

V.S. DREAM COACHING

Indirapuram Ghaziabad

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

Year – 2024



**Secret of success is to
know something
nobody else knows**

NO. 3 OF 2024

NEWSLETTER

March 2024

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V.S. DREAM COACHING

1. Study Material-Law

Punishment of Community Service in Indian Criminal Justice

The Indian criminal justice system has gone through an unprecedented phase of change in recent years because of the shortcomings of traditional imprisonments occurring to the vast majority of prisoners. The fact that there is the advancement of the alternatives, which include open prisons, probation, and rehabilitation centres, suggests that imprisonment is the major response upon conviction, and this is seemingly aimed at correcting these offenders. But instead of following this conventional path, the government has now proposed an unprecedented idea of community sentencing for petty crimes through the Bharatiya Nyaya Sanhita 2023. This will be symbolised through the deeper understanding by Indian authorities, lawmakers, and legal experts that there is a need to adopt such alternative forms of punishment that are more rehabilitative in nature and involve the community.

Over the years, Indian lawmakers and legal authorities recognized the need for alternative forms of punishment that focus on rehabilitation and community involvement. Amendments and changes in criminal laws have provided a legal basis for incorporating community service. The recent adoption of community service sentencing as a form of punishment in the Bharatiya Nyaya Sanhita has focused on the significance of community sentencing in India. The adoption of community service in India aligns with broader global trends in restorative justice and a shift away from solely punitive measures. Community service promotes a restorative justice approach, aiming to repair the harm caused by an offense. Offenders actively contribute to the community, helping to rebuild trust and relationships. It offers rehabilitation opportunities by allowing offenders to reflect on their actions and make amends. Engaging in positive, productive activities within the community can contribute to personal growth and development. By involving offenders in community service, there is a chance for them to become positively integrated into society. This can help break the cycle of criminal behavior by fostering a sense of responsibility and belonging.

The global dimension of restorative justice brings about community service as an approach that ushers in a new dawn in the justice system, a departure from purely punitive methods. By actively involving offenders in community service, the

proposed approach aims to repair the harm caused by offences, rebuild trust and relationships, and provide opportunities for personal growth and development.

Concept of Community Service Punishment

Community service stands as a groundbreaking move away from the regular forms of punishment within the criminal justice system, providing an alternative approach to finding solutions for rehabilitation and social integration. It forms an integral part of sentences that are mandated by the court, and the offenders who complete such a kind of sentence are required to carry out unpaid public works that benefit the local community under the supervision of a probation officer who also provides rehabilitative counselling and guidance. Such a kind of punishment not only elicits the reform of criminals, but also provides the chance for these people to contribute their positive sides to the community they might have damaged.

It is basically characterised by its non-custodial approach; this allows for the administration of justice to a limited population, like criminals convicted of minor or non-violent offences, where imprisonment may neither be appropriate nor the most effective remedy. The rationale behind rehabilitating offenders through community service is to leave stiffer sentences for serious and heinous crimes; thus, this approach is in line with the tenets of restorative justice.

In the opinion of **Kenneth D. Miller**, community service can be seen as a form of symbolic restitution, wherein participants give of their time and effort for the betterment of the community, emphasising its transformative potential beyond mere punishment.

Origin of Community Service Punishment

The utilisation of community service as a punitive measure has indeed extensively increased in the last five decades, being especially high in the United States and the United Kingdom. Tracing the exact origins of community service proves challenging, given the fact that it has been a symbol of social service in some countries since time immemorial.

It was first introduced in the House of Correction at Bridewell Palace in London in 1553 as a way of combating the problem of idleness and vagrancy by allotting tasks to the homeless. Before and during the Second World War, community work was compulsory, and in 1949, Alaska State Statute entered the laws of the state, which allowed courts to establish confinement conditions as a part of probation for the individuals convicted of crimes. Informally, this document has also been known as the “Wootton Report” and it supports the use of non-custodial or semi-custodial measures by arguing that part-time work in

community service would be better alternative to imprisonment if appropriate. This marked the beginning of community service as a sentencing option in England and Wales.

Advantages of Community Service

Hudson and Galaway have listed several advantages of community service. Some of them are as follows

- Reduces intrusion of the justice system, and reduce recidivism,
- Agencies are benefited by the labour provided by the offender,
- Increases the community support within the criminal justice system,
- Reduces cost,
- Works as an alternative sentence for the courts,
- Offenders can also experience the needs of others.

Community Service models in Other Countries

Community sentencing models are different in different countries and could represent different legal and cultural frameworks.

In the **US**, community sentences may include probation. In probation cases, offenders are monitored in the community and are advised to follow the cited requirements. Opportunities for community service may be available through non-profits or government agencies.

The **UK** follows a similar approach in terms of community orders, whereby the offenders are required to complete a variety of areas, such as unpaid work, constant monitoring, or commitment in certain rehabilitation processes.

In **Australia**, Community Corrections Orders are also administered. These orders are designed to supervise the offenders in a specified area with additional conditions such as counselling or community service.

In **Canada**, conditional sentences are available for convicted offenders to serve their sentences outside the confinement of corrections facilities. The necessary conditions for leaving are put in place by the authorities.

Norway, famous for its rehabilitation emphasis, achieves its goal through community service under the umbrella of restorative justice and by offering sanctions other than prison. The aim of these programs and projects is to reintegrate offenders back into society.

In **Japan**, the system of "day-fines" is introduced, which does not penalise according to the criminal code but according to the daily income of offenders; in this way, they are made to understand the seriousness of financial responsibility.

These models represent an attempt to adequately punish while at the same time providing an opportunity for change, catering to the offender's requirements, and allowing for cultural and legal adjustments. Being a part of those systems, constant adjustment and adaptation are the characteristics that make them effective and adequate for changing social and human norms.

Punishment of Community Service in Bharatiya Nyaya Sanhita, 2023

The following are the provisions under which community service has been provided as punishment in Bharatiya Nyaya Sanhita, 2023:-

- **Sec. 202** – Public servant unlawfully engaging in trade
- **Sec. 209** – Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023
- **Sec. 226** – Attempt to commit suicide to compel or restrain exercise of lawful power.
- **Sec. 303** – Theft (value of the stolen property is less than Rs. 5000/- and a person is convicted for the first time)
- **Sec. 355** – Misconduct in public by a drunken person
- **Sec. 356(2)** – Defamation

Community Service and Indian Judiciary

The Judiciary has not only immersed itself in implementing and interpreting the concept of community sentences in India but also in carrying out activities related to giving back to the community by the offenders. The courts have at times exercised their powers of discretion to uphold justice and provide offenders with an opportunity to change.

In **Babu Singh Vs. State of Uttar Pradesh, AIR 1978 SC 527**, the Hon'ble Supreme Court identified the pivotal part of reformatory and alternative devices for punishing the accused. The Supreme Court identified meditative drills or study classes as a reformatory or alternative device for punishing the accused.

Thereafter, in **Smt. Sunita Gandharv Vs. State of Madhya Pradesh, Misc. Criminal Case No. 22615/2020, decided on 08-10-2020**, the Madhya Pradesh High Court further re-established the significance of community service sentencing in India to reform the criminal law justice system. The court observed that if the accused is released on bail if the accused is required to do community service such as planting a sapling or serving in a hospital or doing similar work,

then the accused is within the limits of justice, the criminal justice system and cannot "extend threats to victims or tamper with evidence."

The main concerns regarding the imprisonment of those accused/convicted of minor or minor crimes and first-timers are their treatment in prisons due to overcrowding and poor infrastructure and facilities in Indian prisons. Such conditions have a far-reaching effect on the health of such a class of prisoners. The main concerns regarding the imprisonment of those accused/convicted of minor or minor crimes and first-timers are their treatment in prisons due to overcrowding and poor infrastructure and facilities in Indian prisons. Such conditions have a far-reaching effect on the health of such a class of prisoners. Community service is an effective way to protect such prisoners from prison conditions by providing them with a productive and rehabilitative environment for the benefit of society. Community service would also protect such prisoners from being abused by other prisoners who may be hardened criminals. Community service has proven to significantly promote the self-esteem of such convicts.

Conclusion

Thus, the introduction of community sentencing, which is provided under Sec. 4 in the Bharatiya Nyaya Sanhita 2023, represents a pivotal change for the criminal justice system of India. The new system, being equally driven by the popular restorative justice concept worldwide, emphasises rehabilitation and community engagement over common custodial sentences for first-time petty crimes. The concept of community service, whose roots are set in historical measures of enforcement that aimed to curb idleness and vagabondage, provides a non-custodial alternative that serves the best interests of both offenders and the community. While many countries have developed quite different models for community sentencing, the evolving Indian judiciary actively applies interpretation and implementation of the principle.

B. Important Cases March 2024

Important Supreme Court Cases **March 2024**

S.N.	Subject	Case Reference
1.	Legal representatives are not liable to discharge the party's obligation which had to be discharged in a personal capacity but should discharge monetary liabilities.	Vinayak Purushottam Dube (D) Vs. Jayashree Padamkar Bhat, Civil Appeal Nos. 7768-7769 of 2023, decided on 01-03-2024
2.	Whether the Limitation Act, 1963 is applicable to applications for the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996? In the absence of a statutory prescription regarding the time limit for such applications and expressed concerns about the unduly long three-year period allowed for filing under Article 137 of the Limitation Act. While recognizing the legislative vacuum, the court urged Parliament to consider amending the Act to prescribe a specific limitation period for filing applications under Section 11(6).	M/s Arif Azim Co. Ltd. Vs. M/s Aptech Ltd., Arbitration Petition No. 29 of 2023, decided on 01-03-2024
3.	To convict the accused for committing an offence of abetment to suicide under Sec. 306 IPC, it must be proved that the act or omission or the continued course of conduct, created a situation that the deceased is left with no other option except to commit suicide. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.	Kumar @ Shiva Kumar Vs. State of Karnataka, Criminal Appeal No. 1427 of 2011, decided on 01-03-2024
4.	Bribery is not protected by legislative privilege. No immunity for MPs/MLAs taking bribe for vote/speech in legislature. Seven Judges Bench overturned the P.V. Narasimha Rao Vs. State (CBI/SPE) (1998) 4 SCC which by 3:2 majority 626, held that members of	Sita Soren Vs. Union of India, Criminal Appeal No. 451 of 2019, decided on 04-03-2024

	parliament and legislative assemblies could claim immunity under Articles 105(2) and 194(2) of the Constitution for receiving a bribe in contemplation of a vote or speech in the legislature.	
5.	Failure of the defendant to give para wise reply against the claim made by the plaintiff would make the allegations made in the plaint as admitted against the defendant.	Thangam and Anr. Vs. Navamani Ammal, Civil Appeal No. 8935 of 2011, decided on 04-03-2024
6.	The conviction of the accused can be sustained solely based on the dying declaration if the declaration made by the victim inspires the confidence of the court and proves to be trustworthy i.e., the victim was in a conscious state of mind to make such a dying declaration. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. Where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. <u>If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.</u>	Naeem Vs. State of Uttar Pradesh, Criminal Appeals No. 1978-1979 of 2022, decided on 05-03-2024
7.	To determine age, ossification test stands last in the order of priorities. Pertinently, Section 94(2) of the Juvenile Justice Act 2015 provides for the mode of determination of age. As per this provision, priority should be given to the date of birth certificate. In the absence of this, the birth certificate given by a corporation shall be preferred. Only in	Vinod Katara Vs. State of U.P. Writ Petition (Cri.) No. 121 of 2022, decided on 05-03-2024

	the absence of both categories can an ossification test determine age.	
8.	An accused would not be entitled to pre-arrest bail if the non-bailable warrant and the proclamation under Sec. 82(1) Cr.P.C. is pending against him.	Srikant Upadhyay & Ors. Vs. State of Bihar & Anr., decided on 14-03-2024
9.	When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint. To prove the plea of adverse possession:- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner; (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner; (c) The plaintiff must also plead and establish when he came into possession; and (d) The plaintiff must establish that his possession was open and undisturbed.”	M. Radheshyamlal Vs. V Sandhya and Anr. Etc., Civil Appeal Nos. 4322 – 4324 of 2024, decided on 18-03-2024
10.	Certain factors that the courts considered while deciding convicts' period of sentence before remission could be sought. In the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:- (a) the number of deceased who are victims of that crime and their age and gender (b) the nature of injuries including sexual	Navas @ Mulanavas Vs. State of Kerala, Criminal Appeal No. 1215 of 2011, decided on 18-03-2024

	assault if any (c) the motive for which the offence was committed (d) whether the offence was committed when the convict was on bail in another case (e) the premeditated nature of the offence (f) the relationship between the offender and the victim (g) the abuse of trust if any (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. The Court also listed the positive factors like the accused's age, possibility of reformation, and remorseful conduct. Some of the positive factors have been:- (i) age of the convict (ii) the probability of reformation of convict (iii) the convict not being a professional killer (iv) the socioeconomic condition of the accused (v) the composition of the family of the accused and (vi) conduct expressing remorse.	
11.	Directions to the police forces in all States and Union Territories as also all agencies endowed with the power of arrest and custody to scrupulously adhere to all Constitutional and statutory safeguards and the additional guidelines laid down by this Court when a person is arrested by them and/or remanded to their custody.	Somnath Vs. State of Maharashtra & Ors., decided on 18-03-2024
12.	For attracting the provisions of Sec. 420 IPC, it must be shown that the FIR/complaint discloses: (i) the deception of any person (ii) fraudulently or dishonestly inducing that person to deliver any property to any	A.M. Mohan Vs. State Represented By SHO and Anr., decided on 20-03-2024

	person (iii) dishonest intention of the accused at the time of making the inducement.	
13.	The conviction of the accused child who was a 'child in conflict with law' cannot be sustained unless the preliminary assessment to ascertain the physical and mental capacity of the child to commit the crime and the need to try the child as an adult or a juvenile was adhered to as the mandatory requirements under the Juvenile Justice Act, 2015.	Thirumoorthy Vs. State represented by the Inspector of Police, decided on 22-03-2024

IN THE SUPREME COURT OF INDIA

Vinayak Purshottam Dube (D) through LRS.

Vs.

Jayashree Padamkar Bhat & Ors.

Civil Appeal Nos. 7768-7769 of 2023

HEADNOTE – Legal representatives are not liable to discharge the party's obligation which had to be discharged in a personal capacity but should discharge monetary liabilities.

JUDGMENT

Nagarathna, J.

1. These appeals have been filed by the legal representatives of the opposite party-sole proprietor against the common final judgment and order dated 02.05.2018 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") in Review Application No.26 of 2017 in Review Petition No.3283 of 2008 and Review Application No.27 of 2017 in Review Petition No.2794 of 2008.

The NCDRC vide the impugned order dismissed the review applications while affirming its earlier order dated 31.05.2016 passed in review petition with reference to the order dated 03.01.2017 passed by this Court in Special Leave Petition (Civil)... CC Nos.24515-24516 of 2016 granting liberty to the appellants to resort to remedy of review before the NCDRC.

2. The brief facts giving rise to the present appeal are as follows:

2.1 The appellants herein are the legal heirs of the original opposite party in the consumer complaint before the District Forum. All the respondents herein are the complainants.

2.2 For the sake of convenience, the parties shall be referred to as complainants and opposite party.

2.3 The complainants, Jayashree Padmakar and others, owners of property CTS Nos.1465/1 and 1465/2, 'C' Ward, Kolhapur, had entered into a Development Agreement dated 30.07.1996 with the opposite party. According to the agreement, the complainants were entitled to receive eight residential flats and Rs.6,50,000/- as consideration. Allegedly, the opposite party failed to fulfill the

payment obligations, resulting in payment of a balance amount and accruing interest at 18% per annum with effect from 01.04.1997.

The complainants alleged breaches of the agreement, including deviations from sanctioned plan, non-construction of a compound wall impacting parking and issues regarding access and unauthorized constructions beyond sanctioned plan, subsequently sold to third parties. They also noted defects in the building construction, such as cracks, in the building, terrace work being not completed and the absence of provision for electricity meters. Despite notices issued by the complainants, the opposite party denied the allegations asserting that the complainants owed them Rs.8,60,000/- for construction and amenities.

2.4 Seeking a resolution of the ongoing breaches under the Consumer Protection Act, the complainants pursued their legal recourse to address the deadlock by filing Complaint No.184 of 2005 before the District Consumer Forum, Kolhapur. Their prayers for relief were several: they demanded payment of outstanding dues inclusive of interest; reimbursement of expenses incurred and compensation for the mental distress caused to them. Additionally, they sought structural rectification, emphasizing on the removal of unauthorized constructions; rectification of construction defects; completion of pending work and the provision of essential amenities as initially agreed upon.

2.5 In his version, the original opposite party disputed the existence of any consumer relationship, denied breaches and argued for the resolution of contractual disputes through the civil court. The opposite party claimed that the complaint was timebarred and sought its dismissal with compensatory costs of Rs.10,000/-.

2.6 The District Consumer Forum at Kolhapur, vide order dated 16.10.2006, on perusal of various supporting documents, including the Development Agreement, building plans, notices, replies, certificates, estimates, receipts and affidavits partly allowed the Consumer Complaint No.184 of 2005 filed against the opposite party. The District Forum observed that as per the Development Agreement between the parties, the transaction between the parties was not one of sale and purchase of property but of development of property.

Since the services regarding construction are covered by the Consumer Protection Act, the dispute was held to be a consumer dispute. Further, the District Forum refused to take into consideration the points raised by the complainants regarding defects in construction, amenities and facilities due to lack of evidence provided in that regard.

However, the opposite party was found to be liable to pay to the complainants an amount of Rs. 1,65,000/- along with interest at the rate of 18% per annum with effect from 01.05.1997 till payment; an amount of Rs. 1,85,000/- along with interest at the rate of 18% per annum with effect from 31.08.1997 till payment; and an amount of Rs.1,50,000/- at the time of conveyance.

2.7 Both the parties challenged the order of the District Forum before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai (for short, "the State Commission"). The State Commission, vide its common judgment dated 08.04.2008 in First Appeal Nos.2570 of 2006 and 1115 of 2007, partly modified the order of the District Forum by setting aside the directions to pay Rs. 1.85 lakhs and Rs. 1.65 lakhs as the said claims were held to be time-barred but upheld the direction to pay Rs. 1.5 lakhs.

However, the State Commission placed reliance on some other clauses of the Development Agreement such as clause 4(k), to hold that the building was incomplete and that the opposite party was liable to get the construction of the compound wall and give separate access in terms of Schedule-II of the Development Agreement. The opposite party was further directed to obtain and handover the Completion Certificate to the complainants; to execute the Conveyance Deed and to give electricity connections to the complainants for which they had already paid Rs.15,000/- to the developer-opposite party.

2.8 The complainants as well as the opposite party approached the NCDRC by filing Revision Petition Nos.3283 of 2008 and 2794 of 2008. During the pendency of the petition before the NCDRC, the original opposite party-Vinayak Purushottam Dube died and his legal representatives i.e., his wife and two sons were brought on record, who are the appellants before this Court. The NCDRC, vide order dated 31.05.2016, again partly modified the order of the State Commission.

The NCDRC disagreed with the finding and conclusion of the State Commission with respect to the timebarred transaction of Rs. 1.85 lakhs and Rs. 1.65 lakhs, by observing that the limitation of the said claims had to be adjudged by looking at the transaction between the parties as a whole, which established a continuous cause of action in the matter.

The NCDRC upheld the directions given by the State Commission with respect to the Completion Certificate; Conveyance Deed; Electricity Connection, etc., since the developer did not challenge any part of those directions as the same were in accordance with the Development Agreement. In other words, the NCDRC upheld the order of payment of 1.65 lakhs and 1.85 lakhs along with interest as

directed by the District Forum, and also upheld the slew of directions issued by the State Commission to the developer opposite party.

3. The appellants-opposite party thereafter approached this Court by preferring Special Leave Petition (Civil)... CC Nos.24515- 24516 of 2016 to challenge the order of the NCDRC dated 31.05.2016 in Revision Petition Nos.3283 of 2008 and 2794 of 2008. This Court, vide order dated 03.01.2017, refused to interfere with the view taken by the NCDRC and disposed of the same by granting liberty to the appellants-opposite party herein to resort to the remedy of review before the National Commission.

4. Thereafter, the appellants-opposite party filed Review Application No.26 of 2017 and the complainants filed Review Application No.27 of 2017, both before the NCDRC and the order of review proceeding is assailed in the present case. The NCDRC, vide order dated 02.05.2018, upheld its earlier findings on the question of limitation, status of complainants as consumers and the relief being in excess of the payment made by the complainants.

Further, NCDRC refused to accept the contention of the appellants-opposite party that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement. In paragraph 12 of the order, the NCDRC held that the death of a developer has no effect upon the obligations of the developer under the Development Agreement and the same have to be executed by the legal heirs of the developer. The relevant part of the said paragraph 12 is extracted as under:

"12. Further, we have no reason to agree with the contention raised by the review applicant that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement. In the eventuality of death of the developer, it cannot be stated that various clauses of the development agreement between the parties becomes redundant or the complainant is not entitled to seek execution of the provisions of the development agreement. Such execution has to be made by the legal heirs of the developer only."

5. The legal representatives of the opposite party being aggrieved by the aforesaid reasoning of the NCDRC have preferred these appeals.

6. We have heard learned counsel Sri Aniruddha Deshmukh for the appellants and learned counsel Sri Abhishek Yadav for the respondents and perused the material on record.

7. The controversy in these appeals is in a very narrow compass. No doubt, the complainants succeeded before the District Forum, the State Commission as well as the NCDRC. During the pendency of the revision preferred by the original

opposite party before the NCDRC, the original opposite party died. His legal representatives i.e. his widow and two sons were brought on record.

In fact, the complainants also had preferred their Revision Petition. The NCDRC reasoned that the legal representatives of the opposite party were liable both with regard to the monetary payments that the original opposite party was directed to pay and also liable to comply with the other directions issued by the District Forum as modified by the State Commission and thereafter modified by the NCDRC.

8. Learned counsel for the appellants submitted that the appellants as the legal representatives of the deceased opposite party are willing to make the payment as directed. But as far as the other set of the directions are concerned, it is not permissible for them to comply with them inasmuch as the said directions were issued by the District Forum as well as the State Commission personally against the opposite party who is since deceased. Those directions are with regard to construction of compound wall so as to give separate access in terms of Schedule II of the Development Agreement; to obtain and handover completion certificate to the complainants-respondents; to execute the conveyance deed and to give electricity connection and such other directions.

9. Learned counsel for the petitioner contended that the aforesaid directions cannot now be complied with by the legal representatives of the deceased - original opposite party inasmuch as those were personal directions as issued against the original opposite party. He contended that the original opposite party was having the proprietorship concern and therefore, the estate of the deceased proprietor would be liable insofar as the satisfaction of the compensatory payments only but not for complying the other directions issued which cannot now fall on his legal representatives to comply.

It was contended that the original opposite party had skills and expertise to comply with the said directions as a developer but on his demise, his legal representatives, namely, his widow and two sons, cannot be compelled to carry out those directions as they neither possess the necessary skills nor expertise and further, they are not continuing the proprietorship concern of the original opposite party which has now been wound up on the demise of the sole proprietor.

Therefore, learned counsel for the appellants-opposite party contended that the various clauses of the Development Agreement which had placed duties and obligations on the original opposite party, who is since deceased, cannot now be enforced against and performed by his legal representatives or heirs.

10. Per contra, learned counsel for the complainants- respondents submitted that no doubt the legal representatives of the original opposite party would comply with the directions for payments from out of the estate of the deceased opposite party but the complainants would be left high and dry insofar as the other obligations which had to be discharged by the opposite party and therefore, the NCDRC was justified in directing the legal representatives of the deceased opposite party to take steps for also complying with those directions.

11. Having heard learned counsel for the respective parties, we note that admittedly the original opposite party was in the business of real estate and as a developer, had entered into the Development Agreement dated 30.07.1996 with the complainants. According to the complainants-respondents herein, they were entitled to eight residential flats and there were various other terms and conditions of the said Development Agreement which imposed an obligation on the original opposite party.

12. The question is: what would happen to the obligations imposed personally on the original opposite party on his demise? No doubt, the estate of the original opposite party would be liable for any monetary decree or directions for payment issued in the present case. However, what about the obligations which had to be performed under the Development Agreement such as certain construction to be made and certain approvals etc. to be obtained by him on completion of the construction. Can the legal representatives be liable to comply with those obligations under the Development Agreement on the demise of the original opposite party?

13. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February, 2020, the definition of 'Proprietorship Firms' reads as under:

"2.DEFINITION OF 'PROPRIETORSHIP FIRMS'

2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [Raghu Lakshminarayanan vs. Fine Tubes (2007) 5 SCC 103.]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2 (haa) of the Chartered Accountants Act, 1949 defined a 'sole proprietorship' as "an individual who engages himself in practice

of accountancy or engages in services.". Notably, 'proprietorship firms' have also not been statutorily defined in many other jurisdictions."

[Source: Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]

14. According to Salmond, there are five important characteristics of a legal right:

1. It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.
2. It avails against a person, upon whom lies the correlative duty. He may be distinguished as the person bound, or as the subject of duty, or as the person of incidence.
3. It obliges the person bound to an act or omission in favour of the person entitled. This may be termed the content of the right.
4. The act or omission relates to something (in the widest sense of that word), which may be termed the object or subject matter of the right.
5. Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

[Source: PJ Fitzgerald, Salmond on Jurisprudence, Page No.221 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)]

15. Salmond also believed that no right can exist without a corresponding duty. Every right or duty involves a bond of legal obligation by which two or more persons are bound together. Thus, there can be no duty unless there is someone to whom it is due; there can be no right unless there is someone from whom it is claimed; and there can be no wrong unless there is someone who is wronged, that is to say, someone whose right has been violated. This is also called as *vinculum juris* which means "a bond of the law". It is a tie that legally binds one person to another. [Source: PJ Fitzgerald, Salmond on Jurisprudence, Page No.220 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

16. Salmond's classification of proprietary and personal rights are encapsulated as under:

	Proprietary Rights	Personal Rights
1	Proprietary rights means a person's right in relation to his own property.	Personal rights are rights arising out of any contractual obligation

	Proprietary rights have some economic or monetary value.	or rights that relate to status.
2	Proprietary rights are valuable.	Personal rights are not valuable in monetary terms.
3	Proprietary rights are not residual in character.	Personal rights are the residuary rights which remain after proprietary rights have been subtracted.
4	Proprietary rights are transferable.	Personal rights are not transferable.
5	Proprietary rights are the elements of wealth for man.	Personal rights are merely elements of his well-being.
6	Proprietary rights possess not merely judicial but also economic importance.	Personal rights possess merely judicial importance.

[Source: PJ Fitzgerald, Salmond on Jurisprudence, Page No.238 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

17. Salmond's classification of inheritable and uninheritable rights is stated as under: Inheritable Rights Uninheritable Rights A right is inheritable if it survives the owner. A right is uninheritable if it dies with the owner. [Source: PJ Fitzgerald, Salmond on Jurisprudence, Page Nos.415 & 442 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

18. On a reading of the above, it is clear, when it comes to personal rights (as opposed to a proprietary rights) are rights arising out of any contractual obligations or the rights that relate to status. Such personal rights are not transferable and also not inheritable. Correspondingly, Section 306 of the Indian Succession Act, 1925 (for short, "1925 Act") applies the maxim "actio personalis moritur cum persona" (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable. By the same logic, a decree holder cannot enforce the same against the legal representatives of a deceased judgment debtor unless the same survives as against his legal representatives. Section 306 of the 1925 Act reads as under:

"Section 306 - Demands and rights of action of or against deceased survive to and against executor or administrator.-

All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favor of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party; and except

also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

19. We may also advert to Sections 37 and 40 of the Indian Contract Act, 1872, which read as under:-

"37. Obligation of parties to contracts.- The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

40. Person by whom promise is to be performed.- If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it."

20. Section 37 of the aforesaid Act states that a promise made by a promisor is binding on his representatives in case of his/her death, unless a contrary intention appears from the contract. Legal representatives are liable for the debts of their predecessor, but their liability is limited to the extent of the estate of the deceased inherited by them. Therefore, the representatives of a promisor are bound to perform the promisor's contract to the extent of the assets of the deceased falling in their hands.

But they are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased. Therefore, when personal considerations are the basis of a contract they come to an end on the death of either party, unless there is a stipulation express or implied to the contrary. This is especially so when the contracts involve exercise of special skills such as expressed in Section 40 of the Indian Contract Act, 1872.

21. Thus, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject matter of the contract and the nature of performance that was stipulated thereto. But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives. A contract of service is also personal to the promisor. This is because when a person contracts with another to work or to perform service, it is on the basis of the individual's skills, competency or other

qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract.

22. Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives. Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature.

In *Raghu Lakshminarayanan vs. Fine Tubes*, (2007) 5 SCC 103, while distinguishing a juristic person such as a company, a partnership or an association of persons from a proprietary concern, it was observed that a person who carries on business in the name of a business concern, but he being a proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Further, a proprietary concern is only the business name in which the proprietor of the business carries on the business.

A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business which is by representing the estate of the deceased proprietor. The real party who is being sued is the proprietor of the said business. Therefore, if a proprietor had to carry on certain obligations personally under a contract, the same cannot be fastened on his legal representatives.

23. Further, Section 2(11) of the Code of Civil Procedure, 1908 (for short, "CPC") defines a "legal representative" to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Thus, the legal representatives of a deceased are liable only to the extent of the estate which they inherit.

In *Custodian of Branches of Banco National Ultramarino vs. Nalini Bai Naique*, AIR 1989 SC 1589, it was observed that the expression "legal representative" as defined in the CPC is applicable to proceedings in a suit. It means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

The definition is inclusive in character and its scope is wide as it is not confined to legal heirs only, instead, it stipulates a person who may or may not be a heir, competent to inherit the property of the deceased or he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title, either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.

24. The aforesaid judgment refers to representation of an estate of a deceased person which would devolve on his legal representatives and where the decree has to be executed vis-à-vis such an estate. In such a case, the heirs of the deceased judgment debtor would be under a legal obligation to discharge their duties to satisfy the decree or an order from the estate of a deceased.

But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a Development Agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the Development Agreement and where the obligations under such an agreement per se cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely on the skills and expertise of the deceased sole proprietor?

In other words, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms.

This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise. In this context, the following terms of the Development Agreement dated 30.07.1996 would clearly indicate that the obligations on the opposite party were to be carried out personally by him:

"NOW THIS AGREEMENT WITNESSETH AND IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1.1 The owners hereby grant to the developer sole and exclusive development rights in respect of the property bearing C.S. No. C. 1465 situated in 'C' Ward, Laxmipuri Kolhapur -416002 in the form of license to enter upon the said property in the capacity of the licensee of the owners for the sole purpose of developing the said property and selling the offices/premises / shops to the extent and in the manner stipulated hereafter and upon the terms and conditions agreed by the between the parties hereto and set out here below in this agreement.

Subject to clause No. 2. the license hereby granted is irrevocable till the entire property is developed and all the premises constructed thereon are sold out. It is however, hereby expressly understood that the right of entry granted under this clause is for the sole purpose of developing the said property selling all premises (except those to be allotted to owners) including the shop/s basement/offices therein and common restricted areas or facilities as the case may be and such entry shall not be construed to mean that the owners have placed the developer in legal or physical possession of the said property.

16. The developer undertakes to comply with and carry out all the legal and contractual obligations that may be entered into for the construction of the buildings and for the sale of the various premises in the said buildings. The developer further undertakes to indemnify and keep indemnified the owners from and against any action either civil or criminal suit proceedings, damages, penalties or any other similar actions which may be initiated, made or ledged by any person or persons by reason of the failure of the developer to comply with, carry out or perform any such legal and contractual obligations."

25. In this regard, it would be useful to illustrate that in a general sense, an injunction is a judicial mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. On the other hand, a direction to pay money either by way of final or interim order is not considered to be an injunction.

An order of injunction is normally issued against a named person and is addressed to the defendant personally and on his demise the cause of action would come to an end insofar as such a person who is since deceased even if it relates to a proprietary right unless his legal representatives are also causing a threat in which case the cause of action would continue vis-à-vis the legal representatives also.

26. Therefore, if the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves

on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it.

27. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.

28. In *Ajmera Housing Corporation vs. Amrit M. Patel (Dead) through LRs*, (1998) 6 SCC 500, this Court observed that the defendants in the said case had no privity of contract with the plaintiff therein and the contract had been entered into on the basis of the skills and capacity of the party to perform under the contract and the rights and duties were also personal to the party who had to discharge the obligations under the contract. In the circumstances, it was observed that the legal representatives of the builder under the contract had neither the capacity nor the special skills to discharge the obligations of the deceased. 29. This position is also clear on a reading of Section 50 of the CPC which states as under:

"Section.50:- (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

30. Thus, any decree which is relatable to the extent of the property of the deceased which has come to the hands of the legal representatives and has not been duly disposed of, the same would be liable for execution by a decree holder so as to compel the legal representatives to satisfy the decree. In this context, even a decree for preventive injunction can also be executed against the legal representatives of the deceased judgment-debtor if such a decree is in relation to the property or runs with the property if there is a threat from such legal representatives.

31. In view of the aforesaid discussion, we hold that the legal representatives of the deceased opposite party-appellants herein are not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity and hence that portion of the impugned orders of the NCDRC, State Commission and District Forum are set aside.

Needless to observe that the direction for payments shall be made by the legal representatives from the estate of the deceased opposite party if not already satisfied.

32. The appeals are allowed in the aforesaid terms.

33. Parties to bear their respective costs.

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

.....J. [Ujjal Bhuyan]

New Delhi;

March 01, 2024.

IN THE SUPREME COURT OF INDIA

M/s Arif Azim Co. Ltd.

Vs.

M/s Aptech Ltd.

Arbitration Petition No. 29 of 2023

HEADNOTE – Whether the Limitation Act, 1963 is applicable to applications for the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996? In the absence of a statutory prescription regarding the time limit for such applications and expressed concerns about the unduly long three-year period allowed for filing under Article 137 of the Limitation Act. While recognizing the legislative vacuum, the court urged Parliament to consider amending the Act to prescribe a specific limitation period for filing applications under Section 11(6).

JUDGMENT

J. B. Pardiwala, J.

For the convenience of exposition, this judgment is divided into the following parts:-

INDEX

A. FACTUAL MATRIX

B. SUBMISSIONS ON BEHALF OF THE PETITIONER

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

D. ANALYSIS

- i. ISSUE NO. 1: Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the present petition is barred by limitation?
 - a. When does the right to apply under Section 11(6) accrue?
- ii. ISSUE NO. 2: Whether the court may refuse to make a reference under Section 11 of the Arbitration and Conciliation Act, 1996 where the claims are ex-facie and hopelessly time-barred?
 - a. Jurisdiction versus Admissibility

- b. When does the Cause of Action arise?
- c. When is Arbitration deemed to have commenced?

E. CONCLUSION

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the Act, 1996") filed at the instance of a company based in Kabul, Afghanistan and engaged in the business of providing training to desirous students in computer education, English language, information technology, etc. praying for the appointment of an arbitrator for the adjudication of disputes and claims arising from the Contract dated 21.03.2013 entered into between the petitioner and the respondent.

A. FACTUAL MATRIX

2. The petitioner, M/s Arif Azim Co. Ltd., is a company based in Afghanistan, having its registered office at 1st Floor, Zarnigar Hotel, Mohammed Jan Khan Watt, Kabul, Afghanistan and is engaged in the business of providing training in computer education, information technology, English language, etc.

3. The respondent, M/s Aptech Limited, is a company having its registered office at Aptech House, A-65, MIDC Marol, Andheri (E), Mumbai - 400093, Maharashtra, India and is engaged in the business of providing training and education in information technology through its network in India and abroad.

4. On 21.03.2013, three separate franchise agreements were entered into between petitioner/franchisee and the respondent/franchisor. As per the terms of the said agreements, the petitioner, as the franchisee, was granted a non-exclusive license, by the respondent to establish and operate businesses under the following trade names:

I. Aptech English Language Academy (for short, "AELA")

II. Aptech Computer Education (for short, "ACE")

III. Aptech Hardware and Networking Academy (for short, "AHNA")

5. The dispute in the present case pertains to the agreement entered into between the parties for the AELA. A perusal of the recitals of the said agreement reveals that the respondent company has the expertise in imparting training in information technology and had developed content and established programs for training in computer-based information.

The programs developed by the respondent under the brand name AELA included the recurring use of trade names, trademarks, advertising and publicity, distinctive style and character of premises and furnishings, support and placement program for students, etc. The petitioner, desirous of establishing a centre for providing training in information technology in the courses conducted by the respondent with a view to train and educate students to enable them to appear and qualify in the said courses, had approached the respondent as a result of which the franchise agreements for AELA, ACE and AHNA were entered into between the parties.

6. The relevant clauses of the AELA franchise agreement are reproduced hereinbelow:

"1. GRANT OF LICENSE

1.01 The Franchisor hereby grants to the Franchisee for the duration of the term and upon the terms of this Agreement, an non-exclusive Licence ("the Licence") to establish and operate in the Territory, a business under the Trade Name "APTECH ENGLISH LEARNING ACADEMY" in accordance with the PROGRAM, on the terms and conditions hereinafter set forth ("the Licensed Business"), from the designated training centre located at First Floor, Zarnigar Hotel, Mohammad Jan Khan Watt, Kabul, Afghanistan (hereinafter the center)) set up in the designated territory, unless revoked otherwise by the Franchisor.

The Franchisor shall Licence to the Franchisee use of the Trade Name in the said territory for the purpose of running the said center. The Franchisee shall conduct only those courses as are mentioned in Schedule 2. The Franchisee shall be required to obtain the prior written permission of the Franchisor, if so directed by the Franchisor before commencing the licensed business from the said centre. However in respect of any additional training centers in the designated territory for carrying out the Licensed Business, the Franchisee shall be required to obtain such written permissions from the Franchisor from time to time.

3. APPOINTMENT

Subject to the terms and conditions of this agreement the Franchisor appoints the franchisee as an independent non-exclusive partner with the right to market and train learners in the territory outlined in Schedule 1. Each party is acting as an independent contractor and not as an agent, partner or joint venture with the other party for any purpose. The franchisee shall bear all costs relating to the marketing and promotion of the courses as outlined in Schedule 2.

8. PAYMENTS AND PAYMENT PROCEDURE

8.01 In consideration of the Franchisor agreeing to grant the licence for the licensed business, in favour of the Franchisee for a period as mentioned in Clause 2 above and for the use of the technical Knowhow, trade marks, trade names, service marks and logos of the Franchisor in relation to its business of computer education and the association of the Franchisee with the reputation and goodwill of the Franchisor, the Franchisee agrees to pay to the Franchisor a Non refundable sum of US\$ 30,000 (US Dollars Thirty Thousand only) as initial lumpsum fees.

8.02 If the Franchisee fails to pay the aforesaid lumpsum fees within the aforesaid period, the Franchisor shall be entitled to terminate this Agreement with immediate effect and shall have the right to forfeit the fees, if any, already paid by the Franchisee.

8.03 Additionally, in consideration of the License and other rights granted, and assistance agreed to be provided hereunder, the Franchisee shall pay to the Franchisor recurring royalty fees as under.

I. The recurring royalty payment shall be on the gross collection, to be paid as given below:

- 10% of the gross collections received in the 1st Year.
- 10% of the gross collections received in the 2nd year.
- 12.5% of the gross collections received in the 3rd Year.
- 15% of the gross collections received in the 4th year.
- 17.5% of the gross collections received in the 5th year.

Gross collections means the total gross collections, which have accrued to the Franchisee (irrespective of whether realized or not) from the conduct of licensed business of Aptech in the designated territory. Amounts payable as Recurring Franchisee Fees will be remitted on or before 10th of the subsequent month for the preceding calendar month e.g. Recurring Franchisee Fees for the gross collections received during the period 1st April to 30th April will be remitted on or before May 10th Such recurring payments shall be made on monthly basis accompanied by the statement of course fees for each Course for the relevant month and also for the total period for which Franchisee's financial year relates. The Franchisee shall use a format supplied by the Franchisor for such statements duly supported with requisite documentation.

II. All the payments to be made by the Franchisee to the Franchisor shall be by way of Telegraphic Transfer / Demand Draft.

III. Any and all statutory tax on the payment as above as per local laws, any other taxes, incidental taxes, incremental taxes, duties or any other charges whether statutory or otherwise in respect of the payments to the Franchisor shall be borne and paid by the Franchisee alone during the term of this agreement.

IV. In case the payments under this agreement are not received by the due date the Franchisor shall be entitled to levy monthly compound interest @ 24% p.a. on such late payments notwithstanding the other remedies available under the laws of the land.

12. RENEWAL

Not less than one hundred eighty days before the expiry of this Agreement (whether or not it has previously been renewed under the provisions of this Clause) the Franchisee may apply to the Franchisor for renewal of this Agreement for further period(s).

Provided that the Franchisee has complied fully with the terms and conditions of this Agreement, the Franchisor shall have option to renew this Agreement on the terms and conditions for such mutually agreed period. However in case the renewal documents and renewal fees are not received in time as stipulated by the Franchisor, the Franchisor has the absolute right to charge monthly compound interest @ 24% p.a. on the late renewal fees from the due date of such payment, notwithstanding the right to terminate the renewal of this agreement.

13. FORCE MAJEURE

Neither party to this agreement shall be liable for any failure or delay to perform any of its obligations under this agreement if the performance is prevented, hindered or delayed by a Force Majeure Event which is beyond reasonable control of either party and in such a case its obligations shall be suspended for so long as the Force Majeure event continues.

Each party shall promptly inform the other in writing of the existence of a Force Majeure Event and shall consult together to find a mutually acceptable solution. "Force Majeure Even" means any event due to any cause beyond reasonable control of parties to this agreement viz. unavailability of any communication systems, breach or virus in the processes, fire, storm, earthquake, Flood. Explosion, Act of God, Civil commotion, strikes, or industrial action of any kind, riots, rebellion, war wreck, epidemic failure, statutory laws, regulations or other Government action, computer hacking, unauthorized access to computer data, etc.

The affected party shall promptly upon the occurrence of any such cause so inform the other party in writing and thereafter such party shall use reasonable endeavors to comply with the terms of this Agreement as fully and as promptly as possible.

17. STATUS OF AGREEMENT

17.01 Nothing in this Agreement shall constitute a partnership between the parties hereto or constitute the Franchisee an agent of the Franchisor for any purpose whatsoever and the Franchisee shall have no authority or power to bind the Franchisor or to pledge its credit.

17.02 This Agreement shall not be deemed to confer any right on the Franchisee and the license granted by this Agreement shall be personal to the Franchisee only and shall not be capable of being or be assigned by the Franchisee to any other person.

17.03 This Agreement shall in no way create a contractual relationship between the students and the Franchisor and the Franchisee shall, at all times, be wholly liable and responsible for any claims related to and arising out of the Licensed Business and the conduct of the Courses. The Franchisee undertakes to ensure that the students are made aware at the time of enrolling in the Course that Franchisee is entirely responsible for the conduct of the Courses and, that the students shall have no claim whatsoever against the Franchisor.

21. ARBITRATION AND GOVERNING LAWS

In the event of any dispute or difference arising between the parties hereto, including the events of termination, the same shall be settled through conciliation between the parties. In the event the parties are unable to arrive at a settlement, the matter will be referred to arbitration. The party raising the dispute shall serve a notice upon the other party advising that a dispute or difference has arisen and nominate on that notice its own arbitrator.

The party receiving the notice shall, within 30 days after receiving such notice, nominate its arbitrator by advising the party raising the dispute and the name of the arbitrator appointed by the other party. The arbitrators so appointed shall appoint a third arbitrator. The award of the majority arbitrators shall be final, conclusive and binding upon the parties hereto. The venue of arbitration shall be MUMBAI and the arbitration proceedings shall be conducted in accordance with the UNCITRAL Model Rules. If arbitration process fails both the parties shall submit to the jurisdiction of the Mumbai courts.

22. This Agreement shall be construed in accordance with and governed by the Indian laws."

7. Pursuant to the signing of the aforesaid agreement, proposals were invited by the Indian Council for Cultural Relations, Azad Bhavan, Indraprastha Estate, New Delhi - 110002 (for short, "the ICCR") in 2016 for the execution of a short-term course for training in English for students from Afghanistan who were selected to pursue degree courses in Indian Universities in the academic year 2017-18 under the scholarship scheme of the Government of India (for short, "the course").

The proposal of the respondent was accepted by the ICCR vide Sanction Order No. SSSAN-2017-18 dated 10.10.2016. The sanction order prescribed the schedule for the conduct of the course, submission of progress report to the Embassy of India in Kabul (for short, "EOI, Kabul") etc. and also approved the training fees at Rs 5,000/- + service tax per student per month. The order also stipulated that the payments for the course would be released to the respondent by the ICCR at the end of every month after getting an endorsement from the EOI, Kabul.

8. After securing the aforesaid sanction order, the respondent vide email dated 17.10.2016 addressed to the petitioner Company informed about the sanction order and stated that the respondent would speak to the petitioner for the implementation of the said order once the expectations of the ICCR for the course were understood.

9. Subsequently, a series of emails were exchanged between the petitioner and the respondent regarding the details of the course including the syllabus, learning outcomes, class schedule, qualifications, salary and number of trainers, etc.

10. The EOI, Kabul vide email dated 24.12.2016, informed the petitioner that although the applications of Afghan students were already sent to the Indian Universities, yet the Universities had not started granting admissions to them and thus it was suggested by the ICCR that the course should begin from the last week of January/ First week of February, 2017.

11. The course was executed by the petitioner at its centre in Kabul from February to April, 2017 for 440 Afghan students. The same was certified by the EOI, Kabul vide its letter no. KAB/327/05/2016-17 dated 30.07.2017.

12. Vide letters dated 04.08.2017 and 14.08.2017 respectively addressed to the EOI, Kabul, the program director for the ICCR requested for month-wise details/number of students who attended the course so as to process the payments for the course to the respondent.

13. Meanwhile disputes arose between the parties in relation to the renewal and payment of royalties for all the three franchise agreements entered into by the parties in March, 2013. Vide email dated 20.03.2018 addressed to the petitioner, the respondent issued a recovery notice for non-payment of royalty/renewal fees. The email stated that due to the non-payment of outstanding royalty, the portal operations for AELA and ACE would be shut by 21.03.2018 and by the monthend for the AHNA portal.

14. The petitioner replied to the aforesaid recovery notice vide email dated 23.03.2018, however the contents of the same have not been placed on record. The respondent replied to the reply email of the petitioner vide email dated 27.03.2018 stating that despite having sent the invoices for pending royalties, nothing had been received by the respondent. Responding to the issue of nonpayment for the course conducted by the petitioner, the respondent stated in the said email that they had not received the full amount from the ICCR, which had officially held back 22% of the payment for deductions of quality. The respondent also called upon the petitioner to urgently address, inter-alia, the issue of renewal of the franchise agreements.

15. Responding to the above referred email on the very same day, i.e., 27.03.2018, the petitioner stated that it had hired 7 Indian and 4 local English trainers for executing the course and since the course had been executed in Afghanistan, it was entitled to receive 90% of the payments received by the respondent from Aptech India. The petitioner further requested the respondent to share the details of the amount received from the ICCR after the 22% deduction to enable them to make the calculations and finalise the payment accordingly.

16. The respondent vide an email dated 28.03.2018 replied to the above email of the petitioner stating that it had received only 61.5% of the claimed amount from the ICCR after quality and TDS deductions. The respondent further mentioned that it was entitled to 15% royalty as opposed to the 10% stated by the petitioner and that it had incurred some incidental expenses for the project. The respondent also stressed on the issue of payment of outstanding royalty and renewal, calling upon the petitioner to address them first.

17. The petitioner replied to the above email on the same day disputing the percentage of royalty fee to which the respondent was entitled. The petitioner further stated that it had no issues regarding the quality deductions made by the ICCR, however it needed to know the exact amount disbursed by the ICCR to the respondent so that it could calculate its share from the same and adjust them towards the pending dues.

18. From the email exchanges placed on record, it is clear that the discussions regarding the non-payment of the amount received from the ICCR came to a halt between the parties on 28.03.2018, however the discussions regarding the renewal of the agreements continued. Finally, on 23.04.2018, the petitioner informed the respondent of its decision to not renew the franchise agreements for the ACE and AELA in light of the dispute regarding the payment for the course executed by the petitioner. However, the agreement for AHNA was renewed and the respondent acknowledged the same vide an email on the same day.

19. After about nine months, the petitioner once again sent an email to the respondent on 29.12.2018, raising the issue of the non-payment of the dues for the ICCR project. Although the said email refers to some phone calls and WhatsApp communication regarding the payment for the course, nothing has been placed on record by the petitioner to that effect. Vide the said email, the petitioner once again requested the respondent to provide accounting details for the expenses incurred and payment received from the ICCR for the course. The petitioner also mentioned that it had incurred expenses amounting to \$ 60,000/- on salary, lodging and food for the trainers.

20. As it appears from the record, it is only after a gap of around three years that the petitioner again took up the issue of non-payment of dues for the ICCR project with the respondent, vide a legal notice dated 26.08.2021. Through the notice, the petitioner called upon the respondent to pay Rs 73,53,000/- with 18% interest compounded monthly w.e.f. 01.11.2017 within 15 days of the receipt of the notice. The notice further stated that in the event of the respondent failing to comply with the aforesaid demand, the petitioner would file appropriate proceedings before the competent courts including a suit for settlement of accounts for recovery and also by way of damages or otherwise for breach of trust and breach of contract.

21. Again, after about 10 months, the petitioner invoked a pre-institution mediation before the Main Mediation Centre, Bombay High Court on 05.07.2022 in accordance with Section 12A of the Commercial Courts Act, 2015 making the respondent and the ICCR as party respondents. Notice was issued in the said mediation proceedings and 12.08.2022 was scheduled as the date for appearance of the parties.

Upon failure of the parties to be present on the said date, 24.08.2022 was fixed as the next date for appearance. However, on the said date, the opposite parties submitted letters refusing to go into mediation and thus a non-starter report dated 24.08.2022 was issued under Rule 3(4) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

22. After the failure of mediation as aforesaid, the petitioner sent notice for invocation of arbitration to the respondent on 24.11.2022. Vide the notice, the petitioner called upon the respondent to pay an amount of Rs 1,48,31,067/- inclusive of interest of Rs 82,13,367/- and nominated Mr V. Giri and Mr M.L. Verma, Senior Advocates practicing in this Court as its nominee arbitrators.

23. The respondent replied to the aforesaid notice vide letter dated 05.04.2023 denying all the claims raised by the petitioner in the notice dated 24.11.2022. It further stated that notwithstanding the merits, the claims were barred by limitation. The respondent also stated that the mediation proceedings initiated before the Bombay High Court were under Section 12A of the Commercial Courts Act, 2015 which is a mandatory requirement before filing a commercial suit, and thus it was not open to the petitioner to link it to the conciliation as envisaged in the clause 21 of the franchise agreement for AELA as extracted hereinbefore.

24. The present petition then came to be filed by the petitioner on 19.04.2023 before this Court after the failure of the respondent in nominating an arbitrator as per the mutually agreed upon procedure in response to notice for invocation of arbitration.

B. SUBMISSIONS ON BEHALF OF THE PETITIONER

25. Mr. R. Sathish, the learned counsel appearing for the petitioner submitted that this Court has the requisite jurisdiction to take necessary measures for the constitution of an arbitral tribunal under Section 11(6) of the Act, 1996 as the case at hand pertains to an "international commercial arbitration" within the meaning of Section 2(f) of the Act, 1996. Further, clause 21 of the AELA agreement provides for appointment of a three-membered arbitral tribunal in case a dispute arises and cannot be resolved through conciliation between the parties.

26. The counsel submitted that the petitioner, as an independent non-exclusive partner of the respondent, is entirely responsible for the conduct of the course as per clause 17.03 of the franchise agreement and is thus entitled to receive 90% of the payments received by the respondent from the ICCR after successful completion of the course.

27. The counsel argued that as the principal contract for the course was signed between the ICCR and the respondent, the grant in aid of Rs 73,53,000/- was transferred by the ICCR to the respondent on 03.10.2017 after the certificate of successful completion of the course was issued by the EOI, Kabul. However, since the course was executed in Afghanistan by the petitioner as the franchisee,

it is entitled to received 90% of the amount received as per the AELA franchise agreement.

28. The counsel further submitted that the respondent had neither informed nor disclosed the amount received from the ICCR despite repeated requests made by the petitioner for settlement of accounts. The petitioner further contended that the experience of the respondent with the ICCR and Government of India cannot be a ground for withholding of the payments by the respondent.

29. The counsel argued that the cause of action first arose on 03.10.2017 when the respondent withheld the information of receipt of Rs 73,53,000/- from the ICCR. The cause of action further arose on 28.03.2018 when the respondent informed that cash-flow wise it had received only 61.5% of the claimed amount from the ICCR and that it had incurred some incidental expenses for the project.

30. The petitioner contended that since the respondent has failed to disclose the amount received from ICCR till date, it has resulted in a continuing cause of action as the petitioner couldn't quantify the total amount due along with interest as exact details of the amount received by the respondent from the ICCR were not disclosed.

31. The counsel submitted that as the cause of action for full and final settlement of claims was yet to accrue, the reliance placed by the respondent on the decision of this Court in M/s B and T AG v. Ministry of Defence reported in 2023 SCC OnLine SC 657 was misconceived.

32. The counsel submitted that a force majeure situation as per clause 13 of the AELA agreement was created due to the coming back of Taliban in Afghanistan in August, 2021. It was contended by the petitioner that this resulted in the break-down of all communication channels disabling the petitioner from approaching the courts on time despite of doing everything in its power.

33. The counsel further submitted that the petitioner is entitled to get the benefit of the extension of limitation period as directed by this Court in SMW(C) No. 03 of 2020 by which the period from 15.03.2020 to 28.02.2022 is liable to be excluded for the purposes of computing limitation.

34. The counsel submitted that upon failure of the respondent in replying to its claims and legal notice, it had approached the Bombay High Court Mediation Centre under Section 12A of the Commercial Courts Act, 2015 and had initiated pre-reference mediation in accordance with the terms of the arbitration clause in the AELA agreement. It was further submitted that in any view of the matter, the petitioner is not estopped from invoking arbitration under clause 21 of the AELA

agreement after having invoked pre-litigation mediation under the Commercial Courts Act, 2015.

35. Finally, the counsel prayed for passing an order referring the dispute to arbitration with a view to adjudicate the differences between the parties as contemplated in clause 21 of the AELA agreement dated 21.03.2013.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

36. At the outset, Mr. Rana Mukherjee, the learned senior counsel appearing on behalf of the respondent submitted that the disputes raised by the petitioner are not arbitrable as the claims made by the petitioner relate to the sanction letter dated 10.10.2016 issued by the ICCR to the respondent which is not a part of the AELA franchise agreement entered into between the parties on 21.03.2013. Thus, in the absence of any arbitration clause in the aforesaid sanction order, and it being unrelated to the AELA franchise agreement, the petitioner cannot invoke arbitration for the adjudication of the claims.

37. It was further submitted by him that on the contrary, as per the AELA franchise agreement, it was the respondent who was entitled to receive royalty fee from the petitioner at the rates prescribed in the franchise agreement, and there was no arrangement by which the petitioner was entitled to a 90% payment.

38. The learned Senior counsel vehemently argued that notwithstanding the merits of the claim, the same is hopelessly barred by limitation on the face of it by virtue of the applicability of Article 137 of the Limitation Act, 1963. The dispute, as per the legal notice dated 26.08.2021 issued by the petitioner to the respondent, arose on 01.11.2017 and thus the limitation period, even after considering the covid exclusion, had come to an end much prior to the date when the notice for invocation of arbitration was issued by the petitioner on 24.11.2022.

Further, the plea of a force-majeure event due to coming back of Taliban in Afghanistan, as raised by the petitioner is not bona-fide as most of the exchanges between the parties took place on email and the email facility was available to the petitioner even in the month of August, 2021. The counsel submitted that no effective steps were taken by the petitioner even after the covid period came to an end indicating that the petitioner was not vigilant in protecting its rights and hence the petition was liable to be dismissed as barred by limitation. The counsel contended that the mere exchange of letters would not extend the cause of action and the period of limitation for the purposes of filing the arbitration petition.

39. It was further submitted that the invocation of pre-litigation mediation proceedings before the Bombay High Court Mediation Centre by the petitioner

was under Section 12A of the Commercial Courts Act, 2015 which is a mandatory pre-condition before institution of a commercial suit under the said Act and the petitioner should not be allowed to change course by invoking arbitration after having previously submitted to the jurisdiction of the Commercial Courts Act, 2015.

Further, the petitioner made the ICCR as a party in the mediation proceedings before the High Court and the ICCR also participated in the said proceedings. Thus, it is evident that the dispute arising out of the tripartite arrangement between the petitioner, respondent and the ICCR has no nexus with the arbitration clause of the AELA franchise agreement.

40. An objection was raised by the learned counsel towards the identity of the Deponent to the affidavit in support of the present arbitration petition on the ground that no Power of Attorney or Letter of Authority could have been executed by the petitioner in favour of the Deponent to the Affidavit.

41. One another submission made by the counsel was that the notice for invocation of arbitration sent by the petitioner was not a valid notice as per clause 21 of the franchise agreement being contrary to the arbitration clause which provides for appointment of three arbitrators, the notice mentions appointment of a sole arbitrator and proposes names of two arbitrators, and on this ground too, the petition is liable to be dismissed.

42. Placing reliance on the judgment of this Court in M/s B and T AG (supra) the learned senior counsel submitted that the present petition squarely falls within the dictum laid down in the said judgment and is thus hopelessly barred by limitation.

D. ANALYSIS

43. Having heard the learned counsel appearing for the parties and having perused the material on record, the following two questions fall for our consideration:

I. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the present petition is barred by limitation?

II. Whether the court may refuse to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time-barred?

i. ISSUE NO. 1: Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the

Arbitration and Conciliation Act, 1996? If yes, whether the present petition is barred by limitation?

44. The basic premise behind the statutes providing for a limitation period is encapsulated by the maxim "Vigilantibus non dormientibus jura subveniunt" which translates to "the law assists those who are vigilant and not those who sleep over their rights". The object behind having a prescribed limitation period is to ensure that there is certainty and finality to litigation and assurance to the opposite party that it will not be subject to an indefinite period of liability. Another object achieved by a fixed limitation period is to only allow those claims which are initiated before the deterioration of evidence takes place. The law of limitation does not act to extinguish the right but only bars the remedy.

45. The plain reading of Section 11(6) of the Act, 1996, which provides for the appointment of arbitrators, indicates that no time-limit has been prescribed for filing an application under the said section. However, Section 43 of the Act, 1996 provides that the Limitation Act, 1963 would apply to arbitrations as it applies to proceedings in court. The aforesaid section is reproduced hereinbelow:

"43. Limitations.-

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

46. Since none of the Articles in the Schedule to the Limitation Act, 1963 provide a time period for filing an application under Section 11(6) of the Act, 1996, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision and reads as under:

	Description of Application	Period of limitation	Time from which period begins to run
137.	Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues.

47. In his authoritative commentary, "International Commercial Arbitration, Wolters Kluwer, 3rd Edition, pp. 2873-2875", Gary B. Born has observed that as a general rule, limitation statutes are applicable to arbitration proceedings. The relevant extract is as follows:

"Most nations impose limitation or prescription periods within which civil claims must be brought. Of course, statutes of limitation differ from country to country. As discussed below, statutes of limitations are virtually always applicable in international arbitration proceedings, in the same way that they apply in national court proceedings. Choosing between various potentially-applicable statutes of limitations in international arbitration raises significant choice-of-law questions.

Conflict of laws issues also arise as to the date that the statute of limitations period is tolled. The issue can be addressed by national laws, as well as by institutional arbitration rules. Unfortunately, inconsistencies can arise between institutional rules and one or more potentially-applicable national laws (which may also apply in a mandatory fashion). For counsel in a particular dispute, of course, the only safe course is to satisfy the shortest potentially-applicable limitations period."

(emphasis supplied)

48. A **seven-Judge Bench of this Court in SBP & Co. Vs. Patel Engineering Ltd. and Another reported in (2005) 8 SCC 618** held that the issue of limitation being one of threshold importance, it must be decided at the pre-reference stage, so that the other party is not dragged through a long-drawn arbitration, which would be expensive and time consuming.

49. A three-Judge Bench of this Court in Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited reported in (2020) 14 SCC 643 observed as follows:

"14. Sections 43(1) and (3) of the 1996 Act are in pari materia with Sections 37(1) and (4) of the 1940 Act. It is well-settled that by virtue of Article 137 of the First Schedule to the Limitation Act, 1963 the limitation period for reference of a dispute to arbitration or for seeking appointment of an arbitrator before a court under the 1940 Act (see *State of Orissa v. Damodar Das* [(1996) 2 SCC 216]) as well as the 1996 Act (see *Grasim Industries Ltd. v. State of Kerala* [(2018) 14 SCC 265 : (2018) 4 SCC (Civ) 612]) is three years from the date on which the cause of action or the claim which is sought to be arbitrated first arises.

15. In *Damodar Das* [(1996) 2 SCC 216], this Court observed, relying upon *Russell on Arbitration* by Anthony Walton (19th Edn.) at pp. 4-5 and an earlier decision of a two-Judge Bench in *Panchu Gopal Bose v. Port of Calcutta* [(1993) 4 SCC 338], that the period of limitation for an application for appointment of arbitrator under Sections 8 and 20 of the 1940 Act commences on the date on which the "cause of arbitration" accrued i.e. from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.

16. We also find the decision in *Panchu Gopal Bose* [(1993) 4 SCC 338] relevant for the purpose of this case. This was a case similar to the present set of facts, where the petitioner sent bills to the respondent in 1979, but payment was not made. After an interval of a decade, he sent a notice to the respondent in 1989 for reference to arbitration. This Court in *Panchu Gopal Bose* [(1993) 4 SCC 338] observed that in mercantile references of this kind, it is implied that the arbitrator must decide the dispute according to the existing law of contract, and every defence which would have been open to the parties in a court of law, such as the plea of limitation, would be open to the parties for the arbitrator's decision as well. Otherwise, as this Court observed : (SCC p. 344, para 8)

"8. a claim for breach of contract containing a reference clause could be brought at any time, it might be 20 or 30 years after the cause of action had arisen, although the legislature has prescribed a limit of three years for the enforcement of such a claim in any application that might be made to the law courts."

17. This Court further held as follows: (*Panchu Gopal Bose* case [(1993) 4 SCC 338] , SCC pp. 345-46, paras 11-12)

"11. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of civil actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not

to be put forward after the expiration of the specified number of years from the date when the claim accrued.

