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Year – 2023

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nobody else knows

NO. 1 OF 2024

NEWSLETTER

January 2024

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1. Study Material-Law

Victim-Centric Justice in new Criminal Laws

The new criminal laws in India signify a departure from the colonial-era Indian Penal Code (IPC) of 1860, which primarily focused on punishment rather than justice. These laws were made by a foreign ruler to run his rule and govern its subjects.

One significant aspect to be noted is - the change in nomenclature of the Bill from Indian Penal Code, which would otherwise translate to Bharatiya Danda Sanhita, to Bharatiya Nyaya Sanhita. The change in the operative word from Danda (Punishment) to Nyaya (Justice) denotes a fundamental change in the basis of criminal prosecution- from penalising to delivering justice.

This shift is not merely semantic but embodies a transition from a punitive to a reformative theory of jurisprudence, with a newfound emphasis on victim-centric justice.

This marks a shift in its axis from Punitive theory of Jurisprudence to Reformative theory and ensures that justice is delivered to each stakeholder in the criminal justice system. The ease of Justice has been attempted to be ushered in through simple, consistent, transparent and accountable procedures and fair, time bound, evidence-based speedy trials for enforcement which will reduce the burden on courts and jails.

Historically, the IPC served the interests of British rulers, prioritizing the protection of their regime over the welfare of Indian citizens. The new laws mark a departure from this legacy. In the old laws, instead of giving priority to homicide and misbehaviour with women, priority was given to the protection of treasury, protection of railways and the safety of the British Crown. In new laws crimes against women and children, matters affecting the human body, security of the country's borders, crimes related to the Army, Navy and Air Force, electoral crimes, tampering with coins, currency notes and government stamps etc. have been kept first. The new criminal laws have been crafted in alignment with the spirit of the Indian Constitution.

The revamped legal framework aims at swift and transparent justice by introducing various measures. In order to ensure speedy justice through these laws, there are prescribed time limits for the police, lawyers and judges.

The incorporation of technology at every stage of crime-scene investigation and trial is a cornerstone of the reforms. This not only ensures transparency and accountability in police probes but also enhances the quality of evidence, safeguarding the rights of both victims and the accused.

Upon analysing, the reforms in the new criminal lawsare structured around three essential rights for victims: participatory rights, right to information, and right to compensation.

Building upon the recommendations from the various Law Commission Reports and the Justice Malimath Committee Report (2003) that focuses on ‘justice to victims’ and victimology as crucial areas of reform and made recommendations, suggested increasing victims’ participatory role and for better compensatory justice. Bharatiya Nagarik Suraksha Sanhita (BNSS) solidifies the role of victims in the criminal justice process.

As regards participatory rights, the BNSS introduces a provision akin to Section 321 of CrPC, allowing the prosecutor to withdraw a case with court consent.

Sec. 360 BNSS mandates the victim's participation, ensuring their voice is heard before such withdrawal. BNSS further expands the victim's right to information in crucial ways including free access to FIR, regular updates on the investigation within ninety days, and comprehensive details of the case through mandatory police reports, FIRs, and witness statements.

The BNSS has further institutionally recognised the right to get Zero FIRs registered under Sec. 173 BNSS. This eliminates the challenge of territorial jurisdiction as an obstacle for victims, ensuring that FIRs can be filed irrespective of the location of crime.

The victim-centric reforms, as embodied in the new criminal laws, herald a paradigm shift towards justice delivery rather than mere punishment. By empowering victims, ensuring their active participation, and leveraging technology, these reforms strive to create a legal framework that aligns with the constitutional principles of justice and fairness.

B. Important Cases January 2024

Important Supreme Court Cases
January 2024

S.N.	Subject	Case Reference
1.	High Court Chief Justices have no power to frame rules on post-retiral benefits to Former Judges	State of Uttar Pradesh Vs. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors., decided on 03-01-2024
2.	No conviction is possible under Sec. 364A IPC if prosecution doesn't prove abduction was coupled with ransom demand and life threat	Neeraj Sharma Vs. State of Chhattisgarh, decided on 03-01-2024
3.	'Custody' under Sec. 27 of Indian Evidence Act doesn't mean custody after formal arrest. It includes any kind of restraint or surveillance.	Perumal Raja @ Perumal Vs. State Rep. by the Inspector of Police, decided on 03-01-2024
4.	Tenant can't claim adverse possession against landlord. Tenancy is permissive possession.	Brij Narayan Shukla (D) Thr. Lrs. Vs. Sudesh Kumar @ Suresh Kumar (D) Thr. Lrs. & Ors., decided on 03-01-2024
5.	No case of rape by false promise of marriage when marriage was solemnised ultimately	Ajeet Singh Vs. State of Uttar Pradesh & Ors., decided on 03-01-2024
6.	Judicial Officers' Pay : Directs States to clear SNJPC arrears by Feb 29; Asks High Courts to set up committees to oversee	All India Judges Association Vs. Union of India and Ors., decided on 04-01-2024
7.	Accused doesn't lose a defence merely because that plea wasn't taken in Sec. 313 Cr.P.C. statement	Darshan Singh Vs. State of Punjab, decided on 04-01-2024
8.	Arbitral awards cannot be modified under Sections 34 and 37 of Arbitration and Conciliation Act	S.V. Samudram Vs. State of Karnataka and Anr., decided on 04-01-2024
9.	Factors for deciding remission applications	Bilkis Yakub Rasool Vs. Union of India and Ors., decided on 08-01-2024
10.	A Court cannot pronounce judgment in a suit under Order 8 Rule 10 merely on the	Asma Lateef & Anr. Vs. Shabbir Ahmad and Ors.,

	default of the defendant to file a written statement if the plaintiff doesn't prove his case.	decided on 12-01-2024
11.	Children from void marriage can't be denied share in their parent's property	Raja Gounder and Ors. Vs. M. Sengodan and Ors., decided on 19-01-2024
12.	While prosecuting a person for the offence of cheating punishable under Section 420 IPC, it is to be seen whether the deceitful act of cheating was coupled with an inducement leading to the parting of any property by the complainant. It would be impermissible under the law for a Judicial Magistrate to take cognizance of a supplementary charge-sheet submitted after further investigation if it doesn't contain any fresh oral or documentary evidence, would be impermissible under the law.	Mariam Fasihuddin & Anr. versus State by Adugodi Police Station & Anr., decided on 22-01-2024
13.	To sustain the offence of rape on the ground of false promise of marriage, it must be established that right from the inception, the consent of the woman was obtained based on the false promise	Sheikh Arif Vs. State of Maharashtra and Anr., decided on 30-01-2024
14.	A Magistrate, while issuing the summoning order, shall not act in a casual manner; rather they should be satisfied that there exists a sufficient ground for proceedings against the accused.	Sachin Garg Vs. State of Uttar Pradesh & Anr., decided on 30-01-2024

IN THE SUPREME COURT OF INDIA

State of Uttar Pradesh & Ors.
Vs.
Association of Retired Supreme Court and High Court Judges at Allahabad & Ors.
[Civil Appeal Nos. 23-24 of 2024 Special Leave to Appeal (C) Nos. 8575-8576 of 2023]

HEADNOTE – High Court Chief Justices have no power to frame rules on post-retiral benefits to Former Judges.

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

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1. Leave granted.

2. The present appeals arise from two orders of the Division Bench of the High Court of Judicature at Allahabad1 dated 4 April 2023 and 19 April 2023.2 The Impugned Orders have given rise to significant questions about the separation of powers, the exercise of criminal contempt jurisdiction, and the practice of frequently summoning government officials to court.

3. By its order dated 4 April 2023,3 the High Court directed the Government of Uttar Pradesh to inter alia notify rules proposed by the Chief Justice of the High Court pertaining to 'Domestic Help to Former Chief Justices and Former Judges of the Allahabad High Court' by the next date of hearing. The High Court further directed certain officials of the Government of Uttar Pradesh to be present before the court on the next date if the order was not complied with.

4. The State of Uttar Pradesh moved an application before the High Court to seek a recall of the Order dated 4 April 2023 highlighting legal obstacles in complying with the directions of the High Court. By its order dated 19 April

2023,4 the High Court held that the recall application was 'contemptuous' and initiated criminal contempt proceedings against various officials of the Government of Uttar Pradesh. The officials present in the court, including the Secretary (Finance) and Special Secretary (Finance) were taken into custody and bailable warrants were issued against the Chief Secretary and the Additional Chief Secretary (Finance).

I. Factual Background

5. The Impugned Orders arise from a writ petition instituted in 2011 before the High Court by the first respondent, the Association of Retired Supreme Court and High Court Judges at Allahabad. The petition inter alia sought an increase in the allowance granted to former judges of the High Court for domestic help and other expenses.

6. While the petition was pending before the High Court, a three-judge bench of this Court in P Ramakrishnan Raju vs. Union of India,5 decided a batch of cases pertaining inter alia to the post-retiral benefits payable to former judges of the High Courts. In its judgement dated 31 March 2014, this Court appreciated the scheme formulated by the State of Andhra Pradesh and recommended that other States also formulate similar schemes for post-retiral benefits to former judges of the High Courts, preferably within six months from the Judgement. The Court held:

"34. While appreciating the steps taken by the Government of Andhra Pradesh and other States who have already formulated such scheme, by this order, we hope and trust that the States who have not so far framed such scheme will formulate the same, depending on the local conditions, for the benefit of the retired Chief Justices and retired Judges of the respective High Courts as early as possible preferably within a period of six months from the date of receipt of copy of this order."

(emphasis supplied)

7. Subsequently, contempt petitions were instituted before this Court for noncompliance with the Court's decision in P Ramakrishnan Raju (supra). This Court directed all states to file affidavits detailing the steps taken to comply with the directions. By an Order dated 27 October 2015, reported as Justice V.S. Dave, President, the Association of Retired Judges of Supreme Court and High Courts vs. Kusumjit Sidhu and Others6, this Court closed the contempt proceedings against the State of Uttar Pradesh, noting that it had already framed a scheme in accordance with the Court's directions.

The Court further held that a slight variation from the yardstick in the Andhra Pradesh scheme is permissible keeping in mind the local conditions and directed that states that are paying less than the yardstick, shall consider upward revision at the 'appropriate stage and time'. The court held:

"State of Meghalaya, Manipur, Maharashtra, Goa, Mizoram, Punjab, Tamil Nadu, Karnataka, Andhra Pradesh, Sikkim, Arunachal Pradesh, Telangana, Uttar Pradesh, Madhya Pradesh, Tripura, Government of NCT of Delhi, Haryana, Uttarakhand, Rajasthan, Chhattisgarh, Kerala, Gujarat and Assam The counter-affidavits/responses filed on behalf of each of the aforesaid States indicate that a scheme has been framed in accordance with the directions of the Court.

While some of the States are paying more than what the State of Andhra Pradesh (Adopted as the yardstick by the Court) is paying by way of post-retirement allowances some others are affording lesser amount(s). A little variation from the yardstick can be understood in terms of the flexibility contemplated in paragraphs 33 and 34 of the judgment which enable the States to frame their respective schemes keeping in mind the local conditions.

As all the aforesaid States have framed their schemes, we direct that the contempt proceedings insofar as these states are concerned are closed. We also direct that such of the states where the allowances paid are lesser than the State of Andhra Pradesh, shall consider the necessity of an upward revision of such allowances at the appropriate stage and time."

(emphasis supplied)

8. The Government of Uttar Pradesh issued a Government Order dated 3 July 2018 and revised the post-retiral benefits for former judges of the High Court. The domestic help allowance payable to retired Chief Justices and Judges of the High Court was increased to Rs. 20,000/- (per month) for former Chief Justices and Rs.15,000/- (per month) for former judges.

Under this revised scheme, after the death of a former Chief Justice or judge, the surviving spouse would be entitled to receive Rs. 10,000/- and Rs 7,500/- per month, respectively for life. In 2022, the Government of Andhra Pradesh increased the allowance to Rs. 50,000 for former Chief Justices and Rs. 45,000 for former judges of the High Court. The first respondent preferred an application to amend the prayers in the writ petition and sought parity with the new scheme framed by the Andhra Pradesh government.

9. From the submissions of the parties and documents on the record, it appears that sometime between 2019 and 2023, the Chief Justice of the High Court proposed certain 'Rules for providing Domestic Help to Former Chief Justices

and Former Judges of Allahabad High Court'.7 The preamble to the Rules indicates that they were framed by the Chief Justice in the exercise of his purported powers under Article 229 of the Constitution. The operative portion of the Rules, which lie at the heart of the present case, follows:

"In exercise of the powers conferred by Article 229 of the Constitution of India, the Chief Justice of the High Court of Judicature at Allahabad is pleased to frame the following rules for providing the domestic help to former Chief Justices and former Judges of the High Court.

"6. Selection of Domestic Help: The former Chief Justice or former Judge may at her, or his discretion select a person to be engaged as a Domestic Help.

7. Contractual appointment: The engagement of a Domestic Help under Rule 6 shall be on a contractual basis and will be available until the former Chief Justice or former Judge is entitled to the benefit of the facility under Rule 5 and until the Domestic Help performs duties satisfactorily subject to the certification of the former ChiefJustice or former Judge.

8. Reimbursement: Upon engagement, the monthly remuneration payable to the Domestic Help shall be reimbursed by the High Court to the former Chief Justice or former Judge after completion of the month in each month.

9. Wages: The wages to be reimbursed by the High Court to the former Chief Justice or former Judge for the engagement of the Domestic Help shall be equivalent to the salary payable to a Class-IV employee of the High Court in the grade of a peon or equivalent at the minimum of the scale of pay inclusive of dearness allowance."

(emphasis supplied)

10. In the above factual background, the High Court heard the writ petition, summoned officials of the Government of Uttar Pradesh and passed various orders, including the two Impugned Orders. The orders of the High Court passed before the Impugned Orders are pertinent to understand the course of events before the High Court while adjudicating the subject writ petition.

11. On 5 January 2023, the High Court allowed the first respondent's amendment application. The High Court directed the Principal Secretary, Law and Justice, Government of Uttar Pradesh to appear in-person along with the records to "expedite the matter". The High Court held:

"On specific query, the learned Standing Counsel submits that the scheme pursuant to the direction of the Supreme Court is already there and the amount is

being duly paid by the State Government. However, the quantum of amount towards the benefits being granted to the retired Judges has not been revised since then. It is submitted that the matter for revision, if any, is to be considered at the highest level.

Be that as it may, in order to expedite the matter, before any further order is passed, it would be appropriate that the Principal Secretary, Law and Justice, Government of Uttar Pradesh, shall appear along with the records and apprise the Court of the stand of the State Government in the matter. Amendment application is allowed. Learned counsel for the petitioner to file an amended copy of the writ petition."

(emphasis supplied)

12. When the writ petition was heard on 12 January 2023, the Principal Secretary, Law and Justice, Government of Uttar Pradesh was present before the High Court. Further, it was submitted before the High Court that the Rules proposed by the Chief Justice were pending consideration, certain queries were made to the High Court and the matter would be placed before the Cabinet for approval. The High Court listed the case for 19 January 2023 and noted that "on the said date, it is expected that the queries/clarification would be addressed by the concerned committee." (of the High Court).

13. On 19 January 2023, the counsel on behalf of the High Court submitted that while the queries about the Rules were resolved by the High Court, the State Government was raising queries in a piecemeal manner to keep the matter pending for a long period. The Additional Advocate General submitted that the Rules involve an amendment to the existing scheme and would be examined by the State Government expeditiously.

14. On the next date, 23 March 2023, the High Court expressed its displeasure about the delay by the State Government in notifying the Rules and revising the post-retiral benefits granted to former judges of the High Court. The High Court stated that it is "constrained to summon the Finance Secretary, Government of UP and all the associated Officers dealing with the file along with the Principal Secretary (Law), Government of UP to appear along with the records on the next date fixed."

15. On 4 April 2023, the High Court passed the First Impugned Order. As directed, the Special Secretary, Finance and Principal Secretary, Law, Government of Uttar Pradesh were present. The High Court noted the submission by the Principal Secretary, Law that the matter was placed before the Finance Department on six occasions, but approval was not accorded.

On the other hand, the Secretary, Finance submitted that the Rules are beyond the competence of the Chief Justice and do not fall within the ambit of Article 229 of the Constitution. The High Court observed that the objection with regard to the competence of the Chief Justice was being raised for the first time before the High Court. The High Court observed that:

"5. On perusal of the record with the assistance of the learned Additional Advocate General, we do not find any such objection which is being pressed before this Court. In other words, the attitude of the officers of the Finance Department is not only contemptuous, but at the same time their stand/submission with regard to the competence of the Hon'ble Chief Justice/ Article 229 is not reflected from the record"

16. The High Court further recorded the submissions of the counsel for the High Court that the Finance Department was attempting to stall all the recommendations of the High Court in the recent past and that the objections being raised by the Finance Department should have been raised with the Law Department. The High Court observed:

"6. [...] The audacity of the officers to raise the issue of competence of the Hon'ble Chief Justice, is not only unbecoming of a civil servant, but at the same time contemptuous. These objections are not available on record, nor have it been brought to the notice of the Law Department for legal advice. The Government Order granting benefits to the retired Judges is already in place, the proposal of the High Court merely seeks to incorporate the same by amending, and/or, in supercession of the earlier Government Order. Article 229 is unnecessarily being Â·pressed with the sole purpose of creating hindrance when there is none.

17. The High Court observed that the Rules were pursuant to the assurances given by the State of Uttar Pradesh in P Ramakrishnan Raju (supra) and Justice V.S. Dave (supra). Further, the High Court recorded that the Secretary, Finance conceded that the Rules could be notified by way of a Government Order amending or superseding the Government Order dated 3 July 2018. The High Court relied on this purported 'no objection' and directed as follows:

"22. Secretary, Finance, fairly states that the Finance Department would have no objection in the event the Government Order to that effect is issued incorporating the proposals submitted by the High Court in the form of Rules. He further submits that the Finance Department does not have objections with regard to the financial implications in according approval to the proposed Rules/Guidelines.

25. Having regard to the categorical stand of the Principal Secretary Law and Secretary Finance Department, the following directions are issued:

1. The Rules/Guidelines as proposed by the High Court shall be notified by amending/incorporating/superceeding the Government Order dated 3 July 2018, forthwith;

2. The Finance Department would accord approval within a week thereafter;

3. The notification of the Government Order and the approval, thereof, shall be placed on record on the date fixed;

4. In the event the order is not complied, Additional Chief Secretary, Finance and the officers present today shall appear on the date fixed."

(emphasis supplied)

18. The State of Uttar Pradesh filed a recall application before the High Court on 19 April 2023 seeking a recall of the First Impugned Order on the grounds that:

a. The High Court did not have the power to pass the above directions;

b. The rules do not fall within the ambit of Article 229 of the Constitution;

c. The direction for the Rules to be notified and the Finance Department to accord approval thereafter cannot be complied with as the concurrence/advice of the Finance Department must be taken before notifying the rules; and

d. Only the Parliament and the Union government are competent to frame legislation/rules pertaining to post-retiral benefits for former judges of the High Courts.

19. On 19 April 2023, the High Court passed the Second Impugned Order. The High Court noted that the Additional Chief Secretary (Finance) was not present, while the Secretary (Finance) and the Special Secretary (Finance), who also appeared on the previous date, were present. The High Court noted that on the date of the First Impugned Order, the officials of the Finance Department categorically stated that they have "no objection" if the Government Order issued in 2018 is modified or amended. The recall application, according to the High Court, constituted "ex-facie criminal contempt", as it did not indicate any valid reasons for non-compliance with the First Impugned Order. The High Court held:

"30. [..] From perusal of the entire affidavit, it is not clear as to which part of the order the officers intend to recall, rather, the prayer made therein is to recall the entire order, but no reason has been assigned as to how the order is obnoxious on the whole. In other words, the affidavit that has been filed today is false, misleading and averments, therein, constitute ex-facie criminal contempt.

31. On specific query, it is informed by theÂ· officers present in the Court, on perusal of the record, that pursuant to the order dated 4 April 2023, the Chief Secretary had convened a meeting of the officers on 13 April 2023. The Advocate General had opined to comply the order. Further, the office of the Law Department on 6 April 2023, had forwarded the proposed Government Order/amendment to confer benefits upon the retired Judges for approval of the Finance Department. The proposal is not to frame Rules under Article 229 of the Constitution.

These facts have been suppressed. As per the stand of the officers, it is only after approval by the Finance Department, submitted by the Law Department, the matter would be placed before the Cabinet. In this backdrop, affidavit is not only false but also misleading as the affidavit does not disclose as to why the proposal submitted by the Law Department was not approved or the reason for not approving it, rather, frivolous issues have been raised with regard to the procedure to be adopted while notifying the Government Order or the issue of Article 229 of the Constitution.

Affidavit does not clarify as to why the Government Order as proposed by the Law Department was not approved by the Finance Department till date. The approach of the officers of the Finance Department is writ large, that the proposal submitted by the High Court, would not be complied and in their overzealous approach and adamant attitude are opposing compliance of the writ court order without any valid basis.

32. In the circumstances, having regard to the averments made in the affidavit and the conduct of the officers suppressing material facts and misleading the Court, prima facie, have committed criminal contempt of the Court."

(emphasis supplied)

20. The High Court directed that the officials present in the court, the Secretary (Finance) and the Special Secretary (Finance) be taken into custody and produced before the Court on the next day for framing of charges. Further, the Court issued bailable warrants against the Chief Secretary and the Additional Chief Secretary (Finance) to ensure their presence before the Court on the next day.

21. The above Orders dated 4 April 2023 and 19 April 2023 have been challenged by the State of Uttar Pradesh by the present appeal. By an interim order dated 20 April 2023, this Court stayed the operation of the Impugned Orders and the officials of the Government of Uttar Pradesh, who were taken into custody were directed to be released. This Court directed:

"4 Till the next date of listing, there shall be a stay" of the operation of the orders of the Division Bench of the High Court of Judicature at Allahabad dated 4 April 2023 and 19 April 2023.

5 The officers of the Government of Uttar Pradesh, who have been taken into custody, shall be released forthwith

6 The Registrar (Judicial) of this Court shall communicate the order of this Court both telephonically and on the email to the Registrar General of the High Court of Judicature at Allahabad for immediate compliance."

22. We have heard Mr Tushar Mehta, Solicitor General with Mr K.M. Natraj, Additional Solicitor General appearing on behalf of the Union of India, Mr Nishit Agrawal, counsel appearing on behalf of the Association of Retired Supreme Court and High Court Judges at Allahabad and Ms Preetika Dwivedi, counsel appearing on behalf of the High Court of Judicature at Allahabad on the administrative side.

23. Having heard the rival submissions advanced by the parties and examined the record, the following broad points of law arise for our consideration:

(i) Whether the High Court had the power to direct the State Government to notify Rules proposed by the Chief Justice pertaining to post-retiral benefits for former Judges of the High Court;

(ii) Whether the power of criminal contempt could be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall was 'contemptuous'; and

(iii) The broad guidelines that must guide courts when they direct the presence of government officials before the court.

II. The High Court did not have the power to direct the notification of the Rules proposed by the Chief Justice

24. The preamble to the Rules proposed by the Chief Justice expressly states that the Rules have been made pursuant to Article 229 of the Constitution. Article 229 pertains to 'officers and servants' of the High Courts. Article 229(2) provides

that the conditions of service of officers and servants of the High Court shall be as may be prescribed by rules made by the Chief Justice of the High Court or any other Judge or officer authorized by the Chief Justice for the purpose. The proviso to the Article mandates that the rules made under Article 229(2) require the approval of the Governor of the State, in so far as they relate to salaries, allowances, leave or pensions. The provision reads as follows:

229. Officers and servants and the expenses of High Courts. -

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund

(Emphasis Supplied)

25. Article 229(2) pertains only to the service conditions of 'officers and servants' of the High Courts and does not include Judges of the High Court (both sitting and retired judges). The Chief Justice does not have the power, under Article 229, to make rules pertaining to the post-retiral benefits payable to former Chief Justices and judges of the High Court. Therefore, the Rules proposed by the Chief Justice, in the present case, do not fall within the competence of the Chief Justice under Article 229. The reliance placed on the provision in the preamble to the Rules is misplaced.

26. It is a settled principle of law that merely because reference is made to a wrong provision of law while exercising power, that by itself does not vitiate the exercise of power so long as the power of the authority can be traced to another source of law. However, in the Rules, the Impugned Orders or in its submissions

before this Court, the High Court has not brought to the fore any other source of law which empowers the Chief Justice to frame binding rules for post-retiral benefits of former judges of the High Court. In the Impugned Orders, the High Court merely adverts to the judgements of this Court in P Ramakrishnan Raju (supra) and Justice V.S. Dave (supra) to justify the imposition of the Rules on the state government.

27. In our considered opinion, the reliance on the judgements of this Court to justify the promulgation of Rules by the Chief Justice is based on an erroneous and over-expansive interpretation of the directions of this Court. As stated above, this Court in P Ramakrishnan Raju (supra) appreciated the scheme in Andhra Pradesh and observed that the Court "hopes and trusts that the States who have not so far framed such scheme will formulate the same, depending on the local conditions".

Further, in Justice V.S. Dave (supra), the Court closed the contempt proceedings against the State of Uttar Pradesh noting that the state had already framed a scheme for post-retiral benefits. The Court held that slight variations from the scheme adopted in Andhra Pradesh were permissible and flexibility was contemplated in P Ramakrishnan Raju (supra) for states to frame their respective schemes. Further, the court directed that "states where the allowances paid are lesser than the State of Andhra Pradesh, shall consider the necessity of an upward revision of such allowances at the appropriate stage and time."

28. There is no iota of doubt that in the above judgements, this Court directed the state governments to frame schemes for post-retiral benefits. The above judgements of this Court did not grant the Chief Justices of High Courts, acting on the administrative side, the power to frame rules about post-retiral benefits for former judges that must mandatorily be notified by the State Governments. Further, the Court recognized the need for flexibility and granted state governments the leeway to duly account for local conditions.

29. Further, the High Court's conduct on the judicial side in the Impugned Orders was also erroneous. The High Court, acting under Article 226 of the Constitution, cannot usurp the functions of the executive and compel the executive to exercise its rule-making power in the manner directed by it.

Compelling the State Government to mandatorily notify the Rules by the next date of hearing, in the First Impugned Order, virtually amounted to the High Court issuing a writ of mandamus to notify the Rules proposed by the Chief Justice. Such directions by the High Court are impermissible and contrary to the separation of powers envisaged by the Constitution. The High Court cannot

direct the State Government to enact rules on a particular subject, by a writ of mandamus or otherwise.

30. The High Court, acting on the judicial side, could not compel the State Government to notify Rules proposed by the Chief Justice in the purported exercise of his administrative powers. Policymaking by the government envisages various steps and the consideration of various factors, including local conditions, financial considerations, and approval from various departments. The High Court cannot use its judicial powers to browbeat the State Government to notify the Rules proposed by the Chief Justice.

As the Rules were promulgated by the Chief Justice without competence, at best, they amounted to inputs to the State Government. The State Government was free to constructively consider the desirability of the Rules within its own decision-making apparatus. Therefore, the High Court acted beyond its jurisdiction under Article 226 by frequently summoning officers to expedite the consideration of the Rules and issuing directions to notify the Rules by a fixed date, under the threat of criminal contempt.

III. Criminal Contempt cannot be initiated against a party for availing legal remedies and raising a legal challenge to an order

31. The Contempt of Courts Act, 1971 defines 'civil contempt' and 'criminal contempt' in the following terms:

2. Definitions.- In this Act, unless the context otherwise requires, -

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

32. The Act makes a clear distinction between two types of contempt. 'Wilful disobedience' of a judgement, decree, direction, order, writ, or process of a court or wilful breach of an undertaking given to a court amounts to 'civil contempt'. On the other hand, the threshold for 'criminal contempt' is higher and more stringent. It involves 'scandalising' or 'lowering' the authority of any court; prejudicing or interfering with judicial proceedings; or interfering with or obstructing the administration of justice.

33. In the second Impugned Order, the High Court held that the actions of the officials of the Government of Uttar Pradesh constituted criminal contempt as there was no "valid reason" to not comply with the earlier Order. Even if the High Court's assessment is assumed to be correct, non-compliance with the First Impugned Order could at most, constitute civil contempt. The High Court failed to give any reasoning for how the purported non-compliance with the First Impugned Order was of the nature to meet the standard of criminal contempt. The High Court acted in haste by invoking criminal contempt against the officials of the Government of Uttar Pradesh and directing for them to be taken into custody.

34. In our considered opinion, however, even the standard for civil contempt was not met in the facts of the present case. In a consistent line of precedent, this Court has held that while initiating proceedings of contempt of court, the court must act with great circumspection. It is only when there is a clear case of contemptuous conduct that the alleged contemnor must be punished. The power of the High Courts to initiate contempt proceedings cannot be used to obstruct parties or their counsel from availing legal remedies.

35. In the present case, the State of Uttar Pradesh was availing its legitimate remedy of filing a recall application. From a perusal of the record, it appears that the application was filed in a bona fide manner. Not only had the Finance Department raised its concerns regarding the competence of the Chief Justice before the High Court but its previous conduct, including file notings of the department and letters to the Central Government, indicate that this objection had been raised by them in the past. The legal position taken by the Government in the recall application was evidently based on their desire to avail their legal remedy and not to willfully disobey the First Impugned Order.

36. The objections raised by the Government of Uttar Pradesh with regard to legal obstacles in complying with the First Impugned Order were never adjudicated by the High Court. Instead, the High Court regarded the objection as an attempt to obstruct justice, without even a cursory attempt to provide reasons. Applying the standards delineated above, it is clear that the actions of the

government of Uttar Pradesh did not constitute even 'civil contempt' let alone 'criminal contempt'.

The circumstances most definitely did not warrant the High Court acting in haste, by directing that the officials present before the court be taken into custody. This summary procedure, although, permitted under Section 14 of the Contempt of Courts Act cannot be invoked as a matter of routine and is reserved for only extraordinary circumstances.

37. Such summary procedure, as has been held by this Court, in Leila David v. State of Maharashtra,8 can only be invoked in exceptional cases, such as instances where:

"36. after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behavior, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and overawe the Court.

This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as license for indulging in indecorous behavior and making scandalous allegations not only against the judiciary but those holding the highest positions in the country."

No such situation prevailed in the present case. Therefore, the invocation of criminal contempt and taking the government officials into custody was not warranted.

IV. Summoning of Government Officials before Courts

38. Before concluding, we must note the conduct of the High Court in frequently summoning officials of the Government of Uttar Pradesh. The appearance of government officials before courts must not be reduced to a routine measure in cases where the government is a party and can only be resorted to in limited circumstances. The use of the power to summon the presence of government officials must not be used as a tool to pressurize the government, particularly, under the threat of contempt.

39. The Court must also refrain from relying on mere undertakings by government officials in court, without consent on affidavit or instructions to law officers such as the Attorney General, Solicitor General, or the Advocate Generals of the states. Courts must be cognizant of the role of law officers before summoning the physical presence of government officials.

40. Under Article 76 of the Constitution, the Attorney General is appointed by the President and serves in an advisory capacity, providing legal counsel to the Union Government. The responsibilities of the Attorney General include advising on legal matters, performing assigned legal duties, and representing the government in various courts. Similarly, under Article 165 of the Constitution, the Advocate General is appointed by the Governor of each state.

The Advocate General provides legal advice to the state government, performs legal duties as assigned, and discharges functions conferred by the Constitution. Several other law officers also represent the Union and the states including the Solicitor General, Additional Solicitor General, and Additional Advocates General for the states. They inter alia obtain instructions from the various departments of the government and represent the government before the courts.

41. Law officers act as the primary point of contact between the courts and the government. They not only represent the government as an institution but also represent the various departments and officials that comprise the government. This Court in Mohd. Iqbal Khandaly v. Abdul Majid Rather,9 had occasion to observe that there was no justification to direct the Additional Advocate General, not to appear for the appellant in a contempt petition and to direct that he should merely assist the court.

42. In the present case, instead of adjudicating on the legal position taken by the Government of Uttar Pradesh on affidavit or hearing the Additional Advocate General present in the court, the High Court repeatedly summoned government officials. The government was also directed to notify the Rules based on a "no objection" from the officials of the Finance Department purportedly made before the High Court, which is now contested by the state.

Such situations can be avoided in cases where submissions on affidavit can be sought and the law officers of the Government are present in court, with instructions. The issuance of bailable warrants by the High Court against officials, including the Chief Secretary, who was not even summoned in the first place, further indicates the attempt by the High Court to unduly pressurise the government.

43. This Court in State of Uttar Pradesh v. Manoj Kumar Sharma,10 frowned upon the frequent summoning of government officials "at the drop of a hat". This Court held:

"17. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the

officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

18. The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review, but summoning officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.

21. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling the public officers. The presence of public officer comes at the cost of other official engagement demanding their attention.

Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him get delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The court proceedings also take time, as there is no mechanism of fixed time hearing in courts as of now.

The courts have the power of pen which is more effective than the presence of an officer in court. If any particular issue arises for consideration before the court and the advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond."

(emphasis supplied)

44. Courts must refrain from summoning officials as the first resort. While the actions and decisions of public officials are subject to judicial review, summoning officials frequently without just cause is not permissible. Exercising restraint, avoiding unwarranted remarks against public officials, and recognizing the functions of law officers contribute to a fair and balanced judicial system.

Courts across the country must foster an environment of respect and professionalism, duly considering the constitutional or professional mandate of law officers, who represent the government and its officials before the courts. Constantly summoning officials of the government instead of relying on the law officers representing the government, runs contrary to the scheme envisaged by the Constitution.

45. Enriched by the valuable insights shared in discussions with my esteemed colleagues Justice J.B. Pardiwala and Justice Manoj Misra, we have framed a Standard Operating Procedure (SOP) specifically addressing the appearance of Government Officials before the courts. At its core, this SOP emphasizes the critical need for courts to exercise consistency and restraint. It aims to serve as a guiding framework, steering courts away from the arbitrary and frequent summoning of government officials and promoting maturity in their functioning. The SOP is set out below:

Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court Proceedings

This Standard Operating Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court.

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

a. Evidence-based Adjudication: These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.

b. Summary Proceedings: These proceedings, often called summary proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

c. Non-adversarial Proceedings: While hearing nonadversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.

1.2 Other than in cases falling under para 1.1(a) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3 The presence of a government official may be directed, inter alia, in cases where the court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4 The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for by the court, the court should allow as a first option, the officer to appear before it through video conferencing.

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials:

In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 Scheduled Time Slot: The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 The conduct of officials: Government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4 The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decisionmaking by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe, as per the specifics of the case.

4.2 If an order has already been passed, and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2 Preliminary Determination of Contempt: In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3 Notice and Subsequent Actions: Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 Procedure when personal presence is directed: In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.

5.5 Addressing Non-Compliance: The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.

46. In a nutshell, the conclusions reached in this Judgement are as follows:

a. The High Court did not have the power to direct the State Government to notify Rules proposed by the Chief Justice pertaining to post-retiral benefits for former Judges of the High Court. The Chief Justice did not have the competence to frame the rules under Article 229 of the Constitution. Further, the High Court, acting on the judicial side, does not have the power to direct the Government to frame rules proposed by it on the administrative side.

b. The power of criminal contempt could not be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall of the First Impugned Order was 'contemptuous'. The actions of the officials do not meet the standard of both 'criminal contempt' and 'civil contempt'.

c. The conduct of the High Court in frequently summoning government officials to exert pressure on the government, under the threat of contempt, is impermissible. Summoning officials repeatedly, instead of relying on the law officers representing the government or the submissions of the government on affidavit, runs contrary to the scheme envisaged by the Constitution.

d. The SOP on Personal Appearance of Government Officials in Court Proceedings framed by this Court in Para 45 of this Judgement must be followed by all courts across the country. All High Courts shall consider framing rules to regulate the appearance of Government officials in court, after taking into account the SOP which has been formulated above.

47. Both the Impugned Orders dated 4 April 2023 and 19 April 2023 are set aside and the appeals are disposed of. The High Court is at liberty to hear the writ petition, in view of the observations made in this judgement.

48. The Registry is directed to communicate the judgment to the Registrar General of every High Court.

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

.....CJI. [Dr. Dhananjaya Y. Chandrachud]

.....J. [J. B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

January 03, 2024

1 "High Court"

2 "Impugned Orders"

3 "First Impugned Order"

4 "Second Impugned Order"

5 Writ Petition (Civil) No. 521/2002

6 Contempt Petition (Civil) Nos. 425-426 of 2015.

7 "Rules"

8 (2009) 10 SCC 337

9 (1994) 4 SCC 34.

10 (2021) 7 SCC 806.

IN THE SUPREME COURT OF INDIA

Neeraj Sharma
Vs.
State of Chhattisgarh

[Criminal Appeal No. 1420 of 2019]

Ashwani Kumar Yadav
Vs.
State of Chhattisgarh

[Criminal Appeal No. 36 of 2024
@ SLP (Criminal) No. 5676 of 2021]

HEADNOTE – No conviction is possible under Sec. 364A IPC if prosecution doesn't prove abduction was coupled with ransom demand and life threat

JUDGMENT

Sudhanshu Dhulia, J.

1. Leave granted.

2. Both these appeals arise out of a common judgment and order dated 26.06.2018 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.200 of 2015, which has dismissed the Criminal Appeal of the present appellants, upholding the conviction and sentence of the trial court. The two appellants were convicted for offences under Sections 307/120B, 364-A and 392/397 and were sentenced, inter alia, for life imprisonment under Section 364A Indian Penal Code, 1860 (for short 'IPC'). The third accused in this case, called Ravi Kumar Dwivedi, was acquitted by the trial court.

3. The case of the prosecution is that appellants had abducted one Arjit Sharma (PW-6), a Class 12th student of KPS School, Durg. The abduction, as per the prosecution, was for ransom, and a dastardly attempt was also made by the accused to kill the victim, although the victim miraculously escaped, but not before sustaining grievous injuries, which eventually led to the amputation of his right leg. The complainant/victim (PW-6) was at the relevant time residing as a paying guest in the house of Smt. Seema Singh (PW-7) at Priyadarshni Nagar, Durg.

The accused, Neeraj Sharma and complainant were known to each other and on 02.01.2013, the two decided to go on a motorcycle ride to Nehru Nagar and

Yugandar College, Rajnandgaon. The complainant was picked from his guest house by the two accused i.e., Neeraj Sharma and Ashwani Kumar Yadav and the three took off on their motorcycle to a place called "Doundilohara". At about 1:00 am in the night when the complainant was trying to ease himself, the two accused made an attempt to kill him by throttling his neck by the clutch wire of the motorcycle.

As a result, the complainant fell on the ground unconscious and the appellants thinking that the complainant had died, poured petrol on his body and set him on fire. As per the prosecution case the body was set on fire, but before setting the body on fire, the complainant/victim's mobile phone and cash of Rs.5000/- (Rupees Five Thousand only) were looted from him, by the two accused Neeraj Sharma and Ashwani Kumar Yadav.

4. The complainant, however, was not dead, but as it turned out managed to escape from the scene and was later rescued by strangers whom he met on his way while escaping who helped him call an ambulance and he was taken to Doundilohara Hospital from where he was referred to Rajnandgaon and ultimately to Sector -9 Hospital, Bhilai. While he was at Doundilohara hospital, the doctor (PW-4) who had examined the complainant had also informed the Police and therefore a "Dehati Nalishi"1 (Ex.P/12) was recorded on 03.01.2013. The doctor PW-4 (Jai Kumar Chunarkar) who had examined the complainant/victim at Doundilohara hospital, notes the following burn injuries in his report (Ex.P/09).

"Injured had worn underwear of dark chocolate colour, which was not burnt and smell of skin burning was emitting from his entire body and he was in semi-conscious condition. He was very restless and he had complaint of plain and burn on the burning spots."

"Burn injuries were found on frontal and backside of both legs of the injured and skin of that spots had peeled out from surface. Burn injuries and many burning blisters on the lower portion of his belly and burn injury was on the waist and burn injury was on the upper portion of right side on the chest and a ligature mark like a lining was present on the frontal portion of neck of the injured, which was in light red colour, it had length of 122 to 14 cms and abrasion injuries were found on the frontal portion of his neck which had size of 3x2, 2x2 and 2x2 cms respectively. In this connection he had submitted his Report (exhibit P-9)."

There were first degree burn injuries on the body of the victim as the burnt area was 45% to 48% of his body. Statement of the victim (PW-6) was recorded before a Nayab Tehsildar on 04.01.2013 at 12 noon. The overall circumstances

under which this statement was recorded makes it an important piece of evidence. We must also remember that this is a statement given by an eighteen year old boy who has just come out of a harrowing incident where a dastardly attempt was made on his life. He is also grievously injured and apparently had consulted no one before giving this statement before an Executive Magistrate.

The veracity of this statement should not be in doubt. He states how he was taken on a motorcycle by Neeraj Sharma and Ashwani Kumar Yadav and how he was asked to consume alcohol on the way and then at 1:00 AM in the night, how the two accused first tried to strangulate him with clutch wire and later set his body on fire, thinking he is dead. It is important here to note that there is no mention here of any demand or talk of ransom.

5. The police after completing its investigation filed its Chargesheet against the three accused under Sections 120B, 364A, 307, 392/397 and in the alternative section 394 of IPC. As it was a Sessions triable offence, it was committed to Sessions from where it went to First Additional Sessions Judge Balod, who ultimately framed charges on 15.04.2013 under Sections 364A, 307, 120B, 392, 397 and in the alternative 394 of IPC against all the accused persons i.e., Neeraj Sharma, Ashwani Kumar Yadav and Ravi Kumar Dwivedi.

The prosecution examined in all 11 witnesses and placed several exhibits before the Court. The accused pleaded not guilty and faced trial. The Trial Court passed its Judgement dated 03.01.2015 by which the accused appellants were convicted for offences under sections 307/120B, 364A and 392/397 IPC for which they were sentenced to life imprisonment inter alia for the major offence under section 364-A IPC which has also been upheld by the High Court.

6. While issuing notice in the Special Leave Petition on 30.11.2018 this Court in the case of Neeraj Sharma in fact issued a limited notice to his conviction under section 364-A while confirming his conviction under sections 307 read with 120B along with sections 392 read with 397 of IPC. The said order is produced below:

"We do not find any good ground warranting interference with the conviction of the petitioner under Section 307 IPC read with 120 (B) and Section 392 IPC read with 397. Issue notice limited to the conviction under Section 364A returnable within eight weeks."

All the same nothing of this nature has been observed by this Court while issuing notice in the case of Ashwani Kumar Yadav which was issued on 02.08.2021. As far as an attempt to murder and robbery are concerned, we have no doubt in our mind that the prosecution has been able to establish its case

beyond a reasonable doubt. At the same time, we have our doubts about the conviction of the accused under 364- A of the IPC. In fact, this doubt was also in the mind of this Court, at least in the case of Neeraj Sharma, as this Court has issued a limited notice as only to the applicability of 364-A in the case.

7. The most important witness in this case is the complainant himself. He is also an injured witness. The injuries sustained by him in the incident match the case of the prosecution. An attempt was made by the two accused to dispose of the body of the victim by burning the body. There were burn injuries on both his legs. The strong ligature mark on his neck was again significant as it is the case of the prosecution that the two accused had tried to strangulate him with the clutch wire. The condition of the victim was precarious to say the least, and he gave a statement before the Executive Magistrate, B.K. Verma who was the Nayab Tehsildar and Executive Magistrate, Durg, he said:

"At 6.30-7.00 hrs in the evening Neeraj Sharma and Ashwini Yadav came to me and said that lets go to Youganthar College Rajnandgaon. I had not seen Youganthar College so I went along with them in motor cycle to see the college."

He also said,

"In the night of 3rd at 1.30 hrs there is a plant towards Balod I do not know its name, near to that, Neeraj Sharma and Ashwini Yadav first strangulated me with clutch wire I had stopped my breath they thought that me dead, then set me fire by pouring petrol."

8. Apart from this, the veracity of the incident is further established by the deposition of Santosh Shukla (PW-1), who was the first person in the Bhilai Plant who saw the complainant in a burnt condition and who inquired from him as to what led to his injuries and was informed that these injuries were caused by his friends, and his money was also looted by them. PW-4, Dr. Jai Kumar Chunarkar, was the first to medically examine the complainant at Doundilohara Hospital.

He had recorded burn injuries on his body which we have already referred above. Praneet Sharma (PW-5), is the father of the complainant who stated that on the midnight of 03.01.2013, he was informed by Aman Singh, that his son Arijit Sharma is not well and his son has been hospitalized at Sector -9 Hospital, Bhilai and when he reached the hospital, he saw his son in burnt condition and in severe pain. His son informed him that the two appellants were the ones who tried to kill him.

He also said that at 12 noon on 03.01.2023 he received a phone call from the mobile number 7869590607, where the caller demanded a sum of Rs.8,00,000/- as ramson for the release of his son, Arijit Sharma. When he said that his son is in hospital with him and he would file a complaint against the caller, the phone got disconnected. This part of the statement of this witness (PW-5) who is the father of the complainant/injured, as regards the demand of ransom, however, has not been established in any manner.

The complainant himself was examined as PW-6 who said in his examination in chief that he was staying in Bhilai as paying guest and on 02.01.2013 the accused Neeraj Sharma who was known to him called on his mobile phone and asked him to come to Nehru Nagar, Bhilai, from where they were supposed to go somewhere on a motorbike. After informing his land lady, he went to meet Neeraj Sharma at Nehru Nagar. Neeraj Sharma arrived after a few minutes on a motorcycle with Ashwani Kumar Yadav riding their pillion. The three went on this motorcycle towards Yugandar College and on their way, they also consumed liquor.

They had also met Rahul, the brother of Neeraj Sharma, on their way. Past midnight, he requested Neeraj Sharma to stop the vehicle, as he wanted to ease himself and when the complainant was talking to Neeraj Sharma, the other accused Ashwani Kumar Yadav, came from behind and tied clutch wire around his neck and then both Ashwani Kumar Yadav and Neeraj Sharma made an attempt to strangulate him with the clutch wire. As a result, he fell down semi-conscious and he was thought to be dead by the two assailants who then poured petrol on him.

He also heard Neeraj Sharma and Ashwani Kumar fetching petrol from their motorcycle. Neeraj Sharma also took away Rs.5000/- from his purse, and his cell phone. Later petrol was poured on him and then he was set on fire. He somehow escaped and reached the nearby Bhilai plant and he informed the guard about the incident and gave the number of his landlord to him and subsequently ambulance was called and he was sent to the hospital. This witness was cross-examined at length by the defence counsel but nothing has come out which may cast a doubt on any of his statements.

9. PW-7 is the land lady Seema Singh, where the complainant was staying as a paying guest who also testified against the accused. She has said that the complainant had informed her that he is going with his friend towards another place on 02.01.2013 for which he sought her permission. The mobile phone was traced by the police belonged to one of the accused Ashwani Kumar Yadav. The police during their investigation arrested Neeraj Sharma and Ashwani Kumar

Yadav on 03.01.2013 and their Hero Honda Motorcycle and Mobile Phones were recovered.

The prosecution story therefore as far as abduction and attempt to murder is concerned can hardly be in doubt. The prosecution has been able to prove its case beyond a reasonable doubt. The most important witness here is the complainant himself, who is an 18-year-old boy, studying at the relevant time in a college near Bhilai, who trusted his friends, not aware that he is being taken by deceit by his friends who had planned his murder. PW-6 is also an injured witness.

10. The first doctor who had examined PW-6 was Dr. Jai Kumar Chunarkar (PW-4), who works at the District Hospital at Balod. He had examined the injured complainant in the early hours of morning on 03.01.2013. His observation as to the injuries of PW- 6 and his general condition are as follows :

"Opinion:- Burn injuries were found over the body of the patient, which were of durmel peed burn nature, which expressed the first degree burn. The area of burnt was approximately 45 to 48 percentage. Exhibit P- 9 is the examination report given by me, part A to A of which bears my signature.

On the same date, on receiving the memo from the Station House Officer Daundilohara for recording, statement of injured Arjit Sharma, I had opined that, "injured Arjit Sharma was not in the condition to give statement on 03.01.13 at 4:30 hours in the morning."

The injured was then referred to Bhilai Hospital where he was examined by Dr. Uday (PW-9). His observation is as follows:

"On examination, I found that both legs of the patient were deeply burnt from top to bottom and some blisters were therein stomach and both hands, which were burnt up to 40 to 45 percentage. There were mark in his neck, which probably was comes due to pressure of clutch wire. The treatment of which was undergone in my Hospital at about 60 days, in which he was operated twice, First operation was done on 15.01.13, during which we compelled to cut his right legs below the knee, which was rotten due to heavily burnt.

Second operation was done on 12.02.13, wherein at the place on deep injury, the skin from other places were grafted. Therafter, it started improving gradually the condition of the patient and on 04.03.13, he has been discharged from the hospital. Registration Sheed (Bedhead Ticket) of indoor patient regarding admission in our hospital is Exhibit P-14, which is in 166 pages, wherein on each pages at part A to A bears my signature."

The other person who had met the injured while he had escaped was PW-1 i.e. Santosh Shukla. The statement of PW-1 is as follows:

"I am posted to the post of Senior Executive H.R. in Godawari Steel Plant Gidhali since January, 2009. It is the matter of first week of the January of this year, at that time I was on duty at night shift. On the night in between about 2 to 3, the Guard of the plant informed me that one boy in burning condition has come inside the plant and then reaching out from the office I saw that the boy was burnt at leg, back and hand etc., he had worn underwear only. On enquiring by me, the boy told that, "My friends carried me to the forest and burnt me and looted money from me".

Then I phoned to the Police-station of Daundilohara and had also phone to Sanjivani 108. Thereafter, Sanjivani Ambulance reached and had taken the boy to Daundilohara Hospital for treatment. Police personnel Station House Officer Sahu had come to investigate the incident and had prepared Nazari map (Exhibit P-01) of the incident, part A to A of which bears my signature. Similarly, Halka Patwari had prepared the Nazari map (Exhibit P-02) of the incident, part A to A of which bears my signature.

The police personnel had seized pants, which was burnt, burnt shirt and pants jeep in burnt condition, disposal glass, cigarette box etc. before me and two hand cuff persons. The said seizure proceeding of above articles was done according to Seizure memo (Exhibit P-3), from the place of the incident in the presence of accused Neeraj Sharma, present in the Court, wherein at part A to A, there was my signature. The Police personal had recorded my statement after enquiry."

11. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial. In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

12. In the case at hand the case of abduction and attempt to murder are well established by the prosecution. All that is now left for us to determine is whether an offence under Section 364A of IPC is made out? While abduction simpliciter may not technically be an offence under the IPC, it becomes a punishable offence when it is combined with another act. For example, abduction in order to commit murder is an offence under Section 364 IPC.

So is abduction an offence if it is done with an intent to secretly or wrongfully confine a person (Section 365, IPC), or when it is done to compel a woman for marriage etc. (Section 366, IPC). Similarly, Section 364A is an offence where kidnapping or abduction is made and a person is put to death or hurt; or a person is threatened with death or actually murdered, on demand of ransom.

Section 364A IPC was inserted in the Indian Penal Code by an Act of Parliament (Act No.42 of 1993 with effect from 22nd May, 1993). That was a period when kidnapping and abduction for the purposes of ransom were on the rise and therefore, the Law Commission of India in its 42nd Report in 1971 had recommended insertion of Section 364A in IPC, though it was ultimately incorporated in the year 1993, it reads as under:

"364-A. Kidnapping for ransom, etc.-

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the

Government or [any foreign State or international inter-governmental organisation or] any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

This Court in the case of Vikram Singh v. Union of India (2015) 9 SCC 502 has observed as follows:

"53. Applying the above to the case at hand, we find that the need to bring in Section 364-A IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom. This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment.

While those recommendations were pending with the Government, the spectre of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for adequate measures to curb what has the potential of destabilising any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364-A IPC, in the year 1994.

The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organised activity for economic gains but by terrorist organisations is what necessitated the incorporation of Section 364-A IPC and a stringent punishment for those indulging in such activities."

It needs to be clarified, as it was done in Vikram Singh (supra), that Section 364A IPC does not merely cover acts of terrorism against the Government or Foreign State but it also covers cases where the demand of ransom is made not as a part of a terrorist act but for monetary gains for a private individual.

13. In the present case, the evidence placed by the prosecution to establish a case under Section 364-A is in the form of a phone call to the father of the victim at 12 noon by Ravi Kumar Dwivedi (the third accused who was acquitted by the Trial Court). Although, according to the prosecution the number has been traced to Ashwani Kumar Yadav, one of the two accused here, but no evidence to this effect, as required under Section 165 of the Evidence Act, has been placed before the Court. The supplementary statement given by the complainant before the police on 21.03.2013, (his first statement is on 03.01.2013), has little relevance as PW-6 never speaks of this in his examination in chief.

14. This court in the case of Shaik Ahmed v. State of Telangana (2021) 9 SCC 59 has held that in order to make out an offence under Section 364 A, three conditions must be met:

A) There should be a kidnapping or abduction of a person or a person is to be kept in detention after such kidnapping or abduction;

B) There is a threat to cause death or hurt to such a person or the accused by their conduct give rise to a reasonable apprehension that such person may be put to death or hurt

C) Or cause death or hurt to such a person in order to compel the Government or any foreign state or intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

The necessary ingredients which the prosecution must prove, beyond a reasonable doubt, before the Court are not only an act of kidnapping or abduction but thereafter the demand of ransom, coupled with the threat to life of a person who has been kidnapped or abducted, must be there. It was reiterated by this Court in the case of Ravi Dhingra v. State of Haryana (2023) 6 SCC 76. In the present case, what the prosecution has miserably failed to establish is the demand of ransom.

As per the prosecution, the complainant's father i.e., Praneet Sharma (PW-5) received a phone call from which a demand of ransom was made. The phone call was allegedly traced as being of one Ravi Kumar Dwivedi but no evidence was placed on record to establish the demand of ransom before the Court which was absolutely necessary in view of the law laid done by this Court in Rajesh v. State of Madhya Pradesh, 2023 SCC OnLine SC 1202.

15. For making out a case under Section 364-A, the first condition i.e., kidnapping or abduction must be coupled with either the second or the third condition as held by this Court in Shaik Ahmed (supra)2. Under the said provision, the accused is liable to be punished either by death or imprisonment for life and is also liable to be fined considering the gravity of the offence. In the present case, even if it is presumed for the sake of argument that an offence under Section 364 is made out, we do not find that the offence would come under the ambit of Section 364A. 'Abduction' is defined under Section 362 which reads as under:

"362. Abduction.- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

The offence which is made out is definitely under Section 364 which read as under:

"364. Kidnapping or abducting in order to murder.- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

16. However, in order to come under the ambit of Section 364A, something more than abduction is required, which is demand of ransom. We do not find that there was a demand of ransom as alleged by the prosecution. There is no worthwhile evidence placed by the prosecution in this regard. The demand of ransom does not come in the examination in chief of the complainant (PW-6).

He sticks to his theory of abduction, attempt to murder, etc., but there is no whisper about any demand of ransom, though in his supplementary statement before the Police (under Section 161 of Criminal Procedure Code), on 21.03.2013, he says that while he was lying on the ground after an attempt to strangulate him was made by the two accused, he had heard Neeraj Sharma telling Ashwani Kumar Yadav that they should now demand a ransom from his father.

The only deposition in Court regarding demand of ransom has come as a bald statement by Praneet Sharma (PW-5) who is the father of the complainant that on 03.01.2013 when he was in the hospital one Ravi Kumar Dwivedi demanded Rs.8,00,000/- as ransom. Ravi Kumar Dwivedi the third accused, has already been acquitted by the Trial Court. There was no evidence at all before the Trial Court to have convicted the appellants under Section 364A, IPC. The conviction of the appellants under Section 364A is not made out and is therefore liable to be set aside.

17. Appellants' conviction and sentence of life imprisonment under Section 364A of IPC is therefore set aside. All the same, we do find that PW-6 was abducted so that he could be murdered. We therefore convert the findings under Section 364A to that of Section 364. Appellants are hereby convicted under Section 364 of IPC, instead of Section 364A IPC. Both the trial court and the High Court have failed to detect the flaw in the evidence led by the prosecution under Section 364A IPC.

The trial court as well as the appellate court have completely relied upon the evidence of PW-5 (Praneet Sharma, father of the victim) and PW-6 his son, the victim. As far as the evidence of PW-6 is concerned, he makes no mention of

any demand or ransom in the court as a prosecution witness. In his first statement given to the Executive Magistrate on 03.01.2013, again he makes no mention of any ransom.

He only mentions about ransom in his supplementary statement recorded by the Police after two months on 21.03.2013. The High Court believes it and calls it a "dying declaration". The statement given to the Police on 21.03.2023 cannot be called a dying declaration. Dying declaration is defined under Section 32 of Indian Evidence Act, 1872 which is reproduced below:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) Or is made in course of business.- When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) Or against interest of maker.- When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) Or gives opinion as to public right or custom, or matters of general interest.- When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and

when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship.-When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs.- When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in document relating to transaction mentioned in Section 13, clause (a).- When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, clause (a).

(8) Or is made by several persons and expresses feelings relevant to matter in question.- When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

The statement given by the complainant/victim (PW-6) on 03.01.2013 was firstly to the investigating officer (PW-10). But more importantly it cannot be called "a dying declaration" simply because PW-6 had mercifully survived. This statement cannot be read as a dying declaration because the person making this statement or declaration had ultimately survived.

This supplementary statement given to the investigating officer on 21.03.2013 is nothing more than a statement under Section 162 of Criminal Procedure Code (see: Gentela Vijayavardhan Rao and Another v. State of A.P. (1996) 6 SCC 2413; Sunil Kumar and Others v. State of M.P. (1997) 10 SCC 5704; Shrawan Bhadaji Bhirad and Others v. State of Maharashtra (2002) 10 SCC 565; State of U.P. v. Veer Singh and Others (2004) 10 SCC 1176 and S. Arul Raja v. State of Tamil Nadu (2010) 8 SCC 2337.

18. In our considered opinion both the Trial Court as well as the High Court were completely misdirected in holding this to be, inter alia, a case under Section 364A of the IPC. There was no worthwhile evidence placed by the prosecution on this aspect. The findings of the Courts on this aspect therefore needs to be set aside. We, therefore, partly allow the present appeals to the

extent that findings recorded by the Trial Court and the High Court of conviction under Section 364A of the IPC are hereby set aside.

We, however, find that the accused had committed an offence under Section 364 IPC, as the offence of abduction in order to murder the victim i.e., PW-6 stands proved. In other words, we convert the findings of conviction under Section 364A to that of Section 364 IPC and sentence the two accused (present appellants) for rigorous imprisonment of Ten years each on this count and a fine of Rs.10,000/- each, and in default further imprisonment of three months.

The rest of the conviction and sentence that is under Section 307 of the IPC read with Section 120B as well as under Section 392 of IPC read with Section 397 are hereby affirmed. We are also aware that in addition to the sentence, a fine of Rs.50,000/- each against the two accused was imposed by the High Court. We retain the same and direct that the fine be recovered from the present appellants, in default of payment of the fine, the appellants shall undergo further imprisonment of one year each. The above fine shall be thereafter remitted to the victim in accordance with law.

19. A victim of a crime cannot be treated merely as a prosecution witness. Section 357(1) of Criminal Procedure Code empowers the court to order that the fine amount recovered be given to any person as compensation who has suffered any loss or injury caused due to that offence. In this case, the victim had suffered burn injuries of 45-48% and lost one leg, when he was only eighteen years of age.

There may be times when the situation may demand that a substantive amount of compensation be paid to the victim and the convict may not be financially that strong to bear that burden. For such situations, Section 357A was therefore introduced in Criminal Procedure Code for this reason, where compensation to the victims may be paid out of State funds, as the State had the responsibility to protect the victim against the offence that had been committed against the victim of the crime.

20. In the present case, the victim i.e., PW-6 has suffered grievous injuries, not only this, his left leg below his knee had to be amputated. Consequently, we direct that an amount of Rs.5,00,000/- (Five Lakhs only) be paid by the State of Chhattisgarh to the victim as compensation under Section 357A of Cr.PC., instead of Rs.1,00,000/- as directed by the High Court. Let the same be done within a period of three months from today.

21. Ashwani Kumar Yadav shall be released, subject to the payment of fine/compensation, provided he has completed his 10 years of imprisonment and

if not required in any other case. Order dated 17.09.2019 of this Court up to the extent of suspending the sentence of appellant Neeraj Sharma and granting him bail is hereby vacated.

The bail bonds of appellant Neeraj Sharma stand cancelled and he is directed to surrender within two weeks from today to complete his remaining sentence.

A copy of this judgment shall also be sent to the victim.

.....J. [Sudhanshu Dhulia]

.....J. [Satish Chandra Sharma]

New Delhi.

January 3, 2024.

1 Dehati Nalishi is something akin to a zero FIR.

2 Para 33

3 Para 13

4 Para 20

5 Para 8

6 Para 5

7 Para 31

IN THE SUPREME COURT OF INDIA

Perumal Raja @ Perumal
Vs.
State represented by Inspector of Police

[Criminal Appeal No._____ of 2024
arising out of SLP (Criminal) No. 863 of 2019]

HEADNOTE – 'Custody' under Sec. 27 of Indian Evidence Act doesn't mean custody after formal arrest. It includes any kind of restraint or surveillance.

JUDGMENT

Sanjiv Khanna, J.

1. Leave granted.

2. The impugned judgment1 by the High Court of Judicature at Madras affirms the conviction of the appellant - Perumal Raja @ Perumal for murder of Rajini @ Rajinikanth under Section 302 of the Indian Penal Code, 18602 and Section 201 of the IPC, by the Principal Sessions Judge, Puducherry in SC No. 22 of 20143, in the charge sheet arising from the First Information Report4 No. 80 of 2008 registered on 24.04.2008 in Police Station5 Odiansalai, District - Puducherry.

3. The appellant - Perumal Raja @ Perumal stands sentenced to imprisonment for life and fine of Rs.5,000/- for the offence under Section 302 of the IPC and rigorous imprisonment for three years and fine of Rs.3,000/- for the offence under Section 201 of the IPC.

4. The other co-accused, namely, Saravanan @ Krishnan, Mohan @ Mohankumar, and Ravi @ Ravichandran were acquitted by the trial court, which acquittal has become final. One 'N' was tried as a juvenile and acquitted. On 15.02.2013, the case of another co-accused - Chella @ Mugundhan was split up since he was absconding. Subsequently, vide judgment dated 04.06.2019, which has been placed on record as additional evidence, Chella @ Mukundhan has been acquitted.

5. The prosecution case in brief is as follows:

(i) On 20.04.2008, Rajaram, who was settled in France, returned to Puducherry as his son Rajini @ Rajinikanth, who was living in India, had gone missing.

(ii) On 20.04.2008, Rajaram had approached PS Odiansalai, Puducherry, and made an oral complaint stating that when he had opened his house No. 13, Chinna Vaikkal Street, Puducherry, he had found articles to be scattered all over the place. His motorcycle was missing. He had suspected that his son - Rajini @ Rajinikanth and his sister's husband Krishnamurthy could have taken the bike. He requested the Police to make inquiries. However, in spite of being asked, he did not make any written complaint. He stated that he was exhausted and would come back to lodge written complaint afterwards.

(iii) Next day on 21.04.2008, Rajaram was murdered. FIR No. 204 of 2008 was registered at PS Grand Bazaar, District - Puducherry under Sections 147, 148, 341 and 302 of the IPC read with Section 149 of the IPC.

(iv) On 24.04.2008, Arumugam, father of Rajaram, had made a written complaint at Odiansalai PS, Puducherry that his grandson Rajini @ Rajinikanth was missing. The complaint was registered as Diary No. 80 of 2008 for a 'missing man' and was taken up for investigation.

(v) The appellant - Perumal Raja @ Perumal, son of Krishnamurthy (husband of the sister of Rajaram), was detained and taken into custody during the course of investigation in FIR No. 204 of 2008 for murder of Rajaram.

(vi) On 25.04.2008, the appellant - Perumal Raja @ Perumal made a disclosure statement (Exhibit P-37).6

(vii) The appellant - Perumal Raja @ Perumal, along with other co-accused, had committed murder of Rajini @ Rajinikanth on 23.11.2007 at Rajaram's house at Chinna Vaikkal Street, Puducherry. His dead body was thrown in the sump tank located in the same house.

(viii) The appellant - Perumal Raja @ Perumal had also removed various belongings from the same house, including iron box, home theatre, CD player, documents of the house, motorcycle, RC book, key, Rajini @ Rajinikanth's passport, Rajini @ Rajinikanth's passport size photograph, birth registration of the grandmother, ration card, etc.

(ix) Later on, the appellant - Perumal Raja @ Perumal, and other co-accused, decided to remove the dead body of Rajini @ Rajinikanth from the sump tank as they had learnt that Rajaram was returning to India as his son Rajini @ Rajinikanth was missing.

(x) Accordingly, the appellant - Perumal Raja @ Perumal had bought a knife and sack bags. They opened the sump tank and took out Rajini @ Rajinikanth's body, which was in a decomposed state. They had cut Rajini @ Rajinikanth's

body into two pieces and put it in two sack bags. The knife and rope were put in another sack bag. The three sack bags were taken by them from Chinna Vaikkal Street, and after passing through Gandhi Street they threw the sack bags in the canal/river from the Uppanaru Bridge near the railway crossing.

(xi) On the basis of the disclosure statement (Exhibit P-37), the sack bags with the decomposed dead body of Rajini @ Rajinikanth were recovered on 26.04.2008 from the Uppanaru canal/river. Knife was also recovered.

(xii) The body parts which were in a decomposed state were sent for post mortem, which was conducted by Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry on 26.04.2008.

(xiii) On 30.04.2008, eight articles were recovered from the water sump tank at the house of the deceased, namely, gloves, lower jaw, rib, cervical vertebrae, tarsal and metatarsal, small and big size bone pieces, and knee cap.

(xiv) The skull recovered from the canal/river and the lower part of the jaw recovered from the sump tank were sent for superimposition test to ascertain whether they belong to the deceased Rajini @ Rajinikanth. C. Pushparani, Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai, who had deposed as PW-29, proves the superimposition test report dated 20.01.2009 (Exhibit P- 25), which confirms that the skull and mandible were of the deceased - Rajini @ Rajinikanth.

(xv) On the basis of the disclosure statement, various articles, including the motorcycle, ignition key, original RC book were recovered from the co-accused Mohan Kumar @ Mohan and a juvenile.

(xvi) The motive for the crime was inter se family property disputes and the appellant - Perumal Raja @ Perumal's desire to acquire and become owner of the property No. 13, Chinna Vaikkal Street, Puducherry.

6. Several public witnesses turned hostile and did not support the prosecution case. This includes Arumugam (PW-20), the grandfather of the deceased Rajini @ Rajinikanth, who had filed the 'missing man' complaint for Rajini @ Rajinikanth, vide Diary No. 80 of 2008. However, Arumugam (PW-20) did accept that his son, Rajaram, who was living abroad had come home when he was murdered on 21.04.2008. Arumugam (PW-20) also accepts that his grandson Rajini @ Rajinikanth had not attended crematorial rites of his father Rajaram and was missing.

7. Narayanasamy (PW-12), then head constable, PS Odiansalai, has testified that he had received the oral complaint of Rajaram on 20.04.2008, in connection with the scattered articles in his house, and the missing motorcycle. Rajaram had assumed that his son Rajini @ Rajinikanth could have taken it away.

8. Kaniyakumaran (PW-10), involved in real estate business, did not specifically implicate the appellant - Perumal Raja @ Perumal, but has accepted that Punitha (PW-3), a relative of the deceased Rajini @ Rajinikanth, had tried to sell the property in Kurumbapet. Reliance can be also placed on the documentary evidence to establish that the property in question in the name of Rajaram was dealt with by Porkilai (PW-4), mother of the appellant - Perumal Raja @ Perumal. In support, the following documents are relied:

(i) sale deed in favour of Rajaram executed on 26.06.1990 (Exhibit P-66);

(ii) sale agreement between Porkilai (PW-4) and accused no.5 - Ravi @ Ravichandran executed on May, 2007 (Exhibit P-66);

(iii) release deed in favour of Rajaram by Porkilai (PW-4), executed on 27.06.1990 (Exhibit P-68);

(iv) sale agreement in favour of Thangaveni Ammal, mother of Rajaram, executed on 19.08.1981 (Exhibit P-69).

9. Chinta Kodanda Rao (PW-30), Inspector of Police, PS Grand Bazaar, the investigating officer in FIR No. 204 of 2008 relating to the murder of Rajaram by unknown persons, has testified on the disclosure statement made by the appellant - Perumal Raja @ Perumal (Exhibit P-37). The relevant portion of the disclosure statement reads:

"myself and xxx pull Rajni's xxx, put him in the sump tank near the bathroom and closed it took xxx, Iron box, Home theatre, xxx, xxx, rental documents of my uncle's house at Chittankudi, Hero Honda CD Dawn motorcycle, RC book and key, Rajini's passport book, Rajini's passport size photo, birth registration of grandmother, family ration card of uncle and the copy of documents written in English, bunch of keys of the house and my uncle Ranjith's notebook, xxx xxx xxx, took Hero Honda CD Dawn motorbike of my uncle Rajaram one bag was put by Mohan xxx xxx xxx the house of Mohan nearby to the Tollgate of Ariyankuppam, kept 2 bags in Mohan's house.

I, immediately, went to N (name withheld) house and gave him document, ration card, bunch of keys, Rajini's passport, by keeping them in Ranjith notebook and stated to keep them safe.

I took the already kept 3 sack bags, rope, curry knife, showed the sump tank to xxx. When he opened the cover of the sump tank, he bend down and lifted the hand of the body of Rajini, who was already killed and put in the sump by us, since Rajini's body was in decomposed stage, his hand had alone come. I put the hand in sack bag. Then we tied rope in chest, myself and xxx pulled the body outside from sump.

Then, head has come alone. I put head in the sack bag. Then xxx took knife from me and cut Rajini's body into two pieces and put them in two sack bags, then put knife and xxx in another sack bag and kept the sack bags near kitchen, then xxx closed the sump via Chinnavaikal Street and Gandhi Street, turned on the left side of the street, in front of small clock tower,

via Varnarapettai Billu Shop, on the centre of the bridge of Railway Crossing on the left side, threw the two bags, containing the decomposed body of Rajini, on the right side threw the sack bag, containing knife and xxx.

Also, I gave statement that if I was taken, I would identify the Chinnavaikal street, which is the place of occurrence, my maternal uncle's house which is in the same street the place where I had left the motor cycle of my (nc) and the place where I had put the body of Rajini. "

10. On the aspect of the recovery of two nylon sack bags with body parts, we have affirmative depositions of Chinta Kodanda Rao (PW- 30), Inspector of Police, PS Grand Bazaar, public witness Devadass (PW-21) and Satyamurthy (PW-11). The recovery was photographed by Selvaganapathy (PW-26), police photographer vide photographs marked Exhibit P-19. The recovery was duly recorded in the rough sketch plan (Exhibit P-30) and the mahazar (Exhibit P-31).

