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For

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

Year – 2024

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nobody else knows

NO. 4 OF 2024

NEWSLETTER

April 2024

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1. Study Material-Law

Citizenship Amendment Act, 2019

The country has enacted a new citizenship amendment law called the Citizenship Amendment Act 2019, which grants the right to Indian citizenship to Hindu, Sikh, Jain, Buddhist, Parsi, and Christian communities who have arrived from Pakistan, Afghanistan, and Bangladesh as persecuted minorities. It was passed by the Lok Sabha on December 9, 2019, approved by the Rajya Sabha on December 11, 2019, and became law with the President's signature on December 12, 2019. It was notified on March 11, 2024.

The law that exists is for granting citizenship, not for taking away the citizenship of any Indian citizen. The misconception that citizenship will be affected by this is false. Additionally, in the three countries of Afghanistan, Pakistan, and Bangladesh, where there are minority communities such as Hindus, Sikhs, Parsis, Christians, Buddhists, Jains, etc., they face persecution based on their religion and faith. They are subjected to abduction and forced marriages involving their daughters, which lead to their exploitation and suffering. The law in those countries is to grant citizenship to the persecuted individuals. As for those who came to India before December 31, 2014, they will be considered for citizenship. This is a historical perspective, as during India's partition based on religion, those who were affected and persecuted were promised by India that they would be kept here. After that, under the Nehru-Liaquat Pact of 1950, it was decided that both countries would take care of their respective minority communities.

First of all, it should be understood that this is a new Citizenship Amendment Act, which is an amendment to the existing law. The historical context reveals a long-standing historical injustice in India. Looking at the reality in the region whether it is the increasing Islamic fundamentalism in Pakistan, the situation in Bangladesh, or the Taliban rule in Afghanistan, where Sikhs have faced persecution. For them, it was natural to seek India as their homeland. Since 1947, there has been religious discrimination and persecution, resulting in social injustice. Many of these people, such as the Matua, Rajbanshi, Bhil, Scheduled Caste, and Tribal families, have come from Bangladesh and have not received full citizenship in either Pakistan or India. Despite guarantees provided in the Liaquat Pact and the Indira Gandhi Pact, these minority communities have faced persecution, including during the Ayodhya movement in 1990. Only Hindus who

came to Gujarat and Rajasthan were granted citizenship. To rectify this historical injustice, provisions have been made to grant citizenship to those who sought refuge in India between 1947 and 2014 from Afghanistan, Pakistan, and Bangladesh due to religious persecution. It is important to note that they are considered refugees, not illegal immigrants. This provision aims to address the historical injustice they have endured.

When the partition occurred, the countries to which we are granting citizenship to the refugees who came from there had minority populations. During the partition, these three countries were not Islamic states. However, the basis was that Muslims needed a separate nation. Nevertheless, all countries took responsibility for the minority populations, whether it was Afghanistan, India, Pakistan, or Bangladesh. It was a moral, spiritual, and civilizational duty. However, Pakistan, Bangladesh, and Afghanistan stepped back from this responsibility and declared themselves Islamic states, even though they were not initially. As a result, the rights they received at the time of partition, including the right to religious equality, were taken away from them.

Therefore, it is India's responsibility to fulfil its duty towards these people. India has made provisions to grant citizenship to those who came and stayed until December 31, 2014, for a period of five years. For other individuals, the period is 11 years. Some people are claiming that the remaining individuals will not obtain citizenship, but that is not true. Just as Adnan Sami has been granted citizenship, others will also be granted citizenship. However, they are not persecuted based on religion but have come to India for other reasons. Hence, unless a Muslim is persecuted in Pakistan or a Hindu is persecuted in Nepal based on religion, they will not be granted Indian citizenship. Once these people receive citizenship, legal actions against them in India will be halted.

A portal has been opened in India for people who arrived before 2014, where they can register. They will visit local authorities and present their documents to establish the region they came from and the duration of their residence in India. Based on this, their intelligence verification will be conducted, and if everything is found to be correct, they will be granted citizenship immediately. This provision is specifically for individuals who have experienced religious persecution in their home countries and does not involve the revocation of anyone's citizenship. Some people have incorrectly associated it with the National Register of Citizens (NRC), which is a separate issue. The purpose of this initiative is to rectify a historical injustice, with the most significant benefits expected for people from the Scheduled Castes, who face considerable religious persecution in Pakistan. It is important to distinguish between seeking refuge due to illegal migration and seeking refuge due to religious persecution, as they are two distinct cases. While illegal migrants must undergo legal processes, those

who have arrived in India due to religious persecution are being provided with this facility. In the United States, there have been laws enacted that include the following three: the Jackson-Vanik Amendment, the Lautenberg Amendment, and the Specter Amendment. These laws provide protection to religious communities, such as persecuted Christian communities in countries like Iran and Germany. The United States has offered them shelter, citizenship, and expedited administrative processes similar to what is being done here. The courts there have recognized these measures. We have a precedent available from the US.

As far as registration is concerned the government will inquire about your arrival date, whether you have any documents or brought any with you, and if you have made any reports or registered as an asylum seeker. You will need to provide all that information. If you don't possess documents, you will be required to provide an affidavit or similar documents and fill them out. Based on your actions, including any intelligence input or other classified government information, they will consider it once they are aware of it. There are five ways to obtain citizenship: based on birth, based on descent, based on registration, based on naturalization, and based on joining a specific region. The laws that have been enacted here, such as registration or naturalization, grant citizenship based on these factors. This process is called naturalization. The only difference here is that a minimum residency of 5 years is required in India, while other countries require a residency of 11 years. Here, it has been fast-tracked, providing you with ways to obtain citizenship.

Illegal migrants are individuals who enter another country without valid documentation, such as a visa, granting them permission to enter. They may arrive in that country with a visa but continue to stay beyond the authorized period, placing them in an illegal status. Different countries have varying provisions concerning these illegal migrants, and an essential requirement is that they must inform the embassy or consulate of their home country, after which they are deported back. This rule applies not only in India but also in other countries. Moreover, these individuals are placed on release on parole to ensure their separation and minimize additional hardships. Consequently, special provisions have been established to facilitate their path to citizenship, including naturalization processes. Some individuals may also argue that they have the right to citizenship due to their long-term residence in the country. However, it is important to note that illegal migrants do not possess the right to obtain citizenship despite their illegal status.

B. Important Cases April 2024

Important Supreme Court Cases
April 2024

S.N.	Subject	Case Reference
1.	The time consumed in contesting bonafide litigation by the litigant at a wrong forum (believing it to be appropriate) would be excluded while computing the period of limitation under Section 14(2) of the Limitation Act.	Purni Devi & Anr. Vs. Babu Ram & Anr., decided on 02-04-2024
2.	Though the outcome of the proceedings initiated under civil law would not have any binding effect on the outcome of the proceedings initiated under criminal law, however, the outcome of the civil proceedings would be binding on the criminal proceedings only to the extent of holding the sentences or damages arising out of criminal proceedings as unsustainable in law.	Prem Raj Vs. Poonamma Menon & Anr., decided on 02-04-2024
3.	The legal heirs of a deceased partner do not become liable for any liability of the firm upon the death of the partner.	Annapurna B. Uppin and Ors. Vs. Malsiddappa & Anr., decided on 05-04-2024
4.	Factors of the likelihood of delay and incarceration for a particular period should not be a sole consideration while deciding the plea of the accused to suspend the sentence pending the appeal against the conviction under Section 389 Cr.P.C.	Shivani Tyagi Vs. State of Uttar Pradesh & Anr., decided on 05-04-2024
5.	If there's a direct ocular piece of evidence inspiring the confidence of the court then the motive behind the commission of the offence would be of little relevance and the prosecution need not prove the motive of the accused in the commission of the crime.	Chandan Vs. State (Delhi Admn.), decided on 05-04-2024
6.	Merits of the case not required to be	Pathapati Subba Reddy (D) by

	considered in condoning delay. Explains principles for delay condonation.	LRS. & Ors. Vs. The Special Deputy Collector (LA), decided on 08-04-2024
7.	Candidates contesting elections are not required to disclose each and every moveable property owned by them or their dependents unless they are of substantial value or reflect a luxurious lifestyle. Mere failure to get a transferred vehicle registered in the name of the new owner will not mean that the sale/gift transaction will get invalidated.	Karikho Kri Vs. Nuney Tayang, decided on 09-04-2024
8.	If someone tries to transfer property rights to another person through a legal document but doesn't actually own those rights, the new owner or their successors won't have the legal right to claim those rights from that document.	Kizhakke Vattakandiyil Madhavan (D) through LRS. Vs. Thiyyurkunnath Meethal Janaki and Ors., decided on 09-04-2024
9.	Under NDPS Act, Officer must mandatory record in writing reasons for arrest/search as per Sec. 41(2) and its violation will vitiate the trial.	Smt. Najmunisha, Abdul Hamid Chandmiya alias Ladoo Bapu Vs. State of Gujarat, Narcotics Control Bureau, decided on 09-04-2024
10.	The prosecution will have to establish that, before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered.	Ravishankar Tandon Vs. State of Chhattisgarh, decided on 10-04-2024
11.	A Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene. The claimant of an easementary right wouldn't be entitled to claim the 'easementary right by necessity' for	Manisha Mahendra Gala & Ors. Vs. Shalini Bhagwan Avatramani & Ors., decided on 10-04-2024

	enjoying the 'Dominant Heritage' (the property owned by the claimant) when there exists an alternative way to access the 'Dominant Heritage' apart from the way over which the easementary rights were claimed to access the Dominant Heritage.	
12.	If the Magistrate takes cognizance of the offence and issues summons to an accused by recording satisfaction based on the additional evidence produced by way of a protest petition filed by the informant, then such a protest petition ought to be treated as a private complaint case under Section 200 Cr.P.C. Rejection of protest petition is no bar to file fresh complaint under Sec. 200 Cr.P.C.	Mukhtar Zaidi Vs. State of Uttar Pradesh & Anr., decided on 16-04-2024
13.	The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a "memorandum of confession" of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. This statement is admissible only to the extent it leads to the discovery of new facts. Principles that must be adhered to by the appellate Court while reversing the decision of acquittal as arrived by the Trial Court. The guiding principles read as follows: (a) That the judgment of acquittal suffers from patent perversity; (b) That the same is based on a misreading/omission to consider material evidence on record; (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.	Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka, decided on 19-04-2024

14.	Stridhan is an "absolute property" of a woman, and while the husband has no control over the same, he can use it in times of distress. Nevertheless, he has a "moral obligation" to restore the same or its value to his wife.	Maya Gopinathan Vs. Anoop S.B. & Anr., decided on 24-04-2024
15.	Rejected the pleas seeking 100% cross-verification of Electronic Voting Machines (EVMs) data with Voter Verifiable Paper Audit Trail (VVPAT) records.	Association of Democratic Reforms Vs. Election Commission of India & Anr., decided on 26-04-2024
16.	For summoning of an accused, prima facie case made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant is sufficient	Aniruddha Khanwalkar Vs. Sharmila Das and Ors., decided on 26-04-2024

IN THE SUPREME COURT OF INDIA

Purni Devi & Anr.
Vs.
Babu Ram & Anr.

[Civil Appeal No._____ of 2024
arising out of SLP (Civil) No. 17665 of 2018]

HEADNOTE – The time consumed in contesting bonafide litigation by the litigant at a wrong forum (believing it to be appropriate) would be excluded while computing the period of limitation under Section 14(2) of the Limitation Act.

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

2. The present appeal arises from the final judgment and order in Civil Revision No.33/2008 dated 09.04.2018 of the High Court of Jammu and Kashmir at Jammu, whereby the judgment and order of Munsiff, Hiranagar, in File No. 70/Execution dated 28.11.2007 came to be affirmed, wherein the execution application preferred by the Plaintiff herein was dismissed, being barred by limitation.

Factual History

3. The genesis of the case at hand dates back to 01.06.1984, wherein the predecessors in interest of the Appellant (hereinafter "Plaintiff") filed a suit for possession against the Respondents (hereinafter "Defendants") herein. On 10.12.1986, this suit was decreed by learned Munsiff, First Class Hiranagar, in favour of the Plaintiff, and the Defendants were directed to deliver vacant and peaceful possession of the property to the Plaintiff.

This decree was challenged by the Respondents before the learned District Judge, Kathua, in First Appeal, which came to be dismissed on 09.02.1990. Thereafter, the Respondents preferred a Second Appeal before the High Court of Jammu and Kashmir which came to be dismissed vide Order dated 09.11.2000. No further appeal was preferred. Therefore, the decree of the learned Munsiff Court attained finality on 09.11.2000.

4. The present lis arises from the application for execution filed by the predecessor in interest of the Plaintiff, before the learned Tehsildar (Settlement), Hiranagar on 18.12.2000. This application came to be rejected on 29.01.2005, whereby the learned Tehsildar observed that the Plaintiff had not applied before the Court with appropriate jurisdiction.

5. The Plaintiff thereafter, on 03.10.2005 preferred a fresh application for execution before the Court of Munsiff, Hiranagar. This application resulted in the order dated 28.11.2007, whereby, the learned Munsiff Court dismissed the application as being barred by limitation, which has come to be confirmed vide the impugned order.

Reasoning of the Courts below

Munsiff Court, Order dated 28.11.2007

6. The question framed for determination was whether the execution petition was filed within time and whether the period of limitation for filing the execution petition is 3 years or 12 years.

7. The Court after a careful perusal of Article 182 of the J&K Limitation Act (which provides for 3 years) and Section 48 of the Civil Procedure Code (which provides for 12 years, hereinafter "CPC"), observed that, Article 182 deals with period of Limitation for filing an execution application for the first-time seeking enforcement of a decree. Meanwhile, Section 48 of the CPC deals with subsequent applications and fixes an outer limit when execution remains unsatisfied.

8. The application was held to be required to be filed within 3 years, as required by Article 182 of the J&K Limitation Act, which would run from when the second appeal came to be dismissed. Accordingly, the Munsiff Court, Hiranagar, held the application to be time-barred and therefore, dismissed.

9. There was no argument or discussion about the exclusion of time period under Section 14 of the Limitation Act at this stage.

10. The Plaintiff preferred Civil Revision No.33/2008 against the aforesaid order which came to be dismissed vide the Impugned Order, dated 09.04.2018.

Impugned Order

11. The Impugned Order also framed the question as to whether for execution of a decree, the application has to be filed within 12 years as prescribed by Section

48 of the CPC or within 3 years as prescribed by Article 182 of J&K Limitation Act.

12. Reliance was placed on a judgment rendered by the High Court in J&K Bank Limited etc. v. Amar Poultry Farm[1] wherein it was observed that limitation for the first execution application shall be governed by Article 182 of the J&K Limitation Act. Further reliance was placed on the judgment of this Court in Prem Lata Agarwal v. Lakshman Prasad Gupta and others[2] (2-Judge Bench) wherein Section 48 of the CPC came to be considered. This Court observed that Section 48 provides for a maximum time limit provided for execution, but it does not prescribe the period within which each application for execution was to be made.

13. The argument of the Plaintiff that time spent in pursuing the proceedings before the Tehsildar is required to be excluded, has been recorded and rejected by the High Court.

14. It was finally held vide the Impugned Order that the dismissal of the execution petition is well reasoned and, therefore, cannot be interfered with. However, while disposing off the revision, the Court observed that the State Code of Civil Procedure is required to be brought to 12 years.

Submissions on behalf of the Appellant/ Plaintiff

15. Learned counsel for the Plaintiff has submitted that the reasoning of the learned High Court that the Plaintiff had chosen a wrong forum and is not entitled to exclusion of time runs, contrary to the law laid down by this Court that the provisions of Section 14 of the Limitation Act, 1963 are meant for grant of relief, where a person has committed some mistake and such provisions should be applied in a broad manner. Furthermore, the provision of Section 14 of the Limitation Act is para materia to the provisions of Section 14 of the Limitation Act, as applicable to the then State of Jammu and Kashmir.

16. The Plaintiff has sought to place reliance on the judgment of this Court in Consolidated Engg. Enterprises v. Principle Secy, Irrigation Department[3] (3-Judge Bench) and M.P. Steel Corporation v. CCE[4] (2-Judge Bench) wherein it was expounded that the provisions of Section14 of the Limitation Act are to advance the cause of justice and must be interpreted to do so rather than abort proceedings.

17. It has been further submitted that in light of the facts of the present case, the Plaintiff is entitled to exclusion of time consumed in pursuing their remedy before the learned Tehsildar, in view of Section 14(2) of the Limitation Act. The filing of the application by the predecessor of the Plaintiff before the Tehsildar

for implementation of the judgment and decree dated 09.10.1986 was under a genuine bona fide belief and in good faith that the Tehsildar possess the jurisdiction to execute decrees passed by a Civil Court.

18. In lieu of this conspectus, it has been submitted that previous recourse to a mistaken remedy or selection of a wrong forum by the Plaintiff cannot be said to be bereft of bona fides, due diligence or lacking in good faith.

19. Further, it is not disputed that in view of Section 105 and 112 of the Land Revenue Act, the Court of learned Tehsildar, Settlement, has all the trappings of a Court and thus would fall within the scope and ambit of the expression "Court" for the purpose of Section14 of the Limitation Act.

20. Lastly, in view of the facts submitted above, it would be a travesty of justice, if, on mere technicalities, the Plaintiff is deprived from reaping the fruits of the decree.

Submissions on behalf of the Respondent

21. Learned counsel for the Respondents has vehemently opposed the stand taken by the Plaintiff. It has been submitted that the Plaintiff is taking this plea for the first time before this Court and did not raise the plea of Section 14 of the Limitation Act before the Courts below.

22. It was a deliberate act of wilful disobedience at the Plaintiff's end and the plea of Section 14 of the Limitation Act ought to have been raised at the very first instance.

23. It is further submitted that the Plaintiff herein has not approached the Court with clean hands. They have concealed the fact that they did not enter appearance in the Second Appeal and thereafter, had filed an application for setting aside the ex-parte order, which was allowed, and only thereafter, the second appeal was dismissed vide the impugned order. This Court in M.P. Steel (Supra) has reiterated that 'due diligence' and 'good faith' means that the party who invokes Section 14 is not guilty of negligence, lapse or inaction.

Issue before this Court

24. In view of the submissions raised, the issue which arises for consideration of this Court is as to whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Analysis & Consideration

25. The relevant portion of Section 14 of the Limitation Act is extracted as under, for ready reference:

"Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

26. The Plaintiffs have submitted that the provision of Section14 of the Limitation Act, finds place in the Limitation Act applicable to the then State of J&K, which has not been contested by the Respondents.

27. On a perusal of Section 14(2) of the Limitation Act, which is also applicable to the State of Jammu and Kashmir, it is evident that it carves out an exception excluding the period of limitation when the proceedings are being pursued with due diligence and good faith in a Court "which from defect of jurisdiction or other cause of a like nature, is unable to entertain it".

28. The first objection raised by Defendants is that the plea of exclusion of limitation has not been raised before the Courts below and cannot be raised at the first instance before this Court.

29. We do not find merit in this submission, the learned High Court in paragraph 9 has categorically recorded the submission of the Plaintiff pertaining to the exclusion of time spent in pursuing the proceedings before the learned Tehsildar. Therefore, it cannot be said that the plea of exclusion has been raised for the first time, before this Court.

30. The principles pertaining to applicability of Section 14, were extensively discussed and summarised by this Court in Consolidated Engg. Enterprises (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-

"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it

becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and

(5) Both the proceedings are in a court."

31. This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

32. In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.

(ii) The failure of the execution proceedings was due to a defect of jurisdiction.

(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.

(iv) Both the proceedings are in a court.

33. The only objection pointed out by the Respondent to the ingredients for invocation of Section 14, is that the Plaintiff have not approached this Court with clean hands and did not approach the Court of the Tehsildar diligently and in good faith.

34. The judgment of this Court in M.P. Steel (Supra) discussed the phrases, "due diligence" and "in good faith" for the purposes of invocation of Section 14 of the Limitation Act. While considering the application of Section 14 to the Customs Act, it was observed:

"10. We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.

49. the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

(emphasis supplied)

35. The judgments in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) have been followed consistently by this Court. For instance in Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.[5] (2-Judge Bench), while holding Section 14 to be applicable to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, it was observed:-

"75. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith."

36. More recently, in Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.[6] (2-Judge Bench), this Court followed the dictum in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.

37. No substantial averment has come on record to substantiate the claim that the predecessor in interest of the Plaintiff approached the Tehsildar with any mala

fide intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree. The object to advance the cause of justice, as well must be kept in mind.

38. We do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter bonafidely and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.

39. Therefore, in view of the above discussion the period from 18.12.2000, when the execution application was filed to 29.01.2005, when the prior proceeding was dismissed, has to be excluded while computing period of limitation, which results in the execution application filed by the Plaintiff, being within the limitation period prescribed under Article 182 of the Limitation Act as well, which is 3 years.

40. Consequently, the appeal is allowed. The impugned order of the High Court dated 09.04.2018 and Munsiff Court, Hiranagar dated 28.11.2007 are set aside. The execution application of the Plaintiff is restored to the file of the Munsiff Court, Hiranagar for fresh consideration, in consonance with the view on limitation which has been decided above.

41. Pending applications, if any, are disposed of. No order as to costs.

.....J. (Sanjay Karol)

.....J. (Aravind Kumar)

New Delhi

April 02, 2024

1 AIR 2007 J&K 56

2 (1970) 3 SCC 440

3 (2008) 7 SCC 169

4 (2015) 7 SCC 58

5 (2021) 7 SCC 313

6 2022 SCC Online SC 1790

IN THE SUPREME COURT OF INDIA

Prem Raj
Vs.
Poonamma Menon & Anr.

Criminal Appeal No……of 2024
(Arising out of Special Leave Petition (Crl.) No.9778/2018)

HEADNOTE – Though the outcome of the proceedings initiated under civil law would not have any binding effect on the outcome of the proceedings initiated under criminal law, however, the outcome of the civil proceedings would be binding on the criminal proceedings only to the extent of holding the sentences or damages arising out of criminal proceedings as unsustainable in law.

JUDGMENT

Sanjay Karol, J.

1. Leave granted.

2. Appellant herein challenges judgment and order dated 23rd January, 2018 passed in Crl.R.P. No.1111 of 2011[1], whereby the High Court of Kerala allowed, only in part, his Revision Petition against the judgment and order of the learned Additional Sessions Judge, Thrissur,[2] dated 11th January, 2011, in Criminal Appeal No.673 of 2007, which, in turn, upheld his conviction, as handed down by the learned Judicial First Class Magistrate[3] vide order dated 14th August, 2007 in CC No.51 of 2003, under Section 138 of the Negotiable Instruments Act, 1881.[4]

3. The sole issue that we are required to consider is, whether, a criminal proceeding can be initiated and the accused therein held guilty with natural consequences thereof to follow, in connection with a transaction, in respect of which a decree by a competent Court of civil jurisdiction, already stands passed.

4. The facts necessary to put into perspective the issue in the present appeal are:-

4.1 The Appellant borrowed Rs.2,00,000/- from the Complainant, K.P.B Menon "Sreyes," with the promise that he would repay it on demand.

4.2 On receipt of such demand, he issued a cheque dated 30th June, 2002 for the said amount from the South Indian Bank, encashment thereof was to be through

Canara Bank, Irinjalakuda Branch, to which the cheque was sent through the post with a covering letter dated 24th September, 2002.

4.3 It was dishonoured due to insufficient funds and 'payments stopped by drawer'. The Complainant came to know of such dishonour and issued a notice of demand dated 22nd December, 2002. Accounting for no action on the part of the appellant, the complaint, the subject matter of the instant proceedings, came to be filed.

5. Equally, though, the appellant (accused) had filed Original Suit No.1338 of 2002. The five parties impleaded as defendants were, (i) K.P. Bhaskara Menon; (ii) K.P. Vipinendra Kumar[5]; (iii) Praveen Menon; (iv) The Manager South Indian Bank Limited Kathikudam, Via Koratty, Trichur; and (v) N.T. Raghunandanan. The prayers made therein were to, (a) declare cheque No.386543 of the South Indian Bank Limited, Kathikudam, as a security cheque; (b) issue mandatory injunction directing the 1st defendant to return the said cheque; and (c) issue a permanent prohibitory injunction restraining defendants 1 to 4 named hereinabove from taking any steps to encash the said cheque.