12. In Russell on Arbitration At p. 80 it is stated thus: 'An extension of time is not automatic and it is only granted if "undue hardship" would otherwise be caused. Not all hardship, however, is "undue hardship"; it may be proper that hardship caused to a party by his own default should be borne by him, and not transferred to the other party by allowing a claim to be reopened after it has become barred.'

(emphasis supplied)

50. Having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular. Having held thus, the next question that falls for our determination is whether the present petition seeking appointment of an arbitrator is barred by limitation.

51. The determination of the aforesaid question is an exercise involving both law and facts. As is evident from Article 137 of the Limitation Act, 1963, the limitation period for making an application under Section 11(6) of the Act, 1996 is three years from the date when the right to apply accrues. Thus, to determine whether the present petition is barred by limitation, it is necessary to ascertain when the right to file the present petition under Section 11(6) of the Act, 1996 accrued in favour of the petitioner. a. When does the right to apply under Section 11(6) accrue?

52. It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an arbitral tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.

53. O.P. Malhotra in The Law & Practice of Arbitration and Conciliation, 3rd Edition, pp. 688-689 has summarised the position of law on the limitation period for a Section 11(6) petition thus:

"There is no specific period of limitation prescribed for making the request under Section 11(6) to the Chief Justice or his designate, to take the necessary measure

for appointing an arbitrator. Therefore, Article 137 of the Limitation Act, 1963, which provides the limitation period of three years for filing any other application for which no period of limitation is provided elsewhere in the third division of the Schedule of the Act from the day when the right to apply accrues. It is the residuary article in regard to the applications, and it can only be applied if no other article is applicable. It would only apply to an application where it is required by law to be made.

It is restricted to applications for the exercise of the Acts and powers which the court is not bound to perform suo motu. Therefore, the period of limitation for making a request under Section 11(6) is three years, and the limitation is to be counted from the date on which 30 days from the date of notice by one party to the other for appointing arbitrator expires. The question whether the claims/disputes made in reference to arbitration was valid is a question to be decided by the arbitrator, and not by the appointing authority of the arbitrator under Section 11(6) of the Act. The appointing authority is certainly required to ascertain whether the application under Section 11(6) of the Act was barred by time."

(emphasis supplied)

54. Dr. P.C. Markanda in Law Pertaining to Arbitration and Conciliation, 9th Edition, LexisNexis, pp. 550-551 has discussed on the applicability of law of limitation to a petition under Section 11(6) of the Act, 1996 as follows:

"For the purpose of examining the right of the petitioner to apply under sub section (6) for calculating the period of limitation, it is necessary to establish, in the first instance, the relevant date when the right to apply accrued in favour of the petitioner. It is the date on which the right to apply accrues that determines the starting point. The starting point does not coincide with the date on which the cause of action for filing a suit arises.

Whether the claims of a party are barred by limitation or not is for the arbitrator to see, but it is the duty of the court to see whether the application filed in the court is within limitation or not. Limitation for filing application under sub-section (4) would commence only from the expiry of 30 days from the receipt of request mentioned in sub-section (4)(a) or (b) and the limitation for an application under sub-section (6) would commence from the happening of the contingencies mentioned in sub-clauses (a) or (b) or (c) thereof.

The procedure prescribed under this section is mandatory and Art. 137, Limitation Act providing for limitation shall apply. It would be entirely wrong to mix the two aspects, namely whether there was any valid claim and secondly the

claim to be adjudicated by the arbitrator was barred by time. As for the second matter, it is for the arbitrator to see whether the claim was within limitation or not and the court should confine itself to see whether the application made to the court is within limitation. An application made more than three years after the accrual of cause of action is palpably time barred and liable to be dismissed.

Article 137 of the Limitation Act makes it obligatory for claims to be filed within 3 years of the rescission/termination of the contract. The right of action for the department starts from the date when the work is rescinded and not from the date when the balance work is got completed through another agency. If the petitioner delays invocation of arbitration clause for months together for no justifiable cause after the period prescribed in the arbitration agreement had elapsed, the court would not come to the rescue of such a party seeking appointment of arbitrator and the abnormal delay of more than a year cannot be condoned."

(emphasis supplied)

55. This Court in *Bharat Sanchar Nigam Limited & Another v. Nortel Networks India Private Limited* reported in (2021) 5 SCC 738 held thus:

"15. It is now fairly well-settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.

16. The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator.

This position was recognised even under Section 20 of the Arbitration Act, 1940. Reference may be made to the judgment of this Court in *J.C. Budhraja v. Orissa Mining Corpn. Ltd.* [(2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] wherein it was held that Section 37(3) of the 1940 Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other party, a notice requiring the

appointment of an arbitrator. Para 26 of this judgment reads as follows : (SCC p. 460)

"26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation.

The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in *Inder Singh Rekhi v. DDA* [(1988) 2 SCC 338], *Panchu Gopal Bose v. Port of Calcutta* [(1993) 4 SCC 338] and *Utkal Commercial Corpn. v. Central Coal Fields Ltd.* [(1999) 2 SCC 571] also make this position clear."

(emphasis supplied)

56. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of the Hohfeld's analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 will commence only after the right to apply has accrued in favour of the applicant. As per Hohfeld's scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another.

When an application under Section 11(6) of the Act, 1996 is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the Act, 1996 is exhausted by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator and refer the matter to an arbitral tribunal.

Thus, the "right to apply" of the Applicant can be said to have as its jural correlative the "duty to appoint" of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.

57. This Court in *Utkal Commercial Corporation v. Central Coal Fields Ltd.* reported in (1999) 2 SCC 571 while determining a similar question in relation to the Arbitration Act, 1940 held thus:

"6. Therefore, the time for the purposes of limitation begins to run from the date when the right to make an application under Section 8 accrues. Section 8 of the Arbitration Act, which is relevant for our present purposes, is reproduced below:

"8. Power of court to appoint arbitrator or umpire.-

(1) In any of the following cases-

(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or

(b)-(c)*** any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after service of the said notice, the court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties."

7. Therefore, under Section 8, before an application can be made to the court under that section, the following requirements should be satisfied:

(1) The arbitration agreement should provide for appointment of arbitrator/s by consent.

(2) Parties do not concur in the appointment of an arbitrator.

(3) One party serves notice on the other party to concur in the appointment.

(4) No appointment is made within 15 days of the service of the notice.

8. Thereupon the court may, on the application of the party who gave the notice and after giving the other party an opportunity of being heard, appoint an arbitrator.

9. In view of the express language of Section 8, it is quite clear that unless a party who desires to apply has resorted to the process set out in Section 8, and has failed to secure the concurrence of the other party to the appointment of an arbitrator within the prescribed period, the court will not intervene under Section 8. The right to apply under Section 8, therefore, would accrue when, within 15 clear days of the notice, the other parties do not concur in the appointment of an arbitrator."

(emphasis supplied)

58. In *Secunderabad Cantonment Board v. B. Ramachandraiah & Sons* reported in (2021) 5 SCC 705, this Court while determining the issue of limitation in relation to a Section 11(6) petition under the Act, 1996 held thus:

"19. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006. This demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007.

The appellant's laconic letter dated 23- 1-2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day. Obviously, once time has started running, any final rejection by the appellant by its letter dated 10-11-2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act.

This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2020. On this count, the applications under Section 11 of the Arbitration Act,

themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court."

(emphasis supplied)

59. Similarly, in Bharat Sanchar Nigam Limited (supra), this Court after applying the settled position of law held as follows:

"22. Applying the aforesaid law to the facts of the present case, we find that the application under Section 11 was filed within the limitation period prescribed under Article 137 of the Limitation Act. Nortel issued the notice of arbitration vide letter dated 29-4-2020, which was rejected by BSNL vide its reply dated 9-6-2020. The application under Section 11 was filed before the High Court on 24-7-2020 i.e. within the period of 3 years of rejection of the request for appointment of the arbitrator."

(emphasis supplied)

60. It's time now to apply the dicta laid down in the aforesaid judgments to the facts of the present case. The notice for invocation of arbitration was issued by the petitioner to the respondent on 24.11.2022, proposing the names of two learned arbitrators and calling upon the respondent to either release the allegedly withheld payment or nominate an arbitrator from their side within a period of 30 days from the date of receipt of the notice. As per the record, the notice was delivered to the respondent on 29.11.2022. The relevant extracts from the said notice are extracted hereinbelow:

"14. Thus disputes arose between the parties, one incorporated in a country other than India in relation to the Franchise Agreement dt. 21.3.2013, which would attract Section 2(1)(f)(ii) of the A&C Act. Since every effort to resolve it amicably failed, our client is invoking Sec 11(6) read with Section 11(12)(a) of A & C Act before Hon'ble Supreme Court of India to seek appointment of a sole arbitrator in case M/s Aptech Ltd. is not heeding AACL request in this behalf.

15. Without prejudice to your rights, our client suggests the name of 2 persons, namely Sri. V. Giri, Sri. M L Verma, Senior advocates practicing in the Hon'ble Supreme Court subject to consent, or any Hon'ble former judges for enter into reference with consent of parties to decide all the disputes arising out of the Franchise Agreement dated 21.3.2013, between the parties, within the period as per Section 29A of the Act.

16. In case of failure on your part to return the illegally withheld money or if the above request for appointment of a sole Arbitrator from the panel suggested or any other name suggested from your side within 30 days of from the receipt of

this notice, our clients will be constrained to file appropriate legal proceedings as stated in Para 14 of this notice for which M/s Aptech Ltd. will be fully responsible for all costs, risks, responsibilities, expenses and consequences thereof. Please note. Copy Retained."

61. The respondent replied to the said notice on 05.04.2023. The relevant parts from the aforesaid reply are extracted hereinbelow:

"5. My clients submit that the notice addressed by you on behalf of your clients is defective, unjustified, without any basis, documents, material and is contradictory and inconsistent with the stand taken by your clients in the mediation proceedings filed before the Hon'ble High Court.

6. My client states that your clients have misinterpreted the clause of the Arbitration under the Franchise Agreement dated 21.3.2013 i.e., the conciliation/mediation process and are linking the same to the proceedings of mediation filed before the Hon'ble Bombay High Court. My client states that the mediation proceedings filed before the Hon'ble Bombay High Court was filed under section 2(1)(c) of the Commercial Court Act which is mandatory provision before instituting the Commercial Suit. Therefore, my clients therefore state that the invocation of arbitration clause under the Franchise Agreement dated 21.3.2013 and your notice dated 24.11.2022 is illegal, invalid, non-est and unjustified and is liable to be withdrawn forthwith.

7. My clients state that in view of the aforesaid position, there is no cause of action for referring any dispute to the Arbitration and your notice is defective, illegal and invalid. Therefore, there is no question of my clients consenting to the invocation of the arbitration clause and/or appointment of an Arbitrator.

8. My clients state that despite having conveyed the above should your client insists in initiating any legal proceedings, the same shall be defended entirely at your client's risk as to costs and consequences. My clients reiterate that nothing contained in your notice and not specifically dealt with herein shall in any manner be treated as an admission due to non traverse and in fact shall be treated as denial."

62. A perusal of the above shows that the request for appointment of an arbitrator was first made by the petitioner vide notice dated 24.11.2022 and a time of one month from the date of receipt of notice was given to the respondent to comply with the said notice. The notice was delivered to the respondent on 29.11.2022. Hence, the said period of one month from the date of receipt came to an end on 28.12.2022. Thus, it is only from this day that the clock of limitation for filing the present petition would start to tick. The present petition was filed by the

petitioner on 19.04.2023, which is well within the time period of 3 years provided by Article 137 of the Limitation Act, 1963. Thus, the present petition under Section 11(6) of the Act, 1996 cannot be said to be barred by limitation.

ii. ISSUE NO. 2: Whether the court may refuse to make a reference under Section 11 of the Arbitration and Conciliation Act, 1996 where the claims are ex-facie and hopelessly time-barred?

63. As discussed above, the present petition filed by the petitioner is not barred by limitation. Thus, the next question that falls for our consideration is whether the claims sought to be arbitrated by the petitioner are ex-facie barred by limitation, and if so, whether the court may refuse to refer them to arbitration?

a. Jurisdiction versus Admissibility

64. There are two categories of issues that may be raised against an application for appointment of arbitrator under Section 11(6) of the Act, 1996. The first category is of the issues pertaining to the power and authority of the arbitrators to hear and decide a case and are referred to as the "jurisdictional issues/objections". Objections to the competence of arbitrators to adjudicate a dispute, existence/validity of arbitration agreement, absence of consent of the parties to submit the disputes to arbitration, dispute falling out of the scope of the arbitration agreement are some examples of jurisdictional or maintainability issues.

65. The second category is of those issues which are related to the nature of the claim and include challenges to procedural requirements, viz. a mandatory requirement for pre-reference mediation; claim or a part thereof being barred by limitation, etc. This category is referred to as the "admissibility issues/objections".

66. This Court in *Bharat Sanchar Nigam Limited (supra)*, explained the difference between the aforesaid two category of objections and held that the issue of limitation is essentially an admissibility issue and is not a challenge to the jurisdiction of the arbitrator to decide the claim. While placing reliance on decision of the Singapore Court of Appeal in *Swissbourgh Diamond Mines (Pty) Ltd. v. Kingdom of Lesotho* reported in (2019) 1 SLR 263, this Court explained the "tribunal v. claim" test thus:

"43. Applying the "tribunal v. claim" test, a plea of statutory time bar goes towards admissibility as it attacks the claim. It makes no difference whether the applicable statute of limitations is classified as substantive (extinguishing the claim) or procedural (barring the remedy) in the private international law sense.

44. The issue of limitation which concerns the "admissibility" of the claim, must be decided by the Arbitral Tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties."

67. Although, limitation is an admissibility issue, yet it is the duty of the courts to prima-facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process.

68. In Mustiu and Boyd's Commercial Arbitration (1982 Ed., pp. 436) under the heading "Hopeless Claims" in Chapter 31 it is stated thus in relation to the jurisdiction of an arbitral tribunal adjudicating commercial disputes:

"Two situations must be distinguished. The first, which is very rare, exists when the claimant not only appreciates, but will if pressed be prepared to acknowledge, that his claim is ill-founded in law. In effect, he asserts that his claim has commercial and moral merit; that if the law gives him no remedy, there is a defect in the law; and that a commercial arbitrator ought to award him something in recognition of the true merits.

Here, we believe that there is undoubtedly jurisdiction to interfere by way of injunction to prevent the respondent from being harassed by a claim which can never lead to valid award, for example in cases where claim is brought in respect of the alleged arbitration agreement which does not really exist, or which has ceased to exist. So also where the dispute lies outside the scope of the arbitration agreement.

By parity of reasoning, the Court should be prepared to intervene where the claimant and the respondent are at one as to the absence of legal merits, so that it can be said that there is no real dispute. The respondent might also seek to protect himself by recourse to the arbitrator. He cannot ask the arbitrator to rule that there is no dispute, since this would be a matter affecting his own jurisdiction. An alternative would be to invite the arbitrator summarily to dismiss the claim. It would appear safer, however, to leave the matter to the court."

69. The scope of this primary examination has been carefully laid down by a three-Judge Bench of this Court in Vidya Drolia and Others v. Durga Trading Corporation reported in (2021) 2 SCC 1 as follows:

"148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-Section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21.

Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable.

The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction".

As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)], it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.

154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood.

The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

(emphasis supplied)

70. The aforesaid decision in Vidya Drolia (supra) was relied upon and reaffirmed in another decision of this Court in NTPC Ltd. v. SPML Infra Ltd. reported in (2023) 9 SCC 385 wherein the "Eye of the Needle" test was explained as follows:

"Eye of the needle

25. The abovereferred precedents crystallise the position of law that the pre-referral jurisdiction of the Courts under Section 11(6) of the Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

26. As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the Referral Court may reject claims which are manifestly and ex facie non-arbitrable [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 154.4: (2021) 1 SCC (Civ) 549].

Explaining this position, flowing from the principles laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549], this Court in a subsequent decision in Nortel Networks [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] held [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 45.1 : (2021) 3 SCC (Civ) 352] : (Nortel Networks case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352], SCC p. 764, para 45)

"45. ... 45.1. ... While exercising jurisdiction under Section 11 as the judicial forum, the Court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute."

27. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 134 : (2021) 1 SCC (Civ) 549] and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]

The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 47 : (2021) 3 SCC (Civ) 352] On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1,

para 154.4 : (2021) 1 SCC (Civ) 549] . 28. The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non-arbitrable [Ibid.].

It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 139 : (2021) 1 SCC (Civ) 549]. Further, as noted in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549], if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 139 : (2021) 1 SCC (Civ) 549].

Therefore, this Court or a High Court, as the case may be, while exercising jurisdiction under Section 11(6) of the Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator, as explained in DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd. [DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd., (2021) 16 SCC 743, paras 22, 26 : 2021 SCC OnLine SC 781, paras 18, 20]"

(emphasis supplied)

71. In Geo Miller (supra) where the cause of action for bringing the claim arose in 1983, this Court refused to appoint an arbitrator as the application seeking appointment of arbitrator was filed much later in 2003, that is after a delay of almost twenty years. The relevant part of the said judgment is extracted hereinbelow:

"21. Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court that the appellant's cause of action in respect of Arbitration Applications Nos. 25/2003 and 27/2003, relating to the work orders dated 7-10- 1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation.

Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose i.e. 8-2-1986. Similarly, with respect to Arbitration Application No. 28/2003 relating to the work order dated 3-5-1985, the respondent has stated that final bill was handed over and became due on 10-8-1989. This has not been disputed by the appellant. Hence the limitation period

ended on 10-8-1992. Since the appellant served notice for appointment of arbitrator in 2002, and requested the appointment of an arbitrator before a court only by the end of 2003, his claim is clearly barred by limitation."

(emphasis supplied)

72. In *Bharat Sanchar Nigam Limited* (supra), this Court while observing that although the arbitration petition was not barred by limitation, yet the cause of action for the underlying claims having arisen much earlier, the claims were clearly barred by limitation on the day notice for arbitration was invoked. Relevant paragraphs are extracted hereinbelow:

"48. Applying the law to the facts of the present case, it is clear that this is a case where the claims are *ex facie* time-barred by over 5½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 4-8-2014. The notice of arbitration was invoked on 29-4-2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.

49. The present case is a case of deadwood/no subsisting dispute since the cause of action arose on 4-8-2014, when the claims made by Nortel were rejected by BSNL. The respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the final bill by making deductions.

50. In the notice invoking arbitration dated 29-4-2020, it has been averred that:

"Various communications have been exchanged between the petitioner and the respondents ever since and a dispute has arisen between the petitioner and the respondents, regarding non-payment of the amounts due under the tender document."

51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [*S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India v. Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions

or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions.

Section 9 of the Limitation Act makes it clear that: "where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." There must be a clear notice invoking arbitration setting out the "particular dispute" [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

52. In the present case, the notice invoking arbitration was issued 5½ years after rejection of the claims on 4-8-2014. Consequently, the notice invoking arbitration is ex facie time-barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case."

(emphasis supplied)

73. This Court, in M/s B and T AG (supra), to which two of us, the Chief Justice, Dr. D.Y. Chandrachud and Justice J.B. Pardiwala, were members of the Bench, had the occasion to ascertain in the facts of the said case whether an application for appointment of arbitrator under Section 11(6) of the Act, 1996 was barred by limitation.

The facts of the said case were that disputes had arisen between the parties in relation to the alleged wrongful encashment of warranty bond by the respondent therein vide its letter dated 16.02.2016. Even after the amount got credited in the bank account of the respondent, the parties continued to engage in bilateral discussions. It was the case of the petitioner therein that the 'breaking point' was reached sometime in September, 2019 and not in 2016 as negotiations had continued to take place between the parties.

This Court rejected the contention of the petitioner and held that the encashment of bank guarantee was a positive action on part of the respondent which had crystallised the right of the petitioner to seek reference of the dispute to arbitration and mere writing of letters would not extend the cause of action. It was held that the notice for invoking arbitration having been issued almost six years after the cause of action for raising the claims had arisen, the claims were ex-facie dead and time-barred and hence dismissed the application. Relevant extracts from the judgment are as follows:

"65. On a conspectus of all the aforesaid decisions what is discernible is that there is a fine distinction between the plea that the claims raised are barred by

limitation and the plea that the application for appointment of an arbitrator is barred by limitation.

76. At the cost of repetition, we state that when the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the Government account that was the end of the matter. This "Breaking Point" should be treated as the date at which the cause of action arose for the purpose of limitation.

77. Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the "cause of action" for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating.

80. The case on hand is clearly and undoubtedly, one of a hopelessly barred claim, as the petitioner by its conduct slept over its right for more than five years. Statutory arbitrations stand apart."

(emphasis supplied)

74. The learned senior counsel appearing for the respondent has strongly relied on the judgment in M/s B and T AG (supra) to argue that the facts of the present case are squarely covered by the dicta laid down in the said judgment. However, we are of the view that the said judgment is of no avail to the respondent.

75. The respondent, relying upon the legal notice dated 26.08.2021 issued by the petitioner, submitted that the cause of action arose on 01.11.2017. The relevant part of the said notice is extracted here:

"10. Our client is entitled to receive 90% of the amount certified by the Embassy in Kabul. While reserving our rights without prejudice and subject to settlement of accounts illegally withheld, this notice is issued calling upon you to pay Rs. 73,53,000/- with interest compounded monthly @18% w.e.f. 1st November 2017 within 15 days of from the receipt of this notice, under intimation to us, failing which our client has given instructions to file appropriate legal proceedings before competent courts in India including a suit for settlement of accounts for recovery of money and also by way of damages or otherwise for, breach of trust, breach of contract. In default, Aptech will be fully responsible for all costs, risks, responsibilities, expenses and consequences thereof."

76. From the email communications placed on record, it appears that due to the pre-existing disputes between the parties in relation to the franchise agreements, the respondent sent a demand notice to the petitioner seeking payment of royalty

and renewal fees from the petitioner. It appears that in reply to the said notice dated 23.03.2018, the petitioner raised the issue of payment of dues relating to the ICCR project.

Some more emails were exchanged between the parties on the issue however it can be seen that vide email dated 28.03.2018, the respondent clearly showed unwillingness to continue further discussions regarding payments related to the ICCR project. Thus, it can be said that the rights of the petitioner to bring a claim against the respondent were crystallised on 28.03.2018 and hence the cause of action for invocation of arbitration can also said to have arisen on this date. This position has also been admitted in the Written Submission dated 05.02.2024 wherein the petitioner has submitted as follows:

"4. The limitation for claiming the due amount would expire on 27.03.2021."

b. When does the Cause of Action arise?

77. We are not impressed with the submission canvassed on behalf of the respondent that the cause of action for raising the claims arose on 01.11.2017 and thus the limitation period for invoking arbitration should commence from the said date. The petitioner has alleged that the respondent received the payment for the course from the ICCR on 03.10.2017.

However, the perusal of the communication exchanged between the parties indicates that it is only on 28.03.2018 that the right of the petitioner to bring a claim against the respondent could be said to have been crystallised. The position of law is settled that mere failure to pay may not give rise to a cause of action. However, once the applicant has asserted its claim and the respondent has either denied such claim or failed to reply to it, the cause of action will arise after such denial or failure.

78. In M/s B and T AG (supra) three principles of law came to be enunciated by this Court regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders.

It was further emphasised by this Court that it was important to find out the "breaking point" at which any reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced.

79. This Court in Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority reported in (1988) 2 SCC 338 held as follows:

"4. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise.

The High Court proceeded on the basis that the work was completed in 1980 and therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was non-payment, the cause of action arose from that date, that is to say, February 28, 1983.

It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R.S. Bachawat, first edition, page 354.

There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case."

(emphasis supplied)

80. In Geo Miller (supra), this Court held thus:

"28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of

computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the "breaking point" at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration.

This "breaking point" would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.

29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."

(emphasis supplied)

81. The petitioner completed the course sometime in April and a letter to this effect was issued on 30.07.2017 by the EOI, Kabul. Allegedly, the ICCR made payment to the respondent on 03.10.2017. However, the right of the petitioner to raise the claim could only be said to have accrued after the petitioner made a positive assertion in March, 2018 which was denied by the respondent vide email dated 28.03.2018. Another reminder through email was given by the petitioner on 29.12.2018, however, mere giving reminders and sending of letters would not extend the cause of action any further from 28.03.2018 on which date the rights of the petitioner could be said to have been crystallised.

82. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27.03.2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in *Suo Motu Civil Writ Petition No. 03/2020* directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation.

The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022. Operative part of the order dated 10.01.2022 is extracted hereinbelow:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

83. The operation and effect of the aforesaid order was considered and explained by a two-Judge Bench of this Court in *Prakash Corporates v. Dee Vee Projects Ltd.*, reported in (2022) 5 SCC 112 as follows:

"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801], this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws,

whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947], this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021.

A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."

(emphasis supplied)

84. The effect of the above-referred order of this Court in the facts of the present case is that the balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023.

c. When is Arbitration deemed to have commenced?

85. Section 21 of the Act, 1996 provides that the arbitral proceedings in relation to a dispute commence when a notice invoking arbitration is sent by the claimant to the other party.

"21. Commencement of arbitral proceedings.-Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

86. In *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.* reported in (2004) 7 SCC 288, it was observed thus:

"26. The commencement of an arbitration proceeding for the purpose of applicability of the provisions of the Indian Limitation Act is of great significance. Even Section 43(1) of the 1996 Act provides that the Limitation Act, 1963 shall apply to the arbitration as it applies to proceedings in court. Sub-section (2) thereof provides that for the purpose of the said section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21.

27. Article 21 of the Model Law which was modelled on Article 3 of the UNCITRAL Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute.

29. For the purpose of the Limitation Act an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other a notice requiring the appointment of an arbitrator. This indeed is relatable to the other purposes also, as, for example, see Section 29(2) of (English) Arbitration Act, 1950.

49. Section 21 of the 1996 Act, as noticed hereinbefore, provides as to when the arbitral proceedings would be deemed to have commenced. Section 21 although may be construed to be laying down a provision for the purpose of the said Act but the same must be given its full effect having regard to the fact that the repeal and saving clause is also contained therein. Section 21 of the Act must, therefore, be construed having regard to Section 85(2)(a) of the 1996 Act. Once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding."

(emphasis supplied)

87. Similarly, in *Bharat Sanchar Nigam Limited (supra)*, it was held by this Court thus:

"51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [*S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India v. Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185] or

mere settlement discussions, where a final bill is rejected by making deductions or otherwise.

Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that: "where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." There must be a clear notice invoking arbitration setting out the "particular dispute" [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail."

(emphasis supplied)

88. In the present case, the notice invoking arbitration was received by the respondent on 29.11.2022, which is within the three-year period from the date on which the cause of action for the claim had arisen. Thus, it cannot be said that the claims sought to be raised by the petitioner are ex-facie time-barred or dead claims on the date of the commencement of arbitration.

89. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal.

E. CONCLUSION

90. The present arbitration petition having been filed within a period of three years from the date when the respondent failed to comply with the notice of invocation of arbitration issued by the petitioner is not hit by limitation.

91. The notice for invocation of arbitration having been issued by the petitioner within a period of three years from the date of accrual of cause of action, the claims cannot be said to be ex-facie dead or time-barred on the date of commencement of the arbitration proceedings.

92. In view of the aforesaid, the present petition is allowed. We appoint Shri Justice Sanjay Kishan Kaul, Former Judge of the Supreme Court of India, to act

as the sole arbitrator. The fees of the arbitrator including other modalities shall be fixed in consultation with the parties.

93. All other rights and contentions are kept open for the parties to raise before the Arbitrator.

94. Before we part with the matter, we would like to mention that this Court while dealing with similar issues in many other matters has observed that the applicability of Section 137 to applications under Section 11(6) of the Act, 1996 is a result of legislative vacuum as there is no statutory prescription regarding the time limit.

We would again like to reiterate that the period of three years is an unduly long period for filing an application under Section 11 of the Act, 1996 and goes against the very spirit of the Act, 1996 which provides for expeditious resolution of commercial disputes within a time-bound manner. Various amendments to the Act, 1996 have been made over the years so as to ensure that arbitration proceedings are conducted and concluded expeditiously.

We are of the considered opinion that the Parliament should consider bringing an amendment to the Act, 1996 prescribing a specific period of limitation within which a party may move the court for making an application for appointment of arbitrators under Section 11 of the Act, 1996. The Petition stands disposed of in the aforesaid terms.

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

.....CJI. (Dr. Dhananjaya Y. Chandrachud)

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

.....J. (Manoj Misra)

New Delhi:

March 01, 2024

IN THE SUPREME COURT OF INDIA

Kumar @ Shiva Kumar

Vs.

State of Karnataka

Criminal Appeal No. 1427 of 2011

HEADNOTE – To convict the accused for committing an offence of abetment to suicide under Sec. 306 IPC, it must be proved that the act or omission or the continued course of conduct, created a situation that the deceased is left with no other option except to commit suicide. **A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.**

JUDGMENT

Ujjal Bhuyan, J.

1. This appeal by special leave takes exception to the conviction of the appellant under Section 306 of the Indian Penal Code, 1860 (IPC).

2. It may be mentioned that the Fast Track Court - III Mysore vide the judgment and order dated 06.07.2004 passed in S.C. No. 26/2002 convicted the appellant for the offence under Section 306 IPC and sentenced him to undergo rigorous imprisonment (RI) for three years and to pay fine of Rs. 2,000/-, in default to undergo RI for four months for the aforesaid offence. Appeal filed by the appellant under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the High Court of Karnataka, being Criminal Appeal No. 1139/2004 (SJ-A) was dismissed vide the judgment and order dated 17.09.2010 by upholding the conviction and sentence imposed by the trial court.

Prosecution case

3. Case of the prosecution is that the appellant was earlier residing in the house of the deceased as a tenant though on the date of the incident he was residing elsewhere as the term of the lease agreement had expired. On 05.07.2000 at about 09:00 AM, the deceased was returning home after dropping the children of her sister in the school. When she had reached near the Canara Bank, the appellant was waiting there and teased her to marry him. The deceased refused to respond. Appellant threatened her that if she did not agree to marry him, he would destroy the family of her sisters, outrage their modesty and would kill them.

After she reached home, she informed her sisters about the above incident over telephone. Thereafter, she consumed poison in the house. The neighbours saw through the window of the house the deceased lying on the floor in a painful condition. They got the door of the house opened. The deceased was suffering from pain due to consumption of poison. In the meanwhile, one of her sisters and her husband came to the house. All of them took the deceased to the Nirmala Devi Hospital whereafter she was shifted to the Mission Hospital. Ultimately, she died on 06.07.2000 at 07:30 PM.

4. Raju, the father of the deceased, lodged the first information alleging that appellant was responsible for his daughter committing suicide. The first information was lodged on 07.07.2000 at 06:30 AM.

5. On receipt of the first information, police registered Crime No. 100/2000 under Section 306 IPC. In the course of the investigation, post-mortem examination of the deceased was carried out and the viscera was sent for chemical analysis to the Forensic Science Laboratory, Bangalore (FSL). The chemical analysis report indicated presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood.

Therefore, the doctor who had carried out the post-mortem examination opined that the death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate compound. On completion of the investigation, police submitted chargesheet where the appellant was named as the accused. 6. In order to prove its case, prosecution examined as many as thirteen witnesses and got eleven documents marked as exhibits. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C.

7. On examination of the evidence on record and after hearing both the sides, the trial court held that the prosecution had proved the charge against the appellant that he had abetted the deceased to commit suicide beyond reasonable doubt. Accordingly, the appellant was convicted for the said offence whereafter he was sentenced to undergo RI for three years and to pay fine of Rs. 2,000/- with a default stipulation.

8. As already mentioned above, the appellant had appealed against the aforesaid conviction and sentence before the High Court of Karnataka (for short 'the High Court' hereinafter). By the impugned judgment and order, the High Court held that there was no ground to interfere with the order of conviction. Accordingly, the appeal was dismissed as being devoid of any merit.

9. Aggrieved thereby, appellant moved this Court by filing a petition for special leave to appeal. While the prayer of the appellant for exemption from surrendering was rejected on 13.12.2010, notice was issued on 28.02.2011. Thereafter, this Court passed order dated 18.04.2011 directing the appellant to be released on bail subject to satisfaction of the trial court.

Submissions

10. Learned counsel for the appellant submits that both the trial court and the High Court had failed to appreciate the evidence on record in the proper perspective. Conviction of the appellant under Section 306 IPC is not supported by the evidence on record. Therefore, such conviction and the resultant sentence cannot be sustained.

10.1. There are material contradictions in the evidence of the prosecution witnesses. According to learned counsel for the appellant, even if the prosecution case is accepted, no case for abetment to commit suicide by the deceased could be made out against the appellant. There is no evidence pointing out any act of instigation, conspiracy or aiding on the part of the appellant which had compelled the deceased to commit suicide.

10.2. In so far the testimony of PW Nos. 1, 2, 3, 4 and 12 are concerned, there is a great deal of inconsistency and contradictions in their evidence. Besides, those witnesses being the relatives of the deceased, the trial court as well as the High Court ought to have considered their deposition with circumspection. PW-1 is the father of the deceased whereas PW Nos. 2 and 4 are the sisters of the deceased. On the other hand, PW No. 12 is the brother of the deceased.

Their evidence are highly inconsistent. He submits that it has come on record that PW-1 i.e. the father of the deceased was living separately from the deceased with a woman outside marriage. On the other hand, PW-2 i.e. sister of the deceased in her deposition stated that it was the neighbours who had told her that deceased had consumed poison and that the neighbours had taken the deceased to Nirmala Nursing Home. She had never stated before the police under Section 161 Cr.P.C. that the appellant used to harass the deceased. Therefore, it was evident that she had improved upon her statement when in her deposition she stated that the appellant used to tease the deceased.

10.3. Learned counsel also submits that there were injury marks on the body of the deceased. The front of the right wrist showed superficial linear incised injury measuring 5cms in length, which was partially healed. This injury was not explained by the prosecution. That apart, the presence of the injury and the partial healing of the same was indicative of the fact that the said injury had occurred

sometime prior to the date of occurrence. This would also be a reflection on the suicidal tendency of the deceased.

10.4. It is further submitted that though the deceased was hospitalised on 05.07.2000, there was delay in lodging of the first information. The First Information Report (FIR) was lodged only on 07.07.2000 at 06:30 AM though the deceased had died on the previous evening at 07:30 PM. This fact coupled with the nondisclosure of alleged harassment of the appellant to anyone by the deceased creates a great deal of doubt about the veracity of the prosecution case. Moreover, the appellant had got married just about two months prior to the incident. Therefore, there was no reason for the appellant to threaten the deceased to marry him failing which she and her family members would be visited with dire consequences.

10.5. In support of his submissions, learned counsel for the appellant has placed reliance on the following two decisions of this Court:

(i) Ude Singh and Others Vs. State of Haryana, (2019) 17 SCC 301

(ii) Mahendra K.C. Vs. State of Karnataka and Another, (2022) 2 SCC 129.

11. Per contra, learned counsel for the respondent submits that the evidence on record unmistakably point to the guilt of the appellant. Prosecution could prove that it was the appellant who had abetted the deceased to commit suicide. The charge against the appellant was proved by the prosecution beyond all reasonable doubt and therefore the trial court was fully justified in convicting the appellant under Section 306 IPC and imposing the sentence as above.

11.1. The High Court rightly affirmed the conviction of the appellant imposed by the trial court.

11.2. There is no rule of evidence that conviction cannot be based on the testimony of the evidence of the family members of the deceased. A holistic reading of the evidence of the prosecution witnesses more particularly that of PW Nos. 1, 2 and 4 would clearly establish the prosecution case which was further strengthened by the evidence of the doctor i.e. PW-13. He, therefore, submits that there is no merit in the appeal which is liable to be dismissed.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

Evidence

13. Let us first deal with the evidence on record.

14. PW-1 Raju is first informant and father of the deceased. In his evidence he stated that his deceased daughter X was a final year B.Com student of Maharai College, Mysore. The accused (appellant) used to reside in the ground floor of his house at Vinayakanagar, Mysore. He had stayed there for five years as a tenant and had vacated the house after the tenancy period was over.

14.1. The deceased used to regularly take the two children of his another daughter Meena to Chinamaya School at Jayalakshmipuram around 9:00 AM. During that time, the accused used to meet her and often used to ask her to marry him. In fact, he had threatened his deceased daughter that if she refused to marry him, he would murder her and her sisters.

The deceased had told him about these facts. On 06.07.2000 (corrected to 05.07.2000 during further examination of PW-1), the accused had threatened the deceased at about 09.30 AM near Canara Bank, Jayalakshmipuram that if she refused to marry him, he would pour acid on her and her sisters and murder them. According to him, on that day when he came to the house at 10:00 AM his daughter X was admitted to Kiran Hospital for consuming poison. He stated that the deceased was shifted to Mission Hospital, Mysore for further treatment.

At about 7:00 PM on 06.07.2000 his daughter X died. The deceased had consumed poison due to the unbearable harassment and cruelty of the accused. The deceased had told him about the cruel treatment and harassment meted out by the accused to her one week earlier to her death. She had consumed poison when she was in the house. The deceased had no other disappointment in her life except the harassment and cruelty of the accused.

14.2. In his cross-examination PW-1 stated that at the time of death of his daughter X, he was living in the house at Vinayakanagar, Mysore. His deceased daughter had informed him about the harassment of the accused one week prior to her death. However, he did not confront the accused in this regard; neither did he tell any other person nor lodged any complaint before the police. On the day of the incident he had left the house at 7:00 AM. When he came back home at 10:00 AM his daughter X was taken to the Kiran Hospital. When she was in the Mission Hospital, he visited the said hospital. His daughter X was being treated in the said hospital and she was not in a condition to walk.

He went to the Mission Hospital at about 1:00 PM and was in the hospital till the death of his daughter. Police had come to the hospital at around 3:00 to 4:00 PM on the day of her death when PW-1 and his other daughters were present. Police tried to question and talk with his daughter X but she was not in a position to talk. Till her death she did not talk. She died on 06.07.2000 at about 07:30 PM. Police had visited the hospital about two to three times. He stated that on 07.07.2000 he

had lodged the complaint which was written by Jayarama, who was present in the hospital till her death.

14.3. He further stated in the cross-examination that the accused was running a chit fund of which he was also a member. His daughter X was of marriageable age. He denied the suggestion put by the defence that he wanted to give his deceased daughter in marriage to the accused but the accused had refused. After the death of his daughter X, he came to know that the accused was a married man. However, he stated that he did not know where accused used to stay after he had left his house.

15. Sister of the deceased Meena is PW-2. In her deposition, she stated that she, her two children and her deceased sister were living together at Paduvarahalli (Vinayakanagar). Her two children were studying in Chinmaya Vidyalaya at Jayalakshmipuram. The two children were studying in 3rd and 5th standard. The deceased used to take the children to school everyday and also used to bring them back from school. She used to take the children at around 9:00 AM in the morning and also used to bring them back home from the school.

15.1. She acknowledged that she knew the accused. Fifteen days prior to her death, the deceased had told PW-2 that the accused was teasing her and asking her to marry him. When she refused the proposal on the ground that he was a married man, the accused threatened to kill her and her sister. During this period of fifteen days, the deceased did not talk and was in a pensive mood.

15.2. She further stated in her deposition that on the day of the incident i.e. 05.07.2000, she had left for office at 07:45 AM. While leaving for her office, she had asked her sister X to take her children to school. According to her, she had received a phone message from her neighbour that her sister X was not keeping well and asked her to come home immediately. According to her, she reached home at around 12.30 noon. When she reached the house, the neighbours told her that her sister X had consumed poison and, therefore, she was taken to the Nirmala (Karuna) Nursing Home.

Along with the neighbours she went to the Mission Hospital. She found her sister X in an unconscious condition. On the next day at about 7:30 PM her sister X died. She stated that as the accused had threatened her sister X that he would kill her if she did not agree to marry him, she had committed suicide. She further stated that her father had also visited the hospital. Prior to fifteen days of her death i.e. before the accused started harassing her sister, the later was happy and healthy.

15.3. In her cross-examination PW-2 stated that the house belonged to her mother. Her father PW-1 and her mother resided in the said house. Accused used to stay in the ground floor of their house for five years and had vacated the said house prior to the incident two to three months after expiry of the mortgage (sic) period. After vacating the house, the accused used to reside in a house at IV cross at Paduvarahalli (Vinayakanagar). He was working in a cement dealer shop. After vacating the house, he did not visit the house again and that PW-2 had not seen him.

15.4. At the time of the incident, her deceased sister X was aged about 21 or 22 years. She stated that she and the other family members did not try to conduct the marriage of the deceased. Her father PW-1 was not living with them as he was residing with another woman outside marriage separately. She stated that after the death of her husband she started staying in the said house of her mother. On the day of the incident, her mother had already died.

15.5. PW-2 stated that she had not disclosed to any other person the factum of ill treatment and harassment meted out to her deceased sister by the accused. She had also not stated before the police the fact that her deceased sister X had told her about the harassment of the accused fifteen days prior to her death and her being in a pensive mood.

15.6. She denied the suggestion of the defence that on the date of the incident she had taken her children to the school and that when she had returned to the house at 10:30 AM, she found her deceased sister X in an unconscious condition.

15.7. PW-2 further stated that they did not keep any poisonous medicine in the house. She did not find any bottle containing poison near the bed of the deceased. She denied a suggestion that she along with her another sister Shantha and her husband Diwakar had taken her sister X to Karuna Nursing Home.

15.8. PW-2 stated that she saw her father in the Mission Hospital at 5:00 PM on 06.07.2000. She had not told and informed her father about the incident relating to her sister. Till the dead body of X was taken, her father was in the hospital.

15.9. PW-2 stated that while it was true that the accused was a married person, she did not know that he had married two months prior to the incident. There are residential houses around the house. They were having good relation with the neighbours. The accused was having a chit fund when he used to reside in the house. PW-2 was also a member of the said chit fund.

She denied the suggestion that they had tried to marry the deceased with the accused when he used to reside in their house and that the accused had declined to marry her deceased sister which was the reason for him to leave the house. She

also denied the suggestion that they had chit fund amount to be repaid to the accused. She further denied the suggestion that the deceased might have committed suicide for some other reason and that the accused was falsely implicated as he had refused to marry the deceased.

16. Diwakar is the husband of Shantha, the second sister of the deceased. Diwakar is PW-3. In his examination in chief, he stated that at the time of her death the deceased was residing with PW-2 at Vinayakanagar. PW-2 was also the sister of his wife Shantha.

16.1. On 05.07.2000 at about 09:30 AM, the deceased X had telephoned his wife Shantha and told her that she had consumed poison. At that time, he was present near his wife Shantha. According to PW-3, he and his wife Shantha immediately went to the house of the deceased at Paduvarahalli. The deceased talked with his wife Shantha. They shifted the deceased X to Nirmala Hospital and from there to Mission Hospital. On 06.07.2000, the deceased died in the hospital during the night time.

16.2. He stated that his wife Shantha had told him that the accused was responsible for the suicidal death of the deceased.

16.3. In his cross-examination PW-3 stated that before the death of X his wife Shantha had told him about the accused being responsible for X consuming poison. When they had gone to the house of X and were taking her to the hospital, X had told his wife Shantha that due to the harassment of the accused she had consumed poison. Earlier thereto he did not know this fact. He had seen the accused when he used to reside in a portion of the house as a tenant. The accused had vacated the house two years prior to the incident whereafter he had neither seen the accused nor knew about his whereabouts.

16.4. PW-3 denied the suggestion put forward by the defence that he had stated before the police that the deceased X was in an unconscious condition when they had reached her house and that his wife had not told him that the accused was the reason for the deceased consuming poison. However, he stated that he did not hear what the deceased X had told his wife Shantha.

17. Shantha herself deposed as PW-4. She stated that on 05.07.2000 at about 11:00 to 11:15 AM. the deceased had telephoned her and told her that while she was returning home from the school after dropping the children the accused accosted her on the way. He threatened her that she should marry him and in case of her refusal he would kill her by pouring acid on her. Because of this she had consumed poison to finish her life to bring an end to the matter. Immediately PW-4 and her husband PW-3 came to the house of the deceased.

17.1. PW-4 stated that when they reached the house of the deceased X, she was lying on the floor and the phone receiver was in a hanging position. When PW-4 questioned X, she again told the above referred facts and the reason for her consuming poison. PW- 4 stated that she along with PW-3 and the neighbours shifted X to Kiran Nursing Home and from there to Mission Hospital, Mysore. On 06.07.2000 at about 7:30 PM X died while on treatment in the Mission Hospital.

17.2. In her cross-examination, PW-4 stated that she had told her neighbour about X telling her that she had consumed poison due to the ill treatment and harassment meted out to her by the accused. Her neighbours did not come to the house of the deceased with her. When she had reached the house of X people had gathered. According to PW-4, she knew the neighbours. When she talked with X, the said neighbours were present.

18. PW-11 is M.S. Sathyanaraya who was the investigating officer. In his testimony he stated that he had visited the spot of occurrence. He had sent the viscera of the deceased for chemical examination. He had submitted the chargesheet against the accused on 17.11.2000. He stated that after receiving the FSL report he had sent the same to the concerned doctor who had conducted post-mortem examination of the deceased for opinion regarding cause of death of the deceased. He had obtained the final opinion of the doctor in this regard.

18.1. In his cross-examination he stated that he had not examined the owner of the house where the accused used to reside. He had also not examined the neighbours of the said house. To a pointed query, PW-11 stated that his investigation disclosed that the accused used to threaten the deceased on public road often. He did the same act fifteen days prior to the death of deceased X. He admitted that he had not examined the witnesses of that area.

19. R. Vijaya Kumar is the elder brother of the deceased X. He is PW-12. He stated that his sister X had consumed poison in the house and had died in the hospital while undergoing treatment. On 05.07.2000 at about 01:30 PM he had received a phone message that his sister X had consumed poison. He reached Mysore at about 7:30 PM and went to see his sister X in the Mission Hospital where she was undergoing treatment. He found her to be not in a condition to talk.

19.1. He stated that could come to know from his another sister PW-2 Meena that accused had harassed his sister X with proposal for marriage which was the reason for her to consume poison.

19.2. He further stated that he had not told the police about the PW-2 telling him that the accused had threatened his sister. He did not know the details as to how his sister X had consumed poison and the amount of poison. He denied a suggestion that the accused was not responsible for the suicidal death of X and that it was because of their enmity with the accused that they had filed a false complaint against the accused.

20. Dr. Devdas P.K. PW-13 was the doctor who had conducted the post-mortem examination of the deceased on 07.07.2000. He stated that on examination of the dead body he found multiple injection marks present in front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length which was partially healed.

He further stated that the stomach, small intestine and contents, liver, kidney and blood were preserved and sealed and thereafter sent for chemical analysis. On 09.01.2001, he received the chemical analysis report dated 10.10.2000. The report showed presence of organophosphorus compound in the viscera. Death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

20.1. In his cross-examination PW-13 stated that organophosphorus compound is a pesticide, however, the quantity of the poison in the viscera of the blood of the deceased was not mentioned in the FSL report. The amount of organophosphorus could be detected during the treatment of the injury. The brain would be conscious till the poison effected the brain. PW-13 could not say the time when the deceased had consumed poison.

21. PW-1 in the first information had stated that before his elder daughter could reach the house the deceased X had become unconscious. Neighbours Kumari Hema, Mahesh, and Sarojamma along with other neighbours, including Smt. Hiremani, had seen through the window that the phone was ringing continuously and that his daughter had become unconscious. They had got the door opened and when they asked X why she had done so, her reply was that the accused was responsible and because of his harassment she had consumed poison. After that she collapsed. It was thereafter that her sister and brother-in-law came and took her to Nirmala Devi Hospital and thereafter to Mission Hospital.

22. The post-mortem report is dated 07.07.2000. From an external examination of the dead body it was found that there were multiple injection marks present over the front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length, partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved to be sent for

chemical analysis. Accordingly, the blood and viscera were sealed and sent to FSL, Bangalore for chemical analysis on 07.07.2000.

The final opinion was kept reserved pending receipt of the chemical analysis report. The chemical analysis report dated 10.10.2000 was received on 09.01.2001. As per the report, colour test TLC method responded for presence of organophosphorus pesticide in stomach, small intestine, liver, kidney and blood. Thereafter the doctor gave the final opinion opining that death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

23. The evidence on record, as noted above, not only reveal glaring inconsistencies but also gaping holes in the version of the prosecution. That apart, there are material omissions too. PW-1 is the father and the first informant. According to him, he used to live in the same house as the deceased. On the fateful day, he had gone out of the house at 7:00 AM in the morning and returned back to the house at 10:00 AM.

When he came back home at 10:00 AM, he found that his daughter X was admitted to a nursing home for consuming poison whereafter the deceased was shifted to Mission Hospital, Mysore for further treatment. On the other hand, PW-2 Meena, who is the sister of the deceased and also daughter of PW-1, deposed that the house belonged to her mother who was already dead on the date of the incident. Father, PW-1, was living separately with another woman outside marriage.

According to her, she along with her two children and her deceased sister were living together in the house at Paduvarahalli (Vinayakanagar) after the death of her husband. She was rather categorical in her cross-examination when she stated that her father PW-1 was not living with them, as he was residing with another woman outside marriage separately. Interestingly, in her cross-examination, she stated that she saw her father in the Mission Hospital at 05:00 PM on 06.07.2000 i.e., on the second day of hospitalization of the deceased.

24. If the version of PW-2 is to be believed then the evidence of PW-1, the first informant, cannot be accepted at all. His statement that he used to stay in the same house as his deceased daughter X was belied by his own daughter PW-2, who stated that it was she and her two children, who used to stay in the house of her mother along with her deceased sister X, after the death of her husband.

According to her, she saw PW-1 in the Mission Hospital at 05:00 PM on 06.07.2000. This itself is strange and not at all a normal behaviour of a father whose daughter had consumed poison and was struggling for her life in a

hospital. If what PW-2 says is accepted, then PW-1 had gone to see his daughter in the hospital only in the evening of the next day of the incident, hours before her death. Be it stated that the deceased died on 06.07.2000 at 07:30 PM.

25. Both PW-1 and PW-2 claimed that the deceased had told them about the harassment meted out to her by the appellant fifteen days prior to the incident. However, neither of them confronted the appellant nor lodged any complaint before the police.

26. According to the evidence of PW-4 Shantha, another sister of deceased X and daughter of PW-1, the deceased had telephoned her in between 11:00 to 11:15 AM on 05.07.2000 informing her as to what had happened to her while returning home from the school that led her to consume poison to end her life. It was then that PW-4 and her husband PW-3 rushed to the house of the deceased. When they reached the house of the deceased, she was lying on the floor with the phone receiver in a hanging position. She and her husband along with the neighbours took the deceased to the nursing home and from there to the Mission Hospital.

27. If the version of PW-4 is to be accepted, then the deceased X had called her over telephone at around 11:00 to 11:15 AM on 05.07.2000. It was thereafter that she and her husband rushed to the house from where with the help of the neighbours, the deceased was taken to a nursing home and from there to the Mission Hospital. In other words, according to PW-4, the deceased X was taken to the nursing home only after 11:00 to 11:15 AM. This again contradicts the statement of PW-1 that when he had come back home on 05.07.2000 at 10:00 AM, his daughter X was already taken to the nursing home.

28. None of the near relatives of the deceased i.e. PW-1, PW- 2, PW-4 and PW-12 (the elder brother of the deceased) had confronted the appellant as to why he was harassing the deceased with proposal for marriage and in the event of refusal, threatening her with dire consequences. Though they said that they knew about such harassment fifteen days prior to the date of incident, none of them thought it fit to lodge a police complaint. This creates grave doubt about the prosecution version.

29. Though delay in lodging first information by itself cannot be a ground to disbelieve the prosecution case, unexplained delay coupled with surrounding circumstances can certainly dent the prosecution version. Here is a person (PW-1) who evidently goes to the hospital to see his daughter struggling for life twenty-four hours after her admission in hospital, that too just hours before her death. Such a behaviour is unusual for father, to say the least.

That apart, evidently, he was not stating the truth when he said that he used to reside in the same house as that of the deceased and when he returned home at 10:00 AM in the morning on the fateful day, the deceased was already taken to the nursing home by the neighbours. Evidence of PW-2 and PW-4 bely such statement of PW-1. His daughter died on 06.07.2000 at 07:30 PM, whereafter the body was taken by the police for post-mortem examination.

Yet he waited till the next morning to lodge the police complaint. The police had also not examined Jayarama, the scribe, who had written the complaint, to ascertain the reason for such delay. According to PW-1, Jayarama was in the hospital till the death of the deceased. In the face of such glaring conduct of the first informant PW-1, adverse inference would have to be drawn. But crucially, the tendered evidence, as discussed above, are hearsay not worthy of much credence.

30. There is one more aspect. In the first information, PW-1 stated that neighbours Kumari Hema, Mahesh, Sarojamma and others including Smt. Hiremani, wife of police personnel Nanjunda Swami had noticed through the window that his deceased daughter X was lying unconscious and that the phone was continuously ringing.

He further stated that these neighbours had got the door opened whereafter PW-3 and PW-4 came and took his deceased daughter X to the nursing home. Sarojamma and Mahesh had deposed as PW-8 and PW-9 but both were declared as hostile witnesses. Both stated that the police had not recorded their statements and that they did not know the cause of death of the deceased. Thus, only two of the neighbours were examined and even they were declared hostile. No other neighbours were examined by the police.

There is no explanation by the prosecution for such glaring omission. Again, according to the informant PW-1, it was the neighbours who had first seen the deceased through the window lying on the floor in pain with the phone continuously ringing. It is not at all believable that when the receiver was hanging (as has come out from the evidence of PW-4 Shantha), how the phone could go on ringing continuously. Adverse inference has to be drawn from such glaring contradictions and omissions.

Relevant legal provisions

31. In India attempt to commit suicide is an offence under Section 309 IPC. This section provides that whoever attempts to commit suicide and does any act towards the commission of such offence, he shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

But once the suicide is carried out i.e., the offence is complete, then obviously such a person would be beyond the reach of the law; question of penalising him would not arise. In such a case, whoever abets the commission of such suicide would be penalised under Section 306 IPC. Section 306 IPC reads as under:

306. Abetment of suicide- if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

31.1. Thus, as per Section 306 of IPC, if any person commits suicide, then whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

32. The crucial word in Section 306 of IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. Section 107 of IPC reads thus:

107. Abetment of a thing- A person abets the doing of a thing, who-

First-Instigates any person to do that thing; or

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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

32.1. From a reading of Section 107 IPC what is deducible is that a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing.

Explanation 1 clarifies that even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise bound to disclose

voluntarily causes or procures or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. Similarly, it is clarified by way of Explanation-2 that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

Case law

33. Suicide is distinguishable from homicide inasmuch as it amounts to killing of self. This Court in *M. Mohan Versus State*¹ went into the meaning of the word suicide and held as under:

37. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of selfkilling. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

34. In *Ramesh Kumar versus State of Chhattisgarh*², this Court delved into the meaning of the word 'instigate' or 'instigation' and held as under:

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

34.1. Thus, this Court held that to 'instigate' means to goad, urge, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. But, a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then instigation may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

35. Again in the case of Chitresh Kumar Chopra versus State³, this Court elaborated further and observed that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. This Court held as follows:

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

35.1. Thus, this Court has held that in order to prove that the accused had abetted the commission of suicide by a person, the following has to be established:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

36. In Amalendu Pal alias Jhantu versus State of West Bengal⁴, this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life.

It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or

compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

37. Similar is the view expressed by this court in Ude Singh (supra).

38. In Rajesh versus State of Haryana⁵, this Court after referring to Sections 306 and 107 of the IPC held as follows:

9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

39. Reverting back to the decision in M. Mohan (supra), this Court observed that abetment would involve a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.

40. Sounding a note of caution, this Court in State of West Bengal versus Orilal Jaiswal⁶ observed that the court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide.

If it transpires to the court that the victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. Non-recovery of trace of poison (pesticide)

41. There is one more aspect in this case. In a case of death due to consumption or administering of poison or insecticide or pesticide, be it homicidal or suicidal, recovery of the trace of such poison or insecticide or pesticide is crucial.

42. The post-mortem examination report indicated multiple injection marks over the front of both the elbows of the deceased. That apart, it was also noticed that there was a superficial linear incised injury measuring 5cms in length in the front of the right wrist which was partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved. Those were sealed and sent for chemical analysis to FSL, Bangalore on 07.07.2000.

The chemical analysis report is dated 10.10.2000. The report dated 10.10.2000 stated that colour test for TLC method was carried out which responded to the presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood. On this basis, the doctor who carried out the post-mortem examination i.e. PW-13 gave the final opinion that death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate compound.

43. Before proceeding further, it needs to be noted that the chemical analysis report is dated 10.10.2000 whereas the final opinion of PW-13 is dated 09.01.2001, there being a delay of three months. Ofcourse, PW-13 stated that he received the report only on 09.01.2001 on which date he gave the final opinion. Investigating officer offered no explanation as to why there was such delay in handing over of the chemical analysis report to PW- 13.

44. Be that as it may, PW-13 in his deposition also stated about multiple injection marks being present over front of both the elbows besides the partially healed wrist wound on the body of the deceased. He stated that it was only on 09.01.2000 that he had received the chemical analysis report dated 10.10.2000 which showed presence of Organophosphate compound in the viscera.

In his cross-examination, he explained that Organophosphate compound is a pesticide. The quantity of the poison in the viscera of the blood of the deceased was not mentioned in the FSL report. That apart, he further stated that the smell

of Organophosphate compound could be detected during the treatment. The patient would be conscious till the poison affected the brain. The deceased was treated in the hospital before she died.

45. A Textbook of Medical Jurisprudence and Toxicology by Jaising P Modi is considered as authority on various facets of medical jurisprudence and toxicology. In its 27th edition, Organophosphate compounds and allied poisons are dealt with under the heading Inorganic Irritant Poisons (I) in Chapter 3. It says Organophosphate compounds are extensively used as pesticides for soft body insects in agriculture. Their easy availability and quick action are the reason for their popularity for suicidal and homicidal purposes.

Worth Health Organisation has classified Organophosphate compounds on the basis of their lethality into low toxicity, moderate and highly toxic compounds. Organophosphate compounds include Hexaethyl Tetraphosphate (HETP), Tetraethyl Pyrophosphate (TEPP) - Tetron and Fosvex etc. The Organophosphate compounds are absorbed from the skin, respiratory and GI system. According to the route of entry, the respiratory or GI symptoms are more marked. Organophosphate toxicity can lead to symptoms such as miosis, urination, diarrhoea etc. Early headache, nausea, giddiness, dimness of vision, twitching of the eye muscles, tremulous tongue, profuse frothing etc. may be present.

Later, vomiting, sweating, delirium, weakness and paralysis of respiratory muscles, arflexia, incontinence, bronchospasm, cyanosis, pulmonary edema, convulsions etc. whereafter, coma and death may follow. Tetraethyl pyrophosphate is the most toxic and HETP the least. A single dose that will produce symptoms is 5 mg intramuscular or 25 mg orally. 44-50 mg of TEPP intramuscular or 25-100 mg orally will be a fatal dose. In fatal cases, the symptoms begin in 30 minutes and death results in 30 minutes to 3 hours.

46. In this case, the doctors who had treated the deceased in the first nursing home and later on in the Mission Hospital, were not examined by the police. They were also not summoned as court witnesses. Their testimony could have been crucial. They could have thrown light into the nature of intake of the Organophosphate compound: whether by way of injection or consumed orally? Whether they could detect the smell of Organophosphate compound emanating from the patient? This serious lacuna is further compounded by the fact that the prosecution had failed to recover any syringe or needle from the crime scene.

No container or bottle containing the pesticide were also recovered from the room where the deceased was found lying on the floor or in any part of the house. There is no evidence to suggest that police had made an endeavour to search for such container or bottle. If the deceased had injected the poison herself,

considering the multiple injection marks over the front of both the elbows, then the syringe and the needle would have been there, in and around her. If she had orally consumed the poison, then also the bottle or the container of the poison would have been present in the crime scene or near about. There is absolutely no evidence in this regard.

There is also no evidence to show as to how the deceased had acquired the pesticide. In addition to non-recovery of the syringe or the needle or the container, the police were unable to show the source from where the particular pesticide was obtained by the deceased. If the prosecution case is to be believed, then the syringe and the needle or the container must have been present in the scene of occurrence itself. Those were not found by the prosecution. Neither any trace of pesticide was seen by the investigating officer in the room.

The FSL report as well as the chemical analysis report are silent as to whether any trace of the pesticide was detected from any of the seized articles. Prosecution is silent as to why no investigation was done in this regard. In a case of this nature, where the oral evidence including that of PW Nos. 1, 2 and 4 are not at all convincing, the absence of the container or the bottle containing the pesticide from where the deceased had orally consumed the pesticide, becomes very crucial.

Similarly, recovery of syringe and needle if the deceased had injected the poison, is also crucial. As a general principle, it can be said that in a case of death by poisoning, be it homicidal or suicidal and which is based on circumstantial evidence, recovery of the trace of poison consumed by or administered to the deceased is of critical importance. It forms a part of the chain; rather it would complete the chain to prove homicide or suicide.

Conclusion

47. Human mind is an enigma. It is well nigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant.

48. Coming to the facts of the present case, we do not find any evidence on the basis of which we can hold the appellant guilty of abetting the suicide of the

deceased. While the death of a young woman is certainly very tragic, it cannot be said with any degree of certainty that suicide has been proved; the other essential ingredient constituting the offence under Section 306 IPC, viz, abetment cannot also be said to have been proved.

49. Thus on a conjoint reading of the entire materials on record, this Court is of the opinion that the prosecution had failed to prove the charge of abetment to commit suicide under Section 306 IPC against the appellant. The settled legal position, the evidence on record and the glaring omissions of the prosecution as pointed out above, leaves no room for doubt. We are therefore of the unhesitant view that the conviction of the appellant is wholly unsustainable.

50. That being the position, conviction of the appellant under Section 306 of the IPC is set aside. The judgment and order of the trial court dated 06.07.2004 as affirmed by the High Court vide the judgment and order dated 17.09.2010 are hereby set aside and quashed.