11. On 29.04.2008, accused no. 4 - Mohan Kumar @ Mohan was arrested. On the same day, stolen items including, the motorcycle and ignition key of motorcycle, original registration book, insurance certificate of the motorcycle, iron box, home theatre and speaker box belonging to the deceased were recovered, as recorded vide seizure mahazar (Exhibits P-44, P-45, P-46 and P-47).

12. On 30.04.2008, eight articles were recovered from the water sump tank at the house of the deceased, namely, gloves, lower jaw, rib, cervical vertebrae, tarsal and metatarsal, small and big size bone pieces, and knee cap. T. Bairavasamy (PW-32), Circle Inspector, PS Odiansalai has deposed about the recovery and proved the Mahazar (Exhibit P-48). The recovery was photographed by Subburayan (PW-25), police photographer vide photographs marked Exhibit P-18 and duly witnessed by public witness Devadass (PW-21).

13. To determine the identity of the deceased person, some of the body parts were sent for a superimposition test to C. Pushparani (PW- 29), who was working as a Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai. She has deposed about having received the case properties, consisting of a skull with mandible on 10.09.2008. The mandible was attached with the skull by means of a spring.

For the purpose of identification, she had two identical colour photographs of a male individual sent to her in a sealed envelope as Item Nos. 2 and 3. The photographs were enlarged to the size of a self-portrait. Using the computer aided video superimposition technique, she had examined the skull and mandible viz. the photographs.

For the purposes of the examination, the flesh thickness and the anthroposcopic landmarks in the face were also taken into consideration. C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai opined that the landmarks on the face matched well with those of the skull. She submitted her forensic report dated 20.01.2009 with analysis on the anthroposcopy and superimposition test (Exhibit P- 25). The skull, as per C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai belonged to the male individual seen in the photograph at serial no.4.

With the report, Exhibit P-25, C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai had enclosed the computer laser printouts taken by her at the time of examination to establish and prove that the photographs of deceased - Rajini @ Rajinikanth match with the mandible and the skull (Exhibits P-26 to P-28). We have carefully examined the computer laser print outs, and are of the opinion that the findings of the High Court affirming the judgment of the trial court are justified.

14. On behalf of the appellant - Perumal Raja @ Perumal, it is submitted that as per Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry no definite cause of death could be ascertained due to decomposition of the body. However, it is pertinent to note that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has also deposed that the deceased could be between 25-30 years of age and probable death could have occurred six months prior to the autopsy. It must be further noted that the deceased - Rajini @ Rajinikanth was about 30 years of age and he had been missing for about six months prior to the date on which the autopsy was conducted.

15. It has been submitted with considerable emphasis that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has accepted that the lower jaw (mandible) was not found. Whereas, deposition of C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai and the photo superimposition done by her specifically refer to the lower jaw.

We have examined this contention. Dr. S. Diwakar (PW- 24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his examination-inchief, has testified that the police had sent the skull, sternum and right femur which were preserved by him from the autopsy material. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has also stated that the lower jaw and the left lower first premolar tooth were preserved by him from the skeleton remains for onward transmission to Central Forensic Science Laboratory, Hyderabad, for necessary photo superimposition and DNA test through the Judicial Magistrate-II, Puducherry. The mahazar dated 21.5.2008 (Exhibit P-15) was prepared after collecting the aforesaid body parts.

16. We do not find that any confusion or doubt arises from the deposition of Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry. He had conducted the post mortem examination (Exhibit P-16) on 26.04.2008, wherein he had examined the remains/body parts of the deceased which were found in the two nylon sack bags on the same day.

Other body parts including, the lower part of the skull i.e. the mandible and the tooth were found subsequently in the sump tank on 30.04.2008. Therefore, Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his deposition, while referring to Exhibit P-17 dated 19.05.2008, has referred to the lower jaw (mandible) and the left lower first premolar tooth, to send the said body parts to the Central Forensic Science Laboratory at Hyderabad.

17. It has been submitted on behalf of the appellant - Perumal Raja @ Perumal that Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry, in his cross-examination, has accepted that body parts were sent to him in two nylon sack bags only once, and nothing was sent thereafter. The post mortem was completed on 26.04.2008, vide the post mortem report (Exhibit P-16) of the same date.

18. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry had issued bone-case

certificate (Exhibit P-17) on 19.05.2008. Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has clarified that while he did not mention the lower jaw in the post mortem 26.04.2008 (Exhibit P-16), he had mentioned that the lower jaw was preserved in the bone-case certificate (Exhibit P-17) dated 19.05.2008.7

Further, the aforesaid deposition of Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry has to be read with the testimony of T. Bairavasamy (PW-32), Circle Inspector, PS Odiansalai, who had deposed that he had taken the letter written by Dr. S. Diwakar (PW-24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry and had obtained the signatures of Judicial Magistrate-II, Puducherry for conducting DNA test.

Thereafter, the material objects were sent through Form 95 No. 02876 (Exhibit P-60) to the Judicial Magistrate-II, Puducherry. The skull and the mandible were sent for photo superimposition test after addressing a letter to Judicial Magistrate-II, Puducherry which was signed by Dr. S. Diwakar (PW- 24), Senior Medical Officer, Department of Forensic Medicine, Government General Hospital, Puducherry (Exhibit P-61).

19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 18728, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate.

Section 279 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence.

Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

20. In Pulukuri Kottaya v. King Emperor10, the Privy Council held that the fact discovered embraces the place from which the physical object is produced and the knowledge of the accused as to this, and the information given, must distinctly relate to this fact.

21. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru11, this Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence.

To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In Mohmed Inayatullah v. State of Maharashtra12, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to.

A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the

accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant - Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram.

He was subsequently arrested in this case, that is FIR.No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

26. Reference is made to a recent decision of this Court in Rajesh & Anr. v. State of Madhya Pradesh13, which held that formal accusation and formal police custody are essential pre-requisites under Section 27 of the Evidence Act. In our opinion, we need not dilate on the legal proposition as we are bound by the law and ratio as laid down by the decision of a Constitution Bench of this Court in State of U.P. v. Deoman Upadhyaya14. The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.15

This Court in Deoman Upadhyay (supra) observed that the bar under Section 25 of the Evidence Act applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was in custody at the time of making the confession. Further, for the ban to be effective the person need not have been accused of an offence when he made the confession.

The reason is that the expression "accused person" in Section 24 and the expression "a person accused of any offence" in Sections 26 and 27 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. The adjectival clause "accused of any offence"

is, therefore, descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement.

27. Elaborating on this aspect, a three judge Bench of this Court in Aghnoo Nagesia v. State of Bihar16 has held that if the FIR is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence, except to the extent that the ban is lifted by Section 27 of the Evidence Act.

While dealing with the admission of part of confession report dealing with motive, subsequent conduct and opportunity, this Court rejected the severability test adopted by some High Courts. The statement can, however, be relied upon and admitted to identify the accused as the maker, and the portion within the purview of Section 27 of the Evidence Act is admissible. Aghnoo Nagesia (supra) has been applied and followed by this Court in Khatri Hemraj Amulakh v. State of Gujarat.17

28. The words "person accused of an offence" and the words "in the custody of a police officer" in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act.

Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in "custody" within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression "custody" has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

29. This Court in Deoman Upadhyay (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence.

A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer. Reference can also be made to decision of this Court in Vikram Singh and Ors. v. State of Punjab18, which discusses and applies Deoman Upadhyay (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in Dharam Deo Yadav v. State of Uttar Pradesh19, has held that the expression "custody" in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police.

Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar vide Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in State of A.P. v. Gangula Satya Murthy20 and A.N.Vekatesh and Anr. v. State of Karnataka21.

30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

31. When we turn to the facts of the present case, the body parts of the deceased Rajini @ Rajinikanth were recovered on the pointing out of appellant - Perumal Raja @ Perumal in his disclosure statement. Rajini @ Rajinikanth had been missing for months and was untraceable. In the present case, as discussed above, the homicidal death of Rajini @ Rajinikanth, the disclosure statement marked Exhibit P-37, and the consequent recovery as elucidated above have been proved beyond doubt and debate.

32. In State of Maharashtra v. Suresh22, this Court in the facts therein held that recovery of a dead body, which was from the place pointed out by the accused, was a formidable incriminating circumstance. This would, the Court held, reveal that the dead body was concealed by the accused unless there is material and evidence to show that somebody else had concealed it and this fact came to the knowledge of the accused either because he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location.

Here, if the accused declines and does not tell the criminal court that his knowledge of the concealment was on the basis of the possibilities that absolve him, the court can presume that the dead body (or physical object, as the case

may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the court as to how else he came to know of it, the presumption is that the concealment was by the accused himself.

33. The aforesaid view has been followed subsequently and reiterated in Harivadan Babubhai Patel v. State of Gujarat23, Vasanta Sampat Dupare v. State of Maharashtra24, State of Maharashtra v. Damu S/o Gopinath Shinde and Ors.25, and Rumi Bora Dutta v. State of Assam26.

34. Our reasoning, which places reliance on Section 106 of the Evidence Act, does not in any way dilute the burden of proof which is on the prosecution. Section 106 comes into play when the prosecution is able to establish the facts by way of circumstantial evidence. On this aspect we shall delve upon subsequently.

35. Apart from Section 27 of the Evidence Act, Section 8 of the said Act would be also attracted insofar as the prosecution witnesses, namely, the investigating officers, Chinta Kodanda Rao (PW-30), Inspector of Police, PS Grand Bazaar and T. Bairavasamy (PW- 32), Circle Inspector, PS Odiansalai, have referred to the conduct of the appellant - Perumal Raja @ Perumal with regard to any fact in issue or a relevant fact when the appellant - Perumal Raja @ Perumal was confronted and questioned.27 Reference in this regard may also be made to the judgment of this Court in Sandeep v. State of U.P.28 which held that:

"52. (...) It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered."

36. On the basis of the prosecution evidence, the following factual position has been established:

(i) Rajini @ Rajinikanth was missing for months before his father Rajaram came from France to India, on 20.04.2008.

(ii) On return, Rajaram had noticed that the articles in the property No.13, Chinna Vaikkal street, Puducherry, where deceased Rajini @ Rajinikanth used to reside and was owned by Rajaram, were scattered. The motorcycle owned by Rajaram, which the deceased Rajini @ Rajinikanth used to use, was missing.

(iii) Rajaram was murdered on 21.04.2008.

(iv) The appellant - Perumal Raja @ Perumal is a close relative of Rajini @ Rajinikanth and Rajaram (son of sister of Rajaram).

(v) Rajaram as the owner of the immovable property No.13, Chinna Vaikkal street, Puducherry and Rajini @ Rajinikanth, as the son of Rajaram, were hindrance in the way of the appellant - Perumal Raja @ Perumal acquiring the said property. There were also inter se family disputes relating to the property in Kurumbapet. This was the motive for the offence.

(vi) On the basis of the disclosure statement made by the appellant - Perumal Raja @ Perumal on 25.04.2008 (Exhibit P-37) - (a) two nylon sack bags were recovered containing decomposed human body parts; and (b) human bones were also recovered from the sump tank in property bearing No.13, Chinna Vaikkal street, Puducherry.

(vii) The superimposition report dated 20.01.2009 (Exhibit P-25) by C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai states that the skull and the mandible which were recovered from the river and the sump tank were that of the deceased Rajini @ Rajinikanth. The report relies on the computer laser print out of the skull and the mandible for comparison with the photograph of the deceased Rajini @ Rajinikanth. It is shown that the skull and the mandible were of the deceased Rajini @ Rajinikanth.

(viii) As per the post mortem report (Exhibit P-16), though the cause of death could not be ascertained due to decomposition of the body, the bones were that of a person between 25-30 years of age. Further, the death had probably occurred six months prior to the autopsy. The deceased Rajini @ Rajinikanth was of 30 years in age and he had been missing for about six months.

(ix) Motorcycle bearing registration No. PY 01 X 9857 belonging to Rajaram (which was then at Rajaram's house and in possession of Rajini @ Rajinikanth, as Rajaram was in France), keys, insurance papers, as well as other personal belongings were recovered from Mohan Kumar @ Mohan and a juvenile, whose name is withheld.

37. In Sharad Birdhichand Sarda v. State of Maharashtra29, this Court referred to Hanumant v. State of Madhya Pradesh30, and laid down the five golden principles ('panchsheel') that should be satisfied before a case based on circumstantial evidence against an accused can be said to be fully established:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

38. This Court in Sharad Birdhichand Sarda (supra) rejected the contention that if the defence case is false it would constitute an additional link as to fortify the case of the prosecution. However, a word of caution was laid down to observe that a false explanation given can be used as a link when:

(i) various links in the chain of evidence laid by the prosecution have been satisfactorily proved;

(ii) circumstance points to the guilt of the accused with reasonable definiteness; and

(iii) the circumstance is in proximity to the time and situation.

If these conditions are fulfilled only then the court can use the false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Thus, a distinction has to be drawn between incomplete chain of circumstances and a circumstance after a chain is complete and the defence or explanation given by the accused is found to be false, in which event the said falsehood is added to reinforce the conclusion of the court.

39. This Court in Deonandan Mishra v. State of Bihar31 has laid down the following principle regarding circumstantial evidence and the failure of accused to adduce any explanation:

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been

satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

40. The appellant - Perumal Raja @ Perumal in his statement under Section 313 of the Code of Criminal Procedure, 1973 plainly denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered. In this circumstance, the failure of the appellant - Perumal Raja @ Perumal to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle under Section 106 of the Evidence Act, thus forming an additional link in the chain of circumstances. The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence.

41. The whereabouts of Rajini @ Rajinikanth were unknown. The perpetrator(s) were also unknown. It is only consequent to the disclosure statement by the appellant - Perumal Raja @ Perumal, that the police came to know that Rajini @ Rajinikanth had been murdered and his body was first dumped in the sump tank and after some months, it was retrieved, cut into two parts, put in sack bags, and thrown in the river/canal.

The police, accordingly, proceeded on the leads and recovered the parts of the dead body from the sump tank and sack bags from the river/canal. It has been also established that Rajini @ Rajinikanth was murdered. In addition, there have been recoveries of the motorcycle and other belongings at the behest of the appellant - Perumal Raja @ Perumal. These facts, in the absence of any other material to doubt them, establish indubitable conclusion that the appellant - Perumal Raja @ Perumal is guilty of having committed murder of Rajini @ Rajinikanth. The presence of motive reinforces the above conclusion.

42. It has been contended before us that the appellant - Perumal Raja @ Perumal had been acquitted in the case arising out of crime No. 204 of 2008 relating to the murder of Rajaram. The judgment passed by the trial court32 has been taken on record as additional evidence.

However, we do not find this judgment in any way relevant or negating the prosecution evidence, which we have referred to and elucidated earlier in the

prosecution case against the appellant, because the murder trial of Rajaram was primarily based upon an entirely different set of evidence. The evidence we have mentioned in the present case is not relevant and directly connected with the murder of Rajaram. The two occurrences are separate, albeit the appellant - Perumal Raja @ Perumal was accused of the murder of Rajaram and his son Rajini @ Rajinikanth.

The murders certainly were committed on two different dates - 23.11.2007 (or thereabout) and 21.04.2008 respectively, approximately five months apart. Except for the fact that the appellant - Perumal Raja @ Perumal was taken into custody during the course of investigation in FIR No. 204 of 2008 for murder of Rajaram and thereupon on 25.04.2008 his disclosure statement (Exhibit P-37) was recorded, there is no connection between the two offences. The conviction of the appellant is, therefore, sustainable in view of the evidence placed on record in the present case. The judgment of acquittal would not qualify as relevant and of evidentiary value so as to acquit the appellant - Perumal Raja @ Perumal in the present case.33

43. Acquittal of the co-accused, as noticed in paragraph 4 above, again is for want of evidence against them. At best, they were found in possession of the articles connected with the crime on the basis of the disclosure statement (Exhibit P-37) dated 25.04.2008 made by the appellant - Perumal Raja @ Perumal. Section 27 of the Evidence Act could not have been applied to the other co-accused for the simple reason that the provision pertains to information that distinctly relates to the discovery of a 'fact' that was previously unknown, as opposed to fact already disclosed or known.

Once information is given by an accused, the same information cannot be used, even if voluntarily made by a co-accused who is in custody. Section 27 of the Evidence Act does apply to joint disclosures, but this is not one such case.34 This was precisely the reason given by the trial court to acquit the co-accused. Even if Section 8 of the Evidence Act is to apply, it would not have been possible to convict the co-accused. The trial court rightly held other co-accused not guilty. For the same reason, acquittal of co-accused Chella @ Mukundhan, who was earlier absconding, is also of no avail.

44. As far as acquittal of the juvenile is concerned, reference can be made to the provisions of Sections 40 to 43 of the Evidence Act.

45. In view of the above discussion, we have no difficulty in upholding the conviction of the appellant - Perumal Raja @ Perumal. The appeal is dismissed.

.....J. (Sanjiv Khanna)

.....J. (S. V. N. Bhatti)

New Delhi;

January 03, 2024.

1 Dated 31.08.2016 passed in Criminal Appeal No.280/2016.

2 For short, "IPC".

3 Dated 07.04.2016.

4 For short, "FIR".

5 For short, "PS".

6 We shall be subsequently referring to the admissible portions of the disclosure statement under Section 27 of the Indian Evidence Act, 1872, and also to a limited extent in terms of Section 8 of the Indian Evidence Act, 1872.

7 The recovery of lower jaw from the sump took place on 30.04.2008. Thus, it could not have been mentioned in the post mortem report dated 26.04.2008.

8 For short 'the Evidence Act'.

9. **27. How much of information received from accused may be proved.-** Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

10 AIR 1947 PC 67.

11 (2005) 11 SCC 600.

12 (1976) 1 SCC 828.

13 2023 SCC OnLine SC 1202.

14 (1961) 1 SCR 14.

15 See Judgments of the Constitution Bench of this Court in Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr., (2005) 2

SCC 673 and Union of India and Anr. v. Raghubir Singh (Dead) By Lrs., (1989) 2 SCC 754. Raghubir Singh (supra) and Central Board of Dawoodi Bohra Community (supra) have been subsequently followed and applied by this Court in Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi, 2022 SCC OnLine SC 1247.

16 AIR 1966 SC 119.

17 (1972) 3 SCC 671.

18 (2010) 3 SCC 56.

19 (2014) 5 SCC 509.

20 (1997) 1 SCC 272.

21 (2005) 7 SCC 714.

22 (2000) 1 SCC 471.

23 (2013) 7 SCC 45.

24 (2015) 1 SCC 253.

25 (2000) 6 SCC 269.

26 (2013) 7 SCC 417.

27 See State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600, ¶¶ 190, 204-206, 219-223, 225.

28 (2012) 6 SCC 107.

29 (1984) 4 SCC 116.

30 (1952) 2 SCC 71.

31 (1955) 2 SCR 570.

32 Dated 13.06.2017.

33 See §§ 40-43 of the Indian Evidence Act, 1872.

34 See State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600, ¶ 145.

IN THE SUPREME COURT OF INDIA

Brij Narayan Shukla (D) through LRS.
Vs.
Sudesh Kumar @ Suresh Kumar (D) through LRS. & Ors.

[Civil Appeal No. 7502 of 2012]

HEADNOTE – Tenant can't claim adverse possession against landlord. Tenancy is permissive possession.

JUDGMENT

Vikram Nath, J.

1. The plaintiff is in appeal assailing the correctness of the judgment and order dated 15.05.2012 passed by the Lucknow Bench of the Allahabad High Court allowing Second Appeal No.202 of 1980, Sudesh Kumar and others vs. Brij Narayan Shukla and others, whereby, both the judgments of the First Appeal Court and the Trial Court were set aside and the suit of the plaintiff appellant was dismissed on the ground of limitation being barred by time.

2. Dispute relates to an area of 3500 sq. ft. (70 ft. x 50 ft.) (2 Biswa 12 Biswani) of Plot No.1019 situated in Village Hardoi within the limits of Nagar Palika Hardoi, Uttar Pradesh. The plaintiff claimed title through a registered sale deed dated 21.01.1966 from the erstwhile Zamindar Rai Bahadur Mohan Lal. They also claimed to have received possession pursuant to the sale deed.

It is also relevant to mention that the land purchased was an open piece of land. In 1975, when the appellant tried to raise the construction over the land purchased, the defendants objected and caused hindrance giving rise to the filing of the suit in question on 28.05.1975, registered as O.S.No.161 of 1975 praying for the relief of injunction with alternative relief for possession.

3. The defendant respondent filed their written statement primarily alleging that there had been prior proceedings between Rai Bahadur Mohan Lal and his co-sharers and their tenants (ancestors of the respondent) in the year 1944 where a suit was filed for arrears of rent with respect to Plot No.1019, 1022 and 1023.

3.1 Further under the settlement between the Zamindar and co-sharers, the land in question came to Siddheshwari Narain and Deep Chandra in a private partition and as such these cosharers became the owners of the land.

3.2 The defendant respondents having continued in possession at the time of abolition of Zamindari, became the owners.

3.3 Lastly, it was contended that soon after the sale deed of January, 1966 in favour of plaintiff appellant, there was proceedings under section 145 of the Code of Criminal Procedure, 19731 in May, 1966. In the said proceedings, it was found that the defendant respondents were in possession.

4. Both the parties led evidence, both documentary and oral. The Trial Court found the plaintiff appellant to be the owner of the land in dispute as also in possession and accordingly decreed the suit for injunction vide judgment dated 19.09.1979.

5. The Trial Court had placed reliance upon the sale deed, the Mutation and the Khasra and Khewat entries. Further, the Trial Court had held that the proceedings under section 145 CrPC would not be of any benefit to the defendant respondents as it was not clear from the material placed that the said proceedings related to the land in question.

6. The defendant respondent preferred appeal before the District Judge which was registered as Civil Appeal No.14 of 1979. The District Judge, Hardoi, vide judgment dated 29.11.1979 dismissed the appeal. It however did not agree with a couple of findings recorded by the Trial Court and accordingly, recorded its own findings.

According to the appellate court, the proceedings under section 145 CrPC were related to the land in dispute and that the possession of the defendant respondent was found over the land in dispute. It accordingly decreed the suit for possession and not for injunction as had been done by the Trial Court. The Appellate Court further held that the plaintiff-appellants were the owners of the land in dispute and they had been successful in establishing their title.

7. Another finding recorded by the Appellate Court was that the land in dispute was a nonagricultural land and there was no question of abolition of Zamindari with respect to the said land and therefore the claim of the defendants of becoming the owners on the abolition of Zamindari was not correct.

It further found that the suit for arrears of rent filed in 1944 was with respect to some other land and not the land in dispute in as much as the suit land was vacant open piece of land whereas the 1944 suit for arrears of rent was with respect to the house of the defendants. Even the plot areas in the two suits were different. The Plot No.1019 being a huge piece of land where as the plaintiff appellant had purchased only a part of it, they had derived valid title from the Zamindars, the erstwhile owners.

8. It accordingly held that the period of 12 years for perfecting rights on the basis of adverse possession would commence from 1966 and the suit having been filed in 1975 was well within time.

9. The defendant respondent preferred Second Appeal before the High Court which was registered as Second Appeal No.202 of 1980. It is this appeal which has been allowed by the impugned judgment giving rise to the present appeal. The High Court dismissed the suit of the appellant on the ground of limitation as according to it, the defendant respondent had matured their rights or rather perfected their rights by adverse possession having continued so since 1944 when the first suit for arrears of rent was filed. We are, however, of the firm view that the High Court fell in serious error in holding so, for the following reasons:

9.1 It has not dealt with the findings recorded by the Trial Court and the First Appeal Court with respect to the issue of Limitation and the evidence considered by them.

9.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 19082 and it having reappreciated the findings to disturb findings of fact, committed an error.

9.3 The High Court has not recorded any finding that the plaintiff appellants were not the owners or that they have failed to prove the ownership.

9.4 The suit of the year 1944 was for the arrears of rent and not relating to any dispute of possession. The defendant respondents were tenants and therefore their possession was permissive as against the then landlords. There was no question of them claiming any adverse possession from 1944.

9.5 In our considered view, the plaintiff appellants got their ownership/title under the registered sale deed on 21.01.1966. The dispute for possession vis-Ã -vis the defendant respondents would arise only after the said date and not on any date prior to it. Admittedly from the date of the sale deed, the suit was filed within the period of 12 years in May, 1975. Even if it is assumed that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966.

9.6 Further, the first appellate court having recorded a specific finding that the land in suit was not covered by Zamindari Abolition as it was nonagricultural land, the claim of ownership from the date of abolition of Zamindari was also without any merit. The finding has not been disturbed by the High Court. The

defendant-respondents thus having failed to establish their title, would have no right to retain the possession.

10. Accordingly, the appeal is allowed, the impugned judgment and order of the High Court is set aside and that of the First Appellate Court decreeing the suit for possession is maintained.

11. There shall be no order as to costs.

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

.....J. (Vikram Nath)

.....J. (Rajesh Bindal)

New Delhi

January 03, 2024

1 CrPC

2 CPC

IN THE SUPREME COURT OF INDIA

Ajeet Singh
Vs.
State of Uttar Pradesh & Ors.,

[Criminal Appeal No. 32 of 2024
arising out of SLP (Crl.) No. 147 of 2017]

HEADNOTE – No case of rape by false promise of marriage when marriage was solemnised ultimately

JUDGMENT

Abhay S. Oka, J.

Factual Aspects

1. At the instance of the third respondent, a First Information Report (the FIR), being Case Crime no.106 of 2016, was registered at the Police Station Naka, District Lucknow, Uttar Pradesh, for the offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (for short, 'IPC') wherein the appellant was shown as an accused. A writ petition was filed by the appellant before the High Court of Judicature at Allahabad, Lucknow Bench for quashing the FIR. By the impugned judgment dated 7th December 2016, the High Court declined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

2. In the complaint, on the basis of which the FIR was registered, the allegation of the third respondent was that his daughter (victim - name masked) was studying in Lucknow for coaching in Banking. Her age was 25 years. He stated that the appellant was running IIT coaching classes in Delhi. They met and developed a love for each other. The appellant assured the victim to marry her. When the third respondent approached the appellant's father and brother with the proposal of marriage, they declined the same.

Thereafter, under the pressure exerted by the victim, the appellant got prepared a certificate of marriage from Arya Samaj Mandir. By playing fraud, the appellant maintained a physical relationship with the victim. He stated that the relatives of the appellant threatened him. He stated that after exploiting his daughter, the appellant came to Sitapur at his residence on 22nd April 2015 and left the victim there. The complaint was filed by the third respondent on 27th May 2015, on the basis of which the FIR was registered.

3. The High Court vide order dated 18th October 2016 issued a notice on the writ petition and granted interim relief restraining the Police from taking the appellant into custody, subject to the condition that the appellant must join the investigation at 10 a.m. on 6th June 2016 at Police Station Sitapur, District Sitapur, Uttar Pradesh and thereafter, as and when required.

Shri Abhay Nath Tripathi filed an affidavit in terms of the order dated 18th October 2016 passed by the High Court. He stated that he recorded the statements of both the victim and the appellant, which showed that a marriage was solemnized between them. However, he stated that the appellant did not fulfil his matrimonial obligations. The allegation is that to avoid criminal proceedings, a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short, 'HMA') was filed by the appellant.

He stated that the concerned officer conducted the investigation in a fair manner. He stated that the victim was ready to stay with the appellant, and therefore, the chargesheet, though ready, has not been filed to facilitate the amicable settlement of the dispute. The successor of the said officer filed a counter affidavit to the writ petition on 11th August 2017 justifying the registration of the FIR, which also refers to the petition filed by the appellant under Section 9 of the HMA.

Submissions

4. The learned counsel appearing for the appellant, invited our attention to Annexure P-2, which is a notice dated 1st May 2015 issued by an advocate on behalf of the victim. The learned counsel submitted that in the notice, the victim admitted that a marriage was solemnized between her and the appellant. He pointed out that on 6th May 2015, a petition under Section 9 of the HMA was filed by the appellant against the victim for restitution of conjugal rights.

He submitted that within a few days thereafter, on 27th May 2015, the third respondent lodged the FIR. He urged that the prosecution of the appellant is nothing but an abuse of the process of law. Therefore, the High Court ought to have quashed it. He pointed out that even the Investigating Officer filed an affidavit stating that as the appellant had married the victim, the allegation of rape may not be substantiated.

5. The learned Additional Advocate General appearing for the respondent-State of Uttar Pradesh, supported the impugned judgment and submitted that the ingredients of the offences under Sections 376 and 506 of the IPC were made out.

Consideration of Submissions

6. Shri Abhay Nath Tripathi, Circle Officer, Kaisarbagh, District Lucknow, Uttar Pradesh filed an affidavit on behalf of the State Government stating that the marriage certificate produced along with the writ petition was genuine and that the petition filed by the appellant for restitution of conjugal rights was pending.

He referred to the statements of both the appellant and the victim recorded by him and stated that the main grievance of the victim was that the appellant was not performing his matrimonial obligations. However, in the counter affidavit filed subsequently by the successor of the Circle Officer, it was contended that the marriage ceremony between the appellant and the victim was a farce made only to enable the appellant to establish sexual relations with the victim.

7. Annexure P-2 is the legal notice dated 1st May 2015 issued by Shri Aftab Ahmed, Advocate, on behalf of the victim. In the notice, the victim has been described as the wife of the appellant. In the counter affidavit filed by the Circle Officer, the genuineness of Annexure P-2 is not disputed. In paragraphs 1 and 2 of the notice, it is stated thus:

"1. That through this notice I am informing Sri Satyendra Singh that on 16.2.2001 (sic), your son Ajeet Singh has solemnized marriage according to Vedic rites and ceremonies in his own wish, willingly with my client XXXX (name masked) daughter of Ram Naresh at Arya Samaj Mandir.

2. That from 16.2.2015 to 21.4.2015 your son Ajeet Singh and XXXX (name masked) both had been living as husband and wife at Lucknow and Delhi."

8. Thereafter, in paragraphs 3 and 4, it is alleged that the victim was turned away from the matrimonial home by the appellant on the ground that his father wanted a sum of Rs.50 lakhs. By the said notice, the victim called upon the appellant to arrange "Vidai". Within five days of sending the notice, on 6th May 2015, the appellant filed a petition for restitution of conjugal rights against the victim.

9. The allegation in the FIR lodged at the instance of the third respondent is that the appellant maintained a physical relationship with the victim by giving her a false promise of marriage. It is stated that a certificate of marriage was got prepared by the appellant from Arya Samaj Mandir to put pressure on the victim. It is alleged that the appellant left the victim in her house on 22nd April 2015 and has never returned to take her back. The notice dated 1st May 2015 issued by the advocate for the victim clearly admits that the marriage between the appellant and the victim was solemnized on 16th February 2015.

A copy of the statement of the victim recorded on 23rd November 2016 by an officer of Police Station Naka, Lucknow, is placed on record, in which she stated that the appellant forced her to have a physical relationship with her in a hotel in

Delhi on 4th December 2014. Thereafter, the physical relationship was maintained by the appellant. She stated that on 16th February 2015, the appellant took her to Arya Samaj Mandir and solemnized the marriage where no other person was present. She stated that thereafter, they stayed in a hotel till 19th February 2015.

In March 2015, she stayed with the appellant for three to four days. From the end of April 2015, the appellant stopped attending to her phone calls. Thus, the relationship between the appellant and the victim was a consensual relationship which culminated in the marriage. In the legal notice issued on behalf of the appellant, the factum of marriage was admitted. Therefore, on the face of it, the allegation that the physical relationship was maintained due to false promise given by the appellant to marry, is without basis as their relationship led to the solemnization of marriage.

Therefore, this is a case where the allegations made in the FIR were such that on the basis of the statements, no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the appellant. Therefore, clause (5) of the decision of this Court in the case of State of Haryana & Ors. v. Bhajan Lal & Ors.1 will apply. Hence, a case was made out for quashing the FIR.

10. Therefore, we set aside the impugned judgment of the High Court of Judicature at Allahabad, Lucknow Bench dated 7th December 2016 and quash the Case Crime no.106 of 2016 registered against the appellant at Police Station Naka, District Lucknow, Uttar Pradesh.

11. The appeal is, accordingly, allowed.

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

.....J. (Pankaj Mithal)

New Delhi;

January 03, 2024.

1 1992 Supp (1) SCC 335

IN THE SUPREME COURT OF INDIA

All India Judges Association
Vs.
Union of India and Ors.

[Writ Petition (Civil) No. 643 of 2015]
[Special Leave Petition (Civil) Nos. 6471-6473 of 2020, 29232 of 2018]
[Contempt Petition (Civil) Nos. 711 of 2022, 36, 37, 38, 39, 40 of 2023, 848 of 2023 and 1338 of 2023 in Writ Petition (Civil) No 643 of 2015]

HEADNOTE – **Judicial Officers' Pay :** Directs States to clear SNJPC arrears by Feb 29; Asks High Courts to set up committees to oversee

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

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Institutionalization .....

1. By its orders dated 27 July 2022, 5 April 2023 and 19 May 2023, this Court has accepted the recommendations of the Second National Judicial Pay Commission1, chaired by Justice P V Reddy, former Judge of this Court of India on the revision of pay and pension for judicial officers.

2. The abovementioned orders have delineated inter alia the history of the constitution of the SNJPC, and the principles underlying judicial pay, allowances and pensions. The contents of the earlier orders shall not be repeated here. This judgment pertains to the allowances which have been granted to judicial officers and retired judicial officers by the SNJPC.

At this stage, it would be necessary to note that save and except for three allowances, where there was a modification, the allowances recommended by the First National Judicial Pay Commission known as the Shetty Commission were affirmed by this Court in All India Judges Association v Union of India2. Thereafter, all allowances which were recommended by the subsequent pay commission, namely the Judicial Pay Commission3 called the Justice Padmanabhan Committee were accepted by this Court in its decision reported as All India Judges Association v Union of India4.

3. Besides Mr K Parameshwar, Amicus Curiae, all the State governments and Union Territories have been given an opportunity to furnish their objections to the allowances, as proposed by the SNJPC. Objections have been filed on the record of this Court.

4. In the course of hearing, the following counsel have appeared on behalf of the States, or as the case may be, the Associations of Judges:

S. No.	**Name of the counsel**	**Appearing for**
1	Mr. Gaurab Banerji, Sr. Adv.	AIJA
2	Mr. Jaideep Gupta, Sr. Adv	High Court at Calcutta
3	Mr Gopal Jha, Adv	All India Retired Judges Association
4	Ms Gautami Yadav, Adv	Maharashtra State Judges Association
5	Mr Sunny Choudhary	Madhya Pradesh
6	Mr Mukesh Kumar Verma	Andaman & Nicobar
7	Mr Joydip Roy, Adv.	All India Judges Association
8	Ms Madhumita Bhattacharjee	West Bengal

9	Mr Sanjay Kumar Tyagi	Uttar Pradesh
10	Mr Shuvodeep Roy	Assam and Tripura
11	Mr. Ravi Shanker Jha	Bihar
12	Mr. Amit Anand Tiwari, AAG	Tamil Nadu
13	Mr. Sabarish Subramanian, Adv	Tamil Nadu
14	Mr. Karan Sharma, Adv.	Punjab
15	Dr Manish Singhvi, Sr, Adv	Rajasthan
16	Mr V N Raghupathy, Adv	Karnataka
17	Deepanwita Priyanka, Adv	Gujarat
18	Mr. Sriharsha Pichara, Adv	Telangana
19	Mr Pukhrambam Ramesh	Kumar Manipur
20	Ms K Enatoli Sema	Nagaland
21	Ravi Bakshi, Adv	Himachal Pradesh
22	Mr Alim Anvar, Adv.	Kerala
23	Mr Amit Kumar, AAG	Meghalaya
24	Mr Ashutosh Kumar Sharma, Adv	Uttarakhand
25	Mr Deepak Prakash, Adv	Kerala Judicial Officers Association.

5. In addition, we have had the benefit of considering intervention applications by the State of Maharashtra.

6. The Amicus Curiae has tendered a note summarizing the position. The SNJPC considered a total of twenty-one allowances in its report. These allowances are tabulated below:

1. House Building Advance
2. Children Education Allowance
3. City Compensatory Allowance
4. Concurrent Charge allowance
5. Conveyance/Transport Allowance
6. Dearness Allowance
7. Earned leave encashment
12. House Rent Allowance
    a. Residential Quarters
    b. HRA
    c. Furniture & Air Conditioner Allowance
    d. Maintenance
    e. Guest House
13. Leave Travel Concession/Home Travel Concession
14. 14. Medical Allowance
15. Newspaper and Magazine Allowance
16. Risk Allowance
17. Robe Allowance
18. Special Pay for Administrative Work

8. Electricity and water charges
9. Higher Qualification
10. Hill area/ Tough Location Allowance
11. Home orderly/Domestic Help Allowance
19. Sumptuary Allowance
20. Telephone Facility
21. Transfer Grant

7. Among the allowances which have been recommended by the SNJPC, two new allowances are proposed while two additional components are introduced to an additional allowance, namely:

(i) Children Education Allowance (Serial No 2 in the tabulation);

(ii) A Furniture and Air conditioner allowance and maintenance as a part of the House Rent Allowance (Serial Nos 12C and 12D); and

(iii) Risk Allowance (Serial No 16 of the tabulation).

8. The SNJPC has recommended that the City Compensatory Allowance (Serial No 3 of the above tabulation) should be discontinued. In respect of the Robe Allowance (Serial No 17), the SNJPC recommended that such a demand would not be entertained by the next JPC. Twelve out of the twenty-one allowances form the subject matter of a recommendation either by the Sixth or, as the case may be, Seventh Central Pay Commission either on the same or on revised rates.

9. At the outset, it needs to be clarified that since the SNJPC has proposed a revision of the existing rates as applicable, the States/Union Territories shall continue to pay the allowances at the rates which were applicable in respect of each allowance where the SNJPC has recommended that the revised rates shall come into effect later than 1 January 2016.

Objections by the Union Government and State Governments:

10. Before we deal with each individual allowance, it would be necessary to record that, broadly speaking, the objections which have been raised by the States, Union Territories and the Union Government can be classified into three categories:

(a) The revision of rates or, as the case may be, the new allowances will result in an increased financial burden and expenditure;

(b) The rules governing the payment of allowances prescribed by each State for their own administrative establishment must be followed; and

(c) the benefits which are provided to judicial officers must be equivalent to those provided to other Government officers.

11. The submissions urged on behalf of the States have been considered in several previous judgments of this Court, more specifically in relation to the recommendations of the SNJPC itself. On the aspect of the increased financial burden and additional expenditure, this Court, in its judgment dated 5 April 2023, relied on the earlier decision in the All India Judges Association v. Union of India (II)5 and held that contentions regarding the financial implications of the directions are liable to be rejected when the directions stem from the obligation of the state.

In other words, a plea of financial burden cannot be raised to resist mandatory duties of the state. Providing necessary service conditions for the effective discharge of judicial functions is one such duty. The observations in that regard are contained in paragraph 19 of the judgment dated 05 April 20236.

12. The same objection was dealt with in the subsequent judgment of this Court dated 19 May 2023 at paragraph 26.7 The Court noted that the issue of financial burden has been examined in these very proceedings on at least three occasions and that this Court had earlier expressed the hope that it will not be re-agitated in view of All India Judges Association vs Union of India (II)8.

13. Judicial service is an integral and significant component of the functions of the State and contributes to the constitutional obligation to sustain the rule of law. Judicial service is distinct in its characteristics and in terms of the responsibilities which are cast upon the officers of the District Judiciary to render objective dispensation of justice to citizens. The State is duty bound to ensure that the conditions of service, both during the tenure of office and after retirement, are commensurate with the need to maintain dignified working conditions for serving judicial officers and in the post-retirement emoluments made available to former members of the judicial service.

Members of the district judiciary are the first point of engagement for citizens who are confronted with the need for dispute resolution. The conditions in which judicial officers across the country are required to work are arduous. The work of a judicial officer is not confined merely to the working hours rendered in the course of judicial duties in the court. Every judicial officer is required to work both before and after the court working hours. The judicial work of each day requires preparation before cases are called out.

A judicial officer continues to work on cases which may have been dealt with in court, in terms of preparing the judgment and attending to other administrative

aspects of the judicial record. That apart, members of the district judiciary have wide ranging administrative functions which take place beyond working hours, especially on week-ends including the discharge of numerous duties in relation to prison establishments, juvenile justice institutions, legal service camps and in general, work associated with the Legal Services Act 1987.

14. The work of a Judge cannot be assessed solely in terms of their duties during court working hours. The State is under an affirmative obligation to ensure dignified conditions of work for its judicial officers and it cannot raise the defense of an increase in financial burden or expenditure. Judicial officers spend the largest part of their working life in service of the institution. The nature of the office often renders the incumbent incapacitated in availing of opportunities for legal work which may otherwise be available to a member of the Bar.

That furnishes an additional reason why post-retirement, it is necessary for the State to ensure that judicial officers are able to live in conditions of human dignity. It needs to be emphasized that providing for judges, both during their tenure and upon retirement, is correlated with the independence of the judiciary. Judicial independence, which is necessary to preserve the faith and confidence of common citizens in the rule of law, can be ensured and enhanced only so long as judges are able to lead their life with a sense of financial dignity.

The conditions of service while a judge is in service must ensure a dignified existence. The post-retirement conditions of service have a crucial bearing on the dignity and independence of the office of a judge and how it is perceived by the society. If the service of the judiciary is to be a viable career option so as to attract talent, conditions of service, both for working and retired officers, must offer security and dignity.

15. As we shall indicate in the course of this judgment, the allowances which have been provided by the SNJPC are basic allowances, most of which rank on the same scale as what has been made available to officers discharging executive functions in the All India Services. It is a matter of grave concern that though officers in the other services have availed of a revision of their conditions of service as far back as 01 January 2016, similar issues pertaining to judicial officers are still awaiting a final decision eight years thereafter. Judges have retired from service. The family pensioners of those who have passed away are awaiting resolution as well.

16. The second objection which has been raised on behalf of the States is that the rules of the particular State must be followed in each instance. This has again been dealt with in the judgment of this Court dated 19 May 2023. The relevant extract is footnoted below.9

"14. Secondly, the judiciary in this country is a unified institution judicially though not administratively. Hence uniform designations and hierarchy, with uniform service conditions are unavoidable necessary consequences."

17. This Court has categorically held that there is a need to maintain uniformity in the service conditions of judicial officers across the country. Thus, the plea that rules of each State must govern pay and allowances, lacks substance.

18. The third objection as to the equivalence between judicial officers and other Government officers has been elaborately analyzed in paragraph 1410 of the judgment dated 05 April 2023 and in paragraphs 24, 2911 of the judgment dated 19 May 2023. Judges are not comparable with the administrative executive. They discharge sovereign state functions and just like the Council of Ministers or the political executive and their service is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive, judges are distinct from judicial staff, and are thus comparable with the political executive and legislature.

It would be wholly inappropriate to equate judicial service with the service of other officers of the State. The functions, duties, restrictions and restraints operating during and after service are entirely distinct for members of the judicial service. Consequently, the plea of equivalence has been consistently rejected in the judgments of this Court. We affirmatively do so again.

Allowances recommended by the SNJPC

19. We will now deal with each of the allowances as recommended by the SNJPC.

1 House Building Advance (HBA)

20. At the outset, it needs to be noted that the HBA forms a subject matter of the recommendations of the Seventh CPC, FNJPC, JPC and now the SNJPC. The SNJPC has recommended that:

(i) HBA shall be made available to judicial officers in terms of the House Building Advance Rules, 2017; and

(ii) HBA shall be available to judicial officers also for the purchase of a ready built house from private individuals subject to such safeguards as may be prescribed by the State Government in consultation with their respective High Courts.

21. The Ministry of Housing and Urban Affairs, Government of India has issued an Office Memorandum12 dated 9 November 2017 providing for the payment of HBA. The recommendations of the SNJPC are based on the terms of this OM. However para 2(v) of the OM of the Union Government contains the following stipulation:

"5. Outright purchase of a new ready-built house flat from Housing Boards, Development Authorities and other statutory or semi-Government bodies and from registered builders i.e., registered private builders, architects house building societies, etc. but not from private individuals."

22. The above clause in the OM indicates that the HBA can be availed of for the outright purchase of a new or ready built house or flat from public bodies as well as from registered private builders, architects and societies but not from private individuals. The SNJPC, in the course of its recommendations has observed as follows:

"6. The Commission having given its consideration to the same is of the view that the HBA advance to the Judicial Officers shall be in terms of HBA Rules, 2017. However, the expression "but not from private individual" in Clause 2(v) needs to be suitably modified. It is quite possible that an individual may have purchased the house from the institutions/societies mentioned in the O.M. and if he subsequently intends to sell it and a Judicial Officer is inclined to purchase it.

In such an event, the HBA may not be available to the Judicial Officer if Clause 2(v) is strictly construed. Further, quite often the Government servants/officials as well as Judicial Officers would prefer to have ready built house and mere fact that the seller is a private individual should not be a good reason to deny the HBA on the terms set out in the Rules.

It may be noted from O.M. that from registered private builders, architects, house building societies etc. purchase by a private individual is allowed. There is no good reason for exclusion of purchase from private individuals. However, suitable safeguards to check any overestimation in the case of purchases from private individual can be evolved by the State Government in consultation with the High Court. "

23. The SNJPC has basically adopted the same financials as incorporated in the OM of the Union Government with the modification that the purchase from a private individual may also be permitted.

24. We are inclined to accept the modification particularly since the State Governments have been permitted to evolve suitable safeguards, to check any over estimation in case of a purchase from private individuals, in consultation

with the High Court to ensure that there is not delay in implementation, we direct that the Committee constituted in terms of the directions issued in a later part of this judgment under the authority of every High Court shall sort out any difficulties which may arise in the implementation of the recommendations of the SNJPC as accepted by the present order.

25. We accordingly accept the recommendations of the SNJPC on the adoption of HBA.

2 Children Education Allowance (CEA)

26. The SNJPC has recommended the payment of the allowance with effect from academic year 2019-2020. The recommendation by the SNJPC on the payment of the CEA is in accordance with the recommendations of the Seventh CPC for Central Government employees which is in the following terms:

(a) Rs 2,250 per month as CEA and Rs 6,750 per month as hostel subsidy for two children up to Class 12;

(b) For children with special needs, the reimbursement would be at double the rate stated in (a);

(c) When the DA increases by 50%, the allowances and subsidy shall increase by 25%; and

(d) The rights of officers who are already receiving this benefit will not be adversely affected by the recommendation.

27 While arriving at the above rates for the CEA, the SNJPC has considered the fact that the judicial service has a pan India character. In making the recommendation, the SNJPC has based the payment of the allowance of the CEA in terms of the OM dated 16 August 2017 of the Union Government in the Department of Personnel and Training. The payment of the allowance as recommended shall accordingly stand approved.

3 City Compensatory Allowance (CCA)

28. While recommending that the CCA be discontinued prospectively on the ground that it is not being paid to High Court or Supreme Court Judges after the Seventh CPC recommendations, the SNJPC has also directed that no recovery shall be effected on the amount already paid on account of the allowance.

29. We approve both the recommendation for discontinuation and the recommendation that no recovery shall be made.

4 Concurrent Charges Allowance

30. The SNJPC has observed that concurrent charge allowance is payable to officers who are required to hold full charge of the duties of equal or higher responsibilities in addition to the duties of their own post. The following recommendations were made by the FNJPC:

"a) The charge allowance be paid to the Judicial Officer when he is placed in charge of another Court continuously beyond the period of 10 working days and if he performs appreciable judicial work of that Court; AND

b) The charge allowance be paid to such Judicial Officer at 10% of the minimum of the time scale of the additional post held."

31. The SNJPC has made a similar recommendation for the payment of a like allowance where a judicial officer was placed in charge of another court continuously beyond a period of ten working days. The SNJPC was of the view that the Concurrent Charge Allowance with a ceiling @ 10% of the minimum of the scale of the additional post held beyond a period of ten working days is reasonable and does not require any upward revision. Moreover, it opined that with the revision of pay, the quantum of allowance at the rate of 10% is an adequate sum.

The SNJPC observed that the actual amount payable within the ceiling of 10% depends upon the number of days worked, the quantum of judicial work turned out and the administrative work handled. Moreover, as was being done earlier, the High Courts would decide the amount payable having regard to the relevant factors. The SNJPC, however, recommended that the parameter of "appreciable judicial work" of the FNJPC is vague and involves a cumbersome process. That criterion has accordingly been dispensed with. The summary of the recommendations of SNJPC in that regard is set out below:

"1. The concurrent charge allowance to be available maximum at the rate of 10% of the minimum of the scale of the additional post held beyond a period of ten working days.

2. No upward revision in the percentage of the Concurrent Charge allowance.

3. High Court to decide the Concurrent Charge allowance to be available to the Officer within the ceiling of 10% on the basis of the number of days worked, the quantum of judicial work turned out and the administrative work handled.

4. The criterion laid down by FNJPC be dispensed with and there shall not be any insistence on the performance of 'appreciable judicial work' of the Court concerned. "

32. The recommendations made by the SNJPC is accordingly accepted.

5 Conveyance/Transport Allowance (TP)

33. As regards Conveyance/Transport Allowance, the SNJPC made the following recommendations:

(a) The pool car service for various judicial officers, as recommended by FNJPC, must be dispensed with. However, if the officers wish, they can forgo the transport allowance and continue with the pool car service for a period of one year or so;

(b) The transport allowance at the rate of Rs 10,000 per month be given to those judicial officers who own the car so as to cover the cost of maintenance and driver's salary and this will be increased to Rs 13,500 from 01.01.2021. The transport allowance would be payable at a reduced rate of Rs 4,000 per month in those States where there is an existing practice of allocating a driving-knowing office attendant/peon to the officer;

(c) In addition to the transport allowance, there should be a reimbursement of the cost of 100 litres of petrol/diesel in cities and 75 litres of petrol/diesel in other areas;

(d) After the recommendations of FNJPC, the following judicial functionaries were eligible for official vehicles, namely, Principal District Judge, Chief Judicial Magistrate/Chief Metropolitan Magistrate, Principal Judge of City Civil Court and Principal Judge of Small Causes Court. In addition to these functionaries, three more judicial functionaries would be eligible for official vehicles, namely, Director of the Judicial Academy/Judicial Training Institute, Principal Judge of the Family Courts and Secretary of the District Legal Services Authority. The High Courts were permitted to prune down the list depending upon the financial capacity of the State;

(e) The quantum of petrol/diesel for official cars would be raised to the actual consumption for official purposes as certified by the concerned official and supported by a log book, which would be maintained. The judicial officers using official cars may be permitted to use them for private purposes to the extent of 300 kms per month;

(f) The judicial officers shall be permitted to exhibit a sticker at their option on the lower left side of the windscreen with inscription 'Judge' printed in moderately sized letters; and

(g) Soft loan facilities to the extent of Rs ten lakhs at nominal interest for the purchase of car shall be extended to the judicial officers.

34. The report of the SNJPC in regard to the payment of conveyance/transport allowance is accepted. All concerned authorities shall take steps for the purpose of implementing the recommendations.

6 Dearness Allowance

35. By its order dated 19 May 2023, this Court has accepted the recommendation of the SNJPC on dearness allowance.

7 Earned Leave Encashment

36. The SNJPC has recommended that the judicial officers be entitled to earned leave encashment in the following manner:

"9. SUMMARY OF RECOMMENDATIONS

1. No enhancement in the maximum limit of 300 days leave encashment at the time of retirement.

2. A judicial officer shall be entitled to encash:

(a) 10 days earned leave while availing LTC subject to maximum 60 days - 10 at a time upto six occasions during the entire service.

(b) 30 days in a block of two years. (c) S.No.(a) and

(b) shall be in addition to the right of the Judicial Officers to encash upto 300 days EL at the time of retirement.

3. In case of officers who have retired and while granting leave encashment at the time of retirement, the leave encashment availed during service stand adjusted shall be paid the amount of the so adjusted earned leave, at the time of retirement as explained in the example above, within a period of three months from the date of acceptance of the report."

37. The report submitted by the SNJPC in regard to the earned leave encashment is accepted.

8 Electricity and Water Charges

38. The SNJPC has made the following recommendations:

"1. No change in the percentage of reimbursement. The 50% of reimbursement formula recommended by FNJPC and reiterated by the JPC shall continue.

2. The ceiling in terms of units of electricity and the quantity of water consumed shall be as follows:

Designation	Electricity Units	Water Quantity
District Judges	8000 units per annum	420 Kls per annum
Civil Judges	6000 units per annum	336 Kls per annum

3. Reimbursement of electricity and water charges shall be on the quarterly basis on production of proof of payment of the billed amount.

4. This allowance shall be available at the enhanced rates w.e.f. 01.01.2020."

39. The SNJPC duly considered the objections. While some High Courts suggested the continuance of the existing system of 50% reimbursement, others suggested reimbursement at 75%, while still others at 100%. The High Courts of Madhya Pradesh and Jharkhand suggested the fixation of a ceiling on the number of units. The Union of India and almost all States except Jharkhand and Kerala have accepted the recommendation of SNJPC. The State of Jharkhand recommended a ceiling of Rs 1,250 per month for electricity and water charges.

40. Having considered the recommendation, we are of the view that it should be accepted and it is ordered accordingly.

9 Higher Qualification Allowance

41. The SNJPC noted that for acquiring higher qualifications in law, specialized study of the subjects concerned is involved and the acquisition of such qualifications in the nature of a post graduate or doctoral degree will improve the quality of work of a judicial officer. The recommendations of the SNJPC are summarized below:

"1. The Judicial Officers shall be granted three advance increments for acquiring higher qualification i.e. post- graduation in law and one more advance increment if he acquires Doctorate in Law.

2. The advance increments once granted for post-graduation degree or Doctorate in law shall not be again granted if, in future, the officer acquires post graduate or Doctorate degree in any other subject.

3. The advance increments shall be available to the officer who had acquired the post-graduation degree or Doctorate either before recruitment or at any time subsequent thereto while in service.

4. The advance increments shall be granted from the date of initial recruitment, if the officer has already acquired the postgraduation degree or Doctorate and from the date of acquiring the post-graduation or Doctorate degree, if acquired after joining the service.

5. The advance increments shall be made available to the officers only and only if the higher qualification has been acquired through regular studies (full time or part time) and not through distant learning programmes.

6. The benefit of advance increments shall not be extended at the ACP stage (ACP I or II). However, the advance increment shall be available when the Officer is promoted from Civil Judge (Jr. Div.) to Civil Judge (Sr. Div.) and from Civil Judge (Sr. Div.) to District Judge cadre.

7. The advance increments shall be available in the District Judge Cadre from District Judge (Entry Level) to District Judge (Selection Grade) and from District Judge (Selection Grade) to District Judge (Super Time Scale).

8. The advance increments for all practical purposes shall be part of salary and Dearness Allowance shall be available on the same."

42. The recommendation made by the SNJPC that the benefit of advance increment shall not be extended at the ACP stage appears to be covered by the order of this Court dated 30 September 2022 in State of Maharashtra v Tejwant Singh Sandhu13 where this Court held:

"The short question which is posed for consideration of this Court is whether the judicial officers who have acquired the the degree of LL.M. are entitled to the benefit of an additional increment? It is the case on behalf of the State that once the concerned Judicial Officer is getting the benefit of ACP, is not entitled to the additional increment on acquiring the additional qualification of LL.M.

The aforesaid cannot be accepted. The grant of ACP has nothing to do with the benefit of additional increment on acquiring the additional qualification like LL.M. Even otherwise, the issue is squarely covered by the decision of this Court in Bharat Kumar Shantilal Thakkar Vs. State of Gujarat & Anr. (2014) 15

SCC 305. In view of the above, there is no substance in the present Special Leave Petition and the same deserves to be dismissed and is accordingly dismissed."

43. There is no justification for denying the benefit of advance increments at the ACP stage. The object and purpose of ACP is to prevent stagnation. On the other hand, the object and purpose of advance increments for acquiring higher qualifications is to improve judicial performance. Hence, the restrictive condition imposed by the SNJPC in regard to non-extension of advance increments at the ACP stage is not accepted. The advance increments for acquiring higher qualifications shall also be made available to officers who have acquired their degrees through distance learning programmes.

44. Subject to the above clarifications, the recommendation of the SNJPC is accepted.

10 Hill Area/Tough Location Allowance

45. The SNJPC has made the following recommendations:

"1. Hill Area/Tough Location Allowance @Rs.5000/- per month shall be paid to the Judicial Officers posted in hill areas/tough locations.

2. More beneficial provision, if any, already applicable to the officials of the State/UT shall be extended to the Judicial officers.

3. In case of doubt, whether a particular area can be considered to be hilly or tough location area, decision of the High Court shall be followed in relation to the Judicial officers.

4. This allowance shall be available w.e.f. 01.01.2016."

46. The recommendation is accepted. All High Courts are directed to specify the areas classifiable as hill areas/tough locations within a period of two months from the date of this order.

11 Home Orderly/Domestic Help Allowance

47. The SNJPC has made the following recommendations:

"1. The Home-cum-office orderly allowance shall be available to the serving Judicial officers at the following rates:

District Judges: minimum wages for one unskilled worker in the concerned State/UT subject to minimum of Rs.10,000/- per month

Civil Judges: 60% of the minimum wages for one unskilled worker in the concerned State/UT subject to minimum of Rs.7,500/- per month.

2. Judicial officers getting higher allowance on this account by virtue of the orders issued by some States, they may continue to draw the same.

3. The allowance at the aforesaid rates shall be available to the Judicial Officers w.e.f. 01.01.2016 in States where they are getting the same prior to 01.01.2016 and in other cases, w.e.f. 01.01.2020.

4. The Judicial officers provided with Group D employee as an Attender/Peon/office subordinate for residential duties may exercise their option either to continue with the present system and forego the allowance that has been recommended or to claim the allowance instead of availing the services of the official Attender/Peon.

5(a). The payment of home orderly allowance should not result in discontinuance of practice, if any, of deputing the Office Peons/Attenders or other Group D employee during nights at the residences of (i) Magistrates who are called upon to attend the Judicial work at times during night times. (ii) the Office Peon/Attender or such other Group D employee deputed for night duty at the residence of Judicial officer living in the areas generally considered to be disturbed or security risk areas or outsourced security guards to be deployed in such areas and (iii) such personnel can also be deputed to the residence of Principal District Judge or equivalent rank officer having administrative responsibilities.

(b) The deployment of Peons/Attenders for such residential duties shall be subject to the availability of Group D/Class IV personnel and without detriment to Court related duties.

6. Drawing up a panel of Home Orderlies/residential attendants/sevaks appointed on consolidated salary equivalent to minimum wages and allotting them to the Judicial officers (as suggested by the Madras High Court) can be thought of as an alternative subject to the decision taken in this regard by the concerned High Court. However, in such a case, Home Orderly allowance cannot be claimed.

7a. Domestic Help Allowance to the pensioners and family pensioners shall be available at the following rates from 01.01.2016:

Pensioner: Rs.9,000/- per month

Family pensioners: Rs.7,500/- per month

7b. This allowance shall stand increased by 30% on completion of five years from 01.01.2016 that is, w.e.f. 01.01.2021.

8. The allowance shall be drawn on the self certification of the Judicial Officer/Pensioner/Family Pensioner."

48. We accept the recommendations of the SNJPC.

12 House Rent Allowance and Residential Quarters

49. The allowance under the above head has the following components:

(a) Residential Quarters:

The SNJPC took note of the fact that there is a dearth of residential government quarters and that securing suitable accommodation has become an acute problem for judicial officers. The SNJPC made the following recommendations:

1. The State Governments should urgently take up construction of the residential quarters for the Judicial Officers and the progress of construction be monitored by this Court.

2. The Judicial Officer is to be provided accommodation or requisitioned private accommodation within one month of taking charge of the post.

3. If the Judicial Officer is not provided with the government accommodation or requisitioned private accommodation within one month, then the Judicial Officer may secure private accommodation and should be paid rent in the following terms:

a. If the rent of the private accommodation is within the admissible house rent allowance mentioned below, no fixation of rent is required. But the concerned Judicial Officer has to certify the actual rent being paid.

b. If the rent of the private accommodation is more than permissible house rent allowance, the rent shall be assessed by Principal District Judge with the assistance of PWD/R&B officials.

c. If the difference between the permissible house rent allowance and the rent assessed is more than 15% and Principal District Judge may seek approval of

High Court for payment of the said amount unless the officer is ready to pay the differential cost.

4. The minimum plinth area for the residential accommodation shall be 2500 sq. ft. for District Judge and 2000 sq. ft. for Civil Judge. However, The High Court administration have the discretion to sanction the design with higher plinth area.

(b) House Rent Allowance

The SNJPC noticed that different rates of HRA are prevalent in different cities. Taking all aspects into account, the SNJPC was of the view that the Central Government notified rates may be adopted by the States and made the following recommendations:

(i) Judicial officers who are allotted official quarters for residence shall not be entitled to HRA;

(ii) Judicial officers residing in their own houses, including the house of a parent or spouse, shall also be entitled for the recommended HRA with effect from 01.01.2016 after obtaining permission from the High Court to reside in their own house and judicial officers already residing in hired accommodation will be entitled to the recommended HRA with effect from 01.01.2020, subject to the actual rent paid within the said ceiling;

(iii) The Office of the Principal District Judge or equivalent shall pay rent directly to the landlord, in which case, the officer is not eligible to draw HRA; and

(iv) The SNJPC rates of HRA should be applicable to all Judicial Officers as per the notification dated 07.07.2017 which was issued after the VIIth Central Pay Commission (CPC) by the Central Government:

..	"Rates of HRA/pm as % of basic pay
X	24%
Y	16%
Z	8%

However, the minimum rates prescribed are 5400/-, 3600/- and 1800/- respectively. And the rate will be changed in accordance with the change in Dearness Allowance in the following terms:

Classification of Cities	Rates of HRA/pm as % of basic pay	When DA crosses
X	27%	30%
	25%	50%

Y	18%	20%
	25%	50%
Z	9%	10%
	25%	50%

'Z' Category is unclassified at present and the High Court is at liberty to upgrade and add the cities in different classes."

(c) Furniture and Air Conditioner Allowance

The SNJPC was apprised of the fact that some furniture is provided to the judicial officers in certain places, but there is a lack of uniformity. The SNJPC made the following recommendations:

"4. Furniture grant of Rs.1.25 lakhs every five years shall be provided to the Judicial Officer subject to production of proof of purchase by the Judicial Officer. Household electrical appliances can also be purchased by availing of the said grant. The Officers having not less than two years of service will also be eligible for this allowance. The option to purchase the furniture being used by the officer at the depreciated rate shall be available at the time of fresh grant or retirement.

4.1 Apart from the furniture grant, one air-conditioner shall be provided at the residence of every Judicial Officer once in every five years."

(d) Residential quarters - maintenance

In order to obviate the problems faced by judicial officers in securing services of electricians, plumber, carpenters, sanitary workers and masons and bearing in mind that the Public Works Department, which is in-charge of maintenance, does not have sufficient funds to carry out the work, the SNJPC recommended that an amount of Rs Ten lakhs be made available to each Principal District Judge on the basis of a proposal sent by the Registry of the High Court for the proper maintenance of the residential quarters and that the Government must sanction the amount proposed within two months from the date of the receipt of their proposal.

(e) Guest House/Transit Accommodation

The SNJPC has been in agreement with the suggestions made by the Associations that guest house facility should be provided exclusively for judicial officers bearing in mind the problem faced in securing accommodation in State guest houses. While the SNJPC was aware that it is not possible to construct guest houses in all districts, it emphasized the need to have a guest house-cum-

transit accommodation at least in cities and major towns. In that regard, the following recommendations were made:

"17.2 The Commission does not expect that the Guest houses for the Judiciary should be constructed in all Dist. Headquarters irrespective of the size of the District. The travails of the Judicial Officers in securing suitable accommodation for stay is undeniable at least in the cities and major important towns. There is every need to construct Guest houses-cum-transit homes. One wing can be earmarked as a transit home where the transferred Officer can stay initially for a few weeks till s(he) finds residential accommodation - Official or private.

The Guest house-cum-transit home facility is a long felt need of the Judicial Officers. The Commission recommends that the Guest houses/transit homes shall be constructed in a phased manner by the Governments concerned. The officials concerned shall act in coordination with the Registry of the High Court to identify the places. The details such as number and size of rooms and the amenities shall be finalized after mutual discussion.

As regards the first phase of such construction, the State Governments/UTs may be directed to initiate action within a time frame of six months and necessary financial allocation has to be made for this purpose during the financial year 2020-21. Needless to say that after construction, the High Courts will issue necessary instructions regarding maintenance, minimal catering arrangement, rent to be charged etc."

Of the above five components of house rent related allowances, those at (c) (Furniture and Air Conditioner Allowance) and (d) (Maintenance) have been introduced for the first time. The other components form part of the service conditions of judicial officers.

50. We find reason and justification for the addition of the two components. All the components which have been suggested by the SNJPC are integral to the proper performance of the duties by judicial officers and are accordingly accepted.

13 Leave Travel Concession(LTC)/Home Travel Concession(HTC)

51. The FNJPC recommended that LTC should be provided once in a block of four years to any place in India. However, it laid down a threshold of a completion of five years of service before availing of LTC. The FNJPC also recommended that HTC be extended once in two years and the entitlement for the journey would be according to the rules of the respective States. The recommendation was accepted in 2002 by the decision in the All India Judges Association case by this Court.

52. The JPC, while reiterating these recommendations, proposed two modifications:

(i) A judicial officer may be permitted to avail of LTC on completion of two years of service and on completion of probation (thereby relaxing the requirement of five years of minimum service); and

(ii) The restriction on the availing of LTC in the last year of service was dispensed with.

53. While reiterating the recommendation for HTC, the JPC suggested an additional HTC if a judicial officer was subjected to two or more transfers in the same cadre from one end of the State to another for administrative reasons.

54. The SNJPC considered the views of the High Courts and of the Associations. On considering all aspects of the matter, the SNJPC made the following recommendations:

"i. Payment of one month's salary for not availing the LTC is unwarranted and it would defeat the objective of LTC.

ii. Encashment of 10 days earned leave while availing LTC (not HTC) (subject to the maximum of 60 days) can continue. The same will be in addition to encashment of 300 days at the time of retirement and 30 days in a block of two years.

iii(a) As regards frequency of LTC, the Judicial Officers may be permitted to avail one LTC and one HTC in a block of 3 years.

(b) As far as fresh recruits are concerned, the HTC shall be allowed 2 times in the first block of 3 years. However, the block of 3 years will commence on completion of the period prescribed for probation (not necessarily declared).

iv(a) The Judicial officers irrespective of their rank shall be allowed to travel by air and the reimbursement shall be made subject to the condition that the tickets have been purchased either directly from the Airlines or from the agents authorized, namely, Ashoka Travels, Balmer and Lawrie and IRCTC by the Central/State Government subject to further addition or deletion of the authorized agent by the Central/State Government.

b) The other details such as class of travel, advance etc. shall be governed by the respective Rules/Orders of States/UTs.

v. The Judicial officers may be allowed to carry forward LTC anywhere in India beyond retirement for a period of one year.

vi. There is no justification for extending the LTC/HTC facility to the retired Judicial officers.

vii. As regards the foreign travel to SAARC countries, the District Judges and Senior Civil Judges may be allowed the said facility on two occasions in their service career and only economy class travel shall be allowed.

viii. The Judicial officers shall not be required to avail of earned leave only, for LTC/HTC purpose and they may be permitted to avail of casual leave as a prefix and suffix to the extent of two days."

55. LTC/HTC were components already provided for by the FNJPC and JPC. The recommendations of the SNJPC are on a continuum. We accept the recommendations, save and except for foreign travel to SAARC countries which shall be deleted.

14 Medical Allowance/Medical Facilities

56. The subject matter of the above allowance/facility has been duly considered in the earlier reports of the FNJPC and JPC. Before proceeding further, it would be appropriate to extract from the recommendations of the SNJPC in regard to medical allowances and medical facilities. The recommendations read as follows:

"1. Fixed medical allowance shall be payable @Rs.3,000/- p.m. to the serving Judicial Officers with effect from 01.01.2016.

2. Fixed medical allowance shall be payable @Rs.4,000/- to the pensioners and family pensioners with effect from 01.01.2016.

3. The spouse or other dependents of Judicial Officers drawing family pension shall also be eligible for medical facilities/reimbursement at par with the pensioners of the judiciary.

4(a) The necessity of reference from the Medical Officer of a Government hospital shall be dispensed with. Straightaway, the Judicial Officers including pensioners/family pensioners shall be entitled to have consultations/treatment in the Government notified/empanelled private hospitals/Pathological Labs and seek reimbursement by submitting the bills as per the usual procedure (which is now being followed).

4(b) In regard to Judicial Officers governed by DGEHS or CGHS, the existing procedure which is quite simple and systematic, can be followed.

4(c) The Principal District Judges or Registry of High Court [in respect of Principal District Judge] shall be empowered to address credit letters to the concerned hospitals where the Judicial Officer or Judicial Pensioner/Family Pensioner has been or to be admitted as inpatient.

4(d) For the Pensioners and Family Pensioners, a Medical Card on the lines of what is being issued in Delhi as shown in Appendix III shall be issued by the Principal District Judge.

4(e) The expenditure incurred towards inpatient treatment or for serious ailments requiring more or less continuous treatment shall be processed and sanctioned by the Principal District Judges or other authorized Officer of that rank or as the case may be by the Registry of the High Courts.

4(f) In the case of emergency, the Judicial Officer, serving & retired as well as the family pensioner can take treatment in any nearest private hospital - not necessarily, Government notified hospitals and seek reimbursement as per the usual procedure. If necessary, Credit letter shall be issued for this purpose.

5. On submission of the estimate given by the recognized/empanelled hospital, 80% shall be sanctioned as advance, subject to preliminary scrutiny by the Principal District Judge or a District Judge of equivalent rank authorized by the Registry of the High Court. The balance shall be reimbursed on certification by the designated Civil Surgeon or Official of the Directorate of Medical & Health Services as the case may be. If the Government approved rates are not available for any particular item, the certifying officer shall have due regard to the rates generally charged in the hospitals concerned.

Though there needs to be scrutiny before sanctioning the payment in view of the tendency to exaggerate the estimates, the extent of disallowance shall be minimal and the reasons for disallowance shall be disclosed by the certifying authority. The bills sent by the District Judge for scrutiny of the designated Civil Surgeon/Officer of Directorate shall be cleared within a maximum period of one month from the date of receipt.

6(a) The retired Judicial Officers and the family pensioners who have settled down in another State shall have the facility to claim medical reimbursement/advance from the State from which s(he) is drawing pension/family pension.

6(b) The cost of treatment including room charges/tests undergone in any Government/Government notified/recognized hospitals/pathological labs in an emergency or otherwise shall be reimbursed to the serving officers on tour (official or private purpose) to another State or settled in another State after retirement even though it is not recognized hospital/lab in the State in which the officer is serving or had served.

7 The Registry of the High Court shall examine whether the notified/empanelled hospitals sufficiently cater to the needs of the Judicial Officers including the pensioners/family pensioners and send proposals to the Government for notifying additional hospitals/pathological Labs to the extent it is considered necessary.