5.1 The Additional District Munsif, Irinjalakuda, decreed the Suit on 11th April, 2003 in favour of the plaintiff (accused). The Suit in respect of defendant No.4, namely the Manager, South Indian Bank, was dismissed and the Suit was wholly decreed against the remaining defendants.

5.2 Defendant No.1 filed an appeal before the Additional Subordinate Judge, Irinjalakuda in C.M.A.No.6/2006. In its judgment dated 30th January, 2007, the Court observed that "The lower court correctly analysed the facts and arrived at the right conclusion. I find no reason to interfere the order of the lower court. Hence I dismissed this appeal."

6. Therefore, it appears from the record that the very same cheque was in issue before the Civil Court and also the Court seized of the Section 138 N.I. Act complaint. The conclusions drawn by the Courts below, subject matter of the instant lis, are as under:

6.1 The Trial Court convicted the appellant herein to undergo simple imprisonment for one year as well as pay compensation of Rs.2 lakhs in default whereof, he was to undergo further simple imprisonment for six months. The determination of the issues, i.e., whether the decree passed by the Munsif Court would be binding on it, is of note. It was observed that a Court exercising jurisdiction on the criminal side is not subordinate to the Civil Court. Further, it was held "That order was an ex-parte order as far as criminal complaint is

concerned the order of injunction issued cannot be granted and the hands of the criminal court cannot be fettered by the civil court".

6.2 The First Appellate Court framed primarily one point for consideration - whether the cheque was issued against a legally enforceable debt, thereby attracting the offence under Section 138 of the N.I. Act. This point was held against the appellant and therefore, the conviction handed down by the Court below, accordingly confirmed.

7. The High Court, in revision, observed that no perversity could be indicated in the concurrent findings of the Trial Court and First Appellate Court. The same was dismissed.

8. We find the manner in which this matter has travelled up to this Court to be quite concerning. We fail to understand as to how a civil as well as criminal course could be adopted by the parties involved, in respect of the very same issue and transaction, in these peculiar facts and circumstances.

9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In M/s. Karam Chand Ganga Prasad & Anr. vs. Union of India & Ors.[6], this Court observed that:

"It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

In K.G. Premshanker vs. Inspector of Police & Anr[7]., a Bench of three learned Judges observed that, following the M.S. Sheriff vs. State of Madras[8], no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in Vishnu Dutt Sharma vs. Daya Sapra (Smt.)[9], had observed as under:

"26. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad v. Union of India (1970) 3 SCC 694, wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein."

This Court in Satish Chander Ahuja vs. Sneha Ahuja[10] considered a numerous precedents, including Premshanker (supra) and Vishnu Dutt Sharma (supra), to opine that there is no embargo for a civil court to consider the evidence led in the

criminal proceedings. The issue has been laid to rest by a Constitution Bench of this Court in Iqbal Singh Marwah vs. Meenakshi Marwah[11]:

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given.

There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

"15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

(Emphasis Supplied)

11. The position as per Premshanker (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the Courts. Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed both sentence and damages, the ratio of the above-referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security.

12. In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be unsustainable in law and, therefore, are to be quashed and set aside. Resultantly, the damages as imposed by the Courts below must be returned to the appellant herein forthwith.

13. The appeal is allowed in the aforesaid terms. Hence, the judgment and order passed by Additional Sessions Judge, Thrissur, in Criminal Appeal 673 of 2007, which upheld the conviction, as handed down by the learned Judicial First Class Magistrate in CC No. 51 of 2003, which came to affirmed by the High Court of Kerela in Crl.R.P.No.1111 of 2011 is quashed and set aside. Pending application(s), if any, shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Aravind Kumar)

New Delhi

April 02, 2024

1 'Impugned Judgment'

2 'Lower Appellate Court'

3 'Trial Court'

4 'N.I. Act'

5 2nd defendant

6 (1970) 3 SCC 694

7 (2002) 8 SCC 87

8 AIR 1954 SC 397

9 (2009) 13 SCC 729

10 (2021) 1 SCC 414

11 (2005) 4 SCC 370

IN THE SUPREME COURT OF INDIA

Annapurna B. Uppin & Ors.
Vs.
Malsiddappa & Anr.

[Civil Appeal No._____ of 2024
arising out of SLP (C.) No. 11757 of 2022]

HEADNOTE – The legal heirs of a deceased partner do not become liable for any liability of the firm upon the death of the partner.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. This appeal assails the correctness of the order of the National Consumer Disputes Redressal Commission[1] dated 01.04.2022 passed in Revision Petition No.161 of 2022, titled Smt. Annapurna B. Uppin and three others vs. Sh. Malsiddappa and another, whereby the revision was dismissed and the order passed by the State Consumer Disputes Redressal Commission[2] and the District Consumer Disputes Redressal Forum[3] allowing the complaint of respondent No.1 and directing the Opposite Parties[4] No.1 to 5 therein to be jointly and severally liable to pay Rs.5 lakhs along with simple interest @ 18% p.a. from 21.05.2002 to 20.05.2012 with further interest @ 6% p.a. from 21.05.2012 onwards till realisation. Further, an amount of Rs.5,000/- was awarded towards compensation for mental agony and Rs.2,000/- towards costs to the respondent (the complainant).

3. Brief facts giving rise to the present appeal are summarised hereunder:

3.1. The respondent No.1 filed a complaint before the DCDRF, Dharwad, Karnataka, alleging that he had invested Rs. 5 Lakhs in the partnership firm M/s Annapurneshwari Cotton Co., Amargol, Hubli[5] on 21.05.2002 which was repayable after 120 months with interest @ 18% per annum. The respondent No.1 sought for premature payment but it was denied on the ground that the same would be paid upon maturity. The respondent No.1 waited for the maturity and he again claimed but still the payment was not made compelling him to issue a notice on 12.02.2014 calling upon the opposite parties to make the payment. However, as the payment was not made, a complaint was filed before the DCDRF alleging deficiency in service.

3.2. Before the DCDRF, the respondent No.2 herein was arrayed as OP No.1 as partner of the firm and the appellants herein were arrayed as respondent Nos.2 to 5 being the legal heirs of one Basavaraj Uppin (since deceased). The appellant No.1 is the widow of said Basavaraj Uppin whereas appellant Nos. 2 to 4 are his sons. Before the DCDRF, separate written versions were filed by OP No.1 and OP Nos.2 to 5. In his written statement OP No.1 admitted that he was partner in the firm along with OP Nos.2 to 5 (being the successors and legal representatives of the deceased Managing Partner Basavaraj Uppin) and the liability of OP No.1 was only to the extent of 10 percent.

He also admitted that the firm was accepting finance from individuals and parties on interest basis in order to generate finance for the firm. He also admitted that the complainant had invested an amount of Rs.5 lakhs and the said amount had not been paid. He also admitted that the Managing Partner Basavaraj Uppin, husband of OP No.2 and father of OP Nos.3 to 5 had died on 13.03.2003 and after his death, the legal heirs being OP Nos. 2 to 5 had taken over the business of the firm and were dealing with the same by taking possession of all books of accounts, financial receipts and payments.

3.3. He further stated that though there was no liability of OP No.1, he had been unnecessarily impleaded in order to get unlawful gains by the complainant. Thus, in effect, he admitted his liability of one-tenth of the share.

3.4. On the other hand, OP Nos. 2 to 5 contended that the complainant was not a 'consumer' and he had filed the instant complaint with wrong intention of recovering the amount illegally. They also contended that the complaint was not maintainable in view of section 63 of the Partnership Act, 1932, as there were only two partners and upon death of one of the partners, the firm came to be dissolved and as it was not in existence, the legal heirs of the deceased partner could not be impleaded as opposite parties for recovery of money from the firm.

It was also stated that the complainant was one of the partners of the firm. They also denied the deposit of Rs.5 lakhs and that the receipt filed by the complainant was a concocted document. It was also submitted that they had not succeeded and inherited any assets or liabilities of the firm as such they had no liability to pay the same. Further that there was no 'deficiency in service' and no cause of action arose for filing of complaint before the DCDRF, the complaint thus deserves to be rejected.

3.5. The DCDRF, vide order dated 16.05.2014, allowed the complaint directing OP Nos.1 to 5 therein to pay the sum of Rs.5 lakhs with 18% simple interest per annum from 21.05.2002 to 20.05.2012 and thereafter with simple interest @ 9%

per annum from 21.05.2012 till realization, along with compensation of Rs.2,000/- and costs of Rs.1,000/-.

3.6. Aggrieved, present appellant Nos.1 to 4 filed an appeal before the SCDRC, Bangalore, registered as Appeal No.952 of 2014. The said appeal was allowed by order dated 12.03.2014 and the matter was remanded. The order passed by DCDRF was set aside on the ground of denial of opportunity to the opposite parties and the matter was remitted back for a fresh decision.

3.7. The DCDRF, by order dated 29.04.2016, again allowed the complaint with the same terms as its previous order. The appellants herein again preferred an appeal before the SCDRC, Bangalore registered as Appeal no.1707 of 2016 which again came to be allowed vide order dated 22.07.2019, and the matter was again remanded to the DCDRF to reconsider the issue with regard to maintainability of the complaint.

3.8. The DCDRF, by order dated 13.01.2021, again allowed the complaint awarding relief as stated in the opening paragraph. The appeal preferred by the appellants herein before the SCDRC, being Appeal No.207 of 2021, came to be dismissed by order dated 23.09.2021. Aggrieved by the same, the appellants herein preferred a Revision Petition before the NCDRC which came to be dismissed by the impugned order giving rise to the present appeal.

4. Learned counsel for the appellants made the following submissions.

4.1. It is the specific case of the appellants that they were never a part of the partnership firm either as partners or in any other capacity. By an unregistered deed of partnership dated 16.02.1994, the firm was constituted which included the complainant (respondent No.1), husband and father of the appellants, and three others.

4.2. Later on, by another unregistered deed of partnership, the firm was re-constituted wherein three partners have resigned from the firm which included the complainant - respondent No.1. The surviving partners were the husband of appellant No.1 and father of appellant Nos.2 to 4 and the respondent No.2 herein.

4.3. Subsequently, the registered partnership deed came into force on 27.05.1996, which included all the five partners who were part of the first unregistered partnership deed dated 16.02.1994. It included the complainant-respondent as partner No.2. Thus, the complainant-respondent No.1 was a partner in the firm as per the registered deed dated 27.05.1996.

4.4. All the three partnership deeds, the two unregistered ones and third the registered one are filed as Annexures P1, P2 and P3 respectively. The fact as

stated by the appellants with respect to the complainant-respondent No.1 being a partner to the firm is clearly borne out from the reading of the said documents.

4.5. According to the appellants, once the complainant himself was a partner as per the registered partnership deed dated 27.05.1996, he could not have maintained the complaint for settling the dispute with respect to the partnership firm by way of a complaint under the Consumer Protection Act, 1986[6].

4.6. It was also submitted that the dispute, being purely commercial in nature, appropriate remedy, if any, available to the complainant- respondent No.1 was before the Civil Court and not by way of alleging 'deficiency in service' and filing a complaint under the 1986 Act.

4.7. It was next submitted that the legal heirs of the deceased partner of a registered firm could not be impleaded as opposite parties in a complaint for recovery of any investment or for any liability of the firm of which their husband/father was a partner.

4.8. It is submitted that not only the DCDRF, the SCDRC but also the NCDRC committed serious error of law in entertaining the complaint and allowing the same.

5. On the other hand, learned counsel for the respondent No.1, the contesting respondent, made the following submissions:

5.1. That the present appeal is not maintainable in view of the recent judgment of this Court in the case of Universal Sompo General Insurance Company Ltd. vs. Suresh Chand Jain and Another[7] wherein this Court has held that the remedy of Article 226 of the Constitution before the High Court would be available to an aggrieved party where the NCDRC has decided an appeal or a revision but no such remedy would be available where it was an original complaint before the NCDRC. The present petition should be dismissed on the ground of alternative remedy.

5.2. It was next submitted that the contention of the appellants with respect to the registered partnership deed dated 27.05.1996 would not be of any help to the appellants in as much as there was an intervening unregistered partnership of 13.09.1994 and therefore, no reliance can be placed on the registered partnership deed.

5.3. It was next submitted that despite legal notice, the appellants having refused to return the invested amount, clearly amounted to deficiency in service and therefore, the complaint was maintainable. It was also the case of respondent No.1 that the appellants herein inherited the estate of the Managing Partner

Basavaraj Uppin, and hence cannot escape the liability of making the payment due to the respondent No.1.

6. We need not go into other details of the arguments raised by the parties. In our considered opinion, once there was a registered partnership deed dated 27.05.1996, there is no further document placed on record by the complainant-respondent No.1 regarding dissolution of the said registered deed which continued till the time when the investment was made by the complainant respondent No.1 on 21.05.2002 and hence the complainant respondent No.1 would be deemed to be partner of the firm. It is only upon the death of the Managing Partner Basavaraj Uppin in March 2003, that the status of the firm would cease to exist or would stand dissolved.

7. Secondly, the investment made by the respondent No.1 complainant was for deriving benefit by getting an interest on the same at the rate of 18 % per annum, therefore, it would be an investment for profit/gain. It was a commercial transaction and therefore also would be outside the purview of the 1986 Act. Commercial disputes cannot be decided in summary proceeding under the 1986 Act but the appropriate remedy for recovery of the said amount, if any, admissible to the complainant-respondent No.1, would be before the Civil Court. The complaint was thus not maintainable.

8. Thirdly, there was no evidence on record to show that a fresh partnership deed was executed reconstituting the firm in which the present appellants had become partners so as to take upon themselves the assets and liabilities of the firm. The law is well settled that legal heirs of a deceased partner do not become liable for any liability of the firm upon the death of the partner.

9. The arguments of the respondents that the appellants had alternative remedy of approaching the High Court under Article 226 of the Constitution is of no avail in as much as this Court in Universal Sompo General Insurance (supra) has not issued any directions for the pending matters being either dismissed on this ground or being transferred to the High Court. It would apply prospectively for fresh matters coming up before this Court after the said judgment.

10. For all the reasons recorded above, we are of the view that the District Forum, the State and the National Commissions fell in error in allowing the complaint and upholding it in appeal and revision. The appeal is accordingly allowed. The impugned orders are set aside and the complaint is dismissed.

11. We however, leave it open for the respondent No.1 complainant to avail such other remedy as may be available under law before any Competent Forum.

.....J. (Vikram Nath)

.....J. (Satish Chandra Sharma)

New Delhi

April 5, 2024

1 NCDRC

2 SCDRC

3 DCDRF

4 OP

5 The Firm

6 The 1986 Act

7 (2023) SCC Online SC 877

IN THE SUPREME COURT OF INDIA

Shivani Tyagi
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal Nos. 1957-1961 of 2024
arising out of SLP (Crl.) Nos. 3484-3488 of 2024]

HEADNOTE – Factors of the likelihood of delay and incarceration for a particular period should not be a sole consideration while deciding the plea of the accused to suspend the sentence pending the appeal against the conviction under Section 389 Cr.P.C.

JUDGMENT

Leave granted.

1. In these quintuplet appeals the victim of an acid attack assails the suspension of sentence of life imprisonment of the convicted persons, the private respondents and their consequential enlargement on bail.

2. Heard learned counsel appearing for the selfsame appellant-victim in the captioned appeal, learned counsel appearing for the common first respondent State of Uttar Pradesh and learned counsel appearing for the private respondents.

3. Section 389 of the Code of Criminal Procedure (for short the "Cr.PC") deals with the suspension of execution of sentence pending the appeal against conviction and release of appellant(s) on bail. The said provision mandates for recording of reasons in writing leading to the conclusion that the convicts are entitled to get suspension of sentence and consequential release on bail. The said requirement thus indicates the legislative intention that the appellate Court invoking the power under Section 389, Cr. PC, should assess the matter objectively and that such assessment should reflect in the order.

4. We will briefly refer to some of the relevant decisions dealing with Section 389, Cr. PC. In the case of short-term imprisonment for conviction of an offence, suspension of sentence is the normal rule and its rejection is the exception. (See the decision in Bhagwan Rama Shinde Gosai & Ors. v. State of Gujarat[1]). However, we are of the considered view that the position should be vice-versa in the case of conviction for serious offences when invocation of power under Section 389 is invited. This Court, in the decision in Kishori Lal v. Rupa & Ors.[2], held in paragraphs 4 and 5 thus:-

"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against.

If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate Court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail."

5. In the decision in Anwari Begum v. Sher Mohammad & Anr.[3] this Court in paragraphs 7 and 8 held thus:-

"7. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though a detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

8. There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the Court in support of the charge. Any order dehors of such reasons suffers from non-application of mind as was noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598, Puran v. Rambilas (2001) 6 SCC 338 and in Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528."

6. After referring to the aforesaid paragraphs in the decisions in Kishori Las's case (supra) and Anwari Begum's case (supra), this Court in the decision in Khilari v. State of Uttar Pradesh & Ors.[4] interfered with an order suspending the sentence and granting bail for non-application of mind and non-consideration of the relevant aspects.

7. Applying the principles and parameters for invocation of the power under Section 389. Cr. PC, revealed from the decisions, as above, we will have to consider the sustainability of the challenge against the impugned orders by the appellant victim. In that regard a succinct narration of the facts involved in the case, strictly confining to the requirement for consideration of these appeals, is required.

The private respondents in the appeals, five in numbers, were convicted finding guilty of offences, including under Sections 307/149 and 326A/149, IPC. The appellantvictim was then aged about 31 years and, in the incident, she suffered attack with sulfuric acid and her body was burnt 30 to 40 percent. PW-6, Dr. Uttam Jain with Ext.A5, would reveal that she suffered deep burn on the face, chest and both hands and injuries on her were grievous in nature.

8. We may hasten to add that regarding the merits of the appeals by the party respondents against their conviction, we shall not be understood to have held or made any observation as it is a matter to be considered on its own merits in the pending appeals.

9. We have already referred to the mandate under Section 389 Cr.PC that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in State of Haryana v. Hasmat[5], this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively.

On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered

objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.PC without referring to the relevant factors.

We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. PC, likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable.

That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr.PC. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted.

We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.

10. Having observed and held as above, we are deeply peeved on perusing the impugned judgment, for the same reflects only non-application of mind and non-consideration of the relevant factors despite the fact that the case involved an acid attack on a young woman resulting into permanent disfiguration. In the case on hand, a scanning of the impugned order would reveal that what mainly weighed with the Court is the offer made on behalf of the convicts that they would give a payment of Rs. 25 lakhs through demand drafts, taking into account the evidence that the victim had incurred an amount of Rs. 21 lakhs for her treatment.

Paragraph 10 of the impugned order would reveal that taking note of the said offer besides the period of incarceration and also the delay likely to occur in the consideration of appeal, sentence imposed was suspended and the private respondents were enlarged on bail. Paragraph 10 of the order would reveal this position and it reads thus:-

"10. After hearing counsel for the parties and considering the voluntarily offer made by the appellants, which is without prejudice to the right of defence as well as right of the prosecution to be decided at the time of final adjudication and having no bearing on the merit of the case, over and above, the amount of compensation being paid by the District Legal Services Authority, Meerut, the appellants have offered to pay an amount of Rs. 25 lacs to the victim for her medical treatment and also in view of the long custody as well as the antecedents of the appellants and also considering the fact that the appeals pertain to the year 2021 and are not likely to be listed for final argument in near future, we deem it appropriate to grant suspension of sentence of the appellants."

11. We have no hesitation to hold that the impugned order is infected with non-application of mind and non-consideration of the relevant factors required for invocation of power under Section 389 in the light of the settled position of law. An acid attack may completely strip off the victim of her basic human right to live a Criminal Appeal Nos.1957-1961 of 2024 Page 13 of 14 decent human life owing to permanent disfiguration.

We have no hesitation to hold that in appeals involving such serious offence(s), serious consideration of all parameters should be made. Even a cursory glance of the impugned order would reveal the consideration thereunder was made ineptly. The serious nature of the offence involved was not taken into account besides the other relevant parameters for the exercise of power under Section 389, Cr. PC.

12. In such circumstances, the impugned judgment cannot be sustained. The upshot of the discussion is that the order suspending the sentence of the private respondents and enlarging them on bail, invite interference. Consequently, the impugned order is set aside and consequently the bail granted to the private respondent in all these appeals stands cancelled.

Consequently, the appellants shall surrender before the trial Court for the purpose of their committal to judicial custody. This shall be done within a period of four days. In case of their failure to surrender as ordered, the private respondents who are convicts shall be rearrested and committed to custody.

13. The Appeals are allowed as above.

.....J. (C.T. Ravikumar)

New Delhi;

April 05, 2024

1 (1999) 4 SCC 421

2 (2004) 7 SCC 638

3 (2005) 7 SCC 326

4 (2009) 4 SCC 23

5 (2004) 6 SCC 175

Shivani Tyagi

Vs.

State of Uttar Pradesh & Anr.

[Criminal Appeal Nos. 1957-1961 of 2024

arising out of SLP (Crl.) Nos. 3484-3488 of 2024]

1. I have gone through the detailed reasons recorded by brother C.T. Ravikumar, J. Elaborate discussion has been made on the aspect of suspension of sentence in heinous crimes as it is a case where the High Court had directed suspension of sentence of the respondents in an acid attack case, which will haunt the victim throughout her life. The disfigurement of the face of the victim, as is evident from the photographs placed on record, could not even be seen.

2. It is a case in which after hearing the arguments raised by the appellant and going through the paper book our conscience was shocked. By a short order we granted the leave in the matters and allowed the appeals, for the reasons to follow. The respondents were directed to surrender before the Trial Court on or before 09.04.2024. The same is extracted below:

"Leave granted. Appeals are allowed. Reasons to follow. The respondents-life convicts shall surrender on or before 9.4.2024 before the concerned Trial Court. In case of their failure to surrender, they shall be taken into custody and produced before the Trial Court."

2.1. I fully subscribe to the views expressed, but wish to add some more reasons.

3. The main ground on which the High Court ordered suspension of sentence of the respondents, who have been awarded life imprisonment is that the counsel for the accused submitted that in the evidence it had come on record that about ₹ 21 lakhs (Rupees Twenty-One Lakhs only) have been spent on her treatment as she suffered disfigurement of her face. It was further argued that the Trial Court in its judgment of conviction had directed that the victim be granted adequate compensation for her treatment under the Victim Compensation Scheme.

Then, it was collectively argued by the learned counsel for the accused that without prejudice to their right of defence the accused collectively and voluntarily offered to pay a sum of ₹ 25 lakhs (Rupees Twenty Five Lakhs only) which may be given to the victim for her medical treatment. It was objected to by the learned counsel for the State.

Taking note of the offer made by the counsel for the private respondents, who are the convicts, the High Court accepted the offer made by them and directed that, over and above, the amount of compensation paid by the District Legal Services Authority to the victim, the private respondents have offered to pay a sum of ₹ 25 lakhs (Rupees Twenty-Five Lakhs only) for her treatment. The sentence awarded to them was suspended. It was further noticed that the hearing of appeal is likely to take some time. Relevant paragraph 10 of the impugned order is extracted below:

"10. After hearing counsel for the parties and considering the voluntarily offer made by the appellants, which is without prejudice to the right of defence as well as right of the prosecution to be decided at the time of final adjudication and having no bearing on the merit of the case, over and above, the amount of compensation being paid by the District Legal Services Authority, Meerut, the appellants have offered to pay an amount of ₹ 25 lakhs to the victim for her medical treatment and also in view of the long custody as well as the antecedents of the appellants and also considering the fact that the appeals pertain to the year 2021 and are not likely to be listed for final argument in near future, we deem it appropriate to grant suspension of sentence of the appellants."