51. Since the appellant is already on bail, the bail bonds shall stand discharged.

52. The appeal is accordingly allowed. No costs.

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

.....J. [Ujjal Bhuyan]

New Delhi;

March 01, 2024

1 (2011) 3 SCC 626

2 (2001) 9 SCC 618

3 (2009) 16 SCC 605

4 (2010) 1 SCC 707

5 (2020) 15 SCC 359

6 (1994) 1 SCC 73

IN THE SUPREME COURT OF INDIA

**Sita Soren
Vs.
Union of India**

Criminal Appeal No. 451 of 2019

HEADNOTE – Bribery is not protected by legislative privilege. No immunity for MPs/MLAs taking bribe for vote/speech in legislature. Seven Judges Bench overturned the P.V. Narasimha Rao Vs. State (CBI/SPE) (1998) 4 SCC which by 3:2 majority 626, held that members of parliament and legislative assemblies could claim immunity under Articles 105(2) and 194(2) of the Constitution for receiving a bribe in contemplation of a vote or speech in the legislature.

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

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J. Conclusion

1. Parliamentary privilege, codified in Articles 105 and 194 of the Constitution, is integral to deliberative democracy in facilitating the functioning of a parliamentary form of governance. It ensures that legislators in whom citizens repose their faith can express their views and opinions on the floor of the House without 'fear or favour'.

With the protection of parliamentary privilege, a legislator belonging to a political party with a minuscule vote share can fearlessly vote on any motion; a legislator from a remote region of the country can raise issues that impact her constituency without the fear of being harassed by legal prosecution; and a legislator can demand accountability without the apprehension of being accused of defamation.

2. Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege? It is this question of constitutional interpretation that this Court is called upon to decide.

A. Reference

3. The Criminal Appeal arises from a judgment dated 17 February 2014 of the High Court of Jharkhand.¹ An election was held on 30 March 2012 to elect two members of the Rajya Sabha representing the State of Jharkhand. The appellant, belonging to the Jharkhand Mukti Morcha,² was a member of the Legislative Assembly of Jharkhand.

The allegation against the appellant is that she accepted a bribe from an independent candidate for casting her vote in his favour. However, as borne out from the open balloting for the Rajya Sabha seat, she did not cast her vote in favour of the alleged bribe giver and instead cast her vote in favour of a candidate belonging to her own party. The round of election in question was annulled and a fresh election was held where the appellant voted in favour of the candidate from her own party again.

4. The appellant moved the High Court to quash the chargesheet and the criminal proceedings instituted against her. The appellant claimed protection under Article 194(2) of the Constitution, relying on the judgment of the Constitution bench of this Court in *PV Narasimha Rao v. State (CBI/SPE)*.³ The High Court declined to quash the criminal proceedings on the ground that the appellant had not cast her vote in favour of the alleged bribe giver and thus, is not entitled to the protection under Article 194(2).

The High Court's reasoning primarily turned on this Court's decision in PV Narasimha Rao (supra). The controversy in PV Narasimha Rao (supra) and the present case turns on the interpretation of the provisions of Article 105(2) of the Constitution (which deals with the powers, privileges, and immunities of the members of Parliament and Parliamentary committees) and the equivalent provision in Article 194(2) of the Constitution which confers a similar immunity to the members of the State Legislatures.

5. On 23 September 2014, a bench of two judges of this Court, before which the appeal was placed, was of the view that since the issue arising for consideration is "substantial and of general public importance", it must be placed before a larger bench of three judges of this court. On 7 March 2019, a bench of three judges which heard the appeal observed that the precise question was dealt with in a judgment of a five-judge bench in PV Narasimha Rao (supra). The bench was of the view that "having regard to the wide ramification of the question that has arisen, the doubts raised and the issue being a matter of public importance", the matter must be referred to a larger bench.

6. Finally, by an order dated 20 September 2023, a five-judge bench of this Court recorded prima facie reasons doubting the correctness of the decision in PV Narasimha Rao (supra) and referred the matter to a larger bench of seven judges. The operative part of the order reported as *Sita Soren v. Union of India*⁴, is extracted below:

"24. We are inclined to agree that the view which has been expressed in the decision of the majority in PV Narasimha Rao requires to be reconsidered by a larger Bench. Our reasons prima facie for doing so are formulated below:

Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences.

While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not prima facie appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of

the exercise of the rights and duties as a Member of Parliament or of the legislature of a state;

Secondly, in the course of judgment in PV Narasimha Rao, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner.

On the other hand, no immunity would attach, and the member of the legislature would be liable to be prosecuted on a charge of bribery if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words "in respect of" in Article 105(2) are construed to mean 'arising out of'. In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and

Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority.

26. For the above reasons, prima facie at this stage, we are of the considered view that the correctness of the view of the majority in PV Narasimha Rao should be reconsidered by a larger Bench of seven judges."

7. The scope of the present judgment is limited to the reference made by the order of this Court dated 20 September 2023 doubting the correctness of PV Narasimha Rao (supra). The merits of the appellant's case and whether she committed the alleged offence are not being adjudicated by this Court at this stage. Nothing contained in this judgment may be construed as having a bearing on the merits of the trial or any other proceedings arising from it.

B. Overview of the judgment in PV Narasimha Rao

8. The general elections for the Tenth Lok Sabha were held in 1991. Congress (I) emerged as the single largest party and formed a minority government with Mr PV Narasimha Rao as the Prime Minister. A motion of no-confidence was moved in the Lok Sabha against the government. The support of fourteen members was needed to defeat the no-confidence motion. The motion was defeated with two hundred and fifty-one members voting in support and two hundred and sixty-five members voting against the motion. A group of Members of Parliament⁵ owing allegiance to the JMM and the Janata Dal (Ajit Singh) Group⁶ voted against the no-confidence motion. Notably, one MP belonging to the JD (AS), namely, Ajit Singh, abstained from voting.

9. A complaint was filed before the Central Bureau of Investigation⁷ alleging that a criminal conspiracy was devised by which the above members belonging to the JMM and the JD (AS) entered into an agreement and received bribes to vote against the no-confidence motion.⁸ It was alleged that PV Narasimha Rao and several other MPs were parties to the criminal conspiracy and passed on "several lakhs of rupees" to the alleged bribe-takers to defeat the no-confidence motion.⁹

10. A prosecution was launched against the alleged bribe-givers and bribe-takers, and cognizance was taken by the Special Judge, Delhi. The accused moved the High Court of Delhi to quash the charges. The High Court dismissed the petitions. Appeals were preferred to this Court and culminated in the PV Narasimha Rao (supra) decision.

Two major questions came up for consideration before the Court. First, whether by virtue of Article 105 of the Constitution, an MP can claim immunity from prosecution on a charge of bribery in a criminal court. Second, whether an MP falls within the purview of the Prevention of Corruption Act, 1988, and who is designated as the sanctioning authority for the prosecution of an MP under the PC Act. In the present judgment, we are concerned solely with the holding of the five-judge bench on the first question, i.e., the scope of the immunity from prosecution under Article 105(2) when an MP is charged with bribery.

11. Three opinions were authored in the case - by SC Agarwal, J (for himself and Dr AS Anand, J), SP Bharucha, J (for himself and S Rajendra Babu, J) and an opinion by GN Ray, J.

12. Justice SP Bharucha (as the learned Chief Justice then was) held that the alleged bribe-takers who cast their vote against the no-confidence motion enjoyed immunity from prosecution in a court of law under Article 105(2) of the Constitution. However, Ajit Singh (who abstained from voting) and the alleged

bribe-givers were held not to enjoy the same immunity. Justice Bharucha held that for breach of parliamentary privileges and its contempt, Parliament may proceed against both the alleged bribe-takers and bribe-givers. Justice Bharucha held:

12.1. The provisions of Article 105(1) and Article 105(2) suggest that the freedom of speech for MPs is independent of the freedom of speech and its exceptions contained in Article 19. MPs must be free of all constraints about what they say in Parliament. A vote is treated as an extension of speech and is given the protection of the spoken word;

12.2. The expression "in respect of" in Article 105(2) must receive a "broad meaning" and entails that an MP is protected from any proceedings in a court of law that relate to, concern or have a connection or nexus with anything said or a vote given by him in Parliament;

12.3. The alleged bribe-takers are entitled to immunity under Article 105(2) as the alleged conspiracy and acceptance of the bribe was "in respect of" the vote against the no-confidence motion. The stated object of the alleged conspiracy and agreement was to defeat the no-confidence motion and the alleged bribetakers received the bribe as a "motive or reward for defeating" it. The nexus between the alleged conspiracy, the bribe and the no-confidence motion was explicit;

12.4. The object of the protection under Article 105(2) is to enable MPs to speak and vote freely in Parliament, without the fear of being made answerable on that account in a court of law. It is not enough that MPs should be protected against proceedings where the cause of action is their speech or vote. To enable them to participate freely in parliamentary debates, MPs need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is not difficult to envisage an MP who has made a speech or cast a vote that is not to the "liking of the powers that be" being troubled by legal prosecution alleging that he had been paid a bribe to achieve a certain result in Parliament;

12.5. The seriousness of the offence committed by the bribe-takers does not warrant a narrow construction of the Constitution. Such a construction runs the risk of impairing the guarantee of an effective parliamentary democracy;

12.6. The immunity under Article 105(2) is operative only insofar as it pertains to what has been said or voted. Therefore, Ajit Singh, the MP who abstained from voting, was not protected by immunity and the prosecution against him would proceed;

12.7. With regard to whether the bribe-givers enjoy immunity, since the prosecution against Ajit Singh would proceed, the charge against the bribegivers of conspiracy and agreeing with Ajit Singh to do an unlawful act would also proceed. Further, Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by an MP. The provision merely provides that an MP shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. Those who have conspired with the MP in the commission of that offence have no such immunity. The bribe-givers can, therefore, be prosecuted and do not have the protection of Article 105(2).

13. On the other hand, SC Agarwal, J held that neither the alleged bribe-takers nor the alleged bribe-givers enjoyed the protection of Article 105(2). An MP does not enjoy immunity under Article 105(2) from being prosecuted for an offence involving the offer or acceptance of a bribe for speaking or giving his vote in parliament or any committee. In his opinion, Justice Agarwal held as follows:

13.1. The object of the immunity under Article 105(2) is to ensure the independence of legislators for the healthy functioning of parliamentary democracy. An interpretation of Article 105(2) which enables an MP to claim immunity from prosecution for an offence of bribery would place them above the law. This would be repugnant to the healthy functioning of parliamentary democracy and subversive of the rule of law;

13.2. The expression "in respect of" precedes the words "anything said or any vote given" in Article 105(2). The words "anything said or any vote given" can only mean speech that has been made or a vote that has already been given and does not extend to cases where the speech has not been made or the vote has not been cast.

Therefore, interpreting the expression "in respect of" widely would result in a paradoxical situation. An MP would be liable to be prosecuted for bribery if he accepted a bribe for not speaking or not giving his vote on a matter, but he would enjoy immunity if he accepted the bribe for speaking or giving his vote in a particular way and actually speaks or gives his vote in that manner. It is unlikely that the framers of the Constitution intended to make such a distinction;

13.3. The phrase "in respect of" must be interpreted to mean "arising out of". Immunity under Article 105(2) is available only to give protection against liability for an act that follows or succeeds as a consequence of making the speech or giving of vote by an MP and not for an act that precedes the speech or vote and gives rise to liability which arises independently of the speech or vote;

13.4. The offence of criminal conspiracy is made out on the conclusion of an agreement to commit the offence of bribery and the performance of the act pursuant to the agreement is not of any consequence. Similarly, the act of acceptance of a bribe for speaking or giving a vote against the motion arises independently of the making of the speech or giving of the vote by the MP. Hence, liability for the offence cannot be treated as "in respect of anything said or any vote given in Parliament;" and

13.5. The international trend, including law in the United States, Australia and Canada, reflects the position that legislators are liable to be prosecuted for bribery in connection with their legislative activities. Most of the Commonwealth countries treat corruption and bribery by members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There is no reason why legislators in India should not be covered by laws governing bribery and corruption when all other public functionaries are subject to such laws.

14. GN Ray, J in a separate opinion concurred with the reasoning of Agarwal, J that an MP is a public servant under the PC Act and on the question regarding the sanctioning authority under the PC Act. However, on the interpretation of Article 105(2), GN Ray, J concurred with the judgment of Bhargava, J. Hence, the opinion authored by Bhargava, J on the interpretation of Article 105(2) represents the view of the majority of three judges of this Court.¹⁰ The opinion authored by SC Agarwal, J on the other hand, represents the view of the minority.¹¹

C. Submissions

15. Over the course of the hearing, we have heard Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant, Mr R Venkataramani, Attorney General for India, Mr Tushar Mehta, Solicitor General of India, Mr PS Patwalia, senior counsel, amicus curiae, Mr Gopal Sankarnarayanan, senior counsel, and Mr Vijay Hansaria, senior counsel, appearing on behalf of intervenors. This Court being a court of record, the submissions made by the learned advocates are briefly listed below.

16. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant submitted that the judgment of the majority in PV Narasimha Rao (supra) is squarely applicable to the present case. Further, he argued that the majority judgment is well-reasoned and there are no grounds to reconsider the settled position of law. In this regard, he made the following submissions:

16.1. The overruling of long-settled law in PV Narasimha Rao (supra) is unwarranted according to the tests laid down by this court on overturning judicial precedents;¹²

16.2. The object behind conferring immunity on MPs and MLAs was to shield them from "being oppressed by the power of the crown". The apprehension of parliamentarians being arrested shortly before or after the actual voting or making of a speech in the Parliament (such vote or speech directed against the Executive) was the precise reason for introducing the concept of privileges and immunities;

16.3. The concept of constitutional privileges and immunities is not in derogation of the Rule of Law, but it is a distinct feature of our constitutional structure. The majority judgment preserves the privilege of MPs and MLAs to protect their dignity as legislators and is not opposed to the rule of law;

16.4. The majority judgment gave due regard and recognition to Parliament's exclusive powers to take appropriate steps against corrupt practices by its members, just as the Parliament recognizes the limits on discussions in the House, such as the inability to entertain discussions on the conduct of judges of constitutional courts under Article 121 of the Constitution;

16.5. The present position on parliamentary privilege in India and the UK entails that (a) it is fundamental to a democratic polity and courts have exercised judicial restraint; and (b) the privilege must necessarily relate to the exercise of "legislative functions", which in India relates to voting and making of speeches. While determining whether an act is immune from judicial scrutiny, the 'necessity test' is to be applied, i.e., whether there is a nexus between the act in question and the legislative process of voting/making speeches;

16.6. The so-called "anomaly" in the majority judgment flows from the plain language of Articles 105(2) and 194(2) and any attempt to whittle down their protective scope to adhere to what is seemingly "logical", "fair" or "reasonable" would be constitutionally unjustified. However, while advancing his oral submissions in rejoinder, Mr Ramachandran conceded that the view that an abstention from voting would not be protected under Article 105(2) was incorrect and abstaining from voting, in fact, constitutes casting a vote;

16.7. The minority judgment in PV Narasimha Rao (supra) has erred in reading "in respect of" as "arising out of". Such a reading is not warranted by either the plain language or the intent of the provision;

16.8. The fact that the offence of bribery in criminal law is complete when the bribe is given and is not dependent on the performance of the promised favour is

of no consequence to the constitutional immunity under Articles 105(2) and 194(2). Once a speech is made or a vote is given, the nexus, i.e., "in respect of", is fulfilled;

16.9. The overruling of the majority judgment will have severe unintended consequences. In view of political realities, if the parliamentary immunity conferred upon MPs/ MLAs is whittled down, it would enhance the possibility of abuse of the law by political parties in power; and

16.10. Voting in the Rajya Sabha Elections is within the scope of protection of Article 194(2) as it has all the "trappings" of any other law-making process in the legislature.

17. Mr Venkataramani, the learned Attorney General for India advanced a preliminary submission that the decision in PV Narasimha Rao (supra) is inapplicable to the instant case. He submitted that the exercise of franchise by an elected member of the legislative assembly in a Rajya Sabha election does not fall within the ambit of Article 194(2), and thus, PV Narasimha Rao (supra) does not have any application to the present case.

He submits that the objective of Article 194(2) is to protect speech and conduct in relation to the functions of the legislature. Therefore, any conduct which is not related to legislative functions, such as the election of members to the Rajya Sabha, will fall outside the ambit of Article 194(2). According to the learned Attorney General, the election of members to the Rajya Sabha is akin to any other election process and cannot be treated as a matter of business or function of the legislature.

18. In response to the learned Attorney General's submissions that the polling for Rajya Sabha cannot be considered a proceeding of the House, Mr Ramachandran has submitted that the cases relied on by the learned Attorney General were not rendered in a context where parliamentary privilege or immunity was sought to be invoked and the passing reference to the concept of 'legislative proceedings' was in an entirely different context. Further, certain legislative processes such as ad-hoc committees, standing committees, elections of the constitutional offices of the President/Vice President, and members of the Rajya Sabha, do not necessarily take place on the floor of the House when it is in session. However, they have all the 'trappings' of carrying out the 'legislative process'.

19. Mr P S Patwalia, amicus curiae has submitted that the majority judgment must be reconsidered, and the view of the minority reflects the correct position of law. In this regard, Mr Patwalia made the following submissions:

19.1. The majority judgment has erroneously given a wide interpretation to the expression "in respect of" and granted immunity to MPs from criminal prosecution when they accept a bribe to cast a vote in Parliament. The object of Article 105 is not to place MPs above the law when the offence has been committed before the MP enters the House of Parliament;

19.2. The ratio of the judgments of this court rendered after PV Narasimha Rao (supra) militates against the grant of immunity to MPs for taking a bribe for casting votes;¹³

19.3. The minority judgment correctly notes that the offence of bribery is complete before the member even enters the House and therefore, the offence has no connection or correlation with the vote that she may cast in Parliament. The protection under Articles 105(2) and 194(2) is not available when the alleged criminal acts are committed outside Parliament;

19.4. The proposition that MPs are immune from prosecution for an offence of bribery in connection with their votes in Parliament is subversive of the rule of law;

19.5. The majority judgment results in an anomalous situation, where an MP who accepts a bribe and does not cast his vote can be prosecuted, while a member who casts his vote is given immunity;

19.6. The position of law in the United Kingdom, as developed over the years, confirms the proposition that the claim of privilege cannot be extended to immunity from prosecution for the offence of bribery; and

19.7. The international trend (particularly in the United States, Canada and Australia) is that parliamentary privilege does not extend to the offence of bribery. This trend is correctly relied on in the minority judgment, while the majority judgment relies on decisions which have been subsequently diluted even in their original jurisdictions.

20. Mr Gopal Sankarnarayan, senior counsel appearing on behalf of the intervenor endorsed the view taken by the amicus curiae. Additionally, he made the following submissions:

20.1. While the majority judgment has been doubted on multiple occasions, the minority judgment has been extensively relied on by this Court;

20.2. The word "any" employed in Articles 105 and 194 of the Constitution ought to be given a narrow interpretation and should not mechanically be interpreted as

'everything', especially as it grants an exceptional immunity not available to the common person;

20.3. The expression "in respect of" must be read narrowly. It must be tied down to 'legitimate acts' that are a part of the legislative process involving speech or a vote in Parliament or before a committee. Any other interpretation would violate the sanctity of the democratic process and the trust placed in the legislators by the public;

20.4. Strict interpretation ought to be given to laws dealing with corruption which affects the public interest;

20.5. The offence of bribery is complete on receipt of the bribe well before the vote is given or speech is made in Parliament. The offence under Section 7 (and Section 13) of the PC Act does not require 'performance'. Therefore, the delivery of results is irrelevant to the offence being established and the distinction created by the majority is artificial;

20.6. The effect of the majority judgment is that it creates an illegitimate class of public servants which is afforded extraordinary protection which would be a violation of Article 14, as also being manifestly arbitrary; and

20.7. Internationally, the legal position in the USA, UK, Canada, Australia, South Africa and New Zealand supports the minority judgment.

21. Mr Tushar Mehta, the learned Solicitor General of India highlighted the significance of preserving parliamentary privileges. He submitted that the issue for consideration before this Court is not the contours of parliamentary privileges but whether the offence of bribery is complete outside the legislature. Mr Mehta submitted that the offence of bribery under the PC Act, both before and after the 2018 amendment, is complete on the acceptance of the bribe and is not linked to the actual performance or non-performance of the official function to which the bribe relates.

22. Mr Vijay Hansaria, Senior Advocate appearing on behalf of the intervenor, supplemented the arguments assailing the majority judgment. He submitted that the principle of parliamentary privilege must be interpreted in the context of the criminalization of politics and through the prism of constitutional morality. In his written submissions, Mr A Velan, Advocate for the intervenor supported the submission that the majority judgment in PV Narasimha Rao (supra) ought to be reconsidered.

D. Reconsidering PV Narasimha Rao does not violate the principle of stare decisis

23. We begin by addressing the preliminary argument of Mr Raju Ramachandran, that overruling of the long-settled law in PV Narasimha Rao (supra) is unwarranted by the application of the tests laid down by this Court on overturning judicial precedent. The order of reference provides reasons for prima facie doubting the correctness of the decision in PV Narasimha Rao (supra) including its impact on the "polity and the preservation of probity in public life." However, since the learned Senior Counsel has reiterated the preliminary objection to reconsidering the decision in PV Narasimha Rao (supra) before this bench of seven judges, the argument has been addressed below.

24. A decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser strength cannot disagree with or dissent from the view of the law taken by the bench of larger strength. However, a bench of the same strength can question the correctness of a decision rendered by a co-ordinate bench. In such situations, the case is placed before a bench of larger strength.¹⁴

25. In the present case, the case was first placed before a bench of two judges who referred the case to a bench of three judges. The bench of three judges referred the case to a bench of five judges. In consonance with judicial discipline, the correctness of the decision in PV Narasimha Rao (supra) was only doubted by the co-equal bench of five judges of this Court in a detailed order. Accordingly, the matter has been placed before this bench of seven judges.

26. Doubts about the correctness of the decision in PV Narasimha Rao (supra) have been raised by this Court in several previous decisions as well. For instance, in *Kalpna Mehta v. Union of India*,¹⁵ one of us (D.Y. Chandrachud, J) observed:

"221. The view of the minority was that the offence of bribery is made out against a bribe-taker either upon taking or agreeing to take money for a promise to act in a certain manner. Following this logic, S.C. Agrawal, J. held that the criminal liability of a Member of Parliament who accepts a bribe for speaking or giving a vote in Parliament arises independent of the making of the speech or the giving of the vote and hence is not a liability "in respect of anything said or any vote given" in Parliament. The correctness of the view in the judgment of the majority does not fall for consideration in the present case. Should it become necessary in an appropriate case in future, a larger Bench may have to consider the issue."

(emphasis supplied)

27. Similar observations have been made by this Court in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*.¹⁶ The Court has relied on the minority judgment in several decisions, notably *Kuldip Nayar v. Union of India*.¹⁷ and *Amarinder Singh v. Punjab Vidhan Sabha*.¹⁸ As the correctness of the decision in *PV Narasimha Rao (supra)* did not directly arise in these cases the Court refrained from making a reference or conclusive observations about the correctness of this decision. However, the present case turns almost entirely on the law laid down in *PV Narasimha Rao (supra)*.

28. That the correctness of *PV Narasimha Rao (supra)* arises squarely in the facts of this case becomes clear from the impugned judgment of the High Court. The High Court formulated the question for consideration to be "whether Article 194(2) of the Constitution of India confers any immunity on the Members of the Legislative Assembly for being prosecuted in a criminal court of an offence involving offer or acceptance of bribe." This is the precise question that this Court adjudicated on in *PV Narasimha Rao (supra)* as well, in the context of Article 105(2).

29. Further, both the counsel for the appellant and the counsel for CBI relied on the reasoning in *PV Narasimha Rao (supra)*. The High Court, in its analysis, held that since Article 194(2) is *pari materia* to Article 105(2), the law laid down in *PV Narasimha Rao (supra)* covers the field. The High Court relied on *PV Narasimha Rao (supra)* in holding that an MP who has not cast his vote is not covered by the immunity. Since the appellant did not vote as agreed, she was held not to be protected from immunity under Article 194(2).

30. The issue which arose before the High Court turned on the decision in *PV Narasimha Rao (supra)*. Therefore, this proceeding provides the correct occasion to settle the law once and for all. There is no infirmity in the reference to seven judges to reconsider the decision in *PV Narasimha Rao (supra)*.

31. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant has argued that a position of law which has stood undisturbed since 1998 should not be interfered with by the Court. We do not consider it appropriate for this Court to confine itself to such a rigid understanding of the doctrine of *stare decisis*. The ability of this Court to reconsider its decisions is necessary for the organic development of law and the advancement of justice.

If this Court is denuded of its power to reconsider its decisions, the development of constitutional jurisprudence would virtually come to a standstill. In the past, this Court has not refrained from reconsidering a prior construction of the Constitution if it proves to be unsound, unworkable, or contrary to public interest. This delicate balance was eloquently explained by HR Khanna, J in *Maganlal*

Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay¹⁹ in the following terms:

"22. The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well-established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time."

32. A Bench of seven judges of this Court in *Bengal Immunity Company Limited v. State of Bihar* and Ors.,²⁰ delineated the powers of this Court to reconsider its own decisions in view of the doctrine of stare decisis. Both SR Das, CJ and Bhagwati, J, in their separate opinions, detailed the power of this Court to reconsider its judgments, particularly when they raise issues of constitutional importance. SR Das, J explored the judgments delivered in various jurisdictions, such as England, Australia, and the United States to conclude that this Court cannot be denuded of its power to depart from its previous decisions, particularly on questions of interpretation of the Constitution.

The Court observed that an erroneous interpretation of the Constitution could result in a situation where the error is not rectified for a long period of time to the detriment of the general public. The test laid down by the Court was rooted in establishing the "baneful effect" of the previous decision on the "general interests of the public". It was observed:

"15. in a country governed by a Federal Constitution, such as the United States of America and the Union of India are, it is by no means easy to amend the Constitution if an erroneous interpretation is put upon it by this Court. (See Article 368 of our Constitution). An erroneous interpretation of the Constitution may quite conceivably be perpetuated or may at any rate remain unrectified for a considerable time to the great detriment to public well being.

There is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public. Article 141 which lays down that the law declared by this Court shall be binding on all courts within the territory of India quite obviously refers to courts other than this Court. The corresponding provision of the Government of India Act, 1935 also makes it clear that the courts contemplated are the subordinate courts."

(emphasis supplied)

NH Bhagwati, J also emphasized the distinction between deviating from a decision dealing with the interpretation of statutory provisions and an interpretation of the Constitution, while opining that while an incorrect interpretation of a statute may be corrected by the legislature, it is not as easy to amend the Constitution to correct an unworkable interpretation. Akin to the exposition by SR Das, J, the test to reconsider previous decisions in the opinion of Bhagwati, J is whether the previous decision is "manifestly wrong or erroneous" or "public interest" requires it to be reconsidered.

33. The doctrine of stare decisis provides that the Court should not lightly dissent from precedent. However, this Court has held in a consistent line of cases,²¹ that the doctrine is not an inflexible rule of law, and it cannot result in perpetuating an error to the detriment of the general welfare of the public. This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the interests of the public or if "it is inconsistent with the legal philosophy of the Constitution".

In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to public interest and the polity. The period of time over which the case has held the field is not of primary consequence. This Court has overruled decisions which involve the interpretation of the Constitution despite the fact that they have held the field for long periods of time when they offend the spirit of the Constitution.

34. The judgment of the majority in PV Narasimha Rao (supra) deals with an important question of constitutional interpretation which impacts probity in public life. The decision has been met with notes of discord by various benches of this Court ever since it was delivered in 1998. An occasion has arisen in this case to lay down the law and resolve the dissonance. This is not an instance of this Court lightly transgressing from precedent. In fact, this case is an example of the Court giving due deference to the rule of precedent and refraining from reconsidering the decision in PV Narasimha Rao (supra) until it arose squarely for consideration.

35. The appellant has relied on judgments of this Court in Shanker Raju v. Union of India²², Shah Faesal v. Union of India²³, Keshav Mills Co. Ltd. v. CIT²⁴ and Krishena Kumar v. Union of India²⁵. These judgments reiterate the proposition that (i) the doctrine of stare decisis promotes certainty and consistency in law; (ii) the Court should not make references to reconsider a prior decision in a cavalier manner; and (iii) a settled position of law should not be disturbed merely because

an alternative view is available. However, all these judgments recognize the power of this Court to reconsider its decisions in certain circumstances - including considerations of "public policy"; "public good" and to "remedy continued injustice". In the facts which arose in those cases, this Court found that there was no compelling reason to reconsider certain judgments of this Court.

36. In *Shanker Raju* (supra), this Court was dealing with the interpretation of the Administrative Tribunals (Amendment) Act, 2006 and the appointment of a judicial member of the Central Administrative Tribunal. The two-judge Bench observed that it was bound by the decision of a bench of larger strength adjudicating a similar issue and could not reconsider the view taken in that decision merely because an alternative view was available.

37. In *Shah Faesal* (supra), a Constitution Bench of this Court was adjudicating on the question of whether the petitions were to be referred to a larger bench of seven judges on the ground that there were purportedly two contradictory decisions by benches of five judges. The Court observed that references to larger benches cannot be made casually or based on minor inconsistencies between two judgments. In that context, the Court found that the decisions were not irreconcilable with each other nor was one of the decisions per incuriam.

While laying down the law on the doctrine of stare decisis, the Court held that in certain cases the Court may reconsider its decisions, particularly when they prove to be "unworkable" or "contrary to well-established principles". The Court also adverted to the transition in the practice of the House of Lords in the UK, from an absolute prohibition on reconsidering previous decisions to the present position, which permits overruling of decisions in certain circumstances. The Court also quoted the Canadian position to the effect that while precedent should not routinely be deviated from reconsidering previous decisions is permissible when it is necessary in "public interest".

38. The decision in *Keshav Mills* (supra) interpreted the provisions of the Income Tax Act, 1922 and in the circumstances of that case, the Court did not find any compelling reasons to reconsider previous decisions on a similar point of law. The Court recognized that it is permissible in circumstances where it is in the "interests of the public" or if there are any other "valid" or "compulsive" reasons, to reconsider a prior decision.

Further, the Court noted that it would not be wise to lay down principles to govern the approach of the Court in reviewing its decisions as it is based on several considerations, including, the impact of the error on the "general administration of law" or on "public good". This exposition is, in fact, contained in the same paragraph that the appellant relies on to advance a rigid

understanding of stare decisis. The bench of seven judges of this Court (speaking through Gajendragadkar, CJ) observed:

"23. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided.

That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case, it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: -

What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view?

What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court."

(emphasis supplied)

39. Similarly, *Krishena Kumar* (supra) was a case about pension payable to government employees. There, too, although the Court did not find compelling reasons to reconsider its previous decisions in that factual context, it recognized that the Court does have the power to do so in order to "remedy continued injustice" or due to "considerations of public policy".

40. The context in the above cases cited by the appellant is not comparable with the present case. As set out in the order of reference and in the course of this judgment, the decision in *PV Narasimha Rao* (supra) has wide ramifications on public interest, probity in public life and the functioning of parliamentary democracy. The majority judgment contains several apparent errors *inter alia* in its interpretation of the text of Article 105; its conceptualization of the scope and purpose of parliamentary privilege and its approach to international jurisprudence all of which have resulted in a paradoxical outcome. The present case is one where there is an imminent threat of this Court allowing an error to be perpetuated if the decision in *PV Narasimha Rao* (supra) is not reconsidered.

41. Finally, the appellant also relies on the judgment of this Court in *Ajit Mohan v. Legislative Assembly, National Capital Territory of Delhi*²⁶, where this Court observed that there are "divergent views" amongst constitutional experts on "whether full play must be given to the powers, privileges, and immunities of legislative bodies, as originally defined in the Constitution, or (whether it) is to be restricted." However, it has been urged, that this Court refused to express its views on the matter on the ground that such an opinion must be left to the Parliament. The appellant submits that similarly, in this case, the Court must refrain from taking a conclusive view and leave the issue for the determination of Parliament. The argument is misconceived.

42. This judgment does not seek to determine or restrict the "powers, privileges, and immunities" of the legislature as defined in the Constitution. Rather, this judgment has a limited remit which is to adjudicate on the correct interpretation of Article 105 and Article 194 of the Constitution. Therefore, this Court is adjudicating upon the interpretation of the Constitution as it stands, and not on the question of whether "full play" should be given to the privileges.

43. In a separate but concurring opinion in *Mark Graves v. People of the State of New York*²⁷ while overruling two previous decisions of the United States Supreme Court on a question of constitutional importance, Frankfurter, J pithily observed:

"Judicial exegesis is unavoidable with reference to an act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the

unfolding future. But the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."

(emphasis supplied)

44. The above formulation holds true for the Constitution of India as well, which is a transformative document that raises delicate issues of constitutional interpretation. Cognizant of the consequences of the majority judgment, we endeavour to stay true to what the "Constitution itself" fathomed as the remit of Articles 105(2) and 194(2) even if it may be at the cost of moving away from "what we have said about it" in PV Narasimha Rao (supra). We believe that we must not perpetuate a mistaken interpretation of the Constitution, merely because of rigid allegiance to a previous opinion of five judges of this Court.

45. Having adverted to the background, submissions and preliminary issues, we turn to the subject which arises for consideration.

E. History of parliamentary privilege in India

46. In a deliberative democracy, the aspirations of the people are met by discourse in democratic institutions. The foremost among these institutions are Parliament and the State Legislatures. The object of the Constitution to give life and meaning to the aspirations of the people is carried out by its representatives through legislative business, deliberations, and dialogue. Parliament is called the "grand inquest of the nation." Not only can the actions and legislative priorities of the government of the day be scrutinised and criticised to hold it accountable, but Parliament also acts as a forum for ventilating the grievances of individuals, civil society, and public stakeholders.

When the space for deliberation in the legislature shrinks, people resort to conversations and democratic actions outside the legislature. This privilege of the citizens to scrutinise the proceedings in Parliament is a concomitant right of a deliberative democracy which is a basic feature of the Constitution. Our Constitution intended to create institutions where deliberations, views and counterviews could be expressed freely to facilitate a democratic and peaceful social transformation.

47. Parliament is a quintessential public institution which deliberates on the actualisation of the aspirations of all Indians. The fulcrum of parliamentary privileges under a constitutional and democratic set up is to facilitate the legislators to freely opine on the business before the House. Freedom of speech in the legislature is hence a privilege essential to every legislative body.

48. A deliberative democracy imagines deliberation as an ethic of good governance and is not restricted to the parliamentary sphere alone. The opinion of Sanjeev Khanna, J. in *Rajeev Suri v DDA*,²⁸ elucidates the contours of deliberative democracy as follows:

"653. Deliberative democracy accentuates the right of participation in deliberation, in decision-making, and in contestation of public decision-making. Contestation before the courts post the decision or legislation is one form of participation. Adjudication by courts, structured by the legal principles of procedural fairness and deferential power of judicial review, is not a substitute for public participation before and at the decision-making stage. In a republican or representative democracy, citizens delegate the responsibility to make and execute laws to the elected government, which takes decisions on their behalf.

This is unavoidable and necessary as deliberation and decision-making is more efficient in smaller groups. The process requires gathering, processing and drawing inferences from information especially in contentious matters. Vested interests can be checked. Difficult, yet beneficial decisions can be implemented. Government officers, skilled, informed and conversant with the issues, and political executive backed by the election mandate and connected with electorate, are better equipped and positioned to take decisions.

This enables the elected political executive to carry out their policies and promises into actual practice. Further, citizens approach elected representatives and through them express their views both in favour and against proposed legislations and policy measures. Nevertheless, when required draft legislations are referred to Parliamentary Committees for holding elaborate consultation with experts and stakeholders. The process of making primary legislation by elected representatives is structured by scrutiny, consultation and deliberation on different views and choices infused with an element of garnering consensus.

656. However, delegation of the power to legislate and govern to elected representatives is not meant to deny the citizenry's right to know and be informed. Democracy, by the people, is not a right to periodical referendum; or exercise of the right to vote, and thereby choose elected representatives, express satisfaction, disappointment, approve or disapprove projected policies. Citizens' right to know and the Government's duty to inform are embedded in the democratic form of governance as well as the fundamental right to freedom of speech and expression.

Transparency and receptiveness are two key propellants as even the most competent and honest decision-makers require information regarding the needs of the constituency as well as feedback on how the extant policies and decisions are

operating in practice. This requires free flow of information in both directions. When information is withheld/denied suspicion and doubt gain ground and the fringe and vested interest groups take advantage. This may result in social volatility. [With reference to Olson's 7th implication, "7. Distributional coalitions reduce the rate of economic growth.". 'The Rise and Decline of Nations' by Mancur Olson and subsequent studies.]"

(emphasis supplied)

The freedom of elected legislators to discuss and debate matters of the moment on the floor of the House is a key component of a deliberative democracy in a Parliamentary form of government. The ability of legislators to conduct their functions in an environment which protects their freedom to do so without being overawed by coercion or fear is constitutionally secured.

As citizens, legislators have a fundamental right to the freedom of speech and expression. Going beyond that, the Constitution secures the freedom to speak and debate in the legislatures both of the Union and States. This is the protection afforded to individual legislators. The recognition of that right is premised on the need to secure the institutional foundation of Parliament and the State legislatures as key components of the dialogue, debate and critique which sustains democracy.

49. In the Indian context, deliberative democracy as well as the essential privilege of freedom of speech in legislatures cannot be understood without reference to its history and development in the aftermath of the struggle for independence from colonial rule. India provides an example in history where representative institutions have evolved in stages. The privileges of legislatures in India have been closely connected with the history of these institutions.

This history can be traced to the history of parliamentary privileges in the House of Commons in the UK as well as the struggle of the Indian Legislatures to claim these privileges under colonial rule. The steps which were initiated under colonial rule to bring political and parliamentary governance to India always fell short of the aspirations of Indians. This can primarily be attributed to the fact that British rule was resistant to the desire of Indians to be independent.

Hence, the Indian legislatures were not acknowledged to have comparable privileges to those of the House of Commons in the UK. In *Kielly v. Carson*²⁹, the Privy Council had propounded that the House of Commons in the UK had acquired privileges by ancient usage and colonial legislatures had no *lex et consuetudo parliament* or the law and custom of Parliament as their rights

emanated from a statute. This implied that there were no inherent rights granted to legislatures under colonial rule.

50. Under the rule of the East India Company, law making lay in the exclusive domain of the executive till 1833. The Government of India Act 1833 redesignated the Governor-General of Bengal as the Governor-General of India with exclusive legislative powers. The Governor-General was to have four members one of whom would be a law member who was not entitled to act as a member of the Council except for legislative purposes. This was an introductory measure for legislatures in India because the Council of the Governor-General would hold distinct meetings to transact its executive functions and legislative functions.

This procedure was envisaged for convenience in enacting laws in the vast and diverse social milieu in India rather than a desire to provide representation as a means for framing better laws. However, reflecting the need for legislative privileges in carrying out the duties of the legislators, the first law member, Lord Macaulay, made efforts to secure some special facilities in the nature of powers by his draft standing orders. These special facilities included providing complete information on the subject of the legislation, the right to be present in all meetings of the Council of the Governor-General, freedom of speech, and freedom of voting.³⁰

51. The privileges of attendance and voting even in non-legislative business were extended by the Charter Act 1853. It marked a further separation of the executive and legislative functions. The Legislative Council was to have additional members to help transact the legislative business and give their independent considerations to the laws under scrutiny. These members in the Legislative Council did not have any privileges by statute, but the absence of restrictions on their freedom of speech was construed as conferring inherent rights and privileges on them. The Council therefore attempted to assume to itself powers akin to a mini Parliament modelled around the House of Commons in the UK. The Legislative Council under the Acts of 1833 and 1853 had the power to frame their own rules of procedure.

52. This power was taken away in the Indian Council Act 1861. However, Section 10 of the 1861 Act introduced between six and twelve non-official members into the Legislative Councils, who could be British or Indians. There was an implicit recognition of the freedom of speech and vote of these additional members. The British Parliament had recognised the existence of the privilege for the members of the Indian Councils, which was also confirmed by the Secretary of State for India.³¹ Nevertheless the provisions of the 1861 Act were sufficiently stringent and did not allow the Council to have any activity beyond

the limited sphere prescribed by the Act. Moreover, there was a marked difference between the freedom of speech effectively enjoyed by official members and nominated Indian members.³²

53. The Government of India Act 1909 marked a significant shift in the evolution of India's political institutions. The Act allowed more Indians to be a part of Legislative Councils and enlarged their functions. Members were allowed to ask questions and supplementary questions to the executive. The Act was a way forward for electoral and representative governance by prescribing the indirect election of Indians to the Council. However, even in these Councils, discussion on certain subjects was not permitted.

Non-official members continued to assert the privilege of free speech in the Council. Despite being indirectly elected, the Indian members of legislatures in India diluted the rigidity of colonial governance in India. In the absence of official support, privileges grew as a convention rather than law. The executive felt at liberty to violate the privileges of the Legislative Council and at any rate maintained that the Councils in India did not have any privilege akin to the UK House of Commons.³³

54. The Government of India Act 1919 separated the legislatures from executive control. It introduced dyarchy, by prescribing two classes of administrators - the Executive councillors who were not accountable to the legislature and the ministers who would enjoy the confidence of the legislature. The Act extended more powers to the legislatures than previously enjoyed by them. However, members were restricted on the range of subjects which they could discuss, participate in and vote upon. Many privileges were not specified in the 1919 Act or rules of the procedure of the House.

Nevertheless, the legislature claimed privileges as an inherent right of the legislature in the face of an unwilling executive. The reason for the hesitation of the colonial Government of India was that a government run by a foreign power was not willing to extend parliamentary privileges to Indian legislators as a recognition of their possessing sovereign powers.³⁴ The 1919 Act gave a qualified privilege of freedom of speech to the Houses of Legislature. Section 24(7) of the 1919 Act read thus:

"(7) Subject to the rules and standing orders affecting the Council, there shall be freedom of speech in the Governors' Legislative Councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such Council or by reason of anything contained in any official report of the proceedings of any such Council."

A corresponding provision was made in Section 11(7) of the Act with respect to provincial Legislative Councils. The freedom of speech in the Legislative Councils was subject to the Rules promulgated by the Governor-General. Therefore, while freedom of speech was extended to the Legislative Councils, they were ultimately made subject to the pleasure of the Governor-General and the Secretary of State for India for the legislature's rule making power. The Act therefore did not make provisions to grant freedom of speech to Indian legislatures but rather aimed to place restrictions on the freedom of speech in the House. These restrictions materially impeded the ability of the legislatures to hold discussions on issues of public importance and introduce legislation. The Act however did grant the legislature power to define its own privilege.

55. A committee was set up in 1924 within a few years of the introduction of the Government of India Act 1919. The committee was tasked with enquiring into the difficulties or defects in the 1919 Act and exploring remedies for securing them. The Reforms Committee of 1924 made reference to the privileges of Indian legislative bodies and opined that:

"at present such action would be premature. At the same time we feel that the legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is freedom of speech in all the legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends."³⁵

56. Interestingly, the committee suggested that certain additional privileges be granted to Indian Legislatures. The committee further recommended introducing a penal provision for influencing votes within the legislature through inter alia bribery. The report stated:

"We are given to understand that there are at present no means, of dealing with the corrupt influence of votes within the legislature. We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law."

57. The government introduced a Legislative Bodies Corrupt Practices Bill which proposed to penalise (i) the offering of bribe to a member of a legislature in connection with his functions; and (ii) the receipt on demand by a member of the legislature of a bribe in connection with his functions.³⁶ The Bill ultimately lapsed and was not reintroduced.

58. The provisions of the 1919 Act were substantially retained in Section 28(1) of the Government of India Act 1935. Section 28(1) read thus:

"(1) Subject to the provisions of this Act and the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings."

A corresponding provision was made in Section 71(1) of the 1935 Act with respect to Provincial Legislatures. The House was empowered to make rules for the conduct of proceedings. However, they were always to give way to the rules framed by the Governor-General for the House. Parliamentary privileges had struck root in India on legislators demanding parity with the UK House of Commons with reasonable adjustments to account for Indian needs.

This was because legislators in India felt that their discharge of legislative functions would be adversely affected in the absence of these privileges. Prominent among the demands of legislators were the power to punish for contempt of the House, supremacy of the Chair in matters of the House, and freedom of speech and freedom from arrest to allow members to partake in the proceedings and discharge their functions.

59. At no point were these privileges demanded as a blanket immunity from criminal law. Even in the face of colonial reluctance, the demand for parliamentary privileges in India was always tied to the relationship which it bore to the functions which the Indian legislators sought to discharge.

60. This background prevailed when the Constituent Assembly was deciding the fate of Articles 85 and 169 of the draft Constitution which have since become Articles 105 and 194 of the Constitution. Our founding parents intended the Constitution to be a 'modernizing' force. Parliamentary form of democracy was the first level of this modernizing influence envisaged by the framers of the Constitution.³⁷ The Constitution was therefore born in an environment of idealism and a strength of purpose born of the struggle for independence. The framers intended to have a Constitution which would light the way for a modern India.³⁸

61. When the Constituent Assembly convened to discuss Article 85 of the draft Constitution, Mr HV Kamath moved an amendment to remove the reference to the House of Commons in the UK and replace it with the Dominion Legislature

in India immediately before the commencement of the Constitution. Opposing this amendment Mr Shibban Lal Saxena said, "So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted."³⁹ The members of the Constituent Assembly were therefore keenly aware that their privileges under the colonial rule were not 'ancient and undoubted' like the House of Commons in the UK but a statutory grant made by successive enactments and assertion by legislatures.

F. Purport of parliamentary privilege in India

I. Functional analysis

62. Article 105 which is located in Part V Chapter II of the Constitution stipulates the powers, privileges, and immunities of Parliament, its members and committees. An analogous provision concerning State Legislatures is in Article 194 of the Constitution. Article 105 reads as follows:

"105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

63. Article 105 of the Constitution has four clauses. Clause (1) declares that there shall be freedom of speech in Parliament. This freedom is subject to the Constitution and to the rules and standing orders regulating the procedure in Parliament. Therefore, the freedom of speech in Parliament would be subject to the provisions that regulate its procedure framed under Article 118. It is also subject to Article 121 which restricts Parliament from discussing the conduct of any Judge of the Supreme Court or of a High Court in the discharge of their duties except upon a motion for presenting an address to the President praying for the removal of the Judge.

The freedom of speech guaranteed in Parliament under Article 105(1) is distinct from that guaranteed under Article 19(1)(a). In *Alagaapuram R Mohanraj v. TN Legislative Assembly*⁴⁰ this Court delineated the differences in these freedoms as follows: a. While the fundamental right of speech guaranteed under Article 19(1)(a) inheres in every citizen, the freedom of speech contemplated under Articles 105 and 194 is not available to every citizen but only to a member of the legislature; b. Article 105 is available only during the tenure of the membership of those bodies.

On the other hand, the fundamental right under Article 19(1)(a) is inalienable; c. Article 105 is limited to the premises of the legislative bodies. Article 19(1)(a) has no such geographical limitations; and d. Article 19(1)(a) is subject to reasonable restrictions which are compliant with Article 19(2). However, the right of free speech available to a legislator under Articles 105 or 194 is not subject to such limitations. That an express provision is made for freedom of speech in Parliament in clause (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and is not restricted by the exceptions contained therein.

64. Clause (2) of Article 105 has two limbs. The first prescribes that a member of Parliament shall not be liable before any court in respect of "anything said or any vote given" by them in Parliament or any committee thereof. The second limb prescribes that no person shall be liable before any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings. The vote given by a member of Parliament is an extension of speech.

Therefore, the freedom of a member of Parliament to cast a vote is also protected by the freedom of speech in Parliament. In *Tej Kiran Jain v. N Sanjeeva Reddy*,⁴¹ a six-judge bench of this Court held that Article 105(2) confers immunity in respect of "anything said" so long as it is "in Parliament." Therefore, the immunity is qualified by the fact that it must be attracted to speech during the conduct of business in Parliament. This Court held that the word "anything" is of

the widest import and is equivalent to "everything". It is only limited by the term "in Parliament".

65. Clauses (1) and (2) explicitly guarantee freedom of speech in Parliament. Clause (1) is a positive postulate which guarantees freedom of speech whereas Clause (2) is an extension of the same freedom postulated negatively. It does so by protecting the speech, and by extension a vote, from proceedings before a court. Freedom of speech in the Houses of Parliament and their committees is a necessary privilege, essential to the functioning of the House. As we have noted above, the privilege of free speech in the House of Parliament or Legislature can be traced to the struggle of the Indian legislators and was granted in progression by the colonial government.

This privilege is not only essential to the ability of Parliament and its members to carry out their duties, but it is also at the core of the function of a democratic legislative institution. Members of Parliament and Legislatures represent the will of the people and their aspirations. The Constitution was adopted to have a modernizing influence. The Constitution is intended to meet the aspirations of the people, to eschew an unjust society premised on social hierarchies and discrimination, and to facilitate the path towards an egalitarian society.

Freedom of speech in Parliament and the legislatures is an arm of the same aspiration so that members may express the grievances of their constituents, express diverse perspectives and ventilate the perspectives of their constituents. Freedom of speech in Parliament ensures that the government is held accountable by the House. In *Kalpana Mehta (supra)* one of us (DY Chandrachud, J) had occasion to elucidate the importance of this privilege:

"181. Parliament represents collectively, through the representative character of its Members, the voice and aspirations of the people. Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents.

182. The Constitution recognises free speech as a fundamental right in Article 19(1)(a). A separate articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. It embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy. Elected

Members of Parliament represent the voices of the citizens. In giving expression to the concerns of citizens, Parliamentary speech enhances democracy."

(emphasis supplied)

66. Notably, unlike the House of Commons in the UK, India does not have 'ancient and undoubted' rights which were vested after a struggle between Parliament and the King. On the contrary, privileges were always governed by statute in India. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution. However, while the drafters of the Constitution expressly envisaged the freedom of speech in Parliament, they left the other privileges to be decided by Parliament through legislation.

Clause (3) of Article 105 states that in respect of privileges not falling under Clauses (1) and (2) of Article 105, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law. Until Parliament defines these privileges, they are to be those which the House and its members and committees enjoyed immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Section 15 reads as follows:

"15. Amendment of article 105.-In article 105 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted."

67. The privileges enjoyed by the House and its members and committees immediately before the coming into force of Section 15 of the Forty-fourth amendment to the Constitution were those enjoyed by the House of Commons in the UK at the commencement of the Constitution of India. This was also the case with Clause (3) of Article 194 which was amended by Section 26 of the Forty-fourth amendment to the Constitution.

The reference to the House of Commons was accepted by the Constituent Assembly for two reasons. First, Indian legislators did not enjoy any privilege prior to the commencement of the Constitution and therefore a reference to the Dominion Parliament would leave the House with virtually no privileges. Second, it was not possible to make an exhaustive list of privileges at the time nor was it preferable to enlist such a long list as a schedule to the Constitution.⁴²

68. Clause (3) allows Parliament to enact a law on its privileges from time to time. It may be noted here that the House of Commons in the UK does not create new privileges.⁴³ Its privileges are those which have been practiced by the House and have become ancient and undoubted.

69. Further, unlike the House of Commons in the UK, Parliament in India cannot claim power of its own composition. The extent of privileges in India has to be within the confines of the Constitution. Within this scheme, the Courts have jurisdiction to determine whether the privilege claimed by the House of Parliament or Legislature in fact exists and whether they have been exercised correctly. In a steady line of precedent, this Court has held that in the absence of legislation on privileges, the Parliament or Legislature may only claim such privilege which belonged to the House of Commons at the time of the commencement of the Constitution and that the House is not the sole judge to decide its own privilege.

70. When the Parliament or Legislatures enact a law on privileges, such a law would be subject to the scrutiny of Part III of the Constitution. The interplay between Part III of the Constitution and Article 105(3) arose in the decision of this Court in *MSM Sharma v. Sri Krishna Sinha*,⁴⁴ where a Constitution bench speaking through SR Das, CJ held that the privileges of the House of Parliament under Clause (3) of Article 105 are those which belonged to the House of Commons in the UK at the commencement of the Constitution which would prevail over the fundamental rights guaranteed to citizens under Article 19(1)(a) of the Constitution.

However, if the Parliament were to enact a law codifying its privilege then it may not step over the fundamental rights of citizens by virtue of Article 13 of the Constitution. K Subba Rao, J (as the learned Chief Justice then was) dissented from the majority and held that the import of privileges held by the House of Commons in the UK was only a transitory provision till the Parliament or legislatures enact a law codifying their respective privileges. Therefore, Justice Subba Rao held in his dissent that the legislature cannot run roughshod over the fundamental rights of citizens who in theory have retained their rights and only given a part of it to the legislature.

71. In Special Reference No. 1 of 1964,⁴⁵ a seven-judge Bench of this Court opined on the privileges of the State Legislature upon a Presidential reference. The reference was in the aftermath of the Speaker of the UP Legislative Assembly directing the arrest and production of two judges of the High Court. The two judges had interfered with a resolution to administer reprimand to a person who had published a pamphlet libelling one of the members of the Assembly. Gajendragadkar, CJ speaking for the majority did not disagree with

the decision in MSM Sharma (supra) which held that Article 105(3) and Article 194(3) would prevail over Article 19(1)(a) of the Constitution.

However, the Court held that Article 21 was to prevail over Articles 105(3) and 194(3) in a conflict between the two. The Court held that the Parliament or Legislature is not the sole judge of its privileges and the courts have the power to enquire if a particular privilege claimed by the legislature in fact existed or not, by consulting the privileges of the Commons. The determination of privileges, the Court held, and whether they conform to the parameters of the Constitution is a question that must be answered by the courts. This Court opined that:

"37. The next question which faces us arises from the preliminary contention raised by Mr Seervai that by his appearance before us on behalf of the House, the House should not be taken to have conceded to the Court the jurisdiction to construe Article 194(3) so as to bind it. As we have already indicated, his stand is that in the matter of privileges, the House is the sole and exclusive judge at all stages.

42. In coming to the conclusion that the content of Article 194(3) must ultimately be determined by courts and not by the legislatures, we are not unmindful of the grandeur and majesty of the task which has been assigned to the legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today."

(emphasis supplied)

72. The opinion in Special Reference No. 1 of 1964 (supra) was further affirmed by another seven-judge bench of this Court in State of Karnataka v. Union of India⁴⁶ which held that whenever a question arises whether the House has jurisdiction over a matter under its privileges, the adjudication of such a claim is vested exclusively in the courts. Relying on Special Reference No. 1 of 1964 (supra) and State of Karnataka (supra) a Constitution bench of this Court in Raja Ram Pal (supra) held that the court has the authority and jurisdiction to examine if a privilege asserted by the House (or even a member by extension) in fact accrues under the Constitution.

Further, in Amarinder Singh (supra) a Constitution bench of this Court held that the courts are empowered to scrutinise the exercise of privileges by the House.⁴⁷ The interplay between fundamental rights of citizens and the privileges of the

Houses of Parliament or Legislature is pending before a Constitution bench of this Court in *N Ravi v. Speaker, Legislative Assembly Chennai*.⁴⁸

73. Clause (4) of Article 105 extends the freedoms in the above clauses to all persons who by virtue of the Constitution have a right to speak in Parliament. The four clauses in Articles 105 and 194 form a composite whole which lend colour to each other and together form the corpus of the powers, privileges and immunities of the Houses of Parliament or Legislature, as the case may be, and of members and committees.

74. We have explored the trajectory of parliamentary privileges, especially that of freedom of speech in the Indian legislatures. It has been a timeless insistence of the legislators that their freedom of speech to carry out their essential legislative functions be protected and sanctified. Whereas the drafters of our Constitution have expressly guaranteed the freedom of speech in Parliament and legislature, they left the other privileges uncoded.

75. In a consistent line of precedent this Court has held that - firstly, Parliament or the state legislature is not the sole judge of what privileges it enjoys and secondly, Parliament or legislature may only claim privileges which are essential and necessary for the functioning of the House. We have explored the first of these limbs above. We shall now analyse the jurisprudence on the existence, extent and exercise of privileges by the House of Parliament, its members and committees.

II. Parliamentary privilege as a collective right of the House

76. According to Erskine May, parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the "High Court of Parliament" and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.⁴⁹ The term 'High Court of Parliament' dates back to the time when all powers of legislating and dispensing justice vested in the Monarch who in turn divested them to a body which would carry out the function of the legislature as the King sitting in the High Court of Parliament.

To that extent, the term is redundant in the Indian context where the Constitution is supreme and the power of the Parliament over its domain flows from and is defined by the Constitution. However, the definition provides an authoritative guide to understanding the meaning and remit of parliamentary privileges. The definition evidently divides privileges into two constituent elements. The first is the sum of rights enjoyed by the House of Parliament and the second is the rights enjoyed by members of the House individually.

Rights and immunities such as the power to regulate its own procedure, the power to punish for contempt of the House or to expel a member for the remainder of the session of the House, belong to the first element of privileges held by the House as a collective body for its proper functioning, protection of members, and vindication of its own authority and dignity. The second element of rights exercised individually by members of the House includes freedom of speech and freedom from arrest, among others.

77. The privilege exercised by members individually is in turn qualified by its necessity, in that the privilege must be such that "without which they could not discharge their functions." We shall elucidate this limb later in the course of this judgment. These privileges enjoyed by members of the House individually are a means to ensure and facilitate the effective discharge of the collective functions of the House.⁵⁰ It must therefore be noted that whereas the privileges enjoyed by members of the House exceed those possessed by other bodies or individuals, they are not absolute or unqualified. The privilege of an individual member only extends insofar as it aids the House to function and without which the House may not be able to carry out its functions collectively.

78. Subhash C Kashyap has explained parliamentary privileges as they may be understood in the Indian context.⁵¹ In his book on parliamentary procedure, the author has opined as follows:

"In Parliamentary parlance the term 'privilege means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by the members of each House individually without which they cannot discharge their functions efficiently and effectively. The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of the institution of Parliament and its members. They are granted by the Constitution to enable them to discharge their functions without any let or hindrance.

Parliamentary Privileges do not exempt members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the applications of the laws of the land unless there are good and sufficient reasons in the interest of Parliament itself to do so. The fundamental principle is that all citizens including members of Parliament should be treated equally before the law. The privileges are available to members only when they are functioning in their capacity as members of Parliament and performing their parliamentary duties."

(emphasis supplied)

79. The understanding which unequivocally emerges supports the claim that the privileges which accrue to members of the House individually are not an end in themselves. The purpose which privileges serve is that they are necessary for the House and its committees to function. Therefore, we may understand parliamentary privileges as those rights and immunities which allow the orderly, democratic, and smooth functioning of Parliament and without which the essential functioning of the House would be violated.

80. The framers of the Constitution intended to establish a responsible, responsive and representative democracy. The value and importance of such a democracy weighed heavily on the framers of the Constitution given the history of an oppressive colonial government to which India had been subjected. The history of parliamentary democracy shows that the colonial government denied India a responsible government where initially Indians were kept out of legislating on laws which would be enforced on its diverse social tapestry.

Even when Indians were allowed in legislatures, a responsive government which could be accountable to the people in a meaningful way was yet a distant reality in the colonial period. The ability of the legislature in turn to scrutinise the actions of the executive was effaced and despite the statutory guarantee of freedom of speech for members of the House in the Government of India Act 1919, the guarantee remained illusory to the extent that many subjects were restricted from being discussed in the legislatures.

81. In that sense, the foundations of a deliberative democracy premised on responsibility, responsiveness, and representation sought to ensure that the executive government of the day is elected by and responsible to the Parliament or Legislative Assemblies which comprise of elected representatives. These representatives would be able to express their views on behalf of the citizens and ensure that the government lends ear to their aspirations, complaints and grievances.

This aspect of the functioning of the House is essential to sustain a meaningful democracy. This necessitates that members of the House be able to attend the House and thereafter speak their minds without fear of being harassed by the executive or any other person or body on the basis of their actions as members of the House in the exercise of their duties. In the absence of this feature Parliament and the state legislatures would lose the essence of their representative character in a democratic polity.

82. The privileges enshrined under Article 105 and Article 194 of the Constitution are of the widest amplitude but to the extent that they serve the aims for which they have been granted. The framers of the Constitution would not

have intended to grant to the legislatures those rights which may not serve any purpose for the proper functioning of the House. The privileges of the members of the House individually bear a functional relationship to the ability of the House to collectively fulfil its functioning and vindicate its authority and dignity.

In other words, these freedoms are necessary to be in furtherance of fertilizing a deliberative, critical, and responsive democracy. In *State of Kerala v. K Ajith*,⁵² one of us (DY Chandrachud, J) held that a member of the legislature, the opposition included, has a right to protest on the floor of the legislature. However, the said right guaranteed under Article 105(1) of the Constitution would not exclude the application of ordinary criminal law against acts not in direct exercise of the duties of the individual as a member of the House.

This Court held that the Constitution recognises privileges and immunities to create an environment in which members of the House can perform their functions and discharge their duties freely. These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal.

83. MN Kaul and SL Shakti have in their celebrated work on the Practice and Procedure of Parliament endorsed this view by stating that⁵³ "In modern times, parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded as a protection of the members of Parliament against an executive authority not responsible to Parliament. The entire background in which privileges of Parliament are now viewed has changed because the Executive is now responsible to Parliament. The foundation upon which they rest is the maintenance of the dignity and independence of the House and of its members."

(emphasis supplied)

The privileges enjoyed by members of the House are tethered intrinsically to the functioning of the House collectively. A House of Parliament or Legislature functions through the collective will of its individual members. These members acting as constituents of the House may not claim any privilege or immunity unconnected with the working of the entire House.

84. While some cherished freedoms exercised individually by members of the House, including the freedom of speech, have been undeniably understood to be essential to the functioning of the House as a whole, other exercises such as damaging public property or committing violence are not and cannot be deemed to have immunity.

The privileges and immunities enshrined in Articles 105 and 194 of the Constitution with respect to Houses of Parliament and the Legislatures, their members and committees, respectively belong to the House collectively. The exercise of the privileges individually by members must be tested on the anvil of whether it is tethered to the healthy and essential functioning of the House. III. Necessity test to claim and exercise a privilege

85. Having established that the privileges and immunities exercisable by members of the House individually must be tethered to the functioning of the House we must now explore which privileges may be deemed to accrue to the House collectively and by extension to individual members. In *State of Karnataka* (supra) a seven-Judge bench of this Court speaking through MH Beg, CJ held that the powers under Article 194 (as well as Article 105) are those which depend upon and are necessary for the conduct of the business of each House. In that sense, these powers may not even apply to all the privileges which accrue to the House of Commons but may not be necessary for the functioning of the House. The learned Chief Justice stated:

"57. It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the "powers" meant to be indicated here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons in England for all purposes.