8. To avoid delays in processing and sanctioning the bills for want of funds, the Registry of High court shall take prompt action in addressing the Government for releasing additional funds and the Finance Department of the State shall take immediate action by way of making available the additional funds to the High Court on this account."

We analyze the recommendations of the SNJPC below.

Fixed Allowance

57. The SNJPC has justifiably increased the fixed medical allowance to Rs 3,000 per month for serving judicial officers and to Rs 4,000 per month to pensioners and family pensioners with effect from 01.01.2016. This recommendation was made in view of the fact that the FNJPC had recommended a fixed medical allowance of Rs 300 per month, which was increased by the JPC to Rs 1,000 per month for serving judicial officers. The JPC enhanced the medical allowance to Rs 1,500 per month for retired judicial officers and Rs 750 per month for family pensioners.

The recommendation made by the SNJPC for uniformity in the medial allowance payable to pensioners and family pensioners is wholesome and is consistent with Article 14. Of the Constitution. There is no valid basis to distinguish between pensioners and family pensioners for the payment of a fixed medical allowance. Moreover, an increase of Rs 1,000 per month for pensioners as compared to serving judicial officers is also justified considering the fact that the pensioners as a class would need more medical attention with advancing years.

Medical Facilities and Reimbursement

58. The medical facilities to be provided to serving judicial officers, retired judicial officers and family pensioners differ from State to State. There are three broad models which are followed in the case of government servants:

(a) Access to a health scheme like CGHS under which there are empaneled hospitals;

(b) Access to government hospitals and thereafter upon following a procedure of reference; and

(c) Cashless facilities pursuant to group insurance policies.

59 The FNJPC recommended that the judicial officers should also be given similar medical facilities as are being given to the members of the State legislature. It recommended that the State Government should notify the list of hospitals for medical treatment of judicial officers and their families. A similar benefit was extended to retired judges. The FNJPC's recommendations were accepted by this Court in All India Judges Association v Union of India14.

60. The JPC reiterated the recommendations of the FNJPC. Its recommendations were accepted in All India Judges Association v Union of India15.

61. While noting the varying practices which are followed across the country, the SNJPC observed that while the CGHS and DGEHS are working well, difficulties are faced by judicial officers in several States where there is neither a proper empanelment of doctors, hospitals and labs nor is there an effective procedure for reimbursement of medical bills. It specifically noted the case of the State of Maharashtra where the earlier orders of this Court were not observed.

The SNJPC further noted that in the absence of proper empanelment, referral by a Medical Officer of a government hospital is needed for treatment in private hospitals. The SNJPC has taken note of the grievance of the judicial officers while formulating its recommendations. The grievances which were projected by the judicial officers included the following:

"1) Lack of adequate number of notified hospitals/pathological labs.

2) Non-availability of cashless treatment for in-hospital treatment even in case of serious ailments and emergency.

3) The Civil Surgeon or Directorate of Medical/Health services to whom the claims are referred to are enforcing unjustifiable cuts.

4) Delay in processing/passing the bills in case of high claims.

5) Insistence of Essentiality Certificate even for medicines purchased on the basis of the prescription issued by Registered Medical Practitioner or even the Consultant of the notified hospital.

6) Procedural problems being faced by the Judicial Officers who have settled down in other States after retirement.

7) Non-specification of premier hospitals of repute in other States for the purpose of availing reimbursable medical treatment in cases of serious ailments.

8) Non-extension of medical facilities to the family pensioners."

62. During the course of the hearing, the attention of this Court has been drawn to the situation in the State of Uttar Pradesh by members of the Association representing former judges. It has been submitted that the hospitals which have been empaneled by the State Government for the purpose of cashless facilities are providing sub-standard treatment.

As a result, the cashless facilities cannot be availed of by the officers. It has been submitted that since a sufficiently large number of hospitals is empaneled under CGHS (nearly 300 hospitals in the State of Uttar Pradesh alone), the State Government may be directed to follow the hospitals which are empaneled for the purpose of CGHS so as to ensure that the quality of treatment which is extended to the judicial officers and retired judicial officers as well as family pensioners is of a requisite standard.

63. The primary concern which has been expressed by serving judicial officers and by retired officers is that the recommendations made by the SNJPC appear to lower the bench-mark or standard set by the FNJPC of entitling the judicial officers to the same medical facilities as those provided to members of the legislative assembly.

64. Mr K Parameshwar, Amicus Curiae, has submitted that this may not be an appropriate manner of reading the recommendations made by the SNJPC. According to him, the recommendations of the SNJPC should be read holistically and harmoniously with those of the FNJPC. Hence, the recommendations which were made by the FNJPC to have empaneled doctors, hospitals or labs and the recommendations to do away with the referral system must be viewed in addition to the standards which were set by SNJPC. We find force on the submission.

65. The substantive recommendations which are made by the SNJPC are accepted. In exercise of the jurisdiction under Article 142 of the Constitution, we institutionalize the process issuing the following directions in the segment of this judgment which follows.

15 Newspaper and Magazine Allowances

66. The following recommendations have been made by the SNJPC:

"1. Reimbursement for newspaper and magazines shall be Rs.1000/- for District Judges (two newspapers and two magazines) and Rs.700/- for Civil Judges (two newspapers and one magazine).

2. The reimbursement shall be on half yearly basis from January to June and July to December, on the basis of self certification.

3. The allowance at the above mentioned rates shall be available from 01.01.2020.

4. More beneficial provision already in operation in any State shall continue."

67. The recommendations are accepted.

16 Risk Allowance

68. The SNJPC has considered it reasonable to grant risk allowance. The SNJPC has issued the following recommendations:

"1. Risk allowance shall be made available to the Judicial Officers working in the States of Jammu & Kashmir and insurgency affected North East States at the same rate as is available to the Civilian Government officials working in those areas.

2. The allowance will be available w.e.f. 01.01.2020."

69. The recommendation is accepted.

17 Robe Allowance

70. The SNJPC has noted that the pay and facilities of judicial officers have considerably improved in view of the recommendations made by the Judicial Commissions. Hence, the situation which existed at the time when the FNJPC had examined the matter "no longer exists now". Hence, it was of the view that it would be appropriate if judicial officers do not raise such a demand.

The Seventh CPC recommended a uniform allowance only to those employees who are required to wear a prescribed dress in the course of the discharge of their duties. However, having regard to the practice which was in force for a considerable time and the essential nature of the robe as apparel for Judges, the SNJPC recommended a "modest increase of the allowance, with the hope that such demand for robe allowance will not be raised before the next Commission". Consequently, the SNJPC recommended that:

(i) An allowance of Rs 12,000 will be payable once in three years with effect from 01.01.2016; and

(ii) The demand for the robe allowance may not be raised before the next Commission.

71. We are inclined to accept and accordingly accept the above recommendations.

18 Special Pay for Administrative Work

72. The SNJPC noted that judicial officers in-charge of certain courts/tribunals have administrative responsibilities for which extra time outside the court working hours has to be spent. This is especially so in the case of Principal District and Sessions Judges or other District Judges having similar responsibilities. The SNJPC noted that Principal District Judges in the districts and officers of equivalent ranks in the cities are required to inspect courts, monitor the progress of cases, assess the performance of officers, conduct discreet inquiries in vigilance cases, and send reports to the High Courts. The administrative work, as the SNJPC noted, is considerable and extra time has to be devoted both at the residence and office for carrying out such duties.

73. Bearing in mind the additional administrative duties which have to be discharged by judicial officers, the SNJPC made the following recommendations:

"1. Special Pay for Judicial officers doing administrative work shall be payable to:

a) Principal District and Sessions Judges : Rs.7000/- per month

b) Other District Judges including I Additional District Judges entrusted with administrative work who have to generally spend time beyond Court working hours: Rs. 3500/- per month.

c) District Judges presiding over Special Courts and Tribunals having independent administrative responsibilities: Rs.3500/- per month.

d) CJMs and Principal Senior, Junior Civil Judges and other Judicial Officers having administrative responsibilities being in charge of independent Courts with filing powers: Rs.2000/- per month.

2. The Special Pay shall be available w.e.f. 01.01.2019."

74. The SNJPC has adduced a sound rationale for the above recommendation. The recommendation is accordingly accepted.

19 Sumptuary Allowance

75. The SNJPC has made the following recommendations:

1. The sumptuary allowance shall be available to the Judicial Officers at the following rates:

District Judges Rs. 7,800/- per month

Civil Judges (Sr. Div.) Rs. 5,800/- per month

Civil Judges (Jr. Div.) Rs. 3,800/- per month

2. The allowance shall be available w.e.f. 01.01.2016.

3. The following categories of Judicial Officers shall get Rs.1,000/- (One thousand) more by virtue of their status or the additional responsibilities they shoulder.

● Principal District Judge in-charge of administration in the Districts/Cities.

● District Judges in selection grade and super time-scale.

● Director of Judicial Academy/Judicial Training Institute/Member Secretary, State Legal Services Authority.

● Chief Judicial Magistrate/Chief Metropolitan Magistrate.

4. No sumptuary allowance shall be payable to retired Judicial Officers.

76. The report of the SNJPC notes that the Seventh CPC recommended the abolition of sumptuary allowance while observing that expenditure on hospitality should be treated as office expenditure and that the Ministry of

Finance shall lay down the ceilings for various levels. In that context, the SNJPC observed:

"5. The VII CPC recommended abolition of sumptuary allowance and observed that the expenditure on hospitality should be treated as office expenditure and the Ministry of Finance shall lay down the ceilings for various levels. Accepting the recommendation of CPC, the sumptuary/entertainment allowance was abolished w.e.f. 30.06.2017.

At the same time, by the Office Memorandum dated 22.09.2017, the Government of India (Department of Expenditure, Ministry of Finance) having observed that "the hospitality related expenditure is now to be incurred as office expenditure", conveyed the President's decision prescribing the ceiling of office expenditure on hospitality only for a few dignitaries and officials. The Table appended to the O.M. is as follows:

Sl. No.	**Designation**	**Existing Rates of sumptuary/ Entertainment Allowance (Rs. per month)**	**Prescribed ceiling in respect of hospitality related office expenditure (Rs. per month)**
1.	Chief Justice of India	20000/-	45000/-
2.	Judges of the Supreme Court and Chief Justice of High Courts	15000/-	34000/-
3.	Judges of the High Court	12000/-	27000/-
4.	Cabinet Secretary	10000/-	23000/-
5.	Training Establishments		
	Director or Head	3500/-	8000/-
	Course Directors	2500/-	5700/-
	Counsellors	2000/-	4500/-
6.	Judicial Officers in Supreme Court Registry	At the same rate as they were getting in the parent office	Existing rates may be multiplied by a factor of 2.25"

77. The SNJPC rejected the demand of the Association in regard to the quantum of increase in sumptuary allowance and decided to adopt an increase of 2.25 times, broadly speaking, as the guiding principle to arrive at this conclusion, based on the yardstick of annual inflation and increase of points in the consumer price index. The increase which has been granted by the SNJPC is reasonable

and commends itself for acceptance. We accordingly accept the recommendation.

20 Telephone Facility

78. The following recommendations have been made by the SNJPC:

"1. The Judicial Officers shall be provided with the following telephone facilities:

i. Residential Telephone (Landline) :

(a) The landline telephone and broadband facility (by the same or different service providers) shall be provided at the residence of the Judicial Officers with the permitted user as follows:

District Judges: Rs.1500/- per month

Civil Judges: Rs.1000/- per month

inclusive of rent, calls (local and STD both) and internet use.

(b) At places where broadband facility is not available, the permissible user shall be:

District Judges: Rs.1000/- per month

Civil Judges: Rs.750/- per month

inclusive of rent and calls (local and STD both).

ii. Mobile Phone:

(a) The provision of mobile phone (handset) with internet shall be as follows:

District Judge: Rs.30,000/-

Civil Judges (Jr. & Sr. Divisions): Rs.20,000/-

And the permissible user shall be:

District Judges: Rs.2000/- per month

Civil Judges: Rs.1500/- per month

inclusive of internet data package.

(b) At the request of the Judicial Officers, the mobile phone handset shall be replaced once in three years.

(c) The Judicial Officers shall be given option to retain the old mobile phone handset at a price to be determined as per the guidelines prescribed by the Registry of High Court.

(d) The existing facilities in so far as they are more beneficial by virtue of the order issued by some of the State Governments/UTs shall be continued notwithstanding the above recommendations.

Iii. Office Telephone:

Regarding telephone connection to the office, the present arrangement shall continue."

79. The recommendation is reasonable and is accepted.

21 Transfer Grant

80. The summary of the recommendations of the SNJPC reads as follows:

"1. On transfer, the composite transfer grant shall be equivalent to one month's basic pay.

2. If the transfer is to a place at a distance of 20 kilometres or less or within the same city (if it involves actual change of residence), the transfer grant shall be 1/3 rd of the basic pay.

3. For the transportation of personal effects, the O.M. dated 13.07.2017 (annexed as Appendix I) issued by the Department of Expenditure; Government of India pursuant to the recommendations of VII CPC shall be applicable.

4. In case of transportation by road, the admissible amount shall be Rs.50/- per km. inclusive of labour charges for loading and unloading or the actual whichever is lower. The said amount shall be raised by 25% when the DA increases by 50%.

5. The recommendations will come into effect from 01.01.2016.

6. The Officers who have undergone transfer(s) after 01.01.2016 and their claims for transfer grant paid as per pre-revised pay scales, shall be paid the differential amount on the basis of revised pay w.e.f. 01.01.2016."

81. The above recommendations are reasonable and are accordingly accepted.

Institutionalization

82. We are of the considered view that a framework has to be set up under the auspices of every High Court for institutionalizing the implementation of the orders of this Court with respect to the service conditions of the district judiciary and for implementing the recommendations of the SNJPC, as approved. Institutionalizing the mechanism for enforcement and implementation will have several benefits which are set out below:

(a) The implementation of the orders of this Court will be streamlined. A Committee set up by this Court at the level of every High Court to act as a bridge between the High Court and the State Government will facilitate seamless implementation;

(b) Experience indicates that this Court is flooded with individual applications and grievances concerning pay and service conditions leading to multiplicity of proceedings and issues. This would be obviated by institutionalizing the process at the level of each High Court; and

(c) An institutionalized entity can act as a body for recording and archiving information and suggestions, maintaining a record of difficulties faced in implementation and generating an institutional memory which will facilitate a consultative framework for the next Pay Commission.

83. Bearing in mind the above benefits, we hereby direct the constitution of a Committee in each High Court for overseeing the implementation of the recommendations of the SNJPC as approved by this Court. The Committee shall be called the 'Committee for Service Conditions of the District Judiciary16'. The composition of the Committee shall consist of the following:

(i) Two Judges of the High Court to be nominated by the Chief Justice of which one should be a Judge who has previously served as a member of the district judiciary;

(ii) The Law Secretary/Legal Remembrancer;

(iii) The Registrar General of the High Court who shall serve as an ex officio Secretary of the Committee; and

(iv) A retired judicial officer in the cadre of District Judge to be nominated by the Chief Justice who shall act as a nodal officer for the day to day redressal of grievances.

84. The senior most Judge nominated by the Chief Justice shall be the Chairperson of the Committee. The Chairperson may co-opt officers of the State Government, including the Secretaries in the Departments of Home, Finance, Health, Personnel and Public Works, when issues concerning these departments are being deliberated upon and implemented. The Chairperson of the Committee may at their discretion co-opt the Accountant General to ensure due implementation of the recommendations of the SNJPC, as approved by this Court. The Committee would be at liberty to consult with the representatives of the Judges' Association or, as the case may be, the Retired Judges' Association in the State.

85. The principal functions of the CSCDJ shall be to:

(i) Oversee the proper implementation of the recommendations of the SNJPC, including pay, pension, allowances and all allied matters as approved by this Court by its orders;

(ii) Act as a single point nodal agency for the redressal of the grievances of the judicial officers, both serving and retired to secure the implementation of the recommendations of the SNJPC which have been approved by this Court;

(iii) Develop an institutional mechanism for recording and archiving institutional concerns pertaining to pay, pension and service conditions of the district judiciary which shall aid in the consultative framework for subsequent Pay Commissions constituted for judicial officers; and

(iv) Ensure that hospitals of a requisite standard with necessary facilities are empaneled for every district in consultation with the Secretary in the Health Department of the State Government. The Collectors of the districts shall render all necessary assistance in ensuring that the process of empanelment is duly streamlined.

The process of empanelment shall ensure that the hospitals which are empaneled have a demonstrable track record and possess requisite medical facilities required for affording medical treatment of the requisite quality and care. The Committee may also ensure the empanelment of institutions for the purpose of carrying out medical investigations. The Committee will prescribe the benchmarks for empanelment.

The Committee shall ensure that where medical care of the requisite standard for specified ailments is not available in the district concerned, treatment in respect of those ailments may be availed of elsewhere in an empaneled hospital. The Committee would be at liberty to take incidental measures covering situations where officers who have served in the State are residing outside the State. In

such a case, the Committee may consider empanelment of hospitals outside the State so as to facilitate the availing of medical facilities.

86. Each of the CSCDJs constituted under the auspices of the High Court shall consider the following:

(i) Formulating a Standard Operating Procedure (SOP) with specified timelines for claims and disbursal of allowances as approved by this Court, including the payment of arrears of salary and pension to judicial officers, pensioners and family pensioners; and

(ii) The SOP shall, inter alia, cover the following:

(a) The nodal agency for disbursement of allowances, arrears and other service and retiral benefits;

(b) Laying down a simplified and effective procedure for reimbursement and disbursement of claims;

(c) Providing contact details of the nodal agency at the district or State level;

(d) Publication of the SOP on the website of the High Court, together with the details of the nodal officer; and

(e) Maintenance of a database of retired Judges and family pensioners in the district judiciary with a process for periodical updating, at least on a quarterly basis.

87. All States and Union Territories shall now act in terms of the above directions expeditiously. Disbursements on account of arrears of salary, pension and allowances due and payable to judicial officers, retired judicial officers and family pensioners shall be computed and paid on or before 29 February 2024.

The CSCDJs institutionalized in terms of the directions issued earlier shall monitor compliance. Each Committee working under the auspices of the High Court shall submit its report to this Court on or before 7 April 2024 through the Registrar General of the High Court.

88. The CSCDJs shall also verify that the earlier orders of this Court in regard to the payment of arrears of salary and pension have been duly implemented.

.....CJI. [Dr. Dhananjaya Y. Chandrachud]

.....J. [J. B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

January 04, 2024

1 "SNJPC"

2 (2002) 4 SCC 247

3 "JPC"

4 (2010) 14 SCC 720

5 (1993) 4 SCC 288.

6 19. The directions of this court applying a uniform multiplier and the corresponding financial implications cannot be considered as excessive in view of the information extracted above. In All India Judges Association v. Union of India (II), this court has earlier held that additional financial burden cannot be a ground for review:

"16. The contention with regard to the financial burden likely to be imposed by the directions in question, is equally misconceived. Firstly, the courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible.

We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the caliber of the persons appointed to administer it are not of different grades in different States. Such contentions are ill-suited to the issues involved in the present case."

(emphasis supplied)

7 26. The submission of the States that there is a paucity of financial resources must be examined from this aspect of the matter. The States and the Union have

repeatedly stated that the burden on the financial resources of the States/Union due to the Report of the SNJPC is significant and therefore the Report cannot be implemented. Without the doctrine of inherent powers, any de-funding of the Judiciary cannot be repelled.

8 (1993) 4 SCC 288.

9 22. India has a unified judiciary under the scheme of the Constitution. A unified judiciary necessarily entails that the service conditions of judges of one state are equivalent to similar posts of judges of other states. The purpose of this constitutional scheme is to ensure that the judicial system is uniform, effective and efficient in its functioning. Efficient functioning necessarily requires judges of caliber and capacity to be provided with the right incentives and promotion opportunities to maintain the high level of functioning of the judiciary.

23 This Court in All India Judges Association (II) has noted the position of law and observed that uniform designations and hierarchy, with uniform service conditions are unavoidable necessary consequences. It was held:

10 14. In view of the above discussion, the issue is whether there is any compelling need to reduce the quantum of increase proposed by applying a lower multiplier so as to marginally reduce the gap between entry level IAS officers (in Junior and Senior time scales) and Judicial Officers at the first two levels (Civil Judge, Junior and Senior Divisions). Such an exercise is not warranted for more than one reason.

Firstly, the initial starting pay must be such as to offer an incentive to talented youngsters to join judicial service. Secondly, the application of a multiplier/ factor less than 2.81 would result in a deviation from the principle adopted by SNJPC that the extent of increase of pay of judicial officers must be commensurate with the increase in the pay of High Court judges. This principle has been accepted by this Court by approving the recommendations of the SNJPC.

Therefore, there is no valid reason to depart from the principle applied by JPC that the pay of judicial officers should be higher when compared to All India Service Officers of the corresponding rank. This principle has been approved by this Court in AIJA (2002). Thirdly, in All India Judges Association (II) v. Union of India, this court rejected the comparison of service conditions of the judiciary with that of the administrative executive:

"7. It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot however, help observing that the failure to realize the distinction between the

judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of 'employment'. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State.

They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State.

However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff.

The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on a par with the members of the judiciary, either constitutionally or functionally."

(emphasis supplied)

Fourthly, the argument that a uniform IoR would equate the district courts with constitutional courts is erroneous. A uniform multiplier is used for a uniform increment in pay and not for the purpose of uniform pay in itself. All Judges across the hierarchy of courts discharge the same essential function of adjudicating disputes impartially and independently. Thus, it would not be appropriate to apply graded IoR when SNJPC has chosen to uniformly apply the multiplier.

11 24. Separation of powers demands that the officers of the Judiciary be treated separately and distinct from the staff of the legislative and executive wings. It must be remembered the judges are not employees of the State but are holders of public office who wield sovereign judicial power. In that sense, they are only

comparable to members of the legislature and ministers in the executive. Parity, thus, cannot be claimed between staff of the legislative wing and executive wing with officers of the judicial wing.

This Court in All India Judges' Assn. (II) v. Union of India, explained the distinction and held that those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. Thus, there cannot be any objection that judicial officers receive pay which is not at par with executive staff. In this context, it may also be remembered that Article 50 of the Constitution directs the State to take steps to separate the judiciary from the Executive.

29. This Court in its Review Order dated 05.04.2023 has explained this position in the following words:

"7. It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot however, help observing that the failure to realize the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of 'employment'.

The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State.

However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff.

The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever

level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on a par with the members of the judiciary, either constitutionally or functionally."

(emphasis supplied)

12 "OM"

13 SLP(C) 1041 of 2020

14 (2002) 4 SCC 247

15 (2010) 14 SCC 720

16 "CSCDJ"

IN THE SUPREME COURT OF INDIA

Darshan Singh
Vs.
State of Punjab

[Criminal Appeal No. 163 of 2010]

HEADNOTE – Accused doesn't lose a defence merely because that plea wasn't taken in Sec. 313 Cr.P.C. statement

JUDGMENT

Aravind Kumar, J.

1. This appeal by special leave arises out of judgment and order dated 23.07.2009 passed in Criminal Appeal No.593-DB of 2000 by the High Court of Punjab & Haryana. The High Court has upheld the order of conviction and sentence, as against Darshan Singh (the appellant) and has allowed the appeal of Rani Kaur (Accused No. 2), thereby acquitting her of all charges. The State of Punjab has not challenged the acquittal of Rani Kaur by filing any special leave petition. It is in this background that Darshan Singh had sought special leave to appeal before us and leave came to be granted by order dated 22.01.2010.

Case of the Prosecution:

2. The facts can be summed up in brief as follows: The deceased, Amrik Kaur was married to Darshan Singh, the appellant, some time in 1988. The marriage was arranged through Melo Kaur (PW-3), the cousin sister of the deceased. The prosecution alleges that their marital relationship was strained owing largely to the fact that Darshan Singh had developed an illicit partnership with Rani Kaur (A2). Several relatives had prevailed on the appellant to put an end to his relationship with Rani Kaur, but to no avail.

The illicit relationship between Darshan Singh and Rani Kaur is said to have lasted for at least three years before the fateful day. It is the case of the prosecution that on the intervening night of 18.05.1999 and 19.05.1999, Darshan Singh and Rani Kaur, with the motive of eliminating the deceased, administered poison and intentionally caused the death of Amrik Kaur.

3. On these allegations, Darshan Singh and Rani Kaur were prosecuted for charges under Section 302 r/w Section 34 IPC. The Trial Court convicted both

the accused persons for the offence under Section 302 r/w Section 34 and sentenced them to undergo imprisonment for life.

Findings of the Trial Court and High Court:

4. The Trial Court has concluded that it was a case of homicide and not suicide. It has found that the appellant had a strong motive to commit the murder of his wife. It further held that the appellant and Rani Kaur were present in the house on the intervening night of 18.05.1999 and 19.05.1999 and therefore, the burden lay on them to explain as to 'how the body of Amrik Kaur who was alive on the night of 18.05.1999 turned into a corpse' the next morning.

The Court has completely disbelieved the theory of suicide sought to be advanced on behalf of appellant. It was noted that merely because there were no injuries on the body of the deceased, that by itself would not obviate the possibility of forceful administration of the poisonous substance. On the basis of the above circumstances taken together, the Trial Court held that the prosecution has proved its case beyond reasonable doubt against the appellant and Rani Kaur.

5. In appeal, the High Court has agreed with the findings of the Trial Court in so far as the appellant is concerned and has acquitted Rani Kaur by extending her the benefit of doubt. It has found that there is no other evidence except the testimony of PW3 and PW4, to prove the presence of Rani Kaur on the intervening night of 18.05.1999 and 19.05.1999 at the appellant's house.

ARGUMENTS OF MR. ABHIMANYU TEWARI, COUNSEL APPEARING FOR APPELLANT:

6. PW3, Melo Kaur, is not a reliable witness. The presence of the appellant, Darshan Singh, at the house on the intervening night of 18.05.1999 and 19.05.1999 is sought to be established based on her testimony. She has made several improvements in her version, and her testimony suffers from several contradictions, and therefore, it is not safe to rely on such a witnesses' uncorroborated testimony. It would be prejudicial to the appellant to rely on only a part of her testimony and exclude the rest. If her testimony is ignored in toto, there is no other evidence to establish the key circumstance of appellant's presence at the spot of crime.

6.1 That aluminium phosphide is rather impossible to administer in a deceitful manner owing to its pungent smell and odour. No injury marks have been found on the deceased, which further establishes that there could not have been any forceful administration of the poison. Therefore, it is submitted that it is nothing

but a case of suicide, the driving force for which, was the confrontation with Melo Kaur.

It is the appellants' case that Amrik Kaur was having an illicit affair with Melo Kaur's husband, Gurmel Singh PW4, and embarrassed with her sister finding out, she self-administered the poisonous substance and committed suicide. Counsel has submitted judgments to support the proposition that aluminium phosphide has a pungent smell similar to garlic.

6.2 Reliance has been placed on Jaipal V. State of Haryana - (2003) 1 SCC 169 wherein the Apex Court discussed the nature of aluminium phosphide. The relevant paragraphs have been extracted below for reference:

"16. According to Modi, symptoms and signs of poisoning by aluminium phosphide are similar to poisoning by zinc phosphide (p. 197, ibid.). The chief symptoms after the administration of zinc phosphide are a vacant look, frequent vomiting with retching, tremors and drowsiness followed by respiratory distress at death. Zinc phosphide acts as a slow poison and is decomposed by hydrochloric acid in the stomach with the liberation of phosphine which acts as a respiratory poison. Being a very fine powder zinc phosphide adheres firmly to the crypts in the mucous membrane of the stomach, and a very small quantity only in the stomach even after vomiting is sufficient to cause death by slow absorption.

17. Phosphine released from zinc phosphide (rat poison) and from aluminium phosphide, is mainly used as a fumigant to control insects and rodents in foodgrains and fields. Liberated from the metal phosphides by the action of water or acids, gaseous phosphine exerts more potent pesticidal action, for it penetrates to all areas otherwise inaccessible for pesticide application. Pathological findings from phosphine inhalation are pulmonary hyperaemia and oedema. It causes both fatty degeneration and necrosis of liver (p. 174, ibid.).

18. Our attention was invited, as was done in the High Court and the trial court, to a paper entitled "Toxicology - Acute Aluminium Phosphide Poisoning in Northern India" written by Dr Mitra Basu and Prof. S.B. Siwach, Head, Department of Medicine, Postgraduate Institute of Medical Sciences, Rohtak and published in Current Medical Journal, Vol. I, No. 5, July 1995.

The authenticity of this article has not been doubted by the High Court nor questioned either in the High Court or in this Court. The learned authors have noticed the aluminium phosphide having emerged as a major health problem in northern India when these cases first started coming in 1984 and hardly any literature being available earlier on this malady. In Postgraduate Institute of

Medical Sciences, Rohtak about 2000 cases were reported which were all suicidal.

19. We may briefly sum up the opinion of the learned authors from their published paper. Phosphine gas (active ingredient of ALP) causes sudden cardiovascular collapse; most patients die of shock, cardiac arrhythmia, acidosis and adult respiratory distress syndrome (ARDS). Aluminium phosphide is available in the form of chalky-white tablets. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating Phosphine gas (PH3) which is the active ingredient of ALP.

This gas is highly toxic and effectively kills all insects and thus preserves the stored grains. When these tablets are swallowed, the chemical reaction is accelerated by the presence of hydrochloric acid in the stomach and within minutes phosphine gas dissipates and spreads into the whole body. The gas is highly toxic and damages almost every organ but maximal damage is caused to heart and lungs. Sudden cardiovascular collapse is the hallmark of acute poisoning.

Patients come with fast, thready or impalpable arterial pulses, unrecordable or low blood pressure and icy-cold skin. Somehow these patients remain conscious till the end and continue to pass urine despite unrecordable blood pressure. Vomiting is a prominent feature associated with epigastric burning sensation. The patients will be smelling foul (garlic-like) from their breath and vomitus. Many of them will die within a few hours.

Those who survive for some time will show elevated jugular venous pressure, may develop tender hepatomegaly and still later adult respiratory distress syndrome (ARDS), renal shutdown and in a very few cases, toxic hepatic jaundice. The active ingredient of ALP is phosphine gas which causes extensive tissue damage. A spot clinical diagnosis is possible in majority of cases of ALP poisoning. However, ALP on account of its very pungent smell (which can drive out all inmates from the house if left open) cannot be taken accidentally."

6.3 It was also argued that the courts below have failed to give sufficient weight to the evidence led on behalf of the defence, in particular, the testimony of DW3 and DW4.

6.4 Lastly, it was argued that Rani Kaur (A2) having been extended benefit of doubt, it was rather anomalous to exclude such benefit to A1- the appellant, when the case of the prosecution was that both of them were present at the scene of crime.

Arguments of Mr. Prateek Chaddha, learned counsel on behalf of State of Punjab:

7. Melo Kaur was an illiterate person who cannot be expected to be aware of the intricacies of law and cross examination and therefore, it was rather natural for minor inconsistencies to creep into the testimony of such a witness. The Trial Court has rightly appreciated her testimony by excluding the uncorroborated parts from the corroborated parts of her testimony.

In that sense, the Trial Court has separated the chaff from the grain, as is expected to be done when it has to appreciate the evidence of a partly reliable and partly unreliable witness. Moreover, the accused himself has never denied his presence at the scene of crime. In his statement recorded under Section 313 of Cr.P.C., he has admitted his presence. This, coupled with the testimony of PW3, 4 and 5, is sufficient to prove the presence of the accused at the spot of crime.

7.1 The case rests on circumstantial evidence, the prosecution has proved the circumstances from which an inference of guilt is sought to be drawn, cogently and convincingly. The circumstances relied on include - (1) Motive; (2) Presence of the appellant at the scene of crime; (3) Cause of Death: By Poisoning (4) Opportunity to administer poison; (5) Conduct (6) False explanation in 313 Statement.

7.2 He has further relied on the principle laid down in Trimukh Maroti Kirkan v. State of Maharashtra1 to contend that the degree of evidence needed to prove the case resting on circumstantial evidence in the given facts cannot be as high as is normally the case.

In view of Section 106 of the Evidence Act, the appellant was under a burden to explain the circumstances leading to the death of the deceased. Merely remaining quiet or offering a false explanation would provide an additional link in the chain of circumstances to make it complete. Remaining quiet, or offering a false explanation would therefore provide an additional link in the chain of circumstances to make it complete. He has also sought to distinguish the cases relied on behalf of the appellant.

ANALYSIS AND FINDINGS:

8. We have heard the learned Counsel for the appellant and respondent and perused the materials on record.

9. There is no eye-witness to the incident. The case of the prosecution rests on circumstantial evidence. The normal approach in a case based on circumstantial

evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. [See Sharad Birdhichand Sarda v. State of Maharashtra2]

10. Let us, therefore, examine whether the prosecution had proved beyond reasonable doubt, the entire chain of circumstances, not leaving any link missing for the appellant to escape from the clutches of law. The circumstances which are said to have been proved on behalf of the prosecution is as follows:

1. Motive

2. Presence at the spot

3. False explanation in 313 statement

4. Death by Poisoning - Doctor's opinion on cause of death

5. Conduct of the Appellant

6. Opportunity to administer poison.

11. According to the case of the prosecution, the illicit relationship that existed between Darshan Singh and Rani Kaur served as the key motive for them to jointly eliminate the deceased. The fact that they were in an illicit relationship has been sufficiently proved from the testimony of PW 2, PW 3 and PW 4. This circumstance, therefore, has been cogently established.

12. The most important circumstance, among all, must be the circumstance of the appellant and Rani Kaur having been present in the appellant's house on the intervening night of 18.05.99 and 19.05.99 and they having been seen leaving the house in the early hours of the day. For, the proof of presence has the effect of triggering into operation, Section 106 of the Evidence Act and the principle laid down in the case of Trimukh Maroti Kirkan v. State of Maharashtra. Even the circumstance that the appellant had the 'opportunity' to administer poison was strongly linked to aspect of proving the presence of the appellant and Rani Kaur in the appellants house.

13. In Trimukh's case, it has been held:

i."If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts.

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character.

In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation"

14. In Trimukh (supra), this Court has pointed out that there are two important consequences that play out when an offence is said to have taken place in the privacy of a house, where the accused is said to have been present. Firstly, the standard of proof expected to prove such a case based on circumstantial evidence is lesser than other cases of circumstantial evidence. Secondly, the appellant would be under a duty to explain as to the circumstances that led to the death of the deceased. In that sense, there is a limited shifting of the onus of proof. If he remains quiet or offers a false explanation, then such a response would become an additional link in the chain of circumstances.

15. Both the Courts below have in fact applied the principle referred to in Trimukh's case. Their presence having been held to be proved, the Court relied on Section 106 of the Evidence Act and shifted the onus of proof on the accused to explain the circumstances which led to the unnatural death of the deceased.

16. Whereas the Trial Court found both the accused guilty, the High Court has confirmed the order of conviction only against the appellant and extended benefit of doubt to Rani Kaur. The appellant having failed to give a proper and believable explanation was, in fact, used as an additional link in the chain of circumstances. The proof of presence in that sense triggered the two consequences as laid down in Trimukh's case (supra)

17. In this case, the presence was sought to be proved by the prosecution on the basis of the testimony of PW-3, PW-4, PW-5 and the statements of the accused at the 313 stage. The Courts below had also relied on the testimony of PW 3 and PW 4 to conclude that the appellant was present in the house. Therefore, it becomes necessary to carefully evaluate this circumstance, given the consequences that flow from proof of this circumstance.

18. PW-3 has deposed that her husband, Gurmel Singh (PW-4), on his return home from work around 8 pm on 18.05.99, had informed her that he saw the appellant along with Rani Kaur present in the appellant's house. He further informed her that it would not be appropriate to visit their house at that time since he anticipated the possibility of a flare up among the family members.

He told her that they could talk to the appellant in the morning. PW-3 stated that she visited the house of the appellant in the morning at around 4:45 am, only to find her sister lying dead. She states that she saw the appellant and Rani Kaur present in the house. She further states that both of them pushed her aside and left in a jeep, belonging to the appellant. She then states that she called her husband (PW-4) to the spot.

19. In the cross examination of PW-3 on behalf of the appellant, several omissions have been brought on record by drawing her attention to her previous statement given to the police under Section 161 CrPC. For instance, it has come out in the evidence that PW-3 had omitted to state in her Section 161 statement that:

(a) her husband had informed her that he saw the appellant and Rani Kaur in the appellant's house when he was returning back home from work around 8 pm;

(b) she had seen the appellant and Rani Kaur in the early hours on 19.05.99 in the appellant's house and they pushed her aside before escaping in a jeep.

(c) her husband had advised her not to visit the deceased in the night. It had been specifically suggested to her that she was falsely deposing and that the appellant was being falsely implicated on account of him having strained relations with PW-4, the husband of PW3.

20. In the cross examination of PW-3 on behalf of Rani Kaur, it was elicited that PW-3 had personally witnessed the appellant and Rani Kaur putting poison in the mouth of the deceased. This, according to PW-3, was seen by her through the chinks of the door.

21. PW-4 has stated that he met the appellant and Rani Kaur on his way home, while he was returning from work around 7.00 PM on 18.05.99. He stated that

both of them went to the appellant's house. He informed his wife that it would not be appropriate to visit their house at this time since there was a possibility of a quarrel arising between Amrik Kaur and her husband, the appellant, since he had brought Rani Kaur home.

Instead, he asked her to go and visit her sister on the next morning. In the morning, around 5.30 am, his wife left to visit her sister at the appellant's house after serving tea to him and his children. On having received a message from his wife, he set about to reach the appellant's house and found Amrik Kaur lying dead and his wife, weeping and wailing.

22. Similarly, in the cross examination of PW-4, it has been brought on record that PW-4 had omitted to state the following aspects in his statement recorded under Section 161 Cr.P.C. before the police - (a) that PW-4 had seen the appellant and Rani Kaur entering the house of the appellant in a jeep; (b) PW-4 had told PW-3 not to visit the appellant's house since they were intoxicated and there was a strong possibility of some dispute arising. (c) PW-4's statement that PW-3 had left for the appellant's house at 5.00 am in the morning on 19.05.99 after serving him tea.

It has been specifically suggested to this witness that he had strained relations with the appellant, and owing to this fact, he has falsely implicated the appellant. It was further suggested that on account of the quarrel that occurred in the night on 18.05.99, the deceased had committed suicide by taking poison.

23. PW 5 is an independent witness having no relationship with any of the persons involved, either as an accused or as witnesses, in this incident. He stated that on the morning of 19.05.99, at about 6.00 am, he had gone to answer the call of nature. At that time, he states that he saw the appellant and Rani Kaur were going in a jeep to Hiro Kalan and that jeep was covered with black cloth. He then returned to the bus stop and found a lot of persons having gathered and there, he heard the news that the appellant had murdered his wife.

24. PW-5's deposition that he had heard from persons at the bus stop that the appellant had murdered his wife, was an omission since he had not stated as such in his statement before the police. It has been elicited from him that the jeep came from behind and then passed by his side. It has been further elicited that the black cloth which was used to cover the jeep was opened on both sides.

25. In the face of the above evidence on record, can it be said that the presence of the appellant and Rani Kaur in the appellant's house in the intervening night of 18.05.99 and 19.05.99, has been firmly and cogently established? According to us, the answer must be in the negative. There are several omissions that have

been brought out in the cross examination of PW-3 and PW-4, which seriously dent the credibility of their testimony.

26. If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. [See : (i) Rohtash Vs. State of Haryana, (2012) 6 SCC 589 (ii) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra, 2011 (72) ACC 699 (SC). (iii) Rudrappa Ramappa Jainpur Vs. State of Karnataka, (2004) 7 SCC 422 (iv) Vimal Suresh Kamble Vs. Chaluverapinake, (2003) 3 SCC 175]

27. Of course, PW-3 claims to be an illiterate witness and therefore, her testimony must be interpreted in that light. We are cognizant that the appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. This Court has held that the evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition.3

28. However, the testimony of PW-3 suffers not merely from technical imperfections, there are glaring omissions and improvements that have been brought out in the cross-examination, which cannot be attributed to the illiteracy of the individual deposition. If there were minor contradictions and inconsistencies, that could have been ignored since the recollection of exact details as to location and time can be attributed to the lack of literacy.

However, such is not the case here. PW-3 had only heard from her husband that the appellant and Rani Kaur were seen together in the appellant's house on 18.05.99. To that extent, it is merely hearsay. Moreover, PW-4 has omitted to state this fact to PW3 in his statement before the police.

He has also omitted to state that he advised his wife (PW-3) against going to the appellant's house in the night since there may arise a quarrel between all of them. If these facts are ignored from consideration, we only wonder as to why PW-3 would visit the house of the appellant in the wee hours of the morning on 19.05.99. It seems quite unnatural for PW-3 to visit the house of the appellant at 430 am in the morning without any reason.

If PW-3 was aware that the appellant and Rani Kaur were in an illicit relationship for a sufficiently long duration, there was no reason to suspect all of a sudden that the two of them would get together, administer poison and murder the deceased on 19.05.1999, which fact, prompted her to visit the house of the appellant at such odd hours in the morning. Both the Courts have failed to take notice of the several significant omissions and improvements in the evidence of PW 3 and PW 4.

29. Further, PW-5 is a chance witness. He was in his village, answering the call of nature at 6 am, at which point he claimed to have seen the accused persons going in a jeep. It was elicited in his cross examination that he had a side-on view since he stated the jeep came from behind and he got a sideon glimpse. The side-on view would have been only for a couple of seconds at best, since they were travelling in a jeep. Therefore, it is not safe to rely on this testimony solely to prove that the appellant was escaping along with Rani Kaur after having murdered his wife.

30. The appellant had set up a defence that the deceased had committed suicide. The Trial Court has disbelieved it on the premise that the appellant and Rani Kaur were present in the house, and if the deceased were to have committed suicide, it was but natural for the appellant to take her to the hospital and inform concerned persons/authorities. However, we have come to the finding above that the circumstance of appellant and Rani Kaur being present in the house has not been convincingly proved beyond doubt.

Therefore, the reasoning given by the Trial Court loses its legs to stand on. In any case, we believe that the appellant has raised a doubt in our minds as regards his defence that the deceased had committed suicide. There appears to be no dispute as to the fact that the death was caused by poisoning. The doctor's testimony on the basis of the chemical examiner's report that the cause of death was linked to aluminium phosphide poisoning remains unchallenged.

In fact, in his 313 statement, even the appellant states that the deceased consumed poison (aluminum phosphide) and committed suicide. In Jaipal's case, this Court has considered the characteristic features of death caused by poisoning through aluminum phosphide. Review of scholarly literature and research papers suggests that the nature of this substance (aluminum phosphide) is such that it is not conducive for deceitful administration since it carries a pungent garlic-like odour, which cannot go unmissed.

It was suspected that the substance was mixed in tea and served to the deceased since 200ml brownish liquid was found in her stomach as per the PMR. We find it doubtful that the deceased would have been made to consume tea deceitfully

given the nature of the substance. Forceful administration of this substance also seems doubtful since there are no injury marks suggestive of a scuffle. In light of the evidence on record, even assuming for a moment that the appellant and Rani Kaur were present, it still cannot be said with certainty that it was a case of homicide and not suicide.

The main principle to be satisfied in a case of conviction based on circumstantial evidence is that the proved circumstances must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved.

In this case, it cannot be said that the proved circumstances, even if presence was proved, taken with other circumstances would lead to an unfailing conclusion that the appellant and Rani Kaur were guilty of murdering his wife. There was alive a strong hypothesis that the deceased had committed suicide, which explanation was led by the appellant in his statement under Section 313 CrPC, and it is sufficient to create a doubt in our minds.

31. This Court has held that the standard of proof to be met by an accused in support of the defence taken by him under Section 313 of Code of Criminal Procedure is not beyond all reasonable doubt, as such, a burden lies on the prosecution to prove the charge. The accused has merely to create a doubt and it is for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused. [See: Pramila vs State of Uttar Pradesh 2021 SCC OnLine SC 711]

32. Learned Counsel for the respondent-State has argued that no specific plea of alibi was taken in the statement of the appellant recorded under Section 313 CrPC. In fact, it is submitted that there is an implicit admission as to his presence in the house. It is too well settled that the statement of an accused under Section 313 CrPC is no 'evidence' because, firstly, it is not on oath and, secondly, the other party i.e. the prosecution does not get an opportunity to cross examine the accused. [Sidhartha Vashisht Vs. State of NCT of Delhi, AIR 2010 SC 2352]

33. It is trite law that the statement recorded u/s. 313 CrPC cannot form the sole basis of conviction. Therefore, the presence of the appellant cannot be found solely based on his statement, notwithstanding the lack of independent evidence led by the prosecution. Further, this Court has previously considered the consequences when a particular defence plea was not taken by accused u/s 313 CrPC and held that mere omission to take a specific plea by accused when examined u/s 313 CrPC, is not enough to denude him of his right if the same can

be made out otherwise. See: Periasami Vs. State of Tamil Nadu, (1996) 6 SCC 457

34. The case of the prosecution has, from the very start, been that the appellant was seen jointly along with Rani Kaur in the appellant's house on 18.05.99 and they were seen leaving the house together on 19.05.99. They were both tried together on charges of having administered poison and killing the deceased on the intervening night of 18.05.99 & 19.05.99. Though the Trial Court has convicted both of them under Section 302, the High Court has extended the benefit of doubt to Rani Kaur and acquitted her of all criminal charges.

According to the High Court, 'apart from the evidence of Melo Kaur PW3 and Gurmel Singh PW4, there is no other evidence to show that she was present in the house on the fateful night'. However, even though it was the very same evidence that was sought to be used to prove the presence of the appellant in the house, the benefit of doubt has not been similarly extended to him. The High Court reasoned that the appellant, being the husband, it was only natural for him to be present in the house.

35. It is important to notice that the respondent-State has not challenged the acquittal of Rani Kaur before this Court. It has accepted the verdict and therefore, the acquittal has reached finality. The State cannot on the one hand accept the verdict of the Court that the presence of Rani Kaur along with the appellant is doubtful and at the same time, maintain its case that the two of them were jointly present, committed the offence together and escaped together.

36. According to us, if the evidence of PW 3 and PW 4 was not sufficient to prove presence of Rani Kaur at the appellant's house, as a natural corollary, such evidence cannot be relied on to conclude that the appellant was present in the house. The manner in which the High Court has sought to distinguish the case of the appellant from Rani Kaur is perverse and does not seem to impress us.

The case of the prosecution has consistently been that the accused persons were seen present together in the house on the night of 18.05.99 and seen leaving together in the wee hours of the next morning. In fact, PW 5 has deposed that he had seen them together in the jeep travelling towards Hiro Kurd. If the presence of Rani Kaur in the house on the date of the alleged incident is doubtful, then, the testimony of PW 5 that he had seen her along with the appellant in the jeep, will also lose its strength.

37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure

to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances.

When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt.

If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. [See: Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281.]

38. Therefore, we allow this appeal and set aside the concurrent findings of conviction.

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

.....J. (Pamidighantam Sri Narasimha)

.....J. (Aravind Kumar)

New Delhi,

January 04, 2024

1 (2006) 10 SCC 681

2 (1984) 4 SCC 116

3 State of U.P. Vs. Chhoteylal, AIR 2011 SC 697 and Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239

IN THE SUPREME COURT OF INDIA

S.V. Samudram
Vs.
State of Karnataka & Anr.

[Civil Appeal No. 8067 of 2019]

HEADNOTE – Arbitral awards cannot be modified under Sections 34 and 37 of Arbitration and Conciliation Act

JUDGMENT

Sanjay Karol J.

1. The issue arising for consideration in this Civil Appeal, which lays challenge to a judgment and order dated 7th February, 2017 passed by the High Court of Karnataka (Dharwad Bench) in MFA No. 24507 of 2010 (AA) under Section 37(1) of the Arbitration and Conciliation Act, 19961, is whether the High Court was justified in confirming the order dated 22nd April, 2010 under Section 34 of the Arbitration & Conciliation Act, 1996 passed by the Senior Civil Judge, Sirsi, in Civil Misc. No. 08/2003, whereby the award passed by the learned Arbitrator was modified and the amount awarded was reduced.

FACTS

2. As borne out from the judgments rendered by the Courts below, the facts, are:-

2.1 Mr. S.V. Samudram2 is a registered Class II Civil Engineering Contractor and had secured a contract from the Karnataka State Public Works Department to construct the office and residence of the Chief Conservator of Forests at Sirsi for an amount of Rs. 14.86 Lakhs.

2.2 The said contract was entered into between the parties on 29th January, 1990 with the stipulation that the possession of the construction site would be handed over to the Claimant-Appellant on 8th March, 1990 and the work allotted was to be completed on or before 6th May 1992 i.e., 18 months from the date of the agreement excluding the monsoon season.

2.3 It is undisputed that the work as allotted could not be completed by the Claimant-Appellant, for which, he held the authorities of the State responsible as they allegedly did not clear his bills, repeatedly at every stage and also due to delays caused by change of site and in delivery of material for such construction.

2.4 For settlement and adjudication of disputes, the parties to the contract resorted to the arbitral mechanism and resultantly, in Arbitration Petition dated 31st May, 2002, Mr. S.K Angadi, Chief Engineer (Retd.) stood appointed as the Arbitrator on 30th July, 2002.

PROCEEDINGS BEFORE THE LEARNED ARBITRATOR

3. Pursuant thereto, the Claimant-Appellant herein filed his claim before the learned Arbitrator totalling to Rs.18,06,439/- along with an interest payable thereupon @ 18% per annum, payable from 9th March, 1994 till date of payment.

4. Having heard both sides, the three primary issues identified were:-

(a) inordinate delay in handing over of site for performance of contract;

(b) non-supply of working drawings and designs; and

(c) delay in supply of materials.

5. For each of these issues, the learned Arbitrator, upon examination of the evidence before him found the Respondents liable. A prÃ©cis of the reasoning adopted, is as under:-

S. No.	**Point of Consideration**	**Reasoning**
1	Delay in handing over the entire site for total performance of the contract.	1) Non handling over the entire site in time is one of the reasons which resulted in noncompletion of the work within the stipulated time of 18 months. There is a delay of 9 months in handing over possession of complete site. Possession of office building was handed over on 07.03.1990 Possession of quarters building was handed over on December 1990.
2	Delay in supply of working drawings, designs, etc.	1) Drawing showing typical excavation plan for footings, details of columns were issued to claimant during September 1990, with a delay of 6 months

		2) The drawing of R28 was not supplied by April 1991 but on 1st July 1991. There was a delay of 3 months. 3) Drawing showing the details of 1st floor slab of the office of the Conservator of Forest was found to be prepared by 13.10.1992 but supplied on 01.11.1992 i.e. after expiration of contract on 06.05.1992. 4) The drawings with details of lintel beams, roof beams, slab, etc of quarters was prepared by 05.10.1991 & supplied on 15.10.1991 but the changed site for construction was handed over to claimant on 14.02.1991.
3	In the matter of delay in supply of materials	On study of documentary evidence, he found adequate steel & cement required for the work was not supplied by the respondent in time.

6. As such, against a total of 11 claims, amounts were awarded against 9 claims. The summary of the award is extracted as under:-

SUMMARY OF THE AWARD

S. No.	**Description of Claim**	**Amount of Claim**	**Award Amount**
1	Payment on loss of Oh. and incidentals	Rs. 83,300/-	Rs. 83,300/-
2	Payment on loss of Profit	Rs. 83,300/-	Rs. 83,300/-
3	Payment on Idle labour	Rs. 1,77,300/-	Rs. 1,77,300/-
4	Payment on idle machinery	Rs.98,500/-	Rejected
5	Payment of extra expenses on procurement of water at the changed site of work	Rs.24,000/-	Rejected
6	Payment of extra expenses on shuttering, centring, fabrication done earlier subsequently	Rs.15,800/-	Rs.15,800/-

	dismantled.		
7	Payment on revised rates on the work executed beyond the originally stipulated time	Rs.11,33,000/-	Rs.9,67,300/-
8	Payment on refund of freek rates recovered in work bills	Rs.33,469/-	Rs.33,469/-
9	Payment on refund of security deposit	Rs.57,770/-	Rs.57,770/-
10	Payment of interest, pre arbitration, pendente lite and future interest	@18% p.a. on all amounts due from claim No.1 to 9 from, 09.03.94 till the date of payment	Payment of interest @ 18% p.a. on all amounts due from 09.3.94 till the date of payment
11	Cost of Arbitration	Rs.1,00,000/-	Rs.50,000/-

PROCEEDINGS UNDER SECTION 34 OF THE A&C ACT

7. Assailing the same, the Respondent preferred a petition under Section 34 of the A&C Act in which the learned Civil Judge, Sirsi, found 2 points to be arising for his consideration which he recorded as: -

"1. Whether the petitioner made out the proper grounds that the award passed by the arbitrator is not supported by sound reasonings and it is in arbitrary nature and it is liable to be set aside?

2. What order?"

8. The award passed by the learned Arbitrator was modified and the Respondents were directed to pay Rs.3,71,564 (25% of tender amount) along with Rs.10,000/- as costs towards the arbitration @ 9% interest. The reasons supplied for such modification, as they come forth upon a perusal of the judgement are:-

8.1 The change in site of the residential quarters was barely at the distance of 200m from the earlier site. Even if there was a change in site, the work of constructing the office building could have begun as there was no change in that regard but he had not even started excavation in order to lay down a foundation. Therefore, the question of loss of payment to the labourers and materials collected for construction, does not arise and the losses allegedly suffered by the Claimant-Appellant were "only at his imagination".

8.2 On the machinery being idle, it was not explained as to how many days the same was idle. It is "for his whims and fancies the petitioner is claiming as if he has sustained loss".

8.3 So far as the claim for water facilities, the contention of the Respondents has been accepted that per the agreement, the Claimant-Appellant was to look after the same and therefore, Respondents would not be liable therefor.

8.4 Since it is the Claimant-Appellant who did not complete the construction in time, he could not make a claim for the rates for the year 1989-90 and cannot claim interest thereupon.

8.5 No evidence to lend support to the contention of the Claimant- Appellant that there was a delay in supplying the material. On which material being supplied, was there a delay, is unexplained. Counter allegation, instead is that even after clearing all bills, the Claimant-Appellant had not picked up speed on the work. All the correspondence is only to escape payment of penalty.

8.6 The only delay is of handing over of the site of the residential house. The same was done on 7th March, 1990. The Claimant- Appellant has not explained that despite such handing over of possession by August 1990, no excavation work for the foundation had commenced.

8.7 For the changes in design, it is observed that since the changes were minor it does not require any extra payment. The same would only be payable if there was duplication of work/removal of earlier construction as per the alteration.

8.8 The cost of arbitration being awarded at Rs.50,000/- is "at exorbitant rate." Even if the argument of delay and laches on part of the Department is accepted, "it cannot be ruled out that the Department always in right path" and the extent of the same cannot be accepted.

8.9 It was also observed that there was a justification for the learned Arbitrator to award an amount which is almost equal to the amount of tender, that too on such a high rate of interest which causes an undue encumbrance on the exchequer.

8.10 The remaining critical observations stand dealt with subsequently.

PROCEEDINGS UNDER SECTION 37 OF THE A&C ACT

9. The High Court, vide its judgement under challenge before us, has confirmed the modification of the arbitral award as has been done by the learned Civil Judge, Sirsi, dismissing the application on part of the Claimant-Appellant.

9.1 It has been observed that the primary dispute is in respect of claim No. 7 which is the grant of revised rates of the escalated cost of work. The High Court has held that the view of the Arbitrator that the Department is solely responsible for the breach of the contract, cannot be accepted as the shift in venue was only in respect of the residential quarters and not for the office complex.

9.2 The estimation of cost is based on the tender notification relating to the year 1989-90. Costs in the year 1992 could not be expected to have risen hundred percent as claimed. Nothing is reflected on record to show, what precluded the Claimant-Appellant from commencing the work of the office building. It is on this ground that the claim of escalation of the Claimant-Appellant be allowed by the learned Arbitrator, has been termed as perverse and contrary to the public policy.

9.3 Findings of delay being solely on account of the Department, cannot be countenanced and the quantification of damages in respect thereto is unreasonable. "It would be a case of misconduct on the part of the arbitrator amenable to Section 34 of the Act"

9.4 Claim No. 3 in respect of idle labour being allowed to the tune of Rs.1,77,300/- "shocks the conscience of the court." It is so because there was no basis for the labour to be idle.

9.5 The award of Rs.50,000/- towards cost of arbitration is excessive. It was further observed that escalation of costs cannot be granted on "assumptions and presumptions" and, therefore, awarding the claims, that too almost equal to the tender amount, cannot be sustained.

10. The learned Civil Judge, Sirsi, to restate, modified the award passed by the learned Arbitrator reducing the amount awarded as also interest thereupon, i.e., Rs.14,68,239/- @ 18% to only 25% of the tender amount which equals to Rs.3,71,564/- and the interest percentage thereon was reduced to 9%. This was found to be justified by the learned Single Judge.

CONSIDERATION AND CONCLUSION

11. It is in this background, that we are required to consider whether the modification of the arbitral award as carried out by the learned Civil Judge as confirmed by the High Court, was justified within law?

12. It would be useful to examine the expositions of this Court on the scope to interfere with arbitral awards under Sections 34 & 37 of the A&C Act.

13. The Judgment and Order of the learned Civil Judge was dated 22nd April 2010.

14. The position as to whether an arbitral award can be modified in the proceedings initiated under Sections 34/37 of the A&C Act is no longer res integra. While noting the provisions, more specifically, Section 34(4) of the A&C Act; the decisions rendered by this Court, including the principles of international law enunciated in several decisions recorded in the treatise "Redfern and Hunter on International Arbitration, 6th Edition", this Court in National Highways Authority of India v. M. Hakeen and Another3, categorically held that any court under Section 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Section 34 would be wholly unsustainable in law. The Court categorically observed that any attempt to "modify an award" under Section 34 would amount to "crossing the Lakshman Rekha".

15. On the exact same issue we may also note another opinion rendered by this Court in Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited4 in the following terms:-

"44. In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in subsections (2) and (2-A) are made out. There is no power to modify an arbitral award. In McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , this Court held as under : (SCC p. 208, para 52)

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(Emphasis Supplied)

16. The principle stands reiterated as late as 2023 in Larsen Air Conditioning and Refrigration Company v. Union of India & Others5.

17. We may notice certain principles to be considered in adjudication of challenges to arbitration proceedings of this nature. It is a settled principle of law that arbitral proceedings are per se not comparable to judicial proceedings before the Court (Dyna Technologies Private Limited v. Crompton Greaves Limited6). The Arbitrator's view, generally is considered to be binding upon the parties unless it is set aside on certain specified grounds.

In the very same decision taking note of the opinion as is in "Russel on Arbitration", reiterated the need for the Court to look at the substance of the findings, rather than its form, stood reiterated and the need for adopting an approach of reading the award in a fair and just manner, and not in what is termed as "an unduly literal way". All that is required is as to whether the reasons borne out are intelligible or not for adequacy of reasons cannot stand in the way of making the award to be intelligibly readable.

18. Emphasizingly, it is reiterated that if the view taken by the Arbitrator is a plausible view, no interference on the specified grounds is warranted (Konkan Railway Corpn. Ltd. v. Chenab Bridge Project 7).

19. It is also a settled principle of law that an award passed by a technical expert is not meant to be scrutinised in the same manner as is the one prepared by a legally trained mind (Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited8).

20. We are dealing with an award passed on 18th February, 2003, prior to the amendment brought in Section 34 by virtue of the Arbitration and Conciliation (Amendment) Act, 2015. For the purpose of ready reference the relevant portion of the amended and the unamended provisions are extracted as under:-

"Prior to 2015 Amendment

34. Application for setting aside arbitral award.-

(1) Recourse to a court against an arbitral awärd may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if-

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in

conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of subclause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

(Emphasis supplied)

Post 2015 Amendment

34. Application for setting aside arbitral award.-

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section

(2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]"

21. In so far as the state of the law prior to such Amendment is concerned, the situation stands encapsulated by this Court, in DDA v. R.S Sharma9 where the grounds whereby courts may intervene against arbitral award, were listed.

22. Observations of this Court in Associate Builders v. DDA10 are also of note. It was held:

"15. This section in conjunction with Section 5 makes it clear that an arbitration award that is governed by Part I of the Arbitration and Conciliation Act, 1996 can be set aside only on grounds mentioned under Sections 34(2) and (3), and not otherwise. Section 5 reads as follows:

"5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

16. It is important to note that the 1996 Act was enacted to replace the 1940 Arbitration Act in order to provide for an arbitral procedure which is fair, efficient and capable of meeting the needs of arbitration; also to provide that the tribunal gives reasons for an arbitral award; to ensure that the tribunal remains within the limits of its jurisdiction; and to minimise the supervisory roles of courts in the arbitral process.

17. It will be seen that none of the grounds contained in subsection (2)(a) of Section 34 deal with the merits of the decision rendered by an arbitral award. It is only when we come to the award being in conflict with the public policy of India that the merits of an arbitral award are to be looked into under certain specified circumstances."

(Emphasis Supplied)

23. As it is evident from the extracted provisions, as above that prior to the Amending Act, it was open for the Court to examine the award as to whether it was in conflict with, (a) public policy of India; (b) induced or affected by fraud;

(c) corruption; and (d) any violation of the provisions of Section 75 and 81 of the A&C Act.

24. In the instant case, the only provision under which the award could have been assailed was for it to have been in conflict with the public policy of India. This concept has been elaborately considered by this Court in Associate Builders (supra); Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India11, in the following terms:-

25. In Associate Builders (supra) the Court observed-

"19. When it came to construing the expression "the public policy of India" contained in Section 34(2)(b)(ii) of the Arbitration Act, 1996, this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] held: (SCC pp. 727-28 & 744-45, paras 31 & 74)

"31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time.

However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be-award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

(Emphasis supplied)

26. Ssangyong Engineering (supra) followed the observations of Associate Builders (supra). To efficiently encapsulate the extent thereof particularly in the context of Indian awards, we may refer only to para 37 where it has been held:-

"37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality."

27. The position in Associate Builders (supra) was recently summarised as hereinbelow recorded by Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum12

"42. In Associate Builders, this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

JUDGMENT PASSED UNDER SECTION 34 A&C ACT

28. A perusal of the judgment and order of the learned Civil Judge, in the considered view of this Court, does not reflect fidelity to the text of the statute. Nowhere does it stand explained, as to, under which ground(s) mentioned under Section 34 of the A&C Act, did the Court find sufficient reason to intervene. In

fact, quite opposite thereto, the Court undertook a re-appreciation of the matter, and upon its own view of the evidence, modified the order.

29. As the above extracted judgment shows, merits of the award are only to be gone into, if the award is demonstrated to be contrary to the public policy of India. The reasons recorded by the learned Civil Judge for modifying the arbitral award, as reflected from a perusal thereof, have been recorded in an earlier section of the judgment. None of those reasons even so much as allude to the award being contrary to the public policy of India, which would enable the court to look into the merits of the award.

30. We have carefully perused the award passed by the Arbitrator in which he has not only referred to and considered the materials on record in their entirety but also, after due application of mind, assigned reasons for arriving at this conclusion, either rejecting, accepting or reducing the claim set out by the Claimant-Appellant. Noticeably, during the arbitral proceedings none of the parties raised any objection to the Arbitrator adjudicating the dispute, be it on any ground, including bias. Each one of the claims stands separately considered and dealt with.

31. We find that the view taken by the Arbitrator is a plausible view and could not have been substituted for its own by the Court.

32. The reasons assigned by the Court under Section 34 of the A &C Act, to our mind, are totally extraneous to the controversy, to the lis between the parties and not borne out from the record. In fact, they are mutually contradictory.

32.1 In awarding an amount of 25% of the tender amount (incorrectly recorded as "over the tender amount" in some parts of the judgment of the learned Civil Judge, Sirsi) in favour of the Claimant-Appellant, the Court has ipso facto accepted that the Claimant-Appellant had not breached the terms of the contract. In fact, the Court appears to have accepted the Claimant's contention of delay in handing over the site drawings and supply of materials.

The Court while noticing the change in the drawings, resorted to, a misadventure by observing that the changes in the drawings were "only minor" in the dimension of beam which as we find the Court have contradicted itself by recording the same to have been "noticed as essential in the execution of the contract". The Court, in our considered view had no business to state that the Claimant is claiming the amount is from the pocket of the concerned engineer or his property.

"Whether the claimant is claiming the such amount is from the pocket of concerned Engineers or from his property, whey should so much amount be paid

from exchequer amount, it is heavily cast on the tax payer, that has to be consider by the court."

32.2 Further observations as we extract hereunder, justifying the interference in the award, in our considered opinion, are totally scandalous: -

"Admittedly the arbitrator who is retired Engineer after retirement there will be no holding on the department, when the claimant is going to benefit so much amount there will be benefit to the arbitrator."

32.3 The Court imputed its personal knowledge in assigning reasons by observing :-

"Even in this case also if the report of the arbitrator is accepted as it is, it is heavy burden on the exchequer not on the department."

32.4 The reasoning given by the Court in interfering with the award which is extracted immediately hereafter, in our view, is preposterous: -

"It is the common sense and the general observation, whenever the work is entrusted to any contractor to put up the construction what they do is, they use to start excavation to lay a foundation. It is not the case of the 2nd opponent regarding digging at original spot or laying any foundation for construction of the residential house. So, under such circumstances the alleged loss pleaded by the opponent No.2 is only at his imagination."

32.5 For it is no business of the Court to consider the burden on the exchequer. All that is required by the Court is to see as to whether the contracting parties have agreed to bind themselves to the terms with the only supervisory jurisdiction of the Court to consider breach thereof, in the light of the grounds specified under Section 34.

32.6 To our mind, the court lost sight of the fact that the civil contract was composite in nature that is having contracted both of the building of the office and residence together. In these circumstances, the contractor could not have commenced work of part of the project when the complete site and the drawings were not handed over to him. In the absence of the parties have agreed otherwise, work could not have commenced. Hence, observation of the court, advisory in nature, for the contractor to have commenced the work for one part of the contract is unwarranted and uncalled for, in fact perverse.

32.7 The other observation that there was a delay on the part of the contractor in completing the work or speeding up the work does not reflect in the record. They are nothing short of mere conjectures. This is more so in view of the absence of

invocation of the arbitration clause or initiation of the proceedings thereunder on the part of the Respondent against the contractor as also not raising any counter claims for adjudication by the Arbitrator.

32.8 Accounting for the legal position, the court could have at best set aside the award and could not modify the same.

32.9 We also notice the learned Arbitrator, to have accepted the contention of the Claimant-Appellant that there was a delay in supply of drawings, which in turn caused delay in placing the orders for steel and other such requirements. The Civil Judge had disagreed therewith on a mere reference to "Ex. R 38 to 95" showing prompt supply.

There is no discussion whatsoever. Another instance is noteworthy. It was observed that the question of idleness of the labour does not arise if there was another building to be constructed, and therefore, such claim cannot be paid. This is a clear instance of the court supplanting its view in place of the Arbitrator, which is not a permissible exercise, and is completely de-hors to the jurisdiction under Section 34.

33. As such, the modification of the arbitral award by the learned Civil Judge, Sirsi, does not stand scrutiny, and must be set aside.

JUDGMENT UNDER SECTION 37 A&C ACT

34. Moving further, we now consider the judgment impugned before us, i.e., the order of the High Court upholding such modification, under the jurisdiction of Section 37 of the A&C Act.

35. It has been observed by this Court in MMTC Ltd. v. Vedanta Ltd.13

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

(Emphasis Supplied)

36. This view has been referred to with approval by a bench of three learned Judges in UHL Power Company Ltd v. State of Himachal Pradesh14. In respect of Section 37, this court observed:-

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

37. This Court has not lost sight of the fact that, as a consequence to our discussion as aforesaid, holding that the judgment and order under Section 34 of the A&C Act does not stand judicial scrutiny, an independent evaluation of the impugned judgment may not be required in view of the holding referred to supra in MMTC Ltd. However, we proceed to examine the same.

38. We may also notice that the circumscribed nature of the exercise of power under Sections 34 and 37 i.e., interference with an arbitral award, is clearly demonstrated by legislative intent. The Arbitration Act of 1940 had a provision (Section 15) which allowed for a court to interfere in awards, however, under the current legislation, that provision has been omitted.15

39. The learned Single Judge, similar to the learned Civil Judge under Section 34, appears to have not concerned themselves with the contours of Section 37 of the A&C Act. The impugned judgment reads like a judgment rendered by an appellate court, for whom reexamination of merits is open to be taken as the course of action.

40. We find the Court to have held the award to be perverse and contrary to public policy. The basis for such a finding being the delay on the part of the contractor in completion of the work which "could have been avoided". Significantly, as we have observed earlier such a finding is not backed by any material on record.

41. What appears to have weighed with the court is that the factoring of the cost escalation between the years 1989-90 and 1992 by 100% was exaggerated. But then equally, there is no justification in granting lump sum escalation by 25% of the contract value. Well, this cannot be a reason to modify the award for the parties are governed by the terms and conditions and the price escalation stood justified by the petitioner based on cogent and reliable material as was so counted by the Arbitrator in partly accepting and/or rejecting the claims.

42. In our considered opinion, the court while confirming the modification of the award committed the very same mistake which the Court under Section 34 of the A&C Act, made. The Court under Section 37 had only three options:-

(a) Confirming the award of the Arbitrator;

(b) Setting aside the award as modified under Section 34; and

(c) Rejecting the application(s) under Section 34 and 37.

43. The learned single Judge has examined the reasoning adopted by the learned Arbitrator in respect of certain claims (claims 3 and 7, particularly) and held that allowing a claim for escalation of cost, was without satisfactory material having been placed on record and is "perverse and contrary to the public policy".

However, it appears that such a holding on part of the Judge is without giving reasons therefor. It has not been discussed as to what the evidence was before the learned single Judge to arrive at such conclusion. This is of course, entirely without reference to the scope delineated by various judgements of this Court as also, the statutory scheme of the A & C Act.

44. Having referred to J.G Engineers (P) Ltd. v. UOI16 and more particularly para 27 thereof, it has been held that the award passed by the learned Arbitrator is "patently illegal, unreasonable, contrary to public policy." There is no reason forthcoming as to how the holding of the learned Arbitrator flies in the face of public policy.

ON INTEREST

45. On the issue of interest, we notice that the Arbitrator has awarded interest @ 18% p.a., w.e.f. 09 March 1994 which stood reduced to 9%. The transaction being commercial in nature, we see no reason as to why the claimant could not be entitled to interest in terms of the rate quantified by the Arbitrator which includes the period of pre-arbitration, pendante lite and future. We notice this Court to have stated in Hyder Consulting (UK) Ltd. v. State of Orissa17, through S.A. Bobde, J. (as His Lordship then was) speaking for the majority as under:

"4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award

period between the date on which the cause of action arose and the date on which the award is made.

The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made". On a plain reading, this expression refers to the total amount or sum for the payment for which the award is made. Parliament has not added a qualification like "principal" to the word "sum", and therefore, the word "sum" here simply means "a particular amount of money". In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include - "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the Act, where it provides that a sum directed to be paid by an arbitral award "shall carry interest" from the date of the award to the date of the payment i.e. post-award. In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the "sum", which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

9. The purpose of enacting this provision is clear, namely, to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the award in the same manner as if it were a decree of the court vide Section 36 of the Act."