4. As the victim may also be in shock and not interested in receiving the amount as offered by the private respondents, the respondents moved a Correction Application[1] before the High Court. On the aforesaid application, the High Court, while noticing that offer made by the private respondents was not acceptable to the victim, directed the respondents to deposit the amount with the Chief Judicial Magistrate, Meerut. The relevant part of the order dated 21.02.2024 is reproduced hereinunder:

"Correction in the order dated 12.12.2023, is sought to the extent that the applicants have already handed over the demand drafts in the Court of Chief Judicial Magistrate, Meerut, as the victim has not come forward to accept the drafts, the appellants, who are granted bail, are still languishing in judicial custody. It is further submitted that appellants have performed their part of liability by depositing the demand draft before the CJM, Meerut, thus they may be released on bail.

In paragraph No. 11 of the order dated 12.12.2023, we modify to the extent that the appellants may be released on bail, even prior to handing over the demand drafts to the victims as ordered earlier. Notice of the application has been sent by registered post to Sri P.K. Rai, learned counsel for the respondent No. 2 by Sri P.K. Mishra, learned counsel for the appellants on 04.01.2024, but none appeared on behalf of respondent No. 2.

Learned AGA has no objection to the prayer made by counsel for the appellants. The bail order dated 12.12.2023 was passed in other connected Criminal Appeal No. 996 of 2021, Criminal Appeal No. 801 of 201, Criminal Appeal No. 1155 of 2021 and Criminal Appeal No. 467 of 2021. Considering the facts and circumstances of the case, it is undisputed that the demand drafts have been handed over to the CJM, Meerut, the appellants be released on bail subject to furnishing of surety bond.

The appellants will tender an undertaking before the Court that in case the victim appears subsequently and applies for release of money and in the meantime if the validity of the drafts have lapsed, they will revalidate the draft and hand over the same to the Court of CJM, Meerut. With the aforesaid observations, the order dated 12.12.2023 is modified accordingly."

5. Detailed discussions have been made in the opinion expressed by my brother C.T. Ravikumar, J. with reference to the suspension of sentence in case of heinous offences. I would like to touch upon the issue of offer of money to the victim for suspension of sentence in a heinous crime of acid attack, where the victim suffered burn injuries to the extent of 30 to 40% resulting in total disfigurement of her face. As is evident from the record, despite spending ₹ 21 lakhs (Rupees Twenty-One Lakhs only) on the treatment, she still has not been cured.

6. One of the principles of sentencing in criminal law is proportionality. If the appropriate punishment is not awarded or if, after conviction for a heinous crime, the court directs the suspension of the sentence without valid reasons, the very purpose for which the criminal justice system exists will fail.

7. After passing of the order dated 12.12.2023 vide which the High Court directed the suspension of the sentence of the private respondents on payment of ₹ 25 lakhs (Rupees Twenty-Five Lakhs only) to the victim, the amount was not accepted by the victim and the convicts could not be released from the jail. An application for correction[2] of the impugned order was filed by the private respondents.

The infirmity of the court is evident from the fact that despite this development, the High Court went on to modify the earlier order dated 12.12.2023 and noted that a Demand Draft having been handed over to the Chief Judicial Magistrate, Meerut the private respondents be released on bail subject to Surety Bonds. It was recorded that, in case subsequently the victim appears in court for release of amount and the validity of the Demand Draft lapses, the private respondents shall get the same revalidated.

8. From the facts it can safely be noticed that there is no question of acceptance of money by the victim as she has challenged the order of suspension of sentence of the private respondents.

9. This court had been taking the offence of acid attacks, which are on increase, seriously. It is even to the extent of regulating the sale of the acid with stringent action so that the same is not easily available to the people with perverse mind. Observations made by this court in paragraph 13 of Parivartan Kendra vs Union of India and Others[3] being appropriate is extracted below:

"13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work.

These instances unveil that the State has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, stringent action be taken against those erring persons supplying acid without proper authorisation and also the authorities concerned be made responsible for failure to keep a check on the distribution of the acid."

10. In Suresh Chandra Jana vs State of West Bengal and Others[4], while rejecting the acquittal of an accused as ordered by the High Court in an acid attack case, this Court observed that the acid attack has transformed itself to a gender-based violence, which causes immense psychological trauma resulting in hurdle in overall development of the victim. Paragraph 30 thereof is extracted below:

"30. At the outset, certain aspects on the acid attack need to be observed. Usually vitriolage or acid attack has transformed itself as a gender based violence. Acid attacks not only cause damage to the physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development.

Although we have acknowledged the seriousness of the acid attack when we amended our laws in 2013 [The Criminal Law (Amendment) Act, 2013 (13 of 2013).], yet the number of acid attacks are on the rise. Moreover, this Court has been passing various orders to restrict the availability of corrosive substance in the market which is an effort to nip this social evil in the bud. [Parivartan Kendra v. Union of India, (2016) 3 SCC 571 : (2016) 2 SCC (Cri) 143] It must be recognised that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society."

11. In another case reported as State of Himachal Pradesh and Another vs Vijay Kumar alias Pappu and Another[5] regarding acid attack on a young girl of 19 years, in which this Court observed in paragraph 13 thereof, that the victim had suffered 16% burn injuries and that such a victim cannot be compensated by grant of any compensation. Paragraph 13 is thereof extracted below:

"13. Indeed, it cannot be ruled out that in the present case the victim had suffered an uncivilised and heartless crime committed by the respondents and there is no room for leniency which can be conceived. A crime of this nature does not deserve any kind of clemency. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which cannot be compensated either by sentencing the accused or by grant of any compensation."

12. The circumstances under which a bail granted by the court below can be cancelled, having been summarised by this Court in Deepak Yadav vs State of Uttar Pradesh and Another[6]. Relevant paragraphs 31 to 35 are extracted below:

"C. Cancellation of bail

31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

(i) interference or attempt to interfere with the due course of administration of justice;

(ii) evasion or attempt to evade the due course of justice;

(iii) abuse of the concession granted to the accused in any manner;

(iv) possibility of the accused absconding;

(v) likelihood of/actual misuse of bail;

(vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

"12. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail.

Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."

35. This Court in Mahipal [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] held that : (SCC p. 126, para 17)

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

13. The impugned order passed by the High Court is perused. Specifically the order dated 21.02.2024 passed in the Correction Application. The order does not suggest that there was any consideration of the parameters laid down by this court for grant of bail or suspension of sentence. Instead, the High Court had noticed and directed that the convicts have offered to pay compensation to the victim for grant of suspension of sentence, which when she refused to accept, was directed to be deposited in the court. It was in a way kind of "Blood Money" offered by the convicts to the victim for which there is no acceptability in our criminal justice system.

14. This Court in Gian Singh vs State of Punjab and Another[7] while dealing with an issue regarding quashing of criminal proceedings on the ground of settlement between the offender and victim, observed that even if settlement or payment of compensation is pleaded in a heinous crime, still the same should not be quashed as the crimes are acts which have harmful effect on the public and in general the well-being of the society. It is not safe to leave the crime-doer on the plea of settlement with victim. Relevant paragraph 58 thereof is extracted below:

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court.

In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all.

However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

15. In the State of Jharkhand vs. Md. Sufiyan[8], the Jharkhand High Court directed the accused to deposit certain amount in court, as ad interim compensation to be paid to the victim as a condition for grant of anticipatory bail. It was a case for various crimes committed under IPC, POCSO Act and I.T. Act. The aforesaid direction of the High Court was deprecated by this Court. It was opined that the willingness of the accused to pay compensation to the victim cannot be a reason for grant of anticipatory bail. Para 6, thereof is extracted below:

"6. The factors on which anticipatory bail could be granted are very well crystallized in a catena of judgments of this Court. Leave aside the discussion of such factors, not even a whisper as to on what grounds anticipatory bail was being allowed were considered by the High Court. Merely because the accused is willing to pay some amount as an interim compensation cannot be a ground for grant of anticipatory bail."

16. Similar view was expressed by this Court in Sahab Alam alias Guddu vs. State of Jharkhand and another[9]. Paras 2 and 8 thereof are extracted below:

"2. We have a batch of petitions before us, arising from different nature of offences from dowry to Section 420 IPC to Section 376, IPC and POCSO Act. The common aspect in all these cases is that one particular learned Judge of the High Court has granted bail on condition on deposit of substantive sums of money without consideration of the requirements of bail dependent on the nature of offences.

It is trite to say that bail cannot per se be granted if a person can afford to deposit the money or his capacity to pay. That is what seems to have happened. Since there is no proper consideration, it is also difficult for us to analyse what weighed with the learned Judge while granting bail and it is certainly not the jurisdiction of this Court to be first or a second court of bail.

8. We also clarify that in view of our judgment in Dharmesh v. State of Gujarat (2021) 7 SCC 198 there is no question of victim compensation, as there cannot be such a criteria at the stage of grant of bail."

.....J. (Rajesh Bindal)

New Delhi

April 5, 2024.

1 Criminal Misc. Correction Application No. 12 of 2024

2 Criminal Misc. Correction Application No. 12 of 2024

3 (2016) 3 SCC 571: 2015 INSC 893

4 (2017) 16 SCC 466 : 2017 INSC 1296

5 (2019) 5 SCC 373 : 2019 INSC 377

6 (2022) 8 SCC 559 : 2022 INSC 610

7 (2012) 10 SCC 303 : 2012 INSC 419

8 SLP (Crl) No. 1960 of 2022 decided on 16.01.2024

9 2022 SCC Online SC 1874

IN THE SUPREME COURT OF INDIA

Chandan
Vs.
State (Delhi Admn.)

Criminal Appeal No. 788 of 2012

HEADNOTE – If there's a direct ocular piece of evidence inspiring the confidence of the court then the motive behind the commission of the offence would be of little relevance and the prosecution need not prove the motive of the accused in the commission of the crime.

JUDGMENT

Sudhanshu Dhulia, J.

1. The appellant before this Court was convicted under Section 302 of IPC. The conviction and sentence have been upheld by the High Court in appeal. As per the prosecution it is a case of a daylight murder with a reliable eye-witness.

2. Brief facts of the case are that on 28.05.1993 at about 8:15 pm while PW-2, who was sister-in-law of the deceased was returning from Ram Bazar, the deceased and the accused were walking a few steps ahead of her. After a few minutes she saw the two, i.e. the deceased Rakesh and Chandan, grappling with each other and then she saw the accused stabbing the deceased multiple times with the knife he was carrying. The deceased fell on the ground and the accused/appellant fled away.

The deceased, Rakesh, was first taken to the adjacent clinic which was a private clinic of Dr. Kalra in the vicinity, where they were advised to take him to Hindu Rao hospital which was the nearest hospital where an emergency treatment could be given to the deceased. By the time the deceased reached the hospital he was declared dead. Post-mortem was conducted on the deceased the next day i.e. on 29.05.1993, and the following ante-mortem injuries were detected:

"1. An incised stab wound 22 cm x 2 cm x? places vertically on the left claricular area. (cellar bone region).

2. An incised wound 2 cm x 1 cm x? vertically present just below an moidal to the left nipple.

3. An incised wound 3 cm. x 1.5 cm x? transversally places on the middle on left arm over anterolateral surface. The medial end was actually cut.

4. An incised wound 1.5 cm. x. 0.8 cm. x ? transversally placed on the back of let arm upper part. The posterior end of the injury was actually cut.

Injury No. 3 and 4 were found to be communicating with each other.

5. An incised wound 2.5 cm x 1.5 x ? vertically placed on the left lateral chest wall on the seventhribs, lower and was acute.

6. An incised wound 20. cm. x · 1.5 cm. x ? sprindle shape on the top of let shoulder.

7. An incised wound 2 cm. x 0.5 cm. x muscle deep on the left scapular area. 8. An incised wound 2 cm. x 1 cm. x? placed vertically on the left renal angle."

It was further observed:

"Injury no. 1 on the chest was only muscle deep. So was injury No. 2 Injury No. 5 had entered left chest cavity through 7th intercostals space and was directed upwards and medially where it involved pericardium and tip of the left ventricle of the hear.

Injury no. 5 was sufficient the ordinarly course of nature to cause death. Death was due to shock and haemorrhage consequent to injuries.

In my opinion, injuries found on the body of deceased Rakesh were possible with this weapon. I had also made sketch of the said weapon along with P.M. report which is Ex.PW9/A which is signed me and is correct.

The weapon knife Ex.Pl is taken out. The weapon Ex. Pl shown to me in the court is the name with was produced before me police in sealed parcel at the time P.M. and the injury could be caused with Ex.Pl."

An FIR was registered on the date of incident itself i.e., 28.05.1993, at Police Station, Kashmere Gate, Delhi on the statement of PW-2, the complainant, where she narrated the incident as already stated above. The police after investigation filed the chargesheet against the sole accused, Chandan, under Section 302 IPC. After committal of the case to the Sessions, 18 witnesses were examined by the prosecution.

The star witness of the prosecution was PW-2, who was the eyewitness. She was put to a lengthy cross-examination by the defence but nothing has come out

which may discredit this witness. This witness in her testimony narrates the entire sequence of events as to how the accused stabbed the deceased to death and how she watched from a short distance the act being committed before her, and how all this happened in quick time.

3. The accused, it must be stated here, was caught the same day in the vicinity itself along with the knife, which was the weapon, used in the commission of the crime. The forensic report and other evidences show that this was the knife which was recovered from the possession of the sole accused and was used in the commission of the crime.

The blood of the deceased was found to be matching with the blood found on the knife, which was recovered from the accused/appellant. Brahm Pal Singh (PW-12) Head Constable is a witness to this recovery. He states that upon receiving information of stabbing, he along with constable Mahabir found the accused at Hamilton Road. They saw the accused coming out from the side of 'ganda Nala', carrying a blood stained knife and wearing a blood stained shirt. The accused was then apprehended by constable Brahm Pal and the knife and shirt were accordingly recovered.

4. There were certain doubts raised on the manner of recovery of the knife from the accused, but nothing moves on this aspect alone, more particularly, in view of the fact that the blood of the deceased clearly matches with the blood which was found on the knife, together with the ocular evidence in the form of an eyewitness (PW-2), who is a reliable eye-witness of the incident.

We can also not lose sight of the fact that the murder, the arrest of the accused and the recovery of the knife from him happened in quick succession, with a very little time gap. The entire evidence put together by the prosecution does establish the guilt of the accused beyond a reasonable doubt. Both the Trial Court as well as the Appellate Court have rightly held that the prosecution has proved their case as such.

5. The argument of the defence that the prosecution has not been able to establish any motive on the accused for committing this dastardly act is in fact true, but since this is a case of eyewitness where there is nothing to discredit the eye-witness, the motive itself is of little relevance. It would be necessary to mention some of the leading cases on this aspect which are as under:

In Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55, it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires the confidence of the court, the prosecution is not required to establish motive. Mere absence of motive would not impinge on the testimony of

a reliable eye-witness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is direct eye witness, motive is not significant. This is what was held:

"In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy."

The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by this Court in **Bikau Pandey v. State of Bihar, (2003) 12 SCC 616; Rajagopal v. Muthupandi, (2017) 11 SCC 120; Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195.**

6. In view of above, we see no reason to interfere with the orders of the Trial Court and that of the High Court, accordingly the appeal is dismissed. Interim order dated 09.05.2012 granting bail to the appellant stands vacated.

Appellant, who is presently on bail, is directed to surrender before the Trial Court within a period of four weeks from today. A copy of this judgment shall be sent to the Trial Court to ensure that the appellant undergoes the remaining part of his sentence.

.....J. [Sudhanshu Dhulia]

.....J. [Prasanna B. Varale]

New Delhi.

April 05, 2024.

IN THE SUPREME COURT OF INDIA

Pathapati Subba Reddy (D) by LRS. & Ors.
Vs.
The Special Deputy Collector (LA)

[Special Leave Petition (Civil) No. 31248 of 2018]

HEADNOTE – Merits of the case not required to be considered in condoning delay'. Explains principles for delay condonation.

JUDGMENT

Pankaj Mithal, J.

1. Some land in village Gandluru, District Guntur, Andhra Pradesh was acquired some time in 1989 for Telugu Ganga Project. Not satisfied by the compensation offered under the award, the claimants (16 in number) preferred a reference under Section 18 of Land Acquisition Act (hereinafter for short the 'Act') i.e., L.A.O.P. No. 38 of 1990 titled Juvvala Gunta China Chinnaiah (dead) and Ors. vs. Special Deputy Collector (Land Acquisition) Telugu Ganga Project, Podalakur at Nellore.

Out of the 16 claimants in the above reference, claimants No. 1, 3 and 11 died during the pendency of the reference before the Court of Addl. Senior Civil Judge, Gudur. No steps were taken to substitute the heirs and legal representatives of the above deceased persons. The said reference was dismissed on merits along with some other references vide common judgment and order dated 24.09.1999 upholding the award of the collector.

2. After the lapse of more than 5/6 years, an appeal was proposed to be filed in the High Court Under Section 54 of the Act challenging the dismissal of the reference. The said appeal was proposed to be filed only by some of the heirs and legal representatives of the deceased claimant No. 11 in the reference i.e., Pathapati Subba Reddy.

No other claimant or their legal heirs from amongst the other 15 who were parties in the reference joined the heirs and legal representatives of claimant No. 11 in filing the appeal. They did not even prefer any separate or independent appeal of their own. In other words, out of the 16 claimants, 15 of them impliedly accepted the judgment and order of the reference court and it is only the heirs and legal representatives of claimant No. 11, who feel aggrieved and have proposed to file the appeal.

3. The above appeal, as stated earlier, was preferred with the delay of 5659 days. Accordingly, an application supported by an affidavit of the surviving daughter of the deceased claimant No. 11 was filed for condoning the delay in filing the proposed appeal. It was averred in the said application that the proposed appellants are the heirs and legal representatives of the deceased claimant No. 11 i.e. Pathapati Subba Reddy, who died on 15.05.1995 during the pendency of the reference but they were not brought on record before the decision of the reference. The said deceased claimant No.11 was survived by his two daughters.

The elder one died and that the proposed appellants are the surviving second daughter and her descendants. Since she was living in her matrimonial house, she had no knowledge of the above reference. It was only on 28.05.2015 when one of the grandsons of the said daughter of the deceased claimant visited the office of the L.A.O. for the purpose of obtaining submersion certificate to secure a job that he came to know that there was a reference which was dismissed on 24.09.1999, whereupon the proposed appeal was immediately filed along with an application to condone the delay in its filing.

4. There is no dispute to the fact that in L.A.O.P. No. 38 of 1990 there were 16 claimants in all. During the pendency of the aforesaid reference, claimants No. 1, 3 and 11 were dead but the heirs and legal representatives of none of them were brought on record. None of the other claimants or their heirs and legal representatives made any effort to challenge the order of the dismissal of the reference except the proposed appellants which indicates that the others have accepted the same.

It is only one of the surviving daughters of the deceased claimant No. 11 and her descendants who have sought to prefer the proposed appeal against the judgment and order dated 24.09.1999 with an inordinate delay of 5659 days. The High Court not being satisfied by the explanation furnished in preferring the proposed appeal beyond limitation, refused to condone the delay in filing the proposed appeal and consequently dismissed it as barred by time by the order impugned dated 18.01.2017.

5. The present Special Leave Petition has been filed challenging the judgment and order dated 18.01.2017 of the High Court passed in L.A.A.S.M.P. No. 714 of 2016 in L.A.A.S. (SR) No. 6950 of 2015 whereby the High Court has dismissed the application of the petitioners herein for condoning the delay of 5659 days in filing the proposed appeal.

6. The moot question before us is whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

"3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

11. Though Section 3 of the Act mentions about suit, appeal and application but since in this case we are concerned with appeal, we would hereinafter be mentioning about the appeal only in context with the limitation, it being barred by time, if at all, and if the delay in its filing is liable to be condoned.

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation.

This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with

the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed.

In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense.

In Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors.[1], it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.

16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice.

In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.[2], this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned.

Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice- oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd[3] has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

19. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors.[4], it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.

20. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.[5] wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the

benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors.[6], where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner.

The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.

22. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.[7], that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

23. In Basawaraj and Anr. vs. Special Land Acquisition Officer[8], this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Paragraph 12 reads as under:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that,

"inconvenience is not" a decisive factor to be considered while interpreting a statute."

25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

(emphasis supplied)

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature

and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

27. It is in the light of the above legal position that now we have to test whether the inordinate delay in filing the proposed appeal ought to be condoned or not in this case.

28. The submission of learned counsel for the petitioners is that in somewhat similar situation, delay in filing appeal for the enhancement of compensation had been condoned by this Court. He placed reliance upon the case of **Dhiraj Singh (Dead) through Legal Representatives & Ors. Vs. State of Haryana & Ors. (2014) 14 SCC 127.** In this case, delay in filing appeal was condoned as in other appeals compensation awarded at the rate of Rs.200/- per sq. yd. was upheld and the proposed appellants were also held entitled to the same benefit of compensation at the rate of Rs.200/- per sq. yd. instead of Rs.101/- per sq. yd. as awarded but with the rider that they will not be entitled for interest for the period of delay in approaching the High Court.

29. The other decision relied upon in this regard is the case of **Imrat Lal & Ors. vs. Land Acquisition Collector & Ors. (2014) 14 SCC 133.** In this case also the matter was regarding determination of compensation for the acquired land and there was a delay of 1110 days in filing the appeal for enhancement of compensation. Despite findings that no sufficient cause was shown in the application for condoning the delay, this Court condoned the delay in filing the appeal as a large number of similarly situate persons have been granted relief by this Court.

30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such

circumstances is in violation of the legislative intent or the express provision of the statute.

Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of Basawaraj (supra).

31. Learned counsel for the petitioners next submitted on the basis of additional documents that in connection with the land acquisition in some other Special Leave Petitions, delay was condoned taking a lenient view and the compensation was enhanced with the rider that the claimants shall not be entitled for statutory benefits for the period of delay in approaching this Court or the High Court.

The said orders do not clearly spell out the facts and the reasons explaining the delay in filing the appeal(s) but the fact remains that the delay was condoned by taking too liberal an approach and putting conditions which have not been approved of by this Court itself.

In the absence of the facts for getting the delay condoned in the referred cases, vis-à-vis, the facts of this case, it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s).

32. Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded.

First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

33. In the above situation, we do not deem it proper and necessary to interfere with the decision of the High Court refusing to condone the inordinate delay in filing the proposed appeal.

34. The Special Leave Petition, as such, lacks merit and is dismissed.

.....J. (Bela M. Trivedi)

.....J. (Pankaj Mithal)

New Delhi;

April 8, 2024.

1 (2007) 11 SCC 285

2 (1987) 2 SCC 107 = AIR 1987 SC 1353

3 A.I.R. 1962 SC 361

4 A.I.R. 1935 PC 85

5 2014 (4) SCALE 50

6 (2011) 4 SCC 363

7 AIR 2009 SC 1927

8 (2013) 14 SCC 81

IN THE SUPREME COURT OF INDIA

Karikho Kri
Vs.
Nuney Tayang

Civil Appeal No. 4615 of 2023
with
Civil Appeal No. 4716 of 2023

HEADNOTE – Candidates contesting elections are not required to disclose each and every moveable property owned by them or their dependents unless they are of substantial value or reflect a luxurious lifestyle.

Mere failure to get a transferred vehicle registered in the name of the new owner will not mean that the sale/gift transaction will get invalidated.

JUDGMENT

Sanjay Kumar, J

1. In the year 2019, Karikho Kri, an independent candidate, Dr. Mohesh Chai, candidate of the Bharatiya Janata Party, and Nuney Tayang, candidate of the Indian National Congress, contested the election to the Arunachal Pradesh Legislative Assembly from 44 Tezu (ST) Assembly Constituency. The election was held on 11.04.2019 and Karikho Kri emerged victorious with 7538 votes, while Dr. Mohesh Chai secured 7383 votes and Nuney Tayang secured 1088 votes.