For example, it could not be contended that each House of a State Legislature has the same share of legislative power as the House of Commons has, as a constituent part of a completely sovereign legislature. Under our law it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in legislative power as is assigned to it by the Constitution itself."

(emphasis supplied)

86. This Court held that in India the source of authority is the Constitution which derives its sovereignty from the people. The powers and privileges claimed by a House cannot traverse beyond those which are permissible under the Constitution. The Constitution only allows exercise of those powers, privileges, and immunities which are essential to the functioning of the House or a committee thereof. MN Kaul and SL Shakti have opined that⁵⁴ "In interpreting these privileges, therefore, regard must be had to the general

principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance".

They apply to individual members "only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects". Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so."

(emphasis supplied)

87. The evolution of parliamentary privileges as well as the jurisprudence of this Court establish that members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning. To give any privilege unconnected to the functioning of the Parliament or Legislature by necessity is to create a class of citizens which enjoys unchecked exemption from ordinary application of the law. This was neither the intention of the Constitution nor the goal of vesting Parliament and Legislature with powers, privileges and immunities.

88. In *Amarinder Singh* (supra) a Constitution bench of this Court held that the test to scrutinise the exercise of privileges is whether they were necessary to safeguard the integrity of legislative functions. KG Balakrishnan, CJ after exploring a wealth of material on the subject opined that privileges serve the distinct purpose of safeguarding the integrity of the House. This Court held that privileges are not an end in themselves but must be exercised to ensure the effective exercise of legislative functions. The Chief Justice observed that:

"35. The evolution of legislative privileges can be traced back to medieval England when there was an ongoing tussle for power between the monarch and Parliament. In most cases, privileges were exercised to protect the Members of Parliament from undue pressure or influence by the monarch among others. Conversely, with the gradual strengthening of Parliament there were also some excesses in the name of legislative privileges.

However, the ideas governing the relationship between the executive and the legislature have undergone a sea change since then. In modern parliamentary democracies, it is the legislature which consists of the people's representatives who are expected to monitor executive functions. This is achieved by embodying the idea of "collective responsibility" which entails that those who wield executive power are accountable to the legislature.

36. However, legislative privileges serve a distinct purpose. They are exercised to safeguard the integrity of legislative functions against obstructions which could be caused by members of the House as well as non-members. Needless to say, it is conceivable that in some instances persons holding executive office could potentially cause obstructions to legislative functions. Hence, there is a need to stress on the operative principles that can be relied on to test the validity of the exercise of legislative privileges in the present case.

47. the exercise of legislative privileges is not an end in itself. They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions. These functions include the right of members to speak and vote on the floor of the House as well as the proceedings of various Legislative Committees. In this respect, privileges can be exercised to protect persons engaged as administrative employees as well. The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions."

(emphasis supplied)

89. In Lokayukta, Justice Ripusudan Dayal v. State of MP,⁵⁵ a three-judge bench of this Court held that the scope of a privilege enjoyed by a House and its members must be tested on the basis of the necessity of the privilege to the House for its free functioning. This Court further held that members of the House cannot claim exemption from the application of ordinary criminal law under the garb of privileges which accrue to them as members of the House under the Constitution. P Sathasivam, CJ opined that

"51. The scope of the privileges enjoyed depends upon the need for privileges i.e. why they have been provided for. The basic premise for the privileges enjoyed by the Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House.

52. It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution.

76. It is made clear that privileges are available only insofar as they are necessary in order that the House may freely perform its functions. For the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of

Corruption Act, 1988, the jurisdiction of the Lokayukt or the Madhya Pradesh Special Police Establishment is for all public servants (except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act) and no privilege is available to the officials and, in any case, they cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. Privileges do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiation."

(emphasis supplied)

90. The necessity test for ascertaining parliamentary privileges has struck deep roots in the Indian context. We do not need to explore the well-established jurisprudence on the necessity test in other jurisdictions beyond the above exposition of Indian jurisprudence on the subject at this juncture. The evolution of parliamentary privileges in various parliamentary jurisdictions has shown a consistent pattern that when an issue involving privileges arises, the test applied is whether the privilege claimed is essential and necessary to the orderly functioning of the House or its committee.

We may also note that the burden of satisfying that a privilege exists and that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege. The Houses of Parliament or Legislatures, and the committees are not islands which act as enclaves shielding those inside from the application of ordinary laws. The lawmakers are subject to the same law that the law-making body enacts for the people it governs and claims to represent.

91. We therefore hold that the assertion of a privilege by an individual member of Parliament or Legislature would be governed by a twofold test. First, the privilege claimed has to be tethered to the collective functioning of the House, and second, its necessity must bear a functional relationship to the discharge of the essential duties of a legislator.

G. Bribery is not protected by parliamentary privilege

I. Bribery is not in respect of anything said or any vote given

92. The question remains as to whether these privileges attract immunity to a member of Parliament or of the Legislatures who engages in bribery in connection with their speech or vote. The test of intrinsic relation to the functioning of the House and the necessity test evolved by this Court in the context of determining the remit of privileges under Articles 105(3) and 194(3) must weigh while delineating the privileges under Clauses (1) and (2) of the provisions as well. When this Court is called upon to answer a question of

interpretation of a provision of the Constitution, it must interpret the text in a manner that does not do violence to the fabric of the Constitution.

This Court's opinion in PV Narasimha Rao (supra) hinged on two phrases in clause (2) of Article 105 of the Constitution. These phrases were "in respect of" and the following word "anything." Clause (2) of the Article reads as follows "(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

93. In *State (NCT of Delhi) v Union of India*,⁵⁶ Dipak Misra, CJ observed that the Court should interpret a constitutional provision and construe the meaning of specific words in the text in the context in which the words occur by referring to the other words of the said provision. This Court held in that case that the meaning of the word "any" can be varied depending on the context in which it appears and that the words "any matter" was not to be understood as "every matter".

94. The decision in *Tej Kiran Jain (supra)* interpreted the word "anything" in Clause (1) of Article 105 to be of the widest amplitude and only subject to the words appearing after it which were "in Parliament." The clause does give wide freedom of speech in Parliament. The word 'anything' cannot be interpreted to allow interference of the court in determining if the speech had relevance to the subject it was dealing with at the time the speech was made.

In *Tej Kiran Jain (supra)* the followers of a religious head who had made a speech on untouchability filed a suit in the High Court seeking damages for defamation alleged to have been committed in the Lok Sabha during a calling attention motion on the speech. This Court held that the Court cannot dissect a speech made in Parliament and adjudicate if the speech has a direct relation to the subject matter before it. Parliament has absolute control over which matters it directs its attention towards and thereafter the members or persons at liberty to speak may not be subjected to the fear of prosecution against anything that they may say in the House.

95. That context evidently changes in Clause (2) of Article 105 which gives immunity to members of the House and the committees thereof in any proceeding in any court in respect of "anything" said or any vote given in the House. MH Beg, CJ in *State of Karnataka (supra)* had foreseen a situation where a criminal act may be committed in the House and had observed that it could not be protected under the Constitution. The Chief Justice opined that:

"63. A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."

(emphasis supplied)

96. In K Ajith (supra) a member of the Kerala Legislative Assembly was accused of climbing over the Speaker's dais and causing damage to property during the presentation of the budget by the Finance Minister of the State. The question which arose before this Court was whether the member could be prosecuted before a court of law for his conduct inside the House of the Legislature. This Court speaking through one of us (DY Chandrachud, J) after exploring the evolution of law in this regard in the UK observed that:

"36. it is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity only if the action bears nexus to the effective participation of the member in the House."

97. This Court further held that privileges accruing inside the legislature are not a gateway to claim exemption from the general application of the law:

"65. Privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen. To claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law.

The entire foundation upon which the application for withdrawal under Section 321 was moved by the Public Prosecutor is based on a fundamental misconception of the constitutional provisions contained in Article 194. The Public Prosecutor seems to have been impressed by the existence of privileges and immunities which would stand in the way of the prosecution. Such an understanding betrays the constitutional provision and proceeds on a misconception that elected members of the legislature stand above the general application of criminal law."

(emphasis supplied)

98. In Lokayukta, Justice Ripusudan Dayal (supra) criminal proceedings were initiated against administrative officers of the Madhya Pradesh Legislative Assembly for allegedly engaging in corruption and financial irregularity. The Speaker of the Assembly initiated proceedings for breach of privilege against the Lokayukta and vigilance authorities. This Court while holding that initiation of criminal proceedings for corruption may not amount to a breach of privilege had opined that:

"48. It is clear that in the matter of the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, insofar as the jurisdiction of the Lokayukt or the Madhya Pradesh Special Establishment is concerned, all public servants except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act fall in the same category and cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply.

49. As rightly submitted by Mr K.K. Venugopal, in India, there is the rule of law and not of men and, thus, there is primacy of the laws enacted by the legislature which do not discriminate between persons to whom such laws would apply. The laws would apply to all such persons unless the law itself makes an exception on a valid classification. No individual can claim privilege against the application of laws and for liabilities fastened on commission of a prohibited act."

(emphasis supplied)

99. The principle which emerges from the above cases is that the privilege of the House, its members and the committees is neither contingent merely on location nor are they merely contingent on the act in question. A speech made in Parliament or Legislature cannot be subjected to any proceedings before any court. However, other acts such as damaging property or criminal acts may be subjected to prosecution despite being within the precincts of the House.

Clause (2) of Article 105 grants immunity "in respect of anything" said or any vote given. The extent of this immunity must be tested on the anvil of the tests laid down above. The ability of a member to speak is essentially tethered to the collective functioning of the House and is necessary for the functioning of the House. A vote, which is an extension of the speech, may itself neither be questioned nor proceeded against in a court of law. The phrase "in respect of" is significant to delineate the ambit of the immunity granted under Clause (2) of Article 105.

100. In PV Narasimha Rao (supra) the majority judgment interprets the phrase "in respect of" as having a broad meaning and referring to anything that bears a

nexus or connection with the vote given or speech made. It therefore concluded that a bribe given to purchase the vote of a member of Parliament was immune from prosecution under Clause (2) of Article 105. By this logic, the majority judgment concluded that a bribe-accepting member who did not comply with the quid pro quo was not immune from prosecution as his actions ceased to have a nexus with his vote.

As we have noted above, the interpretation of a phrase which appears in a provision cannot be interpreted in a way that does violence to the object of the provision. The majority in PV Narasimha Rao (supra) has taken the object of Article 105 to be that members of Parliament must have the widest protection under the law to be able to perform their function in the House. This understanding of the provision is overbroad and presumptive of enhanced privileges translating to better functioning of members of the House.

101. Privileges are not an end in themselves in a Parliamentary form of government as the majority has understood them to be. A member of Parliament or of the Legislature is immune in the performance of their functions in the House or a committee thereof from being prosecuted because the speech given or vote cast is functionally related to their performance as members of the legislature.

The claim of a member to this immunity is its vital connect with the functioning of the House or committee. The reason why the freedom of speech and to vote have been guaranteed in Parliament is because without that Parliament or the legislature cannot function. Therefore, the extent of privilege exercisable by a member individually must satisfy the two fold test laid down in Part F of this judgment namely its tether to the collective functioning of the House and its necessity.

102. The words "in respect of" in Clause (2) of Article 105 apply to the phrase "anything said or any vote given," and in the latter part to a publication by or with the authority of the House. We may not interpret the words "anything" or "any" without reading the operative word on which it applies i.e. "said" and "vote given" respectively. The words "anything said" and "any vote given" apply to an action which has been taken by a person who has the right to speak or vote in the House or a committee thereof. This means that a member or person must have exercised their right to speak or abstained from speaking inside the House or committee when the occasion arose. Similarly, a person or member must have exercised their option of voting in favour, against, or in abstention to claim immunity under Articles 105(2) and 194(2).

103. The words "anything" and "any" when read with their respective operative words mean that a member may claim immunity to say as they feel and vote in a direction that they desire on any matter before the House. These are absolutely outside the scope of interference by the courts. The wide meaning of "anything" and "any" read with their companion words connotes actions of speech or voting inside the House or committee which are absolute.

The phrase "in respect of" applies to the collective phrase "anything said or any vote given." The words "in respect of" means arising out of or bearing a clear relation to. This may not be overbroad or be interpreted to mean anything which may have even a remote connection with the speech or vote given. We, therefore, cannot concur with the majority judgment in PV Narasimha Rao (supra).

II. The Constitution envisions probity in public life

104. The purpose and object for which the Constitution stipulates powers, privileges and immunity in Parliament must be borne in mind. Privileges are essentially related to the House collectively and necessary for its functioning. Hence, the phrase "in respect of" must have a meaning consistent with the purpose of privileges and immunities.

Articles 105 and 194 of the Constitution seek to create a fearless atmosphere in which debate, deliberations and exchange of ideas can take place within the Houses of Parliament and the state legislatures. For this exercise to be meaningful, members and persons who have a right to speak before the House or any committee must be free from fear or favour induced into them by a third party. Members of the legislature and persons involved in the work of the Committees of the legislature must be able to exercise their free will and conscience to enrich the functions of the House.

This is exactly what is taken away when a member is induced to vote in a certain way not because of their belief or position on an issue but because of a bribe taken by the member. Corruption and bribery of members of the legislature erode the foundation of Indian Parliamentary democracy. It is destructive of the aspirational and deliberative ideals of the Constitution and creates a polity which deprives citizens of a responsible, responsive and representative democracy.

105. The minority judgment in PV Narasimha Rao (supra) held that the words "in respect of" must be understood as "arising out of" and that a bribe taken by a member of the House cannot be deemed as arising out of his vote. The minority opined that:

"46. The expression "in respect of" in Article 105(2) has, therefore, to be construed keeping in view the object of Article 105(2) and the setting in which the expression appears in that provision.

47. the object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basic structure of the Constitution.

An interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law would not only be repugnant to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the Constitution. It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. (See: Sub-Committee on Judicial Accountability v. Union of India [(1991) 4 SCC 699] SCC at p. 719.)"

(emphasis supplied)

106. The minority then points out the paradoxical result which would emerge if members were given immunity from prosecution for their speech or vote but would not be protected if the bribe was received for not speaking or not voting. The minority goes on to hold that:

"47. Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of". If the expression "in respect of" is thus construed, the immunity conferred under Article 105(2) would be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof.

The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member in Parliament even though it may have a connection with the speech made or the vote given by the Member if such an act

gives rise to a liability which arises independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member.

Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Member in Parliament. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament."

107. The offence of bribery is complete on the acceptance of the money or on the agreement to accept money being concluded. The offence is not contingent on the performance of the promise for which money is given or is agreed to be given. The minority opinion in PV Narasimha Rao (supra) based its view on another perspective which was not dealt with by the majority. The minority opinion stated that the act of bribery was the receipt of illegal gratification prior to the making of the speech or vote inside the House. Interpreting the phrase "in respect of" to mean "arising out of", the minority concluded that the offence of bribery is not contingent on the performance of the illegal promise. The minority observed that:

"50. the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way.

The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way."

108. A Constitution bench of this Court in Kihoto Hollohan v. Zachillhu,⁵⁷ while deciding on the validity of the Constitution (Fifty Second Amendment) Act 1985 which introduced the Tenth schedule to the Indian Constitution opined that the freedom of speech in Parliament under clause (2) of Article 105 is not violated. This Court understood the provision to necessarily mean that the politically sinful

act of floor crossing is neither permissible nor immunized under the Constitution. This Court held that:

"40. The freedom of speech of a Member is not an absolute freedom. That apart, the provisions of the Tenth Schedule do not purport to make a Member of a House liable in any 'Court' for anything said or any vote given by him in Parliament. It is difficult to conceive how Article 105(2) is a source of immunity from the consequences of unprincipled floor-crossing.

43. Parliamentary democracy envisages that matters involving implementation of policies of the government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter.

Not unoften (sic) the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines."

III. Courts and the House exercise parallel jurisdiction over allegations of bribery

109. Mr Raju Ramachandran, learned senior advocate on behalf of the Petitioner, has argued that bribery has been treated as a breach of privilege by the House which has used its powers to dispense discipline over bribe-taking members. He argues that immunity for a vote, speech or conduct in the House of Parliament does not in any manner leave culpable members blameless or free from sanction. Such members have been punished including being expelled by the House. Mr Ramachandran cites many examples of actions taken by the House against its members who were found to have received bribes.

In our exposition of the history of parliamentary privileges in India, we have illustrated how bribery was initially deemed to be a breach of privilege by the House of Commons in the UK. Based on the position of law in the UK the British government was uncertain about the position in India but assumed it to be governed as a matter of breach of privilege in the absence of an express statutory enactment. The Report of the Reforms Enquiry Committee in 1924 had recommended bribery to be made a penal offence so that members may be prosecuted for crimes before a court of law.

110. The issue of bribery is not one of exclusivity of jurisdiction by the House over its bribe-taking members. The purpose of a House acting against a contempt by a member for receiving a bribe serves a purpose distinct from a criminal prosecution. The purpose of the proceedings which a House may conduct is to restore its dignity. Such a proceeding may result in the expulsion from the membership of the House and other consequences which the law envisages.

Prosecution for an offence operates in a distinct area involving a violation of a criminal statute. The power to punish for criminal wrongdoing emanates from the power of the state to prosecute offenders who violate the criminal law. The latter applies uniformly to everyone subject to the sanctions of the criminal law of the land. The purpose, consequences, and effect of the two jurisdictions are separate. A criminal trial differs from contempt of the House as it is fully dressed with procedural safeguards, rules of evidence and the principles of natural justice.

111. We therefore disagree with Mr Ramachandran that the jurisdiction of the House excludes that of the criminal court for prosecuting an offence under the criminal law of the land. We hold this because of our conclusion above that bribery is not immune under clause (2) of Article 105. A member engaging in bribery commits a crime which is unrelated to their ability to vote or to make a decision on their vote. This action may bring indignity to the House of Parliament or Legislature and may also attract prosecution. What it does not attract is the immunity given to the essential and necessary functions of a member of Parliament or Legislature.

112. We may refer to the opinion of SC Agrawal, J who arrived at the same view in which he was in the minority:

"45. It is no doubt true that a Member who is found to have accepted bribe in connection with the business of Parliament can be punished by the House for contempt. But that is not a satisfactory solution. In exercise of its power to punish for contempt the House of Commons can convict a person to custody and may also order expulsion or suspension from the service of the House. There is no power to impose a fine. The power of committal cannot exceed the duration of the session and the person, if not sooner discharged by the House, is immediately released from confinement on prorogation. (See: May's Parliamentary Practice, 21st Edn., pp. 103, 109 and 111.)

The Houses of Parliament in India cannot claim a higher power. The Salmon Commission has stated that "whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions". (para 306) The Salmon

Commission has also expressed the view that in view of the special expertise that is necessary for this type of inquiry the Committee of Privileges do not provide an investigative machinery comparable to that of a police investigation."

(emphasis supplied)

113. Therefore, we hold that clause (2) of Article 105 does not grant immunity against bribery to any person as the receipt of or agreement to receive illegal gratification is not "in respect of" the function of a member to speak or vote in the House. Prosecution for bribery is not excluded from the jurisdiction of the criminal court merely because it may also be treated by the House as contempt or a breach of its privilege.

IV. Delivery of results is irrelevant to the offence of bribery

114. Another aspect that arises for consideration is the stage at which the offence of bribery crystallizes. It has been urged by the Solicitor General that the offence is complete outside the legislature and is 'independent' of the speech or the vote. Therefore, the question of privilege does not arise in the first place and the question is answered by the provisions of the Prevention of Corruption Act, 1988. Similarly, Mr Gopal Sankarnarayan, learned senior counsel has submitted that the offence of bribery is complete on receipt of the bribe well before the vote is given or speech made in Parliament. It has been urged that the performance of the promise is irrelevant to the offence being made out, and hence, the distinction made in PV Narasimha Rao (supra) is entirely artificial.

115. Interestingly, the judgment of the majority in PV Narasimha Rao (supra) did not consider this question at all. The minority judgment, on the other hand, discusses this aspect and notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. Agarwal, J observed:

"50. The construction placed by us on the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way.

The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way."

(emphasis supplied)

116. Section 7 of the Prevention of Corruption Act, 1988 reads as follows:

"7. Offence relating to public servant being bribed.-Any public servant who, -

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1. -For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration. -A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.-For the purpose of this section,-

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain,

any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts or attempts to obtain the undue advantage directly or through a third party."

(emphasis supplied)

117. Under Section 7 of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The first explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained.

118. It is trite law that illustrations appended to a section are of value and relevance in construing the text of a statutory provision and they should not be readily rejected as repugnant to the section.⁵⁸ The illustration to the first explanation aids us in construing the provision to mean that the offence of bribery crystallizes on the exchange of the bribe and does not require the actual performance of the act.

It provides a situation where "A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section." It is clear that regardless of whether S actually processes the ration card application on time, the offence of bribery is made out. Similarly, in the formulation of a legislator accepting a bribe, it does not matter whether she votes in the agreed direction or votes at all. At the point in time when she accepts the bribe, the offence of bribery is complete.

119. Even prior to the amendment to the PC Act in 2017, Section 7 expressly delinked the offence of bribery from the actual performance of the act for which the undue advantage is received. The provision read as follows:

"7. Public servant taking gratification other than legal remuneration in respect of an official act.-

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.

Explanations. - (d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression."

(emphasis supplied)

120. The unamended text of Section 7 of the PC Act also indicates that the act of "accepting", "obtaining", "agreeing to accept" or "agreeing to obtain" illegal gratification is a sufficient condition. The act for which the bribe is given does not need to be actually performed. This was further clarified by Explanation (d) to the provision. In explaining the phrase 'a motive or reward for doing', it was made clear that the person receiving the gratification does not need to intend to or be in a position to do or not do the act or omission for which the motive/reward is received.

121. In *Chaturdas Bhagwandas Patel v. State of Gujarat*⁵⁹ a two-judge Bench of this Court reiterated that to constitute the offence of bribery, a public servant using his official position to extract illegal gratification is a sufficient condition. It is not necessary in such a case for the Court to consider whether the public servant intended to actually perform any official act of favour or disfavour.

In the facts of the case, the public servant induced the complainant to give a bribe to get rid of a charge of abduction. It was later revealed that no complaint had even been registered against the complainant for the alleged abduction. However, the Court held that the mere demand and acceptance of the illegal gratification was sufficient, regardless of whether the recipient of the bribe performed the act for which the bribe was received.

122. Recently, in *Neeraj Dutta v. State (NCT of Delhi)*⁶⁰ a Constitution Bench listed out the constituent elements of the offence of bribery under Section 7 of the

PC Act (as it stood before the amendment in 2017). Justice BV Nagarathna formulated the elements to constitute the offence:

"5. The following are the ingredients of Section 7 of the Act:

- (i) the accused must be a public servant or expecting to be a public servant;
- (ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;
- (iii) for himself or for any other person;
- (iv) any gratification other than legal remuneration; and
- (v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour."

Consequently, the actual "doing or forbearing to do" the official act is not a constituent part of the offence. All that is required is that the illegal gratification should be obtained as a "motive or reward" for such an action or omission - whether it is actually carried out or not is irrelevant.

123. During the course of the hearing, a hypothetical question arose in this regard. What happens in a situation when the bribe is exchanged within the precincts of the legislature? Would the offence now fall within the ambit of parliamentary privilege? This question appears to be ill-conceived.

When this Court holds that the offence of bribery is complete on the acceptance or attempt to accept undue advantage and is not dependent on the speech or vote, it automatically pushes the offence outside the ambit of Articles 105(2) and 194(2). This is not because the acceptance of undue advantage happened outside the legislature but because the offence is independent of the "vote or speech" protected by Articles 105(2) and 194(2). The remit of parliamentary privilege is intricately linked to the nexus of the act to the 'vote' or 'speech' and the transaction of parliamentary business.

124. The majority judgment in PV Narasimha Rao (supra) did not delve into when the offence of bribery is complete or the constituent elements of the offence. However, on the facts of the case, the majority held that those MPs who voted as agreed were covered by the immunity, while those who did not vote at all (Ajit Singh) were not covered by the immunity under Articles 105(2) and 194(2). This erroneously links the offence of bribery to the performance of the act. In fact, in the impugned judgment as well, the High Court has relied on this

position to hold that the appellant is not covered by the immunity as she eventually did not vote as agreed on and voted for the candidate from her party.

125. The understanding of the law in the judgment of the majority in PV Narasimha Rao (supra) creates an artificial distinction between those who receive the illegal gratification and perform their end of the bargain and those who receive the same illegal gratification but do not carry out the agreed task. The offence of bribery is agnostic to the performance of the agreed action and crystallizes based on the exchange of illegal gratification. The minority judgment also highlighted the prima facie absurdity in the paradox created by the majority judgment. Agarwal, J observed that:

"47. If the construction placed by Shri Rao on the expression "in respect of" is adopted, a Member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner.

It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a Member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a Member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter. Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of".

(emphasis supplied)

126. Indeed, to read Articles 105(2) and 194(2) in the manner proposed in the majority judgment results in a paradoxical outcome. Such an interpretation results in a situation where a legislator is rewarded with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but may eventually decide to vote independently will be prosecuted. Such an interpretation belies not only the text of Articles 105 and 194 but also the purpose of conferring parliamentary privilege on members of the legislature.

H. International position on bribery vis-à-vis privileges

127. The above exposition has sought to elucidate the law governing the subject of parliamentary privileges in India and its implications on a member of the legislature engaging in bribery. It has been the leitmotif of most judgments on the subject in India to delve into the law in other jurisdictions before outlining the position of parliamentary privileges in India. The jurisprudence on parliamentary privileges in India has since grown in its own right and we have referred to the rich jurisprudence of this Court and the history of parliamentary privileges in India.

However, since both the majority and the minority judgments in PV Narasimha Rao (supra) have relied heavily on jurisprudence in foreign jurisdictions, it is appropriate to lay out, in brief, the evolution and position of the law on privileges as it relates to the issue of a bribe received by a member of Parliament in other jurisdictions. We shall first direct our attention to the position of law in the United Kingdom followed by the United States of America, Canada, and Australia.

I. United Kingdom

128. As we have explored above, the law on parliamentary privileges in UK was developed after a struggle by the House of Commons with the Tudor and Stuart Kings. In *The King v. Sir John Elliot*,⁶¹ at the peak of the confrontation between the Commons and the King in 1629, the King's Bench prosecuted three members of the House of Commons, Sir John Elliot, Denzel Hollis and Benjamin Valentine, for making seditious speech, disturbing public tranquillity, and violently holding the Speaker in his position to stop the House from being adjourned.

The members of Parliament were found guilty, fined and imprisoned. Sir John Elliot was sent to be imprisoned in a tower where his health declined and he ultimately passed away. The report of the trial came to be published in 1667 and was noticed by the House of Commons. The House resolved that the judgment was illegal and against the privileges of Parliament. On a writ of error presented by Denzel Hollis, the House of Lords reversed the judgment of the King's Bench.

129. With the glorious revolution of 1688, the last of the Stuart Kings, James, was expelled and a new dynasty was instated. The bitter struggle led to a firmly established constitutional monarchy with the House of Commons ultimately claiming both sovereignty and certain privileges which became ancient and undoubted as a result of the persistence of the House and its gradual recognition. Erskine May notes that:

"at the commencement of every Parliament it has been the custom for the Speaker, in the name, and on behalf of, the Commons, to lay claim by humble petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings."⁶²

130. The clause stipulating freedom of speech in Parliament and immunity from prosecution flows from the Bill of Rights 1689. The Act was a crucial constitutional initiative by Parliament in England to lay claim to its status by grounding it in statute. The statute was to secure Parliament from royal interference in or through the courts. Article IX of the Bill of Rights stipulates:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." The clause guarantees freedom of speech in Parliament and protects it from being "impeached or questioned" in any court or place out of Parliament.

131. Two aspects of Article IX of the Bill of Rights may be outlined at the outset. First, the privilege under Article IX in UK is not attached to individual members only. It immunizes the freedom of speech and debates or proceedings in Parliament and stipulates that it shall not be 'impeached or questioned.' Secondly, Article IX stipulates that the proceedings in Parliament may only be 'impeached or questioned' in Parliament.

This has led to debate as to whether any material from Parliamentary proceedings can be placed before the Courts and whether the jurisdiction of Parliament ousts the jurisdiction of the Courts. As we shall elucidate below, the position as it stands allows for material from Parliamentary proceedings in the UK to be placed before the Court provided that it is not used to imply or argue mala fides behind the action. The courts in the UK have also interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of Parliament to discipline a member for taking bribe would not automatically oust the jurisdiction of the courts.

132. The parliamentary immunity attracted to speech made in Parliament came to be applied in the case of *Ex Parte Wason*,⁶³ where a member of Parliament was accused of conspiring to make a statement which they knew to be false. A person had furnished a petition to Earl Russel to present before the House of Lords which charged the Lord Chief Baron of deliberately telling a falsehood before a Parliamentary committee.

This would have led to the removal of the Lord Chief Baron upon an address by both Houses of Parliament for such a removal. Earl Russel, Lord Chelmsford, and Lord Chief Baron conspired to make speeches in the House of Lords to the effect that the allegations of falsehood were unfounded despite knowing that the allegations were true. The magistrate refused to take the applicant's recognizance on the grounds that a speech made in Parliament could not disclose any indictable offence. The Queen's Bench affirmed the order.

133. Cockburn, CJ opined that speeches made in either House could not give rise to civil or criminal proceedings regardless of the injury caused to the interests of a third person. Concurring with the opinion Lush, J held that:

"I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House."

The Queen's Bench therefore held that a speech made inside the House cannot be questioned in any proceeding before a court in a civil or criminal action and neither can the motives behind the performance of such acts be questioned.

134. The issue of bribery was only governed by common law till 1889. Different common law offences were attracted based on corruption by different offices and their functions. The Public Bodies Corrupt Practices Act 1889, which applied only to local government bodies, created the first statutory offence of corruption. Subsequently, the Prevention of Corruption Act 1906 extended the offence of corruption to the private sector. Neither of these statutes covered the acceptance of bribe by a member of Parliament. In the absence of a statute, the question of taking bribe by a member of Parliament had remained a question of breach of privilege and only the House was empowered to take action against such corruption.

135. The Royal Commission on Standards of Conduct in Public Life, chaired by Lord Salmon, submitted its report in 1976 which inter alia recommended bringing "corruption, bribery and attempted bribery of a Member of Parliament acting in his Parliamentary capacity within the ambit of the criminal law."

While presenting his report to the House of Lords, Lord Salmon said:

"To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake. The passage in the Bill of Rights is:

"That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament."

Now this is a charter for freedom of speech in the House. It is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has no more to do with the topic which we are discussing than the Merchandise Marks Act. The crime of corruption is complete when the bribe is offered or given or solicited and taken.

We have recommended that the Statutes relating to corruption should all be replaced by one comprehensive Statute which will sweep away the present anomalies. If you are not an agent-and Members of Parliament neither of this House nor of the other place are agents-if you are not the member of a public body (and we are not members of public bodies) the Statutes do not touch you. At Common Law you cannot be convicted of bribery and corruption unless you are the holder of an office, and most of us are not the holders of an office."

(emphasis supplied)

136. No action was taken by Parliament on this recommendation of the Salmon Report. However, in *R v. Greenway*,⁶⁴ a member of Parliament was accused of accepting a bribe for helping the interests of a company. A case to quash the prosecution was filed. The member of Parliament asserted that his actions were protected by parliamentary privileges. Rejecting this assertion, Buckley, J held that:

"That a member of Parliament against whom there is a prime facie case of corruption should be immune from prosecution in the courts of law is to my mind an unacceptable proposition at the present time. I do not believe it to be the law."

137. Another commission was constituted after allegations of sleaze by many members of Parliament. The Standing Committee on Standards in Public Life under the Chairmanship of Lord Nolan submitted its report in 1994. The report expressed doubt as to who would have jurisdiction over a bribe taking member of Parliament. To resolve the jurisdictional question between the House and the court the report recommended for clarity from Parliament in the form of a statute. The report recommended that:

"The Salmon Commission in 1976 recommended that such doubt should be resolved by legislation, but this has not been acted upon. We believe that it would be unsatisfactory to leave this issue outstanding when other aspects of the law of Parliament relating to conduct are being clarified. We recommend that the Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament. This could usefully be

combined with the consolidation of the statute law on bribery which Salmon also recommended, which the government accepted, but which has not been done. This might be a task which the Law Commission could take forward."

(emphasis supplied)

This recommendation was referred by the government to the Law Commission. The Law Commission submitted its report in 1998 recommending a new law which makes the offence of corruption applicable to all. This led to a sequence of events which ultimately culminated in the enactment of the Bribery Act 2010. The Act covers instances where members of Parliament engage in corruption.

138. While efforts were being made by lawmakers, the courts in UK continued answering questions on the scope of Article IX of the Bill of Rights on members of Parliament who engage in bribery. The allegations which had led to the constitution of the Nolan committee came before the courts in *R v. Parliamentary Commissioner for Standards Ex Parte Fayed*,⁶⁵ and in *Hamilton v. Al Fayed*.⁶⁶

In the first case, a person had accused a member of Parliament of taking corruption money from him while the member was serving as a minister in the government. The Parliamentary Commissioner of Standards had cleared a member of Parliament of charges pertaining to taking of bribes. The complainant filed for leave to apply for judicial review. The Court of Appeal allowed the application and held that:

"It is important on this application to identify the specific function of the Parliamentary Commissioner for Standards which is the subject of complaint on this application. It is that a Member of Parliament received a corrupt payment. Mr. Pannick rightly says that parliamentary privilege would not prevent the courts investigating issues such as whether or not a Member of Parliament has committed a criminal offence, or whether a Member of Parliament has made a statement outside the House of Parliament which it is alleged is defamatory. He submits that, consistent with this, the sort of complaint which the applicant makes in this case is not in relation to an activity in respect of which the Member of Parliament would necessarily have any form of parliamentary immunity."

(emphasis supplied)

139. In *Hamilton v. Al Fayed* (supra), another case emanating from the same facts against another member of Parliament, a question arose as to whether parliamentary privileges may be waived. The Court while returning specific findings on facts, also held that "courts are precluded from entertaining in any proceedings (whatever the issue which may be at stake in those proceedings)

evidence, questioning or submissions designed to show that a witness in parliamentary proceedings deliberately misled Parliament."

In arriving at such a conclusion the court relied on the judgment in *Prebble v. Television New Zealand*.⁶⁷

140. In the above case, the respondent had transmitted a programme making allegations against the government that a minister had conspired with a businessman and public officials to promote and implement state asset sales with the object of allowing the businessman to obtain assets at unduly favourable terms. The minister sued the channel for defamation. The channel sought to make a defence of truth and place reliance on things said and acts done in Parliament.

It argued that the protection under Article IX of the Bill of Rights would only protect a member from being held liable for his speech in either House. However, they could be placed on record as a defence if it is not being used to inflict liability upon a speech made in either House. The Privy Council held that parties to a litigation cannot bring into question anything said or done in the House or impute any motive to those actions. The Court allowed reliance on the official publication of the House proceedings to the extent that they are not used to suggest that the words were improperly spoken, or any statute was passed for improper use.

141. The question of reliance on legislative material was further weighed in favour of the legislature in 2009. In *Office of Government Commerce v. Information Commissioner (Attorney General intervening)*,⁶⁸ the Queen's Bench Division held that opinions of parliamentary committees would be irrelevant before a court given the nature of their work. This holding was influenced by the words and associated history of Article IX of the Bill of Rights, which is worded more broadly than Clause (2) of Articles 105 and 194 of the Constitution of India. The minority opinion in *PV Narasimha Rao* (supra) throws light on the issue as follows:

"41. The protection given under clause (2) of Article 105 is narrower than that conferred under Article 9 of the Bill of Rights in the sense that the immunity conferred by that clause is personal in nature and is available to the Member in respect of anything said or in any vote given by him in the House or any committee thereof. The said clause does not confer an immunity for challenge in the court on the speech or vote given by a Member of Parliament.

The protection given under clause (2) of Article 105 is thus similar to protection envisaged under the construction placed by Hunt, J. in *R. v. Murphy* [(1986) 5 NSWLR 18] on Article 9 of the Bill of Rights which has not been accepted by the

Privy Council in *Prebble v. Television New Zealand Ltd.* [(1994) 3 All ER 407, PC] The decision in *Ex p Wason* [(1869) 4 QB 573 : 38 LJQB 302] which was given in the context of Article 9 of the Bill of Rights, can, therefore, have no application in the matter of construction of clause (2) of Article 105."

The issue of whether courts can rely on observations contained in Parliamentary committee reports now stands settled by a Constitution Bench of this Court in *Kalpana Mehta* (supra).

142. The majority judgment in *PV Narasimha Rao* (supra) relied on the earlier cases from the UK which generally interpret Article IX to protect speech and debate. Relying on these judgments, the majority extrapolated a general principle of not allowing the production of anything before the courts which may be casually or incidentally related to the acts of a legislator. The Court then grounded this principle by interpreting Article 105(2) in an overbroad manner to attach immunity for bribes received in furtherance of legislative functions. The Court brushed aside the opinion of Buckley, J in *R v. Greenway* on the ground that it remains to be tested in appeal.

The majority therefore failed to contextually apply the different clauses governing the freedom of speech in UK and India. The cases referred to by the majority, while helpful to understand the law generally, do not aid in immunizing bribes received for influencing of votes. As we have noted above, one of the reasons behind the claim of exclusive jurisdiction over bribery by the Parliament was that members of Parliament were not covered by the anti-corruption statute. However, a constitutional interpretation has to answer whether, in the absence of a statute, a member of Parliament can claim immunity for taking corruption money and thereby influence his vote.

143. Since the judgment of this Court in *PV Narasimha Rao* (supra) the courts in UK have narrowly interpreted the immunity under Article IX. In *R v. Chaytor*,⁶⁹ members of Parliament were prosecuted for false accounting for having submitted fake claims and making financial gains. The UK Supreme Court held that the purpose of Article IX of the Bill of Rights is to protect the freedom of speech in the House. The Court opined that the provision must be given a narrower view and held that the prosecution would not violate the privilege of Parliament.

The Court relied on the holding in *Greenway* (supra) that the nexus between a bribe and a speech made in Parliament does not oust the jurisdiction of the courts. The Court therefore opined that submitting a claim for expenses and taking part in such proceedings has an even more tenuous link to parliamentary privileges and cannot be immune from prosecution. The Court applied the test of whether

the action of the member of Parliament which was being questioned bore on the core or essential function of the Parliament. Lord Phillip opined that:

"47. The jurisprudence to which I have referred is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament."

(emphasis supplied)

144. Lord Rodger in the course of his concurring opinion further shed light on the issue being amenable to the contempt jurisdiction of the House of Parliament. Lord Rodger held that this would be an overlapping jurisdiction and would not amount to an ouster of the court's jurisdiction. In *Makudi v. Baron Triesman of Tottenham*,⁷⁰ the Court of Appeal held that a statement made by a witness in public which repeated his testimony before a parliamentary committee would not attract immunity as it was an extra-parliamentary speech which was too remote to the utterance before the parliamentary committee. The Court also opined when the immunity may be attracted. The Court held that:

"25. I accept, however, that there may be instances where the protection of Article 9 indeed extends to extra- Parliamentary speech. No doubt they will vary on the facts, but generally I think such cases will possess these two characteristics:

(1) a public interest in repetition of the Parliamentary utterance which the speaker ought reasonably to serve, and

(2) so close a nexus between the occasions of his speaking, in and then out of Parliament, that the prospect of his obligation to speak on the second occasion (or the expectation or promise that he would do so) is reasonably foreseeable at the time of the first and his purpose in speaking on both occasions is the same or very closely related."

145. The courts in the UK have, overtime, advanced a narrower view than the earlier cases governing the field of privileges. They have interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of courts is not ousted by the immunity of members or the ability of the House to take contempt action against bribery.

II. United States of America

146. Parliamentary privileges in the United States of America emanate from Section 6 of Article 1 in the Constitution. The relevant part of the provision, referred to as the Speech and Debate Clause, is influenced by Article IX of the English Bill of Rights 1689. The clause reads as follows:

"The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

(emphasis supplied)

Courts in the US have given a broad interpretation to the Speech and Debate clause so far as legislative acts of the members of Congress are concerned. Beyond that the Courts have held that a member of Congress may be liable under a criminal statute of general application. All that is prohibited is reliance on the official acts of the member to prove the prosecution case.

147. In *United States v. Thomas F Johnson*,⁷¹ a member of Congress was accused of conflict of interest and conspiring to defraud the United States. The allegation against Johnson was that he entered into a conspiracy to exert influence and obtain dismissal of pending indictments against a saving and loan company and its officers on mail fraud charge. As part of the conspiracy, Johnson made speeches favourable to independent savings and loan associations in the House. The accused was found guilty by the trial court.

His conviction was set aside by the Court of Appeals for the Fourth Circuit on the ground that the allegations were barred under the Speech and Debate Clause from being raised in the Court. The US Supreme Court in interpreting the Speech and Debate Clause held that the Government may not use the speech made by a member of Congress or question its motivation in a court of law. However, the prosecution may make a case without relying on the speech given by the Congressman. The Court opined that its decision does not apply to a prosecution for violating a general criminal law which 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'

148. The US Supreme Court has relied on *Johnson* (supra) in subsequent cases involving bribery by members of Congress to hold that they may be prosecuted

so long as they do not rely on a speech or vote given by the legislator. In *United States v. Brewster*,⁷² a Senator was accused of accepting a bribe in return for being influenced in his performance of official acts with respect to postage rate legislation.

The trial court dismissed the charges on the ground that the Senator attracted parliamentary privileges. The US Supreme Court by majority held that the Speech and Debate Clause prevented prosecutors from introducing evidence that the member of Congress actually performed some legislative act, such as making a speech or introducing legislation, as part of a corrupt plan, but that other evidence might establish that the member had violated the anticorruption laws. The Court held that:

"43. The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process.

60. It is beyond doubt that the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts. So expressed, the privilege is broad enough to insure the historic independence of the Legislative Branch, essential to our separation of powers, but narrow enough to guard against the excesses of those who would corrupt the process by corrupting its Members.

62. The question is whether it is necessary to inquire into how appellee spoke, how he debated, how he voted, or anything he did in the chamber or in committee in order to make out a violation of this statute. The illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that appellee fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."

(emphasis supplied)

The US Supreme Court therefore opined that the privileges exercised by members of Congress individually was to preserve the independence of the legislature. The independence was exactly what would be compromised if the Speech and Debate Clause were to be understood as providing immunity to acts of bribery by members of Congress. Therefore, immunity under the Constitution is only attracted to actions which are clearly a part of the legislative process.

149. The Court in *Brewster* (supra) was conscious of the potential misuse of investigating powers by the Executive but held that a House acting by a majority would be more detrimental to the rights of the accused if it were left to be the final arbiter. The Court noted that a member of Congress would be deprived of the procedural safeguards that Court affords to accused persons. The Court further held that:

"58. We would be closing our eyes to the realities of the American political system if we failed to acknowledge that many non-legislative activities are an established and accepted part of the role of a Member, and are indeed 'related' to the legislative process. But if the Executive may prosecute a Member's attempt, as in *Johnson*, to influence another branch of the Government in return for a bribe, its power to harass is not greatly enhanced if it can prosecute for a promise relating to a legislative act in return for a bribe. We therefore see no substantial increase in the power of the Executive and Judicial Branches over the Legislative Branch resulting from our holding today.

59. As we noted at the outset, the purpose of the Speech or Debate Clause is to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. But financial abuses by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of Members of Congress is unlikely to enhance legislative independence.

63. Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It is not an 'act resulting from the nature, and in the execution, of the office.' Nor is it a 'thing said or done by him, as a representative, in the exercise of the functions of that office,' 4 Mass., at 27.

Nor is inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under this statute or this indictment. When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here or, as in *Johnson*, for use of a Congressman's influence with the Executive Branch. And an inquiry into the purpose of a bribe 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.' 383 U.S., at 185, 86 S.Ct., at 758.

64. Nor does it matter if the Member defaults on his illegal bargain. To make a prima facie case under this indictment, the Government need not show any act of appellee subsequent to the corrupt promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act. If, for example, there were undisputed evidence that a Member took a bribe in exchange for an agreement to vote for a given bill and if there were also undisputed evidence that he, in fact, voted against the bill, can it be thought that this alters the nature of the bribery or removes it from the area of wrongdoing the Congress sought to make a crime?

67. Mr. Justice BRENNAN suggests that inquiry into the alleged bribe is inquiry into the motivation for a legislative act, and it is urged that this very inquiry was condemned as impermissible in Johnson. That argument misconstrues the concept of motivation for legislative acts. The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions. In Johnson, the Court held that, on remand, Johnson could be retried on the conspiracy-to-defraud count, so long as evidence concerning his speech on the House floor was not admitted."

(emphasis supplied)

The Court therefore rejected the idea that anything having a nexus to legislative functions would automatically attract immunity under the Speech and Debate Clause of the US Constitution.

150. In *Gavel v. United States*,⁷³ certain secret documents were made part of the record of a sub-committee hearing in the US Senate by Senator Gavel. He then published the entire document in a private publication. An aide to the Senator was subpoenaed by the grand jury which was investigating the matter. The question which arose for consideration of the US Supreme Court was whether the aide of the Senator enjoyed any immunity under the Speech and Debate Clause and to what extent could he be questioned.

The US Supreme Court held that given the expansive nature of legislative work, an aide to a member of Congress would be protected under the Speech and Debate Clause but only to the extent that it pertained to aiding the legislator in discharge of his legislative functions. The Court further held that private publication of the document was not a necessary part of the functions of the Senator and no immunity would extend in that regard. The Court held that:

"26. Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative

processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House. As the Court of Appeals put it, the courts have extended the privilege to matters beyond pure speech or debate in either House, but 'only when necessary to prevent indirect impairment of such deliberations.' *United States v. Doe*, 455 F.2d, at 760.

27. Here, private publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the Senate; nor does questioning as to private publication threaten the integrity or independence of the Senate by impermissibly exposing its deliberations to executive influence. The Senator had conducted his hearings; the record and any report that was forthcoming were available both to his committee and the Senate.

Insofar as we are advised, neither Congress nor the full committee ordered or authorized the publication. [The sole constitutional claim asserted here is based on the Speech or Debate Clause. We need not address issues that may arise when Congress or either House, as distinguished from a single Member, orders the publication and/or public distribution of committee hearings, reports, or other materials. Of course, Art. I, § 5, cl. 3, requires that each House 'keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy .']

This Clause has not been the subject of extensive judicial examination. See *Field v. Clark*, 143 U.S. 649, 670-671, 12 S.Ct. 495, 496-497, 36 L.Ed. 294 (1892); *United States v. Ballin*, 144 U.S. 1, 4, 12 S.Ct. 507, 508, 36 L.Ed. 321 (1892).] We cannot but conclude that the Senator's arrangements with Beacon Press were not part and parcel of the legislative process."

(emphasis supplied)

151. The Court in *Gavel* (supra) applied the same standard it did in *Brewster* (supra) to hold that only acts which are essential to the deliberations of the House or in discharge of the functions vested under the Constitution are immune from prosecution before a court of law. Other acts which may in some way be related to the speech or vote of a legislator will not be protected under the Speech and Debate Clause unless they were essential to the legislator's function. The Court therefore held a consistent position that members of Congress would only have immunity under the Constitution for their 'sphere of legitimate legislative activity.'

152. In *United States v. Helstoski*,⁷⁴ a member of the House of Representatives was accused of accepting money in return for introducing certain private bills to suspend the application of immigration laws. Relying on its previous rulings in *Johnson* (supra), *Brewster* (supra) and *Gavel* (supra) the US Supreme Court held that the purpose of the Speech and Debate Clause was to free the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator.

The Court reaffirmed the position of American law that material from the legislative acts of the accused Congressman may not be relied on or placed before the grand jury but proof of bribe and promise to commit a future legislative act may be investigated as they do not constitute an essential function of the legislator in discharge of his duties.

153. We may helpfully refer to another decision before concluding the analysis of the position of law in the United States. In *Hutchinson v. Proxmire*,⁷⁵ a Senator would release a publication highlighting what he perceived to be "wasteful government spending". The Senator made a speech on the floor of the Senate and had it published in the press. The complainant, who was funded by public institutes for his research, was named by the Senator.

The press release was circulated to over one hundred thousand people including agencies which funded the research of the complainant. The complainant filed a suit claiming loss of respect in his profession, loss of income and the ability to earn income in the future. The District Court granted summary judgment in favour of the Senator, holding that the publication fell under the 'information function' of Congress and would be immune under the Speech and Debate Clause.

154. The US Supreme Court held that the intention of the Speech and Debate Clause was not to create an absolute privilege in favour of members of Congress. The clause, the Court held, is only attracted to "legislative activities" and would not protect republishing of defamatory statements. The Court held that:

"Whatever imprecision there may be in the term "legislative activities," it is clear that nothing in history or in the explicit language of the clause suggests any intention to create an absolute privilege from liability or suit for defamatory statements made outside the Chamber. Claims under the clause going beyond what is needed to protect legislative independence are to be closely scrutinized. Indeed, the precedents abundantly support the conclusion that a Member may be held liable for republishing defamatory statements originally made in either House. We perceive no reason from that long-established rule."

(emphasis supplied)

155. The principle which emerges from the approach taken with regard to privileges in the United States is that a member of Congress is not immune for engaging in bribery to perform legislative acts in terms of speech or vote. The Speech and Debate Clause does not give any absolute immunity to a legislator with respect to all things bearing a nexus with legislative activity. The immunity is attracted only to those functions which are essential and within the legitimate sphere of legislative business. The only privilege a Congressperson may attract in a prosecution is that the content of the speech, vote or legislative acts may not be produced as evidence by the prosecution.

156. The majority judgment in *PV Narasimha Rao* (supra) has interpreted *Johnson* (supra) and the dissenting opinion in *Brewster* (supra) to arrive at the same conclusion which it did upon a reflection of the law in the UK. Here too, the majority judgment fails on two accounts. Firstly, it fails to account for the fact that the Speech and Debate Clause which is substantially borrowed from Article IX of the English Bill of Rights confers immunity to the speech and vote made in parliament.

The understanding arrived at in the majority judgment was not informed by the evolution of law in a line of cases in the United States. On the contrary, the majority judgment relied solely on the dissenting opinion in *Brewster* (supra) without adequate substantiation for such reliance. Secondly, the majority judgment has extended its interpretation of the Speech and Debate Clause and pigeon-holed the interpretation of Article 105(2) to satisfy this understanding.

III. Canada

157. The precise question of whether bribing legislators to vote in a certain direction falls within the ambit of parliamentary privilege was adjudicated upon by the Queen's Bench in *R v. Bunting et al.*⁷⁶ In that case, the defendants had sought the quashing of an indictment for conspiracy to change the Government of the Province of Ontario by bribing members of the legislature to vote against the government.

The Court conclusively held that the offence of bribery and conspiracy to bribe members of the legislature fell within the jurisdiction of the court and such an inquiry would not encroach on parliamentary privilege. Further, it was held that if the defendants were proceeded against by the court, they may also be parallelly inquired against by the legislature for violation of rights and privileges. The proceedings are for different offences, may be conducted in their own right and

such situations do not constitute a case of double punishment or double jeopardy. The Court (speaking through Wilson, CJ) held:

"It is to my mind a proposition very clear that this Court has jurisdiction over the offence of bribery as at the common law in a case of this kind, where a member of the Legislative Assembly is concerned either in the giving or in the offering to give a bribe, or in the taking of it for or in respect of any of his duties as a member of that Assembly; and it is equally clear that the Legislative Assembly has not the jurisdiction which this Court has in a case of the kind; and it is also quite clear that the ancient definition of bribery is not the proper or legal definition of that offence. There is nothing more definitely settled than that the House of Commons in England, and the different colonial Legislatures, have not, and never have had, criminal jurisdiction.

But if these three persons had agreed that the two members of the House of Lords should make these false statements, or vote in any particular manner, in consideration of a bribe paid or to be paid to them, that would have been a conspiracy to do an act, not necessarily illegal perhaps, but to do the act by illegal means, bribery being an offence against the law; and the offence of conspiracy would have been complete by reason of the illegal means by which the act was to be effected. That offence could have been inquired into by the Court, because the inquiry into all that was done would have been of matters outside of the House of Lords, and there could therefore be no violation of, or encroachment in any respect upon, the *lex parliament*".

(emphasis supplied)

158. The decision in *Bunting* (supra) was before the Court in *PV Narasimha Rao* (supra). The Minority expressly relied on the decision, recognizing that bribing a legislator was treated as a common law offence under the criminal law in Canada and Australia and a legislator can be prosecuted in a criminal court for the offence. Agarwal, J noted:

"54. In Australia and Canada where bribery of a legislator was treated as an offence at common law the courts in *White* [13 SCR (NSW) 332], *Boston* [(1923) 33 CLR 386] and *Bunting* [(1884-85) 7 Ontario Reports 524] had held that the legislator could be prosecuted in the criminal court for the said offence. It cannot, therefore, be said that since acceptance of bribe by a Member of the House of Commons was treated as a breach of privilege by the House of Commons and action could be taken by the House for contempt against the Member, the Members of the House of Commons, on 26-1-1950, were enjoying a privilege that in respect of conduct involving acceptance of bribe in connection with the business of Parliament, they could only be punished for breach of

privilege of the House and they could not be prosecuted in a court of law. Clause (3) of Article 105 of the Constitution cannot, therefore, be invoked by the appellants to claim immunity from prosecution in respect of the charge levelled against them.

55. In the earlier part of the judgment we have found that for the past more than 100 years legislators in Australia and Canada are liable to be prosecuted for bribery in connection with their legislative activities and, with the exception of the United Kingdom, most of the Commonwealth countries treat corruption and bribery by Members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There appears to be no reason why legislators in India should be beyond the pale of laws governing bribery and corruption when all other public functionaries are subject to such laws. We are, therefore, unable to uphold the above contention of Shri Thakur."

(emphasis supplied)

The majority judgment, on the other hand, makes a reference to Bunting (supra) but chooses to not rely on the judgment or any other judgment by Canadian courts placed on record in the case.

159. Another interesting line of jurisprudence, expanded by the Supreme Court of Canada after the decision in PV Narasimha Rao (supra), is relevant to answer the question before this Court. While dealing with the remit of parliamentary privilege, the Supreme Court of Canada has adopted the test of 'necessity' in a formulation similar to the test formulated in Part F of this judgment. In this regard, the landmark decision of the Supreme Court of Canada in Canada (House of Commons) v. Vaid,⁷⁷ may be noted in some detail.

160. In the above case, the former Speaker of the House of Commons was accused of dismissing his chauffeur for reasons that allegedly constituted workplace discrimination under the Canadian Human Rights Act, 1985. This was resisted by the House of Commons which contended that such an inquiry constituted an encroachment on parliamentary privilege and the hiring and firing of House employees are "internal affairs" which may not be questioned or reviewed by any tribunal or court apart from the House itself. The court did not accept this contention.

161. The Supreme Court of Canada held that legislative bodies do not constitute enclaves shielded from the ordinary law of the land. The party that seeks to rely on immunity under the broader umbrella of parliamentary privilege has the onus of establishing its existence. In Canada, the House of Commons in the UK is used

as the benchmark to determine the existence of parliamentary privilege. Therefore, to determine whether a privilege does in fact exist, the first step is to scrutinize if it is authoritatively established in relation to the Canadian Parliament or the House of Commons.

If the existence is not established, the doctrine of necessity is to be applied to determine if the act is protected by parliamentary privilege. In essence, the legislature or the member seeking immunity must prove that the activity for which privilege is claimed is closely and directly connected with the fulfilment by the legislature of its functions and that external interference would impact the autonomy required for the assembly to carry out its functions with "dignity and efficiency".

162. The Supreme Court of Canada held as follows:

"While much latitude is left to each House of Parliament, such a purposive approach to the definition of privilege implies important limits. There is general recognition, for example, that privilege attaches to "proceedings in Parliament". Nevertheless, as stated in *Erskine May* (19th ed. 1976), at p. 89, not "everything that is said or done within the Chamber during the transaction of business forms part of proceedings in Parliament. Particular words or acts may be entirely unrelated to any business which is in course of transaction or is in a more general sense before the House as having been ordered to come before it in due course." (This passage was referred to with approval in *Re Clark*.)

Thus in *R. v. Bunting* (1885), 7 O.R. 524, for example, the Queen's Bench Division held that a conspiracy to bring about a change in the government by bribing members of the provincial legislature was not in any way connected with a proceeding in Parliament and, therefore, the court had jurisdiction to try the offence. *Erskine May* (23rd ed.) refers to an opinion of "the Privileges Committee in 1815 that the re-arrest of Lord Cochrane (a Member of the Commons) in the Chamber (the House not sitting) was not a breach of privilege. Particular words or acts may be entirely unrelated to any business being transacted or ordered to come before the House in due course.

All of these sources point in the direction of a similar conclusion. In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency."

(emphasis supplied)

163. Similarly, the decision of the Supreme Court of Canada in *Chagnon v. Syndicat de la fonction publique et parapublique du QuÃ©bec*,⁷⁸ relies on *Vaid* (supra) and adopts the test of 'necessity' in similar terms. In that case, security guards who were employed by the National Assembly of QuÃ©bec were dismissed from service by the President of the assembly. The dismissal was assailed before the labour arbitrator. This was objected to on the ground that the decision to dismiss the guards is not subject to review and is protected by parliamentary privilege.

The Supreme Court of Canada, in its majority opinion, held that the dismissal of the security guards was not protected by parliamentary privilege. The Court opined that the inherent nature of parliamentary privilege indicates that its scope must be anchored to its rationale, i.e. to protect legislatures in the discharge of their legislative and deliberative functions. A court recognizing a parliamentary privilege entails that the court cannot review its exercise.

Therefore, a purposive approach must be adopted to ensure that it is only as broad as necessary to perform the assembly's constitutional role. In the factual context, the Court held that the necessity of a parliamentary privilege over the management of the security guards could not be established. The management of guards could be dealt with under ordinary law without impeding the security of the assembly or its ability to deliberate on issues.

IV. Australia

164. The position of law in Australia has been consistent since 1875. The courts have held that an attempt to bribe a member of the legislature to influence their votes constitutes a criminal offence under common law. The decision of the Supreme Court of New South Wales in *R v. Edward White*⁷⁹ was a landmark in this regard. Sir James Martin (CJ) observed:

"The point now for the consideration of the Court, whether or not the objection so taken is a valid one, or in other words, whether an attempt to bribe a member of the Legislative assembly is a criminal offence. I am clearly of the opinion that such an attempt is a misdemeanor at common law. Although no case can be found on an information or indictment against a person for attempting to bribe a member of the Legislature, there are several cases which show that such an attempt is an offence.

The injury to the public is more direct and is certainly greater in tampering with the person actually elected than with the persons who elect him. A person sent into the Legislature by means of votes corruptly obtained may be an able and

conscientious member; but a legislator who suffers his vote to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundation. It would be a reproach to the common law if the offer to, or the acceptance of, a bribe by such a person were not an offence."

(emphasis supplied)

Similarly, Justice Hargrave also observed as follows:

"These numerous modern authorities clearly establish that the old common law prohibition against bribery has been long since extended beyond mere judicial officers acting under oaths of office, to all persons whatever holding offices of public trust and confidence; and it seems impossible to understand why members of our Legislative Assembly and Legislative council, who are entrusted with the public duty of enacting our laws, should not be at least equally protected from bribery and corruption as any Judge or constable who has to carry out the law."

(emphasis supplied)

165. Subsequently, the decision in *White* (supra) was also followed by the High Court of Australia in *R v. Boston*.⁸⁰ This was a case where certain private parties entered into an agreement to bribe members of the legislative assembly such that they would use their official position to secure the acquisition of certain estates. The argument that was advanced before the Court was unique. The appellant did not dispute the proposition established in *White* (supra) that an agreement to pay money to a member of the assembly to influence their vote would amount to a criminal offence.

However, it was submitted that the bribe in this case was to induce the member of the assembly to use his position outside and not inside the assembly in favour of the bribe-givers. The Court rejected the artificial distinction between illegal gratification to perform acts inside the parliament and acts outside the parliament and held that in both cases, the act of bribery impairs the capacity of the member to exercise a disinterested judgment, thereby, impacting their ability to act as a representative of the people. Knox, CJ held:

"In my opinion, the payment of money to, and the receipt of money by, a member of Parliament to induce him to use his official position, whether inside or outside Parliament, for the purpose of influencing or putting pressure on a Minister or other officer of the Crown to enter into or carry out a transaction involving payment of money out of the public funds, are acts tending to the public mischief, and an agreement or combination to do such acts amounts to a criminal offence.

From the point of view of tendency to public mischief I can see no substantial difference between paying money to a member to induce him to use his vote in Parliament in a particular direction and paying him money to induce him to use his position as a member outside Parliament for the purpose of influencing or putting pressure on Ministers. Payment of money to a member of Parliament to induce him to persuade or influence or put pressure on a Minister to carry out a particular transaction tends to the public mischief in many ways, irrespective of whether the pressure is to be exercised by conduct inside or outside Parliament.

It operates as an incentive to the recipient to serve the interest of his paymaster regardless of the public interest, and to use his right to sit and vote in Parliament as a means to bring about the result which he is paid to achieve. It impairs his capacity to exercise a disinterested judgment on the merits of the transaction from the point of view of the public interest and makes him a servant of the person who pays him, instead of a representative of the people."

(emphasis supplied)

166. Courts in Australia have also followed the position of law laid down by the Supreme Court of the UK in *Chaytor* (supra) that the House of Commons does not have exclusive jurisdiction to deal with criminal conduct by members of the House. The only exception to such cases is when the existence of parliamentary privilege makes it virtually impossible to determine the issues or if the proceedings interfere with the ability of the House to conduct its legislative and deliberative business. For instance, in *Obeid v. Queen*⁸¹, the appellant was charged with the offence of misconduct in office by using his position to gain a pecuniary advantage for himself.

One of the grounds argued before the Court of Criminal Appeal for New South Wales was that since Parliament had the power to deal with such contraventions by members of the assembly, the court should have refrained from exercising jurisdiction. The Court followed *Chaytor* (supra) to hold that the Court and Parliament may have concurrent jurisdiction in respect of criminal matters and there was no law which prohibited the court from determining matters that do not constitute "proceedings in parliament".

167. The decisions in *White* (supra) and *Boston* (supra) were placed before the Court in *PV Narasimha Rao* (supra). The minority judgment discussed both judgments in detail and relied on them to conclude that giving a bribe to influence a legislator to vote or speak in Parliament constitutes a criminal offence, which is not protected by Articles 105(2) and 194(2). The majority judgment, however, does not refer to the Australian precedents.