(Emphasis Supplied)

46. Keeping in view the aforesaid observations of this Court, it cannot be doubted that the Claimant-Appellant is entitled to interest. We find that the learned Arbitrator, as hitherto observed, has awarded 18% interest and the same stood reduced by the Courts below to 9% without any legal basis therefor. In exercise of our powers under Article 142, we deem it appropriate to, in order to ensure substantial justice, inter se the parties, of awarding interest @ 9 % p.a. from the date of award pendante lite and future, till date of payment.

Conclusion

47. In the absence of compliance with the well laid out parameters and contours of both Section 34 and Section 37 of the A&C Act, the impugned judgement(s) referred to in Para 1 (supra) are required to be set aside. Consequently, the award

dated 18th February 2003 of the learned Arbitrator is restored, for any challenge thereto has failed.

48. The appeal is allowed with a direction to the State of Karnataka to expeditiously pay the amount. No costs.

.....J. (ABHAY S. OKA)

.....J. (SANJAY KAROL)

New Delhi;

January 04, 2024.

1 A&C Act, for short.

2 Hereinafter, the Claimant-Appellant

3 (2021) 9 SCC 1 (2-Judge Bench)

4 (2021) 7 SCC 657 (2-Judge Bench)

5 2023 SCC On Line 982 (2-Judge Bench)

6 (2019) 20 SCC 1 (3-Judge Bench)

7 (2023) 9 SCC 85 (Three Judge Bench)

8 (2022) 1 SCC 131 (Two Judges Bench)

9 (2008) 13 SCC 80 (2 Judge Bench)

10 (2015) 3 SCC 49 (2 Judge Bench)

11 (2019) 15 SCC 131 (Two Judges Bench)

12 (2022) 4 SCC 463 (2-Judge Bench)

13 (2019) 4 SCC 163 (2 Judge Bench)

14 (2022) 4 SCC 116 (3-Judge Bench)

15 Larsen Air Conditioning and Refrigration Company v. Union of India and Others 2023 SCC OnLine 982 (2-Judge Bench)

16 (2011) 5 SCC 758 (2 Judge Bench)

17 (2015) 2 SCC 189 (3-Judge Bench)

IN THE SUPREME COURT OF INDIA

Bilkis Yakub Rasool
Vs.
Union of India & Ors.
[Writ Petition (Crl.) No. 491 of 2022]
[Writ Petition (Crl.) No. 319 of 2022]
[Writ Petition (Crl.) No. 326 of 2022]
[Writ Petition (Crl.) No. 352 of 2022]
[Writ Petition (Crl.) No. 403 of 2022]
[Writ Petition (Crl.) No. 422 of 2022]

HEADNOTE – Factors for deciding remission applications

JUDGMENT

Nagarathna, J.

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Preface:

1. Plato, the Greek Philosopher in his treatise, The Laws, underscores that punishment is to be inflicted, not for the sake of vengeance, for what is done cannot be undone, but for the sake of prevention and reformation (Thomas L. Pangle, The Laws of Plato, Basic Book Publishers, 1980). In his treatise, Plato reasons that the lawgiver, as far as he can, ought to imitate the doctor who does not apply his drug with a view to pain only, but to do the patient good.

This curative theory of punishment likens penalty to medicine, administered for the good of the one who is being chastised (Trevor J. Saunders, Plato's Penal Code: Tradition, Controversy, and Reform in Greek Penology, Oxford University Press, 1991). Thus, if a criminal is curable, he ought to be improved by education and other suitable arts, and then set free again as a better citizen and less of a burden to the state. This postulate lies at the heart of the policy of remission.

In addition, there are also competing interests involved- the rights of the victim and the victim's family to justice vis-a-vis a convict's claim to a second chance by way of remission or reduction of his sentence for reformation. Over the years, this Court initially attached greater weight to the former and has expressed scepticism over the latter, particularly if the offence in question is a heinous one. This sentiment can be gathered from the following observations of Fazal Ali J. in Maru Ram vs. Union of India, AIR 1980 SC 2147 ("Maru Ram"):

"77. It is true that there appears to be a modern trend of giving punishment a colour of reformation so that stress may be laid on the reformation of the criminal rather than his confinement in jail which is an ideal objective. At the same time, it cannot be gainsaid that such an objective cannot be achieved without mustering the necessary facilities, the requisite education and the appropriate climate which must be created to foster a sense of repentance and penitence in a criminal so that he may undergo such a mental or psychological revolution that he realises the consequences of playing with human lives. In the world of today and particularly in our country, this ideal is yet to be achieved and, in fact, with all our efforts it will take us a long time to reach this sacred goal.

79. The question, therefore, is - should the country take the risk of innocent lives being lost at the hands of criminals committing heinous crimes in the holy hope

or wishful thinking that one day or the other, a criminal, however dangerous or callous he may be, will reform himself. Valmikis are not born everyday and to expect that our present generation, with the prevailing social and economic environment, would produce Valmikis day after day is to hope for the impossible."

A woman deserves respect howsoever high or low she may be otherwise considered in society or to whatever faith she may follow or any creed she may belong to. Can heinous crimes, inter alia, against women permit remission of the convicts by a reduction in their sentence and by granting them liberty? These are the issues which arise in these writ petitions. With the aforesaid philosophical preface, we proceed to consider these writ petitions, both on maintainability as well as on merits purely from a legal perspective.

Details of the writ petitioners:

2. These writ petitions have been filed assailing the Orders dated 10.08.2022, granting remission and early release of respondent Nos.3 to 13 in Writ Petition (Crl.) No.491 of 2022 (which petition shall be considered to be the lead petition), who were all convicted, having been found guilty of committing heinous crimes during the large-scale riots in Gujarat on 28.02.2002 and a few days thereafter which occurred in the aftermath of the burning of the train incident in Godhra in the State of Gujarat on 27.02.2002.

2.1. The grotesque and diabolical crime in question was driven by communal hatred and resulted in twelve convicts, amongst many others, brutally gang-raping the petitioner in Writ Petition (Crl.) No.491 of 2022, namely, Bilkis Yakub Rasool, who was pregnant at that time. Further, the petitioner's mother was gang raped and murdered, her cousin who had just delivered a baby was also gang raped and murdered. Eight minors including the petitioner's cousin's two-day-old infant were also murdered. The petitioner's three-year-old daughter was murdered by smashing her head on a rock, her two minor brothers, two minor sisters, her phupha, phupi, mama (uncle, aunt and uncle respectively) and three-cousins were all murdered.

2.2. While eventually, the perpetrators of the crime, including the police personnel were convicted and sentenced, the petitioner, who was aged twenty-one years and pregnant at that time, having lost all members of her family in the diabolical and brutal attacks, has once again approached this Court seeking justice by challenging the en-masse remission granted to respondent Nos.3 to 13. Bilkis Yakub Rasool, being an unfortunate victim of the heinous crimes hereinabove narrated, has filed the present writ petition under Article 32 of the Constitution of India, seeking issuance of a writ, order or direction quashing the

Orders dated 10.08.2022 passed by the State of Gujarat by which the convicts in Sessions Case No.634 of 2004, Mumbai (respondent Nos.3 to 13 herein), whose convictions were upheld by a Division Bench of the Bombay High Court and thereafter by this Court, have been released prematurely.

2.3. Writ Petition (Crl.) No.352 of 2022 titled Dr. Meeran Chadha Borwankar vs. State of Gujarat has been preferred by a former woman police officer, a woman bureaucrat who had served in the Indian Foreign Service and an academic, seeking, inter alia, the setting aside of the remission Orders dated 10.08.2022. The petitioners by way of the writ petition have also sought a writ or order in the nature of mandamus directing that the States must endeavour to have a pluralistic composition in Jail Advisory Committees, adequately representing the diverse nature of our society.

2.4. Writ Petition (Crl.) No.319 of 2022 titled Subhashini Ali vs. State of Gujarat being the first of the petitions filed in this batch has been preferred under Article 32 by Subhashini Ali, a former parliamentarian and presently the Vice-President of All India Democratic Women's Association; Revati Laul, an independent journalist and Roop Rekha Verma, former Vice-Chancellor of Lucknow University, challenging the Orders dated 10.08.2022.

2.5. Writ Petition (Crl.) No.326 of 2022 titled Mahua Moitra vs. State of Gujarat has been preferred by Mahua Moitra, a Member of Parliament from the Krishnanagar constituency in West Bengal, seeking issuance of a writ, order, or direction, quashing the Orders dated 10.08.2022. The petitioner in the said writ petition has also sought the framing of guidelines and the equitable application of existing guidelines by the State Government for the grant of remission so as to channelise the exercise of discretion in granting remission and to prevent the misuse of such discretion, if found necessary upon an examination of the existing statutory framework.

2.6. Writ Petition (Crl.) No.403 of 2022 titled National Federation of Indian Women (NFIW) vs. State of Gujarat has been filed by the National Federation of Indian Women (NFIW), which is a women centric organization that was established on 04.06.1954 for the purpose of securing women's rights, seeking appropriate directions in the form of a writ of mandamus to the respondent to revoke the remission granted to respondent Nos.3 to 13 by the competent authority of the Government of Gujarat under the remission policy dated 09.07.1992 and to re-arrest respondent Nos.3 to 13 herein.

2.7. Writ Petition (Crl.) No.422 of 2022 titled Asma Shafique Shaikh vs. State of Gujarat has been filed by Asma Shafique Shaikh, a lawyer by profession and a

social activist, seeking issuance of a writ, order or direction, quashing the Orders dated 10.08.2022.

2.8. As Writ Petition (Crl.) No.491 of 2022 has been filed by one of the victims, Bilkis Yakub Rasool, seeking quashing of the orders dated 10.08.2022, for the sake of convenience, the factual background, details as well as the status of the parties shall be with reference to Writ Petition (Crl.) No.491 of 2022.

Factual Background:

3. The factual background in which these writ petitions have been filed is that following the aforesaid unfortunate and grave incident, a First Information Report ("FIR" for short) was registered against unknown accused, on 04.03.2002. The Investigation Agency filed a closure report stating that the accused could not be traced and the said closure report was accepted by the Judicial Magistrate vide Order dated 25.03.2003. The closure report was challenged by the petitioner-victim- Bilkis Yakub Rasool, before this Court in Writ Petition (Crl.) No.118 of 2003. This Court directed the reopening of the case and transferred the investigation of the same to the Central Bureau of Investigation ("CBI" for short).

3.1. The CBI commenced a fresh investigation and submitted a chargesheet on 19.04.2004 against twenty persons accused of the crime. Charges of gang rape, murder and rioting armed with deadly weapons with a common intention were framed against twelve persons, six police personnel and two doctors

3.2. The petitioner-victim approached this Court by filing Transfer Petition (Crl.) No.192 of 2004, seeking transfer of the trial from the State of Gujarat to a neutral place. This Court in Transfer Petition (Crl.) No.192 of 2004, by an Order dated 06.08.2004, in the peculiar facts and circumstances of the case, considered it appropriate to transfer Sessions Case No.161 of 2004 pending before the learned Additional Sessions Judge, Dahod, Ahmedabad to the competent Court in Mumbai for trial and disposal. Charges were framed on 13.01.2005 amongst others against the eleven convicts for the commission of offences under Sections 143, 147, 302, 376(2)(e) and (g) of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC" for the sake of brevity).

3.3. The Special Judge, Greater Mumbai, vide Judgment dated 21.01.2008 in Sessions Case No.634 of 2004 convicted the eleven accused and sentenced them to life imprisonment for the commission of the offences of, inter alia, gang rape and murder of the petitioner's mother; gang rape and murder of her cousin Shamim; murder of twelve more victims including the three and a half year old

daughter of the petitioner, rioting, etc. and one police personnel for deliberately recording the FIR incorrectly.

However, the Trial Court acquitted the remaining five police personnel and the two doctors, against whom there were serious charges. Respondent Nos.3 to 13 herein were convicted for the offences punishable under Sections 143, 147, 148, 302 r/w 149 of the IPC for the murder of fourteen people; Section 376 (2)(e) & (g) for having committed gang-rape on the petitioner-victim; Section 376(2)(g) for having committed gang rape on other women. The police officer, Somabhai Gori was convicted of the offence punishable under Sections 217 and 218 of the IPC.

3.4. On 05.08.2013, a Division Bench of the High Court of Bombay passed an Order in Criminal Writ Petition No.305 of 2013 titled Ramesh Rupabhai Chandana vs. State of Maharashtra, preferred by respondent No.13 herein, holding that where a trial has been transferred from one State to another and such trial has been concluded and the prisoner has been convicted, the prisoner should be transferred to the prison of his State.

3.5. Against the judgment of the Trial Court dated 21.01.2008, the persons convicted, as well as the State filed Criminal Appeals before the Bombay High Court. While the convicts filed criminal appeals assailing their conviction, the State filed criminal appeal against acquittal of the police officials and the doctors A bench comprising Mrs. Mridula Bhatkar and Mrs. V. K. Tahilramani, JJ. of the Bombay High Court upheld the conviction of the eleven persons accused of the offence of rioting armed with deadly weapons, gang-rape and murder by judgment dated 04.05.2017 in Criminal Appeal Nos.1020-1023 of 2009, 487 of 2010, 194 and 271 of 2011 titled Jaswantbhai Chaturbhai Nai vs. State of Gujarat.

The five police officials and the two doctors who were acquitted by the Trial Court were also convicted by the High Court. The High Court also observed that the investigation by the Gujarat police was not proper and that the Gujarat police had taken the investigation in the wrong direction from the beginning i.e., the day of registering the FIR.

That the investigation was not only unsatisfactory but it also smacked of dishonest steps to shield the culprits. It was further observed that the earlier investigation had played the role of a villain in the case. The High Court while going through the evidence also noted that "the truth and the falsehood are mixed up in such a manner that at every stage of investigation the truth is hidden under layers of intentional laxity, omissions, contradictions and falsehood and the truth is required to be unearthed".

3.6. All the persons convicted filed Special Leave Petitions against the judgment of the High Court. This Court vide Order dated 10.07.2017 passed in SLP (Crl.) Nos.4290/2017, 4705/2017 and 4716/2017 and by Order dated 20.11.2017 passed in SLP (Crl.) No.7831/2017 dismissed the Special Leave Petitions preferred by the convicts and upheld the findings rendered by the High Court, as well as the sentence awarded.

3.7. It is noteworthy that the petitioner-victim approached this Court by way of Criminal Appeal Nos.727-733 of 2019 seeking just and adequate compensation for her ordeals. This Court vide order dated 23.04.2019 observed that the petitioner is a victim of riots which occurred in the aftermath of the Godhra train burning. This Court noted that the petitioner's case had to be dealt with differently as the loss she has suffered surpassed normal cases.

That the gruesome and horrific acts of violence had left an indelible imprint on the mind of the petitioner, which will continue to torment and cripple her. This Court therefore directed the State Government to pay Rs. 50,00,000/- (Rupees Fifty Lakhs) to the petitioner within two weeks noting that the petitioner had been coerced into living the life of a nomad and an orphan and was barely sustaining herself on the charity of NGOs, having lost her family members.

3.8. After undergoing 14 years 5 months and 6 days of his sentence, respondent No.3 herein, namely, Radheshyam Bhagwandas Shah, filed Criminal Application No.4573 of 2019 before the Gujarat High Court challenging the non-consideration of his application for premature release under Sections 433 and 433A of the Code of Criminal Procedure, 1973 (hereinafter, the "CrPC" for the sake of brevity).

The High Court after considering the submissions observed that respondent No.3 herein had been tried in the State of Maharashtra, hence, as per Section 432 (7), the 'appropriate government' for the purpose of Sections 432 and 433 of the CrPC would be the State of Maharashtra. The High Court placed reliance on the dictum of this Court in Union of India vs. V. Sriharan, (2016) 7 SCC 1 ("V. Sriharan") and by Order dated 17.07.2019 directed the petitioner therein (respondent No.3 herein) to pursue his remedy within the State of Maharashtra.

3.9. Respondent No.3 then moved an application dated 01.08.2019 before the Secretary, Department of Home Affairs, State of Maharashtra, seeking premature release under Sections 432 and 433A of the CrPC. Respondent No.3 specifically relied on the order dated 17.07.2019 of the Gujarat High Court granting liberty to the convict to approach the State of Maharashtra seeking premature release.

3.10. As the case was investigated and prosecuted by the CBI, the opinion of the said Agency was sought on the application for premature release. The CBI submitted its report dated 14.08.2019 wherein it was recommended that respondent No.3 should serve his sentence fully and no leniency should be given to him. The CBI submitted that respondent No.3 had actively participated in the heinous crime and that the offences committed by him and others were serious in nature and thus, he should not be pardoned or the sentence, suspended or remitted.

3.11. Further, on 03.01.2020, the Special CBI Court, Mumbai, also gave a negative report and objected to the prayer for premature release of respondent No.3 on the ground of seriousness of the offence. It was observed that the offences committed by the accused fell into category 5 (b) of the relevant State policy and were extremely serious, thus, it would be improper to grant remission to respondent No.3.

3.12. Similarly, on 03.02.2020, the Superintendent of Police, Dahod, in his report submitted to the Collector and District Magistrate, Dahod, gave a negative opinion against the pre-mature release of respondent No.3 on the ground that the victim and her family members apprehended serious crimes against them if respondent No.3 was released prematurely. The Office of the Collector and District Magistrate, Dahod, on 19.02.2020 also opined against the pre-mature release of respondent No.3 by relying on the opinion dated 03.02.2020 of the Superintendent of Police, Dahod.

3.13. Respondent No.3 again approached the High Court of Gujarat by way of Criminal Miscellaneous Application No. 1 of 2019 in Criminal Application No.4573 of 2019 seeking remission under Section 432 read with Section 433 of the CrPC. The High Court vide Order dated 13.03.2020 rejected the application preferred by respondent No.3 with a specific observation that the appropriate government under Section 432(7)(b) to exercise the powers of remission would be the State of Maharashtra and not the State of Gujarat.

It was further recorded in the said order that the counsel for respondent No.3 had sought the permission of the Court to move the High Court of Bombay for the same relief and therefore the application was disposed of with liberty to the writ petitioner therein in the aforesaid terms. It is pertinent to note that this order still holds the field as it has neither been challenged nor recalled or set aside in accordance with law.

3.14. On 20.07.2021, a meeting of the Jail Advisory Committee of the State of Gujarat took place which comprised of four social workers; two members of the State Legislative Assembly; the Superintendent of Police, Godhra; the District

and Sessions Judge, Godhra; the Secretary, Jail Advisory Committee and Superintendent, Godhra Sub-Jail and the District Magistrate, Godhra (Chairman of the Jail Advisory Committee, Godhra Sub- Jail).

3.15 The Sessions Judge, Godhra, being one of the ten members of the Jail Advisory Committee, after going through the case papers observed that the convict, respondent No.3 herein, had been sentenced to undergo life imprisonment in a sensitive case and that if he was released prematurely, it may create an adverse effect on the society and there is a possibility of peace being disturbed. The other Committee members recommended the grant of remission to respondent No.3, on the ground that he had completed fifteen years of imprisonment and that his conduct in prison had been good.

3.16. On 18.08.2021, the Additional Director General of Police, Prisons and Correctional Administration, State of Gujarat, vide his letter to the Additional Chief Secretary, Home Department, Gujarat, after considering the opinion given by the Jail Advisory Committee, concurred with the opinion given by the Superintendent of Police, Dahod; CBI; the Special CBI Court, Mumbai and the District Magistrate, Dahod and did not recommend the premature release of the convict- respondent No.3.

3.17. In the interregnum, the rest of the convicts, respondent Nos.4 to 13 had applied for remission on varying dates in the month of February 2021 to the Superintendent, Godhra Sub-Jail. The opinion of the CBI was sought in this regard, and a negative opinion was given, so also by the Special Judge (CBI), Greater Mumbai. By a common opinion dated 22.03.2021, Special Judge (CBI), Greater Mumbai stated that since all the accused were tried and convicted in Mumbai, i.e., the State of Maharashtra, the Government Resolution issued by the Home Department, Government of Maharashtra would be applicable to them.

The Special Judge after perusing the guidelines issued by the Government of Maharashtra on 16.11.1978 and 11.05.1992 and the Government Resolution dated 11.04.2008 (Policy dated 11.04.2008), observed that the said resolution dated 11.04.2008 would apply as it had superseded all earlier orders and guidelines and would have been applicable in the normal course to the convicts undergoing life imprisonment.

The Special Judge further noted that the case of the convicts mentioned above would fall under categories 2(c), 2 (d) and 4(d) of the Policy dated 11.04.2008, according to which the minimum period of imprisonment to be undergone is 28 years (Category 2(d)). However, the Superintendent of Police, Dahod, gave a positive opinion with respect to the premature release of respondent Nos.3 to 13. His opinion was seconded by the Collector and District Magistrate, Dahod.

3.18. In the aforesaid backdrop, when various steps were in progress at various stages, stealthily a writ petition, being Writ Petition (Crl.) No.135 of 2022 titled Radheshyam Bhagwandas Shah vs. State of Gujarat, (2022) 8 SCC 552 ("Radheshyam Bhagwandas Shah"), was filed before this Court by respondent No.3 herein, seeking a direction in the nature of mandamus to the State of Gujarat to consider his application for pre-mature release under its policy dated 09.07.1992, which was existing at the time of commission of his crime and his conviction.

3.19 This Court noted that the policy on the date of conviction was as per the resolution dated 09.07.1992 passed by the State of Gujarat. Hence, respondent No.3 (petitioner therein) would be governed by the same. This Court placed reliance on the dictum in State of Haryana vs. Jagdish, (2010) 4 SCC 216 ("Jagdish") to observe that the application for grant of pre-mature release will have to be considered on the basis of the policy which stood as on the date of conviction. The other pertinent findings of this Court in its judgment and Order dated 13.05.2022, in Writ Petition (Crl.) No.135 of 2022 are culled out hereunder:

i. The argument advanced by the respondents - State of Gujarat therein that since the trial had been concluded in the State of Maharashtra, the 'appropriate Government' as referred to under Section 433 of the CrPC would be the State of Maharashtra, was rejected by this Court holding that the crime in the instant case was admittedly committed in the State of Gujarat and ordinarily, the trial would have been concluded in the same State and in terms of Section 432(7) of the CrPC, the appropriate Government in the ordinary course would have been the State of Gujarat but in the instant case, the case was transferred under exceptional circumstances by this Court for the limited purpose of trial and disposal to the State of Maharashtra. However, after the conclusion of trial and on conviction, the case stood transferred to the State where the crime was committed and the State of Gujarat remains the appropriate Government for the purpose of Section 432(7) of the CrPC.

ii. This Court observed that once the crime was committed in the State of Gujarat, after the trial came to be concluded and judgment of conviction came to be passed, all further proceedings would have to be considered, including remission or premature release, as the case may be, in terms of the policy which is applicable in the State of Gujarat where the crime was committed and not the State where the trial stood transferred and concluded for exceptional reasons under the orders of this Court. iii. This Court directed the State of Gujarat to consider the application of the petitioner therein for premature release in terms of its policy dated 09.07.1992 which was applicable on the date of conviction.

3.20. Pursuant to the judgment of this Court dated 13.05.2022, a meeting of the Jail Advisory Committee of the State of Gujarat took place on 26.05.2022 and all the members recommended grant of remission to respondent Nos.3 to 13.

3.21. The Sessions Judge, Godhra, also considered the applications of respondent Nos.3 to 13 and upon going through the particulars provided by the Jail Superintendent, Sub-Jail, Godhra noted that the said report recorded that the convicts had demonstrated good behavior and conduct during the period of incarceration and that no adverse incident had been recorded against the convicts even when they were on furlough or on parole, except against one convict, namely, Mitesh Chimanlal Bhatt. That all convicts, by and large, surrendered themselves within the time after enjoying parole/furlough and participated in rehabilitation and corrective programmes. That the convicts still had substantial years of life remaining. Accordingly, the Sessions Judge applied the policy dated 09.07.1992 and gave an 'affirmative' opinion as regards the premature release of respondent Nos.3 to 13.

3.22. The Additional Director General of Police, Prisons and Correctional Administration, State of Gujarat, addressed a letter dated 09.06.2022 to the Additional Chief Secretary, Home Department, Government of Gujarat, regarding the premature release of accused Kesarbhai Khimabhai Vahoniya. In the said letter, the details of the opinion given by the concerned authorities regarding the premature release of the said convict were also discussed.

It was stated in the letter that the Superintendent of Police, Dahod, had given a positive opinion regarding premature release from jail; the Superintendent of Police, Special Crime Branch, Mumbai, however, had given a negative opinion about premature release from jail; the District Magistrate, Dahod, had given a positive opinion about the premature release from jail; the Sessions Court, Mumbai, which pronounced the sentence had given a negative opinion about premature release; however, the Jail Advisory Committee of Gujarat had given a positive opinion about the convict's premature release and the Superintendent, Godhra Sub-Jail had also given a positive opinion about the premature release.

Thus, the Additional Director General of Police, Prisons and Correctional Administration, State of Gujarat gave a positive opinion regarding the premature release of Kesarbhai Khimabhai Vahoniya to the Additional Chief Secretary, Home Department, Government of Gujarat. So also, as regards the other convicts, namely, Salesh Chimanlal Bhatt, Pradip Ramanlal Modhhiya, Mitesh Chimanlal Bhatt, Bipinchand Kanhaiyalal Joshi, Rajubhai Babulal Soni, Bakabhai Khimabhai Vahoniya, Jaswantbhai Chaturbhai Nai (Rawal) and Ramesh Rupabhai Chandana.

3.23. On 28.06.2022, the Department of Home Affairs, Government of Gujarat, addressed a letter to the Secretary, Ministry of Home Affairs, Government of India, seeking sanction from the Government of India on the proposal for the premature release of the prisoners, respondent Nos.3 to 13.

3.24. By letter dated 11.07.2022, the Ministry of Home Affairs, Government of India conveyed its approval under Section 435 of the CrPC for the premature release of all 11 convicts, respondent Nos.3 to 13.

3.25. Pursuant to the concurrence of the Central Government, the State of Gujarat issued the impugned orders dated 10.08.2022.

3.26. In the above background, these writ petitions have been filed, praying, inter-alia, for issuance of a writ, order, or direction, quashing the Orders dated 10.08.2022.

Counter affidavit of State of Gujarat:

4. Under Secretary, Home Department, State of Gujarat (first respondent) has filed his affidavit stating that he is acquainted with the facts of the case as appearing from the official records of the case. While denying every assertion, contention and statement made by the petitioner in Writ Petition (Crl.) No.319 of 2022, which was the first of the writ petitions filed before this Court, certain preliminary submissions have been advanced at the outset.

4.1 It is contended that the public interest litigation (PIL) filed by the petitioners (Subhashini Ali and others) is neither maintainable in law nor tenable on facts. That a third party has no locus to challenge the orders of remission passed by a competent authority under the garb of a PIL. A PIL is not maintainable in a criminal matter as the petitioners are in no way connected with the proceedings with which the convicted persons have been granted remission.

Therefore, the writ petition may be dismissed on that ground alone. In support of this submission, reliance has been placed on Rajiv Ranjan Singh 'Lalan' (VIII) vs. Union of India, (2006) 6 SCC 613 ("Rajiv Ranjan"); Gulzar Ahmed Azmi vs. Union of India, (2012) 10 SCC 731 ("Gulzar Ahmed"); Simranjit Singh Mann vs. Union of India, (1992) 4 SCC 653 ("Simranjit Singh"); and, Ashok Kumar Pandey vs. State of West Bengal, (2004) 3 SCC 349 ("Ashok Kumar").

It is submitted that a third party/stranger either under the provisions of the CrPC or under any other statute is precluded from questioning the correctness of grant or refusal of 'sanction for prosecution' or the conviction and sentence imposed by the Court after a regular trial. Similarly, a third party stranger is precluded from questioning a remission order passed by the State Government which is in

accordance with law. Therefore, dismissal of the petition at the threshold is sought.

4.2. It is next averred that the petitioners have not pleaded as to how they have the locus to seek a writ of certiorari for quashing the orders of remission passed by respondent no.1 with respect to the eleven convicts sentenced by the Special Judge, Greater Mumbai in Sessions Case No.634 of 2004. That the petitioners have not pleaded as to how their fundamental rights have been abridged or how they are aggrieved by the action of the State Government. Therefore, filing of the writ petition as Public Interest Litigation (in short, 'PIL') is an abuse of PIL jurisdiction and is motivated by political intrigues and machinations. In this regard, reliance has been placed on Tehseen Poonawalla vs. Union of India, (2018) 6 SCC 72 ("Tehseen"); and Ashok Kumar.

4.3. It is further submitted that the petitioners not being aggrieved persons have invoked the jurisdiction of this Court under Article 32 of the Constitution for extraneous purposes. As the petitioners are not the "persons aggrieved", the writ petition is not maintainable. On the scope and ambit of the expression "person aggrieved", reliance has been placed on State of Maharashtra vs. M.V. Dabholkar, (1975) 2 SCC 702 ("M.V. Dabholkar"); Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed, (1976) 1 SCC 671 ("Jasbhai Motibhai"); and Thammanna vs. K. Veera Reddy, (1980) 4 SCC 62 ("Thammanna").

4.4. On merits, it is stated that one of the respondents/prisoners, namely, Radheshyam Bhagwandas Shah had filed Writ Petition (Crl.) No.135 of 2022, inter alia, praying to consider his remission application. This Court by its order dated 13.05.2022 held that the policy which will be applicable for deciding the remission application is the one which was in vogue at the time of conviction i.e. Premature Release of Convicts Policy of 1992.

Further, this Court held that for the purposes of Section 432 of the CrPC, the "appropriate Government" for considering the remission application is the State in which the offence was committed and not the State in which the trial was conducted and therefore, directed the State of Gujarat to consider the application of the prisoner within a period of two months. Accordingly, the State of Gujarat considered the application of the prisoners as per Section 432 read with Section 435 of the CrPC along with the Premature Release of Convicts Policy of 1992.

That, the State Government vide its Circular dated 09.07.1992 had issued a policy for early release of prisoners who have completed fourteen years of imprisonment and who were imposed punishment of life imprisonment. As per the aforesaid Policy of 1992, the Inspector General of Jail is mandated to obtain the opinion of the District Police Officer, District Magistrate, Jail Superintendent

and Advisory Board Committee for early release of a convict. Thereafter, the Inspector General of Jail is mandated to give his opinion with the copy of the nominal roll and copy of the judgment and the recommendation of the Government.

Further, the Jail Advisory Board at the time of consideration of the premature release application shall be guided by the Policy of 1992. A copy of the policy has been annexed as Annexure R-2. It is further submitted that the State Government considered the case of all the eleven convicts as per the Policy of 1992. Further, the remission in these cases was not granted under the Circular governing grant of remission to prisoners as part of celebration as 'Azadi Ka Amrit Mahotsav".

4.5. The State Government in fact directed the Additional Director General of Prisons, Ahmedabad to send the necessary proposal of remission as per the direction of this Court before 31.05.2022 vide letter dated 25.05.2022. A reminder was also sent on 08.06.2022. Ten proposals were received on 09.06.2022 and one proposal was received on 17.06.2022. The applications of the accused were considered according to the remission policy dated 09.07.1992 in accordance with the directions issued by this Court. As laid down in the abovementioned policy, the Department received the opinions of the concerned District Police Officer, District Magistrate and Chairman of Jail Advisory Board Committee.

It is further stated that the State Government has considered the opinions of the Inspector General of Prisons, Gujarat State, Jail Superintendent, Jail Advisory Committee, District Magistrate, Police Superintendent, CBI, Special Crime Branch, Mumbai and Sessions Court, Mumbai (CBI). Therefore, the opinions of seven authorities were considered. Further, having regard to the provisions of Section 435 of the CrPC, sanction of the Government of India was also necessary. As the CBI was a central investigating agency, the State Government obtained the approval/suitable orders of the Government of India.

The prisoners/convicts had completed fourteen years of imprisonment and the opinions of the concerned authorities were obtained as per Policy dated 09.07.1992. The same was submitted to the Ministry of Home Affairs, Government of India vide letter dated 28.06.2022 and sought the approval/suitable orders of the Government of India. The Government of India vide its letter dated 11.07.1992 conveyed its concurrence/approval. On considering all the opinions, the State Government decided to release the eleven convicts since they had completed fourteen years and above in jail and their behaviour was found to be good.

4.6. Reliance has been placed on Jagdish and V. Sriharan to contend that if a policy which is beneficial to the convict exists at the time of consideration of the application of premature release then the convict cannot be deprived of such beneficial policy and that judicial review of the order of remission is not permissible in law. The Under Secretary has further proceeded to place the following facts to contend that the impugned orders are in accordance with law:

"29. I say that the relevant records pertaining to the application for remission qua the prisoner, Kesharbhai Khimabhai Vahoniya, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 19.02.2021.	-
2.	Letter dated 11.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/suitable orders from the Govt. of India.
10.	Letter dated 11.07.2022 to the Home	Approved the premature release of

	Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	the prisoner.

Copy of the relevant records qua the prisoner, Kesharbhai Khimabhai Vahoniya is annexed herewith as ANNEXURE R-3.

30. I say that the relevant records pertaining to the application for remission qua the prisoner, Shaileshbhai Chimanlal Bhatt, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 23.02.2021.	-
2.	Letter dated 11.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/suitable orders from the Govt. of India.
10.	Letter dated 11.07.2022 to the Home	Approved the premature release of

	Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	the prisoner.

Copy of the relevant records qua the prisoner, Shaileshbhai Chimanlal Bhatt is annexed herewith as Annexure-RG-4.

31. I say that the relevant records pertaining to the application for remission qua the prisoner, Pradip Ramanlal Modhiya, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 23.02.2021.	-
2.	Letter dated 11.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India	Recommended premature release of the prisoner. from Home Department, Govt. of Gujarat. Sought approval/suitable orders from the Govt. of India.

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Pradip Ramanlal Modhiya is annexed herewith as ANNEXURE RG-5.

32. I say that the relevant records pertaining to the application for remission qua the prisoner, Mitesh Chimanlal Bhatt, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 18.02.2021.	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay.	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 25.05.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 25.05.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/suitable orders from the Govt. of India.

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Mitesh Chimanlal Bhatt is annexed herewith as ANNEXURE RG-6.

33. I say that the relevant records pertaining to the application for remission qua the prisoner, Bipinchandra Kanaiyalal Joshi, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 16.02.2021.	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay.	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat.	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India.

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Bipinchandra Kanaiyalal Joshi is annexed herewith as ANNEXURE RG-7.

34. I say that the relevant records pertaining to the application for remission qua the prisoner, Rajubhai Babulal Soni, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 15.02.2021.	-
2.	Letter dated 11.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay.	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat.	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/suitable orders from the Govt. of India.

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Rajubhai Babulal Soni is annexed herewith as ANNEXURE RG-8.

35. I say that the relevant records pertaining to the application for remission qua the prisoner, Bakabhai Khimabhai Vahoniya, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 18.02.2021.	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay.	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat.	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat.	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022.	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India.

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Bakabhai Khimabhai Vahoniya is annexed herewith as ANNEXURE R- 9.

36. I say that the relevant records pertaining to the application for remission qua the prisoner, Govindbhai Akhambhai Nai (Raval), is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 15.02.2021	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India.	Approved the premature release of the prisoner.

37. Copy of the relevant records qua the prisoner, Govindbhai Akhambhai Nai (Raval) is annexed herewith as Annexure R-10.

38. I say that the relevant records pertaining to the application for remission qua the prisoner, Jashvantbhai Chaturbhai Nai (Raval), is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 15.02.2021	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India.	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Jashvantbhai Chturbhai Nai (Raval) is annexed herewith as Annexure R-11.

39. I say that the relevant records pertaining to the application for remission qua the prisoner, Rameshbhai Rupabhai Chandana, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 25.02.2021	-
2.	Letter dated 10.03.2021 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 22.03.2021 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Considering the Govt. Resolution dated 11.04.2008, issued by the State of Maharashtra, prisoner should not be released prematurely.
4.	Letter dated 07.03.2022 from the Superintendent of Police, Dahod, Gujarat.	No objection to the premature release of the prisoner.
5.	Letter dated 07.03.2022 from the Collector & DM, Dahod, Gujarat	No objection to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 26.05.2022	The committee has unanimously given the opinion in favour of the premature release of the prisoner.
8.	Letter dated 09.06.2022 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	No objection to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India.	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Rameshbhai Rupabhai Chandana is annexed herewith as Annexure R-12.

40. I say that the relevant records pertaining to the application for remission qua the prisoner, Radheshyam Bhagwandas Shah @ Lala Vakil, is as under:

Sl. No.	Document	Opinion of the concerned Authority
1.	Premature release application dated 01.08.2019	-
2.	Letter dated 14.08.2019 from the Superintendent of Police, CBI, SCB, Mumbai.	Prisoner should not be released prematurely.
3.	Letter dated 03.01.2020 from the Special Judge (CBI), City Civil & Sessions Court, Gr. Bombay	Objected to the premature release of the prisoner.
4.	Letter dated 13.02.2020 from the Superintendent of Police, Dahod, Gujarat.	Objected to the premature release of the prisoner.
5.	Letter dated 19.02.2020 from the Collector & DM, Dahod, Gujarat	Objected to the premature release of the prisoner.
6.	Opinion of the Jail Superintendent, Godhra Sub-Jail, Gujarat	No objection to the premature release of the prisoner.
7.	Opinion of the Jail Advisory Committee, dated 20.07.2021	9 out of 10 members of the Committee has recommended the premature release of the prisoner.
8.	Letter dated 18.08.2021 to the Home Department, Govt. of Gujarat, from the Addl. Director General of Police, Prisons & Correctional Administration, Ahmedabad.	Did not recommend to the premature release of the prisoner.
9.	Letter dated 28.06.2022 to the Ministry of Home Affairs, Govt. of India from Home Department, Govt. of Gujarat.	Recommended premature release of the prisoner. Sought approval/ suitable orders from the Govt. of India

10.	Letter dated 11.07.2022 to the Home Department, Govt. of Gujarat from the Ministry of Home Affairs, Govt. of India.	Approved the premature release of the prisoner.

Copy of the relevant records qua the prisoner, Radheshyam Bhgwandas Shah @ Lala Vakil is annexed herewith as Annexure R-13."

4.7 Therefore, it has been contended that PIL is not maintainable as it is misconceived and devoid of any merit and as such is liable to be dismissed.

5. Respondent No.2 has not filed any pleading in this matter. Even though respondent Nos.3 to 13 have filed their counter affidavits, we do not find it necessary to advert to the same as they would be replicating the stand of the State of Gujarat. Submissions:

6. We have heard learned counsel Ms. Shobha Gupta for the petitioner in Writ Petition (Crl.) No.491 of 2022; learned ASG, Sri S.V. Raju appearing on behalf of the State of Gujarat and Union of India; and learned senior counsel Mr. Sidharth Luthra and other counsel for respondent Nos.3 to 13 and perused the material on record.

6.1 We have also heard learned senior counsel and learned counsel Ms. Indira Jaising, Ms. Vrinda Grover and Ms. Aparna Bhat, for the petitioners in the public interest litigations.

6.2 We have perused the material on record as well as the judicial dicta cited at the Bar.

7. Learned counsel for the petitioner in Writ Petition (Crl.) No.491 of 2022, Ms. Shobha Gupta at the outset submitted that the en-masse remission granted to respondent Nos.3 to 13 by Orders dated 10.08.2022 has not only shattered the victim-petitioner and her family but has also shocked the collective conscience of the Indian society. That in the present case, the right of the victim and the cry of the society at large have been ignored by the State and Central Governments while recommending the grant of remission to all convicts in the case.

7.1. It was asserted that though the crime was committed in the State of Gujarat, the investigation and trial were carried out in the State of Maharashtra pursuant to the orders of this Court. Hence, in view of the unambiguous language of Section 432(7)(b), only the State of Maharashtra would be the appropriate government which could have considered the applications filed by respondent Nos.3 to 13 seeking remission of their sentences. Learned counsel has placed reliance on the following judgments to buttress her argument, namely, State of M.P. vs. Ratan Singh, (1976) 3 SCC 470 ("Ratan Singh"); Government of A.P.

vs. M.T. Khan, (2004) 1 SCC 616 ("M.T. Khan"); Hanumant Dass vs. Vinay Kumar, (1982) 2 SCC 177 ("Hanumant Dass") and V. Sriharan.

7.2. According to learned counsel, once a competent Court in the State of Maharashtra had tried and convicted the accused then that State is the 'appropriate Government'. Therefore, the Orders of remission passed by the State of Gujarat in respect of respondent Nos.3 to 13 is without jurisdiction and a nullity and thus, are liable to be quashed.

7.3. As regards the applicability of the relevant remission policy, learned counsel for the petitioner submitted that since the 'appropriate government' in the instant case is the State of Maharashtra, the remission policy of the State of Maharashtra would be applicable. Thus, the remission policy of the State of Gujarat dated 09.07.1992 would be wholly inapplicable.

It was contended that the remission policy dated 09.07.1992 of the State of Gujarat was not even in existence as on the date for consideration of the remission applications as it was scrapped by way of a Circular dated 08.05.2014 pursuant to the letter of the Central Government circulated to all the States/UTs requiring the implementation of the judgment of this Court in Sangeet vs. State of Haryana, (2013) 2 SCC 452 ("Sangeet"), wherein this Court held that before actually exercising the power of remission under Section 432 of the CrPC, the appropriate government must obtain the opinion of the Presiding Judge of the convicting or confirming court and that the remission shall not be granted in a wholesale manner, such as, on the occasion of Independence Day etc.

That pursuant to the cancellation of the policy dated 09.07.1992, the State of Gujarat came up with a new remission policy dated 23.01.2014, and even this policy would not entitle remission of the accused herein, for two reasons: firstly, because the remission policy of the State of Maharashtra would be applicable as it is the 'appropriate government', and secondly, the 2014 policy of the State of Gujarat bars the grant of remission to convicts of heinous crimes.

7.4. Relying on the opinion of the Special Judge, Sessions Court, Greater Mumbai, it was submitted that the Special Judge had rightly stated that the remission policy applicable in the present case would be the Policy dated 11.04.2008 of the State of Maharashtra in respect of which the Circular dated 13.06.2008 of the State of Maharashtra was issued, wherein a convict of communal crime, gang rape and murder would fall under the categories 2(c), 2(d) and 4 (e) of the Policy which prescribes that the minimum period of imprisonment to be undergone by the convict before remission can be considered would be twenty eight years. Thus, respondents-convicts were not

entitled to be granted remission as they had not completed the minimum period of imprisonment as per the applicable remission policy.

7.5. It was further contended that the remission orders under challenge failed to meet the criteria laid down by this Court in Sangeet; and Ram Chander vs. State of Chhattisgarh, (2022) 12 SCC 52 ("Ram Chander"), wherein it has been stated that the appropriate government must obtain the opinion of the Presiding Judge of the convicting court before deciding the remission application. That the State of Gujarat granted remission to all the convicts by completely ignoring the negative opinions expressed by two major stakeholders i.e., the Presiding Judge of the convicting Court in Mumbai and the prosecuting agency (CBI).

7.6. Reliance was placed on the decisions of this Court in State of Haryana vs. Mohinder Singh, (2000) 3 SCC 394 ("Mohinder Singh"); Sangeet; Ratan Singh, and Laxman Naskar vs. State of West Bengal, (2000) 2 SCC 595 ("Laxman Naskar") to emphasize that a convict cannot claim remission as a matter of right. The remission policies only give a right to the convict to be considered and do not provide an indefeasible right to remission.

7.7. Further, reference was made to the dicta of this Court in Mohinder Singh; Epuru Sudhakar vs. State of A.P., (2006) 8 SCC 161 ("Epuru Sudhakar"); Maru Ram; Sangeet; Ratan Singh and Laxman Naskar to contend that the decision to grant remission should be well informed, reasonable and fair and that the power cannot be exercised arbitrarily.

7.8. Emphasizing the gravity of the offences in this case and the grotesque nature of the crimes committed by the accused, learned counsel Ms. Shobha Gupta submitted that while considering the application for remission, the appropriate government was required to bear in mind the effect of its decision on the victim and the family of the victims, the society as a whole and the precedent it would set for the future. To buttress the said submission, she relied on Epuru Sudhakar, Swamy Shraddhananda (2) vs. State of Karnataka, (2008) 13 SCC 767, ("Shraddhananda"), and Jagdish. Reliance was also placed on the decision in Laxman Naskar wherein this Court had discussed the factors to be considered before granting remission.

7.9. It was urged that the prerogative power of remission is not immune from judicial review, vide Epuru Sudhakar wherein it was observed that judicial review of the order of remission is available on the following grounds: (i) non-application of mind; (ii) order is mala fide; (iii) order has been passed on extraneous or wholly irrelevant considerations; (iv) relevant materials kept out of consideration; (v) order suffers from arbitrariness.

7.10. It was contended that in the present case, remission was granted to all the convicts mechanically and without application of mind to each of the cases and that the relevant factors were not considered. That the State Government failed to consider the relevant material and make an objective assessment while considering the applications of the convicts for remission. The nature and gravity of the crime, the impact of the remission orders on the victim and her family, witnesses and society at large, were not considered. That mere good behaviour in jail and completion of fourteen years in jail are not the only pre-requisites while considering the application for premature release of the convicts.

7.11. Attention was drawn to the fact that respondent No.3 herein had approached the High Court of Gujarat by way of Crl. Application No.4573 of 2019 seeking a direction to the State Government to consider his application for remission. The High Court vide Order dated 17.07.2019 dismissed the same in view of Section 432 of the CrPC. Respondent No.3's second application was also dismissed vide Order dated 13.03.2020 passed by the Gujarat High Court.

That in fact, within fourteen days of the First Order dated 17.07.2019, respondent No.3 had approached the Government of Maharashtra by way of an application dated 01.08.2019. Upon his application, opinion was sought from the (i) Investigating Agency (CBI) and the (ii) Presiding Officer of the convicting court (Special Judge, Sessions Court, Greater Mumbai), both of whom opined in the negative and against remission being granted to the said respondent.

Further, the Superintendent of Police, Dahod, vide letter dated 03.02.2020 gave a negative opinion by noting that the victim and her relatives stated that respondent No.3 should not be released. The District Magistrate, Dahod, also gave a negative opinion vide letter dated 19.02.2020, so also the Jail Advisory Committee at its meeting held on 20.07.2021. That it was thereafter that respondent No.3 approached this Court by filing Writ Petition (Crl.) No.135 of 2022 and by Order dated 13.05.2022 this Court directed the State of Gujarat to consider respondent No.3's application within a period of two months from the date of the order.

7.12. Further adverting to the sequence of events, it was stated that in the meanwhile, the rest of the convicts had also applied separately for remission in February 2021. The Presiding Officer (Special Judge, Greater Mumbai) vide a common letter dated 22.03.2021 gave a negative opinion against the premature release of the remaining ten convicts, respondent Nos.4 to 13 herein. That thereafter, for one good year, their case was kept pending and only after 07.03.2022 the new Superintendent of Police, Dahod, gave a 'no objection' for the premature release of all the convicts by separate letters of the same date.

The District Magistrate, Dahod, also gave a positive opinion in favour of the premature release of all the convicts. On 26.05.2022, a meeting of the Jail Advisory Committee of Gujarat was held and this time, all the members of the Committee gave a positive opinion. The Additional Director General of Police, Prisons and Correctional Administration vide letter dated 09.06.2022 this time gave a positive opinion and did not raise any objection for the release of the ten convicts.

7.13. That although the reference by the Jail Advisory Committee to the State Government, was only qua respondent Nos.4 to 13, the State Government erroneously recommended the name of respondent No.3 also, to the Central Government for remission even in the absence of any application pending before the State Government.

7.14. Learned counsel for the petitioner next submitted that the Presiding Judge's reasoned negative opinion opposing the premature release was disregarded and this was contrary to the mandate of Section 432(2) of the CrPC. The remission Orders dated 10.08.2022 of respondent No.1 are in the teeth of the negative opinion of the Presiding Judge, Special Judge (CBI), Sessions Court, Greater Mumbai, dated 03.01.2020 and 22.03.2021, thereby, defeating the purpose of Section 432(2) of the CrPC.

Further, the remission Orders dated 10.08.2022 are conspicuously silent about the opinion of the Presiding Judge to be mandatorily obtained under Section 432(2) of the CrPC. Not even a reference is made to the said opinion. This amounts to an erasure of record by removing from consideration a document that is statutorily mandated to be considered and judicially held to be determinative.

Reliance was placed on Ram Chander to contend that the opinion of the Presiding Judge of the court that convicted the offender will 'have a determinative effect' on the exercise of executive discretion under Section 432 of the CrPC. Further, reference was made to the decision of this Court in V. Sriharan, wherein a Constitution Bench of this Court held that the procedure stipulated in Section 432(2) of the CrPC is mandatory and that the opinion of the Presiding Judge of the Court which had tried the convict is critical and an essential safeguard to check that the power of remission is not exercised arbitrarily.

7.15. It was next contended that the premature release was granted illegally as the imprisonment in default for the non-payment of fine was not served. The Trial Court while sentencing the respondents-convicts had also imposed a fine of Rs. 2,000/- on each of them, for each of the fourteen counts of murder and three counts of rape and in the event of default in payment of said fine, sentenced

them to suffer rigorous imprisonment for a further period of two years each for each count. The total fine payable by the respondents-convicts amounted to Rs.34,000/- each and, in default, they were liable to serve rigorous imprisonment for a period of thirty-four years (two years each for each count).

The Trial Court had further directed that the 'substantive sentences' shall run concurrently and that the period of detention, if any, undergone by the respondents-convicts during the investigation, enquiry, trial, shall be set off against the terms of imprisonment, not being imprisonment in default of payment of fine imposed on the accused. That as per the nominal roll of respondent Nos.3 to 13, none of them had paid the fine sentenced by the Trial Court, making them liable to serve the penalty of rigorous imprisonment for default in payment of fine. But the respondents have neither paid the fine of Rs. 34,000/- to which each of them was sentenced, nor have they served any sentence in default of the non-payment of fine.

It was submitted that the penalty of imprisonment ordered for default in payment of fine stands on a completely different footing from the substantive sentence of imprisonment to be undergone for an offence. While under Section 432 of the CrPC, the Government has the power to remit 'punishment for offence', the executive discretion does not extend to waiving off the penalty of imprisonment for default in payment of fine under Section 64 of the IPC. In this regard, reliance was placed on Sharad Hiru Kolambe vs. State of Maharashtra, (2018) 18 SCC 718 ("Sharad Kolambe") and Shantilal vs. State of M.P., (2007) 11 SCC 243 ("Shantilal").

7.16. It was asserted that respondent No.1 while granting premature release failed to apply its mind and address the determinative factors outlined by this Court in Laxman Naskar. Thus, the orders of remission are vitiated by the vice of arbitrariness for non-consideration of relevant facts and factors. According to learned counsel for the petitioners, a bare perusal of the Orders dated 10.08.2022 would make it clear that premature release was granted mechanically and arbitrarily, without giving due consideration to the factors enumerated in Laxman Naskar, qua each of the respondents-convicts.

That the Order(s) dated 10.08.2022 are conspicuous in their silence on the behavior and the following acts of misconduct of each of the respondents-convicts, including the offences committed while on parole/furlough, namely,: i. Case Crime No.1121001200158/2020 was registered against the respondent-convict, Mitesh Chimanlal Bhatt, under Sections 354, 304 and 306 of the IPC, committed on 19.06.2020 during parole/furlough; and ii. Case Crime No.02/2015 was registered against the respondent-convict, Rameshbhai Rupabhai Chadana under the Prisons Act.

7.17. It was further submitted that it is trite that in cases where a convict has been sentenced to more than one count of life imprisonment, he can only be released if remission is duly granted as per law for each count of life imprisonment. That it is a matter of record that the respondents-convicts were sentenced on fifteen counts of life imprisonment. However, the Orders dated 10.08.2022 have not granted remission for each of the fifteen counts and is only a generic and blanket order, making the release of the convicts illegal and arbitrary.

7.18. That respondent No.3 approached this Court in Writ Petition (Crl.) No.135 of 2022, without disclosing that he had already acted on the judgment of the Gujarat High Court dated 17.07.2019 and had submitted his application to the Home Department, State of Maharashtra, and that his application had already been considered by the authorities concerned, whereby, the major stakeholders had written against the grant of remission to him. Further, when the matter was listed before this Court, no notice was issued to the petitioner - victim and neither was she heard by this Court in the matter.

7.19. That the Orders dated 10.08.2022 have blatantly ignored the grave and real apprehension regarding the safety and security of the victims-survivors raised by public functionaries whose opinions are required to be taken into account by respondent No.1 State before granting premature release as per the 1992 policy.

That this Court in a catena of judgments, such as, Epuru Sudhakar and Rajan vs. Home Secretary, Home Department of Tamil Nadu (2019) 14 SCC 114 ("Rajan") has highlighted the importance of considering the impact of premature release on the victims in particular and the society in general. That even the Superintendent of Police, Dahod, on 03.02.2020 had recommended against the release of Radheyshyam Bhagwandas Shah as he had cited the possibility of peace being disturbed. The Sessions Judge, Panchmahal at Godhra also raised questions regarding the security of the victim - petitioner herein.

7.20. Learned counsel next asserted that the en-masse and nonspeaking "sanction" of the Central Government dated 11.07.2022 under Section 435(1)(a) of the CrPC does not meet the statutory requirement of "consultation". The said sanction conveys its approval for the premature release of eleven convicts sans any reason as to why the case of each respondent-convict is deemed fit for grant of remission. Thus, the approval was granted without considering the relevant factors outlined in Laxman Naskar.

7.21. That non-application of mind is evident in the non-speaking and stereotyped orders dated 10.08.2022 which are bereft of any reason. The Orders are devoid of reasons or grounds as to why the respondents-convicts were found

fit for the grant of remission. All of the eleven orders are a verbatim replication of each other, having only substituted the name and personal details of the respondents-convicts. Further, the recommendations of the Jail Advisory Committee dated 26.05.2022 as regards remission of respondent Nos.3 to 13 are untenable, being arbitrary and mechanical and vitiated by non-application of mind. The said opinions are verbatim and mechanical reproductions of each other that show no independent consideration of facts of each case of the convicts.

7.22 With the aforesaid submissions, it was prayed that Writ Petition (Crl.) No.491 of 2022 be allowed and a writ, order or direction be issued quashing the Orders dated 10.08.2022 passed by the State of Gujarat by which the convicts in Sessions Case No. 634 of 2004, Mumbai (respondent Nos.3 to 13 herein), were released prematurely.

8. Learned senior counsel Ms. Indira Jaising appearing for the petitioner in Writ Petition (Crl.) No.326 of 2022, at the outset submitted that the petitioner is a Member of Parliament and is a public personality and consequently possesses the locus to file this petition as a bona fide person and citizen of India. That the petitioner seeks to discharge her fundamental duty under Article 51A(e) of the Constitution of India, seeking to promote harmony and the spirit of brotherhood amongst the people of India, as well as to denounce the derogation of the dignity of women. That the petitioner seeks to uphold the rule of law and thus is not a mere busybody.

8.1. The following submissions were made to contest the orders of remission:

(i) that when the actions of the State cause some harm to the general public, an action by a concerned citizen would be maintainable and reliance was placed on B.P Singhal vs. Union of India, (2010) 6 SCC 331 ("B.P Singhal") in this regard.

(ii) that the impugned decisions of remission is characterized by arbitrariness and mala fides and bear no consideration of relevant factors That the power of the executive must be exercised in line with constitutional ideals and must be for the benefit of the public. In this regard, reliance is placed on Maru Ram and S.P. Gupta vs. Union of India, (1981) Supp SCC 87 ("S.P. Gupta").

(iii) that there exists no statutory right of appeal against an order of remission. The only avenue available to assail an order of remission is either under Article 32 or Article 226. Reliance was placed on Epuru Sudhakar and Ram Chander. Further, the jurisdiction of this Court is not ousted by the existence of alternative legal remedies. Reliance was placed on a Constitution Bench decision of this

Court in Kavalappara Kottarathil Kochuni vs. States of Madras and Kerala, (1960) 3 SCR 887 ("Kochuni").

(iv) that the present proceedings pertain to administrative law and not criminal law and as a result, the principle of being a stranger to the criminal proceeding does not apply to the case at hand. Nevertheless, this Court has entertained petitions filed by 'strangers' in criminal matters in the past, as in the case of K. Anbazhagan vs. Superintendent of Police, (2004) 3 SCC 767 ("K. Anbazhagan").

(v) that such exercises of executive power may be challenged on the basis of the grounds laid down in Epuru Sudhakar and Maru Ram.

(vi) that an important question of law arises in the present proceedings, namely, whether it is appropriate to grant remission after a period of fourteen years to convicts of heinous crimes. That a further question arises, as to whether, the victims of such crimes must be heard and due consideration given to their vulnerability prior to the grant of remission. That there needs to be a consideration of how compliant such executive actions and the associated policies are with constitutional morality. Therefore, this Court may quash the remission orders passed under Section 432 of the CrPC if they appear to be poorly reasoned.

(vii) that there is a need to situate the crimes committed in the larger context of sectarian and communal violence that was ensuing in the 2002 riots in Gujarat State. That the crimes were specifically targeted at the victim on the basis of her religion and gender. That these heinous crimes constitute crimes against humanity. It was submitted that the nature of the crime is important to consider while deciding whether to grant remission.

The heinousness of the crimes committed by respondent Nos.3 to 13, the communal motivation of the crimes and the context in which those took place are contended to have not been considered by the State while granting remission. Reliance was placed on Sanaboina Satyanarayana vs. Government of Andhra Pradesh, (2003) 10 SCC 78 ("Sanaboina Satyanarayana"), wherein a certain Government Order issued by the State of Andhra Pradesh that excluded from the scope of remission those prisoners who had committed crimes against women and were sentenced to life imprisonment was upheld by this Court considering the nature of the offences.

(viii) that the Executive is bound not merely by provisions of the CrPC but also by the overarching spirit of the Constitution that seeks to promote the upliftment of women, children, and minorities and to protect these groups from further

vulnerability and marginalization. That the policies and actions of the State must be guided by this vision.

(ix) that, in accordance with the aforementioned constitutional principles, grant of remission to those persons sentenced to life imprisonment and accused of crimes under the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, the Explosive Substances Act and the Indian Arms Act, as well as crimes against women under Sections 376 and 354 of the IPC must not be permissible.

Factors such as the opinion of the Presiding Judge, public interest, potential for recidivism, impact on the victims and on society and the nature of the offence must be borne in mind by the State, as held in Epuru Sudhakar, Sanaboina Satyanarayana and Zahid Hussain vs. State of West Bengal, 2001 (3) SCC 750 ("Zahid Hussain"). That the non-consideration of these factors proves the mala fide, arbitrary and unreasonable manner in which the impugned orders were passed.

(x) that the 1992 Policy of remission of the State of Gujarat does not contain any substantive guidelines pertaining to remission and merely deals with procedural formalities. That the 2014 Policy is thus the first instance at which categories of crimes for which remission may not be granted was outlined. As such, it is the 2014 Policy that would apply to the question of remission for respondent Nos.3 to 13.

(xi) that the grant of remission to the respondent Nos.3 to 13 is in violation of India's obligations under international law, specifically instruments such as the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. That rape was used as a tool of oppression by the perpetrators and the victim in the instant case experienced significant trauma as a consequence.

(xii) that the grant of remission in the instant case is in violation of the obligation to prevent crimes against humanity, which itself forms a part of the norm of jus cogens. That there is a link between the peremptory norm of jus cogens and fundamental values, making the former non-derogable and a part of domestic law even if not explicitly codified. Reliance was placed on State of Punjab vs. Dalbir Singh, (2012) 3 SCC 346 ("Dalbir Singh") on this aspect.

(xiii) that the acts of violence that were committed in Gujarat in 2002 are crimes against humanity, owing to their widespread nature and communal motivations. That remission must not be granted to perpetrators of crimes of such gravity. 8.2

With the above submissions learned senior counsel for the petitioners sought quashing of the impugned orders.

9. Learned counsel Ms. Vrinda Grover for the petitioner in Writ Petition (Crl.) No.352 of 2022, submitted that it was absolutely necessary to consider the opinion of the Presiding Judge. Reliance was placed on Ram Chander and V. Sriharan. Her further submissions are recorded as under:

(i) that the Presiding Judge, namely the Special Judge (CBI), Sessions Court, Mumbai gave negative opinions dated 03.01.2020 and 22.03.2021 as to grant of remission to respondent Nos.3 to 13. The said opinion was well-reasoned and took into account all of the relevant factors, but this was completely disregarded by the respondent -State.

(ii) that a fine was imposed on each of the respondentconvicts as a part of their sentence, amounting to Rs. 34,000/- per person. That they had defaulted in paying these fines and thus would be required to undergo rigorous imprisonment for a further period of 34 years. The Trial Court had clarified that these sentences were substantive in nature and would run concurrently. In this context, reliance was placed on Sharad Kolambe and Shantilal.

(iii) reiterating the submissions regarding the remission orders being arbitrary by virtue of nonconsideration of relevant factors, it was urged that the criteria outlined in the decision of this Court in Laxman Naskar were not considered at all. Reliance was further placed on the decision of this Court in Mohinder Singh, wherein it was held that the decision to grant remission must be reasonable, well-informed and fair. That non-application of mind and the mechanical nature of the remission orders utterly belie these principles.

(iv) that reference has only been made to four documents, namely (1) the order of this Court dated 13.05.2022, (2) the letter of the Additional Director General of Police and Inspector General of Prisons, State of Gujarat at Ahmedabad, (3) the Department Circular dated 09.07.1992 and (4) the letter of the Ministry of Home Affairs, Government of India in the impugned orders of remission. It was contended that the non-consideration of determinative factors has rendered the remission orders mechanical and arbitrary, with reliance placed on what is described as the untenable and unlawful en-masse approval of the Central Government.

(v) that one of the criteria that is required to be considered which was highlighted in Laxman Naskar is the possibility of reformation and recidivism. That these factors have been given no consideration as there is no mention of the respondent-convicts' behavior while in prison, as well as offences committed

while out on parole/furlough. That a case has been registered against one of the respondent-convicts under Sections 304, 306 and 354 IPC while on parole. That a range of punishments were imposed on the respondent-convicts in prison hence, the possibility of recidivism cannot be entirely ruled out.

(vi) that there is a real and grave apprehension of danger to the victim if the respondent-convicts are released into society. This has been reflected in the recommendation of Superintendent of Police, Dahod as well as the questions raised by the Principal and Sessions Judge, Panchmahal at Godhra in the Jail Advisory Committee meeting dated 26.05.2022.

(vii) that remission must be granted for each particular count of life imprisonment, as all of these are superimposed over each other. Remission granted qua one sentence does not automatically extend to the others as well. That a generic, mechanical and unreasoned blanket order of remission has been passed by the respondent-State, as remission is not stated to have been granted for all of the life sentences of each respondent-convict.

(viii) that Section 435(1)(a) of the CrPC makes it mandatory for the State Government to consult the Central Government regarding the exercise of power to grant remission. But the en-masse and nonspeaking nature of the sanction granted by the Central Government, merely conveys approval of the premature release of the respondent-convicts, which do not meet the requirement of 'consultation'. Reliance was again placed on Laxman Naskar.

(ix) further, the opinion of the Sessions Judge, Panchmahal, Godhra is of a casual and perfunctory character, that doesn't pay heed to the heinous nature of the crimes committed.

(x) it was further submitted that the remission orders having thus been established as unreasoned, untenable and vitiated by arbitrariness and mala fides, there is a need for judicial intervention in the same.

10. Learned counsel for the petitioner in Writ Petition (Crl.) No.319 of 2022, Ms. Aparna Bhat submitted that the aforesaid writ petition has been filed purely in the interest of the general public and out of concern for the impact on society if the respondentsconvicts were released. That there is no political agenda behind the filing of this writ petition by the petitioner, who is a member of a national political party and an advocate for women's rights.

11. Sri Mohammad Nizamuddin Pasha, learned counsel appearing on behalf of the petitioner in Writ Petition (Crl.) No.403 of 2022 submitted that the cases which are at stages prior to conviction. i.e., investigation and trial must be treated as being on a different footing as guilt would not have been established

and the fair trial rights of the accused still subsisted. However, there is no right to remission post-conviction as held in V. Sriharan.

That it is only upon conviction that the need for the accused to remain in prison becomes a concern of the society. That all theories of punishment, including those of retributivism and utilitarianism, emphasize the impact on society as being of primary importance. Reliance was placed on T.K. Gopal vs. State of Karnataka, (2000) 6 SCC 168 ("T.K. Gopal"), Narinder Singh vs. State of Punjab, (2014) 6 SCC 466 ("Narinder Singh"), Shailesh Jasvantbhai vs. State of Gujarat, (2006) 2 SCC 359 ("Shailesh Jasvantbhai") and Ahmed Hussain Vali Mohammed Saiyed vs. State of Gujarat, (2009) 7 SCC 254 ("Mohammed Saiyed").

12. Sri. S.V. Raju, learned Additional Solicitor General of India, appearing on behalf of the State of Gujarat and Union of India, at the outset submitted that the writ petitions filed by persons other than the victim are not maintainable. That the said persons are strangers and have no locus-standi to challenge the remission orders passed by the State of Gujarat.

The said petitioners are in no way connected with the proceedings which convicted the respondents herein nor the proceedings which culminated in the grant of remission to the convicts. Reliance was placed on the decisions of this Court in Rajiv Ranjan; Gulzar Ahmed Azmi; Simranjit Singh and Ashok Kumar to contend that no third party/stranger's interference in criminal matters is permissible in law in the garb of filing a PIL.

12.1. Referring to Writ Petition (Crl.) No.319 of 2022, it was contended that nowhere has the petitioner therein, namely, Subhasini Ali pleaded as to how her fundamental rights had been abridged and as to how she was aggrieved by the action of the State Government. That the petitioner therein was nothing but an interloper and a busybody and not a 'person aggrieved' as per the dicta of this Court in M. V. Dabholkar and Jasbhai Motibhai. Thus, the PIL filed by such a person is nothing but an abuse of the PIL jurisdiction of this Court and against the principles laid down in Tehseen and Ashok Kumar. Therefore, learned ASG sought for dismissal of all the PILs challenging the impugned orders of remission on the ground of maintainability.

12.2. It was next contended that there was no illegality in the Orders granting remission to respondent Nos.3 to 13, dated 10.08.2022. That this Court in Writ Petition (Crl.) No.135 of 2022 vide judgment dated 13.05.2022 had held that the policy which would be applicable for deciding the remission application was the one which was in vogue at the time of conviction i.e., the premature release policy of 1992 and that for the purposes of Section 432 of the CrPC, the

'appropriate government' for considering the remission application is that State in which the offence was committed and not the State in which the trial was conducted and therefore, had directed the State of Gujarat to consider the application of respondent No.3, Radheshyam Bhagwandas Shah.

Accordingly, the respondent-State of Gujarat had considered the application of the convict as per the procedure prescribed under Section 432 of the CrPC read with Section 435 of the CrPC, along with the Premature Release of Convicts Policy of 1992. The State Government considered the cases of all eleven prisoners as per the policy of 1992 and remission was granted on 10.08.2022.

12.3. That further, the Order(s) dated 10.08.2022 were passed after duly considering the opinions expressed by Inspector General of Prisons, Gujarat State; Jail Superintendent; Jail Advisory Committee, District Magistrate; Superintendent of Police, CBI, Special Crime Branch, Mumbai; and the Special Court, Mumbai (CBI). That as per Section 435 of the CrPC, it is indispensable to obtain the sanction of the Government of India in cases in which the investigation of the offence was carried out by a central investigation agency. In the present case, the investigation was carried out by CBI, hence, the State Government obtained the approval of Government of India.

12.4. It was next submitted that respondent Nos.3 to 13 had completed more than fourteen years in custody, that their behaviour had been good and the opinions of the concerned authorities had been obtained as per the policy of 09.07.1992. The State Government submitted the opinions of the concerned authorities to the Ministry of Home Affairs, Government of India vide letter dated 28.06.2022 and sought the approval of the Government of India which conveyed its concurrence/approval under Section 435 of the CrPC for the premature release of eleven convicts vide letter dated 11.07.2022. Hence, after following the due procedure, Orders were issued on 10.08.2022 to release the convicts which would not call for any interference by this Court.

12.5. Reliance was placed on the judgment of this Court in Jagdish wherein it was held that if a policy which is beneficial to the convict exists at the time of consideration of his application for premature release, then the convict cannot be deprived of such a beneficial policy. It was held in the said case that, "In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given the benefit thereof." That bearing in mind such considerations, the applications of respondent Nos.3 to 13 for remission were considered and decided.

12.6. That the crime in the instant case was admittedly committed in the State of Gujarat and ordinarily, the trial was to be concluded in the same State and in

terms of Section 432 (7) of the CrPC, the appropriate government in the ordinary course would be the State of Gujarat. However, the trial in the instant case was transferred under exceptional circumstances by this Court to the neighboring State of Maharashtra for the limited purpose of trial and disposal by an order dated 06.08.2004 but after the conclusion of trial and the prisoners being convicted, the matter stood transferred to the State where the crime was committed and thus, the State of Gujarat was the appropriate government for the purpose of Section 432(7) of the CrPC.

12.7 It was submitted that the Orders dated 10.08.2022 were passed by the Government of Gujarat after following the due procedure laid down in this regard and on an application of mind. Therefore, the same do not call for any interference by this Court in these petitions.

13. Learned Counsel for respondent No.3, Sri Rishi Malhotra at the outset attacked the maintainability of the writ petitions on the ground that in substance, the petitions seek to challenge the judgment of this Court dated 13.05.2022 in Writ Petition (Crl.) No.135 of 2022; that the same is impermissible and is in the teeth of the judgment of a Constitution Bench of this Court in Rupa Ashok Hurra vs. Ashok Hurra, (2002) 4 SCC 388, ("Rupa Ashok Hurra") wherein it has been held that a writ petition assailing the judgment or order of this Court after the dismissal of the Review Petition is not maintainable. Thus, the only remedy, if any, available to the petitioner-victim herein against the dismissal of the Review Petition, is to file a Curative Petition as propounded by this Court in the case of Rupa Ashok Hurra.

13.1. Sri Rishi Malhotra further submitted that in this proceeding this Court cannot sit over the judgment passed by another coordinate bench. It was further submitted that this Court by its judgment dated 13.05.2022 was right in categorically directing the State of Gujarat to consider the application for premature release of respondent No.3 in terms of the policy dated 09.07.1992 which was applicable on the date of conviction. That after duly taking into account the fact that respondent No.3 had undergone over fifteen years of imprisonment and that no objections were received from the Jail Superintendent, Godhra and that nine out of ten members of the Jail Advisory Committee had recommended his premature release.

That coupled with the aforesaid facts the Home Department of the State of Gujarat as well as the Union Government had recommended and approved the premature release of respondent No.3. This clearly demonstrates that the remission order was correct. Further, it is nowhere mentioned in the 1992 policy that all stakeholders must give a unanimous opinion for the release of the

convict. All it says is that the State Government should collate various opinions from different quarters in order to arrive at a decision.