2. Nuney Tayang filed Election Petition No. 01(AP) of 2019 before the Itanagar Bench of the High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh, seeking a declaration that the election of Karikho Kri was void on the grounds mentioned in Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of the People Act, 1951 (for brevity, 'the Act of 1951'). He also sought a consequential declaration that he stood duly elected from the said constituency.

3. By judgment and order dated 17.07.2023, a learned Judge of the Itanagar Bench of the High Court allowed the election petition in part, declaring the election of Karikho Kri void under Sections 100(1)(b), 100(1) (d)(i) and 100(1)(d)(iv) of the Act of 1951, but rejecting the prayer of Nuney Tayang to declare him duly elected, as he had not led any evidence to prove the allegations

levelled by him against Dr. Mohesh Chai, the candidate with the second highest number of votes.

4. Aggrieved thereby, Karikho Kri filed Civil Appeal No. 4615 of 2023 before this Court and Nuney Tayang filed Civil Appeal No. 4716 of 2023. These appeals were filed under Section 116A of the Act of 1951.

5. While ordering notice in both the appeals on 31.07.2023, in exercise of power under Section 116B(2) of the Act of 1951, this Court directed that an election should not be held for the subject Constituency which was represented by Karikho Kri and permitted him to enjoy all the privileges as a Member of the House and of the constituted committees but restrained him from casting his vote on the floor of the House or in any of the committees wherein he participated as an MLA.

6. Thereafter, during the course of the hearing of these appeals, Karikho Kri filed I.A. No. 73161 of 2024, as a fresh schedule for election to the Legislative Assembly of the State of Arunachal Pradesh was notified on 16.03.2024 and he wished to contest in the election that is proposed to be held on 19.04.2024. He sought leave to contest as a candidate in the upcoming assembly election in the State of Arunachal Pradesh during the pendency of this appeal.

By order dated 20.03.2024, this Court opined that a strong prima facie case had been made out by him and, in the light of the said fact, stayed the operation of the impugned judgment. This Court also made it clear that any steps taken by Karikho Kri in view of the stay order would be subject to the final decision that would be taken upon conclusion of the hearing of these appeals.

7. In his election petition, Nuney Tayang claimed that the nomination submitted by Karikho Kri was improperly accepted by the Returning Officer, Tezu, as he did not disclose material particulars in his Affidavit filed in Form No.26 appended to the Conduct of Elections Rules, 1961. The High Court framed nine issues for determination in the election petition and ultimately held against Karikho Kri on Issue Nos. 1 (in part), 4, 5, 6 (in part), 7 and 8. Issue No.9 pertained to the relief claimed by Nuney Tayang. The relevant 'Issues' read as under:

'1. Whether there has been a non-disclosure of ownership of Hero Honda CD Dawn Motorcycle owned by the returned candidate, Shri Karikho Kri bearing registration No. AR-11-2446; Kinetic Zing Scooty owned by the wife of the returned candidate, Smti. Bagilu Kri bearing registration No. AR-11-4474; Van, Maruti Omni Ambulance owned by the wife of the returned candidate, Smti. Bagilu Kri bearing registration No. AR-11A-3100 and TVS Star City Motorcycle

owned by Shri Goshinso Kri, the son of the returned candidate Shri Karikho Kri bearing registration No. AR- 11-6581, as is required to be disclosed under Clause 7(vi) of the Conduct of Election Rules, 1961, rendering the nomination of the returned candidate invalid?

4. Whether there has been a non-submission of no dues certificate with regard to Electricity Charges required to be submitted under Clause 8(ii)(b) of Form No. 26 of the Conduct of Election Rules, 1961, as the respondent No. 1 was in occupation of MLA Cottage No. 1 at 'E' Sector, Itanagar, from the year, 2009-2014, while the respondent No. 1 was an MLA of Tezu (ST) Assembly Constituency during the year, 2009-2014?

5. Whether the statements made by the respondent No. 1 about the liability of himself and his wife in respect of Municipal Tax, Property Tax, due and grand total of all govt. dues against Serial No. 6 & 8 of the table in Para-8(A) of the affidavit in Form No. 26 appended to the nomination paper of the respondent No. 1 has rendered the nomination of respondent No. 1, defective?

6. Whether the non-disclosure of assets both movable and immovable belonging to the respondent No. 1, his wife, his mother and his two sons in the affidavit in Form No. 26 appended to the nomination paper amounted to commission of corrupt practice of undue influence within the meaning of Section 123(2) of the Representation of the People Act, 1951?

7. Whether the election of respondent No. 1 to the 44- Tezu(ST) Assembly Constituency is liable to be declared void under Section 100(1)(d)(i) of the Representation of the People Act, 1951?

8. Whether the nature of non-disclosure alleged by the Election petitioner is of a substantial nature effecting the election of the returned candidate/respondent No. 1?

9. What consequential relief the petitioner is entitled to, if any?'

8. Nuney Tayang examined 7 witnesses, including himself as PW7. Karikho Kri examined 39 witnesses, including himself as DW1A. Dr. Mohesh Chai did not choose to contest the case before the High Court, despite service of notice. Before us, however, he is duly represented by learned counsel and also filed his replies in both the appeals.

9. The High Court held against Karikho Kri on Issue No 1, in relation to three out of the four vehicles, viz., the Kinetic Zing Scooty bearing No. AR-11/4474 and the Maruti Omni Van bearing No. AR-11A/3100, both registered in the name of

Bagilu Kri, his wife, and the TVS Star City Motorcycle bearing No. AR-11/6851, registered in the name of Goshinso Kri, his second son.

The High Court was of the opinion that, notwithstanding the sale of the Kinetic Zing Scooty bearing No. AR-11/4474 in 2009 and the Maruti Omni Van bearing No. AR-11A/3100 in the year 2017 and the gifting of the TVS Star City Motorcycle bearing No. AR- 11/6851 in 2014, these vehicles continued to stand in the names of Bagilu Kri and Goshinso Kri, the dependent wife and son of Karikho Kri, on the relevant date.

Upon considering the provisions of the Motor Vehicles Act, 1988 (for brevity, 'the Act of 1988') and the decision of this Court in Naveen Kumar vs. Vijay Kumar and others[1], the High Court concluded that the person in whose name the motor vehicle stood registered should be treated as the owner thereof. In consequence, it was held that, as on the date of presentation of his nomination on 22.03.2019 and its scrutiny on 26.03.2019, the above three vehicles were owned by the dependent wife and son of Karikho Kri but they were not disclosed in the Affidavit in Form No. 26 filed by him.

10. On Issue No. 4 with regard to non-submission of a 'No Dues Certificate' in the context of electricity and water charges, etc., that was required to be submitted under Clause 8(ii)(B) of Form No. 26, the High Court noted that Karikho Kri had occupied government accommodation in MLA Cottage No.1 at 'E' Sector, Itanagar, from 2009 to 2014, as the MLA of Tezu (ST) Assembly Constituency during those years. According to Karikho Kri, he lost the election in 2014 and vacated the said accommodation.

He claimed that when he filed his nomination for the Assembly Election in 2014, he obtained a 'No Dues Certificate' after clearing the dues and submitted it. As there were no outstanding dues thereafter and he did not occupy government accommodation, he stated that he did not disclose the same. As Karikho Kri admitted such non-disclosure in his Affidavit in Form No. 26, the High Court held against him on this count.

11. As regards Issue No. 5, pertaining to the liability of Karikho Kri and his wife in respect of their dues of municipal and property taxes, the High Court found that Karikho Kri had disclosed the taxes due and payable by him and his wife in one part of the Affidavit in Form No.26 submitted by him, but failed to do so in another part thereof. He disclosed the dues in Part A, Clause 8 (vi) and (viii), but failed to disclose it in Clause 9 in Part B. Though the High Court held against Karikho Kri even on this count, Mr. Arunabh Chowdhury, learned senior counsel, appearing for Nuney Tayang, fairly stated that he would not be pressing

this ground as there was disclosure of the dues at least in one part of the Affidavit in Form No. 26.

12. As regards Issue No. 6, i.e., whether non-disclosure of the three vehicles, registered in the names of his dependent wife and second son, by Karikho Kri in his Affidavit in Form No. 26 amounted to commission of a corrupt practice as per Section 123(2) of the Act of 1951, the High Court referred to case law and held that such non-disclosure amounted to a corrupt practice within the meaning of Section 123(2) of the Act of 1951.

13. The High Court then considered Issue No. 7, i.e., whether the election of Karikho Kri was liable to be declared void under Section 100(1) (d)(i) of the Act of 1951 and opined that when the nomination of the returned candidate was shown to have been improperly accepted by the Returning Officer, there is no necessity to further prove that the election was 'materially affected'. As the High Court was of the opinion that the nomination of Karikho Kri had, in fact, been improperly accepted by the Returning Officer, Tezu, his election was held liable to be declared void under Section 100(1)(d)(i) of the Act of 1951.

14. On Issue No. 8 - as to whether the non-disclosures by Karikho Kri were of a substantial nature affecting his election, the High Court observed that disclosure of information as per Form No. 26 of the Conduct of Election Rules, 1961, was fundamental to the concept of free and fair elections and, therefore, the solemnity thereof could not be ridiculed by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters.

15. Coming to Issue No. 9, i.e., as to what consequential relief Nuney Tayang would be entitled to, if any, the High Court noted that Nuney Tayang had secured the least number of votes out of the three candidates and though he made allegations to the effect that Dr. Mohesh Chai had failed to disclose the properties belonging to his mother in his Affidavit in Form No. 26, the High Court found that Nuney Tayang had failed to lead any evidence in proof of this statement and, as such, there was no material to hold that Dr. Mohesh Chai's mother was even his dependent.

On that basis, the High Court held that no judgment could be pronounced against Dr. Mohesh Chai, solely on the basis of the pleadings and allegations made by Nuney Tayang in his election petition. In consequence, Nuney Tayang was held disentitled to relief by way of a declaration that he had been duly elected from 44 Tezu (ST) Assembly Constituency.

16. It is well-settled that the success of a winning candidate at an election should not be lightly interfered with (See Santosh Yadav vs. Narender Singh[2] and Harsh Kumar vs. Bhagwan Sahai Rawat and others[3]). The issue before us presently is as to the validity of the High Court's findings that the grounds under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 were established, warranting invalidation of the election of Karikho Kri. Further, the finding of the High Court on Issue No. 6, that Karikho Kri committed a 'corrupt practice' within the meaning of Section 123(2) of the Act of 1951 also requires to be examined.

17. Section 33 of the Act of 1951 deals with 'presentation of nomination papers and the requirements for a valid nomination'. Scrutiny of such nominations is undertaken by the Returning Officers under Section 36 of the Act of 1951. To the extent relevant, Section 36 reads as under:

'36. Scrutiny of nomination:-

1. On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

2. The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) ..... or

(b) ..... or

(c) .....

3. .....

4. The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

5. .....

6. The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

7. .....

8. Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

18. In terms of Section 36(4) above, a Returning Officer is under a mandate not to reject a nomination paper for a defect unless it is of substantial character. Significantly, Nuney Tayang raised objections to the candidature of Karikho Kri by way of his written representation dated 26.03.2019. Therein, he raised the issue of non-submission of a 'No Dues Certificate' in respect of the government accommodation occupied by Karikho Kri during his tenure as an MLA from 2009 to 2014.

He also raised the issue of non-disclosure of the vehicles, mentioned in Issue No. 1. By his reply dated 26.03.2019, Karikho Kri informed the Returning Officer, Tezu, that the vehicles, viz., the Kinetic Zing Scooty and the Maruti Omni Van standing in the name of his wife had already been disposed of as was the TVS Star City Motorcycle standing in the name of his dependent second son, which had been gifted away.

As regards the non-submission of a 'No Dues Certificate', Karikho Kri asserted that there were no outstanding dues against any government accommodation in his name. Karikho Kri submitted documents with his explanation, including those pertaining to the transfer of the vehicles in question as well as the 'No Dues Certificates' of 2014.

Thereafter, Karikho Kri filed before the High Court, Certificates issued in 2019 by the Bharat Sanchar Nigam Limited; the Department of Power, Government of Arunachal Pradesh; and the Legislative Assembly Secretariat, Arunachal Pradesh, confirming that there were no outstanding dues. In effect and in fact, there were no dues payable by Karikho Kri in relation to the Government accommodation occupied by him earlier.

19. In any event, it appears that the Returning Officer concerned, being satisfied with the explanation and documents submitted by Karikho Kri, accepted his nomination. No doubt, this preliminary exercise on the part of the Returning Officer did not preclude the Election Tribunal, viz., the High Court, from

examining as to whether the acceptance of Karikho Kri's nomination was improper and, in consequence, whether it would have an impact on his election under the relevant provisions of the Act of 1951. Section 100(1) thereof enumerates the grounds on which an election can be invalidated. To the extent relevant, it reads as under:

'100. Grounds for declaring election to be void:-

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) .....; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) .....; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.'

20. The High Court held against Karikho Kri not only under Sections 100(1)(d)(i) and (iv) but also under Section 100(1)(b) of the Act of 1951, as it was of the opinion that his failure to disclose the three vehicles, that still stood registered in the names of his dependent family members, amounted to a corrupt practice.

Insofar as Section 100(1)(b) of the Act of 1951 is concerned, the requirement thereof for the purpose of invalidating the election of the returned candidate is that the High Court must form an opinion that a 'corrupt practice' was committed by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent.

Section 123 of the Act of 1951 inclusively defines 'corrupt practices', by stating that what have been enumerated thereunder shall be deemed to be corrupt practices for the purposes of the Act of 1951. Insofar as the present case is concerned, Section 123(2) of the Act of 1951 is of relevance. This provision reads as under:

'123. Corrupt practices.-

The following shall be deemed to be corrupt practices for the purposes of this Act:-

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:'

21. The High Court opined that non-disclosure of the Kinetic Zing Scooty and the Maruti Omni Van that had belonged to Bagilu Kri and the TVS Star City Motorcycle that had belonged to Goshinso Kri, the dependent wife and son of Krikho Kri, was sufficient in itself to constitute 'undue influence', thereby attracting Section 123(2) of the Act of 1951. However, what is of significance is that the High Court did not doubt that these vehicles had been sold or gifted long before the submission of the nomination by Karikho Kri in 2019.

This is clear from the observations in Para 13 (xiii) of the judgment, wherein the High Court observed: 'at the time of presentation of nomination paper of respondent No. 1, and on the date of scrutiny of the nomination paper on 26.03.2019, notwithstanding the aforesaid vehicles were gifted/sold to other persons by Smti. Bagilu Kri, wife of respondent No. 1 as well as Shri. Goshinso Kri, son of respondent No. 1; it has now become imperative to decide as to who was the owner of the aforesaid vehicles at the time presentation of the nomination paper by the respondent No. 1, and on the date of scrutiny of the nomination paper on 26.03.2019'. This finding of the High Court has attained finality as Nuney Tayang did not choose to challenge the same before this Court.

22. Though it appears that the three vehicles in question still remained registered in the names of the wife and son of Karikho Kri, the question that arises is as to whether non-disclosure of such vehicles justified the attributing of a corrupt practice to Karikho Kri and the negating of his election on that ground. The High Court assumed that the non-disclosure of a vehicle registered in the name of a candidate or his dependent family members was sufficient in itself to constitute undue influence. In this context, the High Court placed reliance on the provisions

of the Act of 1988 and the decision of this Court in Naveen Kumar (supra). Section 2(30) of the Act of 1988 defines the owner of a vehicle as under:

' "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;'

In Naveen Kumar (supra), a 3-Judge Bench of this Court was dealing with the issue as to who would be the owner of an offending vehicle in the context of the Act of 1988 when a claim arises from an accident involving the said vehicle. 'Owner', as defined under Section 2(30) of the Act of 1988, was considered and it was opined that the person in whose name a vehicle stands registered would be the owner of the vehicle for the purposes of the Act. Reference was made to Section 50 of the Act of 1988, which deals with transfer of ownership, and to various earlier decisions in that regard and it was observed thus:

'13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression "owner" in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the "owner". In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of liability.

Parliament has consciously introduced the definition of the expression "owner" in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the Registering Authority.

To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the "owner" of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured.'

(emphasis is ours)

23. Notably, the High Court overlooked the fact that the above judgment was rendered in the context of and for the purposes of the Act of 1988 and not for

general application. The judgment itself made it clear that despite the sale/transfer of the vehicle in question, a claimant or claimants should not be made to run from pillar to post to find out who was the owner of the vehicle as on the date of the accident, if the sale/transfer was not carried out in their books by the authorities concerned by registering the name of the subsequent owner, be it for whatever reason.

Further, vehicles being goods, their sale would be covered by the provisions of the Sale of Goods Act, 1930 (for brevity, 'the Act of 1930'), and the same make it clear that conveyance of ownership of the vehicle would stand concluded upon execution of the document of sale/transfer and registration of the new owner by the authorities concerned would be a post-sale event. Section 2(7) of the Act of 1930 defines goods, inter alia, to mean every kind of movable property, other than actionable claims and money. Chapter III of the Act of 1930 is titled 'Effects of the Contract' and 'Transfer of property as between seller and buyer'.

Section 18 therein states that where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Section 19, however, states that the property passes when intended to pass and elaborates that, where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

24. In Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala vs. K.T.C. Automobiles[4], this Court observed that registration of a motor vehicle is a post-sale event but the question would arise as to when the property in the motor vehicle actually passed to the buyer. That was a case involving the first sale of a motor vehicle by the dealer to the first owner and is, therefore, distinguishable from the subsequent sale of a vehicle, as in the case on hand. It was observed therein that registration of a motor vehicle is a post-sale event but only after obtaining valid registration under the Act of 1988, a purchaser would get entitlement to use the vehicle in a public place.

It was observed that the purchaser, as an owner under the Act of 1988, was obliged to obtain the certificate of registration, which alone would entitle him to enjoy the possession of the vehicle by using it in public places after meeting the other statutory obligations of insurance, etc. This Court rejected the contention that motor vehicles would be 'unascertained goods' till their engine number or chassis number is entered in the Certificate of Registration, as the sale invoice itself would disclose such particulars, so that the owner of the vehicle may apply for registration of that specific vehicle in his name.

However, owing to the statutory provisions governing motor vehicles, this Court held that an intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirements of the Act of 1988 and the rules framed thereunder and such possession can be given only at the registration office immediately preceding the registration.

Owing to the aforestated legal position, this Court held that, prior to getting possession of the motor vehicle, the intending purchaser/owner would not have a claim over any 'ascertained motor vehicle'. The observations in this judgment would, however, have to be understood in the context of the first sale of a vehicle by the dealer, i.e., where such vehicle has no registration whatsoever as opposed to the subsequent sale of a registered vehicle.

25. Presently, insofar as the Scooty bearing No. AR-11/4474 is concerned, it stood in the name of Bagilu Kri but Md. Nizammudin (DW5) deposed that he had taken this vehicle as scrap and sold it as such to Promod Prasad (DW6). In turn, Promod Prasad (DW6) confirmed that he bought the Scooty as scrap from Md. Nizammudin (DW5). During their cross-examination, nothing was elicited from these witnesses to doubt their claims. However, letter dated 20.09.2019 addressed by the District Transport Officer, Lohit District, Tezu, to Bagilu Kri, manifests that the registration of the Scooty in her name stood cancelled only at that time.

The taxes in respect of this Scooty were paid till 26.03.2022, as borne out by Treasury Challan No. 4806 dated 30.08.2019. Though much was argued about this payment of taxes and the fact that the receipt was issued in the name of Bagilu Kri, we are not inclined to give any weightage to it. The payment was made after the filing of the election petition and any person could have done so. The receipt therefor would automatically be generated in the name of the registered owner.

We may also note that in relation to the other two vehicles in question, there were actual documents of conveyance and also proof of the requisite forms prescribed under the Act of 1988 being duly filled in and issued by Bagilu Kri and Goshinso Kri. Form No. 29, relating to notice of ownership transfer of a vehicle by the registered owner, viz., the transferor, was issued in respect of each of these vehicles but despite the same, the transferees did not do the needful to get their own names registered as the owners.

26. In Surendra Kumar Bhilawe vs. New India Assurance Co. Ltd.[5], the issue before this Court was as to whether an insurance company would be liable to cover the claim arising out of an accident on the ground that the vehicle was sold

to another long before the date of the accident but the insured continued to be the registered owner of the vehicle.

Referring to the judgment of this Court in Naveen Kumar (supra), it was observed that the policy of insurance was a comprehensive policy which covered thirdparty risks as well and, therefore, the insurer could not repudiate one part of the policy with regard to reimbursing the owner for losses when it could not evade liability to third parties under the same contract of insurance.

In view of the definition of 'owner' in Section 2(30) of the Act of 1988, this Court observed that the registered owner of the truck, on the date of the accident, was the insured and, therefore, the insurer could not avoid its liability for the losses suffered by the owner, on the ground of transfer of ownership. This Court held that it is difficult to accept that a person who transferred the ownership of a goods vehicle, on receipt of consideration, would not report the transfer or apply for transfer of registration and thereby continue to incur the risks and liabilities of ownership of the said vehicle under the provisions of law, including the Act of 1988.

This Court further observed that it is equally incredible that an owner of a vehicle who has paid consideration to acquire it would not insist on transfer of the permit and thereby expose himself to the penal consequences of operating a goods vehicle without a valid permit. This Court, accordingly, held that the registered owner continues to remain the owner and when the vehicle is insured in the name of such registered owner, the insurer would remain liable notwithstanding the transfer.

This judgment is clearly inapplicable to the case on hand as it dealt with the liability of an insurer in the event of an accident involving the vehicle. Further, as already noted, the vehicles in question were transferred and the requisite forms, insofar as the transferor was concerned, were filled up and issued but it was the transferees who failed to get the vehicles transferred in their own names.

27. Mere failure to get registered the name of the new owner of an already registered vehicle does not mean that the sale/gift transaction would stand invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be treated as still being in the possession and control of the former owner.

Once it is accepted that the three vehicles in question were either gifted or sold before the filing of the nomination by Karikho Kri, the said vehicles cannot be considered to be still owned by Karikho Kri's wife and son for purposes other than those covered by the Act of 1988. However, the High Court did not take

note of this distinguishing factor in the case on hand. In Kisan Shankar Kathore vs. Arun Dattatray Sawant and others[6], the vehicle, details of which had been suppressed by the returned candidate, was actually owned and possessed by his wife and such suppression was, accordingly, held against him.

Presently, the High Court itself concluded that the three vehicles in question were transferred, be it by way of sale or gift. The vehicles were, therefore, not owned and possessed in praesenti by the dependent family members of Karikho Kri at the time of the filing of his nomination. This point of distinction was completely lost sight of by the High Court but, in our considered opinion, it made all the difference.

28. Therefore, non-disclosure of the three vehicles in question could not be held against Karikho Kri in the light of the aforestated analysis. Such non-disclosure cannot, by any stretch of imagination, be treated as an attempt on his part to unduly influence the voters, thereby inviting the wrath of Section 123(2) of the Act of 1951.

We may note that Karikho Kri had declared the value of the movable assets of his dependent family members and himself as ₹8,41,87,815/-. The value of the three vehicles in question, by comparison, would be a mere miniscule of this figure. In any event, suppression of the value of these three vehicles would have no impact on the declaration of wealth by Karikho Kri and such non-disclosure could not be said to amount to 'undue influence'.

29. Coming to the next ground, if the acceptance of a nomination is found to be improper and it materially affects the result of the election in so far as the returned candidate is concerned, Section 100(1)(d)(i) of the Act of 1951 would come into play. It would be appropriate and apposite at this stage for us to take note of precedential law on this point.

In Vashist Narain Sharma vs. Dev Chandra and others[7], a 3-Judge Bench of this Court noted that the burden of proving that the improper acceptance of a nomination has materially affected the result of an election would arise in one of three ways: (i) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes, (ii) where the person referred to above secured more votes, or (iii) where the person whose nomination has been improperly accepted is the returned candidate himself.

It was held that in the first case the result of the election would not be materially affected because if all the wasted votes were added to the votes of the candidate securing the next highest votes, it would make no difference to the result and the

returned candidate would retain the seat. However, in the other two cases, the result may be materially affected and insofar as the third case is concerned, it may be readily conceded that such would be the conclusion.