I. Elections to the Rajya Sabha are within the remit of Article 194(2)

168. We may lastly direct our attention to an argument raised by Mr Venkataramani, the learned Attorney General. The Attorney General submitted that the decision PV Narasimha Rao (supra) is inapplicable to the facts of the present case. The factual situation in PV Narasimha Rao (supra) pertained to a no-confidence motion, while in the present case, the appellant voted to fill vacant seats in the Council of States or the Rajya Sabha. In the counter affidavit filed by the Respondent, it was submitted that since polling for the Rajya Sabha Election was held outside the house in the lobby, it cannot be considered as a proceeding of the House like a no-confidence motion.

However, during oral arguments and in his written submissions, the Attorney General premised the argument that polling to the Rajya Sabha is not protected by Article 194(2) on the ground that such an election does not form part of the legislative proceedings of the House regardless of the geographical location of the election. To buttress this argument, the Attorney General relied on three judgments of this Court in Pashupati Nath Sukul v. Nem Chandra Jain and Ors., 82 Madhukar Jetly v. Union of India,⁸³ and Kuldip Nayar v. Union of India.⁸⁴

169. Such an argument, although attractive at first blush, appears to be misconceived. In essence, the question is whether votes cast by elected members of the state legislative assembly in an election to the Rajya Sabha are protected by Article 194(2) of the Constitution. Before addressing the judgments relied on by the learned Attorney General, we will analyze the provisions of the Constitution that govern this interesting question of constitutional interpretation.

170. Article 80 governs the election of members to the Council of States or the Rajya Sabha. The provision reads as follows:

"80. Composition of the Council of States.-

(1) The Council of States shall consist of-

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(b) not more than two hundred and thirty-eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(4) The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote."

(emphasis supplied)

171. Pursuant to Article 80, the Rajya Sabha consists of twelve members who are nominated by the President and not more than two hundred and thirty-eight representatives of the States and Union Territories. Significantly, under Article 80(4), the representatives of the Rajya Sabha shall be elected by the elected members of the Legislative Assembly of the states. Therefore, the power to 'vote' for the elected members of the Rajya Sabha is solely entrusted to the elected members of the Legislative Assemblies of the states. It constitutes an integral part of their powers and responsibilities as members of the legislative assemblies of each of the states.

172. The next question that arises, therefore, is whether the text of Article 194(2) places any restriction on such a vote being protected by parliamentary privilege. As stated above, Article 194(2) of the Constitution reads as follows:

"194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.-

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes, or proceedings."

173. The marginal note to Article 194 uses the phrase "powers, privileges, etc. of the Houses of Legislatures and of the members and committees thereof." It is a settled position of law that the marginal note to a section in a statute does not control the meaning of the body of the section if the language employed is clear. With reference to Articles of the Constitution, a marginal note may be used as a tool to provide "some clue as to the meaning and purpose of the Article". However, the real meaning of the Article is to be derived from the bare text of the Article. When the language of the Article is plain and ambiguous, undue importance cannot be placed on the marginal note appended to it.⁸⁵ In *Kesavananda Bharati v. State of Kerala*,⁸⁶ Hegde, J (speaking for himself and A K Mukherjea, J) observed as follows:

"620. To restate the position, Article 368 deals with the amendment of the Constitution. The Article contains both the power and the procedure for

amending the Constitution. No undue importance should be attached to the marginal note which says "Procedure for amendment of the Constitution". Marginal note plays a very little part in the construction of a statutory provision. It should have much less importance in construing a constitutional provision.

The language of Article 368 to our mind is plain and unambiguous. Hence we need not call into aid any of the rules of construction about which there was great deal of debate at the hearing. As the power to amend under the Article as it originally stood was only implied, the marginal note rightly referred to the procedure of amendment. The reference to the procedure in the marginal note does not negative the existence of the power implied in the Article."

(emphasis supplied)

174. Distinct from the marginal note, in the text of the provision, there is a conscious use of the term "Legislature" instead of the "House of Legislature" at appropriate places. It is evident from the drafting of the provision that the two terms have not been used interchangeably. The first limb of Article 194(2) pertains to "anything said or any vote given by him in the Legislature or any committee thereof".

However, in the second limb, the phrase used is "in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes, or proceedings." There is a clear departure from the term 'Legislature' which is used in the first limb, to use the term "House of such a Legislature" in the second limb of the provision. It is clear, therefore, that the provision creates a distinction between the "Legislature" as a whole (in the first limb) and the "House" of the same legislature (in the second limb).

175. As correctly submitted by Mr Raju Ramachandran, senior counsel for the appellant, the terms "House of Legislature" and "Legislature" have different connotations. "House of Legislature" refers to the juridical body, which is summoned by the Governor pursuant to Article 174.⁸⁷ The term "Legislature", on the other hand, refers to the wider concept under Article 168,⁸⁸ comprising the Governor and the Houses of the Legislature. It functions indefinitely and continues to exist even when the Governor has not summoned the House.

176. The use of the phrase "in the Legislature" instead of "House of Legislature" is significant. There are several parliamentary processes which do not take place on the floor of the House, i.e. when it is in session, having been summoned by the Governor. For instance, there are ad hoc committees and standing committees which examine various issues, including matters of policy or government administration. Many of these committees do not deliberate on laws or bills

tabled in the House or cease to function when the 'House' is not sitting. There appears to be no reason why the deliberations that take place in such committees ("anything said") would not be protected by parliamentary privilege.

177. The elections to the Rajya Sabha conducted under Article 80 as referred to above, may also take place when the House is not in session as seats may fall vacant when the legislative assembly of the state is not in session. However, the elections remain a part of the functioning of the Legislature and take place within the precincts of the Legislative Assembly.

Similarly, the elections for the President of India under Article 54⁸⁹ and for the Vice President under Article 66⁹⁰ may also take place when Parliament or the state legislative assemblies are not in session. However, they are an integral part of the powers and responsibilities of elected members of the Parliament and state legislative assemblies. The vote for such elections is given in the Legislature or Parliament, which is sufficient to invoke the protection of the first limb of Articles 105(2) and 194(2).

Such processes are significant to the functioning of the legislature and in the broader structure of parliamentary democracy. There appears to be no restriction either in the text of Article 105(2) and Article 194(2), which pushes such elections outside of the protection provided by the provisions. Further, the purpose of parliamentary privilege to provide legislators with the platform to "speak" and "vote" without fear is equally applicable to elections to the Rajya Sabha and elections for the President and Vice President as well.

178. We will now address the cases relied on by the Attorney General to advance his argument. In Pashupati Nath Sukul (supra), a bench of three judges of this Court held that a member of the legislative assembly may propose a candidature for a seat in and vote at an election to the Rajya Sabha even before taking the constitutional oath required under Article 188 of the Constitution.

The Court observed that an election to fill seats in the Rajya Sabha does not form a part of the legislative proceedings of the House nor do they constitute a vote given in the House on any issue arising before it. Therefore, it is not hit by Article 193 of the Constitution which states that a member of the Legislative Assembly cannot sit and vote in the House before subscribing to the oath. Interestingly, the Court also noted that in the intervening period between the name of the elected member appearing in the notification and the member taking the constitutional oath, she is entitled to all the privileges, salaries, and allowances of a member of the Legislative Assembly.

It is clear that the Court recognized that members of the legislative assembly are entitled to privileges even when they cannot participate or are not participating in 'law-making'. One of these privileges is the parliamentary privilege bestowed on members of the legislative assembly under Article 194. The Court held as follows:

"18. The rule contained in Article 193 of the Constitution, as stated earlier, is that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words "sitting and voting" in Article 193 of the Constitution imply the summoning of the House under Article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting.

An elected member incurs the penalty for contravening Article 193 of the Constitution only when he sits and votes at such a meeting of the House. Invariably there is an interval of time between the constitution of a House after a general election as provided by Section 73 of the Act and the summoning of the first meeting of the House. During that interval an elected member of the Assembly whose name appears in the notification issued under Section 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly, one of them being the right to function as an elector at an election held for filling a seat in the Rajya Sabha.

That is the effect of Section 73 of the Act which says that on the publication of the notification under it the House shall be deemed to have been constituted. The election in question does not form a part of the legislative proceedings of the House carried on at its meeting. Nor the vote cast at such an election is a vote given in the House on any issue arising before the House. The Speaker has no control over the election. The election is held by the Returning Officer appointed for the purpose.

As mentioned earlier, under Section 33 of the Act the nomination paper has to be presented to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon before the last day notified for making nominations under Section 30 of the Act. Then all further steps such as scrutiny of nominations and withdrawal of nominations take place before the Returning Officer.

Rule 69 of the Conduct of Elections Rules, 1961 provides that at an election by Assembly members where a poll becomes necessary, the Returning Officer for such election shall, as soon as may be after the last date for the withdrawal of candidatures, send to each elector a notice informing him of the date, time and

place fixed for polling. Part VI of the Conduct of Elections Rules, 1961 which contains Rule 69 and Part VII thereof deal with the procedure to be followed at an election by Assembly members.

Rule 85 of the Conduct of Elections Rules, 1961 provides that as soon as may be after a candidate has been declared to be elected, the Returning Officer shall grant to such candidate a certificate of election in Form 24 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the Council of States or as the case may be, the Secretary of the Legislative Council. All the steps taken in the course of the election thus fall outside the proceedings that take place at a meeting of the House."

(emphasis supplied)

179. In *Madhukar Jetley* (supra), the Court relied on *Pashupati Nath Sukul* (supra) and reiterated that an election to the Rajya Sabha does not form part of the legislative proceedings of the House and the vote cast at such an election does not constitute a vote given at a sitting of the House. Pertinently, both *Pashupati Nath Sukul* (supra) and *Madhukar Jetley* (supra) did not relate to any question bearing on the interpretation and scope of Article 194(2) or any claim for parliamentary privilege.

180. As stated above, there is no dispute with the proposition that elections to the Rajya Sabha are not part of the law-making functions and do not take place during a sitting of the House. However, the text of Article 194 consciously uses the term 'Legislature' instead of 'House' to include parliamentary processes which do not necessarily take place on the floor of the House or involve 'lawmaking' in its pedantic sense.

181. Finally, the learned Attorney General placed reliance on *Kuldip Nayar* (supra). In this case, a Constitution bench of this Court was adjudicating the validity of an amendment to the Representation of the People Act, 1951 by which (a) the requirement that a candidate for elections to the Rajya Sabha be an elector from a constituency in the state was removed; and (b) an open ballot was introduced in the elections to the Rajya Sabha.

182. One of the submissions before the Court to assail the use of open ballots in elections to the Rajya Sabha was that the votes are protected by Article 194(2). It was contended that the right to freedom of speech guaranteed to MLAs under Articles 194(1) and (2) is different from the right to free speech and expression under Article 19(1)(a), which is subject to reasonable restrictions.

It was urged that the absolute freedom to vote under Article 194(2) of the Constitution was being diluted through a statutory amendment to the Representation of the People Act, 1951 permitting open ballots. While addressing this argument, the Court held that elections to fill seats in the Rajya Sabha are not proceedings of the legislature but a mere exercise of franchise, which falls outside the net of Article 194. The Court (speaking through YK Sabharwal, CJ) held as follows:

"Arguments based on Legislative Privileges and the Tenth Schedule

372. It is the contention of the learned counsel that the same should be the interpretation as to the scope and tenor of the provision contained in Article 194(2) concerning the privileges of the Members of the Legislative Assemblies of the States who constitute Statewise electoral colleges for electing representatives of each State in the Council of States under the provisions of Article 80(4). The counsel argue that the freedom of expression without fear of legal consequences as flowing from Article 194(2) should inure to the Members of the Legislative Assemblies while discharging their function as electoral college under Article 80(4).

373. This argument, though attractive, does not deserve any credence in the context at hand. The proceedings concerning election under Article 80 are not proceedings of the "House of the Legislature of the State" within the meaning of Article 194. It is the elected Members of the Legislative Assembly who constitute, under Article 80 the electoral college for electing the representative of the State to fill the seat allocated to that State in the Council of States.

It is noteworthy that it is not the entire Legislative Assembly that becomes the electoral college, but only the specified category of members thereof. When such members assemble at a place, they do so not to discharge functions assigned under the Constitution to the Legislative Assembly. Their participation in the election is only on account of their ex-officio capacity of voters for the election. Thus, the act of casting votes by each of them, which also need not occur with all of them present together or at the same time, is merely exercise of franchise and not proceedings of the legislature."

(emphasis supplied)

183. The protection under Article 105 and Article 194 guarantees that the vote of an elected member of Parliament or the state legislature, as the case may be, cannot be the subject of proceedings in court. It does not guarantee a "secret ballot". In fact, even when elected members of Parliament or of the state legislature vote on Bills during a sitting of the House, which undisputedly falls

within the ambit of Articles 105 and 194, they are not assured of a secret ballot. While voting is ordinarily carried out by a voice vote, members of the legislature can seek what is referred to as a "division vote."

In such a case the division of votes, i.e. which member voted in favour or against the motion is visible to the entire House and the general public. It cannot be gainsaid that the purpose of parliamentary privilege under Article 194(2) is not to provide the legislature with anonymity in their votes or speeches in Parliament but to protect them from legal proceedings pertaining to votes which they cast or speeches which they make. That the content of the votes and speeches of their elected representatives be accessible to citizens is an essential part of parliamentary democracy.

184. Mr Raju Ramachandran, senior counsel on behalf of the appellant has argued that the observations in *Kuldip Nayar (supra)* do not constitute the ratio decidendi of the judgment and are obiter. It is trite law that this Court is only bound by the ratio of the previous decision. There may be some merit to this contention. However, in any event, this being a combination of seven judges of this Court, it is clarified that voting for elections to the Rajya Sabha falls within the ambit of Article 194(2). On all other counts, the decision of the Constitution bench in *Kuldip Nayar (supra)* remains good law.

185. Interestingly, *Kuldip Nayar (supra)* is yet another case where the Court relied on the minority judgment in *PV Narasimha Rao (supra)* to strengthen the proposition that while interpreting the Constitution, the Court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. Applying this proposition of law to the question of whether voting to the Rajya Sabha is covered within the ambit of Article 194(2) also brings us to a similar conclusion.

186. One of us (DY Chandrachud, J) in *K.S. Puttaswamy (Aadhaar-5J.) v. Union of India*,⁹¹ had occasion to reflect on the significance of the Rajya Sabha and bicameralism on the "foundations of our democracy". It was observed that:

"1106. The institutional structure of the Rajya Sabha has been developed to reflect the pluralism of the nation and its diversity of language, culture, perception and interest. The Rajya Sabha was envisaged by the Makers of the Constitution to ensure a wider scrutiny of legislative proposals. As a second chamber of Parliament, it acts as a check on hasty and ill-conceived legislation, providing an opportunity for scrutiny of legislative business. The role of the Rajya Sabha is intrinsic to ensuring executive accountability and to preserving a balance of power.

The Upper Chamber complements the working of the Lower Chamber in many ways. The Rajya Sabha acts as an institution of balance in relation to the Lok Sabha and represents the federal structure of India. Both the existence and the role of the Rajya Sabha constitute a part of the basic structure of the Constitution. The architecture of our Constitution envisions the Rajya Sabha as an institution of federal bicameralism and not just as a part of a simple bicameral legislature. Its nomenclature as the "Council of States" rather than the "Senate" appropriately justifies its federal importance.

1108. As a revising chamber, the Constitution-Makers envisioned that it will protect the values of the Constitution, even if it is against the popular will. The Rajya Sabha is a symbol against majoritarianism.

1110. Participatory governance is the essence of democracy. It ensures responsiveness and transparency. An analysis of the Bills revised by the Rajya Sabha reveals that in a number of cases, the changes recommended by the Rajya Sabha in the Bills passed by the Lok Sabha were eventually carried out. The Dowry Prohibition Bill is an example of a legislation in which the Rajya Sabha's insistence on amendments led to the convening of a joint sitting of the two Houses and in that sitting, one of the amendments suggested by the Rajya Sabha was adopted without a division.

The Rajya Sabha has a vital responsibility in nation building, as the dialogue between the two Houses of Parliament helps to address disputes from divergent perspectives. The bicameral nature of Indian Parliament is integral to the working of the federal Constitution. It lays down the foundations of our democracy. That it forms a part of the basic structure of the Constitution, is hence based on constitutional principle. The decision of the Speaker on whether a Bill is a Money Bill is not a matter of procedure. It directly impacts on the role of the Rajya Sabha and, therefore, on the working of the federal polity."

(emphasis supplied)

187. The Rajya Sabha or the Council of States performs an integral function in the working of our democracy and the role played by the Rajya Sabha constitutes a part of the basic structure of the Constitution. Therefore, the role played by elected members of the state legislative assemblies in electing members of the Rajya Sabha under Article 80 is significant and requires utmost protection to ensure that the vote is exercised freely and without fear of legal persecution. The free and fearless exercise of franchise by elected members of the legislative assembly while electing members of the Rajya Sabha is undoubtedly necessary for the dignity and efficient functioning of the state legislative assembly.

Any other interpretation belies the text of Article 194(2) and the purpose of parliamentary privilege. Indeed, the protection under Articles 105 and 194 has been colloquially called a "parliamentary privilege" and not "legislative privilege" for a reason. It cannot be restricted to only law-making on the floor of the House but extends to other powers and responsibilities of elected members, which take place in the Legislature or Parliament, even when the House is not sitting.

J. Conclusion

188. In the course of this judgment, while analysing the reasoning of the majority and minority in PV Narasimha Rao (supra) we have independently adjudicated on all the aspects of the controversy namely, whether by virtue of Articles 105 and 194 of the Constitution a Member of Parliament or the Legislative Assembly, as the case may be, can claim immunity from prosecution on a charge of bribery in a criminal court. We disagree with and overrule the judgment of the majority on this aspect. Our conclusions are thus:

188.1. The doctrine of stare decisis is not an inflexible rule of law. A larger bench of this Court may reconsider a previous decision in appropriate cases, bearing in mind the tests which have been formulated in the precedents of this Court. The judgment of the majority in PV Narasimha Rao (supra), which grants immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for casting a vote or speaking has wide ramifications on public interest, probity in public life and parliamentary democracy. There is a grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered;

188.2. Unlike the House of Commons in the UK, India does not have 'ancient and undoubted' privileges which were vested after a struggle between Parliament and the King. Privileges in pre-independence India were governed by statute in the face of a reluctant colonial government. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution;

188.3. Whether a claim to privilege in a particular case conforms to the parameters of the Constitution is amenable to judicial review;

188.4. An individual member of the legislature cannot assert a claim of privilege to seek immunity under Articles 105 and 194 from prosecution on a charge of bribery in connection with a vote or speech in the legislature. Such a claim to immunity fails to fulfil the twofold test that the claim is tethered to the collective functioning of the House and that it is necessary to the discharge of the essential duties of a legislator;

188.5. Articles 105 and 194 of the Constitution seek to sustain an environment in which debate and deliberation can take place within the legislature. This purpose is destroyed when a member is induced to vote or speak in a certain manner because of an act of bribery;

188.6. The expressions "anything" and "any" must be read in the context of the accompanying expressions in Articles 105(2) and 194(2). The words "in respect of" means 'arising out of' or 'bearing a clear relation to' and cannot be interpreted to mean anything which may have even a remote connection with the speech or vote given;

188.7. Bribery is not rendered immune under Article 105(2) and the corresponding provision of Article 194 because a member engaging in bribery commits a crime which is not essential to the casting of the vote or the ability to decide on how the vote should be cast. The same principle applies to bribery in connection with a speech in the House or a Committee;

188.8. Corruption and bribery by members of the legislatures erode probity in public life;

188.9. The jurisdiction which is exercised by a competent court to prosecute a criminal offence and the authority of the House to take action for a breach of discipline in relation to the acceptance of a bribe by a member of the legislature exist in distinct spheres. The scope, purpose and consequences of the court exercising jurisdiction in relation to a criminal offence and the authority of the House to discipline its members are different;

188.10. The potential of misuse against individual members of the legislature is neither enhanced nor diminished by recognizing the jurisdiction of the court to prosecute a member of the legislature who is alleged to have indulged in an act of bribery;

188.11. The offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification. It does not matter whether the vote is cast in the agreed direction or if the vote is cast at all. The offence of bribery is complete at the point in time when the legislator accepts the bribe; and

188.12. The interpretation which has been placed on the issue in question in the judgment of the majority in PV Narasimha Rao (supra) results in a paradoxical outcome where a legislator is conferred with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but eventually decides to vote

independently will be prosecuted. Such an interpretation is contrary to the text and purpose of Articles 105 and 194.

189. The reference is answered in the above terms. Having answered the question of law raised by the Impugned Judgement of the High Court in this reference, the Criminal Appeal stands disposed of in the above terms.

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

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

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

.....J. [M.M. Sundresh]

.....J. [Pamidighantam Sri Narasimha]

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

.....J. [Sanjay Kumar]

.....J. [Manoj Misra]

New Delhi;

March 04, 2024

1 Writ Petition (Criminal) No 128 of 2013.

2 "JMM"

3 (1998) 4 SCC 626.

4 2023 SCC OnLine SC 1217.

5 "MP"

6 "JD (AS)"

7 "CBI"

8 "Bribe-takers"

9 "Bribe-givers"

10 The opinion authored by SP Bharucha, J has been referred to as majority judgment hereinafter.

11 The opinion authored by SC Agarwal, J has been referred to as minority judgment hereinafter.

12 Keshav Mills Co. Ltd v. CIT, AIR 1965 SC 1636, para 23; Krishena Kumar v. Union of India, (1990) 4 SCC 207, para 33; Shanker Raju v. Union of India, (2011) 2 SCC 132, para 10; Shah Faesal and Ors. v. Union of India (UOI), (2020) 4 SCC 1, para 17.

13 Raja Ram Pal v. Hon'ble Speaker Lok Sabha, (2007) 3 SCC 184, Lokayukta, Justice Ripusudan Dayal v. State of M.P. (2014) 4 SCC 473 and State of Kerala v. K. Ajith, (2021) SCC OnLine 510.

14 Central Board of Dawoodi Bohra Community vs. State of Maharashtra, (2005) 2 SCC 673, para 12.

15 (2018) 7 SCC 1.

16 (2007) 3 SCC 184.

17 (2006) 7 SCC 1.

18 (2010) 6 SCC 113.

19 (1974) 2 SCC 402.

20 1955 SCC OnLine SC 2.

21 See Sambhu Nath Sarkar v. State of W.B., (1973) 1 SCC 856; Lt. Col. Khajoor Singh v. Union of India, (1961) 2 SCR 828; Union of India v. Raghubir Singh, (1989) 2 SCC 754; Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111; Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1.

22 (2011) 2 SCC 132.

23 (2020) 4 SCC 1.

24 (1965) 2 SCR 908.

25 (1990) 4 SCC 207.

26 (2022) 3 SCC 529.

27 306 US 466 (1939).

28 (2022) 11 SCC 1.

29 (1841-42) 4 Moo. PC 63.

30 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 317-18.

31 Legislative Dispatch No. 14 of 9 August 1861, para 23.

32 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 102-103.

33 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 139-141, 158.

34 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 322.

35 Report of the Reforms Enquiry Committee (1924), 75.

36 SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 213-214.

37 Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), ix.

38 Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), xiii.

39 CAD Vol VIII 19 May, 1949 Draft Article 85.

40 (2016) 6 SCC 82.

41 (1970) 2 SCC 272.

42 See reply of Sir Alladi Krishnaswami Ayyar and Dr BR Ambedkar to the Constituent Assembly, CAD Vol VIII 19 May 1949 Draft Article 85 and Vol X 16 October 1949 Draft Article 85.

43 It was agreed in 1704 that no House of Parliament shall have power, by any vote or declaration, to create new privilege that is not warranted by known laws and customs of Parliament. The symbolic petition by the Speaker of the House of

Commons to the crown claiming the 'ancient and undoubted' privileges of the House of Commons are therefore not to be changed.

44 AIR 1959 SC 395.

45 1964 SCC OnLine SC 21.

46 (1977) 4 SCC 608, para 63.

47 (2010) 6 SCC 113, para 54

48 WP (Crl) No. 206-210/2003 etc.

49 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

50 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

51 Subhash C. Kashyap, Parliamentary Procedure-Law, Privileges, Practice and Precedents, 3rd ed., Universal Law Publishing Co, 502.

52 (2021) 17 SCC 318.

53 MN Kaul and SL Shakti, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

54 MN Kaul and SL Shakti, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

55 (2014) 4 SCC 473.

56 (2018) 8 SCC 501

57 1992 Supp (2) SCC 651.

58 Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 136.

59 (1976) 3 SCC 46

60 (2023) 4 SCC 731

61 (1629) 3 St. Tr. 294

62 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 242.

63 (1969) 4 QB 573.

64 [1998] PL 357, referred to as R v Currie in PV Narasimha Rao (*supra*).

65 [1998] 1 WLR 669.

66 [2001] 1 A.C. 395.

67 (1994) 3 ALL ER 407

68 [2009] 3 WLR 627

69 [2010] 3 WLR 1707.

70 [2014] QB 839.

71 383 US 169 (1966).

72 408 US 501 (1972).

73 408 US 606 (1972).

74 442 US 477 (1979).

75 439 US 1066 (1979).

76 [1885] 17 O.R. 524.

77 [2005] 1 SCR 667.

78 [2018] 2 S.C.R. 687.

79 13 SCR (NSW) 332.

80 (1923) 33 CLR 386

81 [2017] NSWCCA 221.

82 (1984) 2 SCC 404.

83 (1997) 11 SCC 111.

84 (2006) 7 SCC 1.

85 Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 188-189; Bengal Immunity Company Limited v. State of Bihar, (1955) 2 SCR 603.

86 (1973) 4 SCC 225.

87Â 174. Sessions of the State Legislature, prorogation and dissolution.-

(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time- (a) prorogue the House or either House; (b) dissolve the Legislative Assembly.]

88Â 168. Constitution of Legislatures in States.-

(1) For every State there shall be a Legislature which shall consist of the Governor, and-

(a) in the States of Andhra Pradesh], Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

89 The electoral college consists of elected MPs and MLAs.

90 The electoral college consists of elected MPs.

91 2018 SCC OnLine SC 1642.

IN THE SUPREME COURT OF INDIA

Thangam and Anr.

Vs.

Navamani Ammal

Civil Appeal No. 8935 of 2011

HEADNOTE – Failure of the defendant to give para wise reply against the claim made by the plaintiff would make the allegations made in the plaint as admitted against the defendant.

JUDGMENT

Rajesh Bindal, J.

1. The issue under consideration in the present appeal is regarding genuineness of the Will dated 09.10.1984, which is a registered document, executed by Palaniandi Udyar in favour of Navamani Amma.

2. A suit¹ filed by the respondent/plaintiff for declaration and injunction was decreed by the Trial Court², holding the Will to be genuine. In appeal³ by the appellants, judgment and decree of the Trial Court was reversed by the First Appellate Court⁴. In second appeal⁵ filed by the respondent the judgment and decree of the First Appellate Court was set aside and that of the Trial Court was restored by the High Court⁶.

3. Before we embark upon to consider the issues in detail, we deem it appropriate to mention the relations between the parties and certain brief facts.

3.1. The testator of the Will dated 09.10.1984, Palaniandi Udayar, was the husband of appellant no. 1 Thangam and father of appellant no. 2 Laila.

3.2. The Will was executed on 09.10.1984 in favour of Navamani Amma/Plaintiff, who as per the narration in the Will is said to be daughter of the brother of the testator.

3.3. The defendant in the suit originally filed was widow of the testator, however, later on his minor daughter was also impleaded. Both are the appellants before this Court.

3.4 The appellant no. 1 is the third wife of the testator. The earlier two wives expired and were not having any child from the loins of the testator.

3.5 Even as per the admitted case of the defendant no. 1/widow of the testator, the testator was having total land about 8 acres besides three houses.

3.6 By way of Will, the testator had bequeathed approximately 3.5 Acres of land in favour of the plaintiff stating therein that she is like his daughter, being daughter of his brother. The value of the suit property was estimated to be about ₹16,000/-.

Arguments

4. In the aforesaid factual matrix, the argument raised by learned counsel for the appellants challenging the judgment and decree of the High Court was that the execution of Will was surrounded by various suspicious circumstances and deserves to be discarded as was rightly done by the First Appellate Court. The finding of facts recorded by the First Appellate Court was erroneously reversed by the High Court without the same being perverse. Re-appreciation of the facts merely to come to another possible conclusion does not fall within the scope of consideration of a matter in second appeal.

There was no substantial question of law involved in the second appeal before the High Court. There were discrepancies in the statements of the scribe and the attesting witnesses to the Will. The health of the testator was not good and he was not in a position to understand and comprehend the contents of the Will. There were differences in the thumb impressions of the testator on the Will and on the register in the office of the Sub-Registrar.

5. Though, admittedly the testator left behind his widow and a minor daughter but there is no mention in the Will about the same. How their interest was taken care of, the Will is silent. In fact, the appellants were in possession of the suit property. The suit filed by the respondent was totally misconceived.

6. On the other hand, learned counsel for the respondent submitted that the execution of Will by a person in favour of any other relative always would mean that the testator wishes to take away some property from the normal course of inheritance. In fact, the respondent being like daughter to the testator was taking care of his health, who was suffering from asthma and chronic cough.

It is not that the entire property owned by the testator was given to the respondent by way of Will, rather it was only a part thereof. She is in possession of the suit property after the death of the testator. The need to file the suit arose more than two years after the death of the testator as her possession was disturbed by the appellants. Otherwise also the appellants had not taken any step to take care of the testator when he was not keeping good health or the property left by him after his death.

Admittedly, the appellant no. 1 was living away from the testator. Even at the time of his death the appellants were not present as she came later on. Even the expenses for performing last rites of the testator were borne by the husband of the respondent. There is no error in the judgment of the High Court. The findings recorded by the First Appellate Court being totally perverse were rightly interfered by the High Court.

6.1 In the written statement filed by the appellants, there was no specific denial to the claim made by the respondent/plaintiff. No parawise reply was given. In the absence thereof, the allegations in the plaint were deemed to be admitted.

Discussion

7. Heard learned counsel for the parties and perused the relevant referred record. We may record that the translated copies of whatever documents have been placed on record by the parties, are being considered as such as to the same, no dispute has been raised by the either side.

8. What is required to be considered while examining the correctness of the judgment of the High Court is as to whether the Will in question was surrounded by suspicious circumstances whereby the testator had not mentioned the names of his widow and minor daughter in the Will and has bequeathed a part of his property to the respondent.

8.1 The appellant no. 1 is the third wife of the testator whereas the appellant no. 2 is the daughter. From the earlier two wives no child was born.

9. Firstly, coming to the health of the testator the Plaintiff/PW-1 stated in her examination-in-chief that though the testator was having Asthma but otherwise he was in good health condition. In her Cross- Examination PW-1 stated that the testator was suffering from Asthma and Cough for about 5 to 6 years. She denied that the testator was having any drinking habit. She denied the suggestion that the testator was bedridden for three months before executing the Will.

9.1 PW-2/Vadivelu, who is an attesting witness to the Will, in his cross-examination stated that he inquired about the health of the testator and he told PW-2 that he was having some cough problem and was otherwise suffering from T.B.

9.2 PW-3/Govindasamy, who was a witness in the office of Sub- Registrar, in his cross-examination stated that at the time of execution of Will the testator was having cough.

9.3 PW-4/Subramanian, who is Scribe of the Will, stated in his examination-in-chief that at the time of execution of Will the testator was in good physical condition and he was having cough only. He was not put any question in this regard in cross-examination.

9.4 DW-1/Thangam Ammal, who is the widow of the testator, stated in her examination-in-chief that before his death the testator 'was suffering from lever wound and he had dysentery and suffered very much' (sic). DW-1 in her cross-examination sated that three months before his death the testator was not in good physique and before that he was in good condition. DW-1 further stated that the testator was bed ridden for 3 months and she was taking care of him.

9.5 From the aforesaid evidence of the witnesses with reference to the health of the testator we do not find that he was not in good senses and was unable to understand his welfare or take correct decisions. Hence, the Will cannot be held to be suspicious on the ground of the alleged ill-health of the testator at the time of the execution of the Will.

10. Now, coming to another aspect with reference to the genuineness of the Will, the PW-4/Subramanian, who is scribe of the Will, stated in his examination-in-chief that the testator had put his thumb impression on the Will and that he witnessed the same. He further stated the Will was registered in the office of Sub-Registrar.

10.1 In his cross-examination, he stated that on enquiry testator told him that the Plaintiff can take the suit property and other properties can be taken by the Defendants i.e., his wife and daughter. This shows that even at the time of execution of the Will, the testator was fully conscious of the welfare of his widow and minor daughter as sufficient property was left for them.

11. The Plaintiff examined PW-2/Vadivelu, who was the attesting witness to the Will. In his examination-in-chief he stated that the testator was very well known to him and that he was witness in the above Will. He stated that the Will was written under a tree at Palavur. Details were given by the Testator. After writing of Will, the testator asked PW-4/scribe to read over the same.

After hearing and being satisfied the testator had put his thumb impression. He and one other attesting witness, Muruganian (DW-2), had witnessed the testator putting thumb impression on the Will. In his cross-examination he stated that the Will was written without compulsion and in good conscious were expressed by Testator alone. He asked testator whether he was having any legal heir and testator told him that as per his desire alone the Will was written.

11.1 The Defendants examined Murugaian, who was also an attesting witness to the Will, as DW-2, who in his examination-in-chief stated that he was asked by Paramasivam, who is husband of the Plaintiff, to be witness in the office of Sub-Registrar. He further stated that he was requested to sign as witness and after putting his signature he returned. DW-2 further stated that he did not see the testator put his thumb impression. In Cross-examination DW-2 stated that he saw the testator sitting under a tree and that the testator told him that he was writing the Will in favour of his heirs.

12. It is the admitted case of the appellants that the testator left behind about 8 acres of land and three houses. What has been bequeathed to the respondent is merely a part of testator's entire property i.e. land measuring approximately 3.5 Acres. Meaning thereby the balance property of the testator is in possession of widow and daughter. This is how the interest of the natural legal heirs has been taken care of.

12.1 The reason to bequeath a part of the property in favour of the respondent is also evident from the material available on record. It has come in evidence that the testator was not keeping good health as he was suffering from asthma and cough. The appellants were not living with him for quite sometime as it is the admitted case of DW-1 in her cross-examination that she had gone to her paternal home on account of marriage of her brother and was not living with the testator at the time of execution of Will. It has also come on record that she was not present when the testator died. Expenses for his last rites were borne by the husband of the respondent who was taking care of the land of the testator.

12.2 There is nothing on record to suggest that the appellants were taking care of the property left by the testator immediately after his death or that any steps were taken by them to get the same mutated in their favour.

13. From the aforesaid evidence on record, in our opinion, no error has been committed by the High Court in holding that the Will was not surrounded by the suspicious circumstances as the scribe and one of the witnesses were unison. The testator was conscious of the fact that he had a wife and a minor child whose interest had been taken care of by leaving part of the property for them.

It came in response to a specific question asked by PW-4 to the testator at the time of execution of the Will. It was so stated by PW-4 in his cross-examination. Even in para 14 of the written statement, the appellants stated that they are enjoying the suit properties and other properties left by the testator. This clearly shows that certain part of the properties was left by the testator for his widow and minor daughter.

14. Before we part with the judgment we are constraint to observe the manner in which the pleadings have been filed in the Trial Courts or may be in some cases in the High Courts.

14.1 A perusal of the plaint filed by the respondent shows that it contains ten paragraphs besides the prayer. In the written statement filed by the appellants, no specific para-wise reply was given. It was the own story of the respondent containing fifteen paragraphs besides the prayer in para 16.

15. In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras.

15.1 Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.

15.2 The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

15.3 In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

15.4 The issue regarding specific admission and denial of the pleadings was considered by this Court in Badat and Co. Bombay Vs. East India Trading Co⁷. While referring to Order VIII Rules 3 to 5 of the CPC it was opined that the aforesaid Rules formed an integrated Code dealing with the manner in which the

pleadings are to be dealt with. Relevant parts of para '11' thereof are extracted below:

"11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written-statement, the particulars to be contained therein and the manner of doing so;

These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its noncompliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary."

15.5 The matter was further considered by this Court in *Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar*⁸ after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below:

"14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted."

15.6 We have made the aforesaid observations as regularly this Court is faced with the situation where there are no specific para-wise reply given in the written statement/counter affidavit filed by the defendant(s)/respondent(s). In our opinion, if the aforesaid correction is made, it may streamline the working.

16. For the reasons mentioned above, we do not find any merit in the present appeal. The same is, accordingly, dismissed.

.....J. (C.T. Ravikumar)

.....J. (Rajesh Bindal)

New Delhi

March 04, 2024.

1 O.S. No. 402 of 1986.

2 Additional District Munsif Court, Ariyalur.

3 Appeal Suit No. 7 of 1991.

4 Subordinate Judge, Ariyalur.

5 Second Appeal No. 1344 of 1996.

6 High Court of Judicature at Madras.

7 AIR 1964 SC 538.

8 (1993) 4 SCC 6.

IN THE SUPREME COURT OF INDIA

Naeem
Vs.
State of Uttar Pradesh

Criminal Appeals No. 1978-1979 of 2022

HEADNOTE – (1) The conviction of the accused can be sustained solely based on the dying declaration if the declaration made by the victim inspires the confidence of the court and proves to be trustworthy i.e., the victim was in a conscious state of mind to make such a dying declaration.

(2) The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. **If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.**

JUDGMENT

B.R. Gavai, J.

1. These appeals challenge the judgment and order dated 17th December 2019, passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal Nos. 1589 of 2018 and 7393 of 2017, whereby the Division Bench dismissed both the criminal appeals preferred by the appellants, namely, Pappi @ Mashkoor (accused No.1), Naeema (accused No.2) and Naeem (accused No.3) and upheld the order of conviction and sentence dated 24th October 2017 as recorded by the learned Sessions Judge, Moradabad (hereinafter referred to as the 'trial court') in Sessions Trial No. 260 of 2017.

2. Shorn of details, the facts leading to the present appeals are as under:

2.1. On 1st December 2016, the Police Station Katghar, District Moradabad received a written report at 08:15 pm which was a transcription of the complaint made by Shahin Parveen (deceased) who had been admitted in the District Hospital, Moradabad on 1st December 2016, at 02:20 pm with 80% deep thermal and facial burns. In her complaint, the deceased had alleged that she had been set

ablaze by the accused/appellants who had been pressuring her into entering the profession of immoral trafficking and prostitution.

On the basis of the written report (Ext. Ka-3), a First Information Report ("FIR" for short) was registered at Police Station Katghar, District Moradabad vide Case Crime Number 1332 of 2016 for the offence punishable under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). On the same day, Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar, Sadar, Moradabad was telephonically summoned by the Tehsildar to record the statement of Shahin Parveen (deceased), after she was admitted in the hospital.

Between the hours of 08:48 pm and 09:15 pm, dying declaration of Shahin Parveen (deceased) (Ext. Ka-6) came to be recorded by PW-5. Subsequently, the victim was admitted in Safdarjang Hospital, New Delhi on 2nd December 2016, where she eventually succumbed to her injuries at 07:55 pm. Consequently, the Case Crime No. 1332 of 2016 was altered to the offence punishable under Section 302 of IPC. According to the Post-Mortem Report (Ext. Ka- 11), the cause of death was shock as a result of ante-mortem burn injuries.

2.2. After the death of the husband of the deceased two years prior to the incident, she had been residing at her matrimonial house with her two children along with Pappi @ Mashkooor (accused No. 1) who was her brother-in-law (devar) and his wife Naeema (accused No.2). Naeem (accused No.3) is Naeema's brother. The prosecution case is that, after the death of the husband of the deceased, the accused/appellants started pressuring her into entering the profession of immoral trafficking and prostitution. As the deceased did not concede to the same, she was physically and sexually assaulted and asked to vacate the house.

On the day of the incident at about 01:30 pm, the accused/appellants caught hold of the deceased and poured kerosene on her. Pappi @ Mashkooor (accused No.1) and Naeema (accused No.2) ignited the matchstick and threw it at her. Thereafter, the accused/appellants surrounded her so that she could not escape. On being set ablaze, the deceased ran out of the house whereafter her neighbours put out the fire and informed her mother and brother namely, Islam @ Babli (PW-2) who took her to the hospital.

This version of events was brought out in the complaint made by the deceased which was transcribed by Faisal Zamal (PW-3). On the basis of PW-3's written report, bearing the thumb impression of the deceased, the FIR came to be registered at 08:15 pm on 1st December 2016. Thereafter, on the same day, between 08:48 pm and 09:15 pm, PW-5 recorded the dying declaration of the deceased (Ext. Ka-6) wherein she stated that there was an outstanding dispute

between her and Pappi @ Mashkooor (accused No.1) with regards to the partition of their shared residence.

On the date of the incident at about 12:30 pm, another quarrel broke out between the deceased and the accused/appellants, during which accused No.1 poured kerosene on the deceased and set her ablaze. He was accompanied and assisted by his wife Naeema (accused No.2) and Naeem, brother of Naeema (accused No.3). She was taken to the District Hospital, Moradabad by her brother Islam @ Babli (PW-2) and thereafter shifted to Safdarjang Hospital, New Delhi, where she eventually succumbed to her injuries.

2.3. After completion of the investigation, a charge-sheet came to be filed before the Court of Chief Judicial Magistrate, Moradabad. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the learned Sessions Judge.

2.4. Charges came to be framed by the learned Sessions Judge for the offences punishable under Sections 302 and 34 of the IPC. The accused pleaded not guilty and claimed to be tried.

2.5. The prosecution examined 8 witnesses to bring home the guilt of the accused persons. While Papi @ Mashkooor (accused No.1) took the defence that he was absent from the spot of the incident at the relevant time and that the deceased had committed suicide since she was depressed after the death of her husband, Naeema (accused No.2) and Naeem (accused No.3) set up the defence of bare denial. The defence did not lead any evidence.

2.6. At the conclusion of the trial, the trial court found that the prosecution had proved the case against the accused/appellants beyond reasonable doubt and accordingly convicted them for offences punishable under Sections 302 and 34 of the IPC and sentenced them to undergo imprisonment for life along with fine.

2.7. Being aggrieved thereby, the accused/appellants preferred appeals before the High Court. The High Court by the impugned judgment dismissed the same and affirmed the order of conviction and sentence awarded by the trial court. Being aggrieved thereby, the present appeals.

3. We have heard Shri Mohd. Adeel Siddiqui, learned counsel appearing on behalf of the appellants and Shri Sharan Thakur, learned Additional Advocate General (AAG) appearing on behalf of the respondent-State.

4. Shri Mohd. Siddiqui submits that the conviction is based only on the dying declaration of the deceased (Ex. Ka- 6). He submits that the dying declaration (Ext. Ka-6) is not free from doubt. It is submitted that the Discharge Slip (Ext.

Ka-7) would show that the deceased was discharged from the District Hospital, Moradabad on 1st December 2016 at 05:00 pm. It is therefore impossible that the dying declaration (Ext. Ka-6) could have been recorded between 08:48 pm and 09:15 pm. The learned counsel therefore submits that the said dying declaration (Ext. Ka-6) cannot be said to be trustworthy, reliable and cogent so as to base the conviction solely on the basis of the same.

5. Per contra, Shri Thakur submits that, both the trial court and the High Court, on the correct appreciation of evidence, rightly convicted the accused/appellants and as such, no interference would be warranted with the concurrent findings of the trial court and the High Court. The learned AAG submits that Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar, has deposed about the dying declaration (Ext. Ka-6). Shri Thakur submits that the dying declaration (Ext. Ka-6) also contains the certification by Dr. A.K. Singh, Emergency Medical Officer, District Hospital, Moradabad regarding the medical fitness of the victim both prior to and after recording the dying declaration (Ext. Ka-6).

6. Undisputedly, in the present case, the conviction is based solely on the dying declaration (Ext. Ka-6). The law with regard to conviction on the sole basis of dying declaration has been considered by this Court in a catena of judgments. After considering the earlier judgments, this Court, in the case of *Atbir v. Government of NCT of Delhi*¹, has laid down certain factors to be taken into consideration while resting the conviction on the basis of dying declaration. It will be apposite to refer to para (22) of the said judgment, which reads thus:

"22. The analysis of the above decisions clearly shows that:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

7. It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration.

It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

8. A perusal of the material placed on record would reveal that Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar has deposed that he was directed by the Tehsildar on phone to record the statement of the victim Shahin Parveen at the District Hospital, Moradabad. He came to the hospital and asked the Chief Medical Officer of the hospital about the condition of the victim Shahin Parveen, who informed that Shahin Parveen was in a sound condition and was also fit to give her statement.

He further deposed about the certificate issued by the doctor. He also deposed that, after recording the statement, the deceased put her thumb impression. He has further deposed that the deceased answered in full sense and she was

understanding the questions. The deposition of PW-5 would also reveal that he had taken care to ensure that none of the relatives of the deceased were present when the dying declaration (Ext. Ka-6) was being recorded.

9. Insofar as the contention of the learned counsel for the appellants that the dying declaration (Ext. Ka-6) was recorded between 08:48 pm and 09:15 pm and the Discharge Slip (Ext. Ka-7) was issued at 05:00 pm is concerned, no question was put to that effect in the cross-examination of Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar. As such, his testimony, in spite of cross-examination, has gone unchallenged on the material aspect of recording of the dying declaration.

10. A perusal of the dying declaration (Ext. Ka-6) would reveal that before recording the dying declaration (Ext. Ka-6), the victim was examined by Dr. A.K. Singh, Emergency Medical Officer at District Hospital, Moradabad on 1st December 2016 at 08:45 pm, who has certified her to be fully conscious and fit to give the statement.

After the dying declaration (Ext. Ka-6) was recorded, a certification by Dr. A.K. Singh, Emergency Medical Officer at District Hospital, Moradabad is recorded once again to the effect that the deceased was fully conscious while giving the statement (Ext. Ka-6). It can thus clearly be seen that the material placed on record would reveal that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

11. We have no reason to interfere with the concurrent findings of fact that the dying declaration (Ext. Ka-6) is true and free from any effort to induce the deceased to make a false statement. The dying declaration (Ext. Ka-6) is coherent and consistent and as such, there should be no legal impediment to make it the basis of conviction without there being any independent corroboration. We find that the dying declaration (Ext. Ka-6) is cogent, trustworthy and reliable to base the conviction on the same.

12. That leaves us with the question as to whether the conviction of all the three accused is tenable or not.

13. It will be apposite to refer to the relevant part of the dying declaration (Ext. Ka-6), which reads thus:

"Answer: I had been into a dispute with my devar (husband's younger brother) Mashkoor Hussain s/o Maqdoom Hussain over partition of the house for many days. Today i.e. 01.12.2016 at 12:30 O'clock I had a quarrel with my devar over partition of the house, during which he poured kerosene on me and set me ablaze. In commission of the act, my devrani (husband's younger brother's wife) Naeema

Parveen and her brother Naeem aided my devar (husband's younger brother). When they set my body ablaze, I ran outside the house. People from the neighbourhood doused fire engulfing my body and saved me. Residents of the locality informed my mother and brother, thereafter, my brother and mother brought and admitted me to the hospital."

14. The statement of the victim would therefore reveal that the motive attributed by the deceased is to accused No. 1 Pappi @ Mashkoor. She stated that she had a quarrel with her devar Pappi @ Mashkoor over partition of the house. It can further be seen that the role of pouring kerosene on the victim and setting her ablaze is also attributed to accused No. 1 Pappi @ Mashkoor.

15. Insofar as other two accused i.e. Naeema (wife of accused No.1 Pappi @ Mashkoor) and her brother Naeem are concerned, the statement of the victim only states that they aided her devar Pappi @ Mashkoor. However, no specific role of how they assisted accused No. 1 Pappi @ Mashkoor could be found in the dying declaration (Ext. Ka-6).

We therefore find that, though the said dying declaration can be the sole basis of maintaining the conviction of accused No. 1 Pappi @ Mashkoor, in the absence of any specific role attributed to accused No. 2 Naeema and accused No. 3 Naeem, they are entitled to the benefit of doubt.

16. In the result, we pass the following order:

(i) Criminal Appeal No. 1978 of 2022 qua appellant Naeem and Criminal Appeal No. 1979 of 2022 qua appellant Naeema are allowed. The order of conviction and sentence dated 24th October 2017 passed by the trial court and maintained by the High Court vide impugned judgment and order dated 17th December 2019 in respect of the aforesaid appellants is quashed and set aside. They are acquitted of all the charges charged with and are directed to be released forthwith if not required in any other case

(ii) Criminal Appeal No. 1979 of 2022 qua appellant Pappi @ Mashkoor is dismissed.

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

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

.....J. (Sandeep Mehta)

New Delhi;

March 05, 2024.

1(2010) 9 SCC 1: 2010 INSC 491

IN THE SUPREME COURT OF INDIA

Vinod Katara

Vs.

State of U.P.

Writ Petition (Cri.) No. 121 of 2022

HEADNOTE – To determine age, ossification test stands last in the order of priorities. Pertinently, Section 94(2) of the Juvenile Justice Act 2015 provides for the mode of determination of age. As per this provision, priority should be given to the date of birth certificate. In the absence of this, the birth certificate given by a corporation shall be preferred. **Only in the absence of both categories can an ossification test determine age.**

JUDGMENT

Mehta, J.

1. This writ petition arises from a very peculiar set of facts and circumstances.
2. The petitioner herein was arraigned as an accused for the offence of murder committed on 10th September, 1982. The petitioner along with three co-accused was convicted by the trial Court for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') vide judgment dated 6th January, 1986 and were sentenced to undergo rigorous imprisonment for life.
3. The convicts including the petitioner herein preferred Criminal Appeal No. 133 of 1986 before the Allahabad High Court. During the pendency of appeal, the sentence awarded to the petitioner by the trial Court was suspended and he was released on bail. The said appeal came to be rejected vide judgment dated 4th March, 2016 and the conviction of the petitioner and the sentence awarded to him by the trial Court were affirmed. The petitioner was taken into custody after the dismissal of the appeal by the High Court.
4. The petitioner preferred Special Leave Petition (Crl.) No.6048 of 2016 assailing the judgment rendered by the Allahabad High Court. The said Special Leave Petition was dismissed by this Court vide order dated 16th August, 2016.
5. The High Court of Judicature at Allahabad, while considering a PIL bearing Crl.(PIL) Misc. W.P. No. 855 of 2012, vide order dated 24th May, 2012 directed the Juvenile Justice Board(s) (hereinafter being referred to as the 'Board') in the

State of Uttar Pradesh to hold enquiries for determination of age of the convicts who were languishing in jail wherein the possibility was felt that the convict might have been a juvenile at the time of incident.

Pursuant to the said order of the High Court, the petitioner herein who was at the relevant point of time lodged in District Jail, Mathura was subjected to examination by a Medical Board on 10th December, 2021. The Medical Board conducted X-rays of the skull and sternum of the petitioner and gave an opinion that on the date of the report, the petitioner herein was around 56 years of age. Based on the said report of the Medical Board, the petitioner has preferred the instant writ petition claiming that he was around 15 years of age on the date of the incident i.e. 10th September, 1982 and has sought the following substantive relief:-

"In the light of the abovementioned facts and circumstances, the petitioner through this instant petition prays before this Hon'ble Court as under:-

A. issue a writ of mandamus or any other similar writ, order or direction thereby directing the respondent State to verify the claim of juvenility and thereafter pass necessary orders as it deems fit in the facts and circumstances of the case."

6. The matter was heard at length on 12th September, 2022, and this Court passed an order with the following pertinent directions:-

"(i) We direct the Sessions Court, Agra to examine the claim of the writ applicant to juvenility in regard with law within one month from the date of communication of this order;

(ii) The concerned Sessions Court shall also examine the authenticity and genuineness of the Family Register sought to be relied upon by the writ applicant convict considering that the document does not appear to be contemporaneous. This document assumes importance, more particularly in light of the fact that the ossification test report may not be absolutely helpful in determining the exact age of the writ applicant on the date of the incident.

If the Family Register on record is ultimately found to be authentic and genuine, then we may not have to fall upon the ossification test report. In such circumstances, the Presiding Officer concerned shall pay adequate attention towards this document and try to ascertain the authenticity and genuineness of the same. If need be, the statements of the persons concerned i.e. from the concerned government department may also be recorded;

(iii) The Sessions Court shall ensure that the writ applicant convict is medically examined by taking an ossification test or any other modern recognized method of age determination;

(iv) The Sessions Court concerned shall submit its report as regards the aforesaid to this Court within one month from the date of communication of this order;

(v) The Registry is directed to forward one copy of this order to Sessions Court, Agra;

(vi) We request the learned counsel appearing for the State to take appropriate steps to facilitate the Sessions Court to complete the enquiry."

7. The inquiry in pursuance to the said direction was conducted by the learned Additional District and Sessions Judge, Court No. 5, Agra who has forwarded a report dated 21st October, 2022 opining that from the contemporaneous evidence placed during the inquiry, the date of birth of the petitioner was 2nd July, 1960 and he was major on the date of the incident.

The learned Additional District and Sessions Judge took note of the fact that medical examination of the convict Vinod Katara was conducted by Medical Board in compliance of the directions given by this Court and the Chairman of the Board had given an opinion that the probable age of accused Vinod Katara was between 55 to 60 years with a remark that estimation of age based on X-ray examination becomes uncertain after the age of 25 years.

8. After receiving the report, this Court permitted learned counsel for the petitioner as well as learned counsel for the respondent to submit their response thereto. Final arguments were heard on 17th January, 2024.

9. Mr. Rishi Malhotra, learned counsel appearing for the petitioner vehemently and fervently contended that the conclusions drawn by the learned Additional District and Sessions Judge in the report dated 21st October, 2022 that it would not be possible to determine the age of the accused accurately based on the X-ray examination is unsustainable in light of the earlier medical report dated 10th December, 2021 wherein the Medical Board has given a pertinent opinion that the age of the petitioner as on the said date was around 56 years.

10. As per the learned counsel, if the entries made in the contemporaneous documents relied upon by the Additional District and Sessions Judge are perused, it would become evident that the petitioner was born in the same year as his brother Ashok Kumar, i.e., 1960 which would lead to a situation of serious anomaly.

He urged that the documentary evidence presented by the convict petitioner in the inquiry held by the learned Additional District and Sessions Judge conclusively establishes that after the birth of Ashok Kumar and before the birth of the petitioner, two other sons were born to the petitioner's parents in the intervening years. However, both these children expired because of medical complications. He vehemently contended that the attendance register/school record on which the learned Additional District and Sessions Judge placed implicit reliance is not a reliable piece of evidence because the concerned Principal of the school neither verified the documents nor was he examined in evidence.

11. Learned counsel further urged that the assumption drawn by the learned Additional District & Sessions Judge that there has been an overwriting in the family register wherein numerical '0' has been changed to numerical '8' is without any foundation. He contended that as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter being referred to as the 'JJ Act'), where contemporaneous reliable school record is not available, the Court can place reliance either on other documentary evidence or in absence thereof, the Medical Board's opinion based on X-ray examination can be taken into account to determine the age of the person claiming juvenility.

12. Learned counsel urged that school record produced during inquiry is not a reliable piece of evidence and the family register wherein the year of birth of the petitioner is shown to be 1968 as well as the medical report dated 10th December, 2021 deserve to be given precedence and accepted for extending the prayer made by the petitioner that he was a juvenile on the date of the incident. He thus, submitted that the petitioner is entitled to consequential relief of being released from prison.

13. Per contra, Mr. Ardhendumauli Kumar Prasad, learned AAG vehemently opposed the submissions advanced by the learned counsel for the petitioner and urged that the inquiry report has been submitted by the learned Additional District and Sessions Judge, as a consequence of direction given by this Court. Such inquiry report is based on detailed process of collection of evidence and analysis thereof.

14. He submitted that the inquiry officer, i.e., the learned Additional District and Sessions Judge, after minute appreciation and evaluation of the evidence has categorically found that the date of birth of the petitioner as entered in the contemporaneous school record was 2nd July, 1960, which is the actual date of birth of the petitioner and as a consequence, the petitioner does not deserve the relief claimed for.

15. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have carefully perused the order dated 16th August, 2016 passed by this Court and so also the enquiry report dated 21st October, 2022 forwarded by the learned Additional District and Sessions Judge.

16. The learned Additional District and Sessions Judge recorded evidence during the course of the inquiry and gave detailed findings holding that the family register brought on record by the petitioner was a forged document and was unreliable. It may be stated that a copy of the family register issued on 2nd March, 2022 was placed on record by the petitioner during the course of inquiry. The inquiry officer issued a notice to the Assistant Block Development Officer, Panchayat, Fatehpur Sikri, Agra and in his examination, the officer clearly stated that the original register on the basis of which said family register has been prepared was not available in the record of the Panchayat, Aulenda.

17. The learned Additional District and Sessions Judge gave the following opinion doubting the veracity of the family register relied upon by the petitioner:-

"This is also getting confirmed from Page No.133 of the Family Register because probable date of birth of petitioner Shashi w/o Vinod Kumar, is mentioned as 1965 on the said page. Generally, age of wife is some years less than husband. In the instant matter, in the family register, year of birth of wife of petitioner in the family register is 1965 whereas year of birth of her husband is mentioned as 1968 which is forged by which age of wife Shashi is becoming 3 years more than her husband Vinod Kumar. In general circumstances, it is not possible. It is clear from aforesaid appreciation that family register produced by petitioner is not authentic but a document doubtful in nature which does not appear to be a credible document."

18. The learned Additional District and Sessions Judge also summoned the record from the Pre-Secondary School, Dabar, Fatehpur Sikri and recorded the evidence of school officials. From these documents which are admission register and the transfer certificate, it transpired that the date of birth of the petitioner recorded in the school is 2nd July, 1960.

19. Having minutely perused the inquiry report and the evidence led during the inquiry, we are of the opinion that the conclusions drawn by the learned Additional District and Sessions Judge that the actual date of birth of the accused petitioner is 2nd July, 1960 and the opinion of the Medical Board that estimation of age based on X-ray examination becomes uncertain after 25 years is apropos and deserves to be accepted.

20. Section 94(2) of the JJ Act provides for the mode of determination of age. In the order of priorities, the date of birth certificate from the school stands at the highest pedestal whereas ossification test has been kept at the last rung to be considered, only in the absence of the criteria Nos. 1 and 2, i.e. in absence of both certificate from school and birth certificate issued by a Corporation/Municipal Authority/Panchayat.

21. In the wake of above discussion, we find no merit in the writ petition which is dismissed as such.

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

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

.....J. (Sandeep Mehta)

New Delhi;

March 05, 2024.

IN THE SUPREME COURT OF INDIA

Srikant Upadhyay & Ors.

Vs.

State of Bihar & Anr.

[Criminal Appeal No._____ of 2024 @ SLP (Crl.) No. 7940 of 2023]

HEADNOTE – An accused would not be entitled to pre-arrest bail if the non-bailable warrant and the proclamation under Section 82(1) Cr.P.C. is pending against him.

JUDGMENT

C.T. Ravikumar, J.

Leave granted.

1. This appeal is directed against the order dated 04.04.2023 in CRLM No.67668 of 2022 passed by the High Court of Judicature at Patna whereby and whereunder the application for anticipatory bail filed by the appellant was dismissed.

The pre-arrest bail application was moved in connection with FIR No.79 of 2020, registered against him and co-accused at Govindganj, Police Station, District East Champaran, Bihar, under Sections 341, 323, 354, 354 (B), 379, 504, 506 and 149 of the Indian Penal Code, 1860 (for short, 'IPC') and Section 3/4 of Prevention of Witch (Daain) Practices Act, 1999 (for short, 'the Daain Act').

2. Heard, Mr. Basant R., learned Senior Counsel for the appellants and Mr. Anshul Narayan, learned counsel for the respondent-State.

3. The question of seminal importance that arises for consideration can better be explained and understood by referring to a decision of this Court in Prem Shankar Prasad v. State of Bihar and Anr.¹, which was rendered after referring to the earlier decisions of this Court in State of Madhya Pradesh v. Pradeep Sharma² and Laves v. State (NCT of Delhi)³. In Laves's case (supra), this Court held in paragraph 12 thus:-

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or

concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

(Underline supplied)

4. In the decision in Pradeep Sharma's case (supra) this Court held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 Cr.PC., he is not entitled to relief of anticipatory bail. After extracting Section 438, Cr.PC., it was further held therein thus:-

"The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty."

5. In Prem Shankar Prasad's case (supra), this Court took note of the fact that the respondent-accused was absconding and concealing himself to avoid service of warrant of arrest and the proceedings under Sections 82/83, Cr.PC have been initiated against him, set aside the order of the High Court granting anticipatory bail ignoring the proceedings under Sections 82/83, Cr.PC. Thus, it is obvious that the position of law, which was being followed with alacrity, is that in cases where an accused against whom non-bailable warrant is pending and the process of proclamation under Sections 82/83, Cr.PC is issued, is not entitled to the relief of anticipatory bail.

6. The learned Senior Counsel appearing for the appellants-accused would contend that the well-nigh settled position of law in respect of pre-arrest bail as above, is inapplicable in a case where a person apprehending arrest has already filed an application seeking anticipatory bail and it is pending sans any interim orders and during its pendency if the Trial Court issues proclamation under Section 82, Cr.PC.

In short, the proposition of law raised is - when an application seeking anticipatory bail filed by a person apprehending arrest is pending without any interim protection, whether initiation of proceeding for issuance of proclamation under Section 82, Cr. PC would make that application worthy for further consideration on its own merits? According to the learned Senior Counsel appearing for the appellants even in such envisaged circumstances and despite the pendency of non-bailable warrant, the pending application for anticipatory bail is liable to be considered on its own merits and at any rate, on the aforesaid grounds the pending application of prearrest bail could not be dismissed.

7. Per contra, the learned counsel appearing for the State vehemently opposed the proposition(s) mooted on behalf of the appellants. It is submitted that the issuance of non-bailable warrant and initiation of the proceedings under Section 82, Cr.PC are justiciable. Certainly, in the absence of an interim protection, there can be no legal trammel for issuing non-bailable warrant or for initiating proceedings under Section 82, Cr. PC. merely because of the pendency of an application for anticipatory bail though more often than not, under such circumstances subordinate Courts would wait for orders of the High Court. It be so, existence of any such circumstance would disentitle a person to press for pre-arrest bail. Even a pending application is not maintainable, it is contended.

8. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances.

In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in *HDFC Bank Ltd. v. J.J.Mannan & Anr.*4).

9. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr.PC, courts must keep reminded of the position that law aides only the abiding and certainly not its resistant.