13.2. As regards the contention of learned counsel for the petitioner-victim to the effect that the Orders are illegal inasmuch as those were passed without consulting the Presiding Judge of the convicting court as required under Section 432(2) of the CrPC, it was submitted that the said provision categorically stipulates that the appropriate government 'may require' the Presiding Judge of the Trial Court to give his opinion, hence obtaining such an opinion is not mandatory; whereas, Section 435 of the CrPC uses the word 'shall' in respect to the State Government to act only after consultation with the Central Government. The legislature is conscious to use the words 'may' and 'shall' whenever it deems appropriate and necessary and that the said procedure has been followed in the instant case.

14. At the outset, learned senior counsel appearing for respondent No.13, Sri Sidharth Luthra contended that a writ petition does not lie against the final order of this Court, thus the petitioners could have only filed a Curative Petition. He further submitted as follow:

i) In this regard reliance was placed on the decision of this Court in Rupa Ashok Hurra, wherein it was held that a writ petition under Article 32 assailing a final judgment of this Court is not maintainable. That since the Review Petition against the Order dated 13.05.2022 has been dismissed by this Court, similar contentions cannot be re-agitated in the guise of the present writ petition.

Reliance was also placed on the decision of this Court in Naresh Shridhar Mirajkar vs. State of Maharashtra, AIR 1967 SC 1 ("Naresh Shridhar Mirajkar"), wherein it has been held that a writ shall not lie against an order of a Constitutional Court. It was thus submitted that the order dated 13.05.2022 has attained finality and cannot be questioned by way of a writ petition under Article 32. Furthermore, in view of the Rules framed by this Court, Order XLVIII thereof lays down how an order of this Court can be questioned by means of a Curative Petition and thus, a natural corollary is that the same cannot be done through a writ petition.

ii) As regards the issue of appropriate government and appropriate policy, learned senior counsel Sri Luthra submitted that the said issues stood settled in view of this Court's Order dated 13.05.2022. The judgments of this Court in Rashidul Jafar vs. State of U.P., 2022 SCC OnLine SC 1201 ("Rashidul Jafar"); State of Haryana vs. Raj Kumar, (2021) 9 SCC 292 ("Raj Kumar") and Hitesh vs. State of Gujarat (Writ Petition (Crl.) No.467/2022) ("Hitesh") were pressed into service wherein it had been held that the policy as on the date of conviction

would apply, and therefore, the 1992 Policy of the State of Gujarat will apply for the grant of remission in the present case.

iii) Learned senior counsel thereafter raised the plea that in India, a reformative/rehabilitative and penal sentencing policy is followed and not one which is punitive in nature. The same was reiterated when the Model Prison Act, 2023 was finalized which aims at "reforming prison management and ensuring the transformation of inmates into law-abiding citizens and their rehabilitation in society."

Furthermore, in the case of Vinter vs. The United Kingdom (Applications Nos.66069/09, 130/10 and 3896/10), (2016) III ECHR 317 ("Vinter ") in the context of rehabilitation and reformation it was held by the European Court of Human Rights that, "Moreover, if such a person is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable." Learned senior counsel submitted that respondent No.13 had exhibited unblemished behaviour in prison and there was no criminality attached to his conduct in prison.

iv) Sri Luthra refuted the argument of the petitioners that in the light of the grievous nature of the offence, the convicts herein do not deserve remission. At the stage of remission, the length of sentence or the gravity of the original crime cannot be the sole basis for refusing premature release as held in Satish vs. State of UP, (2021) 14 SCC 580 ("Satish"). Therefore, any argument regarding the factual nature of the crime or the impact it had on society are not relevant for consideration of remission was the submission of Sri Luthra.

v) That it is open for the High Court as well as this Court to modify the punishment by providing for a specific period of incarceration without remission, considering the purported heinous nature of the offence but neither the High Court nor this Court chose to exercise the said power to incarcerate the private respondents herein for a duration which was nonremittable. This shows that the aforesaid argument advanced by the petitioner is only a red herring.

vi) It was emphasized that an order of remission passed by an authority merely affects the execution of the sentence, without interfering with the sentence passed by the Court. Therefore, since the matter has already attained finality, it is not possible to question the validity of such an order on factual grounds alone, such as, the nature of crime, impact on society and society's cry for justice.

vii) Learned senior counsel submitted that the mere fact that fine had not been paid or that there was a default in payment of the fine imposed does not impact the exercise of the power of remission. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal, or in revision, or in other appropriate judicial proceedings or 'otherwise', whereas, a term of imprisonment ordered in default of payment of fine stands on a different footing vide Shantilal; Abdul Gani vs. State of Madhya Pradesh, (1950) SCC OnLine MP 119 ("Abdul Gani") and Shahejadkham Mahebubkham Pathan vs. State of Gujarat, (2013) 1 SCC 570 ("Shahejadkham Mahebubkham Pathan").

Further, reliance was placed on Sharad Kolambe, wherein it was observed by this Court that, "If the term of imprisonment in default of payment of fine is a penalty which a person incurs on account of non-payment of fine and is not a sentence in strict sense, imposition of such default sentence is completely different and qualitatively distinct from a substantive sentence."

15. Learned senior counsel appearing for respondent No.7 Mrs. Sonia Mathur, while adopting the submissions of other senior counsel further contended as under:

15.1. That as per Section 432 (7)(b) of the CrPC and the judicial precedent set in Radheshyam Bhagwandas Shah, the appropriate government would be the State of Gujarat. The said judgment has attained finality as the Review Petition filed against the said judgment was dismissed by this Court on 13.12.2022. Thus, the said judgment must be followed for the sake of judicial propriety.

15.2. As to the nature of the requirement under Section 432 (2) of the CrPC, i.e., whether mandatory or directory, it was submitted that as observed by this Court in Ram Chander the opinion so obtained is not to be mechanically followed and the government has the discretion to seek an opinion afresh. That the said view would demonstrate that the discretion vests with the concerned government as to whether or not to seek and rely upon the opinion of the Presiding Judge of the Trial Court.

15.3. As regards the contentions of the learned counsel for the petitioner-victim as to non-payment of fine, it was submitted that a fine of Rs.6,000/- was paid by respondent No.7 without any objection on 27.09.2019 before the Sessions Court, Greater Mumbai. However, without prejudice to the said payment, there is no provision in the Prison Manual of Gujarat, which bars remission from being granted if the fine is not paid. The grant of remission cannot be restricted just because a convict is not financially capable to bear the fine. The same would

cause discrimination based on the economic and financial capacity of a convict to pay fine, resulting in the violation of Articles 14 and 21 of the Constitution.

15.4. We have heard learned counsel for the other respondents. With the aforesaid submissions, it was prayed that these writ petitions be dismissed.

Reply Arguments:

16. Ms. Shobha Gupta, learned counsel for the petitioner-victim submitted in her rejoinder on the point that the writ petition was maintainable under Article 32 of the Constitution as follows:

(i) that the order of grant of remission being an administrative order, there was neither a statutory nor substantive right of appeal available to the aggrieved parties. The only remedy available was to file a writ petition under Article 226 of the Constitution before the High Court of Gujarat, or to file a writ petition before this Court under Article 32 of the Constitution.

(ii) that this Court has on multiple occasions entertained writ petitions under Article 32 of the Constitution in those cases where there existed a "gross violation of fundamental rights", or when an executive or administrative decision "shocked the conscience of the public, the nation or of this Court". In this context, reliance was placed on the judgments of this Court in Epuru Sudhakar; Satpal vs. State of Haryana, (2000) 5 SCC 170 ("Satpal") and Mohammed Ishaq vs. S. Kazam Pasha, (2009) 12 SCC 748 ("Mohammed Ishaq").

It was submitted that a similar issue of maintainability arose in Mohammed Ishaq, wherein this Court observed that the mere existence of an alternative remedy in the form of Article 226 does not preclude an aggrieved person from approaching this Court directly under Article 32. The rule requiring the exhaustion of alternative remedies was described as being one of "convenience and discretion" as opposed to being absolute or inflexible in nature.

(iii) that this Court had in the past entertained writ petitions under Article 32 filed by convicts seeking intervention in matters of premature release or the issuance of appropriate directions. Reliance was placed on the judgments in Ram Chander, Laxman Naskar and Rajan.

(iv) that this Court had earlier entertained a writ petition filed by none other than respondent No.3 himself and no question was raised as to the maintainability of that writ petition. All of the other private respondents are beneficiaries of the order dated 13.05.2022 passed by this Court in the aforesaid writ petition. It is

thus incongruous to raise the objection of maintainability only against the writ petition filed by the petitionervictim.

That the petitioner-victim was totally unaware of Writ Petition (Crl.) No.135 of 2022 filed by respondent No.3 seeking premature release before this Court. The petitioner learnt about the release, like the general public did, from the news and social media. That the petitioner had barely begun to recover from the shock of respondent Nos.3 to 13 being released when several PILs were filed, and this Court was already seized of the matter. This left the petitioner with no choice but to approach this Court.

(v) that the petitioner had also filed a Review Petition seeking review of the order dated 13.05.2022, wherein this Court held the State of Gujarat to be the appropriate government to consider the grant of remission, being the State in which the crime took place. The said order was per incuriam and contrary to the judgements of this Court. On this aspect, reliance was again placed on V. Sriharan, Rattan Singh, M. T. Khan and Hanumant Dass. Hence, the petitioner was under the impression that the said Review Petition and this writ petition would be considered together by this Court. But the Review Petition has been dismissed. Hence, this writ petition has to be considered on its own merits.

(vi) that the challenge to the maintainability of this writ petition is fallacious in the context of the specific argument raised by respondent Nos.1 and 2, namely, that the direction given by this Court as on 13.05.2022 was a mandate that was merely being adhered to in the remission order and therefore the same would not be open to challenge. That this further exemplifies non-application of mind and a hasty and mechanical manner of granting remission by misrepresenting about the order dated 13.05.2022.

(vii) It was submitted that the 'right to justice' was recognized as an indispensable human and fundamental right in Anita Kushwaha vs. Pushap Sudan, (2016) 8 SCC 509 ("Anita Kushwaha"), and that this writ petition was maintainable on that basis also. In light of the aforementioned submissions, learned counsel contended that the filing of a writ petition under Article 32 before this Court is the most efficacious remedy available to the petitioner.

16.1. Reiterating her submissions regarding the non-consideration of the negative opinions of the investigating agency, namely the CBI as well as the Judge of the Special CBI Court, Mumbai, learned counsel went on to refute the claim of the learned Additional Solicitor-General that the relevant opinion would be that of the Presiding Judge of the Godhra Court who was convinced of the merits of grant of remission.

That this contention of learned ASG would contradict the plain language of Section 432(2) which specifies that the Presiding Judge should have been the one who awarded or confirmed the sentence. Reliance was again placed on the judgments of this Court in Sangeet, Ram Chander and V. Sriharan. Learned counsel further contended that the submission of the learned ASG that the use of the word 'may' in Section 432(2) would imply that there is no necessary requirement to seek the opinion of the Presiding Judge is erroneous in light of the dictum of this Court in V. Sriharan.

16.2. It was next contended that a letter dated 17.11.2021 was filed along with the application dated 10.08.2022. The said letter by the State of Gujarat addressed to the State of Maharashtra detailed that the State of Gujarat possessed no powers of remission with respect to respondent No.3 and that the appropriate government in this respect would be the State of Maharashtra. Despite taking this view, which is in accordance with the position of law laid down by this Court in various cases, including V. Sriharan, no review petition was filed by the State challenging the 13.05.2022 order.

16.3. It was next submitted that the learned Additional Solicitor- General had placed on record the opinion of the CBI dated 09.07.2022 wherein, after an apparent change of mind, grant of remission to respondent Nos.3 to 13 was recommended. That neither of the documents, namely, the letter of the State of Gujarat and the changed opinion of the CBI find any mention in the counterWrit affidavit filed by the State on 17.10.2022. It was further submitted that these additional documents establish the rapid timeline of the process adopted by the Central Government in affirming the orders of remission, as the State Government's communication was received on 06.07.2022, the opinion of the CBI was sought and received on 09.07.2022 and the Central Government expressed its concurrence on 11.07.2022.

16.4. It was further contended that respondent No.3 produced a document dated 18.06.2022 during the course of his arguments, stating that the same was the opinion of the Presiding Judge of the Mumbai Special Court (CBI). However, the veracity of the said document cannot be established as the State claimed to be not in possession of and is entirely unaware of the same.

16.5. Learned counsel reiterated that the above facts reveal nonapplication of mind and the mechanical manner in which the orders of remission were passed in the instant case.

16.6. Learned counsel for the petitioners next submitted that on 30.08.2023, the fine amounts owed were deposited by respondent Nos.3 to 13. That this is as an admission on their part of the nonpayment of fine. It was contended that they

would ordinarily have had to undergo a further period of six years of imprisonment. That non-consideration of this fact further proves the non-application of mind and a mechanical exercise of power by the State of Gujarat and Union of India in granting remission.

16.7. Learned counsel went on to submit that in Writ Petition (Crl.) No.135 of 2022 filed by respondent No.3, there was no mention of material particulars, such as, the name of the petitioner-victim and the nature of the crimes in question, i.e., gang rape and mass murder in the petition. Also the fact that his application for grant of remission before the State of Maharashtra had been negatively opined by all the concerned authorities. That respondent No.3 did not place on record the judgements and orders of the Trial Court, High Court, and this Court that had upheld his conviction.

That he made "incorrect and misleading" statements with reference to the orders of the Bombay High Court dated 05.08.2013 and Gujarat High Court dated 17.07.2019, namely, that the two courts had given differing opinions, and this fact played a role in this Court's decision-making while passing the order dated 13.05.2022. Respondent No.3 made it seem like both High Courts were sending him to the other State and that there was a contradiction. However, the aforesaid order of the Bombay High Court was dealing with the transfer of convicts to another jail in their parent State and did not discuss the issue of remission, which could not have arisen in the year 2013.

16.8. It was reiterated that the investigating agency of the State of Gujarat had filed a closure report stating that the accused persons were not traceable. That the FIR contained erroneous recording of facts merely to hinder the investigative process. That the case was transferred by this Court to the State of Maharashtra as a consequence of the tainted nature of investigation.

That the only reason the petitioner could get justice was because the investigation was conducted by the CBI. That this demonstrates the highly biased and partisan treatment of the petitioner by the State of Gujarat. That the State has been granting parole and furlough to the respondents in a liberal manner once they were transferred to the Godhra Jail. That in light of the highly diabolical and gruesome nature of the crimes, the treatment awarded to the respondents by the State indicates favouritism and leniency.

16.9. Learned counsel reiterated that the nature of the crimes committed by the respondent Nos.3 to 13 were unusual and egregious. That these crimes were very shocking to the society as a whole and the treatment of the respondents upon being granted remission invoked a common sense of pain in the nation. That in fact the Bombay High Court had described the brutal treatment of the victims by

the respondent Nos.3 to 13, which was reflected in the condition of the dead bodies. These factors require that respondents Nos.3 to 13 be treated differently from other ordinary criminals.

17. Learned senior counsel, Ms. Indira Jaising, appearing for the petitioner in Writ Petition (Crl.) No.326 of 2022 in her rejoinder at the outset submitted that the State of Gujarat does not have a policy of any kind for the release of prisoners under Section 432 of the CrPC. That the 1992 Policy merely outlines the procedure to be followed when releasing convicts on remission. That the State must abide by the law laid down by this Court as well as the constitutional mandate to protect the fundamental rights of women, particularly when they are victims of sexual violence in relation to ethnic conflict.

17.1 Further, it was contended that the State of Gujarat is not the appropriate government and therefore the order of this Court dated 13.05.2022 is per incuriam by virtue of failing to follow the binding precedent in V. Sriharan. That the impugning of the order of the Gujarat High Court that held the State of Maharashtra to be the appropriate Government in Writ Petition (Crl.) No.135 of 2022, filed by respondent No.3, is completely contrary to the position of law laid down in Naresh Shridhar Mirajkar, wherein it was held that no writ petition alleging the violation of fundamental rights would lie against the judgement or order of a court.

That the respondent No.3 committed fraud on this Court by misrepresenting the order of the Bombay High Court dated 05.08.2013 in Writ Petition (Crl.) No.135 of 2022. That the question of two High Courts taking "dramatically different views" did not arise as the issue of appropriate Government was not in question before the Bombay High Court at all. That this amounts to suppressio veri, expression falsi. That this Court in Union of India vs. Ramesh Gandhi, (2012) 1 SCC 476 ("Ramesh Gandhi"), has held that any judgement that is a consequence of misrepresentation of necessary facts would constitute fraud and would be treated as a nullity.

That this error of the Court cannot lead to the deprivation of justice to the victims. While the criminal justice system must strive to adopt a reformative approach, proportionality of sentence must be treated as an equally important ideal. Reliance was placed on the judgements of this Court in Alister Anthony Pareira vs. State of Maharashtra, (2012) 2 SCC 648 ("Alister Anthony Pareira"), Ravji vs. State of Rajasthan, (1996) 2 SCC 175 ("Ravji") and Soman vs. State of Kerala, (2013) 11 SCC 382 ("Soman").

18. Ms. Vrinda Grover, learned counsel for the petitioner in Writ Petition (Crl.) No.352 of 2022 reiterated the contentions as to the centrality and non-optional

nature of seeking the opinion of the Presiding Judge under Section 432(2) of the CrPC, the non-serving of the concurrent sentences for the non-payment of fine by the respondent Nos.3 to 13 as well as the need to consider the nature of the crimes and the impact on public welfare while considering the grant of remission. Reliance was placed on the judgment of this Court in Ram Chander, Sharad Kolambe, Devendra Kumar vs. State of Uttaranchal, (2013) 9 SCC 363 ("Devendra Kumar") and Abdul Gani.

18.1. It was further submitted that the State of Gujarat has not considered the possibility of recidivism and whether there was any evidence of reformation of respondent Nos.3 to 13. That as per the record, respondent Nos.3 to 13 have not demonstrated any sign of reform and have not expressed any remorse for the crimes they have committed. That their applications for remission do not contain reference to feelings of remorse felt by them for their actions. The non-payment of fine is further indication of the absence of remorse. Also fresh cases have been registered against two of the respondents, and this serves as proof of their non-reformation.

18.2. It was also contended that reliance cannot be placed on documents, such as, letter dated 09.07.2022 of the C.B.I, wherein an affirmative opinion on remission was expressed as well as a letter produced by respondent No.3 containing the affirmative opinion of the Special Judge (C.B.I), Civil and Sessions Court, Mumbai as these documents have not been listed among the documents relied upon by the State of Gujarat while granting remission to the respondent Nos.3 to 13.

19. Ms. Aparna Bhat, learned counsel for the petitioner in Writ Petition (Crl.) No.319 of 2022 in her rejoinder submitted that the remission granted by the State of Gujarat to respondent Nos.3 to 13 was violative of Article 14 of the Constitution of India. That prison statistics from the year 2021 reveal that 66.7% of the convicts in Gujarat are undergoing life imprisonment, at least a fraction of whom have completed fourteen years of incarceration.

That no special case has been made out either by the State of Gujarat or the Union of India as to why respondent Nos.3 to 13 are singularly entitled to remission over all of the other convicts. Reliance was placed on judgements in S. G. Jaisinghani vs. Union of India, AIR 1967 SC 1427 ("S. G. Jaisinghani") and E.P. Royappa vs. State of T.N., (1974) 4 SCC 3 ("E.P. Royappa"), wherein this Court held that arbitrary and mala fide exercise of power by the State would constitute a violation of Article 14 of the Constitution. That discretionary and en-masse remission on festive occasions was held to be impermissible in the case of Sangeet.

19.1. It was further submitted that there is no right to remission that a convict can necessarily avail. That remission must be an exercise of discretion judiciously by the concerned authorities. Reliance was placed on the judgments of this Court in Sangeet, V. Sriharan, State of Haryana vs. Mahender Singh, (2007) 13 SCC 606 ("Mahender Singh"); Mohinder Singh, Maru Ram and Shri Bhagwan vs. State of Rajasthan, (2001) 6 SCC 296 ("Shri Bhagwan").

20. Mr. Mohammad Nizamuddin Pasha, learned counsel for the petitioner in Writ Petition (Crl.) No.403 of 2022 reiterated the contention that materials not relied upon by the State of Gujarat while deciding on the question of remission for respondent Nos.3 to 13 cannot be used to justify the decision retrospectively. Reliance was placed on the decision of this Court in OPTO Circuit India Ltd. vs. Axis Bank, (2021) 6 SCC 707 ("OPTO Circuit"). That contrary to the submission of the learned ASG, the State has to consider the gravity of the offence while deciding whether to grant remission or not.

That in cases, where the crimes are of a much less serious nature, remission has not been granted owing to the perceived seriousness of the offences by the State but in these cases of gruesome crime, remission has been simply granted. Further, there is a need to consider the fact that the victim and the convicts live in close proximity while granting remission, which fact has been considered in other cases but not in the impugned remission orders.

Points for consideration:

21. Having heard learned senior counsel and learned counsel for the respective petitioners as well as learned ASG, learned senior counsel and learned counsel for the respondents, the following points would arise for our consideration:-

1) Whether the petition filed by one of the victims in Writ Petition (Crl.) No.491 of 2022 under Article 32 of the Constitution is maintainable?

2) Whether the writ petitions filed as Public Interest Litigation (PIL) assailing the impugned orders of remission dated 10.08.2022 are maintainable?

3) Whether the Government of the State of Gujarat was competent to pass the impugned orders of remission?

4) Whether the impugned orders of remission passed by the respondent-State of Gujarat in favour of respondent Nos.3 to 13 are in accordance with law?

5) What Order?

The aforesaid points shall be considered in seriatim. A detailed narration of facts and contentions would not call for reiteration at this stage.

Re: Point No.1: "Whether the petition filed by one of the victims in Writ Petition (Crl.) No.491 of 2022 under Article 32 of the Constitution is maintainable?"

22. Sri Rishi Malhotra, learned counsel for respondent No.3, while placing reliance on the decisions of this Court, made a specific plea regarding maintainability of Writ Petition (Crl.) No.491 of 2022 filed by the victim by contending that the said petitioner had filed a review petition challenging the order dated 13.05.2022 passed in Writ Petition (Crl.) No.135 of 2022 and the same was dismissed. Therefore, the only remedy open to the petitioner was to file a curative petition in terms of the judgment of this Court in Rupa Ashok Hurrah and not challenging the remission orders by filing a fresh writ petition. We shall answer this contention in detail while considering point No.3.

22.1. One of the contentions raised by learned Senior Counsel, Sri S. Guru Krishna Kumar appearing for one of the private respondents was that the petitioner in Writ Petition (Crl.) No.491 of 2022, Bilkis Bano, ought to have challenged the orders of remission before the Gujarat High Court by filing a petition under Article 226 of the Constitution rather than invoking Article 32 of the Constitution before this Court. In this regard, it was submitted that by straightaway filing a petition under Article 32 of the Constitution a right of approaching this Court by way of an appeal by an aggrieved party has been lost.

It was submitted that if victims file petitions under Article 32 of the Constitution before this Court challenging orders of remission, floodgates would be opened and persons such as the petitioner would straightaway file writ petitions before this Court. That when an alternative remedy of filing a writ petition under Article 226 of the Constitution is available which is also a wider remedy than Article 32 of the Constitution, the petition filed by the writ petitioner in Writ Petition (Crl.) No.491 of 2022 must be dismissed reserving liberty to her to approach the High Court, if so advised. Similar arguments were made by learned senior counsel Sri Chidambaresh.

22.2. At the outset, we state that Article 32 of the Constitution is a part of Part-III of the Constitution of India which deals with Fundamental Rights. The right to file a petition under Article 32 of the Constitution is also a Fundamental Right. In the instant case, the petitioner - Bilkis Bano has filed her writ petition under Article 32 of the Constitution in order to enforce her Fundamental Rights under Article 21 of the Constitution which speaks of right to life and liberty and Article 14 which deals with right to equality and equal protection of the laws.

The object and purpose of Article 32 of the Constitution which is also recognised to be the "soul of the Constitution" and which is a Fundamental Right in itself is for the enforcement of other Fundamental Rights in Part-III of the Constitution.

We think that the aforesaid constitutional remedy is also to enforce the goals enshrined in the Preamble of the Constitution, which speak of justice, liberty, equality and fraternity. Bearing in mind the expanded notion of access to justice which also includes speedy remedy, we think that the petition filed by the petitioner in Writ Petition (Crl.) No.491 of 2022 cannot be dismissed on the ground of availability of an alternative remedy under Article 226 of the Constitution or on the ground of its maintainability under Article 32 of the Constitution before this Court.

22.3. There is another stronger reason as to why the said petitioner has approached this Court by filing a petition under Article 32 of the Constitution rather than invoking Article 226 of the Constitution before the High Court. That is because earlier, one of the respondents, namely, respondent No.3 Radheshyam Bhagwandas Shah had preferred Writ Petition (Crl.) No.135 of 2022 invoking Article 32 of the Constitution before this Court by seeking a direction to the State of Gujarat to consider his case for remission under the Policy of 1992.

This Court issued a categorical direction to that effect. In fact, the respondent-State has understood the said direction as if it was a command or a direction to grant remission within a period of two months. But, before this Court in the said proceedings, one of the serious contentions raised by the State of Gujarat was that it was not the appropriate Government to grant remission which contention was negatived by the order dated 13.05.2022. In fact, that is one of the grounds raised by the petitioner victim to assail the orders of remission granted to respondent Nos.3 to 13.

That being so, the High Court of Gujarat would not have been in a position to entertain the aforesaid contention in view of the categorical direction issued by this Court in Writ Petition (Crl.) No.491 of 2022 disposed on 13.05.2022. In the teeth of the aforesaid order of this Court, the contention regarding the State of Gujarat not being the competent State to consider the validity of the orders of remission in a petition filed under Article 226 of the Constitution, particularly, when the question of competency was raised, could not have been dealt with by the Gujarat High Court on the principle of judicial propriety.

Therefore, for this reason also the petitioner in Writ Petition (Crl.) No.135 of 2022 has, in our view, rightly approached this Court challenging the orders of remission. The contentions of learned Senior Counsel, Sri S. Guru Krishna

Kumar and Sri Chidambaresh are hence, rejected. Thus, we hold that Writ Petition (Crl.) No.491 of 2022 filed under Article 32 of the Constitution is clearly maintainable.

Re: Point No.2: "Whether the writ petitions filed as Public Interest Litigation (PIL) assailing the impugned orders of remission dated 10.08.2022 are maintainable?"

23. We now record the submissions made with regard to maintainability of the Public Interest Litigation (PIL) assailing the orders of remission in favour of respondent Nos.3 to 13 herein.

23.1. Learned ASG appearing for the State of Gujarat as well as Union of India submitted that the writ petitions filed as public interest litigations are not maintainable as the petitioners are strangers to the impugned orders of remission and they are in no way connected with the matter. In this context, reliance was placed on certain decisions referred to above including Rajiv Ranjan, Simranjit Singh, and, Ashok Kumar, to contend that there can be no third party interference in criminal matters in the garb of filing public interest litigations. It was also contended that the petitioners who have filed the public interest litigation are interlopers and busybodies and are not persons who are aggrieved. In the aforesaid context, reliance was placed on M.V. Dabholkar and Jasbhai Motibhai.

23.2. Shri Sidharth Luthra, learned senior counsel has also voiced the arguments of the respondents by referring to certain decisions of this Court while contending that the grant of remission is in the exclusive domain of the State and although no convict can seek remission as a matter of fundamental right has nevertheless the right to be considered for remission. That remission is a matter between the convict and the State and, therefore, there can be no third party inference in such a matter. The detailed submissions of the learned counsel have already been adverted to above and, therefore, it is unnecessary to reproduce the same once again.

23.3. Respondent No.3 has challenged the locus of the petitioners in Writ Petition (Crl.) No.319 of 2022 and connected writ petitions and contended that the petitioners therein are not related to the said case and are third-party/strangers to the case. If petitions filed by third- party strangers are entertained by this Court, then it would unsettle the settled position of law and would open floodgates for litigation.

Learned counsel for respondent No.3 Sri Rishi Malhotra placed reliance on the decision of this Court in Janata Dal vs. H.S. Chowdhary, (1992) 4 SCC 305

("Janata Dal") which was reiterated and followed in Simranjit Singh and in Subramanian Swamy vs. Raju, (2013) 10 SCC 465 ("Subramanian Swamy") where it has consistently been held that a third party, who is a total stranger to the prosecution has no 'locus standi' in criminal matters and has no right whatsoever to file a petition under Article 32.

23.4. In Simranjit Singh, this Court was faced with the situation where a conviction of some of the accused persons by this Court under the Terrorist and Disruptive Activities (Prevention) Act, (TADA Act) was sought to be challenged under Article 32 of the Constitution by the President of the Akali Dal (M), namely, Simranjit Singh Mann which was dismissed.

In paragraph 5 of the judgment in Simranjit Singh, this Court categorically dealt with the said issue and held that the petition under Article 32 of the Constitution was not maintainable for the simple reason that the petitioner therein did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental rights were being violated. This Court was of the view that a total stranger in a criminal case cannot be permitted to question the correctness of a decision.

24. Per contra, learned senior counsel, Ms. Indira Jaising, has made her submissions on the issue of locus standi of the petitioner in Writ Petition (Crl.) No.326 of 2022. According to her, even when no specific legal injury is caused to a person or to a determinate class or group of persons by an act or omission of the State or any public authority but when an injury is caused to public interest, a concerned citizen can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of public duty. (Vide B.P Singhal).

24.1. She asserted that the writ petition raises questions of great public importance in that, in a democracy based on the rule of law, no authority has any unfeterred and unreviewable discretion. All powers vested in an authority, are intended to be used only for public good. The exercise of executive power must be informed by the finer canons of constitutionalism, vide Maru Ram. That the impugned decision of granting remission to the convicts violates rule of law, is arbitrary and not based on any relevant consideration. Therefore, the writ petition filed by the petitioner in public interest is maintainable. In this regard reliance was placed on S.P. Gupta.

24.2. As regards respondents' contention that by entertaining the petition under Article 32 of the Constitution the convicts have been denied the right of appeal, it was submitted that there exists no statutory right of appeal against an order denying or permitting remission. Such an order can only be challenged under

Article 226 or Article 32 of the Constitution. Further, a Constitution Bench of this Court in Kochuni observed that, "the mere existence of an adequate alternative remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition."

24.3. As regards the respondents' submission that a stranger to the criminal proceedings under any circumstance cannot file a petition under Article 32, it was contended that the instant proceedings are not criminal in nature, they fall within the realm of administrative law as they seek to challenge orders of remission which are administrative decisions. Learned senior counsel brought to our notice the fact that this Court had entertained a petition filed by a DMK leader under Section 406 of the CrPC seeking the transfer of a pending criminal trial against his political opponent, J. Jayalalithaa, from the State of Tamil Nadu to the State of Karnataka vide K. Anbazhagan.

25. Ms. Vrinda Grover, learned counsel for the petitioner in Writ Petition (Crl.) No.352 of 2022, at the outset, submitted that the said petition has been filed in the larger public interest by the petitioners who have vast knowledge and practical expertise on issues of public policy, governance and upholding the rule of law. Their petition challenges not only the arbitrary and mala fide exercise of executive prerogative under Section 432 of the CrPC, but also prays for a shift in practices related to the grant of remission by bringing in more accountability and transparency to the process of grant of remission. Thus, the writ petition is maintainable as a Public Interest Litigation.

25.1. Learned counsel contended that the petition does not constitute an intervention into criminal proceedings but is rather a challenge to arbitrary executive action, which is amenable to judicial review. That it is settled law that the exercise of power under Section 432 of the CrPC is an administrative act which neither retracts from a judicial order nor does it wipe out the conviction of the accused and is merely an executive prerogative exercised after the judicial function in a criminal proceeding has come to an end vide Epuru Sudhakar and Ashok Kumar.

25.2. It was further submitted that all the judgments cited by the respondents-convicts as also the respondent-State to argue that the petitioners have no locus standi in the matter refer to different stages of criminal proceedings, viz. petitions related to investigation, trial, sentencing or quashing of the FIR. However, the present petition is a challenge to the arbitrary and mala fide administrative action which has arisen after the criminal proceedings have attained finality in the eye of law.

25.3. Learned counsel submitted that it is trite that the exercise of executive discretion is subject to rule of law and fairness in State action as embodied in Article 14 of the Constitution. The exercise of such discretion under Section 432 of the CrPC which is arbitrary or mala fide amounts to State action in violation of constitutional and statutory obligations and is detrimental to public interest.

Learned counsel placed reliance on the decision of this Court in S. P. Gupta to submit that this Court has in many cases held that in case of public injury caused by an act or omission of the State which is contrary to the rule of law, any member of the public acting bona fide can maintain an action for redressal of a public wrong. In the case at hand, the mala fide and arbitrary grant of premature release to the respondents-convicts by State action is de hors constitutional mandate and abets immunity for violence against women. (Vide Sheonandan Paswan vs. State of Bihar, (1987) 1 SCC 288 ("Sheonandan Paswan") and Abdul Wahab K. vs. State of Kerala, (2018) 18 SCC 448 ("Abdul Wahab").

25.4. Learned counsel next submitted that this Court in Subramanian Swamy, while adjudicating on the locus of a publicspirited intervenor in a case requiring interpretation of the Juvenile Justice (Care and Protection of Children) Act, 2015, held that the intervenor had sought an interpretation of criminal law which would have a wide implication beyond the scope of the parties in that case and hence, allowed the same. Thus, when larger questions of law are involved, which include interpretation of statutory provisions for the purpose of grant of premature release/remission, public-spirited persons who approach the Court in a bona fide manner, ought not to be prevented from assisting the Court to arrive at a just and fair outcome.

25.5. Learned counsel Ms. Grover further submitted that in cases where offences have shocked the conscience of the society, spread fear and alarm amongst citizens and have impugned on the secular fabric of society, like in the instant case, this Court has allowed interventions by members of the public seeking to bring to the attention of the Court the inaction and apathy on the part of the State in discharging its duty within the criminal justice system. It has been held in some cases that the technical rule of locus cannot shield the arbitrary and illegal exercise of executive discretion in violation of constitutional and statutory principles, once the same have been brought to the attention of this Court.

26. Learned counsel for the petitioner in Writ Petition (Crl.) No.319 of 2022, Smt. Aparna Bhat submitted that the petitioner has locus standi to approach this Court against the remission orders dated 10.08.2022. It was submitted that upholding the constitutional values and protection of all citizens is the responsibility of the State and there is a legitimate expectation that the State conducts all its actions in accordance with constitutional values.

That the aforesaid petition has been filed in public interest as the premature release of respondent Nos.3 to 13 cannot be permitted since the convicts pose a danger to society. That the petitioners in the connected matters fulfil the wide ambit of the expression "person aggrieved" as envisaged under PIL jurisdiction since they are challenging the release of convicts who have committed heinous and grave offences against society.

26.1. On the issue of locus standi of the petitioners to approach this Court, the learned counsel relied on para 6 of A.R Antulay vs. Ramdas Sriniwas Nayak, (1984) 2 SCC 500 ("A.R Antulay"). Further, it was submitted that in Sheonandan Paswan, this Court relied on A. R. Antulay and held that if a citizen can set the machinery of criminal law in motion, she is also entitled to oppose the unwarranted withdrawal of prosecution in an offence against society.

26.2. Learned counsel further placed reliance on the dictum of this Court in Manohar Lal vs. Vinesh Anand, (2001) 5 SCC 407, wherein it was held that the doctrine of locus standi is totally foreign to criminal jurisprudence and that society cannot afford to have a criminal escape his liability. Also, in Ratanlal vs. Prahlad Jat, (2017) 9 SCC 340, this Court held that a crime is not merely an offence committed in relation to an individual but is also an offence against society at large and it is the duty of the State to punish the offender.

27. Although, we have recorded the detailed submissions made on behalf of the respective parties, we do not think it is necessary to answer the point regarding maintainability of the PILs in this case inasmuch as one of the victims, namely, Bilkis Bano has also filed a writ petition invoking Article 32 of the Constitution assailing the orders of remission which we have held to be maintainable. The consideration of that petition on its merits would suffice in the instant case.

Hence, we are of the view that the question of maintainability of the PILs challenging the orders of remission in the instant case would not call for an answer from us owing to the aforesaid reason. As a result, we hold that consideration of the point on the maintainability of the PILs has been rendered wholly academic and not requiring an answer in this case. Therefore, the question regarding maintainability of a PIL challenging orders of remission is kept open to be considered in any other appropriate case.

28. Before we consider point No.3, we shall deal with the concept of remission.

Remission: Scope & Ambit

29. Krishna Iyer, J. in Mohammad Giasuddin vs. State of A.P., (1997) 3 SCC 287, quoted George Bernard Shaw the famous satirist who said, "If you are to punish a man retributively, you must injure him. If you are to reform him, you

must improve him and, men are not improved by injuries." According to him, humanity today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence.

29.1. Further, quoting a British Buddhist-Christian Judge, it was observed that in the context of karuna (compassion) and punishment for karma (bad deeds), 'The two things are not incompatible. While an accused is punished for what he has done, a quality of what is sometimes called mercy, rather than an emotional hate against the man for doing something harmful must be deserved. This is what compassion is about.'

30. Learned senior counsel Sri Sidharth Luthra, drew our attention to the principles covering grant of remission and distinguished it from concepts, such as commutation, pardon, and reprieve, with reference to a judgment of this Court in State (Govt. of NCT of Delhi) vs. Prem Raj, (2003) 7 SCC 121 ("Prem Raj"). Articles 72 and 161 deal with clemency powers of the President of India and the Governor of a State, and also include the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentences in certain cases.

The power under Article 72 inter alia extends to all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends and in all cases where the sentence is a sentence of death. Article 161 states that the Government of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. It was observed in the said judgment that the powers under Articles 72 and 161 of the Constitution of India are absolute and cannot be fettered by any statutory provision, such as, Sections 432, 433 or 433-A of the CrPC or by any prison rule.

30.1. It was further observed that a pardon is an act of grace, proceeding from the power entrusted with the execution of the law, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender. But pardon has to be distinguished from "amnesty" which is defined as a "general pardon of political prisoners; an act of oblivion".

An amnesty would result in the release of the convict but does not affect disqualification incurred, if any. 'Reprieve' means a stay of execution of a sentence, a postponement of a capital sentence. Respite means awarding a lesser

sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. It is something like a release on probation for good conduct under Section 360 of the CrPC. On the other hand, remission is reduction of a sentence without changing its character.

In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. Commutation is change of a sentence to a lighter sentence of a different kind. Section 432 empowers the appropriate Government to suspend or remit sentences.

30.2. Further, a remission of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself. In this context, reliance was placed on Sarat Chandra Rabha vs. Khagendranath Nath, AIR 1961 SC 334 ("Sarat Chandra Rabha"), wherein a Constitution Bench of this Court while distinguishing between a pardon and a remission observed that an order of remission does not wipe out the offence; it also does not wipe out the conviction.

All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted person would have to serve out the full sentence imposed by a court, he need not do so with respect to that part of the sentence which has been ordered to be remitted. An order of remission thus, does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court even though the order of conviction and sentence passed by the court still stands as it is.

The power to grant remission is an executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. According to Weater's Constitutional Law, to cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment but does not alter it qua the judgment.

30.3. Reliance was placed on Mahender Singh, to urge that a right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder.

Although no convict can be said to have any constitutional right for obtaining remission in his sentence, the policy decision itself must be held to have conferred a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally, vide State of Mysore vs. H. Srinivasmurthy, (1976) 1 SCC 817 ("H. Srinivasmurthy").

30.4. In Mahender Singh, this Court was considering the correctness of a judgment of the Punjab and Haryana High Court in which a circular/letter issued by the State of Haryana laying down criteria for premature release of the prisoners had been declared to be unconstitutional. In the above context, this Court considered the right of the convict to be considered for remission and not on what should be the criteria when the matter was taken up for grant thereof.

30.5. Satish was pressed into service to contend that the length of the sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. Any assessment regarding a predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses. It was observed that although, a convict cannot claim remission as a matter of right, once a law has been made by the appropriate legislature, it is not open for the executive authorities to surreptitiously subvert its mandate.

It was further observed that where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a constitutional court while exercising its powers of judicial review to assume such task onto itself and direct compliance through a writ of mandamus. Considering that the petitioners therein had served nearly two decades of incarceration and had thus suffered the consequences of their actions, a balance between individual and societal welfare was struck by granting the petitioners therein conditional premature release, subject to their continuing good conduct.

In the said case, a direction was issued to the State Government to release the prisoners therein on probation in terms of Section 2 of the U.P. Prisoners Release on Probation Act, 1938 within a period of two weeks. The respondent State was reserved liberty with the overriding condition that the said direction could be reversed or recalled in favour of any party or as per the petitioner therein.

31. The following judgments of this Court are apposite to the concept of remission: (a) In Maru Ram, a Constitution Bench considered the validity of Section 433-A of the CrPC. Krishna Iyer, J. speaking for the Bench observed,

"Ordinarily, where a sentence is for a definite term, the calculus of remissions may benefit the prisoner to instant release at the point where the subtraction results in zero". However, "when it comes to life imprisonment, where the sentence is indeterminate and of an uncertain duration, the result of subtraction from an uncertain quantity is still an uncertain quantity and release of the prisoner cannot follow except on some fiction of quantification of a sentence of uncertain duration.

(i) Referring to Gopal Vinayak Godse vs. State of Maharashtra, (1961) 3 SCR 440, it was observed that the said judgment is an authority for the proposition that a sentence of imprisonment for life is one of "imprisonment for the whole of the remaining period of the convicted person's natural life", unless the said sentence is committed or remitted by an appropriate authority under the relevant provisions of law.

(ii) In Gopal Vinayak Godse, a distinction was drawn between remission, sentence and life sentence. Remission limited a time, helps computation but does not ipso jure operate as release of the prisoner. But, when the sentence awarded by the Judge is for a fixed term, the effect of remissions may be to scale down the term to be endured and reduce it to nil, while leaving the factum and quantum of sentence intact. However, when the sentence is a life sentence, remissions, quantified in time, cannot reach a point of zero.

Since Section 433-A deals only with life sentences, remissions cannot entitle a prisoner to release. It was further observed that remission, in the case of life imprisonment, ripens into a reduction of sentence of the entire balance only when a final release order is made. If this is not done, the prisoner will continue in custody. The reason is, that life sentence is nothing less than life long imprisonment and remission vests no right to release when the sentence is life imprisonment. Nor is any vested right to remission cancelled by compulsory fourteen years jail life as a life sentence is a sentence for whole life.

(iii) Interpreting Section 433-A it was observed that there are three components in it which is in the nature of saving clause. Firstly, the CrPC generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, the latter law will be saved and will prevail, such as short sentencing measures and remission schemes promulgated by various States. The third component is, if there is a specific provision to the contrary then, whether it would override the special or local law.

It was held that Section 433-A picks out of a mass of imprisonment cases a specific class of life imprisonment cases and subjects it explicitly to a particularized treatment. Therefore, Section 433-A applies in preference to any

special or local law. This is because Section 5 of the CrPC expressly declares that specific provision, if any, to the contrary will prevail over any special or local law. Therefore, Section 433-A would prevail and escape exclusion of Section 5. The Constitution Bench concluded that Section 433- A is supreme over the remission rules and short-sentencing statutes made by various States. Section 433-A does not permit parole or other related release within a span of fourteen years. (

iv) It was further observed that criminology must include victimology as a major component of its concerns. When a murder or other grievous offence is committed the victims or other aggrieved persons must receive reparation and social responsibility of the criminal to restore the loss or heal the injury which is part of the punitive exercise which means the length of the prison term is no reparation to the crippled or bereaved.

(v) Fazal Ali, J. in his concurring judgment in Maru Ram observed that crime is rightly described as an act of warfare against the community touching new depths of lawlessness. According to him, the object of imposing deterrent sentence is three-fold. While holding that the deterrent form of punishment may not be a most suitable or ideal form of punishment yet, the fact remains that the deterrent punishment prevents occurrence of offence.

He further observed that Section 433-A is actually a social piece of legislation which by one stroke seeks to prevent dangerous criminals from repeating offences and on the other hand protects the society from harm and distress caused to innocent persons. While opining that where section 433-A applies, no question of reduction of sentence arises at all unless the President of India or the Governor of a State choose to exercise their wide powers under Article 72 or Article 161 of the Constitution respectively which also have to be exercised according to sound legal principles as, any reduction or modification in the deterrent punishment would, far from reforming the criminal, be counter-productive.

(b) Mohinder Singh is a case which arose under Section 432 on remission of sentence in which the difference between the terms `bail', `furlough' and `parole' having different connotations were discussed. It was observed that furloughs are variously known as temporary leaves, home visits or temporary community release and are usually granted when a convict is suddenly faced with a severe family crisis such as death or grave illness in the immediate family and often the convict/inmate is accompanied by an officer as part of the terms of temporary release of special leave which is granted to a prisoner facing a family crisis.

Parole is a release of a prisoner temporarily for a special purpose or completely before the expiry of the sentence or on promise of good behaviour. Conditional release from imprisonment is to entitle a convict to serve remainder of his term outside the confines of an institution on his satisfactorily complying all terms and conditions provided in the parole order.

(c) In Poonam Latha vs. M.L. Wadhwan, (1987) 3 SCC 347 ("Poonam Latha"), it was observed that parole is a professional release from confinement but it is deemed to be part of imprisonment. Release on parole is a wing of reformative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus, a grant of partial liberty or lessening of restrictions to a convict prisoner but release on parole does not change the status of the prisoner.

When a prisoner is undergoing sentence and confined in jail or is on parole or furlough his position is not similar to a convict who is on bail. This is because a convict on bail is not entitled to the benefit of the remission system. In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. Therefore, such a prisoner who is on bail is not entitled to get remission earned during the period he is on bail.

32. Apart from the constitutional provisions, there are also provisions of the CrPC which deal with remission of convicts. Sections 432, 433, 433A and 435 of the CrPC are relevant and read as under:

"432. Power to suspend or remit sentences.-

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person

in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and-

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in Section 433, the expression "appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

433. Power to commute sentence.-

The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433A. Restriction on powers of remission or commutation in certain cases.-

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

435. State Government to act after consultation with Central Government in certain cases.-

(1) The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence-

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment

which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends."

32.1. Sub-section (1) of Section 432 is an enabling provision which states that when any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any condition which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

The pertinent provision involved in this case is sub-section (2) which deals with an application made to the appropriate Government for the suspension or remission of a sentence and the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to, whether, the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

Sub-section (3) deals with cancellation of the suspension or remission in the event of there being any non-fulfilment of any condition imposed by the appropriate Government whereupon the person in whose favour the sentence has been suspended or remitted, may be arrested by the police officer, without warrant and remanded to undergo the unexpired portion of the sentence, if such a person is at large.

Subsection (4) states that the condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will. The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with vide sub-section (5) of Section 432 of the CrPC.

The proviso to sub-section (5) states that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and it is presented through the officer in-charge of the jail; or where such petition is made by any other person, it contains a declaration that the person sentenced is in jail. Sub-section (6) of Section 432 states that the provisions of this Section would apply to any

order passed by a Criminal Court under any section of the CrPC or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

32.2. The expression "appropriate Government" used in Section 432 as well as in Section 433, is defined in sub-section (7) of Section 432. It expresses that in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government; and in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

32.3. Section 433-A is a restriction on the powers of remission or commutation in certain cases. It begins with a non-obstante clause and states that notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

32.4. Section 434 states that the powers conferred by Sections 432 and 433 upon the State Government may in case of sentences of death also be exercised by the Central Government concurrently.

32.5. The necessity for the State Government to act in consultation with the Central Government in certain cases is mandated in Section 435. The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence (a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, or by any other agency empowered to make investigation into an offence under any Central Act other than the CrPC, or (b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or (c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

Sub-section (2) of Section 435 states that no order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect

unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

With the above backdrop of provisions, we move to consider Point No.3.

Point No.3 : Whether the Government of State of Gujarat was competent to pass the impugned orders of remission?

33. The point for consideration revolves around the definition of the expression "appropriate Government". In other words, whether the first respondent - State of Gujarat was competent to pass the orders of remission in the case of respondent Nos.3 to 13 herein is the question. The meaning and import of the expression "appropriate Government" has to be discerned from the judgments of this Court in the light of sub-section (7) of Section 432 of the CrPC.

33.1. The contentions raised by the learned counsel for the petitioner in Writ Petition (Crl.) No.491 of 2022 as well as the arguments of learned ASG appearing for Union of India as well as State of Gujarat on this aspect need not be reiterated.

33.2. The expression "appropriate Government" no doubt has been defined in sub-section (7) of Section 432 to mean that in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government; in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

The expression "appropriate Government" also finds place in subsection (1) of Section 432 which, as already discussed above, states that when any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any condition which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

33.3. Sub-section (1) of Section 432 of the CrPC deals with a power vested with the appropriate Government which is an enabling power. The discretion vested with the appropriate Government has to be exercised judiciously in an appropriate case and not to abuse the same. However, when an application is made to the appropriate Government for the suspension or remission of a sentence such as in the instant case by a convict, the appropriate Government may seek the opinion of the Presiding Judge of the Court before or by which the conviction was had or confirmed and on considering the reasons for such

opinion, may consider the application for remission vide sub-section (2) of Section 432 of the CrPC.

33.4. On a combined reading of sub-sections (1) and (2) of Section 432, it is apparent that the conviction and sentence of the Court which had tried the case assumes significance and the appropriate Government may have to seek the opinion of the Presiding Judge of the Court before which the conviction took place, before passing an order of remission. This is particularly so when an application is filed by or on behalf of a convict seeking remission.

Therefore, logically the expression appropriate Government in clause (b) of sub-section (7) of Section 432 also states that the Government of the State within which the offender is sentenced or the said order is passed which is the appropriate Government. The aforesaid consistency is significant inasmuch as the intent of the Parliament is, it is only the Government of the State within which the offender was sentenced which is competent to consider an application for remission and pass an order remitting the sentence of a convict.

This clearly means that the place of occurrence of the incident or place of imprisonment of the convict are not relevant considerations and the same have been excluded from the definition of the expression appropriate Government in clause (b) of sub-section (7) of Section 432. If the intention of the Parliament was that irrespective of the Court before which the trial and conviction had taken place, the order of remission can be considered by the Government within whose territorial jurisdiction the offence has been committed or the offender is imprisoned, the same would have been indicated by the definition.

On the contrary, the definition of appropriate Government is otherwise. The intention of the Parliament is that the Government of the State within which the offender was tried and sentenced, is the appropriate Government to consider either under sub-section (1) of Section 432 of the CrPC or on an application made by the convict for remission of the sentence under sub-section (2) of Section 432 of the CrPC. This places emphasis on the place of trial and sentence of the offender rather than the place or location where the crime was committed.

Such an interpretation would also include a situation, such as in the present case, where not only the investigation but also the trial of respondents No.3 to 13 herein was transferred from the State of Gujarat to the State of Maharashtra and particularly to the Special Court at Mumbai. Thus, the aforesaid definition also takes within its scope and ambit a circumstance wherein the trial is transferred by this Court for reasons to be recorded and which is in the interest of justice from one State to another State.

33.5. There may be various reasons for transferring of a trial from a competent Court within the territorial jurisdiction of one State to a Court of equivalent jurisdiction in another State, as has been done in the instant case. But what is certain is that the transfer of the trial to a court in another State would be a relevant consideration while considering as to which State has the competency to pass an order of remission. Thus, the definition of appropriate Government in sub-section (7) of Section 432 clearly indicates that the Government of the State within which the offender is sentenced, is the appropriate Government to pass an order of remission.

33.6. In almost all cases, the court before which the offender was sentenced is located within the territory of a State Government wherein the offence occurred and, therefore, in such a case, there can be no further doubt about the meaning of the expression appropriate Government. But according to us, even in a case where the trial has been transferred by this Court from a court of competent jurisdiction of a State to a court in another State, it is still the Government of the State within which the offender was sentenced which is the appropriate Government which has the jurisdiction as well as competency to pass an order of remission under Section 432 of the CrPC. Therefore, it is not the Government of the State within whose territory the offence occurred or the convict is imprisoned which can assume the power of remission.

33.7. In this regard, the following judgments of this Court may be relied upon:

(a) In Ratan Singh, on discussing Section 401 of the erstwhile CrPC (corresponding to Section 432 of the present CrPC) it was observed that the test to determine the appropriate Government is to locate the State where the accused was convicted and sentenced and the Government of that State would be the appropriate Government within the meaning of Section 401 of the CrPC.

In the said case, it was observed that the accused was convicted and sentenced in the State of Madhya Pradesh and though he was discharging his sentence in a jail in Amritsar in the State of Punjab, the appropriate Government under section 401 (1) of the erstwhile CrPC to exercise the discretion for remission of the sentence was the State of Madhya Pradesh. It was further observed that even under the new Code i.e. CrPC, 1973 as per sub-section (7) of Section 432 thereof, the phrase appropriate Government had the same meaning as the latter provision had been bodily lifted from Section 402(3) of the erstwhile CrPC. On a review of the case law and the statutory provisions of the CrPC the following propositions were culled out:

"9. (1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules

framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner.

(3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the government cannot be interfered with by a High Court in its writ jurisdiction."

(b) The aforesaid decision was reiterated in Hanumant Dass. In the said case, the incident had occurred in Dharmshala and when the matter was pending before the Sessions Court, Dharmshala in Himachal Pradesh at the instance of the complainant, on an application moved before this Court, the case was transferred from Himachal Pradesh to the Sessions Court at Gurdaspur in Punjab.

(c) Insofar as clemency power of a Governor of a State under Article 161 of the Constitution to grant remission to prisoners convicted by courts outside the State but undergoing sentences in jails in the State is concerned, this Court in M.T. Khan observed that the appropriate government on whose advice the Governor has to act while granting remission to such a prisoner was to be decided on the basis of the aid and advice of the Council of Ministers of the State which had convicted the accused and not the State where the accused/convict is transferred to be lodged in the jail. In this case it was held that since the judgment of conviction had been passed in the States of Madhya Pradesh and Maharashtra and the convict was lodged in the State of Andhra Pradesh, the appropriate Governments were the States of Madhya Pradesh and Maharashtra even under Article 161 of the Constitution. Hence, the appeals filed by the Government of Andhra Pradesh were allowed.

(d) V. Sriharan is a judgment of a Constitution Bench of this Court wherein the Government of Tamil Nadu had proposed to remit the sentence of life imprisonment to release seven convicts who were convicted in the Rajiv Gandhi assassination case - State, through Superintendent of Police, CBI vs. Nalini, (1999) 5 SCC 253 ("Nalini").

While discussing the phrase "appropriate Government", it was observed that barring cases falling under Section 432(7)(a), in all other cases where the offender is sentenced or the sentence or order is passed within the territorial jurisdiction of the State concerned, that State Government would be the appropriate Government. Following the earlier decisions it was observed that even if an offence is committed in State-A, but, the trial takes place and the sentence is passed in State-B, it is the latter State which shall be the appropriate Government.

33.8. In our view, on a plain reading of sub-section (7) of Section 432 of the CrPC and considering the judgments of this Court, it is the State of Maharashtra, which had the jurisdiction to consider the application for remission vis-Ã -vis respondent Nos.3 to 13 herein as they were sentenced by the Special Court, Mumbai. Hence the applications filed by respondent Nos.4 to 13 seeking remission had to be simply rejected by the State of Gujarat owing to lack of jurisdiction to consider them. This is because Government of Gujarat is not the appropriate Government within the meaning of the aforesaid provision. The High Court of Gujarat was therefore right in its order dated 17.07.2019.

33.9. When an authority does not have the jurisdiction to deal with a matter or it is not within the powers of the authority i.e. the State of Gujarat in the instant case, to be the appropriate Government to pass orders of remission under Section 432 of the CrPC, the orders of remission would have no legs to stand.

On the aspect of jurisdiction and nullity of orders passed by an authority, the decision of the House of Lords in Anisminic vs. Foreign Compensation Commission, (1969) 2 WLR 163 : (1969) 1 All ER 208 ("Anisminic"), is of significance and the same can be cited by way of analogy. The House of Lords in the said case held that the Foreign Compensation Commission had committed an error which was a jurisdictional error as its decision was based on a matter which it had no right to take into account and so its decision was a nullity and subject to judicial review.

Although in Anisminic, the scope and ambit of the concept of "jurisdictional error" or "error of jurisdiction" was very much extended, and of a very broad connotation, in the instant case we are primarily dealing with a narrower concept i.e. when an authority, which is the Government of State of Gujarat in the instant

case, was lacking jurisdiction to consider the applications for remission. Just as an order passed by a Court without jurisdiction is a nullity, in the same vein, an order passed or action taken by an authority lacking in jurisdiction is a nullity and is non est in the eye of law.

33.10. On that short ground alone the orders of remission have to be quashed. This aspect of competency of the Government of State of Gujarat to pass the impugned orders of remission goes to the root of the matter and the impugned orders of remission are lacking in competency and hence a nullity. The writ petition filed by the victim would have to succeed on this reasoning. But the matter does not rest at that.

34. Learned ASG appearing for respondent Nos.1 and 2, has placed strong reliance on the order of this Court dated 13.05.2022 to contend that in view of the directions issued by this Court in Writ Petition No.135 of 2022, respondent No.1 - State of Gujarat had to consider the applications for remission filed by respondents No.3 to 13 herein.

Further, the consideration had to be made as per the 1992 Policy of Remission of the State of Gujarat. Hence, the appropriate Government in the case of respondent Nos.3 to 13 was the Government of Gujarat in terms of the order of this Court dated 13.05.2022. It was further contended that the offences had also occurred within the State of Gujarat. Therefore, the first respondent - State of Gujarat had no option but to consider the applications filed by respondent Nos.3 to 13 herein and pass the orders dated 10.08.2022 granting remission to them.

35. Learned counsel for the petitioner in Writ Petition (Crl.) No.491 of 2022 has countered the above submission contending that one of the convicts-Radheshyam Bhagwandas Shah, respondent No.3 herein, had initially approached the High Court of Gujarat by filing Criminal Application No.4573 of 2019 for a direction to consider his application for remission by the State of Gujarat.

By order dated 17.07.2019 the High Court disposed of Criminal Application No.4573 of 2019 by observing that he should approach the appropriate Government being the State of Maharashtra. His second such application before the Gujarat High Court was also dismissed vide order dated 13.03.2020. That when the said prisoner filed Writ Petition (Crl.) No.135 of 2022 before this Court, he did not disclose the following facts:

(i) that within fourteen days of the order dated 17.07.2019, he had approached the Government of Maharashtra vide application dated 01.08.2019;

(ii) that the CBI had given a negative recommendation vide its letter dated 14.08.2019;

(iii) that the Special Judge (CBI), Mumbai had given a negative recommendation vide his letter dated 03.01.2020;

(iv) that the Superintendent of Police, Dahod, Gujarat had given a negative recommendation vide his letter dated 03.02.2020; and,

(v) that the District Magistrate, Dahod, Gujarat had given a negative recommendation vide his letter dated 19.02.2020.

35.1. Further, the writ petitioner also made a misleading statement by referring to the order dated 05.08.2013 of the Bombay High Court in juxtaposition to the order of the Gujarat High Court dated 17.07.2019 to contend that there was a divergent opinion between the two High Courts, which aspect constrained him to file Writ Petition (Crl.) No.135 of 2022 before this Court.

That the order dated 05.08.2013 passed by the Bombay High Court was dealing with transfer of the convicts in Maharashtra jail to their parent State (State of Gujarat) that too, in the year 2013, when the issue of remission did not arise at all. But the said writ petitioner projected as if the two High Courts had contradicted themselves in their orders and, therefore, he was constrained to file the writ petition invoking the jurisdiction of this Court under Article 32 of the Constitution.

35.2. It was contended that on account of the suppression of facts as well as misleading this Court with erroneous facts, the order dated 13.05.2022 is vitiated by fraud and is hence a nullity and the same cannot be binding on the parties to the said order or to the petitioner Bilkis Bano who, in any case, was not arrayed as a party in the said writ petition.

36. It is necessary to highlight the salient aspects of the order passed by this Court in the case of Radheshyam Bhagwandas Shah dated 13.05.2022 in Writ Petition (Crl.) No.135 of 2022. That was a petition filed by one of the convicts, respondent No.3 herein, seeking a direction to consider his application for premature release under the policy dated 09.07.1992 of the State of Gujarat which was existing at the time of his conviction. The relevant pleadings in the said writ petition are extracted as under:

"Question of Law:

A. Whether the policy dated 9.7.92, which was existing at the time of the conviction will prevail for considering the case of the petitioner for premature release?

B. Whether in view of 'State of Haryana Vs. Jagdish, (2010) 4 SCC 216', a policy which is more liberal and prevailing would be given preference as compared to the policy which is sought to be made applicable at the time of consideration of the cases of premature release?

FACTS OF THE CASE:

That at this juncture it would be pertinent to mention herein that one of the co-accused Ramesh Rupabhai had approached the Bombay High Court by way of Crl. W.P. No.305/2013. In the said order, the Bombay High Court clarified that the undertrials in this case were lodged in Maharashtra Jail only because of the fact that at that time the Trial was pending in the State of Maharashtra (transferred from Gujarat to Maharashtra by the Supreme Court).

The High Court further clarified that once the Trial has concluded and the prisoner has been convicted, the appropriate prison would be the State of Gujarat and accordingly, the said prisoners were transferred to the State of Gujarat from the State of Maharashtra. At this juncture, the petitioner had approached the Gujarat High Court on the ground that despite he having undergone more than actual sentence of 14 years, his case was not being considered by the respondent/authorities for premature release.

The Gujarat High Court vide its order dated 17.7.19 with great respect took a completely a diametrically opposite view as that of Bombay High Court and erroneously held that since the petitioner's case was tried in the State of Maharashtra, therefore, his case for premature release has to be considered by the State of Maharashtra and not by the State of Gujarat.

Hence the instant Writ Petition under Article 32 of the Constitution issuing a writ of Mandamus or any other similar direction to the State of Gujarat praying inter alia that the case of the petitioner may be considered as per the policy dated 9.7.92 (i.e. policy existing at the time of conviction of the petitioner) in the light of settled decision in "State of Haryana Vs. Jagdish, (2010) 4 SC 216".

PRAYER:

In the light of the above-mentioned facts and circumstances, the petitioner through this instant writ petition prays before this Hon'ble Court as under:

A. Issue a writ, order or direction in the nature of Mandamus to the Respondent/State of Gujarat to consider the case of the petitioner for premature release under the policy dated 9.7.92 i.e. the policy which was existing at the time of conviction.

B. Or in the alternative, issue a writ, order or direction in the nature of Mandamus to the respondent/Union of India to consider the case of the petitioner in light of "UOI Vs. V. Sriharan, (2016) 7 SCC 1." and

C. Pass any such further Order(s)/direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

36.1. The aforesaid pleadings do not indicate that State of Gujarat had no jurisdiction to consider his application for remission. Also, there was no pleading that he had filed any application before the Government of Gujarat. Thirdly, there is no mention that the policy of 09.07.1992 had been cancelled. Moreover, the said policy was not at all applicable as the writ petitioner was convicted in Maharashtra State and therefore, Government of Gujarat was not the appropriate Government.

36.2. On the above basis, this Court passed the order dated 13.05.2022, the relevant portion of which reads as under:

"6. The present petitioner filed his petition for pre-mature release under Sections 433 and 433A of the Code of Criminal Procedure, 1973 (hereinafter being referred to as the "CrPC") stating that he had undergone more than 15 years 4 months of custody but his petition filed in the High Court of Gujarat came to be dismissed taking note of Section 432(7) CrPC and placing reliance on the judgment of this Court in Union of India vs. V. Sriharan alias Murugan and Others, (2016) 7 SCC 1, on the premise that since the trial has been concluded in the State of Maharashtra, the application for pre-mature release has to be filed in the State of Maharashtra and not in the State of Gujarat, as prayed by the petitioner by judgment impugned dated 17th July 2019.

10. Learned counsel for the respondents has placed reliance on the judgment of this Court in Union of India vs. V. Sridharan alias Murugan and Others (supra) and submits that since the trial has been concluded in the State of Maharashtra, taking assistance of Section 432(7) CrPC, the expression 'appropriate government as referred to under Section 433 CrPC in the instant case, would be the State of Maharashtra and accordingly no error has been committed by the High Court in the order impugned.

11. In our considered view, the submission made by learned counsel for the respondents is not sustainable for the reason that the crime in the instant case

was admittedly committed in the State of Gujarat and ordinarily, the trial was to be concluded in the same State and in terms of Section 432(7) CrPC, the appropriate Government in the ordinary course would be the State of Gujarat but the instant case was transferred in exceptional circumstances by this Court for limited purpose for trial and disposal to the neighbouring State (State of Maharashtra) by an order dated 06th August, 2004 but after the conclusion of trial and the prisoner being convicted, stood transferred to the State where the crime was committed remain the appropriate Government for the purpose of Section 432(7) CrPC.

12. Indisputedly, in the instant case, the crime was committed in the State of Gujarat which is the appropriate Government competent to examine the application filed for pre-mature release and that is the reason for which the High Court of Bombay in Criminal Writ Petition No.305 of 2013 filed at the instance of co-accused Ramesh Rupabhai under its Order dated 5th August, 2013 declined his request to consider the application for pre-mature release and left the application to be examined according to the policy applicable in the State of Gujarat by the concerned authorities.

13. The judgment on which the learned counsel for the respondents has placed reliance may not be of any assistance for the reason that under Section 432(7) CrPC, the appropriate Government can be either the Central or the State Government but there cannot be a concurrent jurisdiction of two State Governments under Section 432(7) CrPC.

14. In the instant case, once the crime was committed in the State of Gujarat, after the trial been concluded and judgment of conviction came to be passed, all further proceedings have to be considered including remission or pre-mature release, as the case may be, in terms of the policy which is applicable in the State of Gujarat where the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this Court.

15. Consequently, the petition is allowed. The judgment impugned dated 17th July, 2019 is set aside.

16. The respondents are directed to consider the application of the petitioner for pre-mature release in terms of its policy dated 9th July, 1992 which is applicable on the date of conviction and may be decided within a period of two months. If any adverse order is passed, the petitioner is at liberty to seek remedy available to him under the law."

36.3. The following aspects are noted by this Court in the order dated 13.05.2022:

(i) that the crime was committed in the State of Gujarat but this Court in Transfer Petition (Crl.) No.192 of 2004 had considered it appropriate to transfer Sessions Case No.161 of 2004 pending before the learned Additional Sessions Judge, Dahod, Ahmedabad to the competent court in Mumbai for trial and disposal by order dated 06.08.2004.

(ii) that the trial court, Mumbai in Sessions Case No.634 of 2004, on completion of the trial held the said respondent as well as the other accused guilty and sentenced them to undergo rigorous imprisonment for life by judgment and order dated 21.01.2008.

(iii) that one of the co-accused Ramesh Rupabhai had approached the Bombay High Court by filing Writ Petition (Crl.) No.305 of 2013 seeking premature release but his application was dismissed by order 05.08.2013 on the premise that the crime was committed in the state of Gujarat and his trial was transferred to the competent court in Maharashtra and once the trial had concluded and sentence has been passed, the appropriate Government would be the State of Gujarat and accordingly, the application filed by the said co-accused for premature release was to be examined as per the policy applicable in the State of Gujarat.

(iv) that the judgment on which learned counsel for the State of Gujarat had placed reliance (V. Sriharan) was not of any assistance for the reason that under Section 432 (7) of the CrPC, the appropriate Government can be either Central or State Government but there cannot be a concurrent jurisdiction of two State Governments under the said provision.

(v) that once the crime was committed in the State of Gujarat, after the trial has been concluded and the judgment of conviction came to be passed, all further proceedings had to be considered including remission or pre-mature release, as the case may be, in terms of the policy which is applicable in the State of Gujarat where the crime was committed and not the State where the trial stood transferred and concluded for exceptional reasons under the order of this Court.

(vi) Consequently, the writ petition was allowed. Further even in the absence of there being any challenge, the order dated 17.07.2019 passed by the Gujarat High Court in a petition filed by the same petitioner (respondent No.3) under Article 226 of the Constitution was set aside by this Court in the writ petition filed by him under Article 32 of the Constitution.

(vii) Further, it was not brought to the notice of this Court that the policy dated 09.07.1992 had been cancelled and was no more effective. In the absence of the same, direction was issued to the State of Gujarat to consider the case of the petitioner therein for preWrit mature release in terms of the said policy within a period of two months.

36.4. Our inferences on the Order of this Court dated 13.05.2022 passed on the aforesaid writ petition are as under:

(i) that the convict who approached this Court, namely, Radheshyam Bhagwandas Shah respondent No.3 herein had stated that he had undergone about 15 years 4 months of custody;

(ii) that respondent No.3 herein had not stated that his writ petition filed in the High Court of Gujarat had been dismissed by taking note of Section 432 (7) of the CrPC and on the basis of the decision in V. Sriharan as the trial had been concluded in the State of Maharashtra;

(iii) that respondent No.3 had not stated that the application for premature release had been filed by him in the State of Maharashtra and not in the State of Gujarat as directed by the judgment of the Gujarat High Court dated 17.07.2019;

(iv) Respondent No.3 herein who had filed the writ petition had not disclosed that he had acted upon the order dated 17.07.2019 passed by the Gujarat High Court inasmuch as-

(a) he had approached the Government of Maharashtra vide application dated 01.08.2019;

(b) the CBI had given a negative recommendation vide its letter dated 14.08.2019;

(c) the Special Judge (CBI), Mumbai had given a negative recommendation vide his letter dated 03.01.2020;

(d) the Superintendent of Police, Dahod, Gujarat had given a negative recommendation vide his letter dated 03.02.2020; and,

(e) the District Magistrate, Dahod, Gujarat had given a negative recommendation vide his letter dated 19.02.2020.

(v) that the respondent No.3 had not assailed the order dated 17.07.2019 passed by the Gujarat High Court as there is a bar in law to assail an order passed by High Court under Article 226, under Article 32 of the Constitution.

(vi) Interestingly, in the writ petition, the respondent State of Gujarat placed reliance on the judgment in V. Sriharan and contended that the trial had been concluded in the State of Maharashtra and therefore the expression appropriate government under section 432 of the CrPC would be the State of Maharashtra and that no error had been committed by the High Court in its order dated 17.07.2019.

(vii) Strangely, this Court held that the aforesaid submission on behalf of the State of Gujarat was not sustainable as the crime had been committed in the State of Gujarat and "ordinarily, the trial was to be concluded in the same State and in terms of Section 432 (7) of the Code of Criminal Procedure, the appropriate Government in the ordinary course would be the State of Gujarat but the instant case, was transferred in exceptional circumstances by this Court for limited purpose for trial and disposal to the neighbouring State (State of Maharashtra) by an order dated 06.08.2004 but after the conclusion of trial and the prisoner being convicted, stood transferred to the State where the crime was committed remain the appropriate Government for the purpose of Section 432(7) Code of Criminal Procedure." This portion of the order of this Court is contrary to the judgments of this Court discussed above. This implies that the said order is per se per incuriam.