30. In Hari Vishnu Kamath vs. Syed Ahmad Ishaque and others[8], a Constitution Bench of 7 Judges considered the scope of enquiry under Section 100(1)(d) of the Act of 1951. It was observed that the said provision required, before an order setting aside an election could be made, that two conditions be satisfied.

It must, firstly, be shown that there has been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of the Constitution or the Act of 1951, or any rules or orders made thereunder, relating to the election or any mistake in the use of the prescribed form and it must further be shown that, as a consequence thereof, the result of the election has been materially affected. The Bench observed that the two conditions are cumulative and must both be established. It was further observed that the burden of establishing them is on the person who seeks to have the election set aside. Reference was also made to Vashist Narain (supra).

31. In Kamta Prasad Upadhyaya vs. Sarjoo Prasad Tiwari and others[9], another 3-Judge Bench of this Court affirmed the legal position settled by Vashist Narain (supra). Again, in Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others[10], a 3-Judge Bench of this Court affirmed the view taken in Vashist Narain (supra) that, where a person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of the election was 'materially affected' without their being any necessity to plead and prove the same.

32. In Madiraju Venkata Ramana Raju vs. Peddireddigari Ramachandra Reddy and others[11], another 3-Judge Bench of this Court affirmed that if there are more than two candidates and if the nomination of one of the defeated candidates has been improperly accepted, a question might arise as to whether the result of the election of the returned candidate has been materially affected by such improper reception but that would not be so in the case of challenge to the election of the returned candidate himself on the ground of improper acceptance of his nomination.

33. Ergo, if acceptance of the nomination of the returned candidate is shown to be improper, it would automatically mean that the same materially affected the result of the election and nothing more needs to be pleaded or proved. However, whether acceptance of the nomination of Karikho Kri was actually improper is the main issue that requires to be addressed by us.

34. We may also take note of curial wisdom on the issue as to what would be the defects that would taint a nomination to the extent of rendering its acceptance improper. In Resurgence India vs. Election Commission of India and another[12], a 3-Judge Bench of this Court observed that if the Election Commission accepts nomination papers in spite of blank particulars therein, it would directly violate the fundamental right of the citizen to know the criminal antecedents, assets, liabilities and educational qualifications of the candidate.

It was observed that accepting an affidavit with such blanks would rescind the verdict in Union of India vs. Association for Democratic Reforms and another[13]. In effect, the Bench held that filing of an affidavit with blank particulars would render the affidavit nugatory. In Kisan Shankar Kathore (supra), the issue before this Court was whether non-disclosure of certain government dues in the nomination would amount to a material lapse impacting the election of the returned candidate.

On facts, this Court found that the non-disclosure of electricity and municipal dues was not a serious lapse as there was a dispute raised in the context thereof. Having said so, this Court clarified that it would depend upon the facts and circumstances of each case as to whether such non-disclosure would amount to a material lapse or not.

This Court, however, found that there were, in fact, material lapses by the returned candidate, inasmuch as he had failed to disclose the bungalow standing in the name of his wife and also a vehicle owned by her. Further, he had also failed to disclose his interest/share in a partnership firm which amounted to a very serious and major lapse. The observations of this Court, in the context of improper acceptance of his nomination, are of relevance:

'43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this.

At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later

stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged.

The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material i`nformation, one can state that question of rejection in such a case was only deferred to a later date.

When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.'

35. In Lok Prahari through its General Secretary S.N. Shukla vs. Union of India and others[14], this Court observed that non-disclosure of assets and sources of income of candidates and their associates would constitute a corrupt practice falling under the heading 'undue influence', as defined under Section 123 (2) of the Act of 1951.

In S. Rukmini Madegowda vs. State Election Commission and others[15], a 3-Judge Bench of this Court observed that a false declaration with regard to the assets of a candidate, his/her spouse or dependents, would constitute a corrupt practice irrespective of its impact on the election of the candidate as it may be presumed that a false declaration would impact the election.

36. In Mairembam Prithviraj alias Prithviraj Singh vs. Pukhrem Sharatchandra Singh[16], this Court noted that there is a difference between improper acceptance of the nomination of a returned candidate as opposed to improper acceptance of the nomination of any other candidate.

It was observed that a mere finding that there has been an improper acceptance of a nomination would not be sufficient for a declaration that the election is void under Section 100(1)(d)(i) and there has to be further pleading and proof that the result of the election of the returned candidate was materially affected, but there would be no necessity of any such proof in the event of the nomination of the

returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray.

37. In Association for Democratic Reforms and another vs. Union of India and others[17], a Constitution Bench affirmed that, in terms of the earlier judgments in Association for Democratic Reforms and another (supra) and People's Union for Civil Liberties (PUCL) and another vs. Union of India and another[18], the right of voters to information, which is traceable to Article 19(1)(a) of the Constitution, is built upon the jurisprudence that information which furthers democratic participation must be provided to citizens and voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation. It was further observed that voters have a right to the disclosure of information which is 'essential' for choosing the candidate for whom a vote should be cast.

38. In his Affidavit in Form No. 26, Karikho Kri was required to state as to whether he had been in occupation of accommodation provided by the Government at any time during the last 10 years before the date of notification of the current election and, if so, he was to furnish a declaration to the effect that there were no dues payable in respect of the said accommodation in relation to rent, electricity charges, water charges and telephone charges. Karikho Kri, however, failed to disclose the fact that he had been in occupation of government accommodation during his tenure as an MLA between 2009 and 2014.

He stated 'Not applicable'. However, with regard to the declaration as to there being no dues, he mentioned the date '22.03.2019' and stated that the dues in respect of rent, electricity charges, water charges and telephone charges were 'Nil'. After Nuney Tayang raised an objection to his candidature on this ground, Karikho Kri filed the requisite 'No Due Certificates' of 2014.

39. However, the High Court was of the opinion that the failure of Karikho Kri to disclose the factum of his occupying government accommodation from 2009 to 2014 and his failure to submit the 'No Dues Certificate' in relation to such government accommodation was sufficient, in itself, to infer that his nomination was defective and, in consequence, the acceptance thereof by the Returning Officer, Tezu, was improper.

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure

of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election.

The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in Kisan Shankar Kathore (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election.

This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment.

Earlier, in Sambhu Prasad Sharma vs. Charandas Mahant[19], this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

42. In the case on hand, it is not in dispute that there were no actual outstanding dues payable by Karikho Kri in relation to the government accommodation occupied by him earlier. His failure in disclosing the fact that he had occupied such accommodation and in filing the 'No Dues Certificate' in that regard, with his nomination form, cannot be said to be a defect of any real import. More so, as he did submit the relevant documents of 2014 after Nuney Tayang raised an objection before the Returning Officer.

His explanation that he submitted such Certificates in the year 2014 when he stood for re-election as an MLA is logical and worthy of acceptance. The most important aspect to be noted is that there were no actual dues and the failure of

Karikho Kri to disclose that he had been in occupation of government accommodation during the years 2009 to 2014 cannot be treated as a defect that is of substantial character so as to taint his nomination and render its acceptance improper.

43. The High Court opined that the nomination of Karikho Kri was improperly accepted by the Returning Officer as he had failed to disclose the three vehicles in question, which continued to be registered in the name of his dependent family members. Non-submission of the 'No Dues Certificate' in respect of the government accommodation occupied by him during his earlier tenure as an MLA was also held to weigh against him.

Lastly, the High Court held that non-disclosure of the taxes due and payable by Karikho Kri and his wife was a defect of substantial character and the same tainted his nomination. In consequence, the High Court concluded that the acceptance of Karikho Kri's nomination by the Returning Officer was improper and as he was the returned candidate, the question of pleading and proving that such improper acceptance of his nomination materially affected the result of the election did not arise.

44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office.

In that respect, non-disclosure of each and every asset owned by a candidate would not amount to a defect, much less, a defect of a substantial character. It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns, such as, clothing, shoes, crockery, stationery and furniture, etc., unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed.

Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the non-disclosure of a particular movable asset by a candidate would amount to a defect of a substantial character. For example, a candidate and his family who own several high-priced watches, which would aggregate to a huge figure in terms of monetary value, would obviously have to disclose the same as they constitute an asset of high value and also reflect upon his lavish lifestyle.

Suppression of the same would constitute 'undue influence' upon the voter as that relevant information about the candidate is being kept away from the voter. However, if a candidate and his family members each own a simple watch, which is not highly priced, suppression of the value of such watches may not amount to a defect at all. Each case would, therefore, have to be judged on its own facts.

45. So far as the ground under Section 100(1)(d)(iv) of the Act of 1951 is concerned, the provision requires that the established non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate.

Significantly, the High Court linked all the non-disclosures attributed to Karikho Kri to Section 100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d)(iv) thereof. Surprisingly, there is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for the purposes of Section 100(1)(d)(iv), and as to how the same materially affected the result of the election.

46. In Mangani Lal Mandal vs. Bishnu Deo Bhandari[20], this Court held that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder and his election is sought to be declared void on that ground, it is essential for the election petitioner to aver, by pleading material facts, that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance.

It was further held that it is only on the basis of such pleading and proof that the Court would be in a position to form an opinion and record a finding that such breach or non-compliance has materially affected the result of the election before election of the returned candidate could be declared void.

It was further observed that mere non-compliance or breach of the Constitution or the statutory provisions, as stated above, would not result in invalidating the election of the returned candidate under Section 100 (1)(d)(iv) as the sine qua non for declaring the election of a returned candidate to be void on that ground under clause (iv) of Section 100 (1)(d) is further proof of the fact that such breach or nonobservance has resulted in materially affecting the election of the returned candidate.

For the election petitioner to succeed on such ground, viz., Section 100 (1)(d)(iv), he has not only to plead and prove the breach but also show that the result of the

election, insofar as it concerned the returned candidate, has been materially affected thereby.

47. In **L.R. Shivaramagowda and others Vs. T.M. Chandrashekar (Dead) by LRs and others, (1999) 1 SCC 666,** a 3-Judge Bench of this Court pointed out that in order to declare an election void under Section 100(1)(d) (iv) of the Act of 1951, it is absolutely necessary for the election petitioner to plead that the result of the election, insofar as it concerned the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Constitution or the Act of 1951 or the rules or orders made thereunder and the failure to plead such material facts would be fatal to the election petition.

48. However, perusal of the election petition filed by Nuney Tayang reflects that the only statement made by him in this regard is in Paragraph 21 and it reads as follows:

'Hence, his nomination papers suffer from substantial and material defects. As such, the result of the election, insofar as the respondent No.1 is concerned, is materially affected by the improper acceptance of his nomination as well as by the non-compliance with the provisions of the Representation of the People Act, 1951 and the rules and orders made thereunder, including Section 33(1) of the Representation of the People Act, 1951, Rule 4A of the Conduct of Election Rules, 1961 and the orders made thereunder.'

Again, in his 'Ground No. (ii)', Nuney Tayang stated as under:

'As such, the nomination papers of the respondent Nos. 1 and 2 were improperly accepted by the Returning Officer and the result of the election in question, insofar as it concerns the respondent No.1 the return candidate, as well as the respondent No.2, has been materially affected by such improper acceptance of their nominations.'

Though there are some general references to non-compliance with particular provisions of the Act of 1951 and the rules made thereunder, we do not find adequate pleadings or proof to substantiate and satisfy the requirements of Section 100(1)(d)(iv) of the Act of 1951. Therefore, it is clear that Nuney Tayang tied up the improper acceptance of Karikho Kri's nomination, relatable to Section 100(1)(d)(i) of the Act of 1951, with the non-compliance relatable to Section 100(1)(d)(iv) thereof and he did not sufficiently plead or prove a specific breach or how it materially affected the result of the election, in so far as it concerned the returned candidate, Karikho Kri.

It was not open to Nuney Tayang to link up separate issues and fail to plead in detail and adduce sufficient evidence in relation to the non-compliance that

would attract Section 100(1)(d)(iv) of the Act of 1951. The finding of the High Court in that regard is equally bereft of rhyme and reason and cannot be sustained.

49. As regards the failure on the part of Karikho Kri to disclose the dues of municipal/property taxes payable by him and his wife, the same cannot be held to be a non-disclosure at all, inasmuch as he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part. In any event, as Mr. Arunabh Chowdhury, learned senior counsel, fairly stated that he would not be pressing this ground, we need not labour further upon this point.

50. On the above analysis, we hold that the High Court was in error in concluding that sufficient grounds were made out under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 to invalidate the election of Karikho Kri and, further, in holding that non-disclosure of the three vehicles, that still remained registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act of 1951. In consequence, we find no necessity to independently deal with Civil Appeal No. 4716 of 2023 filed by Nuney Tayang, in the context of denial of relief to him by the High Court, or the issues raised by Dr. Mohesh Chai in the replies filed by him.

51. In the result, Civil Appeal No. 4615 of 2023 filed by Karikho Kri is allowed, setting aside the Judgment and Order dated 17.07.2023 passed by the Itanagar Bench of the High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh in Election Petition No.01(AP) of 2019.

In consequence, the election of Karikho Kri as the returned candidate from 44 Tezu (ST) Assembly Constituency of the State of Arunachal Pradesh is upheld. As a corollary, Civil Appeal No. 4716 of 2023, filed by Nuney Tayang, shall stand dismissed. Pending applications in both the appeals, if any, shall also stand disposed of.

This decision shall be intimated to the Election Commission of India and to the Chairman of the Legislative Assembly of the State of Arunachal Pradesh forthwith, as required by Section 116C(2) of the Act of 1951. An authenticated copy of this judgment shall be sent to the Election Commission of India forthwith.

Parties shall bear their own costs.

.....J. (Aniruddha Bose)

.....J. (Sanjay Kumar)

New Delhi.

April 9, 2024;

1 (2018) 3 SCC 1

2 (2002) 1 SCC 160

3 (2003) 7 SCC 709

4 (2016) 4 SCC 82

5 (2020) 18 SCC 224

6 (2014) 14 SCC 162

7 (1954) 2 SCC 32

8 (1954) 2 SCC 881

9 (1969) 3 SCC 622

10 (2020) 7 SCC 1

11 (2018) 14 SCC 1

12 (2014) 14 SCC 189

13 (2002) 5 SCC 294

14 (2018) 4 SCC 699

15 (2022) SCC OnLine SC 1218

16 (2017) 2 SCC 487

17 W.P. (C) No. 880 of 2017, decided on 15.02.2024

18 (2003) 4 SCC 399

19 (2012) 11 SCC 390

20 (2012) 3 SCC 314

IN THE SUPREME COURT OF INDIA

Kizhakke Vattakandiyil Madhavan (D) through LRS.
Vs.
Thiyyurkunnath Meethal Janaki and Ors.

Civil Appeal No. 8616 of 2017

HEADNOTE – If someone tries to transfer property rights to another person through a legal document but doesn't actually own those rights, the new owner or their successors won't have the legal right to claim those rights from that document.

JUDGMENT

Aniruddha Bose, J.

1. The present appeal arises out of a suit for partition instituted by one Thiyyer Kunnath Meethal Chandu (Chandu) claiming 8/20 shares in the suit property described in the schedule to the plaint as "Kizhake vattakkandy enha Pattayathil perulla Asarikandy pasramba, 6 feetinu ki-pa 37, the-va 35". The appellants before us were the defendants in the said suit, and are successors-ininterest of one Sankaran.

The latter and Chandu are uterine brothers, both being the sons of one Chiruthey, who was married twice. Her first husband was Madhavan, within whose wedlock Sankaran was born. Madhavan passed away sometime before the year 1910, though the exact year of death has not been specified in the pleadings nor it has appeared in evidence. After Madhavan's death, Chiruthey contracted second marriage with Neelakandan, who was the father of Chandu.

2. The suit property is situated in survey no. 56/8 in the village Eravattur in the district of Kozhikode, State of Kerala. The parties belong to Malayakamala Sect. The succession law guiding their inheritance applicable before Hindu Succession Act, 1956 that became operational was the modified form of Mitakshara law applicable to the Makkathayees. But this factor is not of much relevance for adjudication of the present appeal. Though the suit was instituted in the year 1985, to trace the source of claim of the plaintiff, one has to trace the title of the property.

In the last year of the 19th Century, (i.e. 1900) as it has transpired from evidence adduced in course of the trial, the owners of the property appear to be Madhavan and he, along with his mother Nangeli had executed a deed of mortgage (Ext. B1 in the suit) on 07.05.1900 in favour of one Nadumannil Anandhan Kaimal, son of

Cheriya Amma Thamburatti in relation to the subject-property. As we find from the judgment of the High Court which is assailed in this appeal, the mortgage deed itself recorded that possession of the property was not given to the mortgagee.

The plaintiff claims his share to the suit property from his mother, described in the plaint as owner of the property, Chiruthey. We must point out here that the plaintiff also had passed away during the pendency of first appeal and before us are his successors-in-interest who are representing his claim of share as the respondents. Those impleaded as defendants in the suit which was registered as OS No. 157/1985 in the Court of Munsiff Magistrate, Perambra were successors in interests of said Sankaran.

3. Apart from Exhibit B-1, three other deeds were considered by the respective fora before this appeal reached us. There is a deed marked Exhibit A-20, which is described as Kannan Kuzhikanam deed, executed on 14th July 1910 by Chiruthey, Nangeli (mother of Madhavan) and Sankaran (Chiruthey's son) in favour of Cherupula Othayoth Cheriya Amma and her son, Achuthan. On behalf of Sankaran, who was a minor at that point of time, Chiruthey executed the deed. This was in the nature of a deed of lease. Achuthan was also a minor at that point of time, and the said deed records Cheriya Amma to whom the property was being leased, for herself and her minor son.

4. On the same day i.e. 14th July 1910, a Verumpattam Kuzhikkanam deed marked as Exhibit A-1 was executed by Cherupoola Cheriya Amma for herself and for and on behalf of her minor son Achuthan in respect of the same property in favour of Chiruthey and another individual named Kuttiperavan. These appear to be back-to-back transactions. Both these deeds stipulated the term thereof to be twelve years and do not contain any renewal clause.

5. In the year 1925, by another deed executed on 22nd July 1925, described as "assignment deed" which was marked Exhibit A-2, Kuttiperavan surrendered his rights in favour of Chiruthey and Sankaran. In this deed, it has been inter-alia, recited that the executor thereof, being Kuttiperavan and Chiruthey had purchased verumpattam right over the subject-property from Cheriya Amma by fixing a rent of Rs.5/- in addition to revenue paid for the land. This deed further reads:-

"I hereby assigning my right over this property to you for a consideration Rs. 50 which was fixed in the presence of mediators and my share in the decree amount obtained by Cherupula Othayoth Cheriyamma from Payyoli District Munsiff Court in OS 685/ 1921 for arrears of rent together with interest and cost. My share in the said amount was given to you for payment. So I hereby assigned all

my right over this property and hereby hand overing the possession of the property and also hand overing all documents with regard to the property. Hereinafter I have no right over this property."

6. Sankaran passed away in the year 1956 whereas Chiruthey died in the year 1966, as it appears from evidence led before the Trial Court. The foundation of the claim of the partition of the subject-property has been explained in the Trial Court's judgment in the following manner:-

"The plaintiffs claim over the plaint schedule property is as follows:- The property originally belonged to Chirutheyi and one Kuttiperavan as per a Verumpattam Deed No.2323/1910 from one Cheriyamma. In 1925 Kuttiperavan assigned his one half share to Chiurtheyi and her son Sankaran. Thus Chirutheyi acquired 3/4 share and Sankaran acquired 1/4 share in the property. Sankaran died in 1956 and his 1 /4 share was inherited by the defendants and the mother Chirutheyi, thus Chirutheyi acquiring 16/12 shares and the defendants acquiring 4/20 shares. Chirutheyi died in 1926 and half of her 16/20 shares would go to the plaintiff and the only remaining son, and the remaining 8/20 shares would go to the defendants, being the heirs of the other son Sankaran. Thus the shares are fixed as follows: The plaintiff 8/20. The defendants 3/20 shares each. The plaint alleges that the property never belonged to Madhavan ad alleged by the defendants in the notice."

7. The Trial Court sustained the claim for partition and decreed in favour of the plaintiff therein whose interest is now represented before us by the respondents. The First Appellate Court by a judgment delivered on 24th June 1996, set aside the decree and dismissed the suit. The main issue before the Court, which is before us as well, is as to whether Chiruthey had any title over the subject-property which the plaintiff claimed through the series of transactions, particulars of which we have narrated in the preceding paragraphs.

The plaintiff claimed title over the property through Chiruthey who was his mother, and he was born from her second husband. The foundation of Chiruthey's title was claimed to be the registered lease deed bearing No. 2329/10 (Exhibit A-1). Kuttiperavan, who was the second lessee in "Exhibit A-1" had later released his right in the subject-property in favour of Chiruthey and Sankaran, the latter being the son of Chiruthey through her first marriage.

That deed was executed on 22nd July 1925. The First Appellate Court relying on the mortgage deed dated 07th May 1900 found that it was Madhavan and his mother Nangeli who were holders of jenm right and that they were in possession of the subject-property even after execution of the mortgage deed.

8. The First Appellate Court disbelieved that the deed of 22nd July 1925 was in discharge of liability under the mortgage deed. It was also found by the First Appellate Court that Chiruthey had no authority to create a lease and such a transaction by which she sought to lease out the subject-property was not permissible in law.

9. As regards Chiruthey's right or title, it was held that she would not derive title to her deceased husband's property when she got married again to Neelakandan. The First Appellate Court has referred to Section 2 of the Hindu Widow's Remarriage Act, 1856 ("1856 Act") which prevailed at the material point of time, when she contracted her second marriage. Section 2 of the 1856 Act reads:-

"2. Rights of widow in deceased husband's property to cease on remarriage:- All right and interest which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died: and the next heirs of her deceased husband , or other persons entitled to the property on her death, shall thereupon succeed to the same."

10. The First Appellate Court did not attribute much importance to Exhibit A-20 which is the first of the two deeds, which was executed in the year 1910 while referring to Section 2 of the 1856 Act. The First Appellate Court has rightly come to a finding that Chiruthey had only a reversionary right over the suit property held by her first husband Madhavan and the plaintiff (Chandu) could not claim partition right on the strength of his being a uterine brother of Sankaran born to Chiruthey after she contracted her second marriage.

She lost all her rights and interests in her deceased husband's property on contracting second marriage with Neelakandan. There is an authority on this position of law. Velamuri Venkata Sivaprasad (Dead) by lrs. -vs- Kothuri Venkateswarlu (dead) by lrs. And Others [(2000) 2 SCC 139], in which it has been held:-

"17. Section 2 of the Act of 1856, therefore, has taken away the right of the widow in the event of remarriage and the statute is very specific to the effect that the widow on remarriage would be deemed to be otherwise dead. The words "as if she had then died" (emphasis supplied) are rather significant. The legislature intended therefore that in the event of a remarriage, one loses the rights of even the limited interest in such property and after remarriage the next heirs of her

deceased husband shall thereupon succeed to the same. It is thus a statutory recognition of a well-reasoned pre-existing Shastric law."

11. The High Court in the second appeal formulated five questions of law as substantial ones, which are reproduced below:-

"a) Was the court below justified in holding that Exts.A1 and A20 transactions are not genuine in the absence of any pleadings and evidence to arrive at such a finding?

b) Was the interpretation placed by the court below on Exts.A1, A2, A20, and B1 correct and proper?

c) Was the court below justified in relying on Exts.A1 and A20, which are not the original documents on the ground that Section 90 of the Indian Evidence Act would apply?

d) Are the defendants entitled to question the validity of the transactions covered by Exts.A1 and A20, without the same being challenged in a properly constituted suit?

e) Was the court below justified in upholding the plea of ouster and adverse possession without any evidence on the side of the defendants to prove the same?"

12. Thus, when Chiruthey contracted her second marriage by operation of Section 2 of the 1856 Act, she had lost title of her share over the property of Madhavan. The High Court in the judgment under appeal, however, primarily relied on the deeds executed on 14th July 1910 to sustain the claim of Chandu (since deceased), represented by his successors-in-interest.