By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance.

We will dilate this discussion with reference to the factual matrix of this case. However, we think that before dealing with the same, a small deviation to have a

glance at the scope and application of the provisions under Section 82, Cr.PC will not be inappropriate.

10. There can be little doubt with respect to the position that the sine qua non for initiation of an action under Section 82, Cr. PC is prior issuance of warrant of arrest by the Court concerned. In that regard it is relevant to refer to Section 82 (1), Cr. PC, which reads thus:-

"82. Proclamation for person absconding.-

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

11. The use of expression 'reason to believe' employed in Section 82 (1) Cr. PC would suggest that the Magistrate concerned must be subjectively satisfied that the person concerned has absconded or has concealed himself. In the context of Section 82, Cr. PC, we will have to understand the importance of the term 'absconded'. Its etymological and ordinary sense is that one who is hiding himself or concealing himself and avoiding arrest.

Since the legality of the proceedings under Section 82, Cr. PC is not under challenge, we need not go into that question. As noticed above, the nub of the contentions is that pending the application for pre-arrest bail, proclamation under Section 82, Cr.P.C., should not have been issued and at any rate, its issuance shall not be a reason for declining to consider such application on merits. Bearing in mind the position of law revealed from the decisions referred to hereinbefore and the positions of law, we will briefly refer to the factual background of the case.

12. For considering the aforesaid proposition of law, we think it absolutely unnecessary to deal with FIR No. 37 of 2018 dated 28.03.2018 filed against Respondent No.2, Mr. Rajiv Kumar Upadhyay and four others, and also FIR No.66 of 2018 registered against appellant No.4 (first accused) and four other family members of the appellants.

Civil Suit No.140 of 2019 filed against the family members of the appellants for illegal encroachment is also not to be considered as nothing would turn out of it in relation to the question posed for consideration. We may hasten to add that if the question whether the appellants are entitled to anticipatory bail survives, even after answering the aforementioned question(s) posed for consideration, we may refer to the relevant aspects in relation to the said cases.

13. As noticed hereinbefore, the appellants herein moved the application for anticipatory bail in connection with FIR No.79 of 2020 registered at Govindgunj Police Station. It is a fact that the subject FIR was registered pursuant to the directions of the learned Chief Judicial Magistrate, East Champaran, Motihari on complaint No.395 of 2020 filed by Respondent No.4 under Section 156 (3), Cr. PC. The allegations in the complaint are as follows: -

On 22.02.2020, at about 8.00 am, when Jagmati Kunwar, the grandmother of respondent No.4 reached in front of the house of appellant No.2, Shashikant Upadhyay, he said that she is the witch who made his child sick and shall not be spared. Then, the appellants and eight other family members gathered around her and the 4th appellant caught hold of her hair and asked the others to bring dung. Thereupon, accused Paritosh Kumar brought dung and accused Rishu put dung into the mouth of Jagmati Kunwar. Consequently, she vomited and fell down.

When respondent No.2/ complainant and other witnesses went for her help, the second appellant Shashikant Upadhyay assaulted and abused respondent No.2. Co-accused Paritosh Kumar and Jishu Kumar tore the blouse of Kiran Devi and she was disrobed. Another co-accused Soni Devi snatched a gold chain from the complainant. The co-accused Ravikant and appellant No.5 tore the clothes of Jagmati Kunwar and made her half-naked.

14. Later, after completing the investigation, charge sheet was filed on 08.08.2022 only for offences under Sections 341, 323 and 504 IPC, that too only against accused Lakhpati Kunwar (accused No.7). However, the learned Trial Court, on perusal of the FIR, charge sheet and case diary found that sufficient materials are available in the case diary to proceed against the other 12 accused, including the appellants herein and accordingly vide order dated 20.02.2021 took cognizance of the offences under Sections 341, 323, 354B, IPC and Section 3/4 of the Daain Act and issued summons to all accused including the appellants and fixed 12.04.2022 as the date for their appearance.

The accused were absent on that day and hence on 12.04.2022, the Trial Court issuedailable warrants. On 25.05.2022, the accused, other than the appellants herein, appeared and applied for regular bail before the Trial Court and the Trial Court granted them regular bail. Subsequently, the complainant/the second respondent herein, applied for cancellation of bail granted to them and as per the order dated 09.06.2022 the grantees of bail were issued with show cause notices.

Upon receiving the notice for cancellation of bail, they unsuccessfully approached the Sessions Court challenging the order taking cognizance, in Criminal Revision Petition No.94 of 2022. Pursuant to the dismissal of the Revision Petition, the Trial Court posted the application for cancellation of bail

on different dates. The fact is that despite such developments, the appellants herein neither appeared before the Trial Court nor sought for regular bail. In the meanwhile, the appellants herein moved a bail-cum-surrender application (described as such by them), before the Trial Court.

However, it was withdrawn on 23.08.2022 on the fear of arrest. Thereupon, the Trial Court fixed the date for appearance of the appellants on 30.08.2022. Before the date fixed for their appearance, the appellants filed application for anticipatory bail before the Sessions Court and, thereafter on 06.09.2022, informed the Trial Court about its listing before the Sessions Court on 27.09.2022 for final hearing. The Trial Court thereupon posted the matter for appearance of the appellants to 11.10.2022. The anticipatory bail moved by the appellants was dismissed on 27.09.2022 and thereupon, the Trial Court took up the matter on 03.11.2022.

Since the appellants remained absent, the Trial Court issued non-bailable warrants and listed the matter to 04.11.2022 for their production. Meanwhile, the appellants herein approached the High Court by filing CRLM No.67668 of 2022 seeking anticipatory bail. It is to be noted that nonbailable warrants were pending against them when they moved the said application for anticipatory bail. On 04.12.2022, on behalf of the appellants, the Trial Court was informed about the filing of anticipatory bail application before the High Court. Consequently, the matter was listed on 04.01.2023.

On 04.01.2023, pursuant to the non-appearance of the appellants despite the earlier order for their appearance and the issuance of non-bailable warrants, the Trial Court issued proclamation under Section 82(1), Cr. PC. Later, proceedings under Section 83, Cr.PC were also initiated. On 15.03.2023, on behalf of the appellants it was prayed to postpone the process under Section 82/83, Cr. PC.

However, the Trial Court proceeded to issue the process under Section 83, Cr. PC, based on the proclamation under Section 82(1) Cr.PC. On 04.04.2023, the application for anticipatory bail filed by the appellants was dismissed, obviously taking note of the proceedings under Sections 82/83, Cr. PC and observing that owing to such developments the application for pre-arrest bail could not be maintained.

15. The core contention of the appellants is that the rejection of the application for anticipatory bail without considering the application on merits for the reason of issuance of proclamation under Section 82, Cr. PC, is unsustainable. It is further contended that at no stage, the appellants were "evading the arrest" or "absconding" but were only exercising their legal right to seek anticipatory bail.

It is in the aforesaid circumstances that the learned Senior Counsel appearing for the appellants raised the contention that when an application for anticipatory bail is pending, the issuance of proclamation, following issuance of non-bailable warrant could not be a reason for non-considering the application for anticipatory bail on merits.

16. For a proper consideration of the aforesaid contentions and allied questions, it is only appropriate to refer to certain provisions of law as also certain relevant decisions. From the chronology of events narrated hereinbefore, it is evident that for reasons best known to the appellants, subsequent to the filing of the final report in terms of the provisions under Section 173 (2), Cr.P.C in FIR No.79/2020 and issuance of summons, issuance of bailable warrants and issuance of non-bailable warrants; pursuant to the failure of the appellants to appear before the Court on the date fixed for their appearance based on bailable warrants, they did not care to take any action in accordance with law except moving applications for bail.

Same was the position even after the issuance of the proclamation under Section 82, Cr.PC. As noted earlier, in the case of similarly situated co-accused of the appellants, they appeared and obtained regular bail pursuant to the issuance of bailable warrants. Thus, a scanning of the acts and omissions of the appellants, it can only be seen that virtually, the appellants were defying the authority of law and moving applications for bail when they apprehended arrest owing to their nonattendance and dis-obedience. It is in the context of the aforesaid facts revealed from the materials on record that the contention of the appellants that they were only pursuing their right to file application for anticipatory bail and, therefore, they were not either evading the arrest or absconding, has to be appreciated.

17. Section 70 (2), Cr. PC mandates that every warrant issued under Section 70 (1), Cr. PC shall remain in force until it is cancelled by the Court which issued it, or until it is executed. In this case, as noticed hereinbefore, the bailable warrants and thereafter the non-bailable warrants, were issued against the appellants. They were neither cancelled by the Trial Court nor they were executed. It is not their case that they have successfully challenged them. Sections 19, 20, 21, 174 and 174 A, IPC assume relevance in this context. They, insofar as relevant read thus:

19. "Judge".- The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body or persons, which body of persons is empowered by law to give such a judgment.

20. "Court of Justice".- The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

21. "Public servant".- The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

[Third.-Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

174. Non-attendance in obedience to an order from public servant.-

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.-

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

18. Taking note of the aforesaid facts with respect to the issuance of summons, warrants and subsequently the proclamation, a conjoint reading of Sections 19, 20 and 21, IPC containing the terms "Judge", "Court of Justice" and "Public Servant" and Sections 174 and 174A, IPC can make them liable even to face further proceedings. Same is the position in case of non-attendance in obedience to proclamation under Section 82, Cr. PC.

19. Bearing in mind the aforesaid provisions and position, we will refer to certain relevant decisions. In *Savitaben Govindbhai Patel & Ors. v. State of Gujarat*⁵, the High Court of Gujarat observed thus: -

"9. Filing of an Anticipatory Bail Application by the petitioners-accused through their advocate cannot be said to be an appearance of the petitioners-accused in a competent Court, so far as proceeding initiated under Section 82/83 of the Code is concerned; otherwise each absconding accused would try to create shelter by filing an Anticipatory Bail Application to avoid obligation to appear before the court and raises the proceeding under Section 83 of the Code claiming that he cannot be termed as an absconder in the eye of law. Physical appearance before the Court is most important, if relevant scheme of Sections 82 and 83, is read closely."

(underline supplied)

20. We are in full agreement with the view taken by the Gujarat High Court that filing of an anticipatory bail through an advocate would not and could not be treated as appearance before a court by a person against whom such proceedings, as mentioned above are instituted. The meaning of the term "absconded" has been dealt by us hereinbefore. We found that its etymological and original sense is that the accused is hiding himself.

What is required as proof for absconding is the evidence to the effect that the person concerned was knowing that he was wanted and also about pendency of warrant of arrest. A detailed discussion is not warranted in this case to understand that the appellants were actually absconding. It is not in dispute that they were served with the "summons". The fact thatailable warrants were issued against them on 12.04.2022 is also not disputed, as the appellants themselves have produced the order whereunderailable warrants were issued against them.

We have already referred to Section 70 (2), Cr. PC which would reveal the position that once a warrant is issued it would remain in force until it is cancelled by the Court which issued it or until its execution. There is no case for the appellants that either of such events had occurred in this case to make the warrants unenforceable. They also got no case that their application was interfered with by a higher Court. That apart, it is a fact that the appellants themselves on 23.08.2022, moved a bail-cum-surrender application before the Trial Court but withdrew the same fearing arrest.

It is also relevant to note that in the case on hand even while contending that they were before a Court, the appellants got no case that in terms of the provisions under Section 438 (1-B), Cr. PC an order for their presence before the Court was

ordered either suo motu by the Court or on an application by the public prosecutor. When that be the circumstance, the appellants cannot be allowed to contend that they were not hiding or concealing themselves from arrest or that they were not knowing that they were wanted in a Court of law.

21. To understand and consider another contention of the appellants it is worthy to extract ground No.3 raised by the appellants in SLP which reads thus:

"III. Because the Hon'ble High Court has failed to appreciate that proclamation under section 82 Cr.P.C. was issued on 04.01.2023 by the Ld. Trial Court and thereafter process under section 83 Cr.P.C. have been initiated on 15.03.2023 whereas the application for anticipatory bail by the petitioner before the Hon'ble High Court was filed in November, 2022, however, the same was came for hearing on 04.04.2023. It is, therefore, evident that when the petitioners preferred filing of anticipatory bail before the Hon'ble High Court then none of the petitioner was declared absconder and process under section 82/83 Cr.P.C. were not initiated against them."

22. The above extracted ground taken by the appellant constrains us to consider the question whether there could be any bar on the Trial Court for proceeding under Section 82 Cr.PC, merely because an anticipatory application for bail has been filed or because such an application was adjourned without passing any interim order. We may hasten to add here that it is always preferable to pass orders, either way, at the earliest.

In the case on hand, application for anticipatory bail was filed by the appellants before the High Court in November, 2022 and brought up for hearing on 04.04.2023, on which day it was dismissed as per the impugned order. The very ground, extracted above, would reveal that in the meanwhile, proclamation under Section 82 Cr.PC, was issued on 04.01.2023 and thereafter process under Section 83 Cr.PC was initiated on 15.03.2023.

23. There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438 (1), Cr.PC, would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without

warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail.

In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in *Shrenik Jayantilal Jain and Anr. v. State of Maharashtra Through EOW Unit II, Mumbai*⁶ and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order.

At any rate, the said application was rejected on 04.04.2023. Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of nonobedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82, Cr.PC, merely because of the pendency of an application for anticipatory bail.

If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82, Cr.PC, by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed.

We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr.PC, in accordance with law.

24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case.

While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases.

At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested.

Even after the issuance of nonbailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

26. The upshot of the discussion is that there is no ground for interfering with the order of the High Court rejecting the application for anticipatory bail rather not considering application on merits.

Since their action is nothing short of defying the lawful orders of the Court and attempting to delay the proceedings, this appeal must fail. Consequently, it is dismissed.

.....**J. (C.T. Ravikumar)**

.....**J. (Sanjay Kumar)**

New Delhi;

March 14, 2024

1 (2022) 14 SCC 516

2 (2014) 2 SCC 171

3 (2012) 8 SCC 730

4 2010 (1) SCC 679

5 2004 SCC OnLine Guj 345

6 [2014 SCC Online Bom 549]

IN THE SUPREME COURT OF INDIA

M. Radheshyamlal
Vs.
V Sandhya and Anr. Etc.

Civil Appeal Nos. 4322 – 4324 of 2024
arising out of SLP (C) Nos. 19059-19061 of 2014]

HEADNOTE – When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.

To prove the plea of adverse possession:-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also plead and establish when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.”

JUDGMENT

Abhay S. Oka, J.

1. Leave granted.

Factual Aspects

2. These appeals arise out of three separate suits. For convenience, we are referring to the parties with reference to their status in Original Suit No. 12091 of 2010 (Civil Suit no. 331 of 1996). The appellant is the plaintiff in the said suit. The respondents in Special Leave Petition (C) No. 19060 of 2014 are the defendants in the said suit.

3. It is not in dispute that one Sungani Bai (Sukri Bai) was the original owner of the suit property who died in the year 1947. Sungani Bai (the original owner) executed a registered settlement deed dated 1st December 1945. She settled the suit property by the said settlement deed in favour of three persons: Gopu Bai, Abbey Karan Joshi and Vijay Kishan Bohra. It is not in dispute that the original owner died intestate without leaving any legal representatives. As per the

settlement deed, it was provided that 1/3rd share in the suit property was given to Gobu Bai for her life and then to her two daughters for their lifetime.

It was provided that after their demise, 1/3rd of the share would pass on to their male children. The daughters of Gobu Bai died, leaving behind them Radhe Shyam, Rajendra Purohit and Omprakash Purohit. As per the settlement deed, 1/3rd share was given to Abbey Karan Joshi during his lifetime and after his demise to his male children. The 2nd defendant - Sailesh Joshi, is his only son. The remaining 1/3rd share was settled on Vijay Kishan Bohra during his lifetime. It was provided that it would go to his male children after his lifetime.

The said Vijay Kishan Bohra died, leaving behind his son Chandrasekar Bohra. Vasantha Kumar (original 3rd defendant) and his wife V. Sandhya (4th defendant) purchased the suit property by a registered sale deed dated 29th January 2001 from the 2nd defendant - Sailesh Joshi, and the successors of two other sharers who were entitled to 1/3rd share each under the said deed of settlement. The 3rd defendant died during the pendency of the proceedings, and the 5th defendant is the son of the 3rd and 4th defendants.

4. Original Suit No. 12091 of 2010, as stated earlier, was filed by the appellant/plaintiff. The suit was filed on 17th November 1995, in which the plaintiff claimed that he was in open, uninterrupted and continuous possession of the suit property for 45 years. He claimed that he had perfected his title to the suit property by adverse possession along with his father and other family members.

In the plaint, it is stated that the original owner died in 1947. The plaintiff relied upon several documents to show his possession. As the defendants threatened to dispossess him and trespass upon the suit property, the suit was filed for a declaration that he had become the owner of the suit property by adverse possession and for permanent injunction.

5. The 2nd defendant contested the suit by contending that the plaintiff was well aware of the said deed of settlement, but he had not disclosed the same in the plaint. He submitted that the three persons on whom the suit property was settled by the original owner in the year 1945 became the owners of the suit property on the demise of the original owner. The 4th and the 5th defendants also filed a written statement contending that the plaintiff was in unlawful possession of a small portion of the suit property to the extent of 250 sq. ft. The 4th and 5th defendants denied the claim of adverse possession made by the plaintiff.

6. Original Suit no. 12092 of 2010 was filed by the 3rd, 4th and 5th defendants against the plaintiff. The suit was filed for possession based on the title acquired

by the 3rd, 4th and 5th defendants on the basis of the sale deed dated 29th January 2001.

7. The 2nd defendant had filed a suit for eviction against the tenants in the suit property, being EP No. 28 of 1996, in which an order of eviction was passed. The plaintiff/appellant filed Original Suit No. 973 of 1996, inter alia, for a declaration that he was not bound by any order of eviction in EP No. 28 of 1996. The City Civil Court dismissed Suit No. 12091 of 2010 filed by the plaintiff and decreed Suit No. 12092 of 2010 filed by 3rd to 5th defendants and passed a decree for possession. Suit No. 973 of 1996, filed by the plaintiff, was decreed.

Therefore, two appeals were preferred by the plaintiff before the High Court for challenging the decrees in the first two suits. The 2nd defendant preferred an appeal against the decree passed in Suit No. 973 of 1996. The appeal filed against the decree passed in Suit No. 973 of 1996 was dismissed by the First Appellate Court. However, the finding of the Trial Court that the plaintiff had perfected his title by adverse possession was set aside. The plaintiff filed a second appeal before the High Court. By the impugned judgment dated 25th April 2014, the High Court dismissed all three appeals preferred by the plaintiff.

Submissions

8. The learned senior counsel appearing for the appellant/original plaintiff submitted that what was executed on 1st December 1945 by the original owner was a will. He submitted that as the suit property is in Chennai, rights can be claimed based on the will only if a probate or letters of administration is obtained. The learned counsel submitted that in the absence of probate or letters of administration, no right could be claimed based on the so-called settlement deed dated 1st December 1945. Consequently, no right, title or interest in the suit property has been passed on to the 3rd and 4th defendants by the sale deed dated 29th January 2001.

He submitted that the continuous possession of the plaintiff is at least from 1951, and on facts, the plaintiff had established the plea of adverse possession. He submitted that the defendants have no right concerning the suit property, and hence, the impugned judgment is entirely erroneous. The learned counsel appearing for the respondents supported the impugned decision of the High Court.

Consideration of Submissions

9. As far as the suit filed by the plaintiff for the declaration of ownership based on adverse possession is concerned, the plaintiff can never succeed unless he

proves the plea of adverse possession. There is a concurrent finding of fact on this issue against the plaintiff.

10. As far as the plea of adverse possession is concerned, a Constitution Bench of this Court in the case of *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das1*, in paragraph 1142 and 1143 has held thus:

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed.

Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being *nec vi nec claim* and *nec precario*. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse.

These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case.

Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence."

(underline supplied)

11. In the case of *Karnataka Board of Wakf v. Govt. of India and Ors.*², in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous.

The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See *S.M. Karim v. Bibi Sakina* [AIR 1964 SC 1254] , *Parsinni v. Sukhi* [(1993) 4 SCC 375] and *D.N. Venkatarayappa v. State of Karnataka* [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma* [(1996) 8 SCC 128.]]"

(underline supplied)

12. Therefore, to prove the plea of adverse possession:-

(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff must establish that his possession was open and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

13. Therefore, it is necessary to consider the averments made in Original Suit No. 12091 of 2010. A plea of adverse possession can be found in paragraph 3 of the plaint, which reads thus:

"3. The plaintiff is for the last 45 years in open uninterrupted and continuous possession and enjoyment of the premises being land and building bearing Old Door no. 14, New No. 18, Peria Neikaran Street, Sowcarpet, Madras-600079, more fully described in the schedule hereunder and he has thus perfected his title by adverse possession from before 1951, alongwith his father, J. mangilal Radhakishen Joshi, other members of his family.

In proof thereof, the plaintiff has filed several documents to establish his said possession adverse to the interests of anyone else including the defendants. The said documents may be treated as part and parcel hereof. Several years prior to 1951, the said property had been owned by on Sukri Bai who died in or about 1947, she died leaving no issues. The father of the plaintiff and later the plaintiff have been paying taxes only in her name. The mutation in the Corporation and other registries remain unchanged."

(underline supplied)

As stated earlier, the suit was filed on 17th November 1995. Therefore, going by the averments in paragraph 3 of the plaint, the plaintiff can, at the highest, claim to be in possession from the year 1950. In the same paragraph, the plaintiff stated that the original owner died in 1947. It is not pleaded that even before the year 1947, the plaintiff or his father were in hostile possession to the knowledge of the original owner.

When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.

14. The Trial Court and the High Court have recorded findings of fact on the plea of adverse possession. The High Court has noted the admitted position that all

along, the property tax and water tax bills stood in the name of the original owner. The High Court confirmed the finding of the Trial Court that the plaintiff was not able to produce even a single document to show that he had paid house tax before 1995.

The High Court has referred to the Court Commissioner's Report, which records that the building forming a part of the suit property was in a completely dilapidated condition. The High Court has noted that the plaintiff took no steps to repair the portion in the dilapidated condition. The High Court has recorded a finding that water tax and sewage tax were not paid for years together.

15. The High Court has referred to a complaint dated 25th August 1995 submitted by the plaintiff to the police. In the complaint, firstly, the plaintiff asserted that he was in possession of only the front portion of the suit property. Secondly, he specifically asserted that he had been in possession of the suit property for 35 years before filing the complaint. It is pointed out that this complaint was filed one year before the institution of the suit. Thus, he claimed to have been in possession since 1960. In the plaint, the plaintiff claimed to have been in possession since 1950. The plaintiff's own complaint defeats the case made out in the plaint.

16. Therefore, the High Court held that the plaintiff could not establish that his adverse possession commenced from a particular date. The Trial Court and High Court rightly held that the plaintiff failed to prove his plea of adverse possession. In fact, as stated earlier, there was no foundation for the plea of adverse possession in the plaint itself. Therefore, the suit for declaration of ownership by the plaintiff must fail. On one hand, the plaintiff is claiming only on the basis of the plea of the adverse possession.

On the other hand, the defendants are claiming through the person who was admittedly the original owner. Even considering the failure to obtain probate or a letter of administration, it is obvious that the defendants have a better title to the suit property than the plaintiff, a trespasser. Therefore, it is not possible to find fault with the concurrent judgments recording a finding of fact that the plaintiff failed to prove his adverse possession. Thus, the appeals must fail.

17. During the submissions, the learned senior counsel appearing for the appellant/plaintiff submitted that the plaintiff is more than 80 years old. The plaintiff was in possession of at least a part of the suit property almost from 1995. Therefore, notwithstanding the dismissal of the appeals, we propose to grant the plaintiff a longer time to vacate the suit property.

18. Accordingly, we dismiss the appeals with no orders as to costs. Notwithstanding the dismissal of the appeals and confirmation of the decree for possession against the plaintiff, we direct that the decree of possession shall not be executed till 31st March 2025, subject to the condition of the appellant and all adult members of his family filing unconditional undertakings on oath to vacate and handover the peaceful possession of the suit property to the defendant nos. 4 and 5 (plaintiffs in Original Suit No. 10292 of 2010).

The undertakings on oath shall be filed within one month from today. The advocate for the appellant shall provide copies of the undertakings to the advocate for the respondents.

On the failure of the appellant and his adult family members to file undertakings as above within the stipulated time, the decree for possession shall forthwith become executable.

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

.....**J. (Ujjal Bhuyan)**

New Delhi;

March 18, 2024

1 (2020) 1 SCC 1

2 (2004) 10 SCC 779

IN THE SUPREME COURT OF INDIA

Navas @ Mulanavas

Vs.

State of Kerala

Criminal Appeal No. 1215 of 2011

HEADNOTE – Certain factors that the courts considered while deciding convicts' period of sentence before remission could be sought. In the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:-

- (a) the number of deceased who are victims of that crime and their age and gender
- (b) the nature of injuries including sexual assault if any
- (c) the motive for which the offence was committed
- (d) whether the offence was committed when the convict was on bail in another case
- (e) the premeditated nature of the offence
- (f) the relationship between the offender and the victim
- (g) the abuse of trust if any
- (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

The Court also listed the positive factors like the accused's age, possibility of reformation, and remorseful conduct. Some of the positive factors have been:-

- (i) age of the convict
- (ii) the probability of reformation of convict
- (iii) the convict not being a professional killer
- (iv) the socioeconomic condition of the accused
- (v) the composition of the family of the accused and
- (vi) conduct expressing remorse.

JUDGMENT

K.V. Viswanathan, J.

1. The present Appeal arises out of the judgment of a Division Bench of the High Court of Kerala at Ernakulam in D.S.R. No. 4 of 2007 and Criminal Appeal No. 1620 of 2007 dated 09.02.2010. The Death Sentence Reference and the Criminal Appeal arose out of the judgment of the Court of the III Additional Sessions

Judge (Adhoc), Fast Track Court No. 1, Thrissur in Sessions Case No. 491 of 2006.

2. The trial Court found the appellant (the sole accused) guilty for the offences punishable under Sections 302 and 449 IPC for having committed the murder of Latha (aged 39 years), Ramachandran (aged 45 years), Chitra (aged 11 years) and Karthiayani Amma (aged 80 years) after committing house-trespass. After committing the above said act, the accused attempted to commit suicide for which he was also found guilty under Section 309 IPC.

The trial Court sentenced the accused to death for the offence punishable under Section 302 IPC. For the offence under Section 449 IPC, the accused was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default, to undergo simple imprisonment for six months. The accused was also sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.500/- for the offence under Section 309 IPC, and in default of the payment of fine to undergo simple imprisonment for one month.

3. When the matter went for confirmation before the High Court, the High Court, while confirming the conviction, modified the sentence. The sentence of death was modified and reduced to imprisonment for life with a further direction that the accused shall not be released from prison for a period of 30 (thirty) years including the period already undergone with set off under Section 428 Cr.P.C. alone. Aggrieved, the appellant is before us in the present appeal by way of special leave.

Brief Facts:

4. The prosecution story, in brief, is that in the household of the deceased Ramachandran, there were four people residing. Apart from Ramachandran, there was his wife Latha, their daughter Chitra and Ramachandran's mother Karthiayani Amma. The appellant, according to the prosecution, had, at an earlier point in time, illicit intimacy with Latha so much so that Latha even became pregnant, later leading to termination of pregnancy. It is the prosecution case that after Latha tried to distance herself, the appellant was seriously aggrieved, and they advert to an occurrence of 03.02.2005 when the appellant is supposed to have trespassed into the house where Latha lived and even tried to harm her. They rely on Ext. P-9 to Ext.P-11 complaints.

5. The macabre incident, out of which the present case arose, happened on the night intervening 03.11.2005 and 04.11.2005. It is alleged that the accused reached the house of the deceased late at night on 03.11.2005. Having reached

the house, he made a hole in the eastern side wall of the house and gained access into the house.

It is the prosecution case that, having gained access and being armed with 2 (two) knives and an iron rod, he caused the death of Ramachandran and Chitra with the iron rod in the upper floor room in the northern side of the house; that he caused serious injuries to Karthiayani Amma in the northern room on the ground floor (resulting in her death subsequently) and caused the death of Latha with multiple stab injuries in the hall near the stairs on the ground floor.

6. The prosecution case is that PW-1 Thankamani, the domestic help, who had seen the family hale and hearty the previous evening i.e., 03.11.2005, had come to sweep the house on the morning of 04.11.2005 at around 07:00 a.m. While sweeping the courtyard, she found that, unlike on normal days when the family would come out of the house in the morning, no one came out that day. While sweeping, she found that a hole had been dug on the eastern side wall of the house and to her horror also found that blood was dripping from a pipe adjoining the western side wall of the house. She raised an alarm resulting in the neighbours converging on the property.

7. It is PW-2 (Shyama Sundaran), a neighbour, who called the police after witnessing the commotion outside the house. PW-30 (KT Kumaran) the ASI rushed to the spot with his police party and reached at 08:25 AM. He also found a hole in the wall on the eastern side of the house and also that telephone cable was cut. He instructed PW-6 (Balan) & PW-23 (Rajan) to break open the door on the western side of the house first. PW-6 & PW-23 broke open the outer door but found that the inner door was also locked and it could not be opened.

It was then decided to break open the door on the front side of the house. PW-4 (Sandeep) removed the tile portion above the porch and entered the porch. He then broke open the door using a pestle and entered the poomukham (veranda). PW-4 then broke the glass ventilator above the main door and inserted his hand to open the door latch. As they entered, they found Latha's dead body in the passage near the stairs.

The body of Ramachandran and Chitra were found dead in the upper floor room on the northern side of the house. Karthiayani Amma was found in the northern room on the ground floor unconscious. PW-6 & PW-23 took Karthiayani Amma to hospital. It was PW-32 (Ajaya Kumar), the Investigating Officer of the case, who reached the spot at 09:15 AM and saw blood droplets starting from the northern room on the ground floor to the room on the south. When he opened the door, he found the accused lying on the floor with a cut injury on his left wrist.

8. PW-30, ASI registered the suo motu FIR and PW-32, conducted the investigation. The appellant was sent up for trial. In all, the prosecution examined 32 witnesses (PWs 1- 32) and proved Exhibits P1 to P45 series. Material Objects [M.Os.] 1-122 were also marked by the prosecution. The accused did not examine any defence witnesses; but proved Exhibits D1-D5. The accused also gave a statement while being examined under Section 313 Cr.P.C.

At the Section 313 stage, he advanced a version to the effect that there was a pact between him and Latha to commit suicide; that he had come to the house of Latha on 03.11.2005 with the intention that both of them shall commit suicide; that Latha had kept the door open as usual and he gained entry into the house through such door; that after he entered the house, he found Latha and others were all lying dead/injured; that on account of grief, he had cut his left wrist in an attempt to commit suicide and that he was found available in the house in an unconscious state. The appellant was clearly implying that somebody else had gained access into the house and caused the death of all victims. It is then that he proceeded to commit suicide.

9. The case entirely rests on circumstantial evidence. Both the trial Court and the High Court have closely marshalled the circumstantial evidence in the case to arrive at the conclusion that the accused alone is responsible for the death of the four deceased. Additionally, it also relied on the fact that the accused having been found present in the house had offered no plausible and cogent explanation about the sequence of events that had transpired inside, leading to the sole and irresistible conclusion that the accused has perpetrated the heinous crime.

Contentions:

10. We have heard Mr. Renjith B. Marar, learned counsel for the appellant, who advanced elaborate arguments, covering the entire spectrum by making available a chart setting out the summary of the deposition of the prosecution witnesses, the relevant exhibits marked and the argument of the defence in separate columns. He mainly contended that the case made out by the prosecution falls short of the proof needed in a case which is based entirely on circumstantial evidence.

Learned counsel contended that with the available evidence it would be unsafe to sustain the conviction and pleaded for outright acquittal. The specific contentions of the learned counsel challenging certain individual circumstances have been dealt with hereinbelow while tabulating the circumstances. Alternatively, learned counsel pleaded that the sentence of 30 years without remission is excessive and prayed that the sentence may be appropriately tailored to meet the ends of justice.

11. Shri Jayanth Muth Raj, learned senior counsel, for the State vehemently rebutted the arguments of the counsel for the appellant and contended that the trial Court and the High Court have correctly arrived at the conclusion of guilt. Learned senior counsel contended that the case actually warranted death penalty but the High Court has modified it to a sentence of imprisonment for 30 years without remission for the offence under Section 302. According to the learned senior counsel, the sentence did not deserve any further modification.

Discussion:

12. We have carefully considered the submissions of the learned counsel for the respective parties and have perused the material on record, including the relevant original trial Court records. The circumstances that unerringly point to the guilt of the appellant as it emerges from the deposition of the witnesses and the duly proved exhibits can be summarized as under:

i) There was the incident on 03.02.2005 when the accused allegedly trespassed into the house and had thrown a koduval (curved sword) at deceased Latha. This highlights the friction between the accused and deceased Latha. Ext. P9 - P11 complaint of 03.02.2005 has been marked by the prosecution. It also forms an important piece of evidence to establish motive.

ii) PW-3, Raman, an auto driver, deposed that on the night of 03.11.2005, the accused engaged his services to go to Orumanayur. The accused asked him to stop at a place called Muthenmavu (which is the place where the house of the deceased was situated) and he paid him Rs.70/-. We have seen the original deposition and it clearly records that it was at 10.30 PM on the night of 03.11.2005 that the accused engaged the services of PW-3 at Guruvayur auto stand to reach the area where the house of the deceased was located.

Mr. Renjith B. Marar, learned counsel, has challenged the evidence of PW-3 on the ground that no test identification parade was held and the identification was for the first time at the police station. This submission need not detain the court as nothing much turns on it. The presence of the accused even otherwise, at the scene of occurrence has been spoken to by PW-1, PW-2, PW-4, PW-6, PW-23, PW-30 and PW-32, as has been discussed hereinbelow.

iii) PW-1 Thankamani has clearly spoken about the fact that, on 03.11.2005, when she left the house after her work at 7.30 p.m. all the deceased were hale and hearty. On the morning of 04.11.2005, it was she who detected the dripping of the blood from the pipe adjoining the western wall, and a hole being made in the eastern side wall of the house.

iv) The evidence of PW-1, 2, 4, 6, 23, 30 and 32 speaks about the appellant lying in the southern room of the house and being taken to the hospital from there. PWs 1,2,4,6,23 & 30 also speak about the hole that has been made on the eastern wall of the house. The seizure of M.O. 29,30,31,32,33 & 34 items i.e., 2 (two) knives, 2 (two) knife sheaths, iron rod and bag recovered also contributes as a link in the chain.

v) On 4.11.2005, M.O. 29 & 30 (Knives found in the southern room on the ground floor where the accused was found) were seized and taken into custody under Ext. P-12 (Scene Mahazar). M.O. 33 (Iron rod) was also seized and taken from the northern room in the upper floor, vide the same Ext. P-12.

vi) Another important circumstance is the report of the Finger Print Expert (Ext.P-22). The Finger Print Expert has opined that the chance finger print on the water bottle found at the scene of the crime (marked as C-9 by the Expert) was identified as the left thumb impression of the appellant in the slip made available with the Expert for verification (marked as "S" by the expert). The Expert concluded in P- 22 that since the identical ridge characteristics are present in their nature and relative possessions, the finger impressions "C9" and "S" are identical i.e. that they are the impressions of the same finger of the person. The Expert concluded that, in his opinion, that the chance print marked as C-9 and developed by him from the scene of crime on 04.11.2005 is made by the left thumb of the appellant.

vii) The prosecution case is also that there were writings on the wall and on certain objects in the southern room of the ground floor where the accused was found. The writings indicate that these were parting messages of the accused (as the High Court labels them) since he had decided to commit suicide. The writings were in the following words "Do not enter here"; "Shyaman, you are a O, you should not desire the ruppam of a woman, money will make people traitors, you are O, you should not destroy the local area"; The mirror had the writing with pen on it reading 'Latha, I love you' and same was underlined and below that it was written 'Salim, I love you' and 'Yahio I lo' and below that 'Shabna I lo'; The aforesaid wall had one wall clock with the label 'Samaya Quartz' inside. On it, it was written with marker pen 'Latha, I love you'; On the wall, below the clock, it was written "My name is Nawas, reason for my death is Latha, so myself and Latha decided to die together Confirm by Navaz P.M."; "Yahayikka knows that now I shall not be there, wherever, no harm should happen to Yahayikka. I may be an idiot"; "For Salim to know, even if I am not there, you shall always be in my eyes". Near to that it was written "night =12 O'clock, I am at the house of Latha" in two lines. Below that it was written "6 to 7= Finishing"; "I have no role in the looting of 6 lakhs. I was present in the said vehicle. This is true" and near

to that it was written "for police to know where I was for all these days, no child knows".

Specimen of these writings was taken and referred to the handwriting expert. The Handwriting Expert produced P-42 report. PW-32, the Investigating Officer spoke about the seizure of a mirror, a samaya quartz clock and the November-December, 2005 page of Guruvayur Cooperative Urban Bank Calendar. All these items had writings on them at the scene of the crime. Twenty black and white photographs of the handwritings were taken. These were termed 'question' writings and marked by the Handwriting Expert in the report for his reference as Q1, Q2, Q3, Q4, Q5, Q5A, Q6, Q6A to Q6P.

The Expert was also furnished with the 'standard' writings by Appellant marked by the Expert for his reference as S1 to S49. In Ext. P-42, the Handwriting Expert concludes that, on comparison, the 'question' and 'standard' writings are by the same person. He concluded that they agree in general writing characteristics such as skill, speed, spacing, relative size and proportionate spelling errors. The Expert opined that similarities found between the question and standard writings are significant and numerous and there did not exist any material differences.

Only with regard to the signature stamp in Q6(q), the expert concluded that it was not possible to arrive at any definite conclusion regarding the authorship for want of sufficient data on that score. With regard to all others, it was concluded that the person who wrote the blue enclosed writings stamped and marked as 'standard' writings also wrote the red enclosed 'question' writings. The High Court has found that this aspect of handwriting was not even seriously challenged by the accused. Mr. Renjith B. Marar, learned counsel, contended that the handwriting expert had not been examined.

In support thereof, he relies on the judgment of this Court in Padum Kumar v. State of Uttar Pradesh, (2020) 3 SCC 35. The submission flies in the face of Section 293 of the Code of Criminal Procedure. Exhibit P-42 Report is prepared by Dr. K.P. Jayakumar, Joint Director (Research), Forensic Science Laboratory, Thiruvananthapuram. The report is duly marked and exhibited and proved as Exhibit P-42. The Joint Director who occupies a position above the Deputy Director and Assistant Director, is encompassed in the phrase "Director" used in Section 293(4)(e). This position is expressly settled by the judgment of this Court in Ammini & Others v. State of Kerala, (1998) 2 SCC 301. The relevant para of which is extracted hereinbelow:

"11. The trial court was also wrong in holding that the report given by the Forensic Science Laboratory with respect to the contents of MO 44 was not admissible in evidence as it was signed by its Joint Director and not by the

Director. On a true construction of Section 293(4) CrPC it has to be held that Joint Director is comprehended by the expression "Director". The amendment made in clause (e) of Section 293(4) now indicates that clearly.

If the Joint Director was not comprehended within the expression Director then the legislature would have certainly named him while amending the clause and providing that Section 293 applies to the Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory. A Joint Director is a higher officer than a Deputy Director or an Assistant Director and, therefore, it would be unreasonable to hold that a report signed by Joint Director is not admissible in evidence though a report signed by the Deputy Director or Assistant Director is now admissible. In our opinion the High Court was right in holding that the report made by the Joint Director was admissible in evidence and that it deserved to be relied upon."

(Emphasis Supplied)

Hence, the report Ex. P-42 is admissible even without the examination of Dr. K. P. Jayakumar. (See also Bhupinder Singh v. State of Punjab, (1988) 3 SCC 513 & State of H.P. v. Mast Ram, (2004) 8 SCC 660) viii) The evidence of the doctors PWs-10 & 19, who conducted the post-mortem of Latha & Chitra respectively, fixed the timing of death between 6-18 hours prior to 6.25 PM on 04.11.2005. Evidence of PW-25, Doctor who conducted post-mortem of Ramachandran stated that the death occurred 12-18 hours prior to 6:25PM. This synchronizes with the time that the accused made entry into the house.

ix) The hair strands found on the body of Chitra were found to be similar and identical to the hair of the accused. In Ext.P41(b), which is the report of Dr. R. Sreekumar, Assistant Director (Biology) in the forensic laboratory, it is opined that the hairs in Item 45 (hairs from the belly of Chitra) are human scalp hairs which are similar to the sample scalp hairs in Item 58 (a tuft of black hairs) which is the combed hair and cut hair of the appellant.

Challenging the circumstances, Mr. Renjith B. Marar, learned counsel, contends that PW-27 Annamma John does not speak about the hair being seized and that there was no seizure memo spoken to in her 161 statement. This submission has no merit since Exhibit P-26 is the seizure mahazar of the objects collected by PW-27 on 04.11.2005, the day the sordid incident was unravelled. In the Inquest Report also PW-14 mentions about the collection of hair from the body of the deceased Chitra by PW-27.

x) It is also important to note that the 2 (two) strands of hair found on one of the knives, was found to be Latha's as per FSL Report (Ex. P. 41(b)).

xi) The testimonies of the Doctors PWs, 10, 19, 25 and 26, clearly bring out that the injuries sustained by the deceased could be caused by means of M.O. 29, 30 and 33. This is an additional circumstance.

xii) Ext.P41(c), which is the report of the Scientific Assistant (Chemistry), FSL, Thiruvananthapuram, clearly establishes that the black coloured ink in Item 66 (the marker pen with trade brand label as Kolor Pik permanent XL marker) and 67 (1 black coloured plastic cap) is similar to the ink used in the black coloured writings in Item 63 (wooden frame) item 64 (wall clock) with trade label samay and item 65 (calendar of Guruvayur Cooperative Urban Bank). Item numbers referred to here are the ones given for reference by the Scientific Assistant in her report. The Marker pen (part of M.O. 95) was recovered from the southern room where the Appellant was found, and rightly an inference has been drawn that the writings on M.O. 43 (Wall Clock) M.O. 90 (Mirror) and M.O. 94 (2005 Calendar) are the writings of the accused by using M.O 95 (marker pen)

xiii) At the site where the hole was drilled, soil/powder was available. It is found in the forensic report that the soil/powder on M.O. 34 bag (found in the room where the accused was found) and seized as per Ext.P-12 scene mahazar, was apparently similar to the soil/powder seized near the hole. Equally so, in the M.O. 71 shirt belonging to the accused, apparently similar soil/powder was found. These are established by the FSL report (Exh. 41(a)). Further, the nail clippings of the accused taken by PW-31 dated 14.11.2005 revealed apparently similar soil/powder to the soil/powder found at the site of the hole as per FSL report (Exh. 41(a)).

This is a circumstance relied upon by the prosecution to establish that the accused gained access through the hole that he dug. The argument of the accused that the nail clippings were taken on 14.11.2005 and no importance could be attached has rightly been rejected by the High Court saying that it is not even the case of the accused that the soil/powder detected from the hole at the scene of occurrence was planted on his nail. Mr. Renjith B. Marar, learned counsel for the appellant contended that Exhibit P-41(a) report was not put in the Section 313 questioning in the context of the soil particles on the wall tallying with the soil particles in the nail clippings and on the shirt and the bag found in the room where the accused was present.

We have called for the original record and examined the Section 313 statement and had the Malayalam version read over to us. We have also seen the translated version of Section 313. Exhibit P-41(a) was put in question no. 52 but it was in the context of item 68 cable and as to how it could be cut with the knives (item 22 and 23). To that extent, Mr. Renjith B. Marar is right that the report was not put in this context. The report was put to the accused albeit in the context of the

cable and knives. However, viewed in the conspectus of the other circumstances even if this circumstance is eschewed, it will not make any difference to the ultimate conclusion.

The further argument that there was no seizure memo for the nail clippings is clearly incorrect. PW-31 Dr. Hitesh Shankar has clearly deposed that he had collected the nail clippings and hair samples and the blood of the accused-appellant and after sealing and labeling them handed it over to the police constable-4628. Exhibit P-45(i) marked by PW-32 Ajay Kumar, Investigating Officer as part of the property list, mentions about the collection of nail clippings, hair sample and sodium fluoride tube. Hence, the contention that the chain of custody is not established cannot be countenanced. There is no reason to disbelieve PW-31 Dr. Hitesh Shankar and the documents in support of the same.

xiv) The evidence of the prosecution witnesses and even the version of the accused establishes his presence at the scene of occurrence. His explanation that deceased Latha would always leave the door open for him to enter and that when he entered, he found them already dead and lying on the floor wounded has been found to be false. If the appellant's own case is that he entered the house that night, no cogent explanation has been given as to who opened the door. However, we have not gone by his version. His presence at the scene of crime is established by the evidence of PW-1, PW-2, PW-4, PW-6, PW-23, PW-30 and PW-32.

xv) The appellant was the only other person inside the house, with the other three being dead and one Karthiayani Amma, who was injured and unconscious and who later died in that state itself. There is no cogent and plausible explanation forthcoming from the accused as to what transpired at the scene of occurrence on the night intervening 03.11.2005 and 04.11.2005. This coupled with the fact that his relationship with the deceased Latha was strained clearly point to his guilt. Section 106 of the Indian Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

We are conscious of the warning administered by Justice Vivian Bose, rightly, in Shambhu Nath Mehra vs. The State of Ajmer, 1956 SCR 199 to the effect that Section 106 is not intended to relieve the prosecution of its duty. However, Shambhu Nath Mehra (supra) itself recognizes that in exceptional cases where it could be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are especially within the knowledge of the accused, the burden will be on the accused since he could prove as to what transpired in such scenario, without difficulty or inconvenience.

In this case, when an offence like multiple murders is committed inside a house in secrecy, the initial burden has to be discharged by the prosecution. Once the prosecution successfully discharged the burden cast upon it, the burden did shift upon the appellant being the only other person inside the four corners of the house to offer a cogent and plausible explanation as to how the offences came to be committed. The appellant has miserably failed on that score. This can be considered as a very important circumstance, constituting a vital link in the chain.

13. Though the trial Court and the High Court have adverted to few other circumstances, we are satisfied that the circumstances set out hereinabove are by themselves consistent with the sole hypothesis that the accused and the accused alone is the perpetrator of these murders which were most foul.

14. It is also to be noted that the law on the appreciation of circumstantial evidence is well settled and it will be an idle parade of familiar learning to deal with all the cases. We do no more than set out the holding in *Sharad Birdhichand Sarda vs. State of Maharashtra* (1984) 4 SCC 116, which dealt with the panchsheel or the five principles essential to be kept in mind while convicting an accused in a case based on circumstantial evidence:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

15. We are convinced that the circumstances presented in evidence in this case more than meets the ingredients that are required to be established. We find no reason to interfere with the concurrent conviction recorded by the trial Court and the High Court against the appellant for the offences under Section 302 (murder), 449 (house-trespass) and 309 (attempt to commit suicide) and we maintain the conviction.

Discussion on Sentence:

16. Coming to the sentencing, while the trial Court imposed the sentence of death, the High Court has modified it to that of imprisonment for 30 years with no remission. Mr. Renjith B. Marar, learned counsel, made an impassioned plea as part of his alternative submission that imprisonment for 30 years without remission is excessive and disproportionate. Mr. Jayanth Muth Raj, learned senior counsel, left no stone unturned in contending that the appellant has got away lightly and that he is fortunate to have escaped the gallows.

17. The question before us is what should be the appropriate sentence and whether the High Court was justified in adopting the *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767 line of cases and even it was justified whether the fixing of the quantum at 30 years without remission was the appropriate sentence, in the facts and circumstances of the case?

18. The trial court imposed the sentence of death as far as the offence punishable under Section 302 IPC was concerned. The trial court recorded that the appellant had committed the murder of four persons; that the appellant was blood-thirsty; that he had illicit love affair with deceased Latha, the wife of deceased Ramachandran; that she even became pregnant because of him and then fell out with the appellant; that there was an attempt to cause bodily injury earlier to Latha by throwing a koduval (curved sword) on 03.02.2005; that the nature of the injuries inflicted upon the deceased persons indicate that the murders were committed in an extremely brutal and dastardly manner; that they were premeditated and cold blooded murders; that the entire family was eliminated including an innocent child aged eleven years and a hapless 80 years old lady and

that the collective conscience of the community was shocked. The trial court also noted that the accused attempted to commit suicide by cutting the vein in his left forearm but however discarded that circumstance and passed a sentence of death.

19. The High Court first recorded that there was no question of interfering with the sentence under Sections 449 and 309 IPC and the question was only whether the sentence of death ought to be confirmed or not. Thereafter, the High Court delved into the balance sheet of aggravating and mitigating circumstances.

The High Court, while recording the argument of the prosecution, noticed that there was prior planning; that four lives were snuffed out and the entire family was wiped out including a child and an aged woman; that the deceased were unarmed and defenceless and no provocation or resistance was offered by them; that the offence was committed after mischievously planning the operation and after gaining access to the closed house in the night by making a hole on the wall; that the incident reflected a dare devil attitude; that the nature of weapons used by the accused, namely, the knife and the iron bar is also taken as an aggravating circumstance; that the nature and number of injuries inflicted on deceased Latha (43 of which 38 were stab injuries) was also an aggravating circumstance and that there were prior instances of involvement by the accused in attempting to assault Latha.

20. Dealing with the mitigating circumstance, the High Court noticed the contention of the defence, to the effect that there was no semblance of any element of gain, profit or advantage for the accused; that rightly or wrongly the accused was labouring under an impression of deprivation in love; that the accused was in an extremely agitated and excited state of mind; that there was indication to show that at some point of time deceased Latha had herself suggested commission of suicide together; that the accused had no motive whatsoever against Ramachandran, Chitra and Karthiayani Amma; that he had great affection for Chitra and referred to Ramachandran in endearing terms; that he had not used any weapon against Karthiayani Amma; that he did not make any attempt to flee from justice and in fact attempted to commit suicide; that he was a young man of twenty eight years; that he was still young and not lost to civilization and humanity and the final contention of the defence that he was not a menace to the society.

21. Thereafter, the High Court dealt with the precedents laid down by this Court in Bachan Singh v. State of Punjab (1980) 2 SCC 684, Machhi Singh v. State of Punjab (1983) 3 SCC 470 to examine whether the litmus test, namely, that the alternative option being unquestionably foreclosed was fulfilled or not. Thereafter, the High Court noticed the judgment of this Court in Swamy Shraddananda (supra) and the holding thereon that to avoid a sentence of death, it

is possible for the courts to device a graver form of sentence of imprisonment for life beyond fourteen years which would ensure that the society is insulated from the criminal for such period as the court may specify, including if the facts warranted, the entire rest of his life.

22. Thereafter applying *Swamy Shraddananda (supra)*, the High Court observed as follows:

"54. A question still remains whether the instant case is one in which the graver alternatives of a life sentence are also unquestionably foreclosed. We have rendered our anxious consideration to all that all the relevant inputs. We are unable to agree that all the options now available can be said to be unquestionably foreclosed in the given circumstances. In every case of death sentence, the court must consider the purpose of the sentence.

The theory of reformation will have no place whatsoever in a case of imposition of death sentence. In a case like the instant one, the consideration of compensation/restoration cannot also have any place, as all the members of the family have been liquidated by the conduct of the accused. The purpose of a death sentence - of eliminating the menace to the society in the form of a hardened criminal and to save society from the activities of such criminal may not also have much role, given the alternative option of a life sentence which will ensure that the accused does not come into contact with the society thereafter.

59. Let it not be assumed that this court does not perceive the instant one to be a serious and dastardly crime. We, to say the least, are convinced that the offence committed calls for societal abhorrence and disapproval. But, the totality of circumstances instill in us the satisfaction that this is not a case where the range of further options available to the court after *Swamy Shraddananda (supra)* are unquestionably foreclosed.

Placing fetter on the powers of the Executive under Section 432 and 433 Cr.P.C. for a prescribed period (and with due caution administered that the powers under Article 72 and Article 161 should not be lightly invoked to get over the prescription of such period fixed by this Court) a sentence of imprisonment for life which shall ensure that the offender does not get exposed to society for a period of 30 years can be imposed. We are not prescribing the 'entire rest of the life' as the period, as fixed by their Lordships in *Swamy Shraddananda (supra)*, considering the totality of circumstances and because of the optimistic faith in the infinite capacity of the human soul to repent and reform."

Holding so, the High Court modified the sentence of death to that of imprisonment for life with the further direction that the accused shall not be

released from prison for a period of 30 (thirty) years including the period already undergone with set off under Section 428 Cr.P.C. alone.

23. The State is not in appeal, having accepted the verdict of the High Court. It is only the appellant who is in appeal. It is his submission that the imposition of 30 (thirty) years sentence without remission is excessive and the counsel urges that a suitable lesser sentence be imposed under the Swamy Shraddananda principle. This is the alternative submission advanced.

24. Swamy Shraddananda (supra), since affirmed subsequently in Union of India v. V. Sriharan alias Murugan and Others, (2016) 7 SCC 1, resolved a judge's dilemma. Often it happens that a case that falls short of the rarest of the rare category may also be one where a mere sentence of 14 years (the normal benchmark for life imprisonment) may be grossly disproportionate and inadequate. The Court may find that while death penalty may not be warranted keeping in mind the overall circumstances, a proportionate penalty would be to fix the period between 14 years and for the imprisonment till rest of the life without remission. Addressing this issue felicitously in Swamy Shraddananda (supra) Justice Aftab Alam speaking for the court, held as follows:

"92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence.

But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty.

Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all."

25. In *V. Sriharan* (supra), a Constitution Bench of this Court affirmed the principle laid down in *Swamy Shraddananda* (supra). It first affirmed the principle that imprisonment for life meant imprisonment for rest of the life, subject however, to the right to claim remission, as provided in the Constitution and the statutes. It was further held that the judgment in *Swamy Shraddananda* (supra) did not violate any statutory prescription.

The Court went on to observe that all that *Swamy Shraddananda* (supra) sought to declare was that within the prescribed limit of the punishment of life imprisonment, having regard to the nature of offence committed by imposing life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim. Thereafter, in the same judgment *Ibrahim Kalifulla, J.*, in a passage which repays study held as under:

"98. While that be so, it cannot also be lost sight of that it will be next to impossible for even the lawmakers to think of or prescribe in exactitude all kinds of such criminal conduct to fit into any appropriate pigeonhole for structured punishments to run in between the minimum and maximum period of imprisonment.

Therefore, the lawmakers thought it fit to prescribe the minimum and the maximum sentence to be imposed for such diabolic nature of crimes and leave it for the adjudication authorities, namely, the Institution of Judiciary which is fully and appropriately equipped with the necessary knowledge of law, experience, talent and infrastructure to study the detailed parts of each such case based on the legally acceptable material evidence, apply the legal principles and the law on the subject, apart from the guidance it gets from the jurists and judicial pronouncements revealed earlier, to determine from the nature of such grave offences found proved and depending upon the facts noted, what kind of punishment within the prescribed limits under the relevant provision would appropriately fit in.

In other words, while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions noted above, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, what should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae."

(Emphasis Supplied)

It will be clear from the paragraph above that the question of fixing the number of years within the maximum, in the case of life imprisonment, was to be left to the courts. It was mandated that the courts would with its experience, knowledge of law, the talent and infrastructure after studying the detailed parts of each case, with the guidance from the jurists and judicial pronouncements revealed earlier would decide judiciously about the period of incarceration which the case warranted. It was also indicated that for this, apart from the crime itself; the angle of the commission of such crime or crimes; the interest of society at large and all other relevant facts which cannot be put in any straitjacket formulae would be taken into account.

26. Once the court decides that the death penalty is not to be imposed and also that the convict cannot be released on the expiry of 14 years, the guidelines set out in *Swamy Shraddananda (supra)*, *V. Sriharan (supra)* and the line of cases which have applied these judgments will have to be considered and principles, if any, set out therein have to be applied.

27. How much is too much and how much is too little? This is the difficult area we have tried to address here. As rightly observed, there can be no straitjacket formulae. Pegging the point up to which remission powers cannot be invoked is an exercise that has to be carefully undertaken and the discretion should be exercised on reasonable grounds. The spectrum is very large. The principle in *Swamy Shraddananda (supra)* as affirmed in *V. Sriharan (supra)* was evolved as the normally accepted norm of 14 years was found to be grossly disproportionate on the lower side.

At the same time, since it is a matter concerning the liberty of the individual, courts should also guard against any disproportion in the imposition, on the higher side too. A delicate balance has to be struck. While undue leniency, which will affect the public confidence and the efficacy of the legal system, should not be shown, at the same time, since a good part of the convict's life with freedom is being sliced away (except in cases where the Court decides to impose imprisonment till rest of the full life), in view of his incarceration, care should be taken that the period fixed is also not harsh and excessive.

While by the very nature of the task mathematical exactitude is an impossibility, that will not deter the Court from imposing a period of sentence which will constitute "a just dessert" for the convict. Precedents can be good pointers as advised in *V. Sriharan (supra)*. A survey of the previously decided cases applying the *Swamy Shraddananda (supra)* principle would be a safe and legitimate guide. It is in pursuance of that mandate that we have made a survey of some of the cases to see how *Swamy Shraddananda (supra)* had come to be applied in the course of the last decade and a half.

28. In *Swamy Shraddananda (supra)* itself, on facts, after finding that it was a murder of the wife in a systematic preplanned manner coupled with the fact that it was a murder for gain, this Court directed that the appellant therein be not released from prison for the rest of his life.

29. In *Haru Ghosh v. State of West Bengal*, (2009) 15 SCC 551 which involved the murder of two individuals and the attempt to murder the third by the accused who was out on bail in another case, after conviction, this Court while commuting the death penalty after taking into account the aggravating and mitigating circumstances imposed a sentence of 35 (thirty five) years of actual jail sentence without remission. It was noted that commission of the offence was not premeditated since he did not come armed and that the accused was the only bread earner for his family which included two minor children.

30. In *Mulla & Another v. State of U.P.*, (2010) 3 SCC 508 the accused/appellant, along with other co-accused, was found guilty of murdering five persons, including one woman. This Court confirmed the conviction but modified the sentence. This Court stressed on the fact that socioeconomic factors also constitute a mitigating factor and must be taken into consideration as in the case the appellants belonged to extremely poor background which prompted them to commit the act. The sentence was reduced from death to life imprisonment for full life, subject to any remission by the Government for good reasons.

31. In *Ramraj v. State of Chhattisgarh*, (2010) 1 SCC 573 which involved the murder of his wife, this Court imposed a sentence of 20 (twenty) years including remissions.

32. In *Ramnaresh and Others vs. State of Chhattisgarh.*, (2012) 4 SCC 257 the convicts were sentenced to death by the lower court, with the High Court confirming the sentence, on finding them guilty of raping and murdering an innocent woman while she was alone in her house. This Court confirmed the conviction but found the case did not fall under the 'rarest of rare' category for awarding death sentence. Ultimately, after setting out the well-established principles and on consideration of the aggravating and mitigating circumstances, this Court, while commuting the sentence from death imposed a sentence of life imprisonment of 21 (twenty one) years.

33. *Neel Kumar v. State of Haryana*, (2012) 5 SCC 766 was a case where the accused committed murder of his own four-year old daughter. This Court, after considering the nature of offence, age, relationship and gravity of injuries caused, awarded the accused 30 (thirty) years in jail without remissions.

34. In *Sandeep v. State of Uttar Pradesh*, (2012) 6 SCC 107 which involved the murder of paramour and the unborn child (foetus), this Court, while considering the facts and circumstances awarded a period of 30 (thirty) years in jail without remission.

35. In *Shankar Kisanrao Khade vs State of Maharashtra*, (2013) 5 SCC 546, the accused was convicted for raping and murdering a minor girl aged eleven years and was sentenced to death for conviction under S. 302 of IPC, life imprisonment under S. 376, seven years RI under S. 366-A and five years RI under S. 363 r/w S. 34. This Court confirmed the conviction but modified the death sentence to life imprisonment for natural life and all the sentences to run consecutively.

36. *Sahib Hussain v. State of Rajasthan*, (2013) 9 SCC 778, concerned killing of five persons including three children. This Court, taking note of the fact that the guilt was established by way of circumstantial evidence and the fact that the High Court had already imposed a sentence of 20 (twenty) years without remission, did not interfere with the judgment of the High Court.

37. In *Gurvail Singh & Anr. v. State of Punjab*, (2013) 2 SCC 713 which involved the murder of four persons, this Court weighed the mitigating factors i.e., age of the accused and the probability of reformation and rehabilitation, and aggravating factors i.e., the number of deceased, the nature of injuries and the totality of facts and circumstances directed that the imprisonment would be for a period of 30 (thirty) years without remission.

38. In *Alber Oraon v. State of Jharkhand*, (2014) 12 SCC 306 which involved the murder by the accused of his livein partner and the two children of the partner, this Court, even though it found the murder to be brutal, grotesque, diabolical and revolting, applied the proportionality principle and imposed a sentence of 30 (thirty) years over and above the period already undergone. It was ordered that there would be no remission for a period of 30 (thirty) years.

39. In *Rajkumar v. State of Madhya Pradesh*, (2014) 5 SCC 353, which involved the rape and murder of helpless and defenceless minor girl, this Court commuting the death penalty imposed a sentence of 35 (thirty five) years in jail without remission.

40. In *Selvam v. State*, (2014) 12 SCC 274, the accused was found guilty of rape and murder of nine year old girl. This Court imposed a sentence of imprisonment for a period of 30 (thirty) years without any remission, considering the diabolic manner in which the offence has been committed against the child.

41. In *Birju v. State of Madhya Pradesh*, (2014) 3 SCC 421, the accused was involved in the murder of a one-yearold child. This Court noted that various

criminal cases were pending against the accused but stated that it cannot be used as an aggravating factor as the accused wasn't convicted in those cases. While commuting the death penalty, this Court imposed a sentence of rigorous imprisonment for a period of 20 (twenty) years over and above the period undergone without remission, since he would be a menace to the society if given any lenient sentence.

42. In *Tattu Lodhi v. State of Madhya Pradesh*, (2016) 9 SCC 675 this Court was dealing with an appeal preferred by the accused who was sentenced to death after he was found guilty of committing murder of a minor girl and for kidnapping and attempt to rape after destruction of evidence. This Court reduced the sentence from death to life imprisonment for a minimum 25 (twenty five) years as it noted that there exists a possibility of the accused committing similar offence if freed after fourteen years. This Court also opined that the special category sentence developed in *Swamy Shradhanand* (supra) serves a laudable purpose which takes care of genuine concerns of the society and helps the accused get rid of death penalty.