(viii) This Court went on to hold that the High Court of Bombay had declined to interfere in Criminal Writ Petition No.305 of 2013 filed by the co-accused Ramesh Rupabhai by its order dated 05.08.2013 without realising what the prayer in the said writ petition was, which was filed in the year 2013, as at that point of time, the issue of remission had not arisen at all. The Bombay High Court had declined to entertain the Writ Petition filed by one of the convicts by holding to consider his plea for transfer to a jail in State of Gujarat.

(ix) Interestingly, no review petition was filed against the order of this Court dated 13.05.2022 by the State of Gujarat for seeking a review of the said order but the victim - petitioner in Writ Petition (Crl.) No.491 of 2022 - had filed a review petition which has been rejected by this Court.

(x) that although the respondent No.3 who approached this Court as well as the State of Gujarat had termed the order of the Gujarat High Court dated 17.07.2019 as "impugned Order", the said order was not at all impugned or assailed in the proceedings before this Court. What was filed by the convict i.e., respondent No.3 before this Court was a writ petition under Article 32 of the Constitution seeking a direction to the State of Gujarat to consider his remission application;

(xi) More significantly, while a reference has been made to Criminal Writ Petition No.305 of 2013 filed by one of the co-accused Ramesh Rupabhai in the year 2013 before the Bombay High Court seeking a direction for transfer of the convicts from Maharashtra Jail to Gujarat Jail, the reference to the Order of the Gujarat High Court dated 17.07.2019 dismissing the writ petition filed by respondent No.3 herein directing him to approach the Maharashtra State for remission was only in the context of the said order being "diametrically opposite" to the view of the Bombay High Court without explaining and by suppression of the backgrounds under which the two writ petitions were filed before the respective High Court.

(xii) In fact, there was no pleading or prayer for seeking setting aside of the Gujarat High Court Order dated 17.07.2019 nor was there any challenge to the said Order. That said Order had attained finality as no Special Leave Petition as against the said Order was filed by the writ petitioner, Radheshyam Bhagwandas Shah respondent No.3 herein before this Court; rather he had acted upon it. Curiously, in the writ petition filed under Article 32 of the Constitution, the Order dated 17.07.2019 has been set aside even in the absence of there being any prayer thereto nor any discussion of the same.

(xiii) Further, contrary to Section 432 (7) and the judgements of the Constitution Bench and other benches of this Court, a writ of mandamus was issued to the State of Gujarat to consider the prayer of the writ petitioner for premature release in terms of its policy dated 09.07.1992. It was not brought to the notice of this Court by any party that the said policy had been cancelled and had been substituted by another policy in the year 2014. What was the effect of cancellation of the policy dated 09.07.1992 was not brought to the notice of this Court either by the writ petitioner or by the State of Gujarat.

(xiv) In Sangeet & Another vs. State of Haryana, (2013) 2 SCC 452, this Court speaking through Lokur, J., observed that a convict undergoing a sentence does not have right to get a remission of sentence but he certainly does have a right to have his case considered for the grant of remission. The term of sentence spanning the life of the convict can be curtailed by the appropriate Government for good and valid reasons in exercise of its powers under Section 432 of the CrPC. The said Section provides for some procedural and substantive checks on the arbitrary exercise of this power.

While observing that there is no decision of this Court detailing the procedure to be followed for the exercise of power under Section 432 of the CrPC, it was stated that sub-section (2) to sub-section (5) of Section 432 of the CrPC lay down the basic procedure, which is making of an application to the appropriate Government for the suspension or remission of a sentence, either by the convict

or someone on his behalf. Thus, the representation has to be made to the appropriate Government in terms of the provisions under Section 432 of the CrPC.

It was further observed that the exercise of power by the appropriate Government under sub-section (1) of Section 432 of the CrPC cannot be suo motu for the simple reason that this sub-section is only an enabling provision. In other words, the appropriate Government is enabled to "override" a judicially pronounced sentence, subject to fulfillment of certain conditions. Those conditions are found either in the jail manual or in statutory rules. Therefore, sub-section (1) of Section 432 of the CrPC cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the jail manual or the statutory rules.

On such an application being made, the appropriate Government is required to approach the Presiding Judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. There has to be an application of mind to the issue of grant of remission and the power of remission cannot be exercised arbitrarily.

It was further observed that a convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the CrPC which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the CrPC. Pursuant to the judgment in Sangeet, the Government of India vide its communication dated 01.02.2013 made to all the Home Secretaries of the States and Union Territories, stated that there is a need to relook at the manner in which remissions of sentence are made with reference to Section 432 read with Section 433-A of the CrPC and hence requested that there should be scrupulous compliance of the aforesaid provisions and not to grant remission in a wholesale manner.

Thereafter, on 08.05.2013, the Home Department, Government of Gujarat issued a Circular referring to the decision of this Court dated 20.11.2012 in Sangeet and in order to implement the same and also taking note of the communication of the Government of India dated 01.02.2013, the Circular dated 09.07.1992 was cancelled in following manner:

"Therefore, the provisions of circular No.JLK/3390/CM/16/part/2/J dated 09.07.1992 of the Home Department hereinabove referred to in Srl. No.1, hereby stand cancelled."

Thereafter, on 23.01.2014, the State Government constituted a Committee headed by the Additional Chief Secretary (Home) for considering the policy and guidelines to be followed for the purpose of remission and pre-mature release of the prisoners. After careful consideration, the State Government issued guidelines/policy for consideration of cases of remission and premature release of the prisoners. In the said policy, it was categorically mentioned that "the prisoners who are convicted for the crimes" as mentioned in Annexure-I, shall not be considered for remission. Annexure-I contained the classes of prisoners who shall not be granted state remission as well as for premature release. Clause IV (a) and (d) read as follows:

(a) A prisoner or prisoners sentenced for group murder of two or more persons.

(d) Prisoners convicted for murder with rape or gang rape.

(xv) Realising that respondent Nos.3 to 13 would not be released under the Remission Policy dated 23.01.2014, which had substituted the earlier Policy dated 09.07.1992, which had been cancelled, the writ petition was filed by respondent No.3 herein before this Court seeking a specific direction to the State of Gujarat to consider his case as per the Policy dated 09.07.1992 which had by then been cancelled and substituted by another Policy dated 23.01.2014.

(xvi) What is the effect of cancellation of the said policy by the State of Gujarat in light of the judgement of this Court in Sangeet and the communication of Union of India issued to each of the states including the State of Gujarat? Does it mean that the said policy of 09.07.1992 had stood cancelled and therefore got effaced and erased from the statute book and substituted by a new policy of 2014 which had to be considered. There was no pleading or discussion to that effect.

36.5 Thus, by suppressing material aspects and by misleading this Court, a direction was sought and issued to the respondent State of Gujarat to consider the premature release or remission of the writ petitioner, i.e., respondent No.3 on the basis of the policy dated 09.07.1992.

37. More pertinently, respondent No.3 had suppressed the fact that on the basis of the judgment of the Gujarat High Court in the writ petition that he had filed, the convict had acted upon it and had made an application to the State of Maharashtra for remission on 01.08.2019 and the said application was being processed inasmuch as the stakeholders had given their opinion on the application, such as, the Presiding Judge of the court which had convicted the

accused; the Director - CBI as well as the Director General and Inspector General of Police, State of Maharashtra who were all unanimous in their opinion inasmuch as they had all negatived grant of remission to the convict - Radheshyam Bhagwan Das. Suppressing all this, the writ petition was filed by respondent No.3 invoking Article 32 of the Constitution and the same was allowed by also setting aside the Order of the Gujarat High Court dated 17.07.2019 and thereby setting at naught the steps taken pursuant to the said Order of the Gujarat High Court.

38. At this stage, we may point out that if respondent No.3 had felt aggrieved by the order of the Gujarat High Court dated 17.07.2019, it was open to him to have challenged the said order before this Court by filing a special leave petition, but he did not do so. Rather, he complied with the order of the Gujarat High Court by filing remission application dated 01.08.2019 before the Government of Maharashtra where, not only the process for consideration of the remission prayer was initiated, but opinions of various authorities were also obtained. When the opinions were found to be negative, respondent No.3 filed Writ Petition (Crl.) No.135 of 2022 before this Court seeking a direction to the State of Gujarat to consider his remission application suppressing the above material facts. This he could not have done, thereby misrepresenting and suppressing relevant facts, thus playing fraud on this Court.

39. We have no hesitation in holding that neither the order of the Gujarat High Court dated 17.07.2019 could have been challenged by respondent No.3 or for that matter by anybody else before this Court in a writ proceeding under Article 32 of the Constitution of India nor the said order of the High Court could have been set aside in a proceeding under Article 32 thereof. This proposition of law has been settled long ago by a nine-Judge bench decision of this Court in Naresh Shridhar Mirajkar vs. State of Maharashtra, AIR 1967 SC 1, which is binding on us.

39.1. When an oral order of the learned Judge passed in the original suit of the Bombay High Court was challenged by the petitioner therein by way of a writ petition under Article 226 of the Constitution of India before the Bombay High Court, the writ petition was dismissed by a division bench of the Bombay High Court on the ground that the impugned order was a judicial order of the High Court and was not amenable to writ jurisdiction under Article 226.

Thereafter, the petitioner therein moved this Court under Article 32 of the Constitution of India for enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution of India. This Court observed that the impugned order was passed by the learned Judge in the course of trial of a suit before him after hearing the parties. This Court took the view that the restraint

order was passed to prohibit publication of evidence in the media during the progress of the trial and could not be construed as imposing a permanent ban on the publication of the said evidence.

39.2. The question which fell for consideration before this Court was whether a judicial order passed by the High Court prohibiting the publication in newspapers of evidence given by a witness pending the hearing of the suit, was amenable to be corrected by a Writ of Certiorari of this Court under Article 32 of the Constitution of India. In the above context, this Court first held that a judicial verdict pronounced by a court in a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1) of the Constitution of India.

Thereafter, this Court proceeded to hold that if any judicial order was sought to be attacked on the ground that it was inconsistent with Article 14 or any other fundamental rights, the proper remedy to challenge such an order would be by way of an appeal or revision as may be provided by law. It would not be open to the aggrieved person to invoke the jurisdiction of this Court under Article 32 of the Constitution and to contend that a Writ of Certiorari should be issued to quash such an order.

This Court observed that it would be inappropriate to allow the petitioners to raise the question about the jurisdiction of the High Court to pass the impugned order in a proceeding under Article 32. Rejecting the argument of the petitioners, this Court held that judicial orders passed by High Courts in or in relation to proceedings pending before the High Courts are not amenable to be corrected by this Court exercising jurisdiction under Article 32 of the Constitution of India. This being the law of the land, it is binding on all the courts including benches of lesser coram of this Court.

40. Before proceeding further, it may also be mentioned that it was only respondent No.3 who had approached this Court by filing a writ petition under Article 32 of the Constitution of India being Writ Petition (Crl.) No.135 of 2022, seeking a direction to the State of Gujarat to consider his pre-mature release. None of the other convicts, i.e. respondent Nos.4 to 13 had approached this Court or any High Court seeking such a relief. Therefore, in so far these respondents are concerned, there was no direction of this Court or any court to the State of Gujarat to consider their pre-mature release.

41. We are of the considered view that the writ proceedings before this Court is pursuant to suppression and misleading of this Court and a result of suppressio veri suggestio falsi. Hence, in our view, the said order was obtained by fraud played on this Court and hence, is a nullity and non est in law. In view of the

aforesaid discussion, we hold that consequently the order dated 13.05.2022 passed by this Court in Writ Petition (Crl.) No.135 of 2022 in the case of Radheshyam Bhagwandas Shah is hit by fraud and is a nullity and non est in the eye of law and therefore cannot be given effect to and hence, all proceedings pursuant to the said order are vitiated.

42. It is trite that fraud vitiates everything. It is a settled proposition of law that fraud avoids all judicial acts. In S.P. Chengalvaraya Naidu vs. Jagannath (Dead) through LRs, (1994) 1 SCC 1 ("S.P. Chengalvaraya Naidu"), it has been observed that "fraud avoids all judicial acts, ecclesiastical or temporal." Further, "no judgment of a court, no order of a minister would be allowed to stand if it has been obtained by fraud. Fraud unravels everything" vide Lazarus Estates Ltd. vs. Beasley, (1956) 1 ALL ER 341 ("Lazarus Estates Ltd.").

43. It is well-settled that writ jurisdiction is discretionary in nature and that the discretion must be exercised equitably for promotion of good faith vide State of Maharashtra vs. Prabhu, (1994) 2 SCC 481 ("Prabhu"). This Court has further emphasized that fraud and collusion vitiate the most solemn precedent in any civilized jurisprudence; and that fraud and justice never dwell together (fraus et jus nunquam cohabitant). This maxim has never lost its lustre over the centuries. Thus, any litigant who is guilty of inhibition before the Court should not bear the fruit and benefit of the court's orders. This Court has also held that fraud is an act of deliberation with a desire to secure something which is otherwise not due. Fraud is practiced with an intention to secure undue advantage. Thus, an act of fraud on courts must be viewed seriously.

43.1. Further, fraud can be established when a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii), recklessly, being careless about whether it be true or false. While suppression of a material document would amount to a fraud on the Court, suppression of material facts vital to the decision to be rendered by a court of law is equally serious. Thus, once it is held that there was a fraud in judicial proceedings all advantages gained as a result of it have to be withdrawn. In such an eventuality, doctrine of res judicata or doctrine of binding precedent would not be attracted since an order obtained by fraud is non est in the eye of law.

43.2. In K.D. Sharma vs. Steel Authority of India Limited, (2008) 12 SCC 481 ("K.D. Sharma"), this Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts

or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. It was held thus:

"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court Under Article 32 or of a High Court Under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him.

He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The Petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the Rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

43.3. In K. Jayaram vs. Bangalore Development Authority, 2021 SCC OnLine SC 1194 ("K. Jayaram"), a bench of this Court headed by Sri Nazeer, J. noticed that the appellants therein had not come to the Court with clean hands. The appellants in the said case had not disclosed the filing of a suit and its dismissal and also the dismissal of the appeal against the judgment of the Civil Court.

This Court stressed that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject matter of dispute which is within their knowledge in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement.

This Court observed that since the appellants therein had not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants had to be non-suited on the ground of suppression of material facts. They had not come to the court with clean hands and they had also abused the process of law, therefore, they were not entitled to the extraordinary, equitable and discretionary relief.

43.4. A Division Bench of this Court comprising Justice B. R. Gavai and Justice C.T. Ravikumar placing reliance on the dictum in S.P. Chengalvaraya Naidu, held in Ram Kumar vs. State of Uttar Pradesh, AIR 2022 SC 4705, that a judgment or decree obtained by fraud is to be treated as a nullity.

44. We wish to consider the case from another angle. The order of this Court dated 13.05.2022 is also per incuriam for the reason that it fails to follow the earlier binding judgments of this Court including that of the Constitution Bench in V. Sriharan vis-Ã -vis the appropriate Government which is vested with the power to consider an application for remission as per sub-section (7) of Section 432 of the CrPC and that of the nine Judge Bench decision in Naresh Shridhar Mirajkar that an order of a High Court cannot be set aside in a proceeding under Article 32 of the Constitution.

44.1. In State of U.P. vs. Synthetics and Chemicals Ltd., (1991) 4 SCC 139 ("Synthetics and Chemicals Ltd."), a two Judge Bench of this Court (speaking through Sahai J. who also wrote the concurring judgment along with Thommen, J.) observed that the expression per incuriam means per ignoratium. This principle is an exception to the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'.

It would result in a judgment or order which is per incuriam. In the case of Synthetics and Chemicals Ltd., the High Court relied upon the observations in paragraph 86 of the judgment of the Constitution Bench in Synthetics and Chemicals Ltd., namely, "sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol" and struck down the levy.

In Synthetics and Chemicals Ltd., before the two-judge bench, it was categorically argued by the learned Advocate General appearing for the appellant State of Uttar Pradesh that the reference to "sales tax" in the judgment of this Court in the earlier round of the litigation was accidental and did not arise from the judgment. This was because the levy of sales tax was not in question at any stage of the arguments nor was the question considered as it was not in

issue. The Court gave no reason whatever for abruptly stating that "sales tax was not leviable by the State by reason of the Ethyl Alcohol (Price Control) Orders."

In fact, the question which arose for consideration in the earlier litigation was in regard to the validity of "vend fee and other fees" charged by the States. The argument was that such impost, to the extent that it fell on industrial alcohol, encroached upon the legislative field reserved for Parliament in respect of a controlled industry coming under Entry 52 of List I (read with Entry 33 of List III).

Vend fee or transport fee and similar fees, unless supported by quid pro quo, this Court held, interfered with the control exercised by the Central Government under the Industries (Development and Regulation) Act, 1951 (for short "IDR Act, 1951") and the various orders made thereunder with respect to prices, licences, permits, distribution, transport, disposal, acquisition, possession, use, consumption, etc., of articles related to a controlled industry, industrial alcohol being one of them. But none of the observations in the judgment warranted the abrupt conclusion, to which the court came, that the power to levy taxes on sale or purchase of goods referable to Entry 54 of List II was curtailed by the control exercised by the Central Government under the IDR Act.

The casual reference to sales tax in the concluding portion of the judgment was accidental and per incuriam was the submission. While considering the said plea, this Court observed that "the only question which had to be determined between the same parties reported in (1990) 1 SCC 109 (Synthetics and Chemicals Ltd. vs. State of U.P.) was "whether intoxicating liquor in Entry 8 in List II was confined to potable liquor or includes all liquors." Answering this question, this Court categorically held that intoxicating liquor within the meaning of Entry 8 of List II was confined to potable liquor and did not include industrial liquor.

This Court did not deal with the taxing power of the State under Entry 54 of List II which deals with 'taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I'. The power of the State to levy taxes on sale or purchase of goods under that entry was not the subject matter of discussion by this Court although in paragraph 86 of the leading judgment of this Court, there was a reference to sales tax. Therefore, the only question that was considered by the sevenjudge bench of this Court was whether the State could levy "excise duty" or "vend fee" or "transport fee" and the like by recourse to Entry 51 or 8 in List II in respect of industrial alcohol. Entry 52 List II was not applicable to fee or charges in question.

Entry 52 List II refers to "Taxes on the entry of goods into a local area for consumption, use or sale therein". Further, the observation that sales tax cannot

be charged by the State on industrial alcohol was an abrupt observation without a preceding discussion, and inconsistent with the reasoning adopted by this Court in earlier decisions from which no dissent was expressed on the point. However, the aforesaid observation with reference to Entry 52 of List II in connection with excise duty and sales tax when neither falls under that entry, was held to be per incuriam.

This was because this Court by a detailed discussion in the seven-judge bench decision had observed that the impugned statutory provisions purportedly levying fees or enforcing restrictions in respect of industrial alcohol were impermissible in view of the control assumed by the Central Government in exercise of its power under Section 18-G of the IDR Act in respect of a declared industry falling under Entry 52 of List I, read with Entry 33 of List III. It was in the above background that this Court considered the question whether or not the power of the State to levy tax on the sale or purchase of goods falling under Entry 54 of List II would comprehend industrial alcohol.

This was because the taxing power under Entry 54 of List II was subject to taxing power of the Parliament under Entry 92-A of List I. Therefore, it was observed that the provisions in question by which sales tax could be levied within the scope and ambit of Entry 54 List II was contrary to what had been stated (in paragraph 86) by the seven-judge bench decision between the same parties. It was observed that the aforesaid decision of this Court was not an authority for the proposition canvassed by the assessee in challenging the provision.

This Court could not have intended to say that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods. The reference to sales tax in paragraph 86 of that judgment was merely accidental or per incuriam and therefore, had no effect. In the earlier litigation of Synthetics and Chemicals Ltd., the question was whether the State Legislature could levy vend fee or excise duty on industrial alcohol.

The seven-Judge Bench answered in the negative as industrial alcohol being unfit for human consumption, the State legislature was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the Seventh Schedule. While doing so, the Bench recorded the above conclusion. It was not preceded by any discussion. No reason or rationale could be found in the judgment. Therefore, it was held by the two-Judge Bench that the same was per incuriam and was liable to be ignored in a subsequent matter between the same parties.

The courts have taken recourse to this principle for relieving from injustice being perpetrated by unjust precedents. It was observed that uniformity and consistency are core of judicial discipline. But, if a decision proceeds contrary to the law declared, it cannot be a binding precedent. It was further observed that the seven-Judge Bench in Synthetics and Chemicals Ltd. did not discuss the matter and had observed that the State cannot levy sales tax on industrial alcohol. In the subsequent matter which arose from the High Court between the same parties, it was held by this Court that the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol was per incuriam and also covered by the rule of sub-silentio and therefore, was not a binding authority or precedent.

Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the rule of precedents which are expressed by the doctrines of per incurium and sub silentio. Incuria legally means carelessness and per incurium may be equated with per ignorantium. If a judgment is rendered in ignorantium of a statute or a binding authority, it becomes a decision per incurium.

Thus, a decision rendered by ignorance of a previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law is per incurium. Such a per incurium decision would not have a precedential value. If a decision has been rendered per in curium, it cannot be said that it lays down good law, even if it has not been expressly overruled vide Mukesh K. Tripathi vs. Senior Divisional Manager, LIC, (2004) 8 SCC 387 (para 23). Thus, a decision per incurium is not binding.

44.2. Another exception to the rule of precedents is the rule of subsilentio. A decision is passed sub-silentio when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the court and it does not form part of the ratio decidendi it is not binding vide Amrit Das vs. State of Bihar, (2000) 5 SCC 488.

45. One of the contentions raised in the present case was that since this Court in the order dated 13.05.2022 had directed that the State of Gujarat was the appropriate Government, the same was binding on the parties even though it may be contrary to the earlier decisions of this Court.

We cannot accept such a submission having regard to what has been observed above in the case of Synthetics and Chemicals Ltd. which was also with regard to the application of the same doctrine between the very same parties inasmuch as when a judgment has been delivered per incuriam or passed subsilentio, the same cannot bind either the parties to the judgment or be a binding precedent for

the future even between the same parties. Therefore, for this reason also, the order dated 13.05.2022 would not bind the parties thereto and particularly, to the petitioner in Writ Petition (Crl.) No.491 of 2022 who was in any case not a party to the said writ proceeding.

46. Having regard to the above discussion and in light of the provisions of the CrPC, the judgments of this Court and our own understanding of the order dated 13.05.2022 passed by a coordinate Bench of this Court in Writ Petition No.135 of 2022, we hold as follows:

(i) that the Government of State of Gujarat (respondent No.1 herein) had no jurisdiction to entertain the applications for remission or pass the orders of remission on 10.08.2022 in favour of respondent No.3 to 13 herein as it was not the appropriate Government within the meaning of sub-section (7) of Section 432 of the CrPC;

(ii) that this Court's order dated 13.05.2022 being vitiated and obtained by fraud is therefore a nullity and non est in law. All proceedings taken pursuant to the said order also stand vitiated and are non est in the eye of law.

47. Point No.3 is accordingly answered.

Point No.4 : Whether the impugned order of remission passed by the respondent - State of Gujarat in favour of respondent Nos.3 to 13 are in accordance with law?

48. We have perused the original record which is the English translation from Gujrati language.

48.1. Even according to the respondent State of Gujarat Radheshyam Bhagwandas Shah has not made any application seeking remission before the Superintendent, Godhra Sub-Jail or the State of Gujarat on 01.08.2019.

48.2. All the other applications were made even prior to the order of this Court made in Writ Petition (Crl.) No.135 of 2022 on 13.05.2022. Within next few days i.e. on 26.05.2022, the Jail Advisory Committee gave its opinion recommending grant of remission. The recommendation of ADG and IG of Jails was received in almost cases on 09.06.2022. In two cases,

(i) the recommendation of the ADG and IG was received on 18.08.2021 and 09.06.2021 [in the case of Govind Bhai Akham Bhai Nai (Raval)] and

(ii) on 18.08.2021 [in the case of Radheyshyam Bhagwandas Shah].

48.3. The communication of the State Government to the Central Government was made on 28.06.2022; the second respondent Union of India gave its concurrence on 11.07.2022; and, the order of remission was made on 10.08.2022.

48.4. We extract one of the orders of remission dated 10.08.2022 in the case of respondent No.3 as under:

"GOVERNMENT OF GUJARAT
Order Number JLK/83202/2978/J
Secretariat House, Gandhinagar,
Dated: 10/08/2022.

Reference:

(1) Order of the Hon'ble Supreme Court date:13/05/2022, Writ Petition (Criminal) No.135/2022.

(2) The Additional Director General of Police and Inspector General of Prisons, State of Gujarat, Ahmedabad/letter dated:17/06/2022 No:- JUD/14 Year/2/4754/2022.

(3) Department Circular Date: 09/7/1992, No.JLK/3390/CM/16/Part-2/J.

(4) Ministry of Home, The Government of India, Letter dated: 11/07/2022, No.15/05/2022/JC-II

::FORWARD::

Mr. Radheshyam Bhagwandas Shah, From Godhra Sub Jail filed Writ Petition in the Hon'ble Supreme Court as per reference No.1 and Hon'ble Supreme Court passed order to take decision as per policy mentioned in reference No.3 within two months regarding Pre-mature release application of Mr. Shah. The premature release proposal was prepared and sent by the Additional Director General of Police and Inspector General of Prisons as per the letter of reference No.2.

The provision under Section 432 of CrPC the State Government has power for pre-mature release, however provision under Section 435(1)(A) of CrPC. Indicates that any case investigated by any agency which is established by Union Government Rules, in those cases it is need to be consulted with Central Government is required.

This case was investigated by CBI, therefore the State Government of Gujarat in consultance with Central Government letter dated 28/06/2022. Pursuant to which the Ministry of Home Affairs of the Government of India has given a positive opinion regarding the release of the prisoner from the letter reference (4), considering all the details, the release of Mr. Radheshyam Bhagwandas Shah was under consideration.

::ORDER::

Provision under Criminal Procedure Code, 1973 Section 443(A), power given to State Government under Section 432 of Criminal Procedure Code, 1973, the convict prisoner Radheshyam Bhagwandas Shah's life sentence remitted under the following conditions and taken decision by Government to release him from immediate effect.

::CONDITIONS::

(1) He shall to furnish surety of two gentlemen about after releasing him, he will behave good up to two years and also given undertaking he will not breach public peace and harass parties and witnesses.

(2) After being released from prison if he commits cognizable offense causing grievous hurt to anyone or property then he may be re-arrested and shall serve the remaining of his sentence.

(3) After released from jail he must give his attendance in nearest police station, once in a month till one year. The jail authority shall read and explain above conditions to him and before releasing him, prior to his release from prison, the jail authority must keep a written record indicating that he has understood the said conditions and that he agrees to these conditions of release from prison.

By order of the Governor of Gujarat and in his name.

--sd--
(Mayursinh Vaghela)
Under Secretary
Home Department."

48.5. Though we have extracted one of the remission orders, we observe that having given our categorical finding on Point No.3, it may not be necessary to dilate on certain aspects of Point No.4, though it is quite evident that the said order is a non-speaking one reflecting complete non-application of mind. All orders dated 10.08.2022 are a stereotyped and cyclostyled orders.

48.6. Be that as it may, it would be useful to refer to the following judgments in the context of passing an order of remission in terms of Section 432 read with Section 435 of the CrPC.

(a) V. Sriharan is a judgment of this Court wherein the Constitution Bench answered seven questions out of which the following questions are relevant for the purposes of this case:

"8.3. (iii) Whether the power under Sections 432 and 433 of the Criminal Procedure Code by the appropriate Government would be available even after the constitutional power under Articles 72 and 161 by the President and the Governor is exercised as well as the power exercised by this Court under Article 32?

8.4. (iv) Whether the State or the Central Government have the primacy under Section 432(7) of the Criminal Procedure Code?

8.5. (v) Whether there can be two appropriate Governments under Section 432(7)?

8.6. (vi) Whether power under Section 432(1) can be exercised suo motu without following the procedure prescribed under Section 432(2)?

8.7. (vii) Whether the expression "consultation" stipulated in Section 435(1) really means "concurrence"?"

(i) This Court observed that the procedure to be followed under Section 432(2) is mandatory and that suo moto power of remission cannot be exercised under Section 432(1) and it can only be initiated by an application of the person convicted as provided under Section 432(2) and the ultimate order of suspension of sentence or remission should be guided by the opinion to be rendered by the Presiding Officer of the Court concerned. In this case the earlier judgement of this court in Sangeet was approved.

(b) In Sangeet, it was observed that a convict undergoing a sentence does not have a right to get remission of sentence, however, he certainly does have a right to have his case considered for the grant of remission as held in Mahender Singh and Jagdish. It was further observed in the said case that there does not seem to be any decision of this Court detailing the procedure to be followed for the exercise of power under Section 432 of the CrPC which only lays down the basic procedure i.e. by making an application to the appropriate Government for the suspension or remission of a sentence, either by the convict or someone on his behalf.

It was observed that sub-section (1) of Section 432 of the CrPC is only an enabling provision to override a judicially pronounced sentence, subject to the fulfilment of certain conditions. These conditions are found either in the Jail Manual or in statutory rules. It was pertinently observed that when an application for remission is made the appropriate Government may take a decision on the remission application and pass orders granting remission subject to certain conditions or, refuse remission.

But there has to be an application of mind on the remission application so as to eliminate discretionary en-masse release of convicts on "festive" occasions, since each release requires a case by case scrutiny. It was observed that the power of remission cannot be exercised arbitrarily and the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure under Section 432 of the CrPC provides a check on the possible misuse of power of the appropriate Government.

(i) It was further observed that there is a misconception that a prisoner serving a life sentence has an indefeasible right to be released on completion of fourteen years or twenty years of imprisonment; however, in reality, the prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the CrPC which, in turn, is subject to the procedural checks in that section and the substantive check in Section 433-A of the CrPC.

That the application of Section 432 of the CrPC to a convict is limited inasmuch as, a convict serving a definite term of imprisonment is entitled to earn a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. The said period is then offset against the term of punishment given to him. Thus, upon completion of the requisite period of incarceration, a prisoner's release is automatic. However, Section 432 of the CrPC will apply only when a convict is to be given an "additional" period of remission for his release i.e., the period to what he has earned as per the Jail Manual or the statutory rules.

That in the case of convict undergoing life imprisonment, the period of custody is indeterminate. Remissions earned or awarded to such a life convict are only notional and Section 432 of the CrPC reduces the period of incarceration by an order passed by an appropriate Government which cannot be reduced to less than fourteen years as per Section 433-A of the CrPC. This Court after a detailed discussion came to the following conclusions on the aspect of grant of remissions:

"77.5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

77.6. Remission can be granted under Section 432 Cr.P.C. in the case of a definite term of sentence. The power under this section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 Cr.P.C. can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

77.7. Before actually exercising the power of remission under Section 432 Cr.P.C. the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner."

(c) Ram Chander was a case of a writ petition being filed before this Court under Article 32 of Constitution seeking a direction to the respondent-State therein to grant him premature release. This Court speaking through Dr. D.Y. Chandrachud., J., (presently the learned Chief Justice) considered the aspect of judicial review of power of remission and referred to Mohinder Singh to observe that the power of remission cannot be exercised arbitrarily and the decision to grant remission should be informed, reasonable and fair. In this context, reliance was placed on Laxman Naskar wherein this Court, stipulated the factors that govern the grant of remission namely:

i. Whether the offence is an individual act of crime without affecting the society at large?

ii. Whether there is any chance of future recurrence of committing crime?

iii. Whether the convict has lost his potentiality in committing crime?

iv. Whether there is any fruitful purpose of confining this convict any more?

v. Socio-economic condition of the convict's family."

(i) That while grant of remission is the exclusive prerogative of the executive, the Court cannot supplant its view. The Court can direct the authorities to reconsider the representation of the convict vide Rajan. Therefore, while there can be no direction to release a prisoner forthwith or to remit the remaining sentence, at best there can only be a direction issued to the State to consider the

representation made for remission expeditiously on its own merits and in accordance with law.

In this case, reliance was placed on Halsbury's Law of India (Administrative Law) to observe that sufficiency of reasons, in a particular case, depends on the facts of each case while considering an application for remission. It was further observed that mechanical or stereo typed reasons are not adequate as also, a mere repetition of the statutory language in the order will not make the order a reasoned one. In the aforesaid case, the application for remission was directed to be reconsidered with adequate reasoning and taking into consideration all the relevant factors that govern the grant of remission as laid down in Laxman Naskar.

(d) Epuru Sudhakar is also a case where a writ petition was filed under Section 32 of the Constitution challenging an order of Government of Andhra Pradesh, whereby a convict (respondent No.2 therein) was granted remission of unexpired period of about seven years' imprisonment. The petition was filed by the son of the murdered persons while the convict was on bail in the murder case of petitioner No.1's father therein.

In the writ petition it was alleged, inter alia, that the grant of remission was illegal as relevant materials were not placed before the Governor and the impugned order was made without application of mind and based on irrelevant and extraneous materials and therefore, liable to be set aside. That was a case where remission or grant of pardon was under Article 161 of the Constitution by the Governor of the State of Andhra Pradesh.

This Court, while considering the philosophy underlining the power of pardon or the power of clemency observed that the said power exercised by a department or functionary of the Government is in the context of its political morality. Reliance was placed on Biddle, Warden vs. Perovich, 274 US 480 (1927) ("Biddle") in which case, Holmes, J of the United States Supreme Court had observed on the rationale of pardon in the following words:

"a pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."

(i) It was observed that the prerogative of mercy exercised by a State as a prerogative power of a Crown as in England (U.K.) or of the President of India or Governor of a State in India is reviewable as an administrative action in case there is an abuse in the exercise of the prerogative power. That the prerogative

power to pardon or grant clemency or for that matter remission of sentence being a discretionary power, it must be exercised for the public good and the same can be examined by the Courts just as any other discretionary power which is vested with the executive. Therefore, judicial review of the exercise or nonexercise of the power of pardon by the President or Governor is available in law.

That any exercise of public power, including constitutional power, shall not be exercised arbitrarily or mala fide vide Maru Ram. It was observed in the said case that, considerations of religion, caste, colour or political loyalty are totally irrelevant and fraught with discrimination. The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power or is vitiated by self-denial or an erroneous appreciation of the full amplitude of the power, is a matter for the Court to de cide vide Kehar Singh vs. Union of India, (1989) 1 SCC 204 ("Kehar Singh").

(ii) In Epuru Sudhakar, two other aspects were also considered: one relating to the desirability of indicating reasons in the order granting pardon/remission and the other, relating to the power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. It was observed that the affected party need not be given the reasons but that does not mean that there should not be legitimate or relevant reasons for passing the order. It was also observed that in the absence of any specific reference under Articles 72 or 161 of Constitution with regard to withdrawal of an order of remission, there is no bar for such power being exercised.

(iii) On a consideration of the facts of the said case, it was observed that, irrelevant and extraneous materials had entered into the decision-making process, thereby vitiating it. The order granting remission impugned in the writ petitions was set aside being unsustainable and directed to be reconsidered and the writ petition was allowed to that extent. Kapadia, J., as the learned Chief Justice then was, in his concurring opinion observed that, exercise of executive clemency is a matter of discretion and yet subject to certain standards. The discretion has to be exercised or public considerations allowed. Therefore, the principle of exclusive cognizance would not apply when the decision impugned is in derogation of a constitutional provision. It was further stated that granting of pardon has the effect of eliminating conviction without addressing the defendant's guilt or innocence.

(iv) The exercise of the prerogative power is subject to judicial review and rule of law which is the basis for evaluation of all decisions. Rule of law cannot be compromised on the grounds of political expediency as "to go by such

consideration would be subversive of the fundamental principles of rule of law and it would amount to setting a dangerous precedent."

(e) In Mansukhlal Vithaldas Chauhan vs. State of Gujarat, (1997) 7 SCC 622, the basis on which the legality of an administrative decision could be reviewed was stated. It could be on whether, a decision making authority exceeding its powers committed an error of law; committed a breach of rules of natural justice; reached a decision which no reasonable tribunal would have reached or abused its powers.

In other words, the judicial review of the order of the President or the Governor under Article 72 or Article 161 of the Constitution, as the case may, is available and such orders can be impugned on the following grounds: i. that the order has been passed without application of mind; ii. that the order is mala fide; iii. that the order has been passed on extraneous or wholly irrelevant considerations; iv. that relevant materials have been kept out of consideration; v. that the order suffers from arbitrariness.

(f) Further, in Swamy Shraddananda, it was observed that judicial notice has to be taken of the fact that remission, if allowed to life convicts in a mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of early release of a particular convict on the society. It was further observed that, the power of executive clemency is not only for the benefit of the convict but what has to be borne in mind is the effect of the decision on the family of the victims, society as a whole and the precedent which it sets for the future.

Thus, the exercise of power depends upon the facts and circumstances of each case and has to be judged from case to case. Therefore, one cannot draw the guidelines for regulating exercise of power. Further, the exercise or non-exercise of power of pardon or remission is subject to judicial review and a pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review and the vindication of the rule of law being the main object of judicial review, the mechanism for giving effect to that justification varies. Thus, rule of law should be the overarching conditional justification for judicial review.

(g) In Rajan, it was observed that where a person has been convicted on several counts for different offences in relation to which life imprisonment has been granted, the convict may succeed in being released prematurely only if the competent authority passes an order of remission concerning all the life sentences awarded to the convict on each count which is a matter to be considered by the competent authority.

48.7. With regard to the remission policy applicable in a given case, the following judgments are of relevance:

(a) In Jagdish, a three Judge Bench of this Court considered the conflicting opinions expressed in State of Haryana vs. Balwan, (1999) 7 SCC 355 ("Balwan") on the one hand and Mahendar Singh, and State of Haryana vs. Bhup Singh, (2009) 2 SCC 268 ("Bhup Singh") on the other. The question considered by the three- Judge bench was, whether, the policy which provides for remission and sentence should be that which was existing on the date of the conviction of the accused or should it be the policy that existed on date of consideration of his case for premature release by the appropriate authority.

Noting that remission policy would be changed from time to time and after referring to the various decisions of this Court, including Gopal Vinayak Godse and Ashok Kumar, this Court observed that, liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as an objective of punishment become a paramount importance in a welfare State.

The State has to achieve the goal of protecting the society from the convict and also rehabilitate the offender. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activities and is required to be rehabilitated. Thus, punishment should not be regarded as the end but only a means to an end. Relevancy of circumstances to an offence such as the state of mind of the convict when the offence was committed, are factors to be taken note of. It was further observed as under:

"46. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances."

(i) That the executive power of clemency gives an opportunity to the convict to reintegrate into the society. However, the power of clemency must be pressed into service only in appropriate cases. Ultimately, it was held that the case for remission has to be considered on the strength of the policy that was existing on the date of conviction of the accused. It was further observed that in case no liberal policy prevails on the date of consideration of the case of a convict under

life imprisonment for premature release, he should be given the benefit thereof subject of course to Section 433-A of the CrPC.

48.8. At this juncture, it is relevant to refer to the following decisions of this Court, wherein orders of remission have been quashed and set aside by this Court on various grounds:

(a) In Swaran Singh vs. State of Uttar Pradesh, (1998) 4 SCC 75, a three-Judge Bench of this Court considered the question as to scope of judicial review of an order of a Governor under Article 161 of the Constitution of India. In the said case, a Member of the Legislative Assembly of the State of Uttar Pradesh had been convicted of the offence of murder and within a period of less than two years, he was granted remission from the remaining long period of his life sentence.

The son of the deceased moved the Allahabad High Court challenging the aforesaid action of the Governor and the same having been dismissed, the matter had been brought to this Court. This Court noticed that the Governor exercised the power to grant remission, without being appraised of material facts concerning the prisoner, such as, his involvement in five other criminal cases of serious nature, the rejection of his earlier clemency petition and the report of the jail authority that his conduct inside the jail was far from satisfactory and that out of the two years and five months he was supposed to have been in jail, he was in fact out on parole during the substantial part thereof.

The Court further held that when the Governor was not in the know of material facts, the Governor was deprived of the opportunity to exercise the power to grant remission in a fair and just manner and that the order granting remission fringed on arbitrariness. Therefore, the order of the Governor granting remission, was quashed, with a direction to re-consider the petition of the prisoner in light of the materials which the Governor had no occasion to know earlier. As regards the question as to the power of judicial review over an order passed by the Governor under Article 161 of the Constitution, the following observations were made:

"10. A Constitution Bench of this Court has considered the scope of judicial review of exercise of powers under Articles 72 and 161 of the Constitution of India in Kehar Singh v. Union of India (1989) 1 SSC 204. The bench after observing that the Constitution of India is a constitutive document which is fundamental to the governance of the country under which people of India have provided a constitutional polity consisting of certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution, proceeded to add thus:

"All power belongs to the people and it is entrusted by them to specified institutions and functionaries with the intention of working out, maintaining and operating a constitutional order."

The Constitution Bench laid down that judicial review of the Presidential order cannot be exercised on the merits except within the strict limitations defined in Maru Ram v. Union of India (1981) 1 SCC 107. The limitations of judicial review over exercise of powers under Articles 72 and 161 of the Constitution have been delineated in the said decision by the constitution Bench. It has been observed that "all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide, and ordinarily guidelines for fair and equal execution are guarantors of valid play of power."

The bench stressed the point that the power being of the greatest moment, cannot be a law unto itself but it must be informed by the finer canons of constitutionalism.

11. It was therefore, suggested by the bench to make rules for its own guidance in the exercise of the pardon power keeping a large residuary power to meet special situations or sudden developments.

12. In view of the aforesaid settled legal position, we cannot accept the rigid contention of the learned counsel for the third respondent that this Court has no power to touch the order passed by the Governor under Article 161 of the constitution. If such power was exercised arbitrarily, mala fide or in absolute disregard of the finer canons of the constitutionalism, the by-product order cannot get the approval of law and in such cases, the judicial hand must be stretched to it."

(underlining by us)

(b) In Joginder Singh vs. State of Punjab, (2001) 8 SCC 306 the facts were that the respondents-convicts therein were convicted for offences punishable under Sections 324, 325 and 326 read with Section 34 of the IPC and had been awarded a sentence of one year and six months which was challenged upto the High Court of Punjab and Haryana and was confirmed. On the dismissal of the Revision Petition by the High Court, the convicts surrendered before the Superintendent of the concerned jail and on the same day were released by the jail authorities on being granted the benefit of remission.

It is of importance to note that during the period of trial ending with confirmation of conviction in the Revision Petition by the High Court, the convicts (earlier accused) were almost all at the time out on bail except for a period of about 2 months and 25 days when they were in jail, serving part of

their sentence. The appellant before this Court, who was the complainant, unsuccessfully challenged the remission order before the High Court and thereafter approached this Court by way of a Special Leave Petition.

The primary ground of challenge before this Court was that the periods of remission permissible under successive notifications issued between 13.07.1988 and 29.07.1998 (period between date of conviction by the Chief Judicial Magistrate and the date on which the conviction and sentence was upheld by the High Court) were cumulatively allowed to the convicts.

That is to say that the maximum period of remission permissible under each of the seven notifications issued between the said dates was to be cumulatively taken into account to grant a total remission of 17 and a half months. It was contended before this Court that the said approach was erroneous in construing successive policies of remission. It was further contended that while applying the period of remission granted by the Government under any remission notification, the period during which an accused person was out on bail cannot be taken into account.

(i) This Court while allowing the appeal of the appellant therein-complainant held that the High Court fell in error in holding that the convicts were entitled to the benefit of the period of remission given by the various notifications cumulatively to be counted against the period during which they were out on bail.

(c) In Satpal, the order of the Governor granting remission to convicts therein, in the exercise of power conferred by Article 161 of the Constitution of India read with Section 132 of the Code of Criminal Procedure was assailed by the brother and widow of the deceased. The primary ground raised before this Court was that the power to grant remission was exercised without application of mind, and that the said power was exercised by the Governor having regard to extraneous considerations and even without the aid and advice of the Government, namely, the concerned Minister.

This Court examined the said case having regard to the parameters of judicial review in relation to an order granting remission by the Governor. It was noted that the Governor had proceeded to grant remission of sentence without any knowledge as to the period of sentence already served by the convicts and if at all they had undergone any period of imprisonment. It was noted that an order granting remission would be arbitrary and irrational if passed without knowledge or consideration of material facts.

49. On a reading of the aforesaid judgments what emerges is that the power to grant remission on an application filed by the convict or on his behalf, is ultimately an exercise of discretion by the appropriate Government. It is trite that where there is exercise of legal power coupled with discretion by administrative authorities, the test is, whether, the authority concerned was acting within the scope of its powers.

This would not only mean that the concerned authority and in the instant case, the appropriate Government had not only the jurisdiction and authority vested to exercise its powers but it exercised its powers in accordance with law i.e., not in an arbitrary or perverse manner without regard to the actual facts or unreasonably or which would lead to a conclusion in the mind of the Court that there has been an improper exercise of discretion. If there is improper exercise of discretion, it is an instance of an abuse of discretion.

There can be abuse of discretion when the administrative order or exercise of discretion smacks of mala fides or when it is for any purpose based on irrelevant consideration by ignoring relevant consideration or it is due to a colourable exercise of power; it is unreasonable and there is absence of proportionality. There could also be an abuse of discretion where there is failure to apply discretion owing to mechanical exercise of power, non-application of mind, acting under dictation or by seeking assistance or advice or there is any usurpation of power.

49.1. It is not necessary to dilate upon each of the aforesaid aspects of abuse of discretion in the instant case, as we have observed that the consideration of the impugned orders or manner of exercise of powers is unnecessary, having regard to the answer given by us to Point No.3.

50. However, it would be relevant to refer to one aspect of abuse of discretion, namely, usurpation of power. Usurpation of power arises when a particular discretion vested in a particular authority is exercised by some other authority in whom such power does not lie. In such a case, the question whether the authority which exercised discretion was competent to do so arises.

50.1. Applying the said principle to the instant case, we note that having regard to the definition of "appropriate Government" and the answer given by us to Point No.3, the exercise of discretion and the passing of the impugned orders of remission in the case of respondent Nos.3 to 13 herein was an instance of usurpation of power.

It may be that this Court by its order dated 13.05.2022 passed in Writ Petition No.135 of 2022 had directed the first respondent State of Gujarat to consider the

case of respondent No.3 under the 1992 Policy of the State of Gujarat, by setting aside the order of the High Court of Gujarat dated 17.07.2019. What is interesting is that in the said writ petition, the State of Gujarat had correctly submitted before this Court that the appropriate Government in the instant case was State of Maharashtra and not the State of Gujarat.

The said contention was in accordance with the definition of appropriate Government under clause (b) of subWrit section (7) of Section 432 of the CrPC. However, the said contention was rejected by this Court contrary to several judgments of this Court including that of the Constitution Bench in V. Sriharan. But the State of Gujarat failed to file a review petition seeking correction of the order of this Court dated 13.05.2022, (particularly when we have now held that the said order is a nullity). Complying with the said order can also be said to be an instance of usurpation of power when the provision, namely, clause (b) of sub-section (7) of Section 432 states otherwise.

50.2. We fail to understand as to, why, the State of Gujarat, first respondent herein, did not file a review petition seeking correction of the order dated 13.05.2022 passed by this Court in Writ Petition No.135 of 2022 in the case of respondent No.3 herein. Had the State of Gujarat filed an application seeking review of the said order and impressed upon this Court that it was not the "appropriate Government" but the State of Maharashtra was the "appropriate Government", ensuing litigation would not have arisen at all.

On the other hand, in the absence of filing any review petition seeking a correction of the order passed by this Court dated 13.05.2022, the first respondent-State of Gujarat herein has usurped the power of the State of Maharashtra and has passed the impugned orders of remission on the basis of an order of this Court dated 13.05.2022 which, in our view, is a nullity in law.

50.3. In this regard it is necessary to dilate on the background to this case and refer to the previous orders passed by this Court as under:-

The first order is dated 16.12.2003, referring the matter to the CBI for investigation; the second is an order of transfer of the trial from the competent Court in Gujarat to the Special Court at Mumbai and the third is an order passed by this Court granting compensation to the petitioner in Writ Petition (Crl.) No.491 of 2022. The relevant portions of the aforesaid orders read as under:-

W.P.(Crl.) No.118 of 2003, dated 16.12.2003 - referring matter to the CBI for investigation;

"ORDER

"Considering the nature of the allegations made, Shri Mukul Rohtagi learned Additional Solicitor General appearing for the respondents accepts that further investigation in this case may be done by the CBI, though he does not concede that the Gujarat Police is incompetent to investigate the matter. Hence, we direct the CBI to take over further investigation of this case and report to this Court from time to time.

Let a report be filed by the CBI within eight weeks.

List after report is filed."

Transfer Petition (Crl.) No.192 of 2004, dated 06.08.2004 - transfer of the trial from the competent Court in Gujarat to the Special Court at Mumbai;

ORDER

"We are of the view that on account of the nature and the allegations of the case, session case No.161 of 2004 before the Additional Sessions Judge, Dahod now transferred to Additional Sessions Judge of IVth Court of the City Civil Sessions Court Ahmedabad (CBI Case No.RCZ/S/2004, SCB Mumbai) title CBI vs. Jaswantbhai Chaturbhai & Others be transferred to any competent Court in Mumbai for trial and disposal.

This order be placed before the Chief Justice of Bombay High Court who shall designate the competent Court as he may deem fit. The transfer petition is accordingly allowed. This order is based on the perceptions of the CBI as recorded in its report and should not be taken as a reflection on the competence or impartiality of the judiciary in the State of Gujarat.

Having regard to the peculiar facts of this case the State of Gujarat shall bear the expenditure of the defence of the accused in accordance with the provisions of the Section 304 of the Code of Criminal Procedure.

It is made clear that for the purpose of this case the Central Government will appoint the public prosecutor."

Criminal Appeal Nos.727-733 of 2019, order dated 23.04.2019 - compensation

ORDER

"The appellant, Bilkis Yakub Rasool, is a victim of riots which occurred in the aftermath of the Godhra train burning incident in the State of Gujarat on February 27, 2002. While eventually, the perpetrators of the crime including the

police personnel stand punished, the appellant, who was aged twenty-one years and pregnant at that time, having lost all members of her family in the diabolical and brutal attacks needs to be adequately compensated. Additional facts which we must note are that the appellant was repeatedly gangraped and was a mute and helpless witness to her three-and-a-half-year-old daughter being butchered to death.

This factual position is undisputed and unchallenged in light of the findings of the trial court upheld by the High Court and this Court. The appellant, we are informed, is presently about forty years of age and is without any home and lives with her daughter who was born after the incident. She has been coerced to live life of a nomad and as an orphan, and is barely sustaining herself on the charity of NGOs, having lost company of her family members. The gruesome and horrific acts of violence have left an indelible imprint on her mind which will continue to torment and cripple her.

We do not have to search and elaborate upon principles of law to come to the conclusion that the appellant deserves to be adequately compensated. It is only the quantum of compensation that needs to be worked out by the Court. Time and again this Court has held that the compensation so awarded must be just and fair, and the criteria objective. However, this case has to be dealt with differently as the loss and suffering evident from the facts stated above surpass normal cases.

Taking into account the totality of the facts of the case, we are of the view that compensation of Rs.50,00,000/- (Rupees fifty lakh only) to be paid by the State Government within two weeks from today, on proper identification, would meet the ends of justice. Coupled with the aforesaid relief, we deem it proper to further direct the State Government to provide the appellant with an employment under the State, if she wishes so and is inclined, and also to offer her government accommodation at a place of her choice, if she is willing to live in such accommodation. With the aforesaid direction, the appeals relating to compensation are disposed of."

The aforesaid orders clearly indicate why this Court had transferred the investigation and trial to the CBI and to the State of Maharashtra respectively.

50.4. Such being the case, it was the State of Maharashtra which was the appropriate Government which had to consider the appellant for remission vis-Ã -vis respondent Nos.3 to 13 herein. Instead, being unsuccessful before the High Court of Gujarat, respondent No.3 surreptitiously filed the writ petition before this Court seeking a direction to consider his case for remission without disclosing the full and material facts before this Court.

Relief was granted by this Court by conferring jurisdiction on State of Gujarat which it did not possess as per Section 432 (7) of the CrPC, in the guise of consideration for remission on the basis of the 09.07.1992 policy, which had also stood cancelled in the year 2013. Taking advantage of this Court's order dated 13.05.2022, all other convicts also sought consideration of their case by the Government of Gujarat for remission even in the absence of any such direction in their cases by this Court.

Thus, the State of Gujarat has acted on the basis of the direction issued by this Court but contrary to the letter and spirit of law. We have already said that the State of Gujarat never sought for the review of the order of this Court dated 13.05.2022 by bringing to the notice of this Court that it was contrary to Section 432 (7) and judgments of this Court.

50.5. Instead, the State of Gujarat has acted in tandem and was complicit with what the petitioner-respondent No.3 herein had sought before this Court. This is exactly what this Court had apprehended at the previous stages of this case and had intervened on three earlier occasions in the interest of truth and justice by transferring the investigation of the case to the CBI and the trial to the Special Court at Mumbai.

But, in our view, when no intervention was called for in the writ petition filed by one of the convicts /respondent No.3 herein, this Court was misled to issue directions contrary to law and on the basis of suppression and misstatements made by respondent No.3 herein. We have held that order of this Court dated 13.05.2022 to be a nullity and non est in the eye of law. Consequently, exercise of discretion by the State of Gujarat is nothing but an instance of usurpation of jurisdiction and an instance of abuse of discretion.

If really State of Gujarat had in mind the provisions of law and the judgments of this Court, and had adhered to the rule of law, it would have filed a review petition before this Court by contending that it was not the appropriate Government. By failing to do so, not only are the earlier orders of this Court in the matter have been vindicated but more importantly, rule of law has been breached in usurping power not vested in it and thereby aiding respondent Nos.3 to 13.

This is a classic case where the order of this Court dated 13.05.2022 has been used for violating the rule of law while passing orders of remission in favour of respondent Nos.3 to13 in the absence of any jurisdiction by respondents - State of Gujarat. Therefore, without going into the manner in which the power of remission has been exercised, we strike down the orders of remission on the

ground of usurpation of powers by the State of Gujarat not vested in it. The orders of remission are hence quashed on this ground also.

Section 432(2) of the CrPC : Opinion of the Presiding Judge of the convicting court:

51. Sub-section (2) of Section 432 of the CrPC states that when an application is made to the appropriate Government, inter alia, for remission of a sentence, the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion, as to, whether, the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

52. Learned ASG Sri S.V. Raju submitted that the expression "appropriate Government may require the opinion of the Presiding Judge of the Court" indicates that this is not a mandatory requirement, therefore, in the instant case the opinion of the Presiding Judge of the Court by which respondent Nos.3 to 13 were convicted, namely, the Special Judge, Mumbai, was unnecessary. It was further submitted that since the State of Gujarat was considering the applications for remission filed by respondent Nos.3 to 13, the opinion of local Sessions Judge at Dahod was obtained as a member of the Jail Advisory Committee and there was a positive opinion for grant of remission to respondent Nos.3 to 13 herein.

52.1. This contention was however refuted by the learned counsel Ms. Shobha Gupta by reiterating her submission that the expression "may require" in sub-section (2) of Section 432 of the CrPC ought to be read as "shall require". This is evident from the dicta of this Court. In this regard, reliance was placed on certain judgments of this Court which we shall advert to in the first instance as under:

(i) In Sangeet, it was observed that before actually exercising the power of remission under Section 432 of the CrPC, the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner.

(ii) Further, in V. Sriharan, it was observed that the declaration of law made by this Court in Sangeet referred to above, is correct and further the procedure to be followed under Section 432(2) of the CrPC is mandatory. The manner in which the opinion is to be rendered by the Presiding Judge can always be regulated and settled by the concerned High Court and the Supreme Court by stipulating the

required procedure to be followed as and when any such application is forwarded by the appropriate Government.

Therefore, it was observed that the suo motu power of remission cannot be exercised under Section 432(1) of the CrPC and it can only be initiated based on an application of the person convicted under Section 432(2) of the CrPC and the ultimate order of remission should be guided by the opinion to be rendered by the Presiding Officer of the Court concerned.

(iii) This Court, in Ram Chander, has specifically dealt with the value of the opinion of the Presiding Judge with reference to paragraph 61 of Sangeet and paragraphs 148 and 149 of V. Sriharan referred to above and observed in paragraphs 25 and 26 as under:

"25. In Sriharan (supra), the Court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the 'right' decision as to whether or not the sentence should be remitted.

Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission. It is possible then that the procedure under Section 432 (2) would become a mere formality.

26. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India (supra), the government may request the presiding judge to consider the matter afresh."

(iv) In paragraph 27, it was further observed that the Presiding Judge in the said case had not taken into account the factors which have been laid down in Laxman Naskar and that the opinion was a mechanical one bereft of reasons and therefore, inadequate and not in accordance with law.

Consequently, the petitioner's application for remission was directed to be considered afresh with a direction to the Special Judge, Durg to provide an opinion on the application afresh accompanied with adequate reasoning, taking

into account all the relevant factors that govern the grant of remission as laid down in Laxman Naskar. A direction was issued to State of Chhattisgarh in the said case to take a final decision on the application for remission afresh within a month after receiving the opinion of the Special Judge, Durg. Consequently, the petition filed under Article 32 was allowed in the aforesaid terms.

52.2. Thus, the consistent view of this Court which emerges is that the expression "may" has to be interpreted as "shall" and as a mandatory requirement under sub-section (2) of Section 432 of the CrPC. The said provision has sufficient guidelines as to how the opinion must be provided by the Presiding Judge of the Court which has convicted the accused inasmuch as -

(i) the opinion must state as to whether the application for remission should be granted or refused and for either of the said opinions, the reasons must be stated;

(ii) naturally, the reasons must have a bearing on the facts and circumstances of the case;

(iii) the reasons must be in tandem with the record of the trial or of such record thereof as exists;

(iv) the Presiding Judge of the Court before or by which the conviction was had or confirmed, must also forward along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists.

52.3. Having regard to the requirements which the Presiding Judge must comply with while stating his opinion to the appropriate Government on an application for remission of sentence made by a convict, it cannot be held that the expression "may" in the said provision is not mandatory nor can it be left to the whims and fancies of the appropriate Government either to seek or not to seek the opinion of the Presiding Judge or the Court before which the conviction had taken place.

52.4. In the instant case, what is interesting is that when respondent No.3 - Radheshyam Bhagwandas Shah filed his application for remission before the State of Maharashtra pursuant to the order of the Gujarat High Court dated 17.07.2019, the State of Maharashtra sought the opinion of the Special Judge at Mumbai who gave a negative opinion.

This was one of the reasons for respondent No.3 to file the Writ Petition (Crl.) No.135 of 2022 before this Court. However, subsequently, when a direction was issued by this Court to the first respondent State of Gujarat to consider the application for remission, the opinion of the local Sessions Court at Dahod was

obtained and the opinion of the Special Judge, Mumbai where the trial had taken place was ignored.

The Sessions Court at Dahod obviously had not complied with the mandatory requirements noted above under sub-section (2) of Section 432 of the CrPC inasmuch as the opinion was not forwarded along with reasons having regard to the record of the trial as no trial had taken place before the Sessions Court, Dahod. Further, the Presiding Judge of the Sessions Court, Dahod also did not forward any certified copy of the record of the trial. Moreover, learned Sessions Judge at Dahod was also a member of the Jail Advisory Committee.

52.5. We further observe that the Presiding Judge of the Court before which the conviction happens can never be a Member of the Jail Advisory Committee, inasmuch he is an independent authority who should give his opinion on the application seeking remission which is a mandatory requirement as per the requirements of sub section (2) of Section 432.

In the instant case, the opinion given by the District & Sessions Judge at Dahod is vitiated for two reasons: firstly, because he was not the Presiding Judge before which the conviction of respondent Nos.3 to 13 took place; and, secondly, if the Presiding Judge of the Court where the conviction occurred is an independent authority which must be consulted by the appropriate Government then he could not have been a Member of the Jail Advisory Committee as in the instant case.

52.6. On perusal of the counter affidavit of the respondent-State of Gujarat, it is noted that pursuant to the applications filed by respondent Nos.4 to 13 (respondent No.3 had filed his application before State of Maharashtra on 01.08.2019) seeking pre-mature release or remission, opinion of the Special Judge (CBI), City Civil & Sessions Court, Greater Mumbai was taken by the State of Gujarat and in respect of all the respondent Nos.3 to 13 the categorical opinion was that having regard to the Government's Resolution dated 11.04.2008, issued by the State of Maharashtra, said prisoners should not be released pre-maturely.

Had the State of Maharashtra considered the applications of respondent Nos.3 to 13 for remission, this vital opinion of the Presiding Judge of the Court which had convicted them would have carried weight in the mind of the Government of the State of Maharashtra as well as the terms of the Government's Resolution dated 11.04.2008 which was the applicable policy for remission. In fact, the first respondent, namely, the Government of the State of Gujarat, which usurped the power of the Government of the State of Maharashtra, simply brushed aside the opinion of the Special Judge (CBI), Greater Mumbai.

Instead the opinion of the Sessions Judge, Godhra, District Panchmahal within whose jurisdiction the offences had occurred and who was a member of the Jail Advisory Committee was highlighted by Sri S.V. Raju, learned ASG appearing for the State of Gujarat. Although this opinion is also a negative opinion, the same is not in accordance with sub-section (2) of Section 432 of the CrPC and, therefore, is of no consequence except when viewed from the prism of being an opinion of one of the members of the Jail Advisory Committee, Dahod Jail.

53. As we have held, in the first place, the first respondent State of Gujarat was not at all the appropriate Government, therefore, the proceedings of the Jail Advisory Committee of Dahod Jail, which had recommended remission is itself vitiated and further, there is no compliance of sub-section (2) of Section 432 of the CrPC in the instant case in as much as the said opinion was not considered by the appropriate Government. On that score also, the orders of remission dated 10.08.2022 are vitiated.

Sentence in default of fine:

54. Learned counsel Mrs. Shobha Gupta contended that respondent Nos.3 to 13 had not paid the fine and therefore, in the absence of payment of fine, the default sentence ought to have been undergone by the said respondents. This aspect of the matter has been lost sight of or ignored while granting the orders of remission and therefore, the orders of remission are vitiated on that score.

54.1. In response to the above arguments, learned senior counsel, Sri Sidharth Luthra, at the outset, submitted that although applications for payment of fine have been filed and are pending consideration before this Court, nevertheless respondent Nos.3 to 13 have now on their own tendered the fine and the same has been accepted by the Special Court at Mumbai.

54.2. In this regard, following judgments were referred to at the bar:

(a) In Shantilal vs. State of Madhya Pradesh, (2007) 11 SCC 243 ("Shantilal"), the contention was that the term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. This sentence must be undergone by the offender unless it is setaside or remitted in part or in whole, either in appeal or in revision or in other appropriate judicial proceedings or otherwise. However, a term of imprisonment ordered in default of payment of fine stands on a different footing.

A person is required to undergo imprisonment for default in payment of fine either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but

the duty of the Court to keep in view the nature of offence, and circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.

(i) The further question considered was, whether, a Court of law can order a convict to remain in jail in default of payment of fine. It was observed that even in the absence of a specific provision in the law empowering a Court to order imprisonment in default of payment of fine, such power is implicit and is possessed by a Court administering criminal justice.

In this regard, reference was made to Sections 40 to 42 and Sections 63 to 70 IPC as well as Section 30 of the CrPC which deals with a sentence of imprisonment in default of payment of fine and Section 25 of the General Clauses Act, 1897 which deals with recovery of fine. It was observed that even in the absence of a provision to the contrary viz. that no order of imprisonment can be passed in default of payment of fine, such power is explicit and can always be exercised by a court having regard to Section 30 of the CrPC.

(b) In Sharad Hiru Kolambe vs. State of Maharashtra, (2018) 18 SCC 718 ("Sharad Hiru Kolambe"), the point for consideration was regarding quantum of fine that was imposed by way of a default sentence in case of non-payment of fine. It was contended that though the substantive sentence stood remitted and the appellant was directed to be released on completion of fourteen years of actual sentence, the appellant would still be inside till he completes twenty-four years. This was because the trial court in the said case directed "all sentences shall run concurrently", therefore, all default sentences must also run concurrently inter se. It was contended that the default sentences so directed was unconscionable and excessive.

(i) This Court speaking through Lalit, J. (as the learned Chief Justice then was) observed that if the term of imprisonment in default of payment of fine is a penalty which a person incurs on account of non-payment of fine and is not a sentence in a strict sense, imposition of such default sentence is completely different and qualitatively distinct from a substantive sentence. Theoretically, if the default sentences awarded in respect of imposition of fine in connection with two or more offences are to be clubbed or directed to run concurrently, there would not be any occasion for the persons so sentenced to deposit the fine in respect of the second or further offences. It would effectively mean imposition of one single or combined sentence of fine.

Such an exercise would render the very idea of imposition of fine with a deterrent stipulation while awarding sentence in default of payment of fine to be

meaningless. If imposition of fine and prescription of mandatory minimum is designed to achieve a specific purpose, the very objective will get defeated if the default sentences were directed to run concurrently. Therefore, the contention regarding concurrent running of default sentences was rejected. It was observed that there is no power of the Court to order the default sentences to run concurrently but if a prisoner does not pay the fine or refuses to pay the fine then he must undergo the default sentences so imposed.

(c) In Shahejadkhan Mahebubkhan Pathan vs. State of Gujarat, (2013) 1 SCC 570 ("Shahejadkhan Mahebubkhan Pathan"), this Court speaking through Sathasivam, J. (as the learned Chief Justice then was) held that the term of imprisonment in connection with a fine is not a sentence but a penalty which a person incurs on account of non-payment of fine.

But on the other hand, if a sentence is imposed, an offender must undergo the same unless it is modified or varied in part or whole in the judicial proceedings or by way of remission. But the imprisonment order in default of fine stands on different footing. When such a sentence on default of payment of fine is imposed, the person is required to undergo imprisonment either because he is unable to pay the fine or refuses to do so. The only way he can avoid to undergo imprisonment in default of payment of fine is by paying such amount.

54.3. The aforesaid dicta would therefore clearly indicate that the sentence of imprisonment awarded to a person for committing an offence is distinct than the imprisonment ordered to be undergone in default of payment of fine. The latter is not a substantive sentence for commission of the offence but is in the nature of penalty for default in payment of fine.

54.4. In the instant case, while considering the applications for remission, the Jail Advisory Committee did not take into consideration whether respondent Nos.3 to 13 convicts had tendered the fine which was imposed by the Special Court and affirmed by the High Court as well as by this Court. Therefore, this is an instance of leaving out of a relevant consideration from the gamut of facts which ought to have been considered by the Jail Advisory Committee.

Had the respondent State of Gujarat considered the opinion from the Presiding Judge of the Court which had convicted, respondent Nos.3 to 13 herein, the aspect regarding non-payment of fine would have surfaced. In the absence of noncompliance with the direction to pay fine, there would be default sentence which would be in the nature of penalty. The question whether the default sentence or penalty had to be undergone by these respondents, was a crucial consideration at the time of recommending remission to the State Government by the Jail Advisory Committee.

This aspect of the matter has also not been taken into consideration by the State Government while passing the impugned orders of remission. Realising this, during the pendency of these writ petitions, applications were filed seeking permission to tender the fine amount. However, even before the said applications could be considered and orders passed thereon, the respondents convicts have paid the fine amount and have produced receipts in that regard.

This fact would not alter the consideration of the case of respondent Nos.3 to 13 herein inasmuch the fact of payment of fine ought to have been a point which had to be taken into consideration prior to the passing of the orders of remission as there could be no relaxation in the sentence with regard to payment of fine. There can only be reduction in the substantive sentence to be undergone by way of imprisonment for which the application seeking remission is filed.

Remission of sentence, which is for reduction of the period of imprisonment, cannot however relate to the payment of fine at all. Since there was non-application of mind in this regard, the impugned orders of remission are contrary to law and are liable to be quashed on this count as well. In view of the above, the other contentions based on Wednesbury principles do not require consideration in the present case and hence all contentions on the said aspect are left open.

55. We however would like to indicate the factors that must be taken into account while entertaining an application for remission under the provisions of the CrPC, which are however not exhaustive of the tests which we have discussed above. They can be adumbrated as under:

(a) The application for remission under Section 432 of the CrPC could be only before the Government of the State within whose territorial jurisdiction the applicant was convicted (appropriate Government) and not before any other Government within whose territorial jurisdiction the applicant may have been transferred on conviction or where the offence has occurred.

(b) A consideration for remission must be by way of an application under Section 432 of the CrPC which has to be made by the convict or on his behalf. In the first instance whether there is compliance of Section 433A of the CrPC must be noted inasmuch as a person serving a life sentence cannot seek remission unless fourteen years of imprisonment has been completed.

(c) The guidelines under Section 432(2) with regard to the opinion to be sought from the Presiding Judge of the Court which had convicted the applicant must be complied with mandatorily. While doing so it is necessary to follow the requirements of the said Section which are highlighted by us, namely,

(i) the opinion must state as to whether the application for remission should be granted or refused and for either of the said opinions, the reasons must be stated;

(ii) the reasons must have a bearing on the facts and circumstances of the case;

(iii) the opinion must have a nexus to the record of the trial or of such record thereof as exists;

(iv) the Presiding Judge of the Court before or by which the conviction was had or confirmed, must also forward along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists.

(d) The policy of remission applicable would therefore be the Policy of the State which is the appropriate Government and which has the jurisdiction to consider that application. The policy of remission applicable at the time of the conviction could apply and only if for any reason, the said policy cannot be made applicable a more benevolent policy, if in vogue, could apply.

(e) While considering an application for remission, there cannot be any abuse of discretion. In this regard, it is necessary to bear in mind the following aspects as mentioned in Laxman Naskar, namely, -

(i) Whether the offence is an individual act of crime without affecting the society at large?

(ii) Whether there is any chance of future recurrence of committing crime?

(iii) Whether the convict has lost his potentiality in committing crime?

(iv) Whether there is any fruitful purpose of confining this convict any more?

(v) Socio-economic condition of the convict's family.

(f) There has also to be consultation in accordance with Section 435 of the CrPC wherever the same is necessitated.

(g) The Jail Advisory Committee which has to consider the application for remission may not have the District Judge as a Member inasmuch as the District Judge, being a Judicial Officer may coincidently be the very judge who may have to render an opinion independently in terms of sub-section (2) of Section 432 of the CrPC.

(h) Reasons for grant or refusal of remission should be clearly delineated in the order by passing a speaking order.

(i) When an application for remission is granted under the provisions of the Constitution, the following among other tests may apply to consider its legality by way of judicial review of the same.

(i) that the order has been passed without application of mind;

(ii) that the order is mala fide;

(iii) that the order has been passed on extraneous or wholly irrelevant considerations;

(iv) that relevant materials have been kept out of consideration;

(v) that the order suffers from arbitrariness.