13. The High Court proceeded on the basis of three documents, being Exhibit B-1 dated 7th May 1900 (mortgage deed), Exhibit A- 20 dated 14th July 1910 which is the deed by which Chiruthey, Nangeli and Sankaran (through Chiruthey as he was minor at that point of time) created lease-right in favour of Cherupula Othayoth Cheriya Amma and her son Achuthan and on the same date Exhibit A-1, a Verumpattam Kuzhikkanam deed was also executed in favour of Chiruthey and Kuttiperavan.

Through the fourth deed, marked as Exhibit A-2, Kuttiperavan surrendered his rights in the property to Chiruthey and Sankaran. Questions were raised about admissibility of these documents before the High Court but as marking of these documents were not objected before the Trial Court, the High Court held that at

the stage of second appeal, such objections could not be raised. We accept the High Court's view on this point.

14. The High Court also rejected the defendant's contention that both the deeds dated 14th July 1910 were strange transactions as the aforesaid exhibits were not challenged by them at any point of time in the course of trial. We also do not find any flaw in the High Court's reasoning on this point also.

15. Dealing with the appellant's case that Chiruthey was divested of any right to her late first husband's property by virtue of the 1856 Act, the High Court observed:-

"10. Learned counsel for the respondent submitted that on Madhavan's death, which was evidently before 1910, his rights devolved on Sankaran. Chirutheyi would not get any right on Madhavan's death as per the personal law applicable to the parties. The right of a widow to hold the property was recognised by the Hindu Women's Right to Property Act, 1937. It is submitted that before 1937, Chirutheyi had re-married Neelakantan and, therefore, her right, if any, had lost by Section 2 of the Hindu Widows Remarriage Act, 1856.

The counsel relied on the decisions in Sivaprasad V. Venkateswaralu : 2000 (1) KLT SN 11(SC) and Dharmarajan V. Narayanan: 2000 (2) KLT 895. I do not think that the contention put forward by the learned counsel for the respondents deserves acceptance. This is not a case where the rights of parties are to be ascertained as if no document was executed and as if the property remained undivided. Exhibits A1 and A20 came into existence in 1910, by which the predecessor in interest of the defendants, Sankaran, and his mother, who admittedly were having rights, lost possessory title.

If Ext.A20 is a valid and binding document, the question as to the rights of a widow and the extinguishment of the rights of the widow on re-marriage do not arise for consideration. As stated earlier, the defendants are not entitled to challenge the validity of Ext.A1 and A20 in defence to the suit for partition. The question whether the plaintiff has right to get a share is to be determined with reference to the documents in existence, namely, Exts.A1, A2 and A20 and not with reference to what would have been the state of affairs had no document been executed."

16. The High Court also rejected the contention made on behalf of the appellants that they had become the owners of the suit property on the basis of adverse possession but that aspect of the matter has not been argued before us and we do not want to disturb the finding of the High Court on that issue.

17. Turning back to the three post 1900 deeds, we are not in agreement with the reasoning of the High Court in full. On remarriage of Chiruthey, after the death of Madhavan, her title or interest over the suit property stood lapsed in terms of Section 2 of the 1856 Act. Thus, Chiruthey's right to deal with property derived from Madhavan stood extinguished so far as the deed of 14th July 1910 is concerned (Exhibit A-20). But it was not Chiruthey alone who had executed that instrument, it was Nangeli and also Sankaran, (son of Chiruthey) who had executed it and remained valid legal heirs of Madhavan (since deceased). There is no conflict at least on that point.

We have no material before us that Madhavan had any other legal heir. In such a situation, even if we discount Chiruthey's title over the property forming subject of lease, it stood conveyed by its actual owners i.e., Nangeli and Sankaran. To that extent, we accept the validity of the lease deed, that was otherwise proved in the Trial Court. Once we find the Exhibit A-20 to be valid conveyance, we do not think the corollary transaction which is marked as Exhibit A-1 bearing No.2329/1910, by which the same property was leased back to Chiruthey and Kuttiperavan to be invalid.

These back-to-back transactions may be unusual, but in absence of any evidence pointing to any illegality, we hold them to be valid. The High Court on finding that these deeds are valid restored the Trial Court's judgment and decree. The underlying reasoning of the High Court was that Chiruthey had legitimate right over the property. We however, find a flaw in this reasoning of the judgment of the High Court.

18. The High Court as also the Trial Court have held that since the deeds were proved, implying that Cheruthey had the right to execute the lease deed on 14th July 1910 so far as the deed of release is concerned, the same might entitle her to be the beneficiary as a lessee thereof. But it would be trite to repeat that even if subsistence of a deed is proved in evidence, the title of the executing person (in this case Chiruthey) does not automatically stand confirmed.

If a document seeking to convey immovable property ex-facie reveals that the conveyer does not have the title over the same, specific declaration that the document is invalid would not be necessary. The Court can examine the title in the event any party to the proceeding sets up this defence. Chiruthey could not convey any property over which she did not have any right or title. Her right, if any, would stem from the second deed of lease (Exhibit A-1). We are conscious of the fact that no claim was made before any forum for invalidating the deed dated 14th July 1910 (Exhibit A-20).

But in absence of proper title over the subject property, that lease deed even if she was its sole lessor would not have had been legally valid or enforceable. If right, title or interest in certain property is sought conveyed by a person by an instrument who herself does not possess any such form of entitlement on the subject being conveyed, even with a subsisting deed of conveyance on such property, the grantee on her successors-in-interest will not have legal right to enforce the right the latter may have derived from such an instrument.

We, however, have not disturbed the transaction arising from Exhibit A-20 as the two legal heirs of Madhavan were also the lessors therein and to that extent, the document marked as Exhibit A-20 would not have collapsed for want of conveyable title, right or interest. What she got back by way of the document marked as Exhibit A-1 was limited right as that of a lessee and not as a successor of her first husband Madhavan (since deceased).

Moreover, this lease (Exhibit A-1) was also for a period of twelve years and the re-lease deed made in the year 1925 which is Exhibit A-2 could not operate as by that time, the entitlement of Kuttiperavan over the subject property also stood lapsed as the document marked as Exhibit A-1 also had a duration of twelve years. No evidence has been shown before us as to how Kuttiperavan, in the capacity of a lessee could exercise his right after the term of lease granted to him was over.

19. The plaintiff (now represented by his successors as respondents) sought to claim his share of suit property through Chiruthey. But as we have already explained, Chiruthey had lost her right over the subject property on her contracting second marriage. Secondly, her status over the said property, post-1910 if at all was that of lessee.

There is no indication in any of the deeds that the said lease (Exhibit A-1) could travel beyond the stipulated term of twelve years. The ownership of the suit property could not be said to have devolved in any manner whatsoever to the original plaintiff, who was born within the wedlock of Chiruthey and Neelakandan. Hence, we set aside the decision of the High Court and the decision of the First Appellate Court shall stand confirmed.

20. The appeal stands allowed in the above terms and interim order, if any, shall stand dissolved. Pending applications (if any) shall stand disposed of in the above terms.

21. There shall be no order as to costs.

.....J. (Aniruddha Bose)

.....J. (Sudhanshu Dhulia)

New Delhi;

April 09, 2024.

IN THE SUPREME COURT OF INDIA

Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu
Vs.
State of Gujarat, Narcotics Control Bureau

[Criminal Appeal No. 2319/2009]
[Criminal Appeal No. 2320/2009]
[Criminal Appeal Nos. 2319-2320 of 2009]

HEADNOTE – Under NDPS Act, Officer must mandatory record in writing reasons for arrest/search as per Sec. 41(2) and its violation will vitiate the trial.

JUDGMENT

Augustine George Masih, J.

1. The instant criminal appeals arise out of SLP (Criminal) No(s). 74197420 of 2009 assailing the Common Impugned Judgment dated 16.03.2009 of the Division Bench of Gujarat High Court in Criminal Appeal Nos. 1702 of 2004 and 2097 of 2004 moved by the Original Accused No. 01 (Smt. Najmunisha - Appellant in Criminal Appeal No. 1702 of 2004 before the High Court) and Original Accused No. 04 (Abdul Hamid Chandmiya alias Ladoo Bapu - Appellant in Criminal Appeal No. 2097 of 2004 before the High Court).

2. Smt. Najmunisha (hereinafter referred to as "Accused No. 01") was originally convicted under Sections 29 read with 20(b)(ii)(c) and 25 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act 1985"). The Trial Court had sentenced her to ten years of rigorous imprisonment and fine of INR 30,000/(Rupees Thirty Thousand only) for the charge under Section 29 read with Section 20(b)(ii)(c) of the NDPS Act 1985 and in default, she had to undergo one year of simple imprisonment.

No separate sentence was imposed under Section 25 of the NDPS Act 1985. This sentence was subsequently modified by the High Court of Gujarat while partly allowing her appeal to the effect that her fine was enhanced to the minimum prescribed fine of INR 1,00,000/(Rupees One Lakh only) and reduced the sentence in default of paying the fine from simple imprisonment of oneyear to simple imprisonment of three months.

2A. Abdul Hamid Chandmiya alias Ladoo Bapu (hereinafter referred to as "Accused No. 04") is the husband of Accused No. 01 who was originally convicted under Section 29 read with 20(b)(ii)(c) of the NDPS Act 1985 and

sentenced to thirteen years of rigorous imprisonment and fine of INR 1,00,000/(Rupees One Lakh only). The same was affirmed by the High Court of Gujarat while also dismissing his appeal.

3. Accused No. 05 (Nazir Ahmed alias Nazir Bazara) was convicted under Section 20(b)(ii)(a) of the NDPS Act 1985 and was sentenced to six months of rigorous imprisonment along with fine of INR 5,000/(Rupees Five Thousand only) which he completed during the trial and therefore did not prefer any appeal before the High Court of Gujarat.

4. The facts leading to the present set of appeals are that on 10.12.1999 at about 06:30 PM, the PW02 Mrs Krishna Chaube (Intelligence Officer/Inspector) (hereinafter referred to as "Mrs Chaube") had received a secret information that the Accused No. 04 would be carrying narcotic substances in an auto rickshaw bearing registration number GJ9T2355 at about 07:00 AM on 11.12.1999 and shall be passing through one Shahpur Darwaja. The said secret information was recorded by her and reported to her superior officer (PW03), namely Mr Pawan Singh Tomar - who was the Zonal Officer (hereinafter referred to as "Mr Tomar").

5. Thereby, on 11.12.1999, it is submitted by the prosecution that on directions of Mr Tomar, they assembled at about 06:30 AM near the raiding point and arranged for the panchas and waited for the Accused No. 04 at different points of the raiding route. When the Accused No. 04 showed up in the said vehicle as per the information, they attempted to stop the auto rickshaw, instead it sped away at a high speed.

Therefore, the members of the raiding party arranged for and chased the said auto rickshaw which was eventually, after covering a certain distance, found abandoned near a road and the Accused No. 04 was said to have escaped. On conducting the search of the said auto rickshaw, the raiding party found a driving license of one Shri Abdulgafar Gulamali Shaikh alias Rajubhai in addition to charas to the tune of 1.450 Kilograms.

6. As Accused No. 04 had run away, the raiding party eventually was led to the house of Accused No. 04 wherein the Accused No. 01 was already present. Thereinafter, the son of Accused No. 01 and Accused No. 04 - namely Abdul Rajak (hereinafter referred to as "Accused No. 02") - came inquiring.

Eventually the raiding party conducted a search of the said house wherein in the open kitchen there was a cement bag which had yellow coloured wires beneath which they are said to have found one bundle wrapped in newspaper which was fastened with a linen thread inside which a transparent plastic bag contained

2.098 Kilograms of substance of which turned out to be charas. Thereafter, the necessary formalities were completed and Accused No. 01 and Accused No. 02 were arrested. Eventually, the panchnama was also recorded with two independent witnesses.

7. The statements of Accused No. 01 and Accused No. 02 were recorded under Section 67 of the NDPS Act 1985 wherein it was stated that Accused No. 01 aids the business of drug trafficking as conducted by Accused No. 04 - who was absconding. Eventually, Accused No. 04 is also said to have been arrested on 26.06.2000 and per his statement under Section 67 of the NDPS Act 1985 he had confessed to be transporting and selling the contraband which he sold regularly to Accused No. 05.

8. Eventually, the charges were framed and a total of five prosecution witnesses were examined with PW01 being one of the panch witnesses, PW02 to PW04 being members of the raiding party, and PW05 being the FSL expert. Per contra, the defence had examined a total of seven witnesses in their favour.

9. The trial of Accused No. 01 to Accused No. 05 was concluded by the Additional Sessions Judge in Sessions Case No. 143 of 2000 and Sessions Case No. 295 of 2000 vide judgment dated 28.01.2004, whereby while the Accused No. 02 and Accused No. 03 were acquitted, Accused No. 01, Accused No. 04 and Accused No. 05 were convicted as aforementioned.

9A. Since both the Accused No. 01 and Accused No. 04 had moved in respective appeals before the High Court of Gujarat their conviction stood affirmed, while the fine imposed on Accused No. 01 was enhanced as aforementioned and the default sentence was reduced. As stated above, Accused No. 05 did not prefer any appeal.

10. The High Court of Gujarat had observed that the statements of the appellants herein under Section 67 of the NDPS Act 1985 were prima facie voluntary and without inducement, threat or coercion and the statement of Accused No. 01 refers to dealing of narcotic substances by Accused No. 04 for a long period of time in which she aided as well. Therefore, there exists a presumption in favour of the prosecution under Section 114 of the Indian Evidence Act, 1872 (hereinafter referred to as "IEA 1872"). None of the accused had either retracted the said statements or they had moved any complaints alleging perversity.

The defence, despite leading evidence, could not establish their version that the officers had come inquiring about house of Accused No. 04 and eventually arrested Accused No. 01 and Accused No. 02 as against all legalities. Furthermore, there was consistency in the statements of prosecution witnesses

and that no specific unreliability was established in the panchnama by the defence.

As to the necessary compliance laid down in the provisions of the NDPS Act 1985, the procedure established under Section 52A of the NDPS Act 1985 was not to be considered and that there was no requirement of any authorization under Section 41 of the NDPS Act 1985. Since Mr Tomar, being a Gazetted Officer, had accompanied the raiding party pursuant to the information communicated by Mrs Chaube on 10.12.1999, defence has also not raised any contention as to breach of Section 36 or Section 53 of the NDPS Act 1985.

11. The High Court of Gujarat had also observed in paragraph number 36 of its judgment that there is compliance of Section 57 of the NDPS Act 1985 as established from the reports (Ex. 87 and Ex. 112) submitted to the Zonal Officer. Furthermore, it rejected the defence that the prosecution failed to prove documentary evidence as the defence did not raise any objection to the exhibiting of said documents, including arrest reports recorded in compliance of Section 57 of the NDPS Act, arrest memo of Accused No. 04 and Accused No. 01 and intimation given to the next kin of the accused persons.

12. The High Court of Gujarat was of the opinion that except two minor inconsistencies, namely, apropos who called the panchas and the recording of statement of Accused No. 02, there was no reason to question the veracity of the depositions of the members of the raiding party. Those minor fallacies in the statements of the prosecution witnesses do not go to the root of the matter.

Thereafter, while acquitting Accused No. 02, the High Court believed that there was no evidence implicating him to the criminality involved. In the same breath, the Court observed that such finding of acquittal does not throw prosecution's case as against other accused persons, inter alia, Accused No. 01 and Accused No. 04, which is established beyond any reasonable doubts.

13. With respect to the objection that no independent witnesses were examined to prove joint possession of house by Accused No. 01 and Accused No. 04, the High Court of Gujarat placed reliance on the depositions of Defence Witness (brother of Accused No. 04), who testified that the said accommodation was occupied by the accused persons to entertain their guests.

The fact of possession of the house by Accused No. 01 and Accused No. 04 is bolstered by their own confessional statements and corroborated by the testimony of an independent witness PW01. Thereupon, perusing the statements of Mrs Chaube and PW05, the High Court held that there was no infirmity regarding the

receipt of muddamal with seals intact on the goods being sent to the Forensic Science Laboratory for examination.

14. Delving into the question of compliance of Section 42(2) of the NDPS Act 1985, the High Court was inclined to accept the argument of the prosecution that the statement of Mrs Chaube with respect to recording of secret information and conveying it to her superior officer stood established by consistent testimonies of Mrs Chaube and Mr Tomar and clarified that the testimony of the former cannot be thrown on the premise that there was variation on the point that who called the panch witness. Considering the aforementioned, theHigh Court of Gujarat affirmed the case of conviction of the Accused No. 01 and Accused No. 04.

15. The learned Counsel for the appellants herein contends that the statement of the appellants/accused in the instant case recorded under the provision of Section 67 of the NDPS Act 1985 was not admissible and ought not to have been the basis of conviction of the Accused No. 01 and Accused No. 04. It has been brought to our attention that the High Court has critically scrutinized the said statements of Accused No. 01 to Accused No. 04 and has observed that the same being voluntary in nature and having been corroborated by other evidence can form the basis of their conviction.

For this purpose, reliance has been placed on the decision in Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1 whereby it has been categorically held that a statement recorded under Section 67 of the NDPS Act 1985 is inadmissible in evidence. The majority opinion herein had held that power of recording of statement under Section 67 of the NDPS Act is limited in nature and conferred upon subject to the safeguards as set out in Sections 41 to 44 of the NDPS Act 1985 for the purpose of entry, search, seizure and arrest without warrants and for conducting of only an enquiry and not in the course of investigation. It is for the initiation of an investigation or enquiry under the NDPS Act 1985 and it does not meet the threshold of a confessional statement.

16. It is submitted that the secret information received by Mrs Chaube was only related to the auto rickshaw wherein the Accused No. 04 was to be carrying the contraband - which was eventually seized. However, there existed no secret information apropos the house wherein the subsequent search/raid was conducted by the raiding party.

The latter was totally out of the scope of the information received and recorded and thereby the search therein was absolutely illegal and in violation of the provisions of Section 42 of the NDPS Act 1985. The learned Counsel has further drawn our attention to the fallacies and inconsistencies in the panchnama

recorded by the raiding party in addition to the depositions of the prosecution witnesses.

17. The learned Counsel further relies on Darshan Singh v. State of Haryana (2016) 14 SCC 358 which deals with scope of Sections 41(1) and (2) of the NDPS Act 1985 and the need of their independent compliance against each other. This Court herein went on to hold that mere registration of FIR at the instance of the SHO and its subsequent communication to the Superintendent of Police would not amount to sufficient compliance with Section 42(2) of the NDPS Act 1985. For this purpose, reference is made to paragraph number 13 of the said judgment at Page 364 as follows:

"13. Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the respondent, we are of the view that the mandate contained in Section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code.

Subsection (1) of Section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Subsection (2) of Section 41 refers to issuance of authorisation for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc.

Subsection (1) of Section 42 of the NDPS Act lays down that the empowered officer if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belie.

The two separate procedures noticed above are exclusive of one another. Compliance with one, would not infer compliance with the other. In the circumstances contemplated under Section 42 of the NDPS Act the mandate of the procedure contemplated therein will have to be followed separately, in the manner interpreted by this Court in Karnail Singh case [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] and the same will not be assumed, merely because the Station House Officer concerned had registered a

first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code."

18. The aforesaid reference places its reliance on a judgment of the Constitution Bench of this Court, i.e., Karnail Singh v. State of Haryana (2009) 8 SCC 539 which is also relied upon by the learned Counsel for the appellants. It is a well celebrated judgment on the statutory requirement of writing down and conveying information to the superior officer prior to entry, search and seizure as per Section 42(1) and (2) of the NDPS Act 1985, requiring a literal or substantial compliance.

The learned Counsel has brought our attention to paragraph number 35 of the judgment at page 554 which dealt with effect of the decisions in Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000) 2 SCC 513 and that in Sajan Abraham v. State of Kerala (2001) 6 SCC 692. By virtue of this, it was observed that while a total noncompliance of Section 42 of the NDPS Act 1985 would be impermissible, a delayed compliance with satisfactory explanation about the said delay could be an acceptable compliance of statutory requirements under Sections 42(1) and (2). For a better clarity of the judgment, paragraph number 35 is reproduced as follows:

"35. In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in subsection (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy

thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total noncompliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or nonsending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42.

But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act.

Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

19. Per contra, the learned Counsel for the Respondent No. 02 herein contents that there is no infirmity in the concurrent findings of the Trial Court and the High Court. There has been well recorded compliance of the statutory requirements and the evidences have been sufficiently appraised by the Courts below. Moreover, there has been no material contradiction in the testimonies of the prosecution witnesses and the same aspires confidence. It is a settled law that the concurrent findings of the facts must not ordinarily be interfered with unless there exists a prima facie perversity or absurdity in light of the observation in paragraph number 26 in the decision delivered in Balak Ram v. State of Uttar Pradesh (1975) 3 SCC 219.

20. It is further submitted by the learned Counsel for the Respondent No. 02 that there has been substantial compliance of the statutory requirements under Section 42 of the NDPS Act 1985 as Mrs Chaube recorded the secret information in writing and conveyed the same to her superior officer namely, Mr Tomar prior to the raid conducted as against Accused No. 04 and Accused No. 01. It is contended that the search undertaken at the residence of Accused No. 04 whereby

Accused No. 01 was also present, was in continuation of the action taken on the basis of the said secret information.

For this, the learned Counsel has brought to our attention the testimonies of Mrs Chaube (PW02) and Mr Tomar (PW03). Alternatively, even assuming that the said latter part of the raid/search at the house of the Accused No. 01 and Accused No. 04 was not in continuation of the action taken towards Accused No. 04 as per the secret information, there has still been appropriate compliance of Section 42 of the NDPS Act 1985 for the reason that the same was based on the personal knowledge of Mr Tomar, who is a Gazetted Officer.

It is further contended that the provision of Section 42(2) of the NDPS Act is to be read disjunctively and henceforth there is no requirement to take down the information in writing where it emanates from the personal knowledge of the superior officer. To further this argument, the learned Counsel has distinguished the facts of the present case from the ratio in decisions in State of Punjab v. Balbir Singh (1994) 3 SCC 299 and Karnail Singh (supra) as they refer only to the process to be followed upon receipt of information from any person and not to "personal knowledge" of the officer.

21. Furthermore, it is submitted that there has been a substantial compliance of Section 42(1) of the NDPS Act 1985 as during the action being taken against the Accused No. 04 and his absconding therefrom, an emergent situation arose which necessitated the search in his house - which was nearby to the place where auto rickshaw was abandoned.

There was a grave possibility that if the Accused No. 04 was at his house then he might run away and/or if there was any further amount of contraband at his residence, he would have appropriated that as well. Thence, the raiding party had their hands tied down to necessarily carry out the said search at the house of Accused No. 04 in light of the ratio in Karnail Singh (supra) not necessitating literal compliance rather substantial compliance contingent on the facts of each case.

22. The learned Counsel for the Respondent No. 02 further contends that the scope of Section 50 of the NDPS Act 1985 is limited to the search on the person of an individual and does not include adherence to the search made on any premise(s). Reliance is placed on State of Himachal Pradesh v. Pawan Kumar (2005) 4 SCC 350 wherein it was held that presence of a Gazetted Officer is required only at the time of the search which is on the person and is not applicable during search of premises. To bolster this argument, it is submitted that the said interpretation fits into the reading of Section 42 of the NDPS Act 1985 as Section 42(1)(a) of the NDPS Act 1985 comprehends search of a

building or conveyance or place while Section 42(1)(d) of the NDPS Act 1985 contemplates for search of a person.

23. Apropos, the presumption pertaining to the recovery of contraband, the learned Counsel for the Respondent No. 02, submits that once the recovery of the contraband has been made from the possession of an individual, there arises a rebuttable presumption as per Section 54 of the NDPS Act 1985 that the said individual has committed an offence under the NDPS Act 1985.