43. *Vijay Kumar v. State of Jammu & Kashmir*, (2019) 12 SCC 791 was a case where the accused was found guilty of murder of three minor children of the sister-in-law of the accused. This Court, taking note of the fact that the accused was not a previous convict or a professional killer and the motive for which the offence was committed, namely, the grievance that the sister-in-law's family was not doing enough to solve the matrimonial problem of the accused, imposed a sentence of life imprisonment till natural death of the accused without remission.

44. In *Parsuram v. State of Madhya Pradesh*, (2019) 8 SCC 382, the accused had raped and murdered his own student. The Trial Court sentenced the accused to death which was affirmed by the High Court. This Court took into consideration the mitigating factors i.e., that the accused was twenty two years old when he committed the act and the fact that there exists a possibility of reformation and the aggravating factors i.e., that the accused abused the trust of the family of the victim. After complete consideration and reference to some precedents, this Court imposed a sentence of thirty years without any remission.

45. In *Nand Kishore v. State of Madhya Pradesh*, (2019) 16 SCC 278, the accused was sentenced to death by the Trial Court and the High Court for committing rape and murder of minor girl aged about eight years old. This Court noted the mitigating factors i.e., age of the accused at the time of committing the act [50 years] and possibility of reformation and imposed a sentence of imprisonment for a period of 25 (twenty five) years without remission.

46. *Swapan Kumar Jha v. State of Jharkhand and Another*, (2019) 13 SCC 579 was a case relating to abduction of deceased for ransom and thereafter murder by the accused. This Court took into consideration the mitigating factors i.e., young age of the accused, possibility of reformation and the convict not being a menace to society. On the other side of the weighing scale, was the fact that the accused had betrayed the trust of the deceased who was his first cousin and the fact that the act was premeditated. This Court modified the death sentence to one of imprisonment for a period of 25 (twenty five) years with remissions.

47. *Raju Jagdish Paswan v. State of Maharashtra*, (2019) 16 SCC 380 was a case where the accused was convicted for the rape and murder of minor girl aged about nine years and sentenced to death by the trial court which was affirmed by the High Court. This Court noted the mitigating factors i.e., murder was not preplanned, young age of the accused, no evidence to show that the accused is a continuing threat to society and the aggravating factors i.e., the nature of the crime and the interest of society, if petitioner is let out after fourteen years, imposed a sentence of life imprisonment for 30 (thirty years) without remission.

48. In *X v. State of Maharashtra*, (2019) 7 SCC 1 the accused was sentenced to death by this Court on his conviction for committing rape and murder of two minor girls who lived near his house. However, in review, the question placed before the Court was whether postconviction mental illness be a mitigating factor. This Court answered it in the affirmative but cautioned that in only extreme cases of mental illness can this factor be taken into consideration. The Court reduced the sentence from death to life imprisonment for the remainder of his life as he still poses as a threat to society.

49. In *Irappa Siddappa Murgannavar v. State of Karnataka*, (2022) 2 SCC 801, this Court affirmed conviction of the accused, inter alia, under S. 302 and 376 but modified the sentence from death to life imprisonment for minimum 30 (thirty years). This Court stated that mitigating factors such as young age of the accused, no criminal antecedents, act not being pre-planned, socioeconomic background of the accused and the fact that conduct of the accused inside jail was 'satisfactory' concluded that sufficient mitigating circumstances exists to commute the death sentence.

50. In *Shiva Kumar v. State of Karnataka*, (2023) 9 SCC 817, this Court opined that the facts of the case shocked the conscience of the Court. The accused was found guilty of rape and murder of a twenty eight year old married woman who was returning from her workplace. Despite noting that the case did not fall under the 'rarest of rare' category, the Court stated that while considering the possibility of reformation of the accused, Courts held that showing undue leniency in such a

brutal case will adversely affect the public confidence in the efficacy of the legal system. It concluded that a fixed term of 30 (thirty years) should be imposed.

51. In *Manoj and Others v. State of Madhya Pradesh*, (2023) 2 SCC 353, the three accused were sentenced to death by the lower court and confirmed by the High Court on their conviction under Section 302 for committing murder, during the course of robbery, of three women. This Court, while modifying the sentence from death to life imprisonment for a minimum 25 (twenty five) years, took into consideration the non-exhaustive list of mitigating and aggravating factors discussed in *Bachan Singh* (supra) to establish a method of principled sentencing. This Court also imposed an obligation on the State to provide material disclosing psychiatric and psychological evaluation of the accused which would help the courts understand the progress of the accused towards reformation.

52. In *Madan vs State of U.P.*, 2023 SCC OnLine SC 1473, this Court was dealing with a case wherein the accused was sentenced to death, along with other coaccused, for murdering six persons of his village. This Court called for the jail conduct report and psychological report of the accused which were satisfactory and depicted nothing out of the ordinary. This Court also took into consideration the old age of the accused and period undergone [18 yrs.] as mitigating factors. This Court concluded that the case did not fall under the rarest of rare category and commuted the death sentence to life imprisonment for minimum 20 (twenty years) including sentence undergone.

53. In *Sundar vs State by Inspector of Police*- 2023 SCC OnLine SC 310, this Court, while sitting in review, commuted death sentence awarded to accused therein to life imprisonment of minimum 20 (twenty years). The accused had committed rape and murder of a 7-year-old girl. Factors that influenced this Court to reach such a decision were the fact that no court had looked at the mitigating factors.

It called for jail conduct and education report from the jail authorities and found that the conduct was satisfactory and that accused had earned a diploma in food catering while he was incarcerated. Apart from the above, the Court noted the young age of the accused, no prior antecedents to reach a conclusion warranting modification in the sentence awarded.

54. In *Ravinder Singh vs State Govt. of NCT of Delhi*- (2024) 2 SCC 323, the accused was convicted under Sections 376, 377 & 506 of the IPC for raping his own 9- year-old daughter by the Sessions court and conviction was confirmed by the High Court. The Sessions Court, while imposing life imprisonment, also stated that the accused would not be given any clemency by the State before 20 years.

This Court clarified that, as discussed in V. Sriharan (supra), the power to impose a special category sentence i.e., a sentence more than 14 years but short of death sentence can only be imposed by the High Court or if in appeal, by this Court. Considering the nature of the offence committed by the accused and the fact that if the accused is set free early, he can be a threat to his own daughter, this Court imposed a minimum 20 (twenty years) life imprisonment without remissions.

55. A survey of the 27 cases discussed above indicates that while in five cases, the maximum of imprisonment till the rest of the life is given; in nine cases, the period of imprisonment without remission was 30 years; in six cases, the period was 20 years (In Ramraj (supra), this Court had imposed a sentence of 20 years including remission); in four cases, it was 25 years; in another set of two cases, it was 35 years and in one case, it was 21 years.

56. What is clear is that courts, while applying Swamy Shraddananda (supra), have predominantly in cases arising out of a wide array of facts, keeping the relevant circumstances applicable to the respective cases fixed the range between 20 years and 35 years and in few cases have imposed imprisonment for the rest of the life. So much for statistics. Let us examine how the judgments guide us in terms of discerning any principle.

57. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the Swamy Shraddananda (supra) principle too.

Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in V. Sriharan (supra). Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:-

- (a) the number of deceased who are victims of that crime and their age and gender;
- (b) the nature of injuries including sexual assault if any;
- (c) the motive for which the offence was committed;

- (d) whether the offence was committed when the convict was on bail in another case;
- (e) the premeditated nature of the offence;
- (f) the relationship between the offender and the victim;
- (g) the abuse of trust if any;
- (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse.

These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein.

58. How do these factors apply to the case at hand? The act committed by the accused was preplanned/ premeditated; the accused brutally murdered 4 (four) persons who were unarmed and were defenseless, one of whom was a child and the other an aged lady. It is also to be noted that by the act of the accused, three generations of single family have lost their lives for no fault of theirs; Nature of injuries inflicted on Latha, Ramachandran and Chitra highlights the brutality and coldbloodedness of the act.

59. On the mitigating side, the accused was quite young when he committed the act i.e., 28 years old; The act committed by the accused was not for any gain or profit; accused did not try to flee and in fact tried to commit suicide as he was overcome with emotions after the dastardly act he committed; accused has been in jail for a period of 18 years and 4 months and the case is based on circumstantial evidence. We called for a conduct report of the appellant from the Jail Authorities.

The report dated 05.03.2024 of the Superintendent, Central Prison and Correctional Home, Viyyur, Thrissur has been made available to us. The report indicates that ever since his admission to jail, he had been entrusted with prison

labour work such as duty of barber, day watchman and night watchman. Presently, he has been assigned the job as convict supervisor for the last one and a half years. The report clearly indicates that no disciplinary actions were initiated against him in the prison and that the conduct and behavior of the appellant in prison has been satisfactory so far.

Conclusion:

60. For the reasons stated above, we uphold the judgment of the High Court insofar as the conviction of the appellant under Sections 302, 449 and 309 IPC is concerned. We also do not interfere with the sentence imposed on the accused for the offence under Section 449 and Section 309 of IPC. We hold that the High Court was justified on the facts of the case in following Swamy Shraddhananda (supra) principle while imposing sentence for the offence under Section 302 IPC.

However, in view of the discussion made above, we are inclined to modify the sentence under Section 302 imposed by the High Court from a period of 30 years imprisonment without remission to that of a period of 25 years imprisonment without remission, including the period already undergone.

In our view, this would serve the ends of justice. For the reasons stated above, the Appeal is partly allowed in the above terms.

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

.....J. (K.V. Viswanathan)

.....J. (Sandeep Mehta)

New Delhi;

March 18, 2024.

IN THE SUPREME COURT OF INDIA

Somnath
Vs.
State of Maharashtra & Ors.,

[Criminal Appeal No. _____ of 2024 @ SLP (Crl.) No. 2600 of 2019]

HEADNOTE – Directions to the police forces in all States and Union Territories as also all agencies endowed with the power of arrest and custody to scrupulously adhere to all Constitutional and statutory safeguards and the additional guidelines laid down by this Court when a person is arrested by them and/or remanded to their custody.

JUDGMENT

Ahsanuddin Amanullah, J.

1. Leave granted.
2. Heard learned counsel for the parties.
3. The present appeal is directed against the Final Judgment and Order dated 08.10.2018 (hereinafter referred to as the "Impugned Judgment") passed by the High Court of Judicature at Bombay, Bench at Aurangabad (hereinafter referred to as the "High Court") in Criminal Writ Petition No.215 of 2017 by which the writ petition filed by the appellant was partly allowed and the respondent no.2 was directed to pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) from his own pocket to the appellant.

BRIEF FACTS:

4. A First Information Report¹ bearing Crime No.1- 117 of 2015 for an offence punishable under Section 379² of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") was filed by one Mr. Madhukar Vikram Gayake on 14.06.2015 with Paithan Police Station, Taluka Paithan, District Aurangabad, State of Maharashtra (hereinafter referred to as the "PS") alleging that on 12.06.2015 the complainant had come to attend the last rites of his brother-inlaw and was standing in a queue in the holy Nath Temple when some unknown persons took away Rs.30,000/- (Rupees Thirty Thousand only), which he was carrying in his pocket, which he realized only after coming out from the temple. The appellant was arrested at 08:30PM in connection with the said crime on

14.06.2015 on the basis of CCTV³ footage showing the involvement of the appellant in the said crime.

5. On 15.06.2015, the appellant was produced before the Magistrate at 4PM and the investigating agency sought police remand on the ground that recovery had been made from the appellant. The request was granted by the Magistrate and he was remanded to police custody till 18.06.2015.

6. On 17.06.2015, the investigating agency prepared a memorandum under Section 27 of the Indian Evidence Act, 1872 showing recovery of Rs.30,000/- (Rupees Thirty Thousand) from the house of the appellant.

7. On 18.06.2015, the investigating agency produced the appellant before the Magistrate praying for further extension of police custody for two days and the same was granted till 20.06.2015. On 19.06.2015, the appellant was allegedly taken out of the lock-up by the respondent no.2, the then officiating Inspector of PS, in handcuffs and paraded half-naked with garland of footwear around his neck and is said to have been verbally abused with reference to his caste as also physically assaulted by the respondent no.2.

8. On 20.06.2015, the investigating agency did not ask for any further extension of police remand and thus the appellant was remanded to judicial custody till 04.07.2015. On the same day, the appellant filed an application for bail in the Court of Judicial Magistrate, First Class, Paithan, which was allowed on the condition that he would visit Police Station on every alternate day between 1000hrs to 1300hrs till filing of the Final Report. The appellant was not released pursuant to the order due to the respondent no.2 not allowing him to be released and instead had taken the appellant to the PS.

9. Mr. Rahul Raju Kamble, relative of the appellant filed application before the Judicial Magistrate, First Class, Paithan, narrating the chain of events and praying for directions to release the appellant and, inter alia, praying for issuance of Show-Cause Notice to the concerned police officer. Thereon, the Magistrate had directed the prosecution to file its reply. However, the appellant was finally released on 20.06.2015.

10. The Superintendent of Police, Aurangabad (Rural), on complaint made by the appellant and others, directed the Sub Divisional Police Officer, Paithan on 07.07.2015 to initiate inquiry on the entire issue and submit report. The Sub Divisional Police Officer, Paithan conducted inquiry relating to the complaint made against the respondent no.2, directing both the appellant and respondent no.2 and other Police officers/constables to appear and submit their statements.

In his report dated 11.09.2015, it was recorded that on 19.06.2015 the appellant was taken out from the lock-up by the respondent no.2 and paraded on the streets of the city of Paithan and was also physically assaulted during the said procession and held respondent no.2 responsible for this. It further narrated that despite grant of bail to the appellant he was illegally detained by respondent no.2 for four hours.

11. On 08.10.2015 and 09.10.2015, the sister of the appellant complained to various authorities including the Superintendent of Police, Aurangabad (Rural) and the President [read Chairperson], National Human Rights Commission (hereinafter referred to as the "Commission") seeking initiation of departmental enquiry and criminal prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act").

12. On 25.12.2015, the appellant was charge-sheeted in connection with another FIR bearing Crime No.1- 192/2015 punishable under Section 394⁴, IPC and he was sought to be declared a Proclaimed Offender despite him being available in town and co-operating with the investigating agency. However, the appellant was arrested on 24.05.2016 and subsequently released on bail.

13. The Special Inspector General of Police, Aurangabad Range, Aurangabad, after perusing the Inquiry Report of the Sub Divisional Police Officer dated 11.09.2015 and not finding the explanation of respondent no.2 to be satisfactory, imposed punishment of "strict warning".

14. The appellant on 02.02.2017, approached the High Court by way of filing Writ Petition, inter alia, praying for initiation of departmental inquiry and criminal proceedings against respondent no.2 and also sought compensation. The writ petition was partly allowed by the Impugned Judgment by awarding Rs.75,000/- (Rupees Seventy Five Thousand only) to be payable to the appellant by respondent no.2 from his own pocket but declining to give any direction for initiating criminal action under the SC/ST Act.

SUBMISSIONS BY THE APPELLANT:

15. Learned counsel for the appellant submitted that it would be a travesty of justice if for such blatant violation of the personal liberty of the appellant and abuse of authority, the respondent no.2 is let off with just "strict warning" without any real effective punishment. It was submitted that the conduct of the respondent no.2 besides being unprovoked was also in the teeth of the judgments of this Court in D K Basu v State of West Bengal, (1997) 1 SCC 416 and Sube

Singh v State of Haryana, (2006) 3 SCC 178, which have laid down the guidelines of how a detenu has to be treated when in custody.

16. Learned counsel submitted that one of the grounds for not directing criminal prosecution of respondent no.2 by the High Court was that Section 161⁵, Maharashtra Police Act, 1951 (hereinafter referred to as the "Police Act") gives protection to a police officer from any belated prosecution, the period being six months.

It was submitted the same should not be so enforced particularly in the facts of the present case where the appellant belongs to a weaker section and is without the wherewithal to pursue prosecution of a police officer. It was submitted that respondent no.2 has in fact been let off without any punishment as "strict warning" does not translate into any effective punishment which is also one of the minimum/minor punishments contemplated, whereas the conduct of the respondent no.2 required inflicting major punishment upon him.

SUBMISSIONS BY THE STATE:

17. Learned counsel for the State submitted that it has initiated departmental proceeding against respondent no.2 and punishment has also been awarded to him pursuant thereto.

SUBMISSIONS BY THE RESPONDENT NO.2:

18. Learned counsel for respondent no.2 submitted that the incident is totally without any truth and only to browbeat, and to demoralise the police, the appellant, who is habitual offender, has lodged a false complaint, that too, much after the time prescribed under the Police Act. It was further submitted that respondent no.2 has already paid Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) to the appellant i.e., Rs.1,00,000/- (Rupees One Lakh only) beyond what was directed by the High Court and in terms of the order passed by this Court on 07.07.2023⁶. It was submitted that the appellant having been found committing the offence for which his prosecution began, from the CCTV footage, cannot claim innocence.

19. Learned counsel submitted that on 20.06.2015 at 3PM when he was produced before the Magistrate, the appellant did not allege any ill-treatment much less spoke about him having been subjected to parade in handcuffs and in a half-naked state with a garland of footwear around his neck. Even when relatives of the appellant had filed a complaint before the Magistrate on 20.06.2015, due to delay in release of the appellant despite grant of bail, there was no reference of any alleged instance of the appellant being paraded half-naked on 19.06.2015.

Further, the report of the Sub Divisional Police Officer does not refer to the appellant having been paraded half-naked with a garland of shoes. It was submitted that due to the strained relationship of the respondent no.2 with the then Sub Divisional Police Officer, who had submitted the Report, adverse findings were recorded against the respondent no.2. Thus, it was submitted that the Special Inspector General of Police found the clarification submitted by the respondent no.2 to be satisfactory and that was the reason why a punishment of only "strict warning" was awarded.

He submitted that pursuant to FIR bearing Crime No.1-192 of 2015, the appellant could not be traced and was declared a proclaimed offender under Section 82(4) of the Code of Criminal Procedure, 1973 on 25.12.2015. It was further contended that only on 03.02.2017, the appellant had filed the underlying Writ Petition before the High Court and for the first time agitating that the respondent no.2 paraded him half-naked with a garland of shoes.

20. Learned counsel submitted that in terms of Section 161 of the Police Act, prosecution against a police officer acting under colour of official duty after six months of the alleged act cannot be entertained and rightly the High Court has declined to direct any action on such prosecution.

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the facts and circumstances of the case, this Court finds that there is enough material to indicate that respondent no.2 did commit excesses against the appellant, as the same has also been found in an enquiry by the Commission as also relied upon by the High Court and such finding has not been varied or interfered with. Thus, the Court has no hesitation in strongly denouncing such high-handed action by the respondent no.2, who being in a position of power, totally abused his official position.

However, in view of the fact that the respondent no.2 has superannuated and during the course of the present proceedings Rs.1,00,000/- (Rupees One Lakh only), apart from what was ordered by the High Court, has also been paid by the respondent no.2 from his own pocket to the appellant, which the appellant accepted, the Court finds that the matter now requires to be finally given a quietus.

Be it noted, the appellant has additionally received Rs.25,000/- (Rupees Twenty Five Thousand only) as ordered by the Commission. We only add that the power of the High Court under Article 226 of the Constitution of India to award compensation is undoubtable, reference whereof can be made to *Nilabati Behera v State of Orissa*, (1993) 2 SCC 746.

22. Accordingly, the appeal stands disposed of by upholding the Impugned Judgment, with the modification that the respondent no.2 is held liable to pay a further sum of Rs.1,00,000/- (Rupees One Lakh only) to the appellant. However, as the same stands already complied with, no further steps are required to be taken by the respondent no.2.

23. Before parting, the Court would indicate that in such matters the Courts need to take a very strict view. A zero-tolerance approach towards such high-handed acts needs to be adopted as such acts, committed by persons in power against an ordinary citizen, who is in a non-bargaining position, bring shame to the entire justice delivery system.

As such, we were considering resorting to Article 142 of the Constitution of India to direct initiation of criminal proceedings, but only because of the fact that respondent no.2 has retired and has already paid a sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand)[Rs.75,000/- (Rupees Seventy Five Thousand) as per the Impugned Judgment and Rs.1,00,000/- (Rupees one lakh) as per this Court's order dated 07.07.2023] in total to the appellant, who has also been paid Rs. 25,000/- (Rupees Twenty Five Thousand) as per the Commission's order, we refrain from so directing, in these peculiar facts and circumstances. We hold back noting that justice ought to be tempered with mercy.

POST-SCRIPT:

24. It is sad that even today, this Court is forced to restate the principles and directions in D K Basu (supra). Before D K Basu (supra), this Court had expressed its concern as to how best to safeguard the dignity of the individual and balance the same with interests of the State or investigative agency in Prem Shankar Shukla v Delhi Administration, (1980) 3 SCC 526.

In Bhim Singh, MLA v State of Jammu and Kashmir, (1985) 4 SCC 677, this Court noted that police officers are to exhibit greatest regard for personal liberty of citizens and restated the sentiment in Sunil Gupta v State of Madhya Pradesh, (1990) 3 SCC 119. The scenario in Delhi Judicial Service Association v State of Gujarat, (1991) 4 SCC 406 prompted this Court to come down heavily on excess use of force by the police.

As such, there will be a general direction to the police forces in all States and Union Territories as also all agencies endowed with the power of arrest and custody to scrupulously adhere to all Constitutional and statutory safeguards and the additional guidelines laid down by this Court when a person is arrested by them and/or remanded to their custody.

.....J. [Vikram Nath]

March 18, 2024

1 FIR.

2

'379. Punishment for theft.- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'

3 Closed-Circuit Television.

4

'394. Voluntarily causing hurt in committing robbery.- If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.'

5

'161. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained or to be dismissed if not instituted within the prescribed period.-

(1) In any case of alleged offence by the Revenue Commissioner, the Commissioner, a Magistrate, Police officer or other person, or of a wrong alleged to have been done by such Revenue Commissioner, Commissioner, Magistrate, Police officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein, it shall appear to the Court that the of - fence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:

Provided that, any such prosecution against a Police Officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.

(2) In suits as Aforesaid one month's notice of suit to be given with sufficient description of wrong complained of. In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to

the alleged wrong-doer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(3) Plaint to set forth service of notice and tender of amends. The plaint shall set forth that a notice art aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if any what tender of amends has been made by the defendant. A copy of the mid notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.'

6 'Learned counsel for respondent No.2, on instructions, states that he will further compensate the petitioner by an amount of Rs.1,00,000/- (Rupees one lakh only) within a period of four weeks from today.

Learned counsel for the petitioner may provide the bank details of the petitioner to the learned counsel for respondent No.2 within a week from today.

List the matter again on 22.08.2023.

If by the said date, the said amount is paid to the petitioner and the counsel for the parties make a statement,

the matter may be considered for closure on the next date.'

IN THE SUPREME COURT OF INDIA

A.M. Mohan

Vs.

State Represented By SHO and Anr.

Criminal Appeal No. of 2024

(Arising out of SLP (Criminal) No. 9598 of 2022)

HEADNOTE – For attracting the provisions of Sec. 420 IPC, it must be shown that the FIR/complaint discloses:

- (i) the deception of any person
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person
- (iii) dishonest intention of the accused at the time of making the inducement.

JUDGMENT

B.R. Gavai, J.

1. Leave granted.

2. The present appeal challenges the order dated 15th July 2022 passed by the learned Single Judge of the High Court of Judicature at Madras in Criminal O.P. No. 20716 of 2020 and CrI. M.P. No. 8763 of 2020, whereby the High Court rejected the petition filed by the present appellant under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), to call for the records and to quash the First Information Report ("FIR" for short) registered as Crime No. 21 of 2020, on the file of SHO, District Crime Branch, Kancheepuram, in connection with the offence punishable under Section 420 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

Facts

3. Shorn of details, the facts leading to the present appeal are as under:

3.1 The case of the prosecution is that, during the year 2016, accused No. 2- Suresh Prathaban, being a college friend, approached the complainant Karthick Krishnamurthy for some help to clear his hand loan. The accused No. 2 further told that he had business with accused No. 1- Lakshmanan, who is running a hotel and also doing real estate business. Upon the insistence of accused No. 2, the complainant had agreed to extend financial help to accused No. 1 to the tune

of Rs.1,60,00,000/- for the business project(s) at Oragadam and around Kancheepuram District with condition to repay the same within 20 months with 100% profit.

3.2 Accordingly, the complainant transferred a sum of Rs.49,25,000/- on 18th March 2016, Rs.20,01,000/- on 31st May 2016, Rs.36,25,000/- on 13th June 2016, Rs.30,24,166/- on 8th July 2016 through RTGS and Rs. 24,25,834/- in cash to accused Nos. 1 and 2, totalling to the tune of Rs.1,60,01,000/- (though mentioned in complaint as Rs.1,60,00,000/-). To secure the same, accused No. 1 had executed a registered simple mortgage deed dated 18th March 2016 in favour of the complainant relating to 100 plots at Sumangali Village, Thiruvannamalai District, registered vide document No.768 of 2016 for Rs.1,00,00,000/-.

3.3 Thereafter, at the insistence of accused Nos. 1 and 2, the complainant entered into an unregistered memorandum of understanding and paid a sum of Rs.1,50,00,000/- and a further sum of Rs.50,00,000/- by RTGS and cheque to accused No. 1's bank. In the said amount, the complainant directly transferred a sum of Rs.20,00,000/- in favour of the present appellant-A.M. Mohan (accused No.3). Further, accused No.1 also transferred a sum of Rs.1,80,00,000/- to the present appellant for the purchase of the land admeasuring 9.80 acres situated at Chittoor Village, Sriperumbudur Taluk.

To secure the said payment of Rs.2,00,00,000/- with returns of Rs.10,00,00,000/-, accused No. 1 executed a registered deed of General Power of Attorney ("GPA" for short) dated 3rd February 2017, in favour of the complainant, vide document No. 3733/2017, in respect of the above said land and also executed a registered sale deed relating to the land admeasuring 2.52 acres situated at Vellarai Village, Kancheepuram District vide document No.386/2017 dated 9th February 2017 in favour of the complainant.

3.4 The accused No. 1 also executed a mortgage deed for land admeasuring 2.14 acres at Sunguvarchatram Village (though mentioned in the complaint as 'a registered Agreement to Sell land admeasuring 1.64½ acres') in favour of the complainant registered vide document No.373/2017 dated 27th February 2017.

Thereafter, accused Nos. 1 and 2 had received an amount of Rs.49,85,500/- and executed unregistered loan agreement dated 5th March 2017, in favour of the complainant and agreed to repay with interest quantified at Rs.60,000/- per month. For repayment of the said amount along with interest, accused No. 1 had given a cheque for Rs.58,50,000/- and the same was returned dishonoured due to insufficient funds.

3.5 Apart from all these transactions, on insistence of accused Nos. 1 and 2, the complainant joined in the "gold chit business" conducted by accused No. 1 and paid a sum of Rs.1,20,000/- per month, from March 2016 to August 2017, totalling to the tune of Rs.21,60,000/-. The accused persons swindled all the amounts and cheated the complainant. The accused No. 1 had disposed of about 58 plots on his own and failed to return the mortgaged amount of Rs.1,00,00,000/- with interest.

He also cancelled the power of attorney standing in favour of the complainant relating to 9.80 acres of land at Chittoor Village and without notice to the complainant, he sold out the same to third parties. Accordingly, the appellant and other accused persons cheated the complainant to the tune of Rs.16,01,00,000/- (though mentioned in complaint as Rs.16,06,00,000/-) by their willful and intentional action of fraud, cheating and criminal breach of trust. Hence the complaint.

3.6 On the strength of the complaint filed before the Judicial Magistrate, a FIR being Crime No. 21 of 2020 came to be registered on 7th November 2020, at District Crime Branch, Kancheepuram District, against accused Nos. 1, 2 and 3, for the offences punishable under Section 420 read with 34 of the IPC.

3.7 Aggrieved thereby, the appellant herein filed a Criminal O.P. No. 20716 of 2020 before the High Court, under Section 482 of the Cr.P.C., to call for the records and to quash the said FIR.

3.8 Vide impugned order dated 15th July 2022, the learned Single Judge of the High Court, observed that it is clear that the intention of the appellant and other accused persons was only to cheat the complainant and that it can be seen from the FIR that there are specific allegations against the appellant to attract the offence, which has to be investigated in depth.

3.9 The Single Judge held that the FIR discloses prima facie commission of a cognizable offence and as such, the High Court cannot interfere with the investigation. As a result, the High Court rejected the petition under Section 482 of Cr.P.C. for quashing of the FIR, but directed the investigating agency to complete the investigation and file a final report within a period of twelve weeks.

3.10 Aggrieved thereby, the appellant filed the present appeal, in which notice came to be issued vide order dated 21st October 2022.

3.11 As per the additional documents filed in this Court, the charge-sheet in relation to the subject FIR, came to be filed on 4th January 2023.

4. We have heard Shri S. Nagamuthu, learned Senior Counsel appearing for the appellant, Shri V. Krishnamurthy, learned Senior Additional Advocate General (AAG) for respondent No. 1 and Shri G. Ananda Selvam, learned counsel appearing for respondent No. 2.

Submissions

5. Shri Nagamuthu, learned Senior Counsel appearing on behalf of the appellant submits that even if the averments made in the FIR are taken at their face value, no case is made out for the offence punishable under Section 420 of IPC against the present appellant. It is further submitted that a reading of the charge-sheet would reveal that none of the ingredients to attract the provision of Section 420 of IPC could be found therein.

6. Shri Nagamuthu, relying on various judgments of this Court, submits that, for attracting the offence of 'cheating' as defined under Section 415 of IPC and punishable under Section 420 of IPC, it is necessary that the FIR should make out a case of "intentional inducement", "dishonesty" or "fraudulence".

It is submitted that for the offence of 'cheating', there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly induced the person deceived to deliver any property to a person. It is submitted that neither the FIR nor the charge-sheet contain a whisper with respect to any inducement, fraud or dishonesty qua the appellant that caused the complainant to deliver the sum of Rs.20,00,000/- to his bank account on 2nd February 2017.

7. Shri Nagamuthu further submitted that the complainant has deliberately suppressed the fact that the appellant had transferred the land in favour of accused No. 1 by way of a Sale Deed dated 3rd February 2017 i.e., on the very next day of receiving the sum of Rs.20,00,000/- from the complainant. It is further submitted that, on the very same day i.e. 3rd February 2017, accused No. 1 had executed a GPA in favour of the complainant vide Document No. 3733 of 2017.

The GPA specifically states that the complainant had received the GPA in respect of the land purchased by accused No. 1 from the appellant. It is therefore submitted that the appellant has no role to play after 3rd February 2017 and almost all the allegations are with regard to cancellation of GPA etc., and execution of subsequent sale deed in favour of accused No. 4-Seeralan and accused No. 5-Kavitha by accused No. 1, are not related to the appellant.

8. As against this, Shri G. Ananda Selvam, learned counsel appearing for respondent No. 2 submits that since the charge-sheet has already been filed, the appeal is rendered infructuous. It is submitted that the appellant can very well file

an application for discharge. It is further submitted that the averments in the FIR would clearly show that the present appellant along with other accused persons has cheated the complainant and defrauded with the huge amount. It is therefore submitted that no interference is warranted in the present appeal.

Consideration

9. The law with regard to exercise of jurisdiction under Section 482 of Cr.P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of *Indian Oil Corporation v. NEPC India Limited and Others*¹ after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions.

To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with

mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families.

There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its

jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

10. The Court has also noted the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that this is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.

The Court, relying on the law laid down by it in the case of *G. Sagar Suri and Another v. State of U.P. and Others*² held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

11. This Court, in the case of *Prof. R.K. Vijayasathya and Another v. Sudha Seetharam and Another*³ has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:

"15. Section 415 of the Penal Code reads thus:

"415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if

he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by

16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

"420. Cheating and dishonestly inducing delivery of property.- 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 a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to (a) deliver property to any person; or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

12. A similar view has been taken by this Court in the cases of Archana Rana v. State of Uttar Pradesh and Another⁴, Deepak Gaba and Others v. State of Uttar Pradesh and Another⁵ and Mariam Fasihuddin and Another v. State by Adugodi Police Station and Another⁶.

13. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

(i) the deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and

(iii) dishonest intention of the accused at the time of making the inducement.

14. The averments with regard to the present appellant as have been found in the FIR is as under:

"At the instance of the said Lakshmanan (accused No.1), I (complainant) paid directly Rs. 20,00,000/- to one Mohan (appellant-accused No. 3) and the said Lakshmanan (accused No.1) transferred the remaining sale consideration of over 18 odd crores to Mohan for the purchase of his lands at Sunguvarchatram. But suppressed the execution of sale deed dated 03.02.2017 by the appellant/accused No.3."

15. A perusal thereof would reveal that even in the said averments, the allegation with regard to inducement is only qua accused No. 1. We have perused the entire FIR. Except the aforesaid allegations, there are no other allegation with regard to the present appellant-accused No. 3. The rest of the allegations are against accused No. 1 (Lakshmanan). Even the allegations with regard to inducement are only against accused Nos. 1 and 2.

16. Not only that, even in the charge-sheet, the only role attributed to the present appellant could be found as follows:

"Thereafter, A2 had lured the complainant once again saying that A1 is going to layout the 9.80 acre land in Chittoor Village, Thiruperumbudur Taluk, which is under A3's general power of attorney and that the complainant would gain huge profits if he invests Rs. 2 crores in this project as well. A1 too, as he had already done, lured the complainant that he would pay him a share out of the profit, and executed a General Power of Attorney Deed in favour of the complainant in respect of the 9.80 acre land in Chittoor Village in Thiruperumbudur Taluk which he purchased from A3 and registered it as Doc. No. 3733/2017 in Sunguvarchattiram Sub Registrar Office on 03.02.2017, in a manner instilling confidence in the complainant.

Moreover, upon instructions from A1 to transfer Rs. 20,00,000/- to A3's Tamil Nadu Mercantile Bank Account towards sale of the land made by A3 to A1, the complainant had transferred online a sum of Rs.20,00,000/- to A3's Tamil Nadu Mercantile Bank Account from his Yes Bank Account on 02.02.2017."

17. It could thus be seen that the only allegation against the present appellant is that accused No. 1 executed the GPA in favour of the complainant in respect of the land which is purchased from the present appellant-accused No.3. The other allegation is that upon instructions of accused No. 1 to transfer Rs. 20,00,000/- to accused No. 3's Tamil Nadu Mercantile Bank Account towards sale of the land made by the appellant-accused No.3 to accused No.1, the complainant had transferred online a sum of Rs.20,00,000/-.

18. It is an undisputed position that upon receipt of the said amount of Rs.20,00,000/-, the present appellant had transferred the land in question by sale deed in favour of accused No.1. It is also undisputed that thereafter accused No. 1 executed the GPA in favour of the complainant on the same day. After the sale deed was executed in favour of accused No.1 by the appellant-accused No.3, though the complaint narrates various instances thereafter, no role is attributed to the present appellant.

19. At the cost of repetition, it has to be noted that no role of inducement at all has been attributed to the present appellant. Rather, from the perusal of the FIR and the charge-sheet, it would reveal that there was no transaction of any nature directly between the appellant and the complainant. The version, if accepted at its face value, would reveal that, at the instance of accused No. 1, the complainant transferred the amount of Rs.20,00,000/- in the account of the appellant.

On receipt of the said amount, the appellant immediately executed the sale deed in favour of accused No.1, who thereafter executed the GPA in favour of the complainant. After that, no role is attributed to the present appellant and whatever happened thereafter, has happened between accused No. 1, the complainant and

the other accused persons. In that view of the matter, we find that the FIR or the charge-sheet, even if taken at its face value, does not disclose the ingredients to attract the provision of Section 420 of IPC qua the appellant.

20. The dishonest inducement is the sine qua non to attract the provisions of Sections 415 and 420 of IPC. In our considered view, the same is totally lacking qua the present appellant. In that view of the matter, we find that continuation of the criminal proceedings against the present appellant would be nothing else but amount to abuse of process of law resulting in miscarriage of justice.

21. Insofar as the contention of the respondents that since the charge-sheet has been filed, the present appeal is liable to be dismissed, is concerned, it will be relevant to refer to the following observations of this Court, in the case of Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another⁷:

"14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]. In Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] , this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)

"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the chargesheet had been filed, the learned Single Judge [Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, chargesheet, documents, etc. or not."

15. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 CrPC and that this Court is hearing an appeal from an order under Section 482 CrPC. Section 482 CrPC reads as follows:

"482. Saving of inherent powers of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to

prevent abuse of the process of any court or otherwise to secure the ends of justice."

16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. Umesh Kumar v. State of A.P., (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237].

Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

[emphasis supplied]

22. A similar view has been taken by this Court in the case of Haji Iqbal alias Bala through S.P.O.A. v. State of U.P. and Others⁸.

23. In that view of the matter, contention in this regard has no merit.

Conclusion

24. In the result, we are inclined to allow the appeal. The order of the High Court dated 15th July 2022 in Criminal O.P. No.20716 of 2020 and Criminal M.P. No. 8763 of 2020 is quashed and set aside. The FIR in Crime No.21 of 2020 and the consequential charge-sheet filed against the present appellant shall stand quashed and set aside.

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

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

.....J. (Rajesh Bindal)

.....J. (Sandeep Mehta)

New Delhi;

March 20, 2024.

1 (2006) 6 SCC 736

2 (2000) 2 SCC 636

3 (2019) 16 SCC 739

4 (2021) 3 SCC 751

5 (2023) 3 SCC 423

6 2024 SCC OnLine SC 58

7 (2019) 11 SCC 706

8 2023 SCC OnLine SC 946

IN THE SUPREME COURT OF INDIA

Thirumoorthy

Vs.

State represented by the Inspector of Police

**[Criminal Appeal No(s)._____ of 2024
arising out of SLP (Crl.) No(s). 1936 of 2023]**

HEADNOTE – The conviction of the accused child who was a 'child in conflict with law' cannot be sustained unless the preliminary assessment to ascertain the physical and mental capacity of the child to commit the crime and the need to try the child as an adult or a juvenile was adhered to as the mandatory requirements under the Juvenile Justice Act, 2015.

JUDGMENT

Mehta, J.

1. Leave granted.

2. This appeal takes exception to the judgment dated 15th April, 2021, passed by the learned Single Judge of the High Court of Judicature at Madras dismissing the criminal appeal filed by the appellant herein under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') and affirming the conviction of the appellant and sentences awarded to him vide judgment and order dated 18th February, 2019, passed by the Court of Sessions Judge, Mahila Court, Salem (hereinafter being referred to as the 'trial Court') in Special Sessions Case No. 79 of 2016. By the said judgment and order, learned trial Court convicted and sentenced the appellant as below:-

Provision under which convicted	Sentence
Section 363 IPC	Sentenced to undergo 07 years rigorous imprisonment.
Section 342 IPC	Sentenced to undergo 01 years rigorous imprisonment.
Section 6 POCSO	Act Sentenced to undergo 10 years rigorous imprisonment.
Section 302 IPC	Sentenced to undergo 10 years rigorous

imprisonment.

Section 201 read with 302 IPC Sentenced to undergo 07 years rigorous imprisonment.

3. The trial Court in para 96 of its judgment held as under: -

“96. Accused is now 19 years 2 months old. Therefore, according to Section 20 Juvenile Justice (Care and Protection of Children Act), Juvenile in conflict with law shall be kept in a safe place in Chengalpattu Juvenile Reform School till the age of 21 years. After that, the Probation Officer should evaluate the reformation of the said child and send a periodic report about it to this Court.

After the completion of 21 years, the said child shall be produced in this Court and after evaluating whether the child has reformed, became a child who can contribute to the society, the remaining sentence may be reduced and released, or if the child is not reformed, the remaining sentence should be spent in jail after the child reaches the age of 21, considering the report of the Probation Officer and the progress records. The decision will be based on the discipline that the child has achieved and his behaviour.”

4. Brief facts relevant and essential for disposal of the instant appeal are noted hereinbelow.

5. The victim Ms. D, being the daughter of the first informant- Mr. G(PW-1) aged 6 years went missing in the evening of 2nd July, 2016. Mr. G (PW-1) lodged a complaint at P.S. Kolathur, District Salem on 3rd July, 2016 at 7 'o clock in the morning alleging, inter alia that he had taken his daughter(victim) to a shop on the previous evening at around 6 o' clock and from there, he asked the child to return home. However, when he reached his house half an hour later and made an inquiry from his wife, he was told that the child had not returned by then. A search was made in the locality but the child could not be traced out. Based on the said complaint, Crime No. 174 of 2016 was registered and investigation was undertaken by S. Viswanathan, Inspector of Police (PW-25).

6. The Investigating Officer (PW-25) recorded the statements of Mylaswamy (PW-10) and Irusappan (PW-11) who stated that they had seen the accused going into the compound of his house with the child victim being the daughter of the first informant-Mr. G (PW-1). On this, the needle of suspicion pointed towards the accused-appellant who was apprehended from his house by the Investigating Officer (PW-25) while he was trying to run away. The accused was interrogated

in presence of Mr. Arivazhagan, Village Administrative Officer (PW-15) and his assistant Muthappan.

7. It is alleged that the accused confessed to his guilt and his admission was recorded in memo (Ex. P-20) and acting in furtherance thereof, the dead body of Ms. D was found concealed in a wide-mouthed aluminium vessel lying in the prayer room of the house of the accused. The requisite spot inspection proceedings were undertaken and the dead body of the child victim was sent to the Salem Government Mohan Kumaramangalam Medical College Hospital for conducting post mortem.

The post mortem report (Ex. P-7) and final opinion of Doctor (Ex. P-8) were received indicating that the death of the victim was homicidal in nature having being caused by asphyxiation due to compression of neck along with injuries to genitalia. Some incised wounds were also found on the body of the victim. Incriminating articles viz., clothes of the accused, a blade, etc. were recovered from the house of accused.

8. Right at the inception of investigation, the Investigating Officer(PW-25) had gathered information to the effect that the accused was a juvenile since his date of birth recorded in school documents is 30th May, 2000. Thus indisputably, the accused was a Child in Conflict with Law(in short 'CICL') as provided under Section 2(13) of the Juvenile Justice(Care and Protection of Children) Act, 2015 (hereinafter being referred to as the 'JJ Act') and the proceedings were required to be conducted in accordance with the mandatory procedure prescribed under the JJ Act. In spite thereof, charge sheet against the accused was filed directly before the Sessions Court (portrayed to be a designated Children's Court, as per the counter affidavit filed by the State in the SLP).

9. Charges were framed against the accused who pleaded not guilty and claimed trial. The prosecution examined 25 witnesses and exhibited 35 documents and 10 material objects to prove its case. The accused was questioned under Section 313(1)(b) of CrPC and was confronted with the circumstances appearing against him in the prosecution case. He denied the allegations levelled against him and claimed to be innocent. However, neither oral nor documentary evidence was led in defence. The trial Court proceeded to convict and sentence the accused as mentioned above, vide judgment and order dated 18th February, 2019.

10. The mother of the accused appellant filed a petition before the Special Court, POCSO Act Cases, Salem praying that the sentence of her son may be reduced and he may be considered for early release in view of his good behaviour.

11. The Special Court, POCSO Act Cases, Salem held an inquiry; conducted psychological evaluation of the accused; procured reports from the Vellore District Social Security Department Probation Officer and Probation Officer of Government Special Home as well as the individual evaluation report of the accused and after analysing the above reports, proceeded to dismiss the application filed by the mother of the accused appellant vide order dated 29th January, 2021.

12. Being aggrieved by his conviction and the sentences awarded by the trial Court, the accused appellant preferred an appeal being CRLA No. 451 of 2019 before the High Court of Judicature at Madras which came to be rejected vide impugned judgment dated 15th April, 2021. Hence this appeal by special leave.

13. Ms. S. Janani, learned counsel representing the accused appellant vehemently urged that admittedly the accused appellant was a CICL on the date of the incident since his date of birth as recorded in the school documents is 30th May, 2000. She contended that the entire series of events commencing from the arrest of the accused appellant; the manner in which the investigation was conducted; the filing of the charge sheet in the Sessions Court; the procedure of trial right up to the conviction and sentencing of the accused appellant is vitiated as the mandatory procedure provided under the JJ Act was not followed and was rather blatantly flouted.

It was submitted that the police official who filed the charge sheet was not having the authority to conduct investigation because investigation into an offence allegedly committed by CICL has to be undertaken by the Special Juvenile Police Unit(SJPU) constituted under Section 107(2) of the JJ Act by the concerned State Government.

14. She urged that Section 3(1) provides for the principle of presumption of innocence, but the said provision was totally ignored in conducting the prosecution of the accused appellant and hence the entire trial is vitiated.

15. It was further submitted that the Sessions Judge who conducted trial was not designated as a Children's Court and thus, the trial of the accused appellant is vitiated. Without prejudice to this submission, learned counsel submitted that even assuming that the Sessions Court had been designated as a Children's Court, the accused appellant could not have been tried by the said Court without preliminary assessment being conducted by the Juvenile Justice Board(hereinafter being referred to as 'Board') as postulated under Section 15 of the JJ Act.

The section mandates an enquiry in form of preliminary assessment to be conducted by the Board wherein the CICL has a right to participate. Upon conclusion of enquiry, the Board has to pass an order under Section 18(3) to the effect that there is a need to try the child as an adult and only thereafter, the Board can transfer the case to the Children's Court for trial. The CICL has been given a right to appeal against such order by virtue of Section 101(2) of the JJ Act.

Even after the transfer of case under Section 15, the Children's Court is required to apply its own independent mind to find out whether there is a genuine need for trial of the CICL as an adult as provided by Section 19(1)(i) of the JJ Act. However, none of these mandatory requirements were complied with and thus, the trial is vitiated.

16. Referring to the alleged confession of the accused appellant, the learned counsel criticised the manner in which the investigation was conducted and submitted that the confession recorded in presence of the police officer could not have been allowed to be exhibited and admitted in evidence. She submitted that the trial Court, not only allowed the confession to be exhibited but also placed implicit reliance upon it basing the conviction of the accused appellant on such inadmissible piece of evidence. The recording of confession of a CICL and placing implicit reliance thereupon is contrary to the general principles laid out under Section 3 of the JJ Act which provides the general principles to be followed in the administration of the Act.

17. It was further urged that (PW-10) and (PW-11) whose depositions have been relied upon to constitute the circumstance of last seen are as a matter of fact, totally unreliable witnesses. Had these witnesses seen the child being taken away by the accused, then their natural reaction would have been to promptly inform the child's father, the informant Mr. G. (PW-1) about this important circumstance and the same would definitely have been incorporated in the FIR which was lodged on the next day of the incident.

18. It was also contended that the factum of recovery of the dead body from the aluminium vessel preceded by the disclosure statement of the accused appellant has not been proved by reliable evidence and hence, there does not exist cogent and convincing circumstantial evidence on the record so as to establish the guilt of the accused appellant.

19. On these counts, learned counsel for the appellant implored the Court to accept the appeal and set aside the impugned judgment and sought acquittal for the accused appellant. 20. Learned counsel representing the State, vehemently and fervently opposed the submissions advanced by the appellant's counsel. It

was submitted that looking to the gruesome nature of the crime, the entire investigation and trial cannot be held to be vitiated simply on account of irregularity in the procedure of conducting investigation and trial.

The Sessions Court which conducted the trial had been designated as a Children's Court. The trial Court as well as the High Court have given due consideration to the fact that the accused appellant was a juvenile on the date of commission of the crime and accordingly, the sentence which has been awarded to the accused appellant is commensurate with the provisions of the JJ Act.

Not only this, the trial Court undertook an exhaustive exercise for mental and psychological assessment of the accused appellant after recording his conviction and only after receiving an individual care plan had quantified the sentences to be awarded to the accused which are strictly within the framework of the JJ Act.

21. In support of his contentions, learned counsel for the State placed reliance on judgments rendered by this Court in the cases of Karan alias Fatiya v. State of Madhya Pradesh¹ and Pawan Kumar v. State of Uttar Pradesh & Ors². He contended that the impugned judgment does not warrant any interference by this Court.

22. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the judgments on record.

23. The fact regarding the accused appellant being a CICL on the date of the incident, i.e., 2nd July, 2016 is not in dispute because the date of birth of the accused as entered in the contemporaneous school record is 30th May, 2000.

24. We shall thus first take up the issue whether the trial is vitiated on the account of non-adherence to the mandatory requirements of the JJ Act.

25. At the outset, we may note that the fact regarding the accused appellant being juvenile and thus a CICL on the date of commission of the incident was known to the Investigating Officer(PW-25) right at inception of the proceedings. The Investigating Officer(PW-25) categorically stated in his deposition that after completing the investigation and preparing the final report against the "juvenile in conflict with law", he took opinion from the Salem TTP, prepared a model charge sheet and filed the same in the trial Court.

26. The trial Court was also cognizant of this important aspect as can be clearly discerned from the opening lines of para 2 of the judgment of the trial Court wherein it is mentioned that "Thirumoorthy", a 17 year old juvenile in conflict with law, lives with his mother in Telanganaur". It has also been recorded by the trial Court that on the date of passing of the judgment, i.e., 18th February,

2019, the accused was 19 years and 2 months old and accordingly, he was required to be sent to a place of safety as per Section 20 of the JJ Act.

The judgment passed by the Sessions Court also records the fact that during the course of the trial, the accused was kept in a child protection home. Further at para 32 of the judgment, the trial Court also noted that the Public Prosecutor himself argued that Thirumoorthy was a CICL who committed the offence upon the child victim.

27. Thus, there is no escape from the conclusion that even before the result of investigation was filed, the fact regarding the accused being a CICL was well known to the Investigating Officer(PW-25), the prosecution and the trial Court as well.

28. Before dealing with the rival contentions, we would now refer to some of the relevant provisions of the JJ Act which are required to be followed in a case involving prosecution of a CICL:-

3. General principles to be followed in administration of Act. -

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely: -

- (i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- (ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.
- (iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- (iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- (v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

9. Procedure to be followed by a Magistrate who has not been empowered under this Act. -

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

(emphasis supplied)

15. Preliminary assessment into heinous offences by Board. -

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and

the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. -For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.â€•

18. Orders regarding child found to be in conflict with law. -

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to-

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. Powers of Children's Court.-

(1) After the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide that-

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and Section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18.

(2)-(5).....â€•

29. The provisions contained in Section 9(1) stipulate that when a Magistrate not empowered to exercise the power of the Board under the Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

30. Sections 9(2) and 9(3) cast a burden that where the Court itself is of the opinion that the person was a child on the date of commission of the offence, it shall conduct an inquiry so as to determine the age of such person and upon finding that the person alleged to have committed the offence was a child on date of commission of such offence, forward such person to the Board for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect.

31. In the present case, the situation is very stark inasmuch as, even when the charge sheet was filed, the Investigating Officer had clearly recorded that the date of birth of the accused was 30th May, 2000, and hence, even assuming that Sessions Court at Salem had been designated as a Children's Court, there was no option for the said Court but to forward the child to the concerned Board for further directions.

32. There is no dispute on the aspect that the offences of which the accused appellant was charged with, fall within the category of 'heinous offences' as defined under Section 2(33) of the JJ Act. Section 15(1) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence.

The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of Section 18 of the JJ Act. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial of summons case under CrPC. Under first proviso to this sub20 section, the order passed by the Board is appealable under Section 101(2) of the JJ Act.

33. Section 18(3) provides that where the Board after preliminary assessment under Section 15 opines that there is a need for the said child to be tried as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

34. By virtue of Section 19(1), the Children's Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.

35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of Ajeet Gurjar v. State of Madhya Pradesh³. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word 'may' used in the said provision be read as 'shall'. It was also held that holding of an inquiry under 19(1)(i) is not an empty formality.

Section 19)(1)(ii) provides that after examining the matter, if the Children's Court comes to the conclusion that there is no need for trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Children's Court have different consequences.

36. It was further held that the Children's Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, all actions provided under Section 19 are mandatorily required to be undertaken by the Children's Court.

37. As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellant filed before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.

38. In absence of a preliminary assessment being conducted by the Board under Section 15, and without an order being passed by the Board under Section 15(1)

read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused.

39. Thus, it is evident that the procedure adopted by the Sessions Court in conducting the trial of the accused appellant is de hors the mandatory requirements of JJ Act.

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are in gross violation of the mandate of the Act and thus, the entire proceedings stand vitiated.

41. It seems that pursuant to the trial being concluded, the trial Court realized the gross illegality in the proceedings and thus, in an attempt to give a vestige of validity to the grossly illegal proceedings conducted earlier, an exercise was undertaken to deal with the accused appellant as per the provisions of the JJ Act on the aspect of sentencing. However, ex facie, the said action which seems to be taken by way of providing an ex post facto imprimatur to the grossly illegal trial does not stand to scrutiny because the very foundation of the prosecution case is illegal to the core.

42. All the proceedings taken against the accused appellant are vitiated as being in total violation of the mandatory procedure prescribed under the JJ Act.

43. In the case of Karan Alias Fatiya(supra) relied upon by learned counsel for the State, this Court interpreted Section 9(3) and held that this sub-section does not specifically or impliedly provide that the conviction recorded by any Court with respect to a person who has been subsequently, after the disposal of the case found to be juvenile or a child, would lose its effect, rather it is only the sentence if any passed by the Court would be deemed to have no effect.

The said judgment is clearly distinguishable because in the present case, the fact that the accused was a child on the date of the incident was clearly known to the Investigating Officer, the prosecution and the trial Court and thus, there is no possibility of saving the illegal proceedings by giving them an ex post facto approval.

44. In the case of Pawan Kumar(supra), the plea of juvenility raised by the accused did not find favour of the Sessions Court as well as the High Court. However, in the appeal before this Court, a report was submitted by the Additional Sessions Judge, wherein it was opined that the appellant was a juvenile at the time of commission of alleged offences. The incident in the said case occurred on 1st December, 1995 and the age of juvenility was 16 years as provided in the then prevailing Juvenile Justice Act, 1986.

In the peculiar facts of the said case, this Court held that by virtue of subsequent amendments, the age of juvenility had been raised to 18 years and thus, the accused was entitled to be treated as a juvenile by virtue of the provisions of the JJ Act prevailing when the appeal was taken up. Since the accused had already undergone the maximum punishment of detention provided under the said Act, i.e., three years, it was directed that the accused therein be released forthwith.

45. In the above two referred cases, the situation presented was that the factum regarding the accused being a child within the meaning of the JJ Act came to light at a very late stage i.e. after final decision of the cases and hence both these cases are clearly distinguishable from the case at hand.

46. In the case of Ajeet Gurjar(supra), this Court remitted back the matter to the Sessions Court for complying with the requirements of Section 19(1) of the JJ Act. However, in the present case, there is yet another hurdle which convinces us that it is not a fit case warranting de novo proceedings against the accused appellant by taking recourse to the provisions of the JJ Act. At the cost of repetition, it may be reiterated that the charge sheet was filed against the accused appellant directly before the Sessions Court (statedly designated as a Children's Court) and he was never presented before the Juvenile Justice Board as per the mandate of the JJ Act.

47. The accused appellant being a CICL was never subjected to preliminary assessment by the Board so as to find out whether he should be tried as an adult. Directing such an exercise at this stage would be sheer futility because now the appellant is nearly 23 years of age.

48. At this stage, there remains no realistic possibility of finding out the mental and physical capacity of the accused appellant to commit the offence or to assess his ability to understand the consequences of the offence and circumstances in which he committed the offence in the year 2016.

49. Since we have held that the entire proceedings taken against the appellant right from the stage of investigation and the completion of trial stand vitiated as having been undertaken in gross violation of the mandatory requirements of the JJ Act, we need not dwell into the merits of the matter or to reappraise the evidence available on record for finding out whether the prosecution has been able to prove the guilt of the appellant by reliable circumstantial evidence.

50. Thus, we are left with no option but to quash and set aside the impugned judgment and direct that the appellant who is presently lodged in jail shall be released forthwith, if not required in any other case.

51. The appeal is allowed accordingly.

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

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

.....J. (Sandeep Mehta)

New Delhi;

March 22, 2024.

1 (2023) 5 SCC 504

2 2023 SCC OnLine SC 1492

3 2023 SCC Online SC 1255

2. Judgment/Order in Limelight

No interim relief to Arvind Kejriwal, Delhi High Court issues notice to ED on plea challenging arrest and remand

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024

ARVIND KEJRIWAL Petitioner

Through: Dr. Abhishek Manu Singhvi, Mr. Vikram Chaudhari, and Mr Amit Desai, Senior Advocates with Mr. Vivek Jain, Mr. Mohd. Irshad, Mr. Rajat Bharadwaj, Mr. Shadan Farasat, Mr. Karan Sharma, Mr. Rajat Jain, Mr. Mohit Siwach, Mr. Kaustubh Khanna and Mr. Amit Bhandari, Advocates

VERSUS

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. S.V. Raju, learned ASG with Mr. Zoheb Hossain, Special Counsel for ED, Mr. Simon Benjamin, SPP, Mr. Annam Venkatesh, Mr. Vivek Gurnani, Mr. Arkaj Kumar, Mr. Hitharth Raja, Ms. Abhipriya, Mr. Vivek Gaurav, Mr. Kanishk Maurya, Mr. Anand Kirti, Ms. Shweta Desai, Advocates for ED, Mr. Gaurav Saini, ALA and Ms. Bhanu Priya, DD

CORAM: HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

27.03.2024

CRL.M.A. 9428/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024

3. The petitioner has approached this Court by way of present writ petition, filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), through which following reliefs has been sought by the petitioner:

“A. In consonance with the principles laid to rest by the Hon’ble Supreme Court, inter alia, in its latest locus classicus ‘Pankaj Bansal Versus Union Of India And Others 2023 SCC Online Sc 1244’, hold and declare the arrest of the petitioner at the hands of Respondent to be wholly non-est, illegal, arbitrary and unconstitutional and consequently set aside and quash the entire proceedings relating thereto including arrest order dated 21.03.2024 as a gross and blatant abuse of the process of law as well as perversion of power and authority is writ large thereby, infringing the petitioner’s fundamental rights as guaranteed under articles 14, 19, 21 and 22(1) & (2) of the Constitution of India;

B. Quash and set aside the order dated 22.03.2024 passed by the Special Judge (PMLA) whereby, the petitioner has been remanded to the custody of Respondent in a patently routine and mechanical manner and, therefore, such untenable remand orders cannot cure the constitutional infirmities as guaranteed under Articles 21 and 22(1) & (2) of the Constitution of India;

C. Direct the forthwith release of the petitioner from custody as his any further incarceration would be anathema to law and gravely detrimental to the cause of justice; d. Issue any other writ(s), order(s) or direction(s) that this Hon’ble Court may deem fit and proper in the facts and circumstances of the case in favor of the petitioner.”

4. Along with the main petition, the petitioner has also preferred an application for grant of interim relief under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., seeking the following relief:

"i. Direct the release of the petitioner from illegal custody forthwith in ECIR/HIU/14/2022 on such terms and conditions as this Hon'ble Court may deem fit; AND/OR

ii. Pass any such other or further order(s) and/or direction(s) as this Hon'ble Court may deem fit in the peculiar facts of the case in favour of the Petitioner."

5. Sh. Abhishek Manu Singhvi, learned Senior Counsel, appearing on behalf of the petitioner argues that there is no requirement for issuance of notice either of the main petition or the application for grant of interim relief since the grounds of arrest as well as the impugned order dated 22.03.2024 passed by the learned Special Judge (PC Act), CBI-09 (MPs/MLAs Cases), Rouse Avenue District Court, New Delhi ('learned Trial Court'), vide which Sh. Arvind Kejriwal was remanded to the custody of Directorate of Enforcement, are on record and the same clearly reflect the stand of the Directorate of Enforcement as far as the present petitioner and his arrest is concerned. He states that the grounds of arrest are frozen and neither the plea taken by the Directorate of Enforcement before the learned Trial Court can change, nor there can be any addition to the grounds or arguments addressed before the learned Trial Court by Directorate of Enforcement, which have to be brought before this Court in the form of a formal reply.

6. Sh. Singhvi also argues that it is a delaying tactic which is reflective of malicious intent on the part of Directorate of Enforcement to stall or delay any order being passed on the release of the petitioner herein. He also states that this Court may decide the petition and the application either way, on the basis of his petition and arguments, and the previous stand taken by the Directorate of Enforcement before the learned Trial Court at the time of remand. Thus, he insists that there is no need for a reply being filed by the Directorate of Enforcement.

7. On the other hand, Sh. S.V. Raju, learned Additional Solicitor General ('ASG') appearing on behalf of the Directorate of Enforcement opposes the present writ petition and argues that it is the right of the Directorate of Enforcement to file a reply and to be heard before passing any order. Learned ASG also argues that he cannot be denied opportunity to file a reply nor the petitioner can decide as to whether the Directorate of Enforcement has to place before the Court any new fact or not. He, therefore, prays that he be given time to file reply to the main petition as well as the application for grant of interim relief.

8. Learned ASG also argues that one of the prayers sought in the main petition and the prayer in the application seeking interim relief are identical. Furthermore, there is a specific averment in the application for grant of interim relief that the contents of the main petition be read as part and parcel of the application for grant of interim relief i.e. immediate release of the petitioner herein.

9. Sh. Singhvi, learned Senior Counsel for the petitioner, in rebuttal to the aforementioned argument, argues that it is a standard paragraph mentioned in an application for interim relief and nothing more than that, and this cannot be used as a ground for seeking time to file a reply. He further argues that since the

interim relief as well as the relief sought in the main petition are identical, no reply is needed for either of them and the matter can be disposed of by hearing arguments on behalf of both the parties today itself or tomorrow.

10. However, learned ASG, while countering this argument, states that the copy of the petition was handed over to the respondent yesterday itself, which runs into more than 400 pages, and there was a deliberate delay on part of the petitioner and objections were not removed on time, neither a copy was given to them despite two emails sent to them for providing a copy of the paper book.

11. In response, Sh. Singhvi, learned Senior Counsel for the petitioner submitted that since the Registry was closed on account of the festival of Holi, they could not have anticipated the objections and that there is no delay on their part and they had prayed for an early hearing on the day this Court was closed.

12. Having heard arguments addressed by the learned Senior Counsel appearing on behalf of the petitioner as well as the learned ASG appearing on behalf of the respondent/Directorate of Enforcement, this Court notes that the petitioner himself mentions in his application for interim relief that since he is hopeful of succeeding in the main petition, the contents of the main petition be read as part and parcel of the application for grant of interim relief. The relevant portion of the application for interim relief reads as under:

"1. That the petitioner is approaching this Hon'ble Court vide the main petition invoking the writ jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution as well as under Section 482 Cr.P.C. and other enabling provisions to set at naught absolutely illegal, arbitrary and unconstitutional action of the Enforcement Directorate in arresting the petitioner and the subsequent mechanical and patently routine remand order passed by the learned Special Court. The petitioner is sanguine in the success of the main petition and therefore, Brevitatis causa, contents of the main petition may kindly be read as a part & parcel of the instant application as well."