Summary of Conclusions:

56. On the basis of the aforesaid discussion, we arrive at the following summary of conclusions:

a) We hold that the Writ Petition (Crl.) No.491 of 2022 filed under Article 32 of the Constitution before this Court is maintainable and that it was not mandatory for the petitioner therein to have filed a writ petition under Article 226 of the Constitution before the Gujarat High Court.

b) Since Writ Petition (Crl.) No.491 of 2022 has been filed by one of the victims invoking Article 32 of the Constitution before this Court which has been entertained by us, the question, whether, the writ petitions filed as public interest litigation assailing the impugned orders of remission dated 10.08.2022 are maintainable, is kept open to be raised in any other appropriate case.

c) In view of Section 432 (7) read with Section 432 (1) and (2) of the CrPC, we hold that the Government of the State of Gujarat had no jurisdiction to entertain the prayers seeking remission of respondent Nos.3 to 13 herein as it was not the appropriate Government within the meaning of the aforesaid provisions. Hence, the orders of remission dated 10.08.2022 made in favour of respondent Nos.3 to 13 herein are illegal, vitiated and therefore, quashed.

d) While holding as above, we also hold that the judgment dated 13.05.2022 passed by this Court is a nullity and is non est in law since the said order was sought by suppression of material facts as well as by misrepresentation of facts

(suppressio veri, suggestio falsi) and therefore, fraudulently obtained at the hands of this Court.

i) Further, the petitioner in Writ Petition (Crl.) No.491 of 2022 not being a party to the said writ proceeding, the same is not binding on her and she is entitled in law to question the orders of remission dated 10.08.2022 from all angles including the correctness of the order dated 13.05.2022.

ii) In addition to the above, the said order, being contrary to the larger bench decisions of this Court, (holding that it is the Government of the State within which the offender is sentenced which is the appropriate Government which can consider an application seeking remission of a sentence) is per incuriam and is not a binding precedent. Hence, the impugned orders of remission dated 10.08.2022 are quashed on the above grounds.

e) Without prejudice to the aforesaid conclusions, we further hold that the impugned orders of remission dated 10.08.2022 passed by the respondent-State of Gujarat in favour of respondent Nos.3 to 13 are not in accordance with law for the following reasons:

i) That the Government of the State of Gujarat had usurped the powers of the State of Maharashtra which only could have considered the applications seeking remission. Hence, the doctrine of usurpation of powers applies in the instant case.

ii) Consequently, the Policy dated 09.07.1992 of the State of Gujarat was not applicable to the case of respondent Nos.3 to 13 herein.

iii) That opinion of the Presiding Judge of the Court before which the conviction of respondent Nos.3 to 13 was made in the instant case i.e. Special Court, Mumbai (Maharashtra) was rendered ineffective by the Government of the State of Gujarat which in any case had no jurisdiction to entertain the plea for remission of respondent Nos.3 to 13 herein. The opinion of the Sessions Judge at Dahod was wholly without jurisdiction as the same was in breach of sub-section (2) of the Section 432 of the CrPC.

iv) That while considering the applications seeking remission, the Jail Advisory Committee, Dahod and the other authorities had lost sight of the fact that respondent Nos.3 to 13 herein had not yet paid the fine ordered by the Special Court, Mumbai which had been confirmed by the Bombay High Court. Ignoring this relevant consideration also vitiated exercise of discretion in the instant case.

56.1. Having declared and held as such, we now move to point No.5.

Point No.5: What Order?

57. Respondent Nos.4 to 13, who had made applications to the first respondent-State of Gujarat seeking remission of their sentences, have been granted remission by the impugned orders dated 10.08.2022, while it is not known whether respondent No.3 had made any application to seek remission to the State of Gujarat as the same is not adverted to in the counter affidavit. The application seeking remission by respondent No.3 before the State of Gujarat has not been brought on record as he had filed his application before the State of Maharashtra. Respondent Nos.3 to13 have been released pursuant to the orders of remission dated 10.08.2022 and set at liberty.

We have now quashed the orders of remission. Since 10.08.2022, respondent Nos.3 to 13 have been the beneficiaries of the orders passed by an incompetent authority inasmuch as the impugned orders are not passed by the appropriate Government within the meaning of Section 432 of the CrPC. So long as the said orders impugned were not set-aside, they had carried the stamp of validity and hence till date the impugned orders of remission were deemed to have been valid. Respondent Nos.3 to 13 are out of jail. Since we have quashed the orders of remission, what follows?

58. In our view, the most important constitutional value is personal liberty which is a fundamental right enshrined in Article 21 of our Constitution. It is in fact an inalienable right of man and which can be deprived of or taken away only in accordance with law. That is the quintessence of Article 21. But, this is a case where respondent Nos.3 to 13 have been granted liberty and have been released from imprisonment by virtue of the impugned orders of remission dated 10.08.2022 which we have declared and quashed as wholly without jurisdiction and non est.

Having quashed the orders of remission made in favour of respondent Nos.3 to 13, should they be sent back to prison? Whether respondent No.3 to 13 must have the benefit of their liberty despite obtaining the same from an incompetent authority with the aid of an order of this Court obtained fraudulently and therefore, the same being illegal and carry a stamp of being a nullity and non est in the eye of law? This has been a delicate question for consideration before us.

59. Learned counsel for the petitioner in Writ Petition (Crl.) No.491 of 2022 has vehemently contended that there being failure of rule of law in the instant case, justice would be done by this Court only when respondent Nos.3 to 13 are returned to the prison. They can be granted remission only in accordance with law.

On the other hand, respective learned senior counsel and counsel for the respondents Nos.3 to 13 who have appeared have pleaded that they have been enjoying liberty since 10.08.2022 and in spite of there being any error in the orders of remission, although the orders of remission may be quashed, by exercising jurisdiction under Article 142 of the Constitution, these respondents may not be subjected to imprisonment once again and they may remain out of jail as free persons. In other words, their liberty may be protected.

60. We have given our anxious thought to the aforesaid divergent contentions. The primary question that now arises for our consideration is this: when is liberty of a person protected? Article 21 of the Constitution states that no person shall be deprived of his liberty except in accordance with law. Conversely, we think that a person is entitled to protection of his liberty only in accordance with law. When a person's liberty cannot be violated in breach of a law, can a person's liberty be protected even in the face of a breach or violation of law?

In other words, should rule of law prevail over personal liberty of a person or vice-versa? Further, should this Court weigh in favour of a person's freedom and liberty even when it has been established that the same was granted in violation of law? Should the scales of justice tilt against rule of law? In upholding rule of law are we depriving respondent Nos.3 to 13 their right to freedom and liberty?

We wish to make it clear that only when rule of law prevails will liberty and all other fundamental rights would prevail under our Constitution including the right to equality and equal protection of law as enshrined in Article 14 thereof. In other words, whether liberty of a person would have any meaning at all under our Constitution in the absence of rule of law or the same being ignored or turned a blind eye? Can rule of law surrender to liberty earned as a consequence of its breach? Can breach of rule of law be ignored in order to protect a person's liberty that he is not entitled to?

61. Before we proceed further, we wish to reiterate what this Court has spoken on the concept of rule of law through its various judgments.

62. Rule of law means wherever and whenever the State fails to perform its duties, the Court would step in to ensure that the rule of law prevails over the abuse of the process of law. Such abuse may result from, inter alia, inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or other obligations in consonance with the procedural and penal statutes. Breach of the rule of law, amounts to negation of equality under Article 14 of the Constitution.

63. More importantly, rule of law means, no one, howsoever high or low, is above the law; it is the basic rule of governance and democratic polity. It is only through the courts that rule of law unfolds its contours and establishes its concept. The concept of rule of law is closely intertwined with adjudication by courts of law and also with the consequences of decisions taken by courts.

Therefore, the judiciary has to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task and always in favour of rule of law. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review and relief and all these features would lose their significance if the courts don't step in to enforce the rule of law.

Thus, the judiciary is the guardian of the rule of law and the central pillar of a democratic State. Therefore, the judiciary has to perform its duties and function effectively and remain true to the spirit with which they are sacredly entrusted to it. In our view, this Court must be a beacon in upholding rule of law failing which it would give rise to an impression that this Court is not serious about rule of law and, therefore, all Courts in the country could apply it selectively and thereby lead to a situation where the judiciary is unmindful of rule of law. This would result in a dangerous state of affairs in our democracy and democratic polity.

64. Further, in a democracy where rule of law is its essence, it has to be preserved and enforced particularly by courts of law. Compassion and sympathy have no role to play where rule of law is required to be enforced. If the rule of law has to be preserved as the essence of democracy, it is the duty of the courts to enforce the same without fear or favour, affection or ill-will.

65. The manner of functioning of the court in accord with the rule of law has to be dispassionate, objective and analytical. Thus, everyone within the framework of the rule of law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. It is mainly through the power of judicial review conferred on an independent institutional authority such as the High Court or the Supreme Court that the rule of law is maintained and every organ of the State is kept within the limits of the law.

Thus, those concerned with the rule of law must remain unmindful and unruffled by the ripples caused by it. Rule of law does not mean protection to a fortunate few. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. In the words of Krishna Iyer, J., "the finest hour of the rule of law is

when law disciplines life and matches promise with performance". In ADM, Jabalpur vs. Shivakant Shukla, H.R. Khanna, J. in his dissenting judgment said, "rule of law is the antithesis of arbitrariness".

66. In this context, it would also be useful to refer to the notion of justice in the present case. It is said that justice should remain loyal to the rule of law. In our view, justice cannot be done without adherence to rule of law. This Court has observed "the concept of "justice" encompasses not just the rights of the convict, but also of the victims of crime as well as of the law abiding section of society who look towards the courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law. If the convicts can circumvent the consequences of their conviction, peace, tranquility and harmony in society will be reduced to chimera." (vide Surya Baksh Singh vs. State of UP, (2014) 14 SCC 222)

67. This Court has further observed that the principle of justice is an inbuilt requirement of the justice delivery system and indulgence and laxity on the part of the law courts would be an unauthorized exercise of jurisdiction and thereby, put a premium on illegal acts. Courts have to be mindful of not only the spelling of the word "justice" but also the content of the concept. Courts have to dispense justice and not justice being dispensed with. In fact, the strength and authority of courts in India are because they are involved in dispensing justice. It should be their life aim.

68. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Justice is supreme and justice ought to be beneficial for the society. Law courts exist for the society and ought to rise to the occasion to do the needful in the matter. Respect for law is one of the cardinal principles for an effective operation of the Constitution, law and the popular Government. The faith of the people is the source to invigorate justice intertwined with the efficacy of law. Therefore, it is the primary duty and the highest responsibility of this Court to correct arbitrary orders at the earliest and maintain the confidence of the litigant public in the purity of the fountain of justice and thereby respect rule of law.

69. In the same vein, we say that Article 142 of the Constitution cannot be invoked by us in favour of respondent Nos.3 to 13 to allow them to remain out of jail as that would be an instance of this Court's imprimatur to ignore rule of law and instead aid persons who are beneficiaries of orders which in our view, are null and void and therefore non est in the eye of law. Further, we cannot be unmindful of the conduct of respondent Nos.3 to 13, particularly respondent No.3 who has abused the process of law and the court in obtaining remission.

In such a situation, arguments with an emotional appeal though may sound attractive become hollow and without substance when placed in juxtaposition with our reasoning on the facts and circumstances of this case. Therefore, in complying with the principles of rule of law which encompasses the principle of equal protection of law as enshrined in Article 14 of the Constitution, we hold that 'deprivation of liberty' vis-Ã -vis respondent Nos.3 to 13 herein is justified in as much as the said respondents have erroneously and contrary to law been set at liberty.

One cannot lose sight of the fact that the said respondents were all in prison for a little over fourteen years (with liberal paroles and furloughs granted to them from time to time). They had lost their right to liberty once they were convicted and were imprisoned. But, they were released pursuant to the impugned remission orders which have been quashed by us. Consequently, the status quo ante must be restored.

We say so for another reason in the event respondent Nos.3 to 13 are inclined to seek remission in accordance with law, they have to be in prison as they cannot seek remission when on bail or outside the jail. Therefore, for these reasons we hold that the plea of 'protection of the liberty' of respondent Nos.3 to 13 cannot be accepted by us.

70. We wish to emphasize that in the instant case rule of law must prevail. If ultimately rule of law is to prevail and the impugned orders of remission are set-aside by us, then the natural consequences must follow. Therefore, respondent Nos.3 to 13 are directed to report to the concerned jail authorities within two weeks from today.

Conclusion:

71. Consequently, we pass the following orders:

a. Writ Petition (Crl.) No.491 of 2022 is allowed in the aforesaid terms.
b. Other Writ Petitions stand disposed of.
c. Pending applications, if any, stand disposed of.

72. Before parting, we place on record our appreciation of all learned senior counsel, learned ASG and learned counsel appearing for the respective parties for their effective assistance in the matter.

.....J. (B.V. Nagarathna)
.....J. (Ujjal Bhuyan)
New Delhi;
January 08, 2024

IN THE SUPREME COURT OF INDIA

Asma Lateef & Anr.
Vs.
Shabbir Ahmad & Ors.

[Civil Appeal No. 9695 of 2013]

HEADNOTE – A Court cannot pronounce judgment in a suit under Order 8 Rule 10 merely on the default of the defendant to file a written statement if the plaintiff doesn't prove his case.

JUDGMENT

Dipankar Datta, J.

The Challenge

1. Respondents 1 to 3 had filed an objection under section 47 of the Code of Civil Procedure, 1908 ("CPC", hereafter) in an execution application filed before the Executing Court by the appellants. It was urged, based on the case pleaded therein, that the decree put to execution was inexecutable. The Executing Court, on 19th March, 2008, allowed the objections of the respondents 1 to 3, resulting in dismissal of the execution application.

2. A revision was carried by the appellants from the order dated 19th March, 2008 before the Revisional Court which, vide its order dated 21st February, 2009, dismissed the objection filed by the respondents 1 to 3 and directed the Executing Court to proceed with the execution of the decree whilst treating such objection as non-maintainable.

3. The revisional order dated 21st February, 2009 was challenged by the respondents 1 to 3 in an application under Article 227 of the Constitution1 before the High Court of Judicature at Allahabad ("High Court", hereafter). The High Court, by its judgment and order dated 4th February, 2011, quashed the order passed by the Revisional Court and relegated the parties to the remedy of having their rights, in respect of the suit property, adjudicated by the appropriate forum.

4. This appeal, by special leave, registers a challenge to the said judgment and order of the High Court.

Factual Conspectus

5. Having regard to the nature and extent of controversy raised at the stage of execution, a decision on this appeal does not necessitate noting the facts triggering it and the rival contentions in great depth; however, we propose to briefly narrate the essential facts and submissions advanced by learned counsel for the parties before recording our conclusions.

6. The relevant facts, shorn of unnecessary details, are noticed hereunder:

a. Appellants claimed that their great-grandmother, one Khatoon Jannat Bibi, had orally gifted them a certain property ("suit property", hereafter) on 16th August, 1988 whereafter a memorandum recording the same was also executed before the relevant tehsildar and that they were in peaceful possession of the same continuously.

b. Appellants, as plaintiffs, through their power of attorney holder, instituted a civil suit2 ("Suit", hereafter) before the Trial Court under section 38 of the Specific Relief Act, 1963 ("Specific Relief Act", hereafter) against three defendants - a son of Khatoon Jannat Bibi named Asad Ullah Kazmi [defendant no. 1] ("Kazmi", hereafter), Kazmi's son Samiullah [defendant no. 2] and one purported caretaker, Mr. Ram Chandra Yadav [defendant no. 3] in respect of the suit property, more particularly described in the plaint. Appellants prayed for a permanent injunction against the three defendants from interfering with the appellants' peaceful possession of the suit property.

c. Kazmi, sometime in 1990, initiated proceedings for declaration of rights before the Sub-Divisional Officer under section 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 ("UPZA & LR Act", hereafter); the said proceedings were, however, dismissed on 27th February, 1999 [4 (four) years after his death].

d. In the Suit, an application for interim injunction was filed by the appellants. The Trial Court on 31st May, 1990, allowed the application and directed Kazmi and Samiullah to maintain status quo with regard to the suit property, and directed them not to interfere with the appellants' peaceful possession thereof.

e. Kazmi filed his written statement in the Suit on 5th December, 1990 where he inter alia contended that the Suit was barred by section 331 of the UPZA & LR Act and not maintainable before a civil court since the suit property was bhoomidhari land. It was further averred that the Suit was barred by section 41(h) of the Specific Relief Act; he also contended that his son Samiullah, the defendant no.2, had no concern with the suit property as long as his father (Kazmi) was alive and, hence, Samiullah had been wrongly impleaded as the defendant no.2. Kazmi also denied that Khatoon Jannat Bibi had the right to

make any oral gift; inasmuch as she had only a life interest in the property, after her demise, the same devolved upon him exclusively.

f. It is to be noted that no written statement was filed on behalf of the other two defendants.

g. Upon the appellants moving an application under Rules 5 and 10 of Order VIII, CPC for pronouncement of judgment against Samiullah, the same was allowed by the Trial Court by its order dated 5th August, 19913, to which we propose to advert in course of our analysis.

h. Subsequently, the Trial Court, on 10th October, 1991, framed 11 (eleven) issues for consideration in the Suit, of which the very first one was on its competency to try the Suit.

i. Kazmi passed away on 15th July, 1995, after which his sons, Samiullah and Fariduddin [respondents 4 and 5 herein] transferred the suit property to the respondents 1 to 3 ("Purchasers", hereafter) vide a sale deed dated 3rd November, 1997. The Suit against Kazmi remained pending even after his demise, and none of his other heirs or legal representatives were brought on record as substituted defendants. The Suit against Kazmi was finally dismissed as abated on 27th April, 2009.

j. Appellants, as purported decree holders, filed an execution application4 before the Executing Court, on 16th December, 1997, praying that respondents 4 and 5 be punished for violating the order dated 5th August, 1991 and that the sale deed dated 3rd November, 1997 in favour of the Purchasers be declared invalid.

k. The Executing Court, vide an interim order passed on 16th January, 1998, restrained the Purchasers from interfering in any manner with the suit property.

l. Thereupon, the Purchasers filed their objection under section 47, CPC wherein they submitted, inter alia, that the order dated 5th August, 1991 was neither a judgment nor a decree and could not be executed.

m. Further, on 7th December, 2004, the appellants filed a contempt petition5 against the respondents alleging contempt of orders dated 31st May, 1990 and 5th August 1991, and the Executing Court order dated 16th January, 1998 by interfering with the appellants' possession of the suit property.

n. These events were followed by the proceedings and the judgments/orders referred to in paragraphs 1 to 4 hereinabove.

Impugned Judgment

7. The Purchasers invoked the appropriate jurisdiction of the High Court by challenging the order dated 21st February, 2009 of the Revisional Court. The High Court formulated two points for determination, viz. (i) whether the petitioners before it (respondents 1 to 3 herein), who are subsequent purchasers of the suit property, had any right to maintain an objection under section 47, CPC against execution of the decree? and (ii) whether the order dated 5th August, 1991, passed in purported exercise of power under Rule 10 of Order VIII, CPC decreeing the suit against Samiullah alone is without jurisdiction and a nullity which is non est and inexecutable in nature? The High Court also framed an ancillary point as to whether the sale deed dated 23rd November, 1997 made by Samiullah in favour of the Purchasers was null and void.

8. While the two main points were answered in the affirmative, the ancillary point was answered in the negative. In course of rendering its judgment, the High Court held the order dated 5th August, 1991, and consequently the decree drawn on the basis thereof, to be beyond jurisdiction and a nullity. The High Court was also of the opinion that the revisional order dated 21st February, 2009 deserved to be set aside and the writ petition allowed, which it duly ordered. The parties were granted liberty to take recourse to available legal remedies to have determination of the title to the suit property adjudicated. Certain salient observations made by the High Court in the impugned judgment are summarised below for convenience:

a. The order dated 5th August 1991, passed by the Trial Court, in the Suit, restrained only the defendant no.2 from interfering with the peaceful enjoyment of the appellants' rights relating to the suit property, but did not restrict the sons of Kazmi from dealing with or transferring the same.

b. The transfer of the suit property was not in derogation of section 52 of the Transfer of Property Act, 1882 ("ToP Act", hereafter) and that the Purchasers could object to the appellants' execution application.

c. It is a cardinal principle that to succeed in a suit for permanent prohibitory injunction, the plaintiff must either establish title, proprietary rights over the suit property or prove possession over the same; however, the Trial Court had not found either the title of the plaintiffs or proved their possession in respect of the suit property.

d. A court need not always pronounce judgment on the facts of a plaint or on those admitted due to non-filing of a written statement or want of specific denial. A court has the option of pronouncing judgment only in cases where it deems it prudent; it also has the option to pass such an appropriate order as it seems fit.

e. A reading of Rules 1, 5 and 10 of Order VIII, CPC show that they concern themselves with only a single defendant to a suit and not several defendants. The Trial Court, instead, could have proceeded to hear the Suit ex parte under Rule 11 of Order IX, CPC since Kazmi's written statement was on the record. Hence, the Trial Court had no authority in law to decree the Suit against one defendant without adjudicating upon the controversy involved.

f. The order dated 5th August, 1991 was not a judgment within the scope of section 2(9) read with Rule 4(2) of Order XX, CPC and did not meet the basic requirements of a "judgment" and a decree as per section 2(9) and 2(2), CPC, respectively.

Rival Contentions

9. Ms. Meenakshi Arora, learned senior counsel for the appellants while seeking our interference with the impugned judgment submitted as under:

a. The High Court fell into error by not appreciating the fact that the Executing Court exceeded its jurisdiction by going behind the order dated 5th August, 1991 and the decree that was drawn up in terms thereof, returning a finding that the same was not executable.

b. Samiullah had been provided ample opportunity to file his written statement but had failed to do so. In any event, the order dated 5th August, 1991 had not been challenged, and had attained finality.

c. The Trial Court, vide an interim order dated 31st May, 1990, had directed Kazmi and Samiullah to maintain status quo and not interfere with the peaceful possession of the suit property, by the appellants. The High Court had erroneously held that a perusal of the aforementioned order did not indicate any rider placed upon the parties from alienating the suit property, and that the sale deed dated 3rd November, 1997 was validly entered into.

d. The Purchasers were purchasers pendente lite and could not have purchased the suit property without leave of the Trial Court. The decisions in Surjit Singh and Others v. Harbans Singh and Others6 and Manohar Lal v. Ugrasen7 were referred to in support of the contentions that the transfer of property during pendency of proceedings and also in contravention of the interim order of injunction was impermissible.

e. Further, the Purchasers forcibly dispossessed the appellants of their peaceful possession of the suit property on 10th October, 2004 in gross violation of the injunction order dated 16th January, 1998 passed by the Executing Court.

f. Reliance placed by the High Court on Balraj Taneja v. Sunil Madan8 was misplaced in the present case as this Court, in Balraj Taneja (supra), while holding that reasons must be given while decreeing a suit under Rule 10 of Order VIII, CPC, was seized of a matter where the decree was challenged in appellate proceedings. In the present case, the decree was sought to be declared inexecutable in execution proceedings, far beyond the reach of such a narrow jurisdiction.

10. Ms. Preetika Dwivedi, learned counsel for the Purchasers (respondents 1 to 3) in support of upholding of the impugned judgment, submitted as under:

a. The order dated 5th August, 1991 passed by the Trial Court is not a judgment within the scope of section 2(9) read with Rule 4 of Order XX, CPC and the principle of law laid down in Balraj Taneja (supra) was rightly applied by the High Court.

b. The High Court had rightly granted all the parties liberty to have the title to the suit property adjudicated by the appropriate forum; hence, it could not be said that the appellants were prejudiced in any manner whatsoever. Further, any question relating to the title, and validity of the sale deed in favour of the Purchasers could be determined by the appropriate forum.

c. At the time of purchase, the names of Kazmi's sons, i.e. respondents 4 and 5, were present in the land revenue records pertaining to the suit property, after which the Purchasers' names have been inserted through mutation.

d. As per the law laid down in Hukam Chand v. Om Chand9 and Nagubai Ammal v. B. Shama Rao10, the transfer of the suit property was not in violation of section 52, ToP Act since the statute did not put an absolute embargo on the transfer of such property pendente lite.

Analysis

11. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

12. The sole question of law which arises for a decision in this appeal is:

Whether the order dated 5th August, 1991 suffered from a jurisdictional error so grave that the decree drawn up subsequently is incapable of execution by the Executing Court and an objection that it is inexecutable was available to be raised under section 47, CPC by the respondents 1 to 3?

13. Prior to answering the above question, we consider it appropriate to examine the scope and extent of power exercisable under Rule 10 of Order VIII, CPC.

14. Rule 10 of Order VIII, CPC, used as the primary source of power by the Trial Court in passing the order dated 5th August, 1991 against Samiullah, postulates the procedure that could be adopted when a party fails to present its written statement upon the same being called for by the court. Rule 10 reads as follows:

"10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

15. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb 'shall' in Rule 10 [although substituted for the verb 'may' by the Amendment Act of 1976] does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which 'shall' equally applies would be rendered otiose.

16. At this stage, we consider it apposite to take a quick look at Balraj Taneja (supra) to examine the scope of Rule 10 of Order VIII. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII, CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement. The relevant paragraphs of the judgment are reproduced below for convenience:

"29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC.

Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement.

But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression 'the court may, in its discretion, require any such fact to be proved' used in sub-rule (2) of Rule 5 of Order 8, or the expression 'may make such order in relation to the suit as it thinks fit' used in Rule 10 of Order 8."

No doubt this decision was rendered considering that the verb used in the provision is 'may', but nothing substantial turns on it.

17. What emerges from a reading of Balraj Taneja (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja (supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

18. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence.

Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only

the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence.

Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.

19. Having noted what Rule 10 of Order VIII postulates, the order dated 5th August, 1991 may be examined now since it is the genesis of the present litigation before us. The order made by the Trial Court on 5th August, 1991, reads as below:

"68-C application moved by the plaintiffs under Order-8 Rule-5 (2) & (3) read with Rule 10 CPC. According to the plaintiff, Samiullah son of Asad Ullah Kazmi, defendant no. 1 has been impleaded as defendant no. 1 (sic, defendant no. 2) as he was also threatening to encroach the right of the plaintiff in the disputed property. He appeared through counsel and moved application and has also filed affidavits 50-C & 57-C but he failed to file any written statement.

It is clear that so many date has been given for written statement and lastly it was 29.4.91, which was fixed for written statement and for issues, but the defendant has (sic, not) filed written statement and on this ground the plaintiff has moved the above application 68-C. The learned counsel for the plaintiff has argued that he has appeared through counsel and enough time has been given to him calling upon him to file the written statement, but he failed to file written statement.

The case is covered by Order-8 Rule 10 C.P.C. The defendant no. 2 remained absent. In view of the above, I am of the opinion that it is fit case to proceed under Order-8 Rule 10 C.P.C. Accordingly, the suit of the plaintiffs is decreed under Order-8 Rule 10 C.P.C. with cost against defendant no. 2. The defendant no. 2 is restrained not to interfere in the peaceful right and enjoyment of the plaintiff in respect of the disputed building, trees and other properties. Fix 9.9.1991 for Issues."

20. In the present case, Kazmi had indeed filed his written statement dealing with the appellants' plaint before the order dated 5th August, 1991 was made. There, not only had Kazmi denied the assertions made in the plaint but he had also specifically objected to the maintainability of the suit itself before the Trial Court on the ground noted above. The Trial Court is presumed to be aware of the

fact that the written statement of Kazmi was on record or else it would not have fixed the next date for settling 'issues'.

In a situation where maintainability of the suit was in question and despite Samiullah not having filed his written statement, it was not a case where the Trial Court could simply pronounce judgment without even recording a satisfaction that it had the jurisdiction to try the suit and adjudicate the contentious issue(s), not to speak of pronouncing its verdict against Samiullah without assigning a single reason by treating the averments in the plaint to be admitted.

The High Court rightly observed that even on pronouncement of judgment against Samiullah, the lis remained alive as against Kazmi and decision on the objection as to maintainability could have resulted in a contrary decision.

21. No tribunal, far less a civil court, in exercise of judicial power ought to play ducks and drakes with the rights of the parties. We are left to wonder what would have been the status of the rival claims if Kazmi had not passed away and accepting his objection, the Suit were dismissed on the ground of maintainability. In such a case, could such a dismissal be reconciled with the purported decree drawn up against Samiullah? The answer would have to be in the negative. Or, take the situation that has cropped up here. The suit has been dismissed qua Kazmi on 27th April, 2009 as abated.

Although Ms. Arora had submitted in course of hearing that steps have since been successfully taken to set aside abatement and an assurance was given to file additional documents by 12th December, 2023 in support of such a submission, the additional documents e-filed beyond time do not reveal that (i) abatement has been set aside, (ii) the heirs/legal representatives substituted in place of Kazmi and (iii) the suit restored to its original file and number. The result is that the suit stands dismissed as against the principal defendant without any determination by the Trial Court on his objection that such court did not possess the jurisdiction to entertain and try the suit.

22. We are constrained to observe that it is to avoid such a situation of contradictory/inconsistent decrees that power under Rule 10 of Order VIII ought to be invoked with care, caution, and circumspection, only when none of several defendants file their written statements and upon the taking of evidence from the side of the plaintiff, if deemed necessary, the entire suit could be decided.

As in the present case, where even one of several defendants had filed a written statement, it would be a judicious exercise of discretion for the court to opt for the second alternative in Rule 10 of Order VIII, CPC unless, of course,

extraordinary circumstances exist warranting recourse to the first alternative. In the matter at hand, the filing of the written statement by Kazmi denying the averments made in the plaint warranted that the appellants' claims be proved by evidence, oral and/or documentary, instead of decreeing the suit against one of the defendants in a most slipshod manner.

23. We find close resemblance of the facts and circumstances under consideration in Swaran Lata Ghosh v. H.K. Banerjee11. A money suit instituted by the respondent before this Court was tried by the High Court at Calcutta and after taking evidence the learned Single Judge on 17th August, 1962, passed the following order:

"There will be a decree for Rs 15,000 with interest on judgment on Rs 15,000 at 6% per annum and costs. No interim interest allowed."

Pursuant to that order a decree was drawn up. An appeal carried from the decree before the Division Bench failed. The Division Bench assigned sketchy reasons for the conclusion that the Trial Court "rightly decreed the suit" and disposed of the appeal with certain modification of the decree. While allowing the appeal and setting aside the decree passed by the high court and remanding the suit to the Court of first instance for trial according to law, this Court noted that Rules 1 to 8 of Order XX, CPC are, by the express provision contained in Rule 3(5) of Order XLIX, CPC inapplicable to a Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction and hence, a judge of a Chartered High Court was not obliged to record reasons in a judgment strictly according to the provisions contained in Rules 4(2) and 5 of Order XX, CPC. Notwithstanding such a provision, this Court proceeded to record in paragraph 6 as follows:

"6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial.

In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent

reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all.

Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal.

The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint."

24. However, there, it was an appellate decree which this Court was called upon to examine. We realise that we are not examining the correctness of a judgment/order arising from exercise of appellate jurisdiction by the High Court but a judgment approving an order on an objection under section 47, CPC, scope wherefor is limited.

25. Our real task is to ascertain whether the decree drawn up on the basis of the order dated 5th August, 1991 and put to execution by the appellants could have been objected to by the respondents 1 to 3 as inexecutable under section 47, CPC. Section 47, CPC, being one of the most important provisions relating to execution of decrees, mandates that an executing court shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit.

26. Reference to a couple of authorities on the scope and nature of section 47, CPC, at this stage, would not be inapt.

27. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman12, this Court was considering the scope of objection under section 47 of the CPC in relation to the executability of a decree. Therein, it was laid down that only such a decree could be the subject-matter of objection which is a nullity and not a decree which was erroneous either in law or on facts. Law was laid down in the following terms:

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor and cannot

entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

(underlining ours, for emphasis)

28. In Dhurandhar Prasad Singh v. Jai Prakash University13, this Court further expounded the powers of a court under section 47, CPC in the following words:

"24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing."

(underlining ours, for emphasis)

29. The legality of the order of the High Court, together with the order of the Executing Court that the former went on to uphold, has to be tested having regard to the settled position of law as noticed above and bearing in mind that the powers of an executing court, though narrower than an appellate or revisional court, can be exercised to dismiss an execution application if the decree put to execution is unmistakably found to suffer from an inherent lack of jurisdiction of the court that made the same rendering it a nullity in the eye of law.

30. For reasons more than one, we propose to hold that the Executing Court and the High Court were right in holding that the objection raised by the respondents 1 to 3 to the executability of the decree was well-founded.

31. What appears to be of significance in the light of the decisions referred to above is the importance of the legal term 'jurisdiction', and the question whether the Trial Court did have the jurisdiction to pass the order it did on 5th August, 1991 followed by the decree signed on 11th November, 1991.

32. What does 'jurisdiction' mean? In the ensuing discussion, we feel inclined to draw guidance from certain decisions of ancient vintage which have stood the test of time.

33. The wisdom of Sir Ashutosh Mukherjee, A.C.J., speaking for a Full Bench of the High Court at Calcutta in Hirday Nath Roy v. Ramachandra Barna Sarma14, more than a century back, profitably assists us in understanding what is meant by 'jurisdiction', 'lack of jurisdiction' and 'error in the exercise of jurisdiction'. The relevant passage reads as under:

"An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact'; 'the authority by which judicial officers take cognizance of and decide causes'; 'the authority to hear and decide a legal controversy'; 'the power to hear and determine the subjectmatter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them'; 'the power to hear, determine and pronounce judgment on the issues before the Court'; 'the power or authority which is conferred upon a Court by the legislature to bear and determine causes between parties and to carry the judgments into effect'; 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.

This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value, and nature of the subject-matter. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction.

The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject-matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction should be included in the conception of jurisdiction itself is sometimes a question of great nicety.

But the distinction between existence of jurisdiction and exercise of jurisdiction has not always been borne in mind and this has sometimes led to confusion. We must not thus overlook the cardinal position that in order that jurisdiction may be exercised, there must be a case legally before the Court and a hearing as well as a determination. A judgment pronounced by a Court without jurisdiction is void, subject to the well-known reservation that when the jurisdiction of a Court is challenged, the Court is competent to determine the question of jurisdiction, though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it.

Besides the cases mentioned therein, reference may particularly be made to the judgment of Srinivas Aiyangar, J., in Tuljaram v. Gopala [32 Mad. L.J. 434; 21 Mad. L.J. 220 (1916).], where the true rule was stated to be that if a Court has jurisdiction to try a suit and has authority to pass orders of a particular kind, the fact that it has passed an order which it should not have made in the circumstances of that litigation, does not indicate total want or loss of jurisdiction so as to render the order a nullity."

(underlining ours, for emphasis)

34. Hirday Nath Roy (supra) found approval in Official Trustee v. Sachindra Nath Chatterjee15, a co-ordinate Bench decision of this Court. The relevant observations of this Court in Sachindra Nath Chatterjee (supra) are reproduced below:

"12. It is plain that if the learned judge had no jurisdiction to pass the order in question then the order is null and void. It is equally plain that if he had jurisdiction to pronounce on the plea put forward before him the fact that he made an incorrect order or even an illegal order cannot affect its validity.

15. *** it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

(underlining ours, for emphasis)

35. The essence really is that a court must not only have the jurisdiction in respect of the subject matter of dispute for the purpose of entertaining and trying the claim but also the jurisdiction to grant relief that is sought for. Once it is conceded that the jurisdiction on both counts is available, it is immaterial if

jurisdiction is exercised erroneously. An erroneous decision cannot be labelled as having been passed 'without jurisdiction'. It is, therefore, imperative that the distinction between a decision lacking in inherent jurisdiction and a decision which suffers from an error committed in the exercise of jurisdiction is borne in mind.

36. Moving on to decisions of not too distant an origin, we notice that this Court in Rafique Bibi v. Sayed Waliuddin16 whilst relying on Vasudev Dhanjibhai Modi (supra), has made valuable observations as to the circumstances where an order passed could be regarded as a nullity. The relevant observations made in Rafique Bibi (supra) read thus:

"6. What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

(underlining ours, for emphasis)

37. Also, a reading of Rafique Bibi (supra) makes it clear that the lack of jurisdiction must be patent on the face of the decree to enable an executing court to conclude that the decree was a nullity. Hence, it is clear that all irregular or wrong decrees would not necessarily be void. An erroneous or illegal decision, which was not void, could not be objected in execution or incidental proceedings. This dictum was also affirmed by a Bench of 3 (three) Hon'ble Judges of this Court in Balvant N. Viswamitra v. Yadav Sadashiv Mule17.

38. What follows from a conspectus of all the aforesaid decisions is that jurisdiction is the entitlement of the civil court to embark upon an enquiry as to whether the cause has been brought before it by the plaintiff in a manner prescribed by law and also whether a good case for grant of relief claimed been set up by him. As and when such entitlement is established, any subsequent error till delivery of judgment could be regarded as an error within the jurisdiction.

The enquiry as to whether the civil court is entitled to entertain and try a suit has to be made by it keeping in mind the provision in section 9, CPC and the relevant enactment which, according to the objector, bars a suit. Needless to observe, the question of jurisdiction has to be determined at the commencement and not at the conclusion of the enquiry.

39. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law.

Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Rule 2 of Order XIV, CPC.

That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief.

However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and nongrant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court.

40. Turning to the facts of the present case, Kazmi had challenged the maintainability of the Suit in the written statement filed by him before the Trial Court contending inter alia that the suit property was bhoomidhari land owing to which the Suit was barred by section 331 of UPZA & LR Act as well as it was barred under section 41(h) of the Specific Relief Act and, thus, not maintainable before the civil court.

What was required of the Trial Court in such situation was to record a satisfaction, at least prima facie, that the Suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances. A glance at the order dated 5th August, 1991, is sufficient to inform us that the Trial Court, in no words whatsoever, made any decision on whether it was entitled in law to decide the plea before it, prior to decreeing the Suit against Samiullah under Rule 10 of Order VIII, CPC.

The question of competence to try the Suit, we have found, was the first of several issues arising for decision in the Suit and despite such looming presence of an important issue before the Trial Court which, if examined and answered in favour of Kazmi, would have ousted jurisdiction, it preferred not to wait and proceeded to decree the same against Samiullah without a whisper on its competency to do the same.

41. The legal and factual position of the present case having been noted above, we hold that a decision rendered by a court on the merits of a controversy in favour of the plaintiff without first adjudicating on its competence to decide such controversy would amount to a decision being rendered on an illegal and erroneous assumption of jurisdiction and, thus, be assailable as lacking in inherent jurisdiction and be treated as a nullity in the eye of law; as a logical

corollary, the order dated 5th August, 1991 is held to be ab initio void and the decree drawn up based thereon is inexecutable.

42. There is one other reason which we wish to assign as a ground for upholding the order of the Executing Court and the High Court.

43. Reference may once again be made to Balram Taneja (supra) where the law has been reiterated succinctly, as follows:

"41. There is yet another infirmity in the case which relates to the 'judgment' passed by the Single Judge and upheld by the Division Bench.

42. 'Judgment' as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment 'shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'.

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

43. ***

44. ***

45. Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that 'the points for determination' as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted.

We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

46. *** Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one

party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say 'suit decreed' or 'suit dismissed'. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained."

(underlining ours, for emphasis)

We concur with the observation that a judgment, as envisaged in section 2(9), CPC, should contain the process of reasoning by which the court arrived at its conclusion to resolve the controversy and consequently to decree the suit.

44. It is indubitable that a "judgment", if pronounced by a court under Rule 10 of Order VIII, CPC, must satisfy the requirements of Rule 4(2) of Order XX, CPC, and thereby conform to its definition provided in section 2(9) thereof.

45. Further, even a cursory reading of Rule 10 of Order VIII, CPC impresses upon us the fundamental mandate that a "decree" shall follow a "judgment" in a case where the court invokes power upon failure of a defendant to file its written statement. It is, therefore, only a "judgment" conforming to the provisions of the CPC that could lead to a "decree" being drawn up. As is manifest on the face of the record of the present case, apart from the ipse dixit of the Trial Court that the case is fit for being proceeded against under Rule 10 of Order VIII and that the suit qua Samiullah ought to be decreed with the injunctive order, no ingredients that a "judgment" should contain as per the CPC appear in the order dated 5th August, 1991.

46. We deem it fit to advert to the fine words of wisdom imparted to us by Hon'ble P.B. Mukharji, CJ., in 'The New Jurisprudence: The Grammar of Modern Law' where the learned author says:

"The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reason. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reason. Reason, therefore, is the soul and spirit of a good judgment."

47. It is one of the cardinal principles of the justice delivery system that any verdict of a competent judicial forum in the form of a judgment/order, that determines the rights and liabilities of the parties to the proceedings, must inform the parties what is the outcome and why one party has succeeded and not the other - the 'why' constituting the reasons and 'what' the conclusion. Apart from anything else, insistence of the requirement for the reason(s) to support the conclusion guarantees application of mind by the adjudicator to the materials

before it as well as provides an avenue to the unsuccessful party to test the reasons before a higher court.

48. All civil courts in the country have to regulate their judicial work in accordance with the terms of the provisions of the CPC. Any egregious breach or violation of such provisions, including the one noticed here, would be ultra vires.

49. Let us now examine whether there is a 'decree' within the scope of section 2(2), CPC. Section 2(2) is reproduced hereunder:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

(underlining ours, for emphasis)

50. The decree signed by the Trial Court on 11th November, 1991 is not on record. Nevertheless, at the cost of repetition, we record that examination of the order dated 5th August, 1991 does not reveal any adjudication leading to determination of the rights of the parties in relation to any of the matters in controversy in the suit and, therefore, the decree since drawn up is not a formal expression of an adjudication/determination since there has been no adjudication/determination so as to conform to the requirements of a decree within the meaning of section 2(2). In this regard, we express our concurrence with both the High Court and the Executing Court that there is no decree at all in the eye of law.

51. We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eyes of law and execution thereof, if sought for, would be open to objection in an application under section 47, CPC.

Conclusion

52. For the reasons mentioned above, we conclude that the Trial Court had no authority to decree the suit against Samiullah in exercise of its power under Rule 10 of Order VIII, CPC.

53. There is no reason to interfere with the judgment and order of the High Court under challenge. It is upheld and the appeal, accompanied by any pending applications, stands dismissed. Parties shall bear their own costs.

54. It is, however, made clear that no part of the observations of this Court, or of the High Court or of those below, be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever. Determination of the title to the suit property, adjudication on the validity of the sale deed in favour of the Purchasers, or decision on any other contentious issue are left open for a forum of competent jurisdiction to embark upon, if approached by any of the parties.

55. We are aware that pursuant to Interim Application No. 4 of 2013 moved by the appellants, this Court had appointed one Mr. Suryanarayana Singh as the Court Receiver in respect of the property ("Court Receiver", hereafter) on 14th March, 2014. The Court Receiver already appointed shall stand discharged forthwith. Unpaid remuneration, if any, shall be borne by the appellants.

56. However, the Court Receiver shall provide accounts of income and expenditure in respect of the suit property to the appellants as well as the respondents 1 to 3 within two months and any claim of either of the parties would be open to be raised and addressed in accordance with law.

.....J. [B.R. Gavai]

.....J. [Dipankar Datta]

.....J. [Aravind Kumar]

New Delhi;

January 12, 2024.

1 Civil Misc. Writ Petition No. 15236 of 2009

2 Original Suit No. 58 of 1990

3 The decree was signed on 11th November, 1991.

4 Execution Application No. 58 of 1997

5 Civil Misc Contempt Petition No. 62 of 2004

6 (1995) 6 SCC 50

7 (2010) 11 SCC 557

8 (1999) 8 SCC 396

9 (2001) 10 SCC 715

10 AIR 1956 SC 593

11 (1969) 1 SCC 709

12 (1970) 1 SCC 670

13 (2001) 6 SCC 534

14 1920 SCC OnLine Cal 85 : ILR LXVIII, Cal 138

15 AIR 1969 SC 823

16 (2004) 1 SCC 287

17 (2004) 8 SCC 706

IN THE SUPREME COURT OF INDIA

Raja Gounder and Ors.
Vs.
M. Sengodan and Ors.

[Civil Appeal No._____ of 2024 @ SLP (C) No. 13486 of 2007]

HEADNOTE – Children from void marriage can't be denied share in their parent's property

JUDGMENT

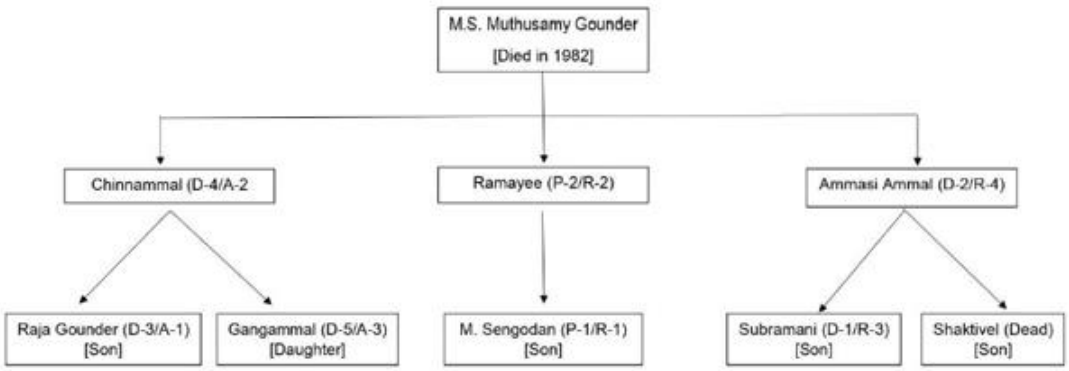
S.V.N. Bhatti, J.

1. Leave granted.

2. The Defendant Nos. 3 to 5 in O.S. No. 357 of 1985 before the Court of the Subordinate Judge, Sankari, Coimbatore District, Tamil Nadu, are the Appellants in the Civil Appeal. The Appellants assail the judgment and decree of the Trial Court and the High Court of Judicature at Madras, dismissing the suit filed by Respondent No. 1 and Respondent No. 2 for partition and separate possession of the plaint schedule properties.

I. FACTUAL BACKGROUND

3. A genealogy is prefaced to appreciate the relationship between the parties:-



4. Respondent Nos. 1 and 2 in this Civil Appeal were the Plaintiffs in O.S. No. 357 of 1985 before the Trial Court filed for partition and separate possession of plaint schedule properties. The plaint schedule consists of three items of agricultural land in Amani, Kliyanoor, Agraharam and Pallipayam villages of Tiruchengode Taluk. The suit was filed against Respondent Nos. 3 and 4 herein. During the pendency of the suit, the Appellants filed I.A. No. 1019 of 1987 and were impleaded by the Trial Court as Defendant Nos. 3, 4 and 5.

5. Muthusamy Gounder is the propositus of the parties to the suit and the claim for partition arose on his demise in the year 1982. The plaint averments are that Respondent No. 1 is the son of the propositus through Respondent No. 2/Ramayee. Respondent No. 3 is also the son of the propositus through Respondent No. 4/Ammasi Ammal.

The marriage of Respondent No. 2 with the propositus is alleged to have happened in the early 1950s. It is averred in the plaint that Respondent Nos. 1 to 4 lived together and had a common kitchen during the lifetime of Muthusamy Gounder. Respondent Nos. 1 and 2 claim that a coparcenary/joint Hindu family existed, and Respondent Nos. 1 to 3 inherited the plaint schedule properties. The plaint schedule properties are treated as joint family/ancestral properties.

The demand of Respondent Nos. 1 and 2 through legal notice dated 21.06.1984 did not result in a reply from Respondent Nos. 3 and 4, or result in partition, the suit for partition of plaint schedule into three equal shares was filed and allot to Respondent Nos. 1 and 3, each one such share. The other share notionally allotted to Muthusamy Gounder, and since he died in 1982, is divided and allotted to Respondent Nos. 1 to 4 in accordance with law.

6. We have specifically referred to the share demanded by Respondent Nos. 1 and 2 in O.S. No. 357 of 1985 because the shares of the parties resulted in change with the impleadment of Appellants. Respondent Nos. 3 and 4 filed written statements denying the factum of marriage between Respondent No. 2 and Muthusamy Gounder, stating that Respondent No. 1 alone is a member of the Hindu Undivided Family (HUF) of Muthusamy Gounder.

6.1 As a natural result of the denial of marriage and relationship between Muthusamy Gounder and Respondent No. 2, the other averments in the plaint, namely, the existence of coparcenary and ancestral properties; the rights of Respondent Nos. 1 and 2 for partition, are specifically denied. The Appellants as Defendant Nos. 3 to 5 claimed that Appellant Nos. 1 and 3 are the son and daughter, respectively, of Muthusamy Gounder through Appellant No. 2/Chinnammal.

The Appellants further averred that upon the demise of the propositus, the parties to the suit have inherited the plaint schedule properties as the legal heirs of the late Muthusamy Gounder. The Appellants and other legal heirs of Muthusamy Gounder were in joint possession and enjoyment of the plaint schedule properties. Therefore, the Appellants, along with other legal heirs/successors of Muthusamy Gounder, pray for partition of the coparcenary headed by Muthusamy Gounder. The Trial Court considered the following issues:-

1. Whether the Plaintiffs are entitled to the reliefs claimed in the suit?

2. Whether Defendant Nos. 1 to 5 are also entitled to shares as legal heirs of the deceased Muthusamy Gounder in his estate?

3. To what relief?

7. The oral evidence of PW1 to 3 and DW1 to 5 was adduced. Ex. A-1 to A-10 and Ex. B-1 to B-10 were marked by the parties.

8. The Trial Court examined the claim for partition from the perspective of the existence of a coparcenary/joint Hindu family and that the extended family of Muthusamy Gounder through Respondent No. 2 and Appellant No. 2 as wives of Muthusamy Gounder.

In fine, the Trial Court examined the existence of coparcenary with Respondent Nos. 1 and 2 and Appellant No. 1, and the status of marriage of Respondent No. 2 and Appellant No. 2 with Muthusamy Gounder, and a coparcenary existed with the extended family members. The Trial Court held that Respondent No. 4 herein admittedly is the first and legally wedded wife of Muthusamy Gounder. Appellant No. 2 and Respondent No. 2 did not produce evidence to prove the factum of the marriage with Muthusamy Gounder.

The evidence adduced by the Appellants or Respondent Nos. 1 and 2, does not inspire the confidence of the Court to accord to them the status as wives of Muthusamy Gounder. The Trial Court records a categorical finding that Appellant No. 2 and Respondent No. 2 are not the wives of Muthusamy Gounder, and consequently, the status of the children through the extended family as coparceners was rejected.

9. Appeal Nos. 394 and 929 of 1991 were filed before the High Court of Judicature at Madras by Respondent Nos. 1 and 2 and the Appellants herein. Through the impugned judgment, the appeals filed at the instance of extended family members of Muthusamy Gounder, stood dismissed. The High Court, in all particulars, accepted the view of the Trial Court on the status of marriage claimed by Appellant No. 2 and Respondent No. 2 as not established by the parties and the claim for partition on the footing of the existence of the coparcenary with the parties of the suit would not arise. The appeals stood dismissed by the common impugned judgment dated 26.09.2006.

9.1 Hence, the Civil Appeal at the instance of the Appellants in Appeal No. 929 of 1991.

II. SUBMISSIONS

We have heard the Counsel appearing for the parties.

10. Advocate N.S. Nappinai, appearing for the Appellants, accepting the findings of fact recorded by the Courts below on the status of Respondent No. 2 and Appellant No. 2 as part of the extended family of Muthusamy Gounder, argues a substantive point viz., both the Courts below fell in a serious flaw in not moulding the relief from admitted circumstances/evidence particularly when the suit filed is for partition and separate possession of the plaint schedule properties.

It is argued that the Appellants and Respondent Nos. 1 and 2, assuming failed in establishing the status of a valid marriage of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder, still the entitlement of a share as sons/children of Muthusamy Gounder through the extended family of Muthusamy Gounder should have been considered.

The documentary evidence shows that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Therefore, Appellant No. 1 and likewise Respondent No. 1 even are children of Muthusamy Gounder through a void or voidable marriage, still the children of Muthusamy Gounder through extended family are entitled to a share in the half share of Muthusamy Gounder in the schedule properties.

The Counsel places reliance on Revanasiddappa and another v. Mallikarjun and others1, for the proposition that the children of Appellant No. 2 and Respondent No. 2 will be entitled to a share in the property, which would have been allotted to Muthusamy Gounder in the notional partition of plaint schedule properties. The Counsel places reliance on Ex. B-6, a registered mortgage deed dated 01.11.1976, executed by Muthusamy Gounder in favour of Karuppana Gounder and on Ex. B-3 dated 27.04.1984, a joint patta in favour of Muthusamy Gounder and all his three sons.

The unrebutted documentary evidence in Exs. B-3 and B-6 constitute, firstly, an admission in the form of a substantive piece of evidence by Muthusamy Gounder on the status of Appellant No. 1 and Respondent No. 1 as his sons, coupled with corroborative documentary evidence in Ex. B-4 and B-5, electoral rolls. Respondent No. 3 claims through the common propositus, i.e., Muthusamy Gounder, and these admissions are valid in law on Respondent No. 3. This is the best evidence from none other than the common propositus. The Appellants and Respondent No. 1 are entitled to a share in the share allotted to Muthusamy Gounder.

Therefore, the Counsel argues that given the settled legal position on the status of sons of Muthusamy Gounder through Appellant No. 2 and Respondent No. 2, a decree for partition though not as prayed for, is passed, but a preliminary decree of partition firstly on plaint schedule properties between Muthusamy Gounder and Respondent No. 3 is made, and a further decree, distributing the share of Muthusamy Gounder to Appellant Nos. 1 and 3 and Respondent Nos. 1 and 3 is rendered.

11. Advocate Vinodh Kanna B., appearing for Respondent Nos. 3 and 4, contends that the findings of fact recorded by the Courts below do not warrant reconsideration of evidence by this Court under Article 136 of the Constitution of India, and alternatively, the evidence is wanting on the status of Appellant Nos. 1 and 3 and Respondent No. 1 as the children of Muthusamy Gounder.

The alternative argument now canvassed before the Supreme Court is not available in the circumstances of the case or from the material on record. The proof of status as children of Muthusamy Gounder is a condition precedent for applying the ratio of Revanasiddappa (supra), and there is no evidence on this crucial aspect to mould the relief. Therefore, the judgements impugned are sustainable in law and fact. He prays for the dismissal of the Civil Appeal.

III. ANALYSIS

12. We have perused the record and noted the rival contentions canvassed by the Counsel, briefly reiterated in this Civil Appeal, the claim for partition in the share notionally allotted to late Muthusamy Gounder is pressed for. Thus, it presupposes the Appellants do not press the claim as coparceners of the family of Muthusamy Gounder; however, from the material on record, they claim a share from the share as the children of Muthusamy Gounder. The claim for a share depends on the application and appreciation of Exs. B-3 to B-6.

13. Sections 17 and 18 of the Indian Evidence Act, 1872 ("the Act") defines "admission" and "admission by party to proceeding or his agent". Section 17 of the Act reads thus: -

"17. Admission defined admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

13.1 Admission is a conscious and deliberate act and not something that could be inferred. An admission could be a positive act of acknowledgement or confession. To constitute an admission, one of the requirements is a voluntary acknowledgement through a statement of the existence of certain facts during the

judicial or quasi-judicial proceedings, which conclude as true or valid the allegations made in the proceedings or in the notice.

The formal act of acknowledgement during the proceedings waives or dispenses with the production of evidence by the contesting party. The admission concedes, for the purpose of litigation, the proposition of fact claimed by the opponents as true. An admission is also the best evidence the opposite party can rely upon, and though inconclusive, is decisive of the matter unless successfully withdrawn or proved erroneous by the other side.

13.2 The above being the position, pithily stated on what constitutes an admission, Section 17 of the Act does not come in aid to answer or appreciate the documentary evidence marked in the suit. Therefore, Section 17 has to be read along with Section 18 of the Act, which reads thus:-

"18. Admission by party to proceeding or his agent.-

Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

by suitor in representative character.- Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by -

(1) by party interested in subject-matter.- persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) by person from whom interest derived.- persons from whom the parties to the suit have derived their interest in the subjectmatter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements."

13.3 Section 18 of the Act deals with:

(i) admission by a party to a proceeding,

(ii) his agent,

(iii) by a suitor in a representative character,

(iv) statements made by a party in trusted subject matter,

(v) statements made by a person from whom interest is derived.

The qualifying circumstances to merit as admission are subject to satisfying the requirements.

14. The Privy Council in Gopal Das and another v. Sri Thakurji and others2, held that a statement made by a person is not only evidence against the person but is also evidence against those who claim through him. Section 18 of the Act lays down the conditions and the requirements satisfied for applying to a statement as an admission. We keep in our perspective Sections 17 and 18 of the Act while appreciating Exs. B-3 and B-6.

15. The Appellants rely on Exs. B-3 to B-6 to evidence that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Now let us examine whether these exhibits, firstly, contain an admission on the relevant fact in issue and secondly, whether they satisfy the requirements under Section 18 of the Act. Ex. B-6 is the registered mortgage deed dated 01.11.1976 executed by Muthusamy Gounder/propositus in favour of one Karuppana Gounder. Sy. No. 66 of Pallipayam, Agraharam Village was the mortgage deed executed by Muthusamy Gounder in favour of Karuppana Gounder. The mortgaged property is one of the items in the schedule in O.S. No. 357 of 1985. Muthusamy Gounder in Ex. B-6 stated as follows: -

"Mortgage deed executed in favour of Karuppannna Gounder, son of...Vellaya Gounder, residing at Vaagaikkadu, Cusba Elandaikkuttai Village, Thiruchengodu Taluk, Salem District.

By Muthusamy Gounder (1) son of Sengoda Gounder, residing at Malagoundenpalayam, Kaliyanoor Ayan Village, - Do - Taluk, - Do - District, Guardian and father of the minors Subramani (2) Raja Gounder (3) and Sengodam (4), for himself and on behalf of the minors Nos. 2 ,3 and 4."

15.1 A mere perusal of the preface to Ex. B-6, mortgage deed, would show that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. The document was executed for himself and on behalf of his minor sons. The statement is made by Muthusamy Gounder during the subsistence of his interest in the property mortgaged. Respondent No. 3 definitely claims through Muthusamy Gounder for the half share notionally partitioned in favour of Muthusamy Gounder.

The Appellants also rely on the patta dated 27.04.1984 (Ex. B-3) standing in the name of Muthusamy Gounder and his sons; the voters lists, viz., Exs. B-4 and B-

5, to show that Muthusamy Gounder and his sons lived as a family. By applying Sections 17 and 18 of the Act, we are convinced that Muthusamy Gounder made a statement describing Appellant No. 1 and Respondent No. 1 as his sons and treated as an admission by record. This statement satisfies the ingredients of Section 18 of the Act.

Further, in the absence of contrary evidence and withdrawal of admission or explained through admissible evidence, the admission in the mortgage deed, viz., Ex. B-6, coupled with the joint patta and voters lists, declares the status of Appellant No. 1, Respondent No. 1, along with Respondent No. 3 as the sons of Muthusamy Gounder. At this juncture, we notice that the status derived through an admission in Ex. B-3 vis-à-vis Appellant No.1 as a natural corollary could be extended to Appellant No. 3 as a child/daughter of Muthusamy Gounder. This is an inescapable consequential conclusion which the Court has to record.

15.2 We make a useful reference to the judgement reported in Nirmala v. Rukminibai3. The Division Bench of the High Court of Karnataka considered a dispute nearer to the circumstances with the case on hand. The decision made in this case decided the status of inheritance of one Narayanarao among the children born out of his second marriage.

The Plaintiffs were the first wife and daughter of Narayanarao, who filed a suit for possession of the suit properties in the estate of Narayanarao, which devolved on the Defendants, i.e., Narayanarao's second wife and children. The Trial Court decreed the suit in the Plaintiffs' favour, against which the Defendants filed an appeal before the High Court of Karnataka. The Defendants relied on Section 18 of the Act to point out Narayanarao's admission that he indeed treated the Defendants as his legally wedded wife and legitimate children.

Accepting this argument, the High Court allowed the appeal holding that where the children from the first wife brought a suit for possession of their father's property disputing the second marriage of their father, the admission of their deceased father that the defendant, as his legally wedded wife, was binding on the Plaintiffs. We are in agreement with the High Court of Karnataka's consideration of the scope of the binding nature of admission by a common ancestor in a matter of inheritance under Section 18 of the Act.

16. We are of the view that the statement in Ex. B-6 is a clear admission of Muthusamy Gounder as to how he treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Respondent No. 3 is claiming through Muthusamy Gounder, the common predecessor in interest; therefore, the admission is binding on Respondent No. 3 as well. Hence, by treating Appellant

Nos. 1 and 3 and Respondent Nos. 1 and 3 as successors in the interest of Muthusamy Gounder, the shares are worked out.

Once the status of the parties, other than Respondent No. 3, is established as the extended family of the propositus, irrespective of whether the marriages of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder are void or voidable, denying the children of Muthusamy Gounder a share in the property of notional partitioned in favour of Muthusamy Gounder, is unsustainable in law and fact. Appellant No. 3 claims to be the daughter of Muthusamy Gounder, and the law, as applicable to the separate share of Muthusamy Gounder, grants an equal share to the daughter along with the sons of Muthusamy Gounder.

17. The above discussion takes us to point out a common infirmity in the examination of issues by the Trial and the Appellate Courts. The suit is one for partition, and the shares are dependent upon the nature of status and the time at which the partition is decreed. It is axiomatic that the shares fluctuate not only with the happening of events in the family but also with the circumstances established by the parties to the lis.

In the present case, the claim as a coparcenary is unacceptable for want of evidence on the factum of the marriage of Muthusamy Gounder with Appellant No. 2 and Respondent No. 2; the courts below ought to have considered the relief from admitted circumstances on record. Hence, the argument of Respondent No. 3 that the status of Appellant Nos. 1 and 3; and Respondent No. 1 as the children of Muthusamy Gounder is without evidence is untenable and rejected accordingly. At this stage, it is apposite to refer to the conclusions laid down in Revanasiddappa (supra):-

"81. We now formulate our conclusions in the following terms:

81.1. In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether: (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

81.2. In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child "begotten or conceived" before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

81.3. While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

81.4. While construing the provisions of Section 3(j) of the HSA, 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA, 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA, 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(j) of the HSA, 1956, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an "illegitimate child" for the purposes of the proviso;

81.5. Section 6 of the HSA, 1956 continues to recognise the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

81.6. Section 6 of the HSA, 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9-9-2005 by the amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship.

In terms of subsection (3) of Section 6 as amended, on a Hindu dying after the commencement of the amending Act of 2005 his interest in the property of a joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a joint Hindu family governed by Mitakshara law has been made the norm;

81.7. Section 8 of the HSA, 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

81.8. While providing for the devolution of the interest of a Hindu in the property of a joint Hindu family governed by Mitakshara law, dying after the commencement of the amending Act of 2005 by testamentary or intestate succession, Section 6(3) lays down a legal fiction, namely, that "the coparcenary property shall be deemed to have been divided as if a partition had taken place". According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

81.9. For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener, namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA, 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

81.10. The provisions of the HSA, 1956 have to be harmonised with the mandate in Section 16(3) of the HMA, 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above."

18. By applying the above principle on the entitlement of share to the children of void or voidable marriages, the judgements under appeal are liable to be set aside and are accordingly set aside.

We allow the appeal by passing a preliminary decree of partition for the plaint schedule properties, firstly between Respondent No. 3 and Muthusamy Gounder. Secondly, in the notionally partitioned share of Muthusamy Gounder, his

children, i.e., Appellant Nos. 1 and 3, Respondent No. 1 and Respondent No. 3 are allotted equal shares.

19. Hence, a preliminary decree of partition, as indicated above, is passed. The appeal is allowed accordingly. No costs.

.....J. [M.M. Sundresh]

.....J. [S.V.N. Bhatti]

New Delhi;

January 19, 2024.

1 (2023) 10 SCC 1

2 AIR 1943 PC 83

3 AIR 1994 Kar 247

IN THE SUPREME COURT OF INDIA

Mariam Fasihuddin and Anr.
Vs.
State by Adugodi Police Station & Anr.,

[Criminal Appeal No. 335/ 2024
arising out of SLP (Crl.) No. 2877/2021]

HEADNOTE – While prosecuting a person for the offence of cheating punishable under Section 420 IPC, it is to be seen whether the deceitful act of cheating was coupled with an inducement leading to the parting of any property by the complainant.

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. The Appellants assail the judgment dated 18.02.2021, passed by the High Court of Karnataka, at Bengaluru (hereinafter, 'High Court'), whereby their Criminal Revision Petition challenging the order dated 15.03.2018 of the VI Additional Chief Metropolitan Magistrate, Bengaluru (hereinafter, 'Trial Magistrate') has been dismissed. Consequently, the Appellants' prayer to discharge them in connection with FIR No. 141/2010 under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, 1860 (hereinafter, 'IPC') registered at P.S. Adugodi, Bengaluru has been concurrently turned down.

A. FACTS

3. The brief facts that are relevant to the present proceedings are set out as follows:

3.1. The Appellant No. 1 - wife, and Respondent No. 2 - husband, got married in Bengaluru on 02.08.2007. At the time of their marriage, Respondent No. 2 was engaged in a software business, located in New Castle Upon Tyne, the United Kingdom. During this period, Respondent No. 2 statedly assured the Appellant - wife that post marriage they would reside together in London.

It is the Appellants' case that Respondent No. 2 initially refused to take the Appellant - wife with him, but after considerable persuasion, she managed to accompany Respondent No. 2 to London. However, soon after, Respondent No.

2 allegedly abandoned her and forcefully confined her to the residence of her sisterinlaw. At the same time, Respondent No. 2 returned to India.

3.2. Appellant No. 2, who is the father of the Appellant - wife, had to intervene in the aforesaid circumstances and facilitate the latter's return to India. Subsequently, on 02.06.2008, the Appellant - wife gave birth to a male child. The Appellants allege that Respondent No. 2 and his family members did not provide any financial assistance to the Appellant - wife and the minor child. In January, 2009, the Appellant - wife sought to obtain a passport for the minor child based allegedly upon Respondent No. 2's instructions.

Respondent No. 2 also assured them that he had arranged their stay in the United Kingdom. Shortly thereafter, the minor child's passport was issued, and Respondent No. 2 obtained a sponsorship letter from his brotherinlaw, Dr. M.K. Shariff, which was duly forwarded to the United Kingdom High Commission. The sponsorship letter stated that Dr. M.K. Shariff would accommodate the Appellant - wife and the minor child during their visit to the United Kingdom and specifically mentioned the minor child's passport number.

3.3. However, as per the allegations of the Appellants, the duration of marriage with Respondent No. 2 was fraught with physical and mental torture solely on account of Respondent No. 2's relentless financial demands. More pertinently, Respondent No. 2, during his visit to India towards the end of 2009, subjected the Appellant - wife to coercion and torture.

These acts of intimidation prompted the Appellant - wife to file a complaint against Respondent No. 2 and his family members on 07.04.2010 before the Basavangudi Women Police Station, Bengaluru. The complaint was registered as Crime No. 68 / 2010, under Sections 346, 498A and 506, read with Section 34 IPC. Additionally, the complaint alleges that Respondent No. 2, on the pretext of arranging for their travel to the United Kingdom, took away the minor child's passport and jewellery items belonging to the Appellant - wife.

3.4. Having learnt of the complaint filed by his wife, Respondent No. 2 also lodged a complaint of his own on 13.05.2010 before the Adugodi Police Station, alleging that the Appellants had forged his signatures on the minor child's passport application and submitted the same to the Regional Passport Office, Bengaluru, at the time when Respondent No. 2 was in the United Kingdom. This complaint was registered as FIR No. 141/2010 under Sections 420, 468 and 471 read with Section 34 IPC (hereinafter, 'Concerned FIR').

3.5. Following the investigation conducted in the Concerned FIR, the investigating agency proceeded to file a chargesheet, implicating the Appellants

and one Mr. Aksar Ahmed Sheriff, who is a travel agent, for procuring the minor child's passport using forged documents. Notably, the charges for offences under Sections 468 and 471 IPC were dropped. Consequently, a case numbered CC No. 23545 / 2011 commenced before the Trial Magistrate only for the offences punishable under Section 420 read with Section 34 IPC.

3.6. The Appellants sought quashing of the aforementioned chargesheet vide Criminal Petition No. 3600 / 2012, invoking the powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, 'CrPC'), but their petition was dismissed vide order dated 22.04.2014. However, liberty was granted to the Appellants to approach the Trial Magistrate and seek their discharge from the case CC No. 23545/2011.

3.7. The Appellants consequently moved an application under Section 239 CrPC, seeking discharge in CC No. 23545 / 2011. In the meantime, Respondent No. 2 also invoked Section 173(8) CrPC and sought further investigation of the offences under Sections 468 and 471 IPC in the Concerned FIR.

The Trial Magistrate on 24.06.2015, vide separate orders, allowed Respondent No. 2's prayer for further investigation and directed him, being the de facto complainant, to furnish necessary evidence before the investigating officer, if so required. On the other hand, the Trial Magistrate dismissed the Appellants' discharge application on the ground that the question as to whether an offence under Section 420 IPC was made out or not would be decided during the course of trial.

3.8. Pursuant to the abovementioned order of the Trial Magistrate, the investigating agency filed a supplementary chargesheet against the Appellants on 25.07.2017, adding offences under Sections 468, 471, 420, 120B and 201 read with Section 34 IPC and Section 12(b) of the Passports Act, 1967.

At this juncture, it is imperative to highlight that the concerned Passport Officer was also implicated as Accused No. 4, for allegedly providing false information regarding the availability of the original passport of the minor child and being complicit with the Appellants in its destruction. The supplementary chargesheet also referred to a report provided by the State Forensic Laboratory, Madiwala, Bengaluru, dated 27.02.2016 (hereinafter, 'State FSL'), which categorically states as follows:

"Opinion on questioned photocopied signatures marked as Q1 to Q4 is not expressed since, the questioned photocopied signatures are showing bad line quality of strokes."

3.9. In addition to the State FSL Report, the supplementary chargesheet also mentioned a report dated 15.07.2013 purportedly obtained by Respondent No. 2 from a private agency, known as, 'Truth Lab'. This report opined that the signatures on the passport application did not signify a close resemblance with the specimens of Respondent No. 2's signatures.

3.10. Subsequent to these developments, when the case CC No. 23545 / 2011 was taken up for hearing before charge, it was urged on behalf of the Appellants that there were no grounds to frame charges. However, the Trial Magistrate repelled this contention by order dated 15.03.2018 and declined to discharge them.

3.11. The Appellants preferred to challenge the Trial Magistrate's order vide Criminal Revision Petition No. 692 / 2018, but as noticed at the outset, the High Court dismissed the same via the impugned order dated 18.02.2021, primarily on the ground that there were specific allegations against the Appellants which required a fullfledged trial.

3.12. The aggrieved Appellants are now before this Court.

B. CONTENTIONS OF THE PARTIES

4. Mr. Ranbir Singh Yadav, Learned Counsel appearing for the Appellants, argued that Respondent No. 2's complaint pertaining to the forgery of the passport application was merely a counterblast to the Appellant - wife's complaint alleging cruelty against him.