To further build this contention, the learned Counsel has brought our attention to the decision in Madan Lal v. State of Himachal Pradesh (2003) 7 SCC 465 whereby at paragraph numbers 22 to 26 of the judgment, it was has been laid down that the aforesaid possession of contraband includes constructive possession and it need not be only an actual possession of the contraband. On the basis of these above recorded submissions, he prays for dismissal of the instant appeals.

24. Before we delve into the factual analysis based on the legal principles and jurisprudence existing in each contention, it is pertinent to refer to the heart and soul of the Constitution of India, 1950 (hereinafter referred to as "Constitution of India") - Article 21 - necessitates a just and fair trial to be a humane and fundamental right and actions of the prosecution as well as the authorities concerned within the meaning of the NDPS Act 1985 must be towards ensuring of upholding of the rights of the accused in order to allow to have a fair trial.

The harmonious balance between the Latin maxims salus populi suprema lex (the safety of the people is the supreme law) and salus republicae suprema lex (safety of the State is the supreme law) is not only crucial and pertinent but lies at the core of the doctrine that welfare of an individual must yield to that of the community subject to the State being right, just, and fair as was iterated in the decision of Miranda v. Arizona (1966) 384 US 436.

25. The NDPS Act 1985 being a special law with the purpose to curtail the drug menace in the republic necessitated the comprehensive control in favour of the authorities. The same is well reflected in the decisions of this Court across the last couple of decades. Accordingly, the key provisions to be contemplated for the purpose of appraising the present factual matrix are Sections 41, 42, and 67 of the NDPS Act 1985. The same are thereby analysed herein after.

26. Having heard the learned Counsels for both the parties, we deem it appropriate to refer to the jurisprudence of Section 6 of the IEA 1872. It is to be observed that it deals with relevancy of facts forming part of same transaction and therefore, it is crucial to refer the bare provision which reads as follows:

"6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

27. This court has laid down the test for "acts forming part of same transaction" in Gentela Vijyvardhan Rao and Anr. v. State of Andhra Pradesh (1996) 6 SCC 241, wherein it has been held that it is based on spontaneity and immediacy of such statement or fact in relation to the fact in issue. Provided that if there was an interval which ought to have been sufficient for purpose of fabrication then the said statement having been recorded, with however slight delay there may be, is not part of res gestae. The same was adopted by a 3Judges' Bench in the decision of Dhal Singh Dewangan v. State of Chhattisgarh (2016) SCC OnLine SC 983.

28. In the present factual matrix, having perused the material it appears that the attempt towards raiding/searching the residence of Accused No. 04 was not explicitly in pursuance of detaining the said accused but the testimonies of the members of the raiding party showcase the idea of search of the house to be an afterthought with an admitted time gap of 4045 minutes between having raided the auto rickshaw which was alleged to be abandoned by the driver and Accused No. 04 and subsequent search of the house of Accused No. 04, wherein Accused No. 01 was present.

Moreover, it appears from the record that even the idea to search the house was for the purpose of recovery of more contraband and not to apprehend the said absconded accused at the first instance. Thence, it can be safely concluded that the search conducted at the residence of the Accused No. 04 is not a continuance of action of the raiding party towards the search of the auto rickshaw based on the secret information received by Mrs Chaube. Accordingly, it does not appropriately fulfill the requirements of the test laid down in Gentela Vijyvardhan Rao (supra).

29. Having reached the conclusion that the searches of the abandoned auto rickshaw, and at the house wherein Accused No. 01 was present, to be different transactions, the subsequent consideration is apropos necessary statutory safeguards enlisted in the NDPS Act 1985. Henceforth, we shall further delve into the legal analysis of relevant provisions of the NDPS Act 1985.

30. The next issue that falls for our consideration is with respect to the compliance of Section 42 of the NDPS Act 1985. For the said purposes, an analysis of the bare text of Section 42 of the NDPS Act 1985 is undertaken hereinafter. Section 42 of the NDPS Act 1985 is worded as follows:

"42. Power of entry, search, seizure and arrest without warrant or authorisation.-

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of subinspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the

concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventytwo hours send a copy thereof to his immediate official superior."

31. From the perusal of provision of Section 42(1) of the NDPS Act 1985, it is evident that the provision obligates an officer empowered by virtue of Section 41(2) of the NDPS Act 1985 to record the information received from any person regarding an alleged offence under Chapter IV of the NDPS Act 1985 or record the grounds of his belief as per the Proviso to Section 42(1) of the NDPS Act 1985 in case an empowered officer proceeds on his personal knowledge.

While the same is to be conveyed to the immediate official superior prior to the said search or raid, in case of any inability to do so, the Section 42(2) of the NDPS Act provides that a copy of the same shall be sent to the concerned immediate official superior along with grounds of his belief as per the proviso hereto. This relaxation contemplated by virtue of Section 42(2) of the NDPS Act 1985 was brought about through the Amendment Act of 2001 to the NDPS Act of 1985 wherein prior to this position, the Section 42(2) mandated the copy of the said writing to be sent to the immediate official superior "forthwith".

32. The decision in Karnail Singh (supra) has been extensively referred by the learned Counsel for the Appellants and at the cost of repetition, it is observed that absolute noncompliance of the statutory requirements under the Section 42(1) and (2) of the NDPS Act 1985 is verboten. However, any delay in the said compliance may be allowed considering the same is supported by wellreasoned explanations for such delay. This position adopted by the instant 5Judges' Bench of this Court is derived from the ratio in the decision in Balbir Singh (supra) which is a decision by a 3Judges' Bench of this Court.

33. Another 3Judges' Bench while dealing with compliance of Section 42 of the NDPS Act 1985 in Chhunna alias Mehtab v. State of Madhya Pradesh (2002) 9 SCC 363 dealt with criminal trial wherein there was an explicit noncompliance of the statutory requirements under the NDPS Act 1985. It was held that the trial of the PetitionerAppellant therein stood vitiated. For a better reference, the judgment is quoted below as:

"1. The case of the prosecution was that at 3.00 a.m. a police party saw opium being prepared inside a room and they entered the premises and apprehended the accused who was stated to be making opium and mixing it with chocolate.

2. It is not in dispute that the entry in search of the premises in question took place between sunset and sunrise at 3.00 a.m. This being the position, the proviso to Section 42 of the Narcotic Drugs and Psychotropic Substances Act was applicable and it is admitted that before the entry for effecting search of the building neither any search warrant or authorisation was obtained nor were the grounds for possible plea that if opportunity for obtaining search warrant or authorisation is accorded the evidence will escape indicated. In other words, there has been a noncompliance with the provisions of the proviso to Section 42 and therefore, the trial stood vitiated.

3. The appeals are, accordingly, allowed."

34. In Dharamveer Parsad v. State of Bihar (2020) 12 SCC 492, there was nonexamination of the independent witness without any explanation provided by the prosecution and even the panchnama or the seizure memo were not prepared on the spot but after having had reached police station only. Since the vehicle was apprehended and contraband was seized in noncompliance of the Section 42 of the NDPS Act 1985 - conviction and sentence of the appellant therein was set aside. Apart from the said reasons there were various suspicious circumstances that inspired the confidence of the Court to set aside the conviction affirmed by the High Court therein. Paragraph numbers 05 and 06 are reiterated below for reference:

"5. In the present case PW 1, who is the investigating officer, in his deposition has stated that the information i.e. the contraband was being carried from the IndoNepal border identified in a vehicle, details of which had also been provided, had been received in the evening of 272007. PW 1 has further stated that on receipt of this information, he had formed a team and had moved to Raxaul from Patna, which place they had reached by 2.00 a.m. in the morning of 372007. The vehicle in question had been apprehended and the contraband seized at about 6.00 a.m. of 372007. No explanation has been offered why the statement had not been recorded at any anterior point of time and the same was so done after the seizure was made.

6. Even if we were to assume that the anxiety of the investigating officer was to reach Raxaul which is on the international border and therefore, he did not have the time to record said information as per requirement of Section 42 of the Act, the matter does not rest there. There are other suspicious circumstances affecting the credibility of the prosecution case.

Though, the investigating officer has stated that he had moved to Raxaul along with a team and two independent witnesses, the said independent witnesses were not examined. No explanation is forthcoming on this count also. That apart from

the materials on record it appears that no memos including the seizure memo were prepared at the spot and all the papers were prepared on reaching the police station at Patna on 472007."

35. The case presented by the prosecution appears to be primarily standing on the fact that initially, Accused No. 04 - who was identified by Mr Tomar to be sitting inside the auto rickshaw which was part of the secret information - had absconded, leaving behind the contraband which was eventually seized by members of the raiding party. It is furthermore admitted that a Driving License was also recovered from the said auto rickshaw.

However, it has never been their case that neither the owner of the auto rickshaw was attempted to be identified nor the person whose driving license was found therein was searched for by the authorities for the purpose of the instant case. It is never explained by Mr Tomar how he was able to identify the face of the Accused No. 04 sitting on the passenger seat inside the auto rickshaw while it was being driven at high speed. It is also not their case that any previous photographic identification for the Accused No. 04 was provided as part of the said information or as to how did he know the face of the Accused No. 04.

36. Even further, it is an admitted fact by the PW01 - the alleged independent witness of the recovery - that the panchnama was not prepared at the time of actual recovery from the auto rickshaw. Same is affirmed by the testimonies of the members of the raiding party, namely, PW02 to PW04. It is furthermore intriguing to note that the panchnama which is timed "0930" was prepared and the PW01 states as part of his crossexamination that he left for his office taking an auto rickshaw after the incident. However, the testimony of Mrs Chaube reveals that the PW01 and the other panch were present in the NCB Office after the incident and even deposes to the effect that they, being present in the said office, ended up inscribing their signatures on the statements taken by them.

37. It does not transpire from the material on record as to exactly how the Accused No. 04 came into the fiasco here except for the claim by Mr Tomar of having identified him as the auto rickshaw per the secret information fled the scene. It creates a doubt in the mind of the Court apropos the case presented by the prosecution.

38. Adopting the words of V. Ramasubramanian, J., while speaking for the Bench in Ramabora alias Ramaboraiah & Anr. v. State of Karnataka (2022) SCC OnLine SC 996 referred to the mythological Swan, Hamsa and drew an analogy with the following observations made in the decision in Arvind Kumar alias Nemichand & Ors. v. State of Rajasthan (2021) SCC OnLine SC 1099:

49. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance.

The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.

39. It becomes difficult to accept the case presented against the Accused No. 04 by the prosecution and it is not acceptable to state that the same has been proved beyond a reasonable doubt. The inconsistencies in the testimonies and lack of observation of due process of law by the investigating agency has severely impacted the case of the prosecution.

40. The subsequent and alternate contention put forth by the learned Counsel for the Respondent No. 02 pertains to the nonrequirement of the compliance of Section 41 of the NDPS Act 1985. To appreciate the said contention, jurisprudential aspect ought to be dealt with. Section 41 of the NDPS Act 1985 deals with the power to issue warrant and authorization to both a Magistrate and an Officer of Gazetted rank as applicable and the same is reproduced below as follows:

"41. Power to issue warrant and authorisation.-

(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed:

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under subsection (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under subsection (2) shall have all the powers of an officer acting under section 42."

41. In the instant case, we are primarily affected by virtue of the jurisprudence of Section 41(2) of the NDPS Act 1985, which begins from the power of search and seizure conferred by the State upon its executive or administrative arms for the protection of social security in any civilized nation. Such power is inherently limited by the recognition of fundamental rights by the Constitution as well as statutory limitations. At the same time, it is not legitimate to assume that Article 20(3) of the Constitution of India would be affected by the provisions of search and seizure.

It is a settled law that the statutory provisions conferring authorities with the power to search and seize are a mere temporary interference with the right of the accused as they stand well regulated by reasonable restrictions emanating from the statutory provisions itself. Thence, such a power cannot be considered as a violation of any fundamental rights of the person concerned. The same is iterated in MP Sharma v. Satish Chandra Sharma, District Magistrate, Delhi 1954 SCR 1077.

42. In light of the aforementioned constitutional backdrop, provisions of general search warrants and seizure were incorporated for the first time in Code of Criminal Procedure, 1882, thereupon, in Sections 96, 97, 98, 102, 103, 105, 165 and 550 of the Code of Criminal Procedure, 1898 and presently, in the Code of Criminal Procedure, 1973 under Sections 93, 94, 100, 102, 103 and 165.

Upon perusal of Section 41(1) of the NDPS Act 1985, it is evident that the said provision empowers a Magistrate to issue search warrant for the arrest of any person or for search, whom he has reason to believe to have committed any offence under the provisions of the NDPS Act 1985. Section 41(2) of the NDPS Act 1985 further enables a Gazetted Officer, so empowered in this regard by the Central Government or the State Government, to arrest or conduct a search or authorize an officer subordinate to him to do so, provided that such subordinate officer is superior to the rank of a peon, sepoy or constable.

It is pertinent to note that the empowered Gazetted Officer must have reason to believe that an offence has been committed under Chapter IV of the NDPS Act 1985, which necessitated the arrest or search. As per Section 41(2) of the NDPS Act 1985, such reason to believe must arise from either personal knowledge of the said Gazetted Officer or information given by any person to him. Additionally, such knowledge or information is required to be reduced into writing by virtue of expression "and taken in writing" used therein.

43. The learned Counsel of the Respondent No. 02 presents an alternate argument that the expressions "personal knowledge" and "and taken in writing" contemplated by Section 41(2) of the NDPS Act 1985 ought to be read disjunctively, thereby eliminating the requirement of taking down information in writing when it arises out of the personal knowledge of the Gazetted Officer. We are not inclined to accept this interpretation. The position for recording the reasons for conducting search and seizure are well established through the ratio in paragraph number 25 (2C) in Balbir Singh case (supra) as mentioned below:

"(2C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial."

44. Applying the aforesaid legal position to the present factual matrix, we do not find force in the submission that the raiding party proceeded to conduct search at the house on personal knowledge of the Gazetted Officer, Mr Tomar. Foremost, the fact that the secret information received by Mrs Chaube was limited to anticipation of Accused No. 04 carrying contraband from a particular route in an auto rickshaw, remains unchallenged.

Accordingly, there was no prior information to the raiding party, including Mr Tomar (Gazetted Officer) that there is contraband in the house of Accused No. 04, thereby necessitating search for the same. Additionally, it is deposed by the PW01 that he was asked to accompany the raiding party to the house of Accused No. 04, which was located nearby for the purpose of carrying out a search thereof and admits of having no knowledge about any written information with the raiding party for conducting raid at the said house.

Further, Mrs Chaube in her examination in chief stated that upon the directions of Mr Tomar that the house of Accused No. 04 was nearby, they proceeded to conduct raid thereof. Per contra, in her cross-examination, she admits that the raiding team proceeded to the house of Accused No. 04 for the purpose of search of the contraband pursuant to the discussions carried by them and not particularly on the personal knowledge of Mr Tomar.

45. She further goes on to admit that it was obligatory for her to obtain a written authorization from her superior officer - which was Mr Tomar in this case. She omitted seeking the said authorization on the premise that there was an emergent need to conduct search at the house. Such major inconsistency as to the 'source' of information of existence of contraband at the house of Accused No. 04 weakens the case of the prosecution.

Furthermore, the testimony of Mr Tomar has some glaring irregularities apropos his personal knowledge of having contraband at the house of Accused No. 04. Mr Tomar, on one hand in his testimony admits that the officers of raiding party together decided to conduct raid at the house of Accused No. 04 post recovery from the auto rickshaw, however, on the other hand admits of having knowledge of the residential address of Accused No. 04 from the secret information. However, Mr Tomar nowhere in his depositions stated that he proceeded to conduct raid at the house on his personal knowledge.

46. From the aforementioned, we are of the view that the raid/search conducted at the house of the Accused No. 01 and Accused No. 04 was not based on the personal knowledge of Mr Tomar, rather it was an action on the part of raiding party bereft of mandatory statutory compliance of Section 41(2) of the NDPS Act 1985.

47. Furthermore, even if the learned Counsel for the Respondent No. 02 would justify the raid at the house on account of "reason to believe from information given by any person and taken down in writing" as per Section 41(2) of the NDPS Act 1985, still the prosecution is not able to establish its case beyond reasonable doubts. Because the secret information, as received by Mrs Chaube in the present facts was limited to the apprehension that Accused No. 04 was to carry contraband via an auto rickshaw from a particular route.

There is no reference to the apprehension of existence of contraband in the house of the Accused No. 04 in the said recorded information. Thence, the raid at the house of the Accused No. 01 and Accused No. 04 is in violation of the statutory mandate of Section 41(2) of the NDPS Act 1985 and the ratio in the precedent of Balbir Singh (supra) and Karnail Singh (supra). Consequently, the conviction of Accused No. 01 premised on the recovery of 2.098 kilograms of charas from the house is not in consonance with the mandatory statutory compliance of Section 41(2) of the NDPS Act 1985.

48. While the facts and evidences are appreciated in the instant case, the testimonies of the PW01 and the members of the raiding party do not present such a compliance of the information of rights to the Accused No. 01 herein. While a claim is made to this effect, nothing has come up from the perusal of the panchnama or the deposition of the PW01 to this effect. Accordingly, the authorities have further failed to protect the inherent rights granted to the Accused No. 01 by virtue of the statutory safeguards.

49. Thereinafter, a significant reliance was placed by the High Court on the statements of the accused wherein a categorical admission was substantiated by them, especially Accused No. 01 and Accused No. 04. To begin with, Section 67 of the NDPS Act 1985 reads:

"67. Power to call for information, etc.-

Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act,-

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case."

50. The evidentiary value of confessional statements recorded under Section 67 of the NDPS Act 1985 was dealt with by this Court in the case of Tofan Singh (supra). As per the majority verdict delivered by 3Judges' Bench in this case has held that the powers conferred on the empowered officers under Section 41 and 42 of the NDPS Act 1985 read with Section 67 of the NDPS Act 1985 are limited in nature conferred for the purpose of entry, search, seizure and arrest without warrant along with safeguards enlisted thereof.

The "enquiry" undertaken under the aforesaid provisions may lead to initiation of an investigation or enquiry by the officers empowered to do so either under Section 53 of the NDPS Act 1985 or otherwise. Thus, the officers empowered only under the aforesaid provisions neither having power to investigate nor to file a police report meet the test of police officer for the purpose of Section 25 of the IEA 1872. Consequently, the bar under Section 25 of the IEA 1872 is not applicable against the admissibility of confessional statement made to the officers empowered under Section 41 and 42 of the NDPS Act 1985.

51. Furthermore, it was also held by this Court that Section 67 is at an antecedent stage to the investigation, which occurs after the empowered officer under Section 42 of the NDPS Act 1985 has the reason to believe upon information gathered in an enquiry made in that behalf that an offence under NDPS Act 1985 has been committed and is thus not even in the nature of a confessional statement. Hence, question of its being admissible in trial as a confessional statement against the accused does not arise.

52. The same, therefore, cannot be considered to convict an accused person under the NDPS Act 1985. A reference at this stage may be made to the majority view in the 3Judges' Bench decision wherein it was held as follows in paragraph number 158:

"158. We answer the reference by stating: 158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

53. By virtue of the decision in Tofan Singh (supra), the benefit is to be granted to the appellants herein in regard to the inadmissibility of their statements under Section 67 of the NDPS Act 1985.

54. In the light of the above, these appeals are allowed by setting aside the impugned judgment of the High Court as well as that of the Trial Court. The appellants are acquitted of the charges framed against them by giving benefit of doubt.

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

.....J. (Aniruddha Bose)

.....J. (Augustine George Masih)

New Delhi

April 09, 2024

IN THE SUPREME COURT OF INDIA

Ravishankar Tandon
Vs.
State of Chhattisgarh

[Criminal Appeal No. 3869 of 2023]
[Criminal Appeal No. 2740 of 2023]

[Criminal Appeal No._____ of 2024
arising out of SLP (Criminal) No. 837 of 2024]

[Criminal Appeal No._____ of 2024
arising out of SLP (Criminal) No. 1174 of 2024]

HEADNOTE – The prosecution will have to establish that, before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered.

JUDGMENT

B.R. Gavai, J.

1. Leave granted in SLP (Criminal) Nos. 837 and 1174 of 2024.

2. These appeals challenge the judgment and order dated 2nd January, 2023 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal Nos. 194, 232 and 277 of 2013 wherein the Division Bench dismissed the criminal appeals preferred by the appellants, namely Ravishankar Tandon (accused No.1), Umend Prasad Dhrutlahre (accused No.2), Dinesh Chandrakar (accused No.3) and Satyendra Kumar Patre (accused No.4) and upheld the order of conviction and sentence dated 5th February, 2013 as recorded by the learned Additional Sessions Judge, Mungeli (hereinafter referred to as the 'trial court') in Sessions Trial No. 10 of 2012.

3. Shorn of details, the facts leading to the present appeals are as under:-

3.1 On 2nd December 2011, Ramavtar (PW-1) lodged a missing person report being Missing Person Serial No. 10/11 at Police Station Kunda after his son Dharmendra Satnami (deceased) went missing. While an extensive search was being conducted, on the basis of suspicion, the police interrogated the appellants.

During the interrogation, the appellants disclosed that they had strangulated the deceased to death on the Bhatgaon Canal Road and had thereafter thrown his body into a pond at Village Bhatgaon.

Thereafter, on 3rd December 2011, the police recorded the memorandum statements of accused Nos.1 to 3 at about 10:00 am, 10:30 am and 11:00 am, respectively, whereas the memorandum statement of accused No.4 came to be recorded on 6th December 2011 at 07:00 pm. On the basis of the aforesaid memorandum statements, the police recovered the dead body of the deceased from the pond at Bhatgaon on 3rd December 2011 at about 04:05 pm and the dead body was identified.

Thereafter, on the very same day, a First Information Report ('FIR' for short) being No. 402 of 2011 was registered at Police Station Mungeli, District Bilaspur wherein it is recorded that the aforesaid offences were committed between the days of 30th November 2011 and 3rd December 2011. According to the Post-Mortem Report (Ext. P-22), the cause of death of the deceased was asphyxia due to strangulation and the nature of death was homicidal.

3.2 The prosecution case stems from the memorandum statements of the appellants wherein the appellants had admitted that Dinesh Chandrakar (accused No.3) had instructed Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) to murder the deceased in exchange for Rs.90,000/-, which was to be paid upon the execution of the said murder. Upon receiving the aforesaid instruction, Ravishankar Tandon (accused No.1) and Satyendra Kumar Patre (accused No.4) along with Umend Prasad Dhritalhare (accused No.2) hatched a criminal conspiracy to kill the deceased and worked out a plan to execute the same. Accordingly, the aforesaid three accused persons called the deceased to Mungeli on 30th November 2011 under the ruse of purchasing silver.

While Umend Prasad Dhritalhare (accused No. 2) and Satyendra Kumar Patre (accused No.4) reached Datgaon which fell within the ambit of Police Station Mungeli, on a motorcycle belonging to a relative of Satyendra Kumar Patre (accused No.4), Ravishankar Tandon (accused No.1) and the deceased reached Datgaon by a bus. Thereafter, the three accused persons along with the deceased went to visit the house of the brother-in-law of Satyendra Kumar Patre (accused No.4), namely, Sunil. On that same night, after taking the dinner, they left Sunil's house on the pretext of returning to their homes.

However, when they reached near Bhatgaon, Ravishankar Tandon (accused No.1), Umend Prasad Dhritalhare (accused No.2) and Satyendra Kumar Patre (accused No.4) strangulated the deceased to death and in order to screen themselves from the said act of 5 murder, the accused persons tied the dead body

of the deceased with his own clothes and stuffed it into a jute sack which had been procured from Sunil's house. Thereafter, the appellants transported the dead body of the deceased to a pond at Village Bhatgaon, on the motorcycle of Satyendra Kumar Patre (accused No.4), and threw the dead body into the said pond, wherefrom it was subsequently recovered.

3.3 Upon the conclusion of the investigation, a charge-sheet came to be filed before the Court of the Chief Judicial Magistrate, Mungeli, Chhattisgarh, wherein accused Nos. 1, 2 and 4 had been charged for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the Indian Penal Code, 1860 ('IPC' for short) whereas accused No.3 had been charged for the offences punishable under Sections 302 read with 34 and 120B of the IPC. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the Sessions Court.