13. The contention of the learned Senior Counsel for the petitioner is that it is a standard paragraph mentioned in every application for interim relief, and therefore, it should not come in the way of granting interim relief today itself without waiting for a response from the opposite side. In this regard, this Court had raised a specific query that, if that be so, should the Court not read the petition and its contents and should only read the application for interim relief, however, the same did not evoke a response from the side of petitioner, since the learned Senior Counsel had himself referred to and raised issues from the main petition while addressing arguments on the application for grant of interim relief.

14. This Court also takes note of the fact that the learned ASG has also placed on record the copies of two emails sent by the respondent to the counsel of the petitioner seeking copies of the paper-book on 24.03.2024 and 25.03.2024. However, the copy of the petition was provided to them on 26.03.2024 in the afternoon. This fact is not disputed by the learned counsel for the petitioner.

15. This Court is further of the opinion that the present petition raises several issues of legality and validity regarding the arrest and remand of the petitioner. Additionally, it questions whether the arrest may be politically motivated and malafide. There are also serious concerns which have been raised by Sh. Singhvi, learned Senior Counsel on behalf of the petitioner, which relate to Article 21 of the Constitution of India and Section 19 of PMLA, as well as the validity of the statement of an approver. The necessity and timing of the arrest of the petitioner and the motive behind it has also been argued at length by the learned Senior Counsel, Sh. Singhvi. He has also raised serious and critical questions before this Court that this Court being a constitutional Court must apply its mind to the motive behind the arrest which is patently illegal and has a direct bearing on the democratic process of impending elections in the country. In this Court's opinion, such important questions and issues cannot be summarily heard and decided, by giving opportunity to only one party to file petition, documents, short note of arguments and compilation of judgments relied upon by them, especially when copy of the petition was provided to the Directorate of Enforcement yesterday itself, and the short note of arguments and compilation of judgments relied upon by them were provided to the Court as well as the learned ASG during the hearing itself. It will be unfair to not give an opportunity to the Directorate of Enforcement to rebut the same by way of filing of a detailed response.

16. Thus, having regard to the nature of issues raised in this petition, this Court is of the opinion that the respondent has to be granted an opportunity to file a reply, as an opportunity for effective representation, and declining this opportunity would amount to denial of fair hearing as well as violation of one of the principles of natural justice i.e., audi- alteram partem, which is applicable to both the parties and not one.

17. This Court also cannot presume that the respondent will have no reply to file and will remain bound only by the contentions raised before the learned Trial Court. Moreso, since there may be some additional material in the possession of the investigating agency, collected during the custodial interrogation of the petitioner herein, which they may wish to place before this Court, which may be crucial to decide the present case. Such material may also be crucial for the petitioner himself.

18. The Court while hearing and deciding a case is duty bound to hear both sides fairly keeping in mind the principles of natural justice. Thus, the reply by Directorate of Enforcement is essential and crucial to decide the present case, and therefore, the contention of the learned Senior Counsel for the petitioner that no reply is required to be filed on behalf of the respondent is rejected.

19. This Court also takes note of the fact that the relief sought in prayer (C) of the main petition i.e. the release of the petitioner and the prayer sought in the application for grant of interim relief is similar and identical. The issues raised in the main petition and prayer (A) i.e. declaring the arrest as illegal and prayer (B) i.e. quashing of remand order, will lead to an order being passed on prayer (C) of the main petition i.e. release of the petitioner from custody. Thus, deciding the present application for interim release of petitioner would amount to disposing of and granting relief sought in the main petition in prayer (C).

20. Further, any release order from custody will amount to enlarging the accused/petitioner on bail or interim bail, as an interim measure. The writ jurisdiction under Article 226 of the Constitution of India is not a ready substitute for recourse to the remedy of bail under Section 439 of the Cr.P.C. ordinarily.

21. As noted above, the relief sought in prayer (C) in the main petition is dependent on the outcome of prayer (A) and (B). Therefore, any order passed in the application for interim release of petitioner, pending disposal of the main petition without calling for reply of the respondent, at this stage, would rather amount to deciding the main petition itself. This Court remains conscious of the fact that to reach a conclusion as to whether the petitioner herein is entitled to immediate release or not, this Court will necessarily have to decide the issues raised in the main petition, as those issues are the edifice of arguments of the learned Senior Counsel for the petitioner seeking immediate release of the petitioner.

22. In such circumstances, this Court deems it appropriate to issue notice of the main writ petition as well as application for grant of interim relief, returnable on 03.04.2024.

23. Mr. Zoheb Hossain, learned Special Counsel accepts notice on behalf of Directorate of Enforcement.

24. The Directorate of Enforcement will ensure that replies are filed to the main petition as well as the application for interim release of the petitioner by 02.04.2024 and copies of the same are provided in digitized form as well as hard copy to the learned counsel for the petitioner. The application as well as the main

petition will be taken up for final disposal on 03.04.2024. No adjournment shall be granted on the said date.

25. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 27, 2024

3. Study Material-G.K.

Kingdoms of Early Medieval Period **Tripartite Struggle**

The period between AD 750 and AD 1200 is known as the early medieval period of Indian History. Earlier, it was called the 'dark phase' of Indian History due to numerous fights between regional states. The recent studies show that though India was politically divided, it witnessed remarkable growth in the field of art, literature and language.

During this period, Kannauj became more significant and Pataliputra lost its importance as a sign of the sovereignty of India. There was complete decentralization that led to Indian feudalism. The political unity of India broke down due to the emergence of many regional powers who were waging continuous wars against each other.

1. Dynasties of Early Medieval Period

The political development of this period is mainly divided into two phases. The first phase (750 AD to 1200 AD) marked the rise of three important political powers in India – Gurjara Pratiharas (north India), Palas (eastern India) and Rashtrakutas (South India). The second phase (1000AD-1200AD) witnessed break-up of these powers.

1.1. Tripartite Struggle

Tripartite Struggle was an armed conflict between Palas of East, Gurjara Pratiharas of North and Rashtrakutas of South India. These powers were fighting with each other to set up their control on the Gangetic region in northern India.

The main objective of the conflict was to possess the Kannauj city, then a symbol of sovereignty.

1.1.1. Gurjara Pratiharas Dynasty

- It was founded by Nagabhata I in the eighth century.
- They originated from the Gujarat or South western region of Rajasthan.
- Mihira Bhoja was the greatest ruler of this dynasty. He had defeated Narayanpala of Pala dynasty.

- Mahendrapala I, successor of Mihira Bhoja, expanded his territory which triggered the Tripartite Struggle.
- Due to the rise of feudal lords and internal conflicts, Pratiharas were disintegrated into many Rajput kingdoms like Chahamanas, Chandellas, Paramaras, Solankis, etc.

1.1.2. Palas

- It was founded by **Gopala** around 750 AD.
- The Pala kings were followers of Buddhism. They made monasteries and temples in Eastern India to promote Buddhism.
- Dharmapala created Somapura mahavira at Paharpur.
- His son Dharmapala revived Nalanda University. He was defeated by Rashtrakuta ruler Dhurva.
- Dharmapala founded **Vikramashila University** near Bhagalpur (Bihar).

1.1.3. Rashtrakuta Dynasty

- Dantidurga was the founder of the Rashtrakuta dynasty. Chalukyas of Badami were defeated by him.
- **Capital:** Manyakheta or Malkhed
- Dhruva, a Rashtrakuta ruler, turned towards north India to control Kannauj which led to the beginning of the 'Tripartite struggle'. He defeated Palas, Pratiharas, Pallavas, and Eastern Chalukyas. He became the first Deccan king to annex Kannauj.
- Krishna I built the famous Kailasha temple at Ellora (Maharashtra). Govind-III and Amoghvarsha were the greatest Rashtrakuta ruler.
- **Kavirajamarga** was one of the creations of Amoghvarsha. During his reign, an Arab traveler named Abu Sulaiman visited his capital. He patronized Jainism.
- Rashtrakuta dynasty ruled over Deccan from around 800AD-1000AD.

1.2. Rise of Chola Empire

- **Vijayalaya** was the founder of the Chola dynasty.
- Chola empire was extended between river Tungabhadra in the north to Kanyakumari in the south. Chola Kings use their Navy for their foreign expedition. They conquered parts of the Maldives and Sri Lanka.
- Rajaraja I and his son Rajendra I were the real architects of this dynasty. **Rajaraja I** is famous for constructing a famous temple known as

Rajarajeshwara or Brihadesvara temple located at Tanjore. It is dedicated to Lord Shiva. He built a dam across Kaveri river.

- **Rajendra I** defeated Mahipala I and assumed the title of “Gangai-konda” (conqueror of Ganga) and also founded a new capital called ‘Gangaikondacholapuram’.
- Rajaraja II built the Darasuram Temple.
- Rajendra Chola III was the last Chola ruler. Under his tenure, the empire started disintegrating into smaller regions.

1.2.1. Chola Administration

- Local self-government was the basic feature of the Chola administration.
- The Chola empire was divided into mandalams or provinces. These were further divided into **valandu** and **nadu**. Under nadu, there were many autonomous villages. Two types of villages were there- Ur (people from different caste and assembly) and Agrahara (settled by Brahmins). Town was called nagram.

Divisions	Head
Mandalam	Royal Prince or officers
Valanadu	Periyanattar
Nadu	Nattar
Nagram (Town)	Nagarattar (Council)

- The cholas undertook land surveys and revenue settlement to assess taxes. Kuli, Ma, Patti, Veli and Padagam were some units of land measurement.
- Trade and commerce were in the flourished state during the Chola empire.
- Cholas were ardent followers of Shaivism. Devadasi system came into practice during this period.

1.3. The rise of Rajputs

- After Harsha’s death (647 A.D.) and disintegration of Pratihara empire many Rajput states emerged in Rajasthan and Indus plain. The Gahadvalas of Kannuj, Parmars of Malwa, and Chauhan of Ajmer were the prominent Rajput rulers.
- Each Rajput state was ruled by a ruler with the help of his chiefs who were generally his blood brothers.

- The political system of the Rajputs was bureaucratic-cum-feudal in character.
- *Prithviraj Raso* (a long epic poem) written by **Chand Bardai** give an account of military conquests of Prithviraj Chauhan.
- The Solankis or Chalukya Dynasty ruled the Gujarat region. Under the reign of Bhimadeva I which lasted for around 42 years, Mahmud of Ghazni raided the Somnath Temple.
- Raja Bhoj was the famous ruler of the Parmar Dynasty. He built Bhojshala (a Sanskrit college) in his capital city Dharanagar.
- The Chandelas ruled the eastern part of Madhya Pradesh. Dhanga was the famous ruler of this dynasty. He adopted the title of Maharajadhiraja. Kandariya Mahadev Temple in Khajuraho complex was built by Chandelas. It is dedicated to Lord Shiva.
- The famous ruler of Gahawars or Rathors was Jaichand.

1.3.1. Important Battles fought by Rajputs

- The Rajputs led by Prithviraj Chauhan defeated Ghurids, led by Muhammad Gori in the **First Battle of Tarain** in 1191.
- In 1192, Muhammad Gori defeated and killed Prithviraj in the **Second Battle of Tarain**.
- In the **Battle of Chandawar**, Jaichand was defeated by Mohammad Gori (1193 or 1194).

1.3.2. Causes of Decline of Rajputs

- Rajput states were engaged in constant war against each other for power which led to the wastage of their resources.
- Feudal system proved fatal for Rajput kingdoms.
- Turkish invasion weakened Rajput states.
- A stringent caste system doesn't allow people from lower caste to join the army of Rajput state.

1.4. Other Important rulers of North and South India

1.4.1. Harshavardhana

- He was one of the most famous Indian rulers of the 7th century AD. His empire extended from north India to the Narmada River in central India. He was the son of founder of Vardhana or Pushyabhuti Dynasty.
- He established his capital at Kannauj.
- It was during his reign; feudalism began in India.

- The two most important events of Harsha's reign were the assemblies at Kannauj and at Prayaga.
- Hiuen-Tsang (Xuanzang) visited Harsha's court and provided detail about the Harsha's administration.
- Banabhatta was a poet in Harsha's court. He wrote 'Harshacharita' a biography of Harshavardhana in the Sanskrit language.
- He was defeated by a South Indian ruler Pulakeshin II (Battle of Narmada). The defeat of Harsha is mentioned in Aihole inscription.

1.4.2. Pulakesin II

- He was one of the greatest rulers of the Chalukya Dynasty of Vatapi.
- He established Vatapi or Badami as its capital.

1.4.3. Vikramaditya II

- He was the son of Vikramaditya I. He succeeded the Badami Chalukya kingdom after his father died.
- He conducted successful military campaigns against Pallavas of Kanchipuram.
- The consecration of the famous Virupaksha Temple (Lokeshwara temple) and Mallikarjuna Temple (Trilokeshwara temple) are the notable achievements of Vikramaditya II.

1.4.4. Narasimhavarman I

- He was the ruler of the Pallava dynasty from 630–668 CE.
- Famous Pancha Rathas Temple was constructed during his reign.
- He was also known as Mahamalla (great wrestler) and he defeated Chalukya king, Pulakeshin II in 642 AD.

2. Causes of Decline of Early Medieval Rulers

- Early Medieval rulers were engaged in constant war against each other. The lack of unity among various dynasties led to the decline.
- The rulers during the early medieval period did not maintain a huge army and were dependent on Feudal lords. The feudal system was another cause for the downfall.
- The rulers of the Early Medieval period followed old war techniques and used outdated weapons therefore, they could not protect their kingdoms from Turkish invasion.
- The espionage system was very weak.

- Rigid caste system caused disunity among the people.

3. Economic and Social life

Many social and economic changes were seen during the early medieval period. New groups were added to Brahmanical society.

New areas were brought under cultivation and land grants have increased. The land grant helped in the emergence of the Kayastha class.

The economic condition in the first phase (AD 750–AD 1000) was on the decline as evident from the absence of coins for exchange and the condition of towns of north India.

The economic condition in the second phase revived after 1000 AD. New gold coins were found and towns were in a good state. The revival seems to be due to an increase in agricultural activities and the emergence of Arab traders as important players in international sea trade.

3.1. Society

The emergence of a power of a class of people who were called Samanta, Ranak, Rautta, etc, can be easily seen during this period. They were either government officers or defeated ruler and their supporters.

The caste system was prominent in society. Most of the workers as well as tribals were considered untouchables. The Brahmanas enjoyed superiority in the caste system.

The ministers and the officials assumed high-sounding titles as *mahasamantadhipati*.

Hinduism was expanding rapidly and society has become more complex due to more sub-castes.

3.2. Condition of women

The marriage age was lowered and the education of women was in a poor state. The condition of women has degraded during this period.

Remarriage was allowed under certain conditions and widows has the Right to property.

3.3. Trade and commerce

The rate of the revenue from peasants was one-sixth of the produce. There were a number of additional cesses such as grazing tax, tax on ponds, etc.

The revenue assignment granted by the ruler to his officer was known as bhoga. They were temporary in nature.

The hereditary chiefs not only assess land revenue but also give punishment and impose fines.

Trade between South India and south-East Asia flourished during this period. The merchants were organized in guilds.

The main port for sailing to Java, Sumatra was tamralipti in Bengal.

Indian rulers Palas, Cholas, Pallavas encouraged trade with China and send their many embassies to Chinese rulers.

4. Cultural Development

- Temple architecture attained its climax under the Cholas. A style of temple architecture known as Dravida style emerged. Some of the characteristics of this style are the garbhagriha (chief deity room), the vimanas (building of storey upon storey), the mandapa and the gopurams.
- The most remarkable examples of this style were Kailashnatha at Kanchipuram and Brihadiswara temple at Tanjore.
- The greatest Sanskrit poet and dramatist Rajsekhar lived in the court of Mahipala.
- The famous rock-cut temple of Shiva at Ellora was built by Rashtrakuta king Krishna I in the 9th century.
- Under Chalukyas of Kalyani temple activities continued at Hoysalas. These temples have finely sculptured panels which show a panorama of life.
- Kannada was patronized by Rashtrakuta, Chalukyas, and Hoysala.
- Angkorvat temple is one of the most famous temples built in the 12th century that is dedicated to Lord Vishnu. Surya Varman II, the king of Kambuja (Cambodia) had built this temple. The walls of the temple are decorated with sculptures based on themes drawn from Mahabharat and Ramayana.

5. Religious movement during the period

This period is marked as a revival of Hinduism and the decline of Buddhism and Jainism.

Many internal changes occurred in Buddhism during this period.

Jainism continued to be popular among the trader's community. The Ganga rulers of Karnataka were patrons of Jainism.

In Hinduism, Shiva and Vishnu became the chief gods. Bhakti movement in south India started during this period.

Alvars/ Alvars were devotees of Vishnu during the 6th -9th century.

Nayanars were a group of saints living in Tamil Nadu during the 3rd to 8th centuries CE. They were devotees of Shiva.

Another famous movement was **Lingayat or Vir Saiva movement**. They were worshippers of Shiva.

Sankara proposed Advaitavada or the doctrine of non-dualism philosophy in the 9th century.

4. Study Material-Language

ONE WORD-SUBSTITUTION

S.N.	Sentence	One Word
1.	A person who acts on behalf of others	Agent
2.	A leader or orator who espoused the cause of the common people	Demagogue
3.	A person having a sophisticated charm	Debonair
4.	A leader who sways his followers by his oratory	Demagogue
5.	A dabbler (not serious) in art, science and literature	Dilettante
6.	A man who is womanish in his habits	Effeminate
7.	A person who deliberately sets fire to a building	Arsonist
8.	A government of officials	Bureaucracy
9.	A government by one person	Autocracy
10.	A government by rich and powerful class	Plutocracy
11.	A government by nobles	Aristocracy
12.	A government of the people, by the people and for the people	Democracy
13.	A Government by the Churchmen	Theocracy
14.	A person who heads the Council of Ministers	Prime Minister
15.	A work or a book or a literary piece of work whose author is not known	Anonymous
16.	A diplomatic representative of one country in another	Ambassador
17.	A person selected by disputing parties to settle their difference	Arbitrator
18.	A supplement added at the end of the book	Appendix
19.	A voluntary renouncement of the throne by the King	Abdication
20.	A lover of others	Altruist
21.	A medicine to cure the effect of poison	Antidote
22.	A public sale of property conducted by biddings	Auction Sale
23.	A place where arms and ammunition are kept	Armoury
24.	A person who secret himself by running away from law	Absconder
25.	A member, of the middle class	Bourgeois
26.	A State involved in war	Belligerent
27.	A person who is fond of fighting	Bellicose
28.	A person unable to pay debt	Bankrupt
29.	A lover of books or a collector of books	Bibliophile
30.	A list of books or articles	Catalogue
31.	A person who has been convicted of an offence	Criminal
32.	A person who has been charged of an offence	Accused
33.	A process of compound between two parties	Compound
34.	A general order for people to remain indoor	Curfew
35.	A period of hundred years	Century
36.	A period of ten years	Decade
37.	A round about mode of expression	Circumlocution
38.	A person engaged in diplomacy	Diplomat

39.	A suit filed for the purpose of declaration of title	Declaratory suit
40.	A Hundi on which payment can be made at sight	Darshani Hundi
41.	A long poetic account of the deeds of great heroes	Epic
42.	A person who leaves his country and goes to live in another	Emigrant
43.	A person whose conduct is not normal	Eccentric
44.	A person interested in everything happening around him	Extrovert
45.	A speech given without preparation	Extempore
46.	A speech given for the first time in life	Maiden speech
47.	A poetry or prose recited at the end of a play	Epilogue
48.	A poetry or prose recited at the beginning of the play	Prologue
49.	A man is womaniser	Effeminate
50.	A person who is hi habit of sensuous pleasure	Epicure
51.	A person who believes in fate	Fatalist
52.	A strong believer of religion	Fanatic
53.	A supporter of women movement/women's right	Feminist
54.	A medicine that destroys germs	Germicide
55.	A plane figure with six sides	Hexagon
56.	A person who is unable to pay his debts	Insolvent
57.	A disease communicable by air or water through virus	Infectious
58.	A sound that cannot be heard	Inaudible
59.	A decision which cannot be changed	Irrevocable
60.	A person who goes from one country to another with intention to settle down there	Immigrant
61.	A trade or act which is prohibited by law	Illicit
62.	A person who is confined to his own-self	Introvert
63.	A body of person selected according to law and sworn to give verdict on some matter according to evidence	Jury
64.	A formal decision made by or pronounced by a court of law or other tribunal	Judgment
65.	A person who is skilled in language	Linguist
66.	A gift of personal property by will to a legatee	Legacy
67.	A game of chance, generally unlawful	Lottery
68.	A person with whom money or gain is the most important consideration	Materialist
69.	A soldier who fights for the sake of money	Mercenary
70.	A place where dead body is kept before post-mortem	Mortuary
71.	A handwritten copy	Manuscript
72.	A person who hates woman-kind	Misogynist
73.	A hater of mankind	Misanthrope
74.	A hater of marriage	Misogamist
75.	A person below the age of 18	Minor
76.	A person above the age of 18	Major
77.	A wrongful act done intentionally without a just cause or excuse	Malice
78.	A direction from a superior to an inferior Court	Mandate
79.	A people's verdict in favour of a party to rule	Mandate
80.	A note according to particulars of an event	Memorandum

81.	A woman who without marriage lives as a wife	Mistress
82.	A sound proposal made in a meeting	Motion
83.	A special favour by a person occupying high position to his relatives	Nepotism
84.	A widely known criminal with bad reputation	Notorious
85.	A new born child	Neonate
86.	A plea in abatement which alleged that the plaintiff has failed to join in action all those who have been parties	Non-joinder
87.	A person deprived of the protection of law	Outlaw
88.	A custom or word which is no longer in use	Obsolete
89.	A figure with eight sides and eight angles	Octagon
90.	A child whose parents are dead	Orphan
91.	A man whose wife is dead	Widower
92.	A woman whose husband is dead	Widow
93.	A person who looks at the brighter side of things	Optimist
94.	A person who views life with despair	Pessimist
95.	A garden of fruits	Orchard
96.	A solemn appeal usually to God to witness that some statement is true or that some promise is binding	Oath
97.	A duty, usually legal or moral and of one's choosing to undertake a course of action	Obligation
98.	A proposal, written or oral to give or do something	Offer
99.	A disregard of the essentials of justice	Oppression
100.	A law promulgated by the President or Governors	Ordinance
101.	A tendency to give an unfair judgment through sympathy with one side	Partiality
102.	A child born after the death of his father	Posthumous
103.	A remedy for all ills	Panacea
104.	A person without means	Pauper/Indigent
105.	A person who does not believe in war or favours its abolition	Pacifist
106.	A murder of his own father	Patricide
107.	A woman who offers the use of her body for sexual intercourse to anyone who pays for that	Prostitute
108.	A person who loves his country and is ready to sacrifice his life for his country	Patriot
109.	A man who amuses himself by love making	Philanderer
110.	A man who helps others in difficulty	Philanthropist
111.	A lover of woman kind	Philogynist
112.	A special right or immunity conferred on some person or body	Privilege
113.	A glance at the past events	Retrospect
114.	A law with effect from some earlier date	Retrospective law
115.	A private person at whose suggestion an action is commenced by Attorney-General	Relator
116.	A residue of an estate, depending upon a particular estate and rated together the same at one time	Remainder
117.	A periodic payment made by the tenant or other occupier of land to the owner for its possession and use	Rent

118.	A citation to appear before a Judge or Magistrate	Summons
119.	A person who draws amusement by inflicting cruelty on others	Sadist
120.	A person who doubts the truth of a particular claim	Sceptic
121.	A person or a thing taking place of another	Substitute
122.	A person who knows the philosophy of pain and pleasure and therefore, takes both in the same way	Stoic
123.	A place where artists work	Studio
124.	A truth which is often repeated	Truism
125.	A play of a serious kind with a sad ending	Tragedy
126.	A practice which has continued over a long period	Usage
127.	A person or animal suffering an' injury or loss	Victim
128.	A person who has a long experience	Veteran
129.	A person who gives up himself upto, luxury and sexual pleasures	Voluptuary
130.	A cupboard with shelves, pegs for keeping clothes	Wardrobe
131.	A study of animal life	Zoology
132.	A group of stars	Constellation
133.	A hackneyed phrase	Cliche
134.	A man whose manners are more like those of a woman than a man	Effeminate
135.	A breaker of images	Iconoclast
136.	A man who can disguise the direction of his voice	Ventriloquist
137.	A man with narrow and prejudiced religious views	Bigot
138.	A man who eats human flesh	Cannibal
139.	A person who is head of the joint-Hindu family	Karta
140.	A person knowing everything	Omniscient
141.	A body which is all powerful	Omnipotent
142.	A remedy which never fails	Infallible
143.	A match which ends without victory of either party	Drawn
144.	A place where birds and animals are kept for exhibition	Zoo
145.	A damages not directly related to a wrongful act	Remote
146.	A state of growth of a person between boyhood and youth	Adolescence
147.	A Constitution which contains norms in a written document	Written Constitution
148.	A Constitution which divides power of governance between the national and the regional governments	Federation
149.	A constitutional scheme which provides for governance of the whole country by the Central Government	Unitary
150.	A person who avoids arrest by concealing himself	Absconder
151.	A person who brings the suit	Petitioner
152.	A claim made by the opposite party in a suit	Counter claim
153.	A statement which is not clear and is open to more interpretations	Ambiguous
154.	A loss or damage that cannot be compensated	Irreparable
155.	A widespread disease affecting people at large at the same time	Epidemic
156.	A place where one can reach	Accessible

157.	A loss which can be ascertained	Accessible
158.	A public officer who attests deeds or documents	Notary
159.	A person who has been declared outcast by a community	Ex-communicated
160.	A person who addresses a public gathering	Speaker
161.	A member of the Parliament who presides over its meetings	Speaker
162.	A dignitary who presides over the Meetings of the Council of the State	Chairman
163.	A duty imposed on the manufacture of a thing	Excise
164.	A duty levied at the incidence of importing or exporting goods	Custom duty
165.	A person who can speak and write two languages	Bilinguist
166.	A person who believes in the existence of God	Theist
167.	A person who does not believe in God	Atheist
168.	A person who spends money recklessly	Prodigal
169.	A person who is sent upon a special mission	Envoy
170.	A self centred person who always thinks of his own interest	Egoible
171.	A judgment pronounced on the basis of the agreeing of all the judges on the bench	Unanimous
172.	A diplomatic personnel of highest order sent by one country to another	Ambassador
173.	A person who dies without making will	Intestate
174.	A matter pertaining to parents	Parental
175.	A government which does not interfere into matters of the people	Laissez-faire
176.	A gratuitous payment made secretly	Donatio violate
177.	A property managed by a person for the beneficial use of other person	Trust Property
178.	A legal injury caused without any monetary loss to a person	Injuria sine Damnum
179.	A kind of happening which had never happened earlier	Unprecedented
180.	A work without remuneration	Honorary
181.	A girl who is not married	Virgin
182.	A leave without application	French leave
183.	A person who eats only vegetables	Vegetarian
184.	A sum of money payable yearly either as a personal obligation of the grantor or out of property	Annuity
185.	A detention with a view to prevent the detenu from committing act	Preventive detention
186.	A payment reserved by the grantor of a patent, lease of mine etc. payable proportionately to the use made of the right by the grantee	Royalty
187.	A money comfort qualified by the statute, given as a conciliatory measure for the compulsory acquisition of the land of the citizen by a welfare state	Solatum
188.	A super added charge over and above the usual or current dues	Surcharge
189.	A term during which an office is held	Tenure

190.	A mark used in relation to goods for the purpose of indicating connection in the course of trade between goods and some person having the right to use that mark as proprietor	Trade mark
191.	A device intended to comprehend a mode by which property can pass	Disposition
192.	A visible manifestation of the feelings or sentiments of an individual having legal personality	Demonstration
193.	A collection or individuals classed together under the same name or a religious body having a faith or organisation and designated by a distinctive name	Denomination
194.	A formal resolution of a body reprimanding a person (normally one of its own members) for specified conduct	Censure
195.	A public and formal censure or severe reproof administered to a person in fault by his superior officer or by a body or organisation to which he belongs	Reprimand
196.	A temporary suspension of the execution of a sentence	Respite
197.	A small quantity of any commodity presented for inspection or examination as evidence of the quality of the whole	Sample
198.	A seat of judgment for the administration of justice	Bench
199.	A right of use over the property of another	Easement
200.	A court organised for the argument of hypothetical cases	Moot Court
201.	A sanctuary or place of refuge and protection	Asylum
202.	A person who has committed grave crime	Felon
203.	A body of law constituted by ecclesiastical authority for the organisation and governance of the Christian Church	Cannon Law
204.	A place of work in which trade union members working there refuse to allow non-union members to be employed in that industry	Closed shop
205.	A mode of the transfer by which property is transferred from one person to another by written instrument's and related formalities	Conveyance
206.	A form of government in which the administration of affairs is open to all citizens and office of the head of the state is occupied by an elected person	Republic
207.	A breaker of images	Iconoclast
208.	Acquisition of one firm by another so that they become one unit	Merger
209.	Acts, the tendency of which is to injure, annoy etc. to a complainant	Molestation
210.	Act of general pardon	Amnesty
211.	Admitting a person as a citizen of a foreign state	Naturalize
212.	Allowance payable to a wife on judicial separation from her husband	Alimony
213.	All substances found under the earth obtained by mining and containing inorganic substances	Minerals
214.	All land, houses or other buildings forming part of endowment of an ecclesiastical benefice	Glebe

215.	Ambiguity in a document seen on its face	Patent
216.	Ambiguity in a document not found prima facie	Latent
217.	An agreement to do or not to do a particular thing	Covenant
218.	Any living object	Animate
219.	An order issued by the court before the pronouncement of the decision	Interlocutory order
220.	An established principle of practical wisdom	Maxim
221.	An authorised period of delay in performing of obligation	Moratorium
222.	An assembly of members of an Inn or Court at which points of law are argued	Moot
223.	An offence of collective insubordination, collective defiance or disregard of authority or refusal to obey authority	Mutiny
224.	An adult through whom an infant or patient sues/represents	Next friend
225.	An act of omission or commission punishable under criminal law	Offence
226.	An action taken by one person as on retaliation for ton assumed or real wrong by another	Reprisal
227.	An act which wrongfully deprives a person of his freehold	Ouster
228.	An association of individuals entitled to act as an individual having a legal personality	Corporation
229.	An imaginary tome assumed by an author	Pseudonym
230.	An earlier decision taken as an example	Precedent
231.	An act by which one annuls something he has done	Revocation
232.	An offence consisting of breaking and entering and committing a felony in any place of divine worship	Sacrilege
233.	An office to whom high salary is paid for little or no work or responsibility	Sine cure
234.	An express and specific denial of an allegation of fact made in statement of claim	Traverse
235.	An order that is absolutely clear	Unambiguous
236.	An offence with intent to deceive others	Witchcraft
237.	An acknowledgment of something existing before	Recognition
238.	An intangible asset or the whole advantage of the reputation or connections formed with customers together with the circumstances making the connection durable	Goodwill
239.	An order against which appeal may lie	Appealable
240.	An infringement of a provision which empowers a person to get enforced in a court of law	Enforceable
241.	An enactment conforming to norms set in the Constitution	Constitutional
242.	An expert in the science of law	Jurist
243.	An act violative of the norms prescribed by the law	Unlawful
244.	An net whose validity is under challenge	Impugned
245.	An act violative of the norm of morality and decency	Obscene
246.	An act ending the sitting of the House	Adjournment
247.	An act ending the session of a House	Prorogation
248.	An act ending the life of the House of the people	Dissolution
249.	An entity which can sue or be sued	Person

250.	An action of killing infants	Infanticide
251.	An act which is contrary to the nature	Unnatural
252.	An act of importing goods illegally without paying the custom duty	Smuggling
253.	An act of removing objectionable utterances of Legislator's in a House by the Speaker	Expunge
254.	An old student of a institution	Alumni
255.	An act of a officer or body beyond Jurisdiction	Ultravires
256.	An institution where a student has been trained	Alma mater
257.	An incidence worthy to be remembered	Memorable
258.	An act which is wrong	Culpable
259.	An act of engaging oneself in war	Belligerent
260.	An act which is legally allowed	Permissible
261.	An infringement of a provision which empowers a person to get enforced in a Court of law	Enforceable
262.	Absence of restraint	Liberty
263.	Authority to act granted by a competent authority	Licence
264.	Bathing nakedly	French bath
265.	Bank loan allowing a customer's current account to go into debit	Overdraft
266.	Belonging to all	Universal
267.	Belonging to village area	Rural
268.	Belonging to a city	Urban
269.	Belonging to the bank of river or stream	Riparian
270.	Book containing information on all subjects	Encyclopaedia
271.	Chairman of a city council elected by the councillors	Mayor
272.	Charging of the nature of the punishment	Commutation
273.	Charges in respect of goods unloaded from wagons and kept at the station	Demurrage
274.	Capable of being understood	Intelligible
275.	Contrary to nature	Unnatural
276.	Collection of special words with meaning	Glossary
277.	Collector of stamps	Philatelist
278.	Common plea remarks	Platitude
279.	Conferred as an honour unpaid, an officer for which no salary is paid	Honorary
280.	Culpable omission to perform a duty	Neglect
281.	Child brought up by a person other than parents	Foster Child
282.	Disagreement or differences between statement in the writ and pleadings	Variance
283.	Destroying the source of authority of the existing government	Subjugation
284.	Discrimination with an object to safeguard the interest of the weaker sections of the society	Protective Discrimination
285.	Dispatching of goods/articles to another country	Export
286.	Dramatic performance with dumb show	Pantomime
287.	Document issued under the seal of the court as official evidence of the authority of an executor	Probate

288.	Duties imposed by the government on imports	Tariff
289.	Everything which is to be applied for the purpose of healing whether externally or internally	Medicine
290.	Extermination of a race by mass murder	Genocide
291.	Evidence from an independent source conforming and strengthening other evidence	Corroboration
292.	Fixed time from which military operation are counted	Zero hour
293.	Functions which can be performed only by the organs of the government	Sovereign or Regal
294.	Formal investigation of a person's activities	Vetting
295.	Formal suspension of execution of a sentence	Reprieve
296.	Former holder of any office or position	Predecessor
297.	Failure of legacy	Lapse
298.	Fund or property available for discharge of debts	Assets
299.	Generally one's nearest blood relations	Next-of-kin
300.	Generally involves a grant of exclusive possession for a term at rent	Lease
301.	Good observer in matters in which taste is needed	Connoisseur
302.	Government where all adult citizens elect their representatives	Democracy
303.	Government or opposition official responsible for controlling the presence of MP's at debates and votes, arranging pairs etc	Whip
304.	Government based on religion	Theocracy
305.	Getting away from restraint or custody	Escape
306.	Give and take mutually	Reciprocate
307.	Given to finding fault	Censorious
308.	Have blood relation	Kin
309.	Having one wife	Monogamy
310.	Having two wives	Bigamy
311.	Having many wives	Polygamy
312.	Having some resemblance to, but lacking some requisites	Quasi
313.	Having more than one husband	Polyandry
314.	Handing over a fugitive foreign criminal to the proper authorities of his own country when sought to do so	Extradition
315.	Herb eating animal	Herbivorous
316.	Happening once in three years	Triennial
317.	High or profitable post with no duties	Sinecure
318.	Honest intent free from taint of fraud or fraudulent design	Good faith
319.	Happening for the first time	Unprecedented
320.	Illegal export or import of merchandise	Smuggling
321.	Imposition of assessment or tax	Levy
322.	Income, yield of taxes, return on investment-	Revenue
323.	In accordance with the forms of law	Legal
324.	Inconsistency of two or more provisions in a deed or other document	Repugnance
325.	Incapable of being cured	Incurable
326.	Intentional abandonment of a right	Renunciation

327.	Intimation, intelligence, warning, observation	Notice
328.	Instrument by which a payment of money is assured on death	Insurance policy
329.	Killing of either or both parents	Parricide
330.	Kingdom of rulers belonging to one family	Dynasty
331.	Knowledge of how to accomplish something	Know how
332.	Legally capable of making a will	Testable
333.	Let the buyer be aware	Caveat Emptor
334.	Lay of dilly at the incidence of importing the goods	Custom Duty
335.	Living on both land and in water (like frog)	Amphibious
336.	Lover of books	Bibliophile
337.	Life History written by the person concerned	Autobiography
338.	Life history of a person written by other person	Biography
339.	List of books, Articles etc.	Catalogue
340.	List of items of business transaction at a meeting	Agenda
341.	Liable to make mistake	Fallible
342.	Market structure with only a single seller of a commodity	Monopoly
343.	Marrying more than one husband at a time	Polyandry
344.	Malicious destruction of or damage to property so as to harm a business or military potential of the State	Sabotage
345.	Medical examination of dead body	Post-mortem
346.	Mode of acquiring title or property by uninterrupted possession	Usucaption
347.	Money paid for securing freedom of a captive	Ransoms
348.	Medicines that promote sleep	Narcotic
349.	Movement from one country to another	Migration
350.	Missing portion or omission in a document	Lacuna
351.	Murder of an infant	Infanticide
352.	Made of different kinds	Heterogeneous
353.	Man who eats human flesh	Cannibal
354.	Medical examination of a dead body	Autopsy
355.	Money received by a Muslim women as a consideration of marriage	Mehr
356.	Negligence and unreasonable delay in the assertion of a right claiming privilege	Latches
357.	Notes providing a record of proceedings	Minutes
358.	Non-payment of interest on a loan exceeding the principal at time	Damdupat
359.	One who can neither read nor write	Illiterate
360.	One who is not sure about God's existence	Agnostic
361.	One who makes an official examination of accounts	Auditor
362.	One who does a thing for pleasure and not as a profession	Amateur
363.	One who can use either hand with ease	Ambidextrous
364.	One who cannot be won	Invictus
365.	One who speaks on behalf of other	Spokesman
366.	One who feels very sympathetic to all human beings	Humanitarian
367.	One who regards the whole world as his country	Cosmopolitan
368.	One who is liked by everybody	Popular

369.	One who cannot be corrected	Incorrigible
370.	One who is dependent on other	Dependent
371.	One who sells goods in the street roaming about	Hawker
372.	One who is unable to pay his debt	Insolvent
373.	Obliteration of statute by another from the statute book as completely as it had never been enacted	Repealed
374.	One who examines publications, films and like for objectionable content	Censor
375.	One who does not take any intoxicating drink	Teetotalism
376.	One who walks in sleep	Somnambulism
377.	One who talks in sleep	Somniquist
378.	One who is appointed to act in place of another	Surrogate
379.	One who makes a settlement of his property	Settlor
380.	One appointed with authority or power to act for another, i.e., meeting, attendance	Proxy
381.	One of the first persons to do anything to go into a country to develop it: first student of a new branch of study	Pioneer
382.	One who walks on foot	Pedestrian
383.	One who depends on others	Parasite
384.	One who has possession as owner or tenant of land or a house and has degree of control associated with his presence on the land or in the house	Occupier
385.	One who does not believe in the existence of God	Atheist
386.	One who leads an austere life	Ascetic
387.	One who can either hand with ease	Ambidextrous
388.	One who is bad in spellings	Cacographer
389.	One who feeds on human flesh	Cannibal
390.	One who is recovering health after illness	Convalescent
391.	One who is a centre of attraction	Cynosure
392.	One who dies for a noble cause	Martyr
393.	One who is very particular about small details	Meticulous
394.	One bound by allegiance and feudal service	Liege
395.	One who makes a lease to another	Lessor
396.	One to whom a lease is made	Lessee
397.	One who entertains a guest	Host
398.	One who sneers at the beliefs of others	Cynic
399.	One who is in debt to another	Debtor
400.	One who is for pleasure of eating and drinking	Epicure
401.	One who often talks of his achievements	Egotist
402.	One who easily believes, whatever is told	Credulous
403.	One who first attacks	Aggressor
404.	One who does work for pleasure and not as an occupation	Amateur
405.	One who intends to destroy the established government, Law and Order	Anarchist
406.	Parliamentary Commissioner for Administration	Ombudsman
407.	Person who compiles a dictionary	Lexicographer
408.	Place, where dead bodies are cremated (burnt)-	Crematory
409.	Property inherited by a person from his ancestor	Patrimony

410.	Place of detention for those committed to custody under the law	Prison
411.	Period of isolation, originally 40 days, imposed on the ship and its travellers coming from a country in which serious infectious disease has spread	Quarantine
412.	Person who takes up arms against the established government	Rebel
413.	Person escaped to foreign country from religious or political persecution	Refugee
414.	Persuasion to disobedience, illicit sexual intercourse	Seduction
415.	Punishment or penalty imposed on a person found guilty by court	Sentence
416.	Payment by the State to producers or distributors intended to reduce prices paid by consumers	Subsidy
417.	Process becoming entitled to property of deceased by operation of law	Succession
418.	Scientist who studies stars	Astronomer
419.	Someone who leaves one country to settle in another	Emigrant
420.	Specialist in female diseases	Gynaecologist
421.	Specialist in children's diseases	Pediatrician
422.	Specialist in eye diseases	Ophthalmologist
423.	Specialist in heart diseases	Cardiologist
424.	Specialist in skin diseases	Dermatologist
425.	Specialist in mental and emotional disorders	Psychiatrist
426.	Science of disease	Pathology
427.	Science of bodily structure	Anatomy
428.	Science of the production of healthier and fitter children	Eugenics
429.	Something said or done at one without preparation	Impromptu
430.	Sending out of a person from his native country	Exile
431.	Send money	Remit
432.	Sexual intercourse between near relations	Incest
433.	Society in which mother is the head of the family	Matriarchy
434.	Stealing from another person's writings	Plagiarise
435.	Substance that prevents infection	Antiseptic
436.	Substance that kill germs	Germicide
437.	Substance that easily catches fire	Inflammable
438.	Substance that breaks easily (like chalk)	Brittle
439.	Statement or story worthy of belief	Credible
440.	State of repugnance between two laws	Repugnancy
441.	Statement in a deed or any formal instrument to explain or to lead up to the operative part of the instrument	Recital
442.	Susceptible to injury	Vulnerable
443.	Statement of a witness in court	Testimony
444.	Speech in which a character speaks to himself in thoughts on the stage	Soliloquy
445.	Power to prohibit or refuse	Veto
446.	Performed by one person as a substitute for, or for the benefit of another	Vicarious

447.	Physical impossibility of the presence of the accused at the scene of offence by reason of his presence of another place	Alibi
448.	Qualified, fit to be chosen	Eligible
449.	Quasi autonomous, non-governmental organisations, generally carrying out regulatory and operational functions	Quangos
450.	Quarrelsome, scolding woman	Shrew
451.	Relating to the affairs of this temporal world	Secular
452.	Referring to damage in ancient civil law caused by a slave or animal	Noxal
453.	Risk of convention and punishment	Jeopardy
454.	Right over another's property	Servitude
455.	Ruler who has absolute power	Dictator
456.	Rule by military during an emergency when the civil authority cannot function	Martial Law
457.	Right or privilege to vote in an election	Suffrage
458.	Repudiation, in Islamic law of a wife by her husband by means of a formal, triple declaration	Talaq
459.	Refers to the deliberate conduct of a person	Wilful
460.	Right of the husband or wife to the society of the other spouse	Conjugal Right
461.	Reasoning from general to particular	A priori
462.	Reasoning from particular to general	A posteriori
463.	Representation of God in the likeness of man	Anthropomorphism
464.	Scientist who studies the development of man from his earliest beginnings	Anthropologist
465.	Scientist who studies the composition of the earth	Geologist
466.	Scientist who studies living organism both animals and plants	Biologist
467.	Status of a child resulting from birth in lawful bedlock	Legitimacy
468.	Stage of gradual recovery of health after illness	Convalescence
469.	Stage between childhood and youth	Adolescence
470.	The state of being unmarried	Bachelorhood/Celibacy
471.	That which happens once a year	Annual
472.	That which happens once in two year	Biennial
473.	Too turn friends into foes, to estrange	Alienate
474.	To talk impiously about; God/sacred things	Blasphemy
475.	Termination of marriage by coup, thereafter spouses are free to remarry	Divorce
476.	Total repudiation of the obligations of marriage	Desertion
477.	Things which one suitable to eat	Eatable
478.	The subject which deals with the derivation of words	Etymology
479.	Total removal of an evil or disease etc.	Eradicate
480.	That which never fails	Infallible
481.	That which is believable	Incredible
482.	That without which one cannot do	Indispensable
483.	That which cannot be defeated	Invincible
484.	The worship of idols	Idolatory
485.	To wage another person to do evil	Instigate

486.	That which must happen	Inevitable
487.	The act of increasing the amount of money in circulation so that there is a price rise	Inflation
488.	That which cannot be burnt	Incombustible
489.	The science/philosophy of law	Jurisprudence
490.	To throw overboard a ship's cargo or tackle so as to lighten it in an emergency	Jettison
491.	The place for keeping the collection of books	Library
492.	The body of rules and guidelines within which society requires its judges to administer, justice	Law
493.	The owner or holder of land leased to another	Landlord
494.	Me making of law by a competent authority	Legislation
495.	The publication in printed form of a statement which tends to damage the reputation of a person	Libel
496.	The taking of legal action by a party, who is known as litigant	Litigation
497.	The place of living for monks	Monastery
498.	The system of government by a single ruler	Monarchy
499.	To injure to person so that he is crippled	Maim
500.	Time at which to bill of exchange becomes due	Maturity
501.	The act of a third party relating to the settling of a dispute between two contending parties	Mediation
502.	The disposition of an estate or land or other property by debtor to creditor as security for debt with proviso that it shall be returned on payment of debt within certain period	Mortgage
503.	Term generally applied to personal as opposed to real property or immovable property	Movable
504.	Title, deeds and other evidence relating to the title to land	Documents
505.	The study of coins	Numismatics
506.	The place where young plants are grown	Nursery
507.	The bringing of the ownership and management of firms/industries under state control	Nationalisation
508.	The legal relationship attaching to membership of a nation	Nationality
509.	That which is offensive to which causes or tends to cause injury	Noxious
510.	To turn out of society	Ostracize
511.	That which cannot be seen through	Opaque
512.	The killing of an imperial power or a king	Regicide
513.	Too much attention to rules and regulation by civil servants	Red-tapism
514.	To dispose of the person or an individual charged with a crime e.g., on the adjournment of a hearing	Remand
515.	To withdraw from an agreement	Resile
516.	The publication, orally or in writing of words intended to bring into hatred or contempt or to excite disaffection against the authority of States' executive	Sedition
517.	To seek justice by the process of law	Sue
518.	To taking of one's own life intentionally and voluntarily	Suicide
519.	Two or more things occurring at the same time	Simultaneous

520.	The passage of soul after death from one body to the other	Transmigration
521.	That which can be seen through	Transparent
522.	To offer for sale or to offer money etc.	Tender
523.	The greatest happiness of the greatest number	Utilitarianism
524.	The risking of a sum of money on an uncertain, eventual outcome	Wager
525.	The exercise of cure and protection of ward	Wardship
526.	Trees and their fruits blown down by the wind	Windfalls
527.	The damage of a ship so that she ceases to be of use	Wreck
528.	The official counting of the people of a State	Census
529.	The fixed beginning or ending point of a given run in connection with transportation	Terminal
530.	The amount of money which is turned over in business	Turnover
531.	The thing is not what it pretends to be	Spurious
532.	The money given to a woman for maintenance	Alimony
533.	The last will drawn by a testator	Ultima voluntas
534.	To remove objectionable matter from a book	Expurgate
535.	The reason for decision of a case	Ratio-decidenti
536.	To root out an evil	Eradication
537.	To hasten the progress	Acceleration
538.	Uncultured person	Philistine
539.	Unauthorised or illegal assumption of rights	Usurpation
540.	Used to indicate the specified number of members of a body	Quorum
541.	Usually solicitor who attests deeds	Notary
542.	Use of public fund not in legal way	Embezzlement
543.	Voluntary murder of one's sister or brother	Fatricide
544.	Which cannot be interpreted clearly	Ambiguous
545.	Words having opposite meaning	Antonyms
546.	Words having similar meaning	Synonyms
547.	Words having the same spelling or pronunciation but different meanings and origins	Homonyms
548.	Words that are pronounced or written in a similar way but which have different lexical meaning	Paronyms
549.	Whose business is to locate criminals	Detective
550.	Who loves company	Gregarious
551.	Who eats too much	Glutton
552.	Which cannot be easily approached	Inaccessible
553.	With knowledge of facts in question	Knowingly
554.	Written acknowledgment of goods or money received	Receipt
555.	With consent of all	Unanimous
556.	Without force	Void
557.	Word for word	Verbatim
558.	Wilful or ignorant destruction (of works of art, loosely of anything)	Vandalism
559.	Woman having dark complexion	Brunette
560.	Wanting foresight	Imprudent

5. Current Affairs

MARCH 2024

1. In which country will the headquarters of the International Big Cat Alliance be established – **India**
2. National Birth Defect Awareness Month 2024 was launched by – **NITI Aayog**
3. When is World Civil Defense Day celebrated every year – **1 March**
4. In which city did PM Modi inaugurate the world's first Vedic clock - **Ujjain (Madhya Pradesh)**
5. How many crores of rupees has the Union Cabinet approved for the International Big Cat Alliance - **150 crores**
6. What percent growth did the Indian economy register during the October-December quarter of the current financial year 2023-24 - **8.4 percent**
7. Tata Group is setting up India's first semiconductor fab in collaboration with - **Powerchip Taiwan**
8. Who has become the first female sniper of Border Security Force (BSF)- **Suman Kumari**
9. Global Resource Outlook Report is released by- **UNEP**
10. Exercise 'Samudra Laksamana' was organized between India and which country - **Malaysia**
11. Union Minister Dr. Where did Mansukh Mandaviya inaugurate the AYUSH-ICMR Advanced Center – **New Delhi**
12. Who recently inaugurated the ASTDS tug named 'Ocean Grace'- **Sarbananda Sonowal**
13. 'Melanochlamys Draupadi', which was in discussion recently, is related to which of the following - **A marine species**
14. How many crores of rupees have been allocated under 'Aditi scheme' for the period 2023-24 to 2025-26 - **750 crores**
15. The new species of head-shield sea slug (Melanochlamys draupadi) has been named after whom – **President Draupadi Murmu**
16. Who took oath as the 24th Prime Minister of Pakistan- **Shahbaz Sharif**
17. In which sport Indian men and women have qualified for the Olympics on the basis of world ranking- **Table Tennis**
18. Where was India's first green hydrogen plant established in the stainless steel sector - **Hisar**
19. Where is the Asian River Rafting Championship being organized – **Shimla**

20. 'Risa' is a tribal dress of which state, which was recently granted GI tag - **Tripura**
21. Recently, the famous silver tarkashi of which state has been given GI tag – **Odisha**
22. In which state did PM Modi inaugurate India's first underwater metro? - **West Bengal**
23. India's first small scale LNG unit was inaugurated in which state - **Madhya Pradesh**
24. NLC India Green Energy Limited has signed agreement with whom for solar power project- **Gujarat Urja Vikas Nigam Limited**
25. Which state government recently approved the Green Hydrogen Policy in the state – **Uttar Pradesh**
26. In which state has recently been started Widow Remarriage Promotion Scheme – **Jharkhand**
27. Which Indian cricketer has recently announced his retirement from all forms of cricket - **Shahbaz Nadeem**
28. Where was the final of National Youth Parliament Festival, 2024 held – **New Delhi**
29. With whose collaboration NITI Aayog has launched 'Frontier Technology Labs' – **Meta**
30. Who won the first prize in the National Youth Parliament Festival, 2024 – **Yatin Bhaskar Duggal**
31. With whom has NPCI joined hands for cooperation in the field of Blockchain and Artificial Intelligence- **IISc, Bangalore**
32. Which country has recently devalued its currency – **Egypt**
33. Who has become the 14th player to play 100 test matches for India- **Ravichandran Ashwin**
34. On which island of Lakshadweep has the Indian Navy established its new base – **Minicoy Island**
35. Who has recently become the player to play his 100th test match for England? – **Jonny Bairstow**
36. Which country has become the new member of the military alliance NATO – **Sweden**
37. When is International Women's Day celebrated every year - **08 March**
38. Who was recently nominated to Rajya Sabha by President Draupadi Murmu- **Sudha Murthy**
39. Who has recently become a new member of the International Solar Alliance – **Panama**
40. With whom has the Reserve Bank of India entered into an agreement to promote the use of local currencies- **Bank Indonesia**

41. What is the theme of International Women's Day 2024 - **"Invest in women: Accelerate progress"**
42. Who inaugurated India's first elevated 8-lane expressway (Dwarka to Gurgaon Bypass) – **PM Narendra Modi**
43. Who won the Best Actor Award at the Academy Awards 2024 (Oscars) – **Cillian Murphy**
44. Kristina Pijkova, who won the 71st Miss World title, is from which country - **Czech Republic**
45. Who took oath as the 14th President of Pakistan- **Asif Ali Zardari**
46. Union Minister Narayan Rane recently laid the foundation stone of MSME-Technology Center in which state – **Maharashtra**
47. Who was honored with the Best Director Award at the Academy Awards 2024 (Oscars)- **Christopher Nolan**
48. In which Indian state was the world's longest twin-lane tunnel inaugurated - **Arunachal Pradesh**
49. Who was recently honored with 'Miss World Humanitarian Award'- **Nita Ambani**
50. Who has been selected as the new Chief Minister of Haryana – **Nayab Saini**
51. In which state did Prime Minister Narendra Modi inaugurate the Kochrab Ashram – **Gujarat**
52. Who has been appointed as the new Vigilance Commissioner in the Central Vigilance Commission- **A.S. Rajeev**
53. Who won the ICC Men's Player of the Month award for the month of February- **Yashasvi Jaiswal (India)**
54. Who launched "Subhash Abhinandan", a digital exhibition based on the life of Subhash Chandra Bose - **Arjun Ram Meghwal**
55. Which missile was successfully tested with MIRV technology recently – **Agni-5**
56. National Institute of Electronics and Information Technology has signed MoU with whom for enhancing workforce skills and international collaboration- **ITI Egypt**
57. Who launched PM-Suraj (Prime Minister Social Upliftment and Employment Aadhaar Public Welfare) National Portal- **PM Modi**
58. According to SIPRI report, who is the world's top arms importer country between 2019-2023 - **India**
59. India's first automobile in-plant railway siding project was inaugurated in which state - **Gujarat**

60. Who recently inaugurated the regional airline service Fly91- **Jyotiraditya Scindia**
61. Where did PM Modi lay the foundation stone of India's first commercial semiconductor fabrication service - Gujarat
62. India recently signed an agreement with which country to establish a Joint Economic and Trade Committee – **Dominican Republic**
63. With whom has SBI partnered for its transaction banking platform – **Aurionpro**
64. Which Union Minister launched the credit assistance program for Jan Aushadhi Kendras- **Dr. Mansukh Mandaviya**
65. Who has been recently selected as the new Election Commissioner- **Sukhbir Sandhu and Gyanesh Kumar**
66. The committee formed on 'One Nation One Election' submitted its report, who is the chairman of this committee - **Ramnath Kovind**
67. With the recent operation of 10 new Vande Bharat trains, now how many Vande Bharat trains are running across India – **102**
68. Who has been honored with the award of Outstanding Male Cricketer of the Year for New Zealand- **Rachin Ravindra**
69. Who launched Prasar Bharati's new service PB-'Shabd'- **Anurag Thakur**
70. Recently, 'Mahtari Vandan Yojana' which was in discussion was started by which state government - **Chhattisgarh**
71. Who has been honored with the honor of Outstanding Mahika Cricketer of the Year for New Zealand- **Mellie Kerr**
72. How much financial assistance will be provided per month to eligible married women under 'Mahtari Vandan Yojana' - **Rs 1000**
73. Who has been appointed as the new Prime Minister of Palestine- **Mohammad Mustafa**
74. What is India's rank in the recently released Global Human Development Index - **134th**
75. When is World Consumer Rights Day celebrated every year – **15 March**
76. Who has become the new Chairman and Managing Director of Northern Coalfields Limited- **B Sairam**
77. Which team won the title of Ranji Trophy 2024- **Mumbai**
78. With whom has the Government of India signed a loan agreement to strengthen the Fintech eco system in India- **ADB**
79. The recently discussed 'Democracy Report 2024' has been released by which of the following - **V-Dem Institute**
80. With whom has the Ministry of Rural Development signed an agreement with the aim of making women self-reliant - **J-Pal**
81. Who has recently released the Global Human Development Index report – **UNDP**

82. Tamilisai Sundararajan resigned from her post, she was the governor of which state- **Telangana**
83. Who was recently awarded the PV Narasimha Rao Memorial Award- **Ratan Tata**
84. 'Majuli Mask' which recently got 'GI Tag', belongs to which of the following states - **Assam**
85. Which team won the title of the second season of Women's Premier League - **Royal Challengers Bangalore**
86. Union Minister Arjun Munda laid the foundation stone of 'Centre for Conservation and Promotion of Tribal Culture and Heritage' in which state - **Jharkhand**
87. Who has recently been appointed as the new Chairman of Prasar Bharati- **Navneet Kumar Sehgal**
88. Who was recently appointed Chairman of the Central Board of Secondary Education- **Rahul Singh**
89. Who won the Orange Cap of BCCI Women's Premier League 2024 season- **Ellyse Perry (RCB)**
90. Who won the Purple Cap of BCCI Women's Premier League 2024 season- **Shreyanka Patil (RCB)**
91. With which country is India organizing Exercise 'Tiger Triumph-24' - **USA**
92. 'Kovind Committee' which was in discussion recently is related to which of the following - **Simultaneous elections**
93. Who has been chosen by the Election Commission of India as the National Disability Icon – **Sheetal Devi**
94. Who has been appointed as the Group President of 'One Kotak' by Kotak Mahindra Bank- **Jaideep Hansraj**
95. Recently 'Yaoundé Declaration' was in discussion, it is related to which of the following - **Malaria disease**
96. Who has recently been selected for the 2024 Sangeet Kalanidhi Award- **Thodur Madabusi Krishna**
97. Where is 'Start-up Mahakumbh' being organized - **New Delhi**
98. Who has recently been given additional responsibility as the Governor in-charge of Telangana- **CP Radhakrishnan**
99. When is International Day of Happiness celebrated every year – **20 March**
100. Which app has ISRO launched to help the Gaganyaan crew - **'Sakhi'**
101. Who has recently been given the additional charge of the Ministry of Food and Processing Industries- **Kiran Rijju**
102. According to the World Happiness Report 2024, who is the happiest country in the world – **Finland**
103. Who has been appointed as the new Ambassador of India to Russia- **Vinay Kumar**

104. What is India's rank in World Happiness Index 2024 – **126**
105. Where was the fourth Shanghai Cooperation Organization Startup Forum organized – **New Delhi**
106. When is World Forestry Day celebrated every year – **21 March**
107. Indian origin Leo Varadkar was the Prime Minister of which country, who recently resigned – **Ireland**
108. Who has taken charge as the President of Indian Steel Association- **Naveen Jindal**
109. Who has recently been nominated for the prestigious Saraswati Samman-2023- **Prabha Verma**
110. Who has recently been appointed as the new Director General of Police of West Bengal- **Sanjay Mukherjee**
111. With whom has the Indian Council of Agricultural Research signed an agreement for new technology in the agricultural sector? - **Dhanuka Agritech Limited**
112. Who was appointed as the next Ambassador of India to Cuba- **T. armstrong changson**
113. What is the theme of World Forestry Day 2024- **'Forests and Innovation: New solutions for a better world'**
114. Who has been selected as the flag bearer of India in Paris Olympics 2024- **Sharat Kamal**
115. Who has been appointed as the new Commissioner of Mumbai Municipal Corporation- **Bhushan Gagrani**
116. When is World Water Day celebrated every year – **22 March**
117. ISRO successfully tested the landing mission of reusable launch vehicle, what name has it been given - **'Pushpak'**
118. Who has been appointed as the new President of Federation of Indian Export Organization- **Ashwini Kumar**
119. Where has ISRO successfully tested the landing mission of the reusable launch vehicle? - **From Challakere, Karnataka**
120. Chandrayaan-3 landing site was recognized by the International Astronomical Union, what was its name - **'Shiv Shakti'**
121. TRAI has issued recommendations on 'Use of Embedded SIM for Machine-to-Machine Communication', When was TRAI established- **1997**
122. Which team won the title of Boxing Sub Junior National Championship- **Haryana**
123. Who won two gold medals in the Indian Masters National Badminton Championship 2024- **Nahid Divecha**
124. Who has been named as the new Ambassador of India to Myanmar- **Abhay Thakur**
125. Which app has been launched to make the election process easier for the disabled - **'Saksham'**

126. Who has recently been appointed the head of the National Investigation Agency- **Sadanand Vasant Date**
127. Who won the gold medal in the 59 kg youth category in the recent Para Powerlifting World Cup – **Vinay**
128. Who led the Indian delegation in the 148th meeting of the Inter-Parliamentary Union in Geneva recently? - **Harivansh Narayan Singh**
129. Who has recently been appointed Director General of Bureau of Police Research and Development (BPRD)- **Rajeev Kumar Sharma**
130. Who has recently been appointed NDRF Director General – **Piyush Anand**
131. According to Brand Finance Insurance 100 2024, which is the strongest insurance brand – **Life Insurance Corporation of India**
132. Recently a 900 year old Kannada inscription of Kalyana Chalukya dynasty was found in which state – **Telangana**
133. Which Gulf country will participate in Miss Universe contest for the first time – **Saudi Arabia**
134. 'Nimmu-Padam-Darcha' road connects which two states - **Ladakh and Himachal Pradesh**
135. Who recently took oath as judicial member of Lokpal- **Ritu Raj Awasthi**
136. Who has been appointed by Microsoft as the new head of both Windows and Surface- **Pavan Davuluri**
137. Who has been included in the team by Rajasthan Royals as a replacement for the famous Krishna - **Keshav Maharaj**
138. Who is the first umpire of Bangladesh to join the ICC elite panel of umpires- **Sharafuddaula Ibne Shahid**
139. In which country is the Popocatepetl volcano, which was in discussion recently, located – **Mexico**
140. In which country is the Baltimore Bridge, which was in the news recently – **USA**

6. 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	

7. 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.

8. 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

9. 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

10. 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