He contended that Respondent No. 2 had expressly consented to obtaining the minor child's passport and after the issuance of passport, had even sent the sponsorship letter authored by his brotherinlaw, Dr. M.K. Shariff, for the relocation of the Appellant - wife and the minor child to London. It was argued that this sponsorship letter is vital since it had been obtained at the instance of Respondent No. 2 and it specifically mentioned the passport number of the minor child, thereby implying consent of Respondent No. 2.

5. Mr. Yadav further contended that the opinion rendered by the State FSL was inconclusive as to the alleged forgery, and no additional material whatsoever had been recovered by the investigating agency between filing the original chargesheet and the supplementary chargesheet. Mr. Yadav also highlighted the reliance placed by both the High Court and the Trial Magistrate on the opinion of a handwriting expert obtained by Respondent No. 2 through a private agency - known as the Truth Lab.

He vehemently urged that the State FSL Report should have been given utmost weightage in comparison to a paid opinion so as to uphold the fairness and impartiality of the investigation. Mr. Yadav contended that no prima facie case had been made out against the Appellants. Citing the decision of this Court in Krishna Chawla v. State of UP,1 he emphasised upon the duty of the Trial Magistrate to nip frivolous prosecution in the bud before it reaches the trial stage by discharging the accused in fit cases.

6. Contrarily, Mr. Narender Hooda, Learned Senior Counsel representing Respondent No. 2, strongly refuted the allegations levelled by the Appellants. He strenuously urged that Respondent No. 2 was not present in India during the period from 13.07.2008 to 17.11.2009, when the alleged passport application with his forged signatures was submitted, to procure the minor child's passport.

He further argued that the Trial Magistrate has unequivocally observed that the Passport Officer (Accused No. 4), who deliberately withheld the original passport application, was an accomplice in the offence of the destruction of evidence. Additionally, Mr. Hooda objected to discarding the Truth Lab report at the stage of deciding the discharge application on the premise that the report of the State FSL was ambiguous and that the veracity of the private lab report could be ascertained only at the time of trial.

7. In addition to the full insight of the controversy, as highlighted by the learned counsel for the parties, we have also meticulously perused the chargesheets and other documents brought on record by them.

C. ISSUES FOR CONSIDERATION

8. The foremost question that falls for consideration before us is whether a prima facie case, to subject the Appellants to the agony of trial, has been made out. In furtherance of this question, the following issues emerge for our further consideration:

(i) Whether the actions of the Appellants prima facie constitute the offence of cheating under Section 420 IPC?

(ii) Whether there has been a prima facie case made out for forgery under Sections 468 and 471 IPC?

(iii) Whether there has been a violation of Section 12(b) of the Passports Act, 1967?

D. ANALYSIS

9. In the present case, charges have been brought against the Appellants for offences punishable under Sections 420, 468, 471, 120B, 201, read with Section 34 IPC, and Section 12(b) of the Passports Act, 1967. In this context, it is paramount to delve into the ingredients of 'forgery' and 'cheating' required to be prima facie established against the Appellants, at the very threshold. We are conscious of the fact that such an evaluation would have to proceed on the premise that the material gathered by the investigating agency is not to be discarded or disbelieved at this stage.

The offence of cheating under Section 420 IPC:

10. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

Further, Section 415 IPC distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

12. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC.

It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.2 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced

person to undertake the said act, which they would not have done but for the inducement.

13. The term 'property' employed in Section 420 IPC has a welldefined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

14. Having fully addressed the contours of the offence of 'cheating', let us now advert to the facts of the instant case to appreciate whether the allegations made by Respondent No. 2, are sufficient to prima facie establish that: (i) the Appellants have deceived Respondent No. 2; (ii) Respondent No. 2 was induced with dishonest intentions; (iii) such inducement was for the delivery of any property or valuable security; and (iv) as a result of such an act, Respondent No. 2 has suffered some damage or injury.

15. Each of these ingredients need to be analysed to ascertain whether Respondent No. 2 has made allegations in his complaint to substantiate points (i) to (iv) above. Additionally, it would also aid in determining whether the original or supplementary chargesheet addresses any of these ingredients.

16. The crux of Respondent No. 2's allegations is that the Appellants purportedly forged his signature on the passport application submitted to obtain the minor child's passport. Assuming the allegation to be accurate, it would undoubtedly constitute an unlawful act. However, as set out earlier, it is crucial to underscore that not every unlawful act automatically qualifies as 'deceitful'.

In the peculiar facts and circumstances of this case, the Appellant - wife seems to have breached the notion of mutual marital trust and unauthorizedly projected Respondent No. 2's consent in obtaining the passport for their minor child. It, however, remains a question as to how such an act can be labelled as 'deceitful'. The motivations prompting either of the Appellants to procure a passport for the minor child were not rooted in deceit.

Furthermore, the grant of passport to the minor child did not confer any benefit upon the Appellantwife, nor did it result in any loss or damage to Respondent No. 2. In the same vein, Appellant No. 2, being the father of the Appellant - wife

and assisting in securing the passport for the chid, derived no direct or indirect benefit from this action.

17. In this context, the critical inquiry arises: how does the act of forging signatures on the passport application, aimed at obtaining the minor child's passport, amount to inducing Respondent No. 2 to relinquish any property or valuable security? Examining the situation, it becomes apparent that the aforementioned act does not entail inducement leading to the parting of any property by Respondent No. 2. The nature of the property which can be claimed to have been relinquished or the tangible loss, damage, or injury, if any, suffered by Respondent No. 2 are not visible at all. The unequivocal response to these queries is clearly in the negative.

18. Respondent No. 2, the biological father and natural guardian of the minor child, is positioned as such in relation to the grant of a passport to his son. This grant can be best characterised as the minor child's acquisition of property. Since the gain by the minor child is not at the cost of any loss, damage or injury to Respondent No. 2, both the fundamental elements of 'deceit' and 'damage or injury', requisite for constituting the offence of cheating are conspicuously absent in this factual scenario.

19. Conversely, can the Appellant - wife, being the natural mother of the child and a natural guardian, be accused of acting `dishonestly' when applying for the passport of her minor child? A passport, is an authorised instrument which enables a person to travel outside the country of his origin. In this case, the passport was admittedly issued in favour of the minor child.

Whether it was stolen by Respondent No. 2 or misplaced, is wholly immaterial to the present discussion. The grant of passport to the minor child is nothing but a right conferred upon him by statute. The passport is meant to facilitate him to accompany his mother to London and stay with his father. However, there is not even a whisper of allegation or suggestion that the passport was obtained to the detriment of the child's wellbeing.

The underlying intent of obtaining the passport was, ironically, essential for the Appellant - wife and minor child to live together with Respondent No. 2, on whose instructions the passport was statedly obtained. Conversely, it is the actions of Respondent No. 2 that have seemingly deprived the minor child of his right to seek the care and company of his father, as the passport was allegedly taken away by Respondent No. 2 in a clandestine manner.

20. The background of this case and the chronology of events squarely indicate that it is the touchstone of a marital dispute. The insinuations made by

Respondent No. 2, even if they possess an iota of truth, have miserably failed to prima facie establish the elements of 'cheating' and thus, the accusation made against the Appellants under Section 420 IPC must fall flat.

The offence of forgery under Sections 468 and 471 IPC:

21. The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

22. There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely: (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.3

23. The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants.

Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand.

It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.

24. That apart, there are glaring procedural irregularities that have been overlooked by the Trial Magistrate, which warrants examination. It is extremely important to delve into these improprieties since the supplementary chargesheet

filed by the investigating authority included the offence of 'forgery' under Sections 468 and 471 IPC.

Questions overlooked by the lower courts:

25. As previously noted, the Appellants stand accused of forging the signatures of Respondent No. 2 on the passport application of the minor child. The investigating agency initially found insufficient evidence to support charges under Sections 468 and 471 IPC. Accordingly, no chargesheet was filed under these provisions. However, in compliance with the Trial Magistrate's order dated 24.06.2015, a supplementary chargesheet was submitted under Sections 468, 471 and 201 IPC and Section 12(b) of the Passports Act, 1967.

26. It is a matter of record that in the course of 'further investigation', no new material was unearthed by the investigating agency. Instead, the supplementary chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original chargesheet was filed. The term 'further investigation' stipulated in Section 173(8) CrPC obligates the officerincharge of the concerned police station to 'obtain further evidence, oral or documentary', and only then forward a supplementary report regarding such evidence, in the prescribed form.

27. The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than reevaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the chargesheet under Section 173(2) CrPC.4

In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the Trial Magistrate's order dated 24.06.2015.

28. Regrettably, the Trial Magistrate, while directing further investigation, overlooked the significant aspect that the offences imputed upon the Appellants fall within the ambit of Chapter XVII, 'Of Offences Against Property', and Chapter XVIII, 'Of Offences Relating to Documents and to Property Marks' of the IPC.

All the offences delineated or illustrated under these two chapters predominantly pertain to commercial or property disputes arising from dishonest, deceitful and

fraudulent transactions, wherein an individual is induced to part with their property or valuable security, leading to subsequent injury or damage. These offences typically diverge from the customary realm of matrimonial disputes, which constitute the underlying cause in this instance.

29. The Trial Magistrate, prior to entertaining the application filed by Respondent No. 2, should have applied his mind and posed certain queries in order to find out as to:

(i) Why does Respondent No. 2 want to deprive his minor child of a passport?;

(ii) Is it the case that he did not want his minor child to join his company in London?;

(iii) How has Respondent No. 2 secured the maintenance, education and future prospects of the minor child?;

(iv) Does the minor child have a civil right to hold a passport even if one of his parents does not accord consent?;

(v) Can the minor child be granted a passport with the consent of one parent under whose care and custody he is?;

(vi) What is the tangible loss, injury or damage suffered by Respondent No. 2 due to procurement of a passport by his minor son?

Had the Trial Magistrate taken the pains to confront Respondent No. 2 with these questions, we have no reason to doubt that the vexatious persecution faced by the Appellants, could not at least be attributed to a judicial order.

30. We also fail to understand the reliability of the material based on which the investigating agency or the Trial Magistrate could form a prima facie opinion concerning the allegation of forgery of signatures of Respondent No. 2. As observed earlier, the State FSL report does not substantiate these allegations. In our opinion, a paid report obtained from a private laboratory seems to be a frail, unreliable, unsafe, untrustworthy and imprudent form of evidence, unless supported by some other corroborative proof.

It is painful to mention that Respondent No. 2 has not produced any other substantive proof, nor has the investigating agency obtained any such material in compliance with the Trial Magistrate's order for further investigation. The basis on which the Trial Magistrate formed a prima facie opinion, in the absence of such supporting evidence is, therefore, beyond our comprehension.

31. The Trial Magistrate and the High Court unfortunately failed to appreciate that the genesis of the present controversy lies in a marital dispute. Respondent No. 2 is alleged to have abandoned the Appellant - wife and the minor child, even during the period when the Appellant - wife was temporarily residing with him in London.

The timeline in this case is noteworthy: immediately after the Appellant - wife filed Crime No. 68 / 2010 against Respondent No. 2 on 08.04.2010, invoking Sections 346, 498A, 506, and 34 IPC, the countercomplaint by Respondent No. 2 followed on 13.05.2010. Further, the passport for the minor child was issued sometime in 2009. The question that naturally arises is whether it is a mere coincidence that Respondent No. 2 chose to make his complaint only after an FIR had been lodged against him.

32. On the one hand, there is no indication whatsoever that Appellant No. 1 ever endeavoured to deceive or induce Respondent No. 2 into parting with his movable or immovable property or valuable security, either for her benefit or that of the minor child. While on the other hand, the law imposes an obligation upon Respondent No. 2 to provide adequate maintenance to his wife and the minor child. The complaint lodged by Respondent No. 2 on 13.05.2010, while unleashing accusations of forgery and fabrication, is conveniently silent on what measures he has undertaken for his minor child's welfare.

33. In light of these circumstances, the Trial Magistrate should have approached the complaint with due care and circumspection, recognising that the allegations do not pertain to offences against property or documents related to property marks. Instead of wielding judicial authority against the Appellants, the Trial Magistrate should have exercised prudence, making at least a cursory effort to discern the actual 'victim' or 'victimiser'. The failure to do so is both fallible and atrocious.

34. The sum and substance of the above discussion is that the elementary ingredients of 'cheating' and 'forgery' are conspicuously missing. Thus, the continuation of the criminal proceedings against the Appellants is nothing but an abuse of the process of law.

In the context of Section 12(b) of the Passports Act, 1967:

35. In addition to the abovementioned provisions of the IPC, the Appellants have also been accused of committing an offence under Section 12(b) of the Passports Act, 1967. Section 12(b) categorically states that, whoever knowingly furnishes any false information or suppresses any material information, with a view to obtaining a passport or travel document under this Act or without lawful

authority, alters or attempts to alter or causes to alter the entries made in a passport or travel document, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

36. As discernible from the language of the provision, what must be established is that the accused knowingly furnished false information or suppressed material information with the intent of obtaining a passport or travel document. In the present case, it is crucial to consider that the State FSL report explicitly stated that the alleged forgery of Respondent No. 2's signatures on the passport application was inconclusive. Moreover, the cognizance of such like offence can be taken only at the instance of the Prescribed Authority. No complaint to that effect has been disclosed against the Appellants. This Court, therefore, will exercise caution before invoking such severe offences and penalties solely on the basis of conjectures and surmises.

The conduct exhibited by Respondent No. 2:

37. Having scrutinised the elements of cheating and forgery, it is also imperative to consider the conduct of Respondent No. 2 since the inception.

Firstly, following the solemnisation of the marriage between the concerned parties, the Appellant - wife purportedly endured both physical and mental torture and was further not extended any support by Respondent No. 2 and his family members even after the birth of the minor child.

Secondly, the original passport of the minor child was presumed to have been issued with the consent and support of Respondent No. 2. He allegedly even sponsored the travel of his wife and minor son through his brotherinlaw for visa purposes, who in his sponsorship letter explicitly cited the passport number of the minor child.

Thirdly, Respondent No. 2 chose to lodge the Concerned FIR as a counterblast to the complaint filed by the Appellant - wife in Crime No. 68/2010 in spite of being fully aware of the issuance of the minor child's passport. Thus, the Appellants were unnecessarily implicated and dragged into criminal proceedings, thereby causing undue hardship to them. These instances shed light on Respondent No. 2's conduct preceding the initiation of the present proceedings and provide insight into his motivations for instigating the same.

38. It is undeniable that despite the evident discord between the Appellants and Respondent No. 2, resulting in numerous complaints and legal proceedings, the issue at hand has adversely impacted the rights and interests of the minor child.

The right to travel abroad is a fundamental right of an individual, albeit not absolute, and subject to established legal procedures.5

The conduct exhibited by Respondent No. 2 infringes upon the best interests of the minor child, which necessitates the child's travel abroad for the realisation of opportunities and intrinsic value, aligning with the child's dignity, as enshrined by the Constitution.6

E. CONCLUSION AND DIRECTIONS

39. Consequently, the appeal is allowed; the impugned judgment of the High Court dated 18.02.2021, and that of the Trial Magistrate dated 15.03.2018, are hereby set aside. As a sequel thereto, the FIR No. 141 / 2010 registered at Police Station Adugodi, Bengaluru under Sections 420, 468, 471 read with Section 34 IPC, lodged by Respondent No. 2 against the Appellants and all the proceedings arising therefrom are hereby quashed.

40. Respondent No. 2 is liable to pay the cost of Rs. 1,00,000/to Appellant No. 1. Ordered accordingly, Respondent No. 2 shall pay the costs within six weeks, failing which the Trial Magistrate is directed to initiate coercive measures for recovery thereof.

.....J. [Surya Kant]

.....J. [Dipankar Datta]

New Delhi;

January 22, 2024

1 (2021) 5 SCC 435, para 23.
2 P. Ramanatha Aiyar, Advanced Law Lexicon, 6th Edition, Vol. 1, pg. 903.
3 Sushil Suri v. Central Bureau of Investigation, (2011) 5 SCC 708, para 26.
4 Vinay Tyagi v. Irshad Ali and others, (2013) 5 SCC 762, para 22.
5 Maneka Gandhi v. Union of India and another (1978) 1 SCC 248, paras 76, 8085.
6 K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1, paras 376379.

IN THE SUPREME COURT OF INDIA

Sheikh Arif
Vs.
State of Maharashtra and Anr.

[Criminal Appeal No. 1368 of 2023]

HEADNOTE – To sustain the offence of rape on the ground of false promise of marriage, it must be established that right from the inception, the consent of the woman was obtained based on the false promise

JUDGMENT

Abhay S. Oka, J.

1) A First Information Report (the impugned FIR) was registered against the appellant at the instance of the second respondent for the offences punishable under Sections 376(2), 377, 504, 506 of the Indian Penal Code (for short, 'IPC') and various clauses of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

Factual Aspects

2) The impugned FIR was registered based on the second respondent's complaint dated 23rd February 2018 filed with Sadar Police Station, Nagpur. The said complaint disclosed that the appellant and second respondent got acquainted with each other in the year 2011. The second respondent was, at the relevant time, employed in a beauty parlour. The appellant used to visit the same parlour to undergo a hair-cutting course.

The second respondent's case is that in June 2011, the appellant proposed her. She agreed, and after that, they started meeting. The allegation made by the second respondent is that an effort was made in the year 2011 by the appellant to maintain a physical relationship with her, but she prevented him from doing so. However, she stated that in the year 2012, by giving a false promise of marriage, the appellant had sexual intercourse with her on a number of occasions.

In February 2013, the second respondent realised that she was pregnant. Therefore, in March 2013, the appellant took the second respondent to a hospital where abortion was done. Even thereafter, the appellant continued his physical relationship with the second respondent. It is stated by the second respondent that in July 2017, there was an engagement between her and the appellant. Even after the engagement, the appellant continued to maintain a physical relationship with the second respondent.

3) In December 2017, when the second respondent realised that she was pregnant, the appellant told her that they would get married very soon. In view of the said assurance, the second respondent did not undergo an abortion. She was treated for pregnancy in a hospital at the instance of the appellant.

The allegation of the second respondent is that on 18th January 2018, she saw photographs of the engagement ceremony of the appellant with another woman in his cell phone. The second respondent stated that a day before the date on which the complaint was filed, she was informed that the appellant had married another girl on 22nd February 2018.

4) The case of the appellant is that there was a Nikah between him and the second respondent on 20th January 2017 at Junglee Peer Baba Dargah. The case of the appellant is that he could not produce the original Nikahnama, but a copy thereof was seized by the police. The case of the appellant is that in the passport issued to the appellant on 17th August 2017, the name of the second respondent appears as the wife of the appellant.

Submissions

5) The learned counsel for the appellant urged that the long relationship between the appellant and the second respondent was always consensual. He submitted that the appellant had married the second respondent on 20th January 2017. He urged that the prosecution of the appellant is an abuse of process of law. The contention of the learned counsel appearing for the State of Maharashtra is that whether the appellant maintained a relationship on the basis of the false promise of marriage or not is a question to be decided at the time of trial as it is a matter of evidence.

He invited our attention to the counter filed by the State in which it was stated that the report of a handwriting expert has been called for as regards the genuineness of the signatures on the Nikahnama. The learned counsel appearing for the State as well as the second respondent relied upon a decision of this Court in the case of Anurag Soni v. State of Chhattisgarh1.

The learned counsel for the second respondent submitted that even if it is assumed that the second respondent gave consent for maintaining a physical relationship, the same was vitiated by fraud and misconception. She submitted that though the Investigating Officer repeatedly called upon the appellant to produce the original Nikahnama, he did not submit the same, and therefore, an adverse inference will have to be drawn against the appellant. She urged that, in any case, the issues raised can be gone into only in the trial.

Consideration of Submissions

6) We may note here that the appellant had volunteered to deposit a sum of Rs. 10 lakhs with the High Court during the pendency of the petition before the High Court. This Court tried to explore the possibility of a settlement between the appellant and the second respondent. However, the settlement could not materialise.

7) Now, the question is whether a case for quashing the criminal proceeding is made out. For that purpose, we are referring to the material which forms a part of the charge sheet. In view of the provisions of Section 375 of the IPC, if the victim of the alleged offence of rape is not under 18 years of age, maintaining a sexual relationship with her consent, is not an offence.

As held by this Court in the case of Anurag Soni1, if the consent of the victim is based on misconception, such consent is immaterial as it is not a voluntary consent. If it is established that from the inception, the consent by the victim is a result of a false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out.

8) The second respondent was admittedly more than 18 years old when the relationship commenced. We have carefully gone through the complaint dated 23rd February 2018 made by the second respondent based on which the impugned FIR was registered. Acquaintance between the appellant and the second respondent started in the year 2011.

In June 2011, the appellant proposed her, and she accepted the said proposal. In fact, according to the version of the second respondent, their physical relationship commenced in 2012 and continued till 2017. In February 2013, the second respondent underwent an abortion. In July 2017, according to the case of the second respondent, there was an engagement ceremony.

In December 2017, the second respondent was pregnant. According to her, as the appellant had assured to marry, she did not agree for abortion. The complaint was filed by the second respondent on 23rd February 2018 as she allegedly learned that on 22nd February 2018, the appellant was married to another woman.

9) When the complaint was filed, the age of the second respondent was 24 years. Her year of birth is recorded as 1994. The averments made in her complaint go to show that their physical relationship started in 2012. Though she claimed that it was a forced relationship, she did not make any grievance about it till February 2018. In February 2013 and in December 2017, the second respondent was pregnant. It is not the case of the second respondent that from February 2013 to

December 2017, the appellant forced the second respondent to maintain the physical relationship.

In 2013, the relationship resulted in pregnancy. Still, it continued till 2017. In fact, according to the second respondent, in July 2017, there was an engagement ceremony between the appellant and the second respondent. Therefore, in the facts of the case, it is impossible to accept that the second respondent allowed the physical relationship to be maintained with her from 2013 to 2017 on the basis of a false promise to marry.

10) Now, coming to the Nikahnama dated 20th January 2017, it is true that the original Nikahnama could not be produced. However, the seizure panchnama dated 21st September 2018 (Annexure: P-14) records that a carbon copy of the Nikahnama was seized. The statement of one Burhanuddin was recorded by the police who was present at the time of Nikah. He confirmed the fact of performance of Nikah between the appellant and the second respondent.

11) On 8th May 2018, the police recorded a statement of Dr. Sarita Rai Vidyarthi, who stated that the appellant and second respondent used to come to her from November 2017 for advice and treatment as the second respondent was pregnant. She stated that the appellant did not tell her that they were married or that they were living as husband and wife. However, the second respondent told her that the appellant was her husband. She stated that apart from the fact that the appellant used to accompany the second respondent to her clinic, even relatives of the second respondent used to visit her clinic.

12) If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the appellant and the second respondent was consensual, at least from 2013 to 2017. The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the appellant proposed her and in 2017, there was engagement is accepted by the second respondent.

In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage.

13) Thus, in our view, the continuation of the prosecution in the present case will be a gross abuse of the process of law. Therefore, no purpose will be served by continuing the prosecution.

14) The appellant has accepted that the second respondent is his legally wedded wife and the child born to the second respondent is his child. We, therefore, propose to direct the appellant to pay a sum of Rs. 5 lakhs to the second respondent. This will be without prejudice to the right of the second respondent to claim maintenance for herself and for her daughter from the appellant in accordance with law. We propose to direct that the amount of Rs.10,00,000/- already deposited by the appellant with the High Court shall be invested appropriately till the child attains majority.

15) Hence, the impugned judgment and order dated 26th February 2021 is hereby quashed and set aside. Crime No. 78 of 2018 registered with Sadar Police Station at Nagpur, as well as the charge sheet filed on the basis of the same, and further proceedings of the case stand quashed.

16) The appellant shall deposit a further sum of Rs. 5 lakhs with the Sessions Court at Nagpur within a period of six weeks from today. The appellant shall file a compliance affidavit alongwith documents in this Court within a period of 7 weeks from today.

17) The amount of Rs. 10 lakhs already deposited by the appellant with the High Court, together with interest, if any, accrued thereon, shall be immediately transferred to the Sessions Court at Nagpur. The said Court shall invest the said amount in a fixed deposit with any nationalized bank by incorporating the name of the minor child of the appellant as the depositor and the second respondent as the guardian of the minor.

The fixed deposit shall be renewed from time to time till the child attains majority. The fixed deposit receipt shall remain deposited with the Sessions Court till the child attains majority. However, the Sessions Court shall direct the bank in which the fixed deposit is made to pay quarterly interest on the fixed deposit to the second respondent. The principal amount shall be paid to the child after attaining majority.

18) On the failure of the appellant to comply with the direction to deposit a sum of Rs. 5 lakhs, the Registry shall list the appeal before the Court. As and when the appellant deposits a sum of Rs. 5 lakhs, the Sessions Court will permit the second respondent to withdraw the same.

We clarify that notwithstanding the above directions, it will always be open for the second respondent to file appropriate proceedings against the appellant for enforcing her as well as the child's rights in accordance with law.

19) The appeal is allowed on above terms.

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

.....J. (Pankaj Mithal)

New Delhi;

January 30, 2024

1 (2019) 13 SCC 1

IN THE SUPREME COURT OF INDIA

Sachin Garg
Vs.
State of Uttar Pradesh and Anr.

[Criminal Appeal No._____ of 2024

arising out of SLP (Criminal) No. 4415 of 2023]

HEADNOTE – A Magistrate, while issuing the summoning order, shall not act in a casual manner; rather they should be satisfied that there exists a sufficient ground for proceedings against the accused.

JUDGMENT

Aniruddha Bose, J.

1. Leave granted.

2. The appellant, at the material point of time, stood posted as the Head of factory of Exide Industries Limited ("EIL"), a corporate entity, situated at Bawal, District Rewari, Haryana. The respondent no.2, ran a proprietary concern, Ambika Gases. He was the supplier of Dissolved Acetylene Gas ("DA Gas"), which is used for manufacturing battery in the said factory. So far as the present appeal is concerned, the dispute is over a purchase order issued for the supply of the said item.

The original purchase order dated 01.04.2019 was amended twice on the basis of representations made by the respondent no.2. The first amendment was made on 18.07.2019 by which the rate was increased from Rs.1.55 per unit to Rs.1.65 per unit and the second amendment was made on 20.12.2019 through which the rate per unit was brought down to Rs.1.48 from Rs.1.65. An invoice was raised by the respondent no.2 with the aforesaid rates for a total sum of Rs.9,36,693.18/-.

The dispute revolves around nonpayment of the said sum. However, it has been contended by the appellant that EIL, after ascertaining the market price of DA Gas from other vendors, by a letter dated 29.06.2020, reconciled the accounts by informing respondent no.2 of what it claimed was foul play with respect to revision of rates and appropriated the alleged illegal amounts claimed by the vendor (respondent no.2) from the invoice.

3. The respondent no.2 instituted a complaint case in the Court of the Chief Judicial Magistrate, Ghaziabad and the substance of the complaint would be

revealed from the following passages of the petition of complaint (registered as Misc. Application No.317/2020):-

"The Applicant through his aboenamed work do the job work of D.A. Gas. Opposite Party Sachin Garg is posted as Material Head of Exide Industries Ltd. situated at Plot No. 179, Sector-3, Bawal, District- Rewari, Haryana and Opposite Party Sachin Garg also used to issue Purchase Order to the Applicant's company on behalf of the Exide Company and only the Opposite Party Sachin Garg used to make payment of Job Work to the Applicant.

Previously, the Transaction of Opposite Party was normal with the Applicant's company and no problem was ever persisted in the payment, due to which, the Applicant started trusting on the Opposite Party and Company. Sachin Garg through the aforesaid company in the capacity of Purchase Head, issued Purchase Order to the Applicant's Company, in which, it was agreed between the Opposite Party and Applicant to do job work @ Rs.1.65/- per piece w.e.f. 18.02.2019, which remained continued on the same rates till December, 2019 and the Opposite Party was regularly making the payment of job work to the Applicant on the same rates.

In the month of December, in pursuance of the Purchase Order of Opposite Party, According to Purchase No. 4800253593 dated 01.04.2019, done the job work of Filled DA Gases HSN Code 290129910 quantity 3,07,114/- pieces @ Rs.165 to the tune of Rs.5,06,738.10/-, and Filled DA Gases H{SN Code 29012910 quantity 1,93,966/- pieces @ Rs.1.48 per piece to the tune of Rs. 2,87,069.68/- and 18% GST to the tune of Rs.1,42,885.40/-0, in this manner did the job work of total amount Rs.9,36,693.18/-. The material Head of Opposite Company namely Sachin Garg by admitting the job work done by the Applicant vide Purchaser Order No. 4800253593 dated 01.04.2019, and got done the job work according to the piece rate quoted by the Applicant.

On 03.07.2020, Applicant sent Bill/Invoice No. AG.SR/20-21/01 dated 02.07.2020 of Rs.9,36,693.18/- to the Material Head of Opposite Party Company namely Sachin Garg through registered post and also sent the aforesaid invoice through email on 14.07.2020, which were received by Opposite Party Sachin Garg. Applicant repeatedly requested the Opposite Party for payment through email, but, the Opposite Party did not make payment of Rs.9,36,693.18/- of job work done by the Applicant Company in the month of December, 2019 and he by keeping the Applicant in dark, kept giving assurances of making full payment.

When, the Applicant put more pressure on the Opposite Party for payment, then, Opposite Party stopped to get done the job work from the Applicant Company,

and on 29.06.2020, sent a letter with quotation to the Applicant Company, in which, the Opposite Party has fixed the rate of job work done by the Applicant company @ Rs.1.40/- per piece w.e.f. April, 2019, whereas, the job work of Opposite Party was completed by the Applicant Company in the month of December, 2019, in which, Opposite Party on 20.12.2019, requested to change the rate of job work at the rate of Rs.1.48/- per piece, which was accepted by the Applicant w.e.f. 20.12.2019.

In this manner, after 20.12.2019, Rs.1.48/- per piece and prior to that the rate of Rs.1.65/- per piece was payable by the Opposite Party, but, the Opposite Party with intention to cheat the Applicant in deliberate manner, and with intention to cause financial loss to him and not to pay the money, has committed criminal breach of trust with the Applicant, which is a cognizable offence. On demanding money by the Applicant, the Opposite Party is abusing him with filthy language and threatening him to kill."

(quoted verbatim from the paperbook)

4. The learned Magistrate upon recording initial deposition of Saurabh Sharma, the proprietor of the supplier firm and his father Padam Kant Sharma issued summons for trial under Sections 406, 504 and 506 of the Indian Penal Code, 1860 ("1860 Code") on 18.08.2021.

5. The appellant had approached the High Court at Allahabad under Section 482 of Code of Criminal Procedure, 1973 ("the 1973 Code") by filing, Criminal Miscellaneous Application No.18603/2021, for quashing the said summons and also the complaint case itself. The judgment of the High Court was delivered dismissing the application filed by the appellant on 23.03.2023 and it is this judgment which is under appeal before us. The main reason for dismissal of the appellant's quashing plea was that the subject-complaint involved adjudication of disputed questions of fact.

Referring to the judgments of this Court in the cases of Neeharika Infrastructure Pvt. Ltd. -vs- State of Maharashtra and Ors. [(2021) 19 SCC 401], R.P. Kapur -vs- State of Punjab [AIR 1960 SC 866], State of Haryana and Ors. -vs- Bhajan Lal and Ors. [1992 SCC (Cr.) 426], State of Bihar and Anr. -vs- P. P. Sharma, IAS and Anr. [1992 SCC (Cr.) 192] and lastly Zandu Pharmaceutical Works Ltd. and Ors. -vs- Mohd. Sharaful Haque and Another [2005 SCC (Cr.) 283], the High Court refrained from considering the defence of the accused.

6. In the case of Neeharika Infrastructure Ltd (supra), a threejudge Bench of this Court examined the factors which were to be considered by the High Court for quashing an F.I.R. at the threshold, relating to factors which would apply to a

proceeding which forms the subject-matter of the present case. Referring to the judgment in the case of R.P. Kapur (supra), principles for quashing were set down as:-

"10.1 The first case on the point which is required to be noticed is the decision of this Court in the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a

reasonable appreciation of the evidence the accusation made against the accused would not be sustained.""

7. In the same decision (i.e. Neeharika Infrastructure Ltd.) (supra), the seven-point edict laid down in the case of Bhajan Lal (supra) was also referred to. These are:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

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

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

8. It was observed in the judgment under appeal that the applicant has got the right of discharge which could be freely taken up by him before the Trial Court. Mr. Mukul Rohatgi, learned senior counsel has appeared in this matter on behalf of the appellant along with Mr. Guru Krishna Kumar, while the case of

respondent no.2 has been argued by Ms. Divya Jyoti Singh. State was represented before us by Mr. Sarvesh Singh Baghel.

The main contentions urged by Mr. Rohatgi is that the complaint made against the appellant does not disclose any criminal offence and at best, it is a commercial dispute, which ought to be determined by a Civil Court. In so far as the allegations of commission of offence under Sections 405 and 406 are concerned, he has relied on a judgment of this Court in the case of Deepak Gaba and Ors. -vs- State of Uttar Pradesh and Another [(2023) 3 SCC 423]. This decision deals with the basic ingredients of a complaint under Sections 405 and 406 of the 1860 Code and it has been held in this judgment:-

"15. For Section 405 IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

9. The judgment in Deepak Gaba (supra) was delivered in a case in which there was subsisting commercial relationship between the parties and the complainant had made allegations of a forged demand, for a sum of around rupees six and a half lakhs. On that basis a summoning order was issued for trial under Section 406 of the 1860 Code. A coordinate Bench of this Court held:-

"17. However, in the instant case, materials on record fail to satisfy the ingredients of Section 405 IPC. The complaint does not directly refer to the ingredients of Section 405IPC and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account.

On these aspects, the summoning order is equally quiet, albeit, it states that "a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of statements by Shubhankar P. Tomar and Sakshi Tilak Chand". A mere wrong demand or claim would not meet the conditions specified by Section 405IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be

in violation of any direction of law, or legal contract touching the discharge of trust.

Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405 IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405IPC, a mere dispute on monetary demand of Rs 6,37,252.16p, does not attract criminal prosecution under Section 406IPC."

10. The same view was expressed by this Court in the cases of Prof. R.K. Vijayasarathy and Anr. -vs- Sudha Seetharam and Anr. [(2019) 16 SCC 739] and Vijay Kumar Ghai and Ors. -vs- State of West Bengal and Ors. [(2022) 7 SCC 124]. The judgment of this Court in the case of Dalip Kaur and Ors. -vs- Jagnar Singh and Anr. [(2009) 14 SCC 696] has also been cited in support of the appellant's case and in this decision it has been, inter-alia, held:-

"10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code."

This goes for allegations relating to Section 406 of the 1860 Code.

11. So far as the allegations of commission of offence under Sections 504 and 506 of the 1860 Code are concerned, we have gone through the petition of complaint as well as the initial depositions. The allegations pertaining to the aforesaid provisions of the 1860 Code surfaces in the last portion of the petition of complaint. The complainant, in his initial deposition has not made any statement relatable to criminal intimidation. But his father made the following statement at that stage under Section 202 of the 1973 Code:-

"With effect from 18.07.2019, the Opposite Party had fixed rate of job work as Rs.1.65/- per piece with the company of my son, which remained continued till December, 2019 and Opposite Party used to make payment of job work to my son, also on this rate and an amount of Rs. 9,36,693.18/- of my son was due for payment on the Opposite Party, due to which, he demanded the Opposite Party to make payment, but, Opposite Party did not make payment and after doing calculation on less rates, he said that no amount is due for payment and on

demanding money, the Opposite Party has abused my son with filthy language and has threatened him to kill. An amount of Rs. 9,36,693.18/- of my son is due for payment on the Opposite Party, which he clearly refused to pay the same."

(quoted verbatim from paperbook)

12. On behalf of the complainant, it has been urged that a detailed description of the offending acts need not be disclosed at the stage at which the appellant wants invalidation of the complaint. He has drawn our attention to the judgment of this Court in the case of Jagdish Ram -vs- State of Rajasthan and Another [(2004) 4 SCC 432]. In this judgment it has been, interalia, held:-

"10. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

Similar views have been expressed by this Court in the case of Birla Corporation Ltd. -vs- Adventz Investments and Holdings Ltd. and Ors. [(2019) 16 SCC 610] as also Smt Nagawwa -vs- Veeranna Shivalingappa Konjalgi and Others [(1976) 3 SCC 736].

13. As far as the allegations of criminal intimidation are concerned, our attention has been drawn to the judgment of this Court in the case of Fiona Shrikhande -vs- State of Maharashtra and Another [(2013) 14 SCC 44]. It has been held in this case that the petition of complaint need not repeat the actual words or language of insult word by word and the complaint has to be read as a whole.

If the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence it should be sufficient to bring the complaint within the ambit of the aforesaid provision. It has also been argued on behalf of the respondent no.2 that the appellant in any event has got the right to apply for discharge and the petition of complaint does not suffer from the defect of not having made out any offence at all. This was the view taken by the High Court.

14. Past commercial relationship between the appellant's employer and the respondent no.2 is admitted. It would also be evident from the petition of

complaint the dispute between the parties centred around the rate at which the assigned work was to be done. Neither in the petition of complainant nor in the initial deposition of the two witnesses (that includes the complainant) the ingredients of the offence under Section 405 of the 1860 Code surfaced.

Such commercial disputes over variation of rate cannot per se give rise to an offence under Section 405 of the 1860 Code without presence of any aggravating factor leading to the substantiation of its ingredients. We do not find any material to come to a prima facie finding that there was dishonest misappropriation or conversion of any material for the personal use of the appellant in relation to gas supplying work done by the respondent no.2.

The said work was done in course of regular commercial transactions. It cannot be said that there was misappropriation or conversion of the subject property, being dissolved acetylene gas which was supplied to the factory for the purpose of battery manufacturing at EIL. The dispute pertains to the revision of rate per unit in an ongoing commercial transaction.

What has emerged from the petition of complaint and the initial deposition made in support thereof that the accused-appellant wanted a rate variation and the entire dispute arose out of such stand of the appellant. On the basis of these materials, it cannot be said that there was evidence for commission of offence under Section 405/406. The High Court also did not apply the test formulated in the case of Dalip Kaur (supra). We have narrated the relevant passage from that decision earlier.

15. In the case of Binod Kumar and Ors. -vs- State of Bihar and Another [(2014) 10 SCC 663], a coordinate Bench of this Court dealt with a criminal complaint arising out of retention of bill amount in course of commercial transaction. The Court found essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint were missing. The High Court's judgment rejecting the plea for quashing the criminal proceeding was set aside by this Court. The reasoning for quashing the criminal proceeding would be revealed from paragraphs 18 and 19 of the Report, which reads:-

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant.

Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120- B IPC, is liable to be quashed."

16. So far as the criminal complaint and the initial depositions with which we are concerned in this case, the factual basis is broadly similar. We have reproduced these materials earlier in this judgment. We do not find they carry the ingredients of offence as specified in Section 405 of the 1860 Code.

17. The allegation of criminal intimidation against the accused is made in the complaint statements made by the appellant, no particulars thereof have been given. Both in the complaint petition and the initial deposition of one of the witnesses, there is only reproduction of part of the statutory provision giving rise to the offence of criminal intimidation. This would constitute a mere bald allegation, short of any particulars as regards to the manner in which threat was conveyed.

18. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of Jagdish Ram (supra). The same proposition of law has been laid down in the case of Pepsi Foods Ltd. and Anr. -vs Special Judicial Magistrate and Ors. [(1998) 5 SCC 749].

The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied

that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial.

A commercial dispute, which ought to have been resolved through the forum of Civil Court has been given criminal colour by lifting from the penal code certain words or phrases and implanting them in a criminal complaint. The learned Magistrate here failed to apply his mind in issuing summons and the High Court also failed to exercise its jurisdiction under Section 482 of the 1973 Code to prevent abuse of the power of the Criminal Court.

19. It is true that the appellant could seek discharge in course of the proceeding itself before the concerned Court, but here we find that no case at all has been made out that would justify invoking the machinery of the Criminal Courts. The dispute, per se, is commercial in nature having no element of criminality.

20. The appellant also wanted dismissal of the complaint and the orders passed in ensuing proceeding on another ground. The respondent no. 2's allegations were against EIL, for whom he did the job-work. The appellant's argument on this point is that the complaint should not have been entertained without arraigning the principal company as an accused. The judgment relied upon on this point is a decision of a Coordinate Bench in the case of Sharad Kumar Sanghi -vs- Sangita Rane [(2015) 12 SCC 781].

This was a case where complaint was made by a consumer for being sold a damaged vehicle under Section 420 of the 1860 Code. But arraigned as accused was the managing director of the dealer, the latter being a corporate entity. Cognizance was taken in that case and summons were issued. The accused failed to get relief after invoking the High Court's jurisdiction, but two-judge Bench of this Court quashed the proceeding primarily on the ground that the company was not made an accused.

The Coordinate Bench found that the allegations were made against the company, which was not made a party. Allegations against the accused (managing director of that company) were vague. So far the present case is concerned, the ratio of the decision in the case of Sharad Kumar Sanghi (supra) would not be applicable for ousting the complaint at the threshold on this ground alone. The perceived wrongdoing in this case has been attributed to the appellant, though the complaint petition acknowledges that the job-work was being done for EIL.

Moreover, the allegation of criminal intimidation is against the appellant directly - whatever be the value or quality of such allegations. Thus, for that reason the complaint case cannot be rejected at the nascent stage on the sole ground of not

implicating the company. But as otherwise we have given our reasons for quashing the complaint and the summons, we do not find any reason to dilate further on this point.

21. We accordingly set aside the impugned judgment and quash the Criminal Complaint Case No.7990 of 2020 as also the summoning order issued on 18.08.2021.

The appeal stands allowed in the above terms. All consequential steps in connection with the said proceeding shall stand quashed.

.....J. (Aniruddha Bose)

.....J. (Sanjay Kumar)

New Delhi;

January 30, 2024

2. Study Material-G.K.

Famous Books and Authors

Famous Books and Authors from Ancient India

Books	Authors
Mudrarakshasa	Visakdatta
Rajtarangini	Kalhana
Kathasaritsagar	Somdeva
Kamasutra	Vatsayana
Prashnottarmalika	Amoghavarsha
Swapanvasdattam	Bhasa
Buddha Charita	Asvaghosa
Natyashastra	Bharata
Abhigyan Shakuntala Vikramorvashi Raghuvansan	Kalidasa
Amarkosa	Amarshmha
Panchsidhantika Brihat Samhita	Varharmihara
Surya Sidhanta Aryabhatta	Aryabhatta
Panch tantra	Vishnu Sharma
Nitisara	Kamandaka
Aihole Prasasti	Ravi Kriti
Indica	Megasthanese
Arthasastra	Kautilya
Charaka Samhita	Charaka
Lilawati	Bhaskara II
Harshacharita Kadambari Nagananda Ratnavali	Harsha Vardhan
Gathasaptashati	Hala
Nitisara	Kamandaka
Astadhyayi	Panini
Mahabhasya	Patanjali
Naishadhacharitra	Sri Harsha
Mrichhakatika	Sudraka

Famous Books and Authors from Medieval India

Books	Authors
Fatuhat-i-Firoz	Firoz Shah Tughlaq
Khamsab	Amir Khusrau
Khazain-ul-Futuh	Amir Khusrau
Kitab-fi-Tahqiq	Alberuni
Nuh-Siphir	Amir Khusrau
Kitab-ul-Raha	Ibn Battuta
Shah Nb ama	Firdausi
Tahquq-i-Hind	Alberuni
Tabaqat-i-Nasiri	Minhaj-us-Siraj
Tughlaq-Nama	Amir Khusrau
Chandayan	Maulana Daud
Himayun Nama	Gulbadan Begum
Bhavartha Dipika	Gyaneshwara
Safarnama or Rihla	Ibn Battuta
Tuzuk-i-Jahangiri (Autobiography)	Jehangir
Tarikh-i-Shershahi	Abbas Sarwani

Famous Books and Authors from Modern India

Books	Authors
Young India Harijan Navjivan Hindu Swarajya My Experiments With Truth	M.K. Gandhi (Mahatma Gandhi)
Kesri The Maratha Gita Rahasya	Bal Gangadhar Tilak
Discovery of India Glimpses of World History Meri Kahani	Jawahar Lal Nehru
Al Hilal India Wins Freedom Gubare Khatir	Maulana Abdul Kalam Aazad
Unhappy India	Lala Lajpat Rai
India Divided	Dr. Rajendra Prasad
Hints For Self Culture	Lala Hardayal

Bangali A Nation In Making	Surendra Nath Banarji
War of Indian Independence	Veer Savarkar
Geetanjali Home and The World Gora Hungry Stones Chandalika Visarjan	Rabindranath Tagore
Abhyuday Hindustan Leader	Madan Mohan Malviya
Nation	Gopal Krishna Gokhale
Indian Mirror Vaam Bodhini	Keshav Chandra Sen
Neel Darpan	Dinbandhu Mitra
Karmyogi Yugantar Savitri Life Divine Essays On Gita Bande Matram	Arvind Ghosh
Tarane Hind Baange Dara	Muhammad Iqbal
Commonweal New India	Annie Besant
Indian Struggle	Subhash Chandra Bose
Kaal	Paranjape
Comred Hamdard	Muhammad Ali
Samvad Kaumudi	Raja Ram Mohan Roy
Som Prakash	Ishwarchadra Vidyasagar
Independent	Motilal Nehru
Rust Guftgur Poverty And Un British Rule In India	Dada Bhai Naurauji
Amrit Bazar Patrika	Shishir Kumar Ghosh
Free Hindustan	Tarak Nath Das
The Revolutionary	Shachindra Sanyal
Satyarth Darpan	Dayanand Saraswati
History of Congress	Bhogaraju Pattabhi Sitaramayya
Indian Unrest	Valentine Chirol
India For Indians	Chittaranjan Das
Anand Math	Bankim Chandra Chattopadhyay

Devi Chaudharani	
Bharat Durdasha	Bhartendu Harishchandra
Divine Life	Shivanand
A Voice Of Freedom	Nayantara Sahgal

Famous Books and Authors Miscellaneous

Books	Authors
A passage to India	E.M.Forster
A Suitable Boy	Vikram Seth
A Tale of Two Cities	Charles Dickens
A Week with Gandhi	Louis Fisher
A Woman's Life	Guy de Maupassaut
Adventures of Sherlock Holmes	Arthur Conan Doyle
Adventures of Tom Saweyer	Mark Twain
Agni Veena	Kazi Nasrul Islam
Alice in Wonderland	Lewis Carrol
Anna Karenina	Tolstoy
Antony and Cleopatra	Shakespeare
Arabian Nights	Sir Richard Burton
Arms and the Man	G.B.Shaw
Around the World in eighty days	Jules Verne
Arthashastra	Kautilya
Avigyan Sakuntalam	Kalidas
Ben Hur	Lewis Wallace
China Passage	John Kenneth Galbraith
Comedy of Errors	William Shakespeare
Communist Manifesto	Karl Marx
Confessions	Jean Jacques Rousseau
Count of Monte Cristo	Alexander Dumas
Crime and Punishment	Dostoevsky
Das Kapital	Karl Marx
David Copperfield	Charles Dickens
Discovery of India	Jawaharlal Nehru
Divine Comedy	Dante
Freedom at Midnight	Dominique Lapierre
French Revolution	Thomas Carlyle
Gathering Storm	Winston Churchill
Geetanjali	Rabindra Nath Tagore
Glimpses of World History	Jawaharlal Nehru
Grammar of Politics	Harold T.Laski

Gulliver's Travels	Jonathan Swift
Hamlet	Shakespeare
Hunchback of Notre Dame	Victor Hugo
Illiad	Homer
Invisible Man	H.G.Wells
In Search of Lost Time	Marcel Proust
Jungle Book	Rudyard Kipling
Kadambari	Bana Bhatt
King Lear	Shakespeare
Les Miserable	Victor Hugo
Lolita	Vladimir Nabokov
Man and Superman	G.B.Shaw
Madame Bovary	Gustave Flaubert
Mein Kampf	Adolf Hitler
Mother	Maxim Gorky
My experiments with Truth	Mahatma M.K.Gandhi
Odyssey	Homer
Old Man and the Sea	Earnest Hemingway
Oliver Twist	Charles Dickens
One Day in the Life of Ivan Denisovitch	Alexander Solzhenitsyn
Origin of species	Charles Darwin
Othello	Shakespeare
Panchatantra	Vishnu Sharma
Paradise lost	John Milton
Pickwick Papers	Charles Dickens
Pride and Prejudice	Jane Austen
Principia	Issac Newton
Robinson Crusoe	Daniel Defoe
Shape of Things to Come	H.G.Wells
The Adventures of Huckleberry Finn	Mark Twain
The City of Joy	Dominique Lapierre
The Class	Erich Byron
The Clown	Heinrich Boll
The Godfather	Mario Puzo
The Great Gatsby	F. Scott Fitzgerald
The Merchant of venice	William shakespeare
The Other Side of Midnight	Sindye Sheldon
The Post Office	R.N.Tagore
The Tempest	Shakespeare
The Vicar of Wakefield	Oliver Goldsmith

Three Musketeers	Alexander Dumas
Time Machine	H.G. Wells
Treasure Island	R.L.Stevenson
Ulysses	James Joyce
Utopia	Sir Thomas Moor
War and peace	Leo Tolstoy
Waste Land	T.S.Eliot

3. Study Material-Language

Punctuation

1. Punctuation (derived from the Latin punctum, a point) means the right use of putting in Points or stops in writing. The following are the principal stops:

1). Full Stop or Period (.)
2). Comma (,)
3). Semicolon (;)
4). Question Mark (?)
5). Exclamation Mark (!)

Other marks in common use are the Dash -; Parentheses ( ); Inverted Commas or Quotation Marks"".

2. The Full Stop represents the greatest pause and separation. It is used to mark the end of a declarative or an imperative or an imperative sentence; as,

Dear, patient, gentle, noble Nell was dead.

3. The Full stop can be used in abbreviations, but they are often omitted in modern style.

M.A. or MA
M.P. or MP
U.N.O. or UNO

Note that in current English Mr. and occur without a full stop, as these have come to be regarded as the full spellings.

4. The Comma represents the shortest pause, and is used:

1). To separate a series of words in the same construction; as,

England, France and Italy formed an alliance.
He lost lands, money, reputation and friends.
It was a long, dull and wearisome journey.
He wrote his exercise neatly, quickly and correctly.

Note A comma is generally not placed before the word preceded by and.

2). To separate each pair of words connected by and; as,

We should be devout and humble, cheerful and serene.
High and low, rich and poor, wise and foolish, must all die.

3). After a Nominative Absolute; as,

This done, she returned to the old man with a lovely smile on her face.
The wind being favorable, the squadron sailed.
The genius making me no answer, I turned about to address myself to him a second time.

4). To mark off a Noun or Phrase in Apposition: as,

Paul, the apostle, was beheaded in the reign of Nero.
Milton, the great English poet, was blind.
Pandit Nehru, the first Prime Minister of India, died in 1964.

5). To mark off words used in addressing people

Come into the garden, Maud.
How are you, Mohan?
Lord of the universe, shield us and guide us.

But when the words are emphatic, we ought to use the Note of Exclamation; as,

Monster! by thee my child's devoured!

6). To mark off two or more Adverb or Adverbial phrases coming together; as,

Then, at length, tardy justice was done to the memory of Oliver.

7). Before and after a Participles phrase, provided that the phrase might be expanded into a sentence, and is not used in a merely qualifying sense; as,

Caesar, having conquered his enemies, returned to Rome.

8). Before and after words, phrases, or clauses, let into the body of a sentence; as,

He did not, however, gain his object.
It is mind, after all, which does the work of the world.
His behavior, to say the least, was very rude.
His story was, in several ways, improbable.

Let there be no strife, I pray thee, between thee and me.
The essay-writers, whose works consisted in a great measure of short moral dissertations, set the literary taste of the age.
The people of Orleans, when they first saw her in their city. Thought she was an angel.

9). To indicate the omission of a word, especially a verb; as,

Rama received a Parker pen: Hari, a watch.
He was a Brahmin: she, a Rajput.
He will succeed; you, never.

10). To separate short co-ordinate clauses of a compound sentence; as,

The rains descended, and the floods came.
Men may come and men may go, but I go on for ever.
I came, I saw, I conquered.
The way was long, the wind was cold.
The minstrel was infirm and old.

When there is a conjunction the comma is sometimes omitted: as,
He came and saw me.

11). To mark off a direct quotation from the rest of the sentences; as,

“Exactly so,” said Alice.
He said to his disciples, “Watch and pray.”
“Go then,” said the ant. “and dance winter away.”

12). Before certain co-ordinative conjunctions; as,

To act thus is not wisdom, but folly.

13). To separate from the verb a long subject opening a sentence; as,

The injustice of the sentence pronounced upon that great scientist and discoverer, is now evident to us all.
All that we admired and adored before as great and magnificent is obliterated or vanished.

14). To separate a Noun clause-whether subject or object-preceding the verb; as,

Whatever is, is right.

How we are ever to get there, is the question.
That he would succeed in his undertaking, no one ever doubted.

15). To separate a clause that is not restrictive in meaning, but is co-ordinate with the Principal clause; as,

Sailors, who are generally superstitions, say it is unlucky to embark on a Friday.
During my stay in Sri Lanka I visited Mihinatale, which is regarded as the cradle of Buddhism.

When the Adjective clause is restrictive in meaning the comma should not be applied; as,

This is the house that jack built.
The Lord is nigh up to them are of a broken hart.
The echoes of the storm which was then raised I still hear grumbling round me.
The design was disapproved by everyone whose judgment was entitled tc respect.

16). To separate an Adverbial clause from its Principal clause; as,

When I was a bachelor, I lived by myself.
If thou would'st be happy, seek to please.

When the Adverbial clause follows the principal clause the comma is frequently omitted; as,

Seek to please if thou would'st be happy.

17. The Semicolon represents a pause of greater importance than that shown by the comma. It is used:

1). To separate the clauses of Compound sentence, when they contain a comma; as,

He was a brave, large-hearted man; and all honoured him

2). To separate a series of loosely related clauses; as,

Her court was pure; her life serene;
God gave her peace; her land reposed.

Today we love what tomorrow we hate; today we seek what tomorrow we shun; today we desire what tomorrow we fear.

18. The Colon marks a still more complete pause than that expressed by the Semicolon. It is used (sometimes with a dash after it):

1). To introduce a quotation; as,

Bacon says: "Reading makes a full man, writing an exact man, speaking a ready man."

2). Before enumeration, examples, etc; as,

The principal parts of a verb in English are: the present tense, the past tense, and the past participle.
The limitation of armaments, the acceptance of arbitration as the natural solvent of international disputes, the relegation of wars of ambition and aggression to the categories of obsolete follies: these will be milestones which mark the stages of the road.

3). Between sentences grammatically independent but closely connected in sense; as,

Study to acquire a habit of thinking: no study is more important.

19. The Question Mark is used, instead of the Full Stop, after a direct question; as,

Have you written your exercise?
If you prick us, do we not bleed? If you trickle us, do we not laugh? If you poison us, do we not die?
And if you wrong us, shall we not have revenge?

But the Question Mark is not used after an indirect question; as,

He asked me whether I had written my exercise.

20 The Exclamation Mark is used after Interjections and after Phrases and Sentences expressing sudden emotion or wish; as,

Alas! Oh dear!
What a terrible fire this is!
O, what a fall was there, my countrymen! Long live the King!

Note: When the interjection O is placed before the Nominative of Address, the Exclamation Mark, if employed at all, comes after the noun; or it may be placed at the end of the sentences; as,

O father! I hear the sound of guns.
O Hamlet, speak no more!

21. Inverted Commas are used to enclose the exact words of a speaker, or a quotation; as,

"I would rather die," he exclaimed, "than join the oppressors of my country."

Babar is said by Elphinstone to have been "the most admirable prince that ever reigned in Asia."

If a quotation occurs within a quotation, it is marked by single inverted commas; as,

"You might as well say," added the March Hare, "that 'I like what I get' is the same thing as 'I get what I like.'"

22. The Dash is used:

1). To indicate an abrupt stop or change of thought; as,

If my husband were alive-but why lament the past?

2). To resume a scattered subject; as,

Friends, companions, relatives-all deserted him.

23. The Hyphen – a shorter line than the Dash – is used to connect the parts of a compound word; as,

Passer-by, man-of-war, jack-of-all-trades.
It is also used to connect parts of a word divided at the end of a line.

24. Parentheses or Double Dashes are used to separate from the main part of the sentence a phrase or clause which does not grammatically belong to it; as,

He gained from Heaven (it was all he wished) a friend.

A remarkable instance of this kind of courage-call it, if you please, resolute will-is given in the history of Babar.

25. The Apostrophe is used:

1). To show the omission of a letter or letters; as,

Don’t, e’er, l’ve.

2). In the Genitive Case of Nouns.

3). To form the plural of letters and figures.

Do your i’s and cross your t’s.
Add two 5’s and four 2’s.

CAPITAL LETTERS

26. Capitals are used:

1). To begin a sentence.

2). To begin each fresh line of poetry.

3). To begin all Proper Nouns and Adjectives derived from them; as,

Delhi, Rama, Africa, African, Shakespeare, Shakespearian.

4). For all nouns and pronouns which indicate the Deity; as,

The Lord, He is the God.

5). To write the pronoun I and the interjection O.

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4. Current Affairs

JANUARY 2024

1. Which player won the title of Scottish Junior Open Squash Under-19 – **Anahat Singh**
2. Who has recently taken charge as the Controller of Warship Production and Procurement in the Navy - **Admiral B Shivakumar**
3. India's first submarine tourism will be started in which state - **Gujarat**
4. Who has been appointed as its new Managing Director by skincare brand 'Nivea India' - **Geetika Mehta**
5. Who has recently assumed the charge of 'Chief of Material' in the Navy- **Kiran Deshmukh**
6. In which city of UP did Defense Minister Rajnath Singh inaugurate the first Sainik School for girls - **Mathura**
7. Who has been made the special envoy for peace in Afghanistan by the United Nations Security Council- **Hamid Karzai**
8. Who has been appointed as the Director General of Fire Services, Civil Defense and Home Guards- **Vivek Srivastava**
9. Who has been appointed by the Central Government as the Chairman of the 16th Finance Commission- **Arvind Panagariya**
10. Who inaugurated the Kochi-Lakshadweep Islands Submarine Optical Fiber Connection- **PM Narendra Modi**
11. Joint military exercise 'Desert Cyclone' is conducted between India and which country - **United Arab Emirates**
12. For how many years has India started its tenure as a member of the United Nations Statistical Commission - **4 years**
13. Who has recently been appointed as the new Chief Secretary of Rajasthan- **Sudhansh Pant**
14. Who has been appointed as the new Chairman and Managing Director of Power Grid Corporation- **Ravindra Kumar Tyagi**
15. Who recently took command of 'Chetak Corps' as General Officer Commanding- **Lieutenant General Nagendra Singh**
16. Who recently got M.S. Swaminathan Award awarded to – **B.R. Kamboj**
17. Who inaugurated the 'NCC Republic Day Camp' 2024- **Vice President Jagdeep Dhankhar**
18. How many crores of rupees has the Central Government allocated for the 'Prithvi Vigyan scheme - **4,797 crores**
19. Where did Union Sports Minister Anurag Thakur inaugurate the 'Beach Games' - **Ghoghla Beach**
20. Kadiyal Sarees' belongs to which state which recently got GI tag -

West Bengal

21. Who has been appointed as the Managing Director of 'National Asset Reconstruction Company' - **P Santosh**
22. Who will be awarded 'Rashtriya Khel Protsahan Puruskar' 2023 for Corporate Social Responsibility- **Odisha Mining Corporate Limited**
23. The Board of Control for Cricket in India has banned which Odisha cricketer for two years - **Sumit Sharma**
24. How many players including Mohammed Shami were honored with Arjuna Award - **26**
25. Which country will chair the UNESCO World Heritage Committee in July this year – **India**
26. 'Chandubi Mahotsav' was recently celebrated in which state - **Assam**
27. When is 'Pravasi Bharatiya Diwas' celebrated every year - **09 January**
28. In which state 'College Phagthansi Mission' was started recently - **Manipur**
29. Elizabeth Bourne was the Prime Minister of which country who has recently resigned - **France**
30. In which city is a two-day regional conference on e-governance being organized – **Guwahati**
31. Which two badminton players were awarded the Major Dhyan Chand Khel Ratna Award this year – **Chirag Shetty and Satwik Sairaj Rankireddy**
32. Who was the chief guest of Vibrant Gujarat Global Summit – **Mohammed bin Zayed Al Nahyan**
33. Which two Indians have been included by ICC in the list of match officials for the upcoming Under-19 Men's World Cup - **KNA**
34. **Padmanabhan and Narayanan Kutty**
35. When is World Hindi Day celebrated every year – **10 January**
36. Who has Indian Fintech 'PhonePe' recently appointed as the CEO of its International Payment Business - **Ritesh Pai**
37. Footballer Franz Beckenbauer has passed away, he was a legendary footballer of which country – **Germany**
38. In which country will the new campus of IIT Madras be started – **Sri Lanka**
39. Who has been named as the new Prime Minister of France- **Gabriel Attal**
40. In which city will the 27th National Youth Festival be organized – **Nashik**
41. Who got the award of the cleanest city in the category of population more than one lakh in the Swachh Survekshan Awards 2023 – **Indore and Surat**
42. Who will take oath as the Prime Minister of Bangladesh for the fourth

consecutive time- **Sheikh Hasina**

43. Who has been appointed by the Central Government as Additional Secretary and Director General (Acquisition) in the Ministry of Defense- **Sameer Kumar Sinha**
44. With whom has the International Hockey Federation signed an agreement for broadcasting hockey tournaments- **Viacom 18**
45. On which date of this month is the budget session of Parliament starting - **31 January**
46. Which Indian won the gold medal in 57 kg category in the Zagreb Open 2024 wrestling tournament – **Aman Sehrawat**
47. Where will the Indian Navy's multinational exercise 'Milan'-24 be organized - **Visakhapatnam**
48. Who has become the first female athlete to win the Arjuna Award for equestrian sports – **Divyakriti Singh**
49. Under the new Republic Day Pact, in how many years have states been allowed to present a tableau – **Three years**
50. Which Tiger Reserve has got the title of India's first 'Dark Sky Park' - **Pench Tiger Reserve**
51. When is National Youth Day celebrated every year – **12 January**
52. Who inaugurated India's longest bridge built on the sea- **Narendra Modi**
53. Which bank has recently launched 'Samman' Rupay Credit Card - **IndusInd Bank**
54. Which two cities have received the 'Cleanest Ganga City' award in the Swachh Survekshan-2023 - **Varanasi and Prayagraj.**
55. In which city did PM Modi inaugurate the 27th National Youth Festival – **Nashik (Maharashtra)**
56. New generation 'Akash' missile was successfully tested, what type of missile is it - **'Surface to Air'**
57. National Youth Day is celebrated every year to commemorate whose birth anniversary – **Swami Vivekananda**
58. Who won the gold medal in the men's 25 meter standard pistol event in the Asian Shooting Championship 2024 - **Yogesh Singh**
59. Which gharana did the famous classical singer Prabha Atre belong to, who passed away recently? - **'Kirana Gharana'**
60. What is the theme of Indian Army Day in the year 2024- **"In Service of the Nation"**
61. In which city of Rajasthan was 'International Camel Festival' organized - **Bikaner**
62. Who has become the fastest bowler to take 7 wickets in an ODI International match - **Wanindu Hasaranga**
63. Who has become the first male cricketer to play 150 matches in T20 International – **Rohit Sharma**

64. When is Indian Army Day celebrated every year – **15 January**
65. Who recently launched the Secure Army Mobile Ecosystem 'Sambhav' - **Indian Army**
66. Who has recently been appointed as Director (Technical) of National Institute of Chemicals and Fertilizers- **Ritu Goswami**
67. Who was appointed as 'Director General of Naval Operations' in the Indian Navy- **Vice Admiral AN Pramod**
68. Who won the title of 'Best Drama Series' at the 75th Emmy Awards- **Succession**
69. Who inaugurated the 5th edition of Meghalaya Games- **President Draupadi Murmu**
70. Which drama received the Best Limited Drama Edition Award at the Emmy Awards 2024 - **"Beef"**
71. Maritime exercise 'Ayutthaya' is conducted between the Navy of India and which country - **Thailand**
72. Who was honored with the Best FIFA Men's Player Award - **Lionel Messi**
73. With which country has India signed an agreement for exploration and mining of Lithium – **Argentina**
74. Which ship did the Indian Navy decommission recently? - **'Cheetah'**
75. Who will be the first impartial female umpire appointed by ICC for bilateral series – **Sue Redfern**
76. In which state of India will the 'World Economic Forum' establish a center based on 'Health Care and Life Sciences' - **Telangana**
77. Where is Asia's largest aviation expo, Wings India 2024, being organized - **Hyderabad**
78. Which batsman made the record of scoring most centuries in T20 International – **Rohit Sharma**
79. Who was appointed as the Chief Staff Officer (Operations) of Eastern Naval Command- **Rear Admiral Shantanu Jha**
80. Who launched a series of commemorative postage stamps dedicated to the Ram temple of Ayodhya - **PM Narendra Modi**
81. India's first solar powered boat will be operated in which river - **Saryu River**
82. Under which new 'Emir' of Kuwait has the first government been formed - **Amir Sheikh Meshaal Al-Ahmad Al-Sabah**
83. In which state was the 125 feet high bronze statue of Dr. BR Ambedkar inaugurated – **Andhra Pradesh**
84. According to the recent report of Forbes, which is the strongest currency in the world - **'Kuwaiti Dinar'**
85. Center approved the creation of posts for the 16th Finance Commission, who is the Chairman of the 16th Finance Commission - **Dr. Arvind Panagariya**

86. PM Narendra Modi launched 8 AMRUT projects in which city of Maharashtra – **Solapur**
87. 'Mahatari Vandana Yojana' was recently started by which state government - **Chhattisgarh**
88. How many crores of rupees has the Central Government allocated for the establishment of artificial reef units in Kerala - **302 crores**
89. IIT Madras has tied up with whom to launch eMobility Simulation Lab – **Altair**
90. According to the recent report of Forbes, what is the position of US dollar in the list of the world's strongest currency? - **10th**
91. Karpoori Thakur will be honored with Bharat Ratna (posthumously), he was the former Chief Minister of which state – **Bihar**
92. When is National Girl Child Day celebrated every year – **24 January**
93. Who won the 'Polly Umargar' award at the BCCI Awards 2024 for the session 2022-23 - **Shubhman Gill**
94. Who has become the second Indian to win gold medal in Asian Marathon Championship- **Man Singh**
95. Who has directed the documentary film 'To Kill a Tiger' nominated for Oscar 2024 - **Nisha Pahuja**
96. Which player won the ICC Men's T20I Cricketer of the Year Award- **Suryakumar Yadav**
97. Who inaugurated the All India Campaign 'Our Constitution, Our Respect' - **Vice President Jagdeep Dhankhar**
98. Colonel C in BCCI Award 2024. Of. Who was given the Naidu Lifetime Achievement Award- **Farokh Engineer and Ravi Shastri**
99. Who was recently selected as ICC Women's T20I Cricketer of the Year for the year 2023- **Hayley Matthews (West Indies)**
100. Who has become the second company in the world to cross the market capitalization of Rs 3 trillion – **Microsoft**
101. With which country has the Union Cabinet recently approved the MoU for cooperation in the information technology sector - **Oman**
102. Who inaugurated the new building 'Kaushal Bhawan' of the Ministry of Skill Development and Entrepreneurship- **President Draupadi Murmu**
103. When is National Voters Day celebrated every year – **25 January**
104. How many people will the Central Government honor with 'Jeevan Raksha Padaks' on Republic Day this year - **31**
105. Which Indian company has received approval for generic medicines from the US health regulator- **Zydus**
106. Who is the chief guest of Republic Day celebrations this year- **Emmanuel Macron (President of France)**
107. What is the theme of National Voters Day 2024- **'Nothing like voting, I vote for sure'**

108. Who has become the batsman to score the fastest triple century in first class cricket- **Tanmay Agarwal**
109. Who has recently taken oath as the new judge of the Supreme Court- **Justice Prasanna B Varale**
110. Which state government has recently started 'Road Safety Force' - **Punjab**
111. With whom has Tata signed an agreement to set up India's first private helicopter assembly line? - **Airbus**
112. Who won the Men's Singles title of Australian Open 2024- **Janik Sinner**
113. Which female cricketer has been appointed by the Uttar Pradesh government to the post of DSP in UP Police - **Deepti Sharma**
114. Indian Army is organizing joint military exercise 'SADA TANSEEQ' with which country - **Saudi Arabia**
115. Who won the Australian Open 2024 women's singles title - **Arina Sabalenka**
116. Which pair won the men's doubles title of Australian Open 2024 - **Rohan Bopanna (India) and Matthew Ebden (Australia)**
117. Who has been nominated by President Draupadi Murmu to the Rajya Sabha, the upper house of the Parliament- **Satnam Singh Sandhu**
118. Recently the book 'Ek Samandar, Mere Andar' was published, it was written by - **Sanjeev Joshi**
119. Which film won the Best Popular Film Award at the Filmfare Awards 2024 **- 12th Fail**
120. Who won the round in Men's 10m Air Rifle Shooting event at ISSF World Cup 2024- **Divyansh Singh Panwar**
121. Who won the FIH Hockey 5S Women's World Cup title- **Netherlands**
122. Where was the foundation of the first Naturopathy Hospital of North-East India recently laid? - **Dibrugarh**
123. NTPC Green Energy Limited has signed an agreement with which state government for green hydrogen – **Maharashtra**

5. Prelims and Mains Notes Preparation Scheme

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

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

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

6. About Coaching

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

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

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

Teaching pedagogy

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

7. About Director and faculty

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

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

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself
2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the

University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

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

9. Library with Research wing

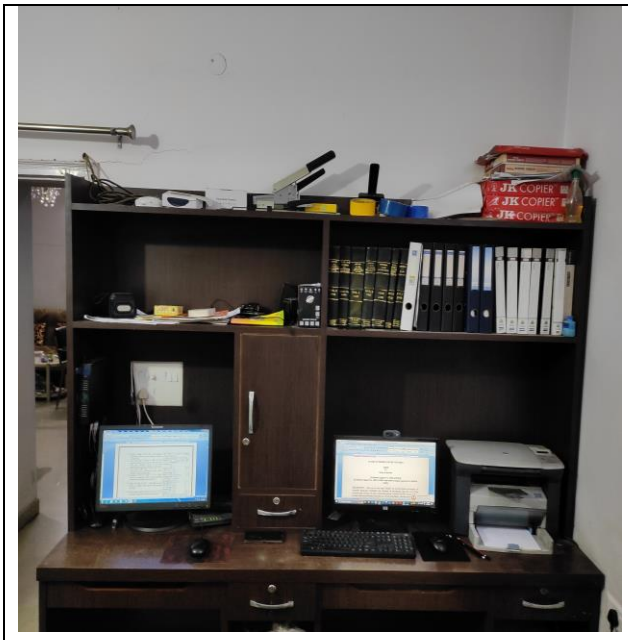
V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person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

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

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

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

Library



Research wing