3.4 Charges came to be framed by the trial court for the aforesaid offences. The accused/appellants pleaded not guilty and claimed to be tried.

3.5 The prosecution examined 18 witnesses and exhibited 37 documents to bring home the guilt of the accused/appellants. The defence, on the other hand, did not examine any witness or exhibit any document.

3.6 At the conclusion of the trial, the trial Court found that the prosecution had proved the case against the appellants beyond reasonable doubt and accordingly convicted accused Nos. 1, 2 and 3 for the offences punishable under Sections 302 read with 34, Sections 120B and 201 of the IPC and convicted accused No. 4 for the offences punishable under Sections 302 read with 34 and 120B of the IPC and sentenced all of them to undergo imprisonment for life along with fine.

3.7 Being aggrieved thereby, the appellants preferred three Criminal Appeals before the High Court. The High Court vide the impugned judgment dismissed the Criminal Appeals and affirmed the order of conviction and sentence awarded by the trial Court.

4. Being aggrieved thereby, the present appeals.

5. We have heard Shri Manish Kumar Saran, learned counsel appearing on behalf of the appellant in Criminal Appeal No. 3869 of 2023, Shri Chandrika Prasad Mishra, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 2740 of 2023, appeals arising out of SLP (Criminal) Nos. 837 and 1174 of 2024, and Shri Praneet Pranav, learned Deputy Advocate General ('Dy. AG' for short) appearing on behalf of the respondent-State at length.

6. Shri Saran and Shri Mishra, learned counsel appearing on behalf of the appellants, submitted that the present case rests on circumstantial evidence. It is submitted that the prosecution has failed to prove any of the incriminating circumstances beyond reasonable doubt. It is submitted that, in any case, the prosecution has failed to establish the chain of proven circumstances which leads to no other conclusion than the guilt of the accused persons. They therefore submitted that the appeals deserve to be allowed and the judgments and orders of conviction need to be quashed and set aside.

7. Shri Pranav, learned Dy. AG appearing on behalf of the respondent-State, on the contrary, submitted that both the High Court and the trial court have concurrently held that the prosecution has proved the case beyond reasonable doubt. He submitted that the findings of the trial court and the High Court are based upon cogent appreciation of evidence and as such, no interference is warranted.

8. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra[1], wherein this Court held thus:

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court **is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129].**

This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused

and it must be such as to show that within all human probability the act must have been done by the accused."

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 Crl LJ 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."

9. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'.

It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other

hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

10. It is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

11. In the light of these guiding principles, we will have to examine the present case.

12. The prosecution case basically relies on the circumstance of the memorandum of the accused under Section 27 of the Indian Evidence Act, 1872 (for short "Evidence Act") and the subsequent recovery of the dead body from the pond at Bhatgaon. The learned Judges of the High Court have relied on the judgment of this Court in the case of State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru[2]. The High Court has relied on the following observations of the said judgment:

"121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved.

It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished.

Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually

discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] : (AIR p. 70, para 10)

"clearly the extent of the information admissible must depend on the exact nature of the fact discovered" and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10)

"Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused."

(emphasis supplied)

We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10)

"If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect."

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10)

"In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the

place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

(emphasis supplied)

128. So also in **Udai Bhan v. State of U.P. [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251] J.L. Kapur, J. after referring to Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65]** stated the legal position as follows: (SCR p. 837)

"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

The above statement of law does not run counter to the contention of Mr. Ram Jethmalani, that the factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical object was not recovered at the instance of the accused was not discussed in any of these cases."

13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.

14. We will have to therefore examine as to whether the prosecution has proved beyond reasonable doubt that the recovery of the dead body was on the basis of the information given by the accused persons in the statement recorded under Section 27 of the Evidence Act. The prosecution will have to establish that,

before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered.

15. The prosecution, insofar as the memorandum under Section 27 of the Evidence Act is concerned, has relied on the depositions of Ramkumar (PW-5) and Ajab Singh (PW-18). According to the prosecution, the statement of Ravishankar Tandon (accused No. 1) was recorded on 3rd December 2011 at 10:00 am. On the same day, the statement of Umend Prasad Dhritalhare (accused No. 2) was recorded at 10:30 am, and that of Dinesh Chandrakar (accused No. 3) at 11:00 am. Whereas the statement of Satyendra Kumar Patre (accused No. 4) was recorded on 6th December 2011 at 07:00 pm. It will be relevant to refer to the relevant part of the evidence of Ramkumar (PW-5), which reads thus:

"2. In front of me, accused Ravishankar have told to the police that at the behest of accused Dinesh, they have killed Dharmender for Rs. 90,000 and made a plan and Ravishankar called Dharmender called him to buy silver and killed him in Bhatgaon stuffed his dead body in a sack and threw it in the pond. On being shown the memorandum statement of Exhibit P- l0 have told to be his signature on Part A to A.

3. Umed had also told the police in front of me that Sattu along with Ravi Shankar had killed Dharmendra and threw him in Bhatagaon's lake on the advice of Dinesh. Witness Memo statement is Exhibit P-11 and accepts his signature on part A to A.

4. Dinesh had told in front of me that 6 months back he had made a deal with Ravishankar and sattu to kill Dharmender for 90 thousand rupees. Dinesh also told that Shankar had said that the work is done, give him the money. On being shown Exhibit P-12, accepted to have his signature on Part A to A. Witness states that it was seized from the pond in front of me.

5. Village Kunda is 16 km away from my village. It is correct that Dharmendra had come to know about the murder on 3rd. Witness states that it was informed by the police. On that other morning, at about 7 -8 o'clock in the morning, it is correct that on my arrival in village Kunda, my brother-in-law and nephew Narendra had told me about the murder which was done by the accused. By that time we did not reach the spot that's why whether it was Dharmender's body or not I cannot."

6. I went from Kunda to Bhatgaon on 2nd with the police, then he says that at that time it was about two and a half o'clock in the evening. It is correct that when I reached Bhatgaon there were many people of the village. It is correct that

because of dead body there were many people there. It is correct to say that police have brought the dead body to Mungeli police station where PM was done.

7. It is correct that accused were brought to Mungeli police station. It is incorrect that I had taken the signature of accused at Mungeli police station. Accused have given the statement at Kunda police station, in front of me. Apart from the accused we were 5-6 other family members in the Police station Kunda. The police took the statement at around 12 o'clock.

14. We have reached Bhatgaon at 4.30-5. And reached Mungeli before sunset. It is incorrect to say that the police have taken my signature Witness itself states that I have signed in Bhatgaon. It is incorrect to say that I did not read the papers before signing them. Witness says that the I have read the main part. It is incorrect to say that I am seeing accused for the first time today. It is incorrect to say that I know accused by name only, witness states that I know him by face also. It is incorrect to say that the name of the accused was revealed by my brotherin-: law and Narendra it was told by the police."

16. It is to be noted that Ramkumar (PW-5) is the brother-inlaw of the deceased. A perusal of his evidence would reveal that he has admitted that, on his arrival in village Kunda, he was informed by his brother-in-law and nephew Narendra Kumar (PW-2) about the murder of the deceased which was done by the accused persons. He stated that, by that time they had not reached the spot and that is why they were not aware as to whether it was the body of Dharmendra or not.

He further admitted that when they reached Bhatgaon, many people of the village were there. He has also admitted that because of the dead body, many people were there. He has further admitted that the accused persons had given their statements at Kunda police station. He has further admitted that they had reached Bhatgaon at around 04:30 pm to 05:00 pm and had reached Mungeli before sunset. He has also stated that he had signed the panchnama at Bhatgaon.

17. It could thus be seen that, according to this witness (PW- 5), though the statement was taken at Kunda, it was signed at Bhatgaon.

18. Ajab Singh (PW-18) is another witness on the memorandum recorded under Section 27 of the Evidence Act and the subsequent recovery of the dead body. He states that Ravishankar informed the police that Dharmendra had been killed and thrown into the pond. However, he states in examination-in-chief that Umend and Dinesh did not tell anything to the police in front of him. It will be relevant to refer to his cross-examination, which reads thus:

"4. It is true that I used to work as Kotwari. It is true that I did not have read the paper. It is true that I had signed 3-4 papers on the instructions of the police. It is

true that due to being Kotwar had to visit police station regularly. It is true that I signed on documents on the instructions of the police. It is wrong to say that I signed in police station, Kunda. Witnesses say that it was signed in Dandaon."

19. It could thus be seen that Ajab Singh (PW-18) has clearly admitted that he did not read the papers before putting his signature on them. He has admitted that he had signed 3-4 papers on the instructions of the police. He has also stated that he had signed the statement at Dandaon.

20. Narendra Kumar (PW-2) is the brother of the deceased. He has stated that, after his brother went missing; on the next day at around 08:00 o'clock in the morning, the police came to his place and informed that his brother Dharmendra had been killed by Ravishankar, Satnami, Umend and Satyendra. After that, they went to Bhatgaon with the police. The extract of the evidence of Narendra Kumar (PW-2) is as under:

"3. At around 8 in morning the police came to my place and informed that my brother Dharmendra was killed by Ravishankar, Satnami, Umend and Satyendra. After that we went to Bhatgaon with the police. Ramkumar, Krishna, Banshee had gone with me."

21. A perusal of the evidence of Narendra Kumar (PW-2) read with that of Ramkumar (PW-5) would clearly reveal that the police as well as these witnesses knew about the death of Dharmendra Satnami occurring and the dead body being found at Bhatgaon prior to the statements of the accused persons being recorded under Section 27 of the Evidence Act. All the statements are recorded after 10:00 am whereas Ramkumar (PW-2) stated that at around 08:00 am, police informed him about the accused persons killing the deceased and thereafter they going to Bhatgaon. Ramkumar (PW-5) also admitted that he arrived at village Kunda and on his arrival, he was informed by his brother-in-law and nephew about the murder which was done by the accused persons.

22. We therefore find that the prosecution has utterly failed to prove that the discovery of the dead body of the deceased from the pond at Bhatgaon was only on the basis of the disclosure statement made by the accused persons under Section 27 of the Evidence Act and that nobody knew about the same before that. It is further to be noted that Ajab Singh (PW-18) has clearly admitted that he had signed the papers without reading them and that too on the instructions of the police.

23. The evidence of Ramkumar (PW-5) would show that though his statement was taken at Kunda police station, it was signed at Bhatgaon. As such, the possibility of these documents being created to rope in the accused persons

cannot be ruled out. In any case, insofar as the statement of Dinesh Chandrakar (accused No. 3) is concerned, even the statement recorded under Section 27 of the Evidence Act is not at all related to the discovery of the dead body of the deceased. As a matter of fact, nothing in his statement recorded under Section 27 of the Evidence Act has led to discovery of any incriminating fact.

24. Another aspect that needs to be noted is that, the only evidence with regard to recording of the memorandum of accused persons under Section 27 of the Evidence Act is concerned, is that of B.R. Singh, the then Investigating Officer (IO) (PW-16). The relevant part thereof reads thus:

"1. I wrote the statement of accused Ravi Shankar as per memorandum Ex. P-10 after taking him into custody in which my signature is on part B to B. I wrote the statement of accused Um end as per his memorandum Ex. P-11 and accused Dinesh as per his memorandum Ex. P-12 in which my signature is on part B to B."

25. It could thus be seen that the IO (PW-16) has failed to state as to what information was given by the accused persons which led to the discovery of the dead body. The evidence is also totally silent as to how the dead body was discovered and subsequently recovered.

We find that therefore, the evidence of the IO (PW-16) would also not bring the case at hand under the purview of Section 27 of the Evidence Act. Reliance in this respect could be placed on the judgments of this Court in the cases of Asar Mohammad and Others v. State of Uttar Pradesh[3] and Boby v. State of Kerala[4].

26. We therefore find that the prosecution has utterly failed to prove any of the incriminating circumstances against the appellants herein. In any case, the chain of circumstances must be so complete that it leads to no other conclusion than the guilt of the accused persons, which is not so in the present case.

27. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The judgment dated 2nd January 2023 passed by the High Court and the judgment dated 5th February 2013 passed by the trial court are quashed and set aside; and

(iii) The appellants are directed to be acquitted of all the charges charged with and are directed to be released forthwith, if not required in any other case.

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

.....J. [B.R. Gavai]

.....J. [Sandeep Mehta]

New Delhi;

April 10, 2024.

1 (1984) 4 SCC 116 : 1984 INSC 121

2 (2005) 11 SCC 600 : 2005 INSC 333

3 (2019) 12 SCC 253 : 2018 INSC 985

4 2023 SCC OnLine SC 50 : 2023 INSC 23

IN THE SUPREME COURT OF INDIA

Manisha Mahendra Gala & Ors.
Vs.
Shalini Bhagwan Avatramani & Ors.

[Civil Appeal No. 9642 of 2010]
[Civil Appeal No. 9643 of 2010]

HEADNOTE – 1. A Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene.

2. The claimant of an easementary right wouldn't be entitled to claim the 'easementary right by necessity' for enjoying the 'Dominant Heritage' (the property owned by the claimant) when there exists an alternative way to access the 'Dominant Heritage' apart from the way over which the easementary rights were claimed to access the Dominant Heritage.

JUDGMENT

Pankaj Mithal, J.

1. The dispute in the above two appeals is in connection with easementary rights over 20ft. wide road situated over land Survey No.57 Hissa No.13A/1 which is presently owned by the respondents herein (hereinafter the 'Ramani's').

2. In Suit No.14 of 1994 instituted by Joki Woler Ruzer, the descendants of the subsequent purchaser Mahendra Gala were added as plaintiff Nos.2-4 (hereinafter the 'Gala's'). The suit was for declaration of their easementary rights over the 20ft. wide road situate in the property of the Ramani's and for permanent injunction in respect thereof.

The suit was decreed by the court of first instance vide judgment and order dated 06.02.2003. However, the aforesaid judgment and decree was set aside in appeal by the Ad-hoc District Judge-2, Raigad, vide judgment and order dated 12.03.2009 and the suit was dismissed. The High Court vide impugned judgment and order dated 01.10.2009 upheld the aforesaid judgment and order of the appellate court in Second Appeal No.305 of 2009.

3. Apart from the above suit, Suit No.7 of 1996 came to be filed by the Ramani's for declaring that the Gala's or their predecessor-in-interest have no right, title

and interest in the property and they do not have any right of way through the above land. The aforesaid suit was dismissed vide judgment and order dated 06.02.2003 by the court of first instance i.e.

Civil Judge, Junior Division, Murud. On the appeal being preferred, the judgment and order passed by the court of first instance was set aside and the suit was decreed holding that the Gala's have no right of way either by easement of prescription or of necessity on the suit land/road. The Gala's were restrained from disturbing the possession of Ramani's over the suit land and from doing any overt act over it.

4. Aggrieved by the dismissal of their Suit No.14 of 1994 and the decreeing of the Suit No.7 of 1996 of the Ramani's, these two appeals have been preferred by the Gala's. Their predecessorin- interest Joki Woler Ruzer has not joined and has not preferred any separate appeal. Meaning thereby, that the original plaintiff has accepted the verdict of the High Court.

5. It would be necessary and beneficial to recapitulate certain background before considering the submissions of the respective parties to arrive at any conclusion with regard to their rights over the suit land, more particularly on the road in question.

6. There is no dispute that one Ramchandra Borkar was the owner of the vast land situate in Mouje Korlai, Taluka Murud, District Raigad, Maharashtra i.e. Survey No.48 Hissa No.15 and Survey No.57 Hissa No.13. The aforesaid Ramchandra Borkar fell into arrears of government dues recoverable as arrears of land revenue and, therefore, his aforesaid properties were acquired by the government.

Subsequently, a part of the aforesaid property i.e. land Survey No.48 Hissa No.15 was sold out by the government on 25.04.1969 through public auction in favour of one Woler Francis who was also put in possession thereof on 08.07.1969. Thus, Woler Francis became the exclusive owner in possession of land Survey No.48 Hissa No.15 admeasuring 1 hectare and 76 acres situated at Mouje Korlai Taluka, Murud, District Raigad.

7. The remaining land which was initially possessed by Ramchandra Borkar and which was acquired by the government, was subsequently re-acquired by one Vasant Ramchandra Borkar, of the family of original owner Ramchandra Borkar. The said Vasant Ramchandra Borkar sold out a piece of the said land on 09.07.1988 to one Dharmadhikari being land Survey No.57 Hissa No.13A/2. The balance land which was essentially a part of Survey No.57 was sold to the family

of Ramani's by a registered Sale Deed dated 11.09.1989 and was numbered as Survey No. 57 Hissa No. 13A/1.

8. In this way, the entire property of the Borkar family comprising of Survey No.48 Hissa No.15 and Survey No.57 Hissa No.13 which was acquired by the government came into the hands of Woler Francis (Survey No.48 Hissa No.15); the family of Ramani's (Survey No.57 Hissa No.13A/1); and the family of Dharmadhikari (Survey No.57 Hissa No.13A/2).

9. The road in dispute on which easementary rights are claimed by the Gala's forms part of Survey No.57 Hissa No.13A/1 which is under the ownership of the Ramani's.

10. Sometime in 1994, Woler Francis died and he was succeeded by his heir and legal representative Joki Woler Ruzer. When his use of the above 20ft. wide road was objected to by the Ramani's, he filed Suit No.14 of 1994 for declaration of his easementary rights over the said land and for a decree of permanent injunction. During the pendency of the said suit, the aforesaid Joki Woler Ruzer transferred and assigned his rights of the entire land i.e. Survey No.48 Hissa No.15 in favour of one Mahendra Gala, the predecessor-in-interest of the Gala's. The aforesaid Mahendra Gala was impleaded as plaintiff in the aforesaid suit on 28.07.1998 and subsequently on his death, the present Gala's were substituted as his heir and legal representative.

11. The suit was contested by the Ramani's by filing a written statement. They resisted the claim of the Gala's regarding easementary rights over the disputed rasta. They contended that they have purchased the property Survey No.57 Hissa No.13A/1 and categorically denied use of the said rasta uninterruptedly by the Gala's.

12. In the said suit, oral and documentary evidence were adduced by the parties. The Gala's produced Navneet Liladhar Hariya, their Power of Attorney holder and the Manager of the property as PW-1, Bhalchandra Nathura Choradhekar, Sarpanch of the village as PW-2, Dattatray Shankar Sawant, one of their neighbours as PW-3 and Bhalchandra Dattaram Tandel, Surveyor as PW-4, in order to prove their easementary right of way over the disputed rasta.

13. The Gala's also relied upon the sale deed by which Joki Woler Ruzer had transferred and assigned his rights in land Survey No.48 Hissa No.15 in favour of Mahendra Gala, the predecessor of the Gala's.

14. The Ramani's examined Sanjay Borkar as DW-1 and filed certified copy of the deposition of one Arjun Ramani. Additionally, they brought on record purshis Exh.165 and Exh.170.

15. On the basis of the pleadings of the parties and the evidence adduced, the trial court framed several issues but the primary issue was whether the Gala's have any easementary right of way over the land of the Ramani's i.e., the disputed rasta.

16. We had heard Shri Huzefa Ahmadi, learned senior counsel for the appellants and Shri Devansh Anoop Mohta, learned counsel for the respondents.

17. The main thrust of the argument of Shri Huzefa Ahmadi, learned senior counsel for the Gala's (appellants in both the civil appeals) is that Gala's are undisputedly the owners in possession of the land Survey No.48 Hissa No.15 and since they have no alternative way of access to the said land except the rasta in dispute, the only option to them is to have egress and ingress through the said rasta for use of their land.

They have acquired easementary right by prescription and that of necessity over the said rasta and more particularly through an agreement i.e. the Sale Deed dated 17.09.1994 which records their right of way through the said rasta. He further submits that once the suit was decreed by the court of first instance and findings were recorded in favour of the Gala's, the appellate court ought not to have overturned those findings. It ought to have exercised restrain in interfering with the aforesaid decision.

18. The above submissions were stoutly opposed on behalf of the Ramani's by their counsel.

19. 'Easement' is defined under Section 4 of the Indian Easements Act, 18821 to mean a right which the owner or occupier of a land possesses for the beneficial enjoyment of his land on the other land which is not owned by him, to do and continue to do something or to prevent and continue to prevent something being done on the said land.

It may be pertinent to mention here that the land which is to be enjoyed by the beneficiary is called 'Dominant Heritage' and the land on which the easement is claimed is called 'Servient Heritage'. The easementary right, therefore, is essentially a right claimed by the owner of a land upon another land owned by someone else so that he may enjoy his property in the most beneficial manner.

20. Now, we first proceed to examine if the Gala's have acquired any easementary right over the rasta in dispute existing on the servient heritage.

21. In the case at hand, the Gala's are admittedly the owners of Survey No. 48 Hissa No.15 whereas the Ramani's are the owners of Survey No.57 Hissa No.13A/1 on which it is alleged, exists the rasta in dispute. The Gala's claim that

the use of the aforesaid rasta is for the beneficial enjoyment of their land as they have no other way of access to their land and that they have been enjoying the said easementary right for the "last many years".

22. Section 15 of the Act categorically provides that for acquiring any easementary right by prescription, the said right must have been peaceably enjoyed in respect of the servient heritage without any interruption for over 20 years. In the plaint, neither the original plaintiff Joki Woler Ruzer nor the Gala's have specifically claimed that they or their predecessor-ininterest were enjoying easementary right of use of the said rasta for over 20 years.

They simply alleged that they have been using and managing the same since "last many years". The use of the term "last many years" is not sufficient to mean that they have been enjoying the same for the last 20 years. Last many years would indicate use of the said rasta for more than a year prior to the suit or for some years but certainly would not mean a period of 20 or more years. Therefore, their pleadings fall short of meeting out the legal requirement of acquiring easementary right through prescription.

23. In this connection Shri Ahmadi, learned counsel for the appellants, relying upon "Ram Sarup Gupta (Dead) By Lrs. vs. Bishun Narain Inter College & Ors"2 submitted that the pleadings must be construed liberally and it is not necessary that the precise language or expression used in the statute should be used.

The aforesaid decision lays down that pleadings should be liberally construed and need not contain the exact language used in the statutory provision but it does not mean that the pleadings even if fails to plead the essential legal requirement for establishing a right, the same be so construed so as to impliedly include what actually has not been pleaded more particularly when it happens to be an essential ingredient for establishing a right. Thus, the aforesaid pleadings cannot be treated to be of sufficient compliance of the statutory requirement. It is settled in law that a fact which is not specifically pleaded cannot be proved by evidence as evidence cannot travel beyond the pleadings.

24. The plaint was filed and verified by Joki Woler Ruzer who has not entered the witness box to substantiate the pleadings as to for how long he or his predecessor had been using the said rasta for egress and ingress to their land before the institution of the suit or to say that the easementary right, if any, attached to the said land, was also transferred or purchased by his predecessor.

25. On the contrary, the deposition of Sanjay Borkar (DW-1) who is from the family of the original owners of the land has categorically stated that the original plaintiff Joki Woler Ruzer was not having any right of way on his land and so

also the Gala's (plaintiff Nos.2-4), the subsequent holders of the land, rather they possess an alternative way to approach their land.

26. Navneet Liladhar Hariya (PW-1), the Power of Attorney holder of the Gala's, stated that the road of 20ft. in width exists on Survey No.57 Hissa No.13A/1 which is being used as an approach road to Survey No.48 Hissa No.15. The said rasta was being used by predecessor-in-interest of the Gala's but now the Ramani's have started raising objection. Since they have no other way of access to their land, they are being denied connectivity or approach to their land.

As a result, access to the Dominant Heritage stands completely blocked. In cross-examination, he states that Dharmadhikari has also purchased some land from Vasant Ramchandra Borkar and that the said Dharmadhikari is having right of way through the disputed rasta. PW-2, the then Sarpanch simply deposes that he has knowledge of the existence of disputed rasta since his childhood.

The neighbour (PW-3) also repeated the same thing and stated that there is a road from Salav-Murud road which passes through the land of the Ramani's