state of India	Gujarat
112.	In which state 'Mission Shakti Scooter Scheme' has been approved	Odisha
113.	India has handed over Corvette 'INS Kirpan' to which country	Vietnam
114.	Who has been named as the first woman chief of the US Navy	Lisa Franchetti
115.	Where is the third G-20 Disaster Risk Reduction Working Group meeting being organized	Chennai
116.	Who has become the second Indian bowler to take the most wickets in international cricket	Ravichandran Ashwin
117.	Which country has made the world record of scoring the fastest 100 runs in Test cricket	India
118.	Which union minister inaugurated the Aviation Security Control System for real time monitoring	Amit Shah
119.	Which country has banned sex change and transgender marriage	Russia
120.	Which Indian has won the gold medal in the World Youth Deaf Badminton Championship	Gauranshi
121.	The central government has approved the decision to set up how many new greenfield airports	21
122.	Where will PM Modi inaugurate Gujarat's first greenfield airport	Hirasar
123.	Which state government has started the second phase of Mukhyamantri Ladli Bahna Yojana	Madhya Pradesh
124.	Who has become the first bowler to take seven wickets in T20 International cricket history	Sayajrul Ejat Idras
125.	Where was the 8th India-Australia Defense Policy Talk organized	Canberra
126.	'Heli Summit 2023' and RCS Udaan-5.2 were inaugurated in which state	Madhya Pradesh
127.	When is Kargil Vijay Diwas celebrated every year in India	26th July
128.	Who won the gold medal in the 50 meter pistol event of the ISSF Junior Shooting World Championship	Kamaljeet
129.	Who has been appointed as the Chief Justice of Bombay High Court	Devendra Kumar Upadhyay
130.	Which state had the highest crime rate against	Madhya Pradesh

	scheduled caste groups in the year 2021	
131.	Who has been appointed as the Chief Justice of Andhra Pradesh High Court	Justice Dheeraj Singh Thakur
132.	Who is the Prime Minister of Cambodia who has recently decided to resign	Hun Sen
133.	Asian Paints has appointed whom as the new chairman of the company	R Seshasayee
134.	In which African country, the army has removed the president from office by a coup	Niger
135.	Who has been appointed as the captain of the junior Indian hockey team for the hockey tournament in Germany	Uttam Singh
136.	Army Postal Service inaugurated the first Permanent Aadhaar Enrollment Center in which city	New Delhi
137.	'India AI' has signed an MoU with whom to promote emerging technologies	Meta
138.	'Meri Mati Mera Desh Abhiyan' campaign is an initiative of which ministry	Ministry of Rural Development
139.	The world's largest museum 'Yuge Yugeen Bharat' will be built in which city	New Delhi
140.	Kerala Startup Mission has tied up with whom to promote fintech startups	IFSCA
141.	When is World Hepatitis Day celebrated annually	28th July
142.	Food delivery platform Swiggy has partnered with which bank to launch co-branded credit card	HDFC Bank
143.	In which state the Asian Youth and Junior Weightlifting Championship 2023 is being organized	Uttar Pradesh
144.	Who has been appointed as the next Ambassador of India to Syria	Irshad Ahmed
145.	Who is the director of Enforcement Directorate whose tenure has been extended	Sanjay Kumar Mishra
146.	What is the theme of World Hepatitis Day 2023	'One life, one liver'
147.	Who was recently honored with the Lokmanya Tilak National Award	PM Narendra Modi
148.	How many medals did India win in the Sri Lanka Athletics National Championship	14
149.	Which is the first Indian city to be a part of the	Bengaluru

	World Cities Culture Forum	
150.	In which city is the Think20 summit being organized under the G20 presidency of India	Mysore
151.	National Cooperative Consumers Federation of India has tied up with which e-commerce startup	Magicpin
152.	Which Indian won the gold medal in the 10 meter air rifle event at the World University Games	Aishwarya Pratap Singh Tomar

## 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;-

<b>1.General Knowledge</b>	<b>2.Law</b>
<ol style="list-style-type: none"><li>1. Current Affairs</li><li>2. G.K.MCQs</li><li>3. History of India and Indian Culture</li><li>4. Geography of India</li><li>5. Indian Polity</li><li>6. Current National Issues</li><li>7. Topic of Social Relevance with special reference to newly added 9 Social Acts</li><li>8. India and the World</li><li>9. Indian Economy</li><li>10. International Affairs and Institutions</li><li>11. Development in the field of:<ol style="list-style-type: none"><li>(a) Science and Technology</li><li>(b) Communications and Space</li></ol></li></ol>	<ol style="list-style-type: none"><li>1. Constitutional Law</li><li>2. Law of Evidence</li><li>3. Criminal Procedure Code</li><li>4. Code of Civil Procedure,</li><li>5. Indian Panel Code</li><li>6. Law of Contract</li><li>7. Partnership Act</li><li>8. Easements Act</li><li>9. Law of Torts</li><li>10. Transfer of Property Act</li><li>11. Principles of Equity ,</li><li>12. Law of Trust</li><li>13. Specific Relief Act</li><li>14. Hindu Law</li><li>15. Muslim Law</li><li>16. U.P. Revenue Code.</li><li>17. U.P. Municipalities Act 1916</li><li>18. U.P. Panchayat Raj Act 1947</li><li>19. U.P. Consolidation of Holdings Act, 1953</li><li>20. U.P. Urban (Planning and Development) Act, 1973</li></ol>
<b>3.CLAT</b> <ol style="list-style-type: none"><li>1. General Knowledge</li><li>2. A Guide for CLAT</li></ol>	

## **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 focus 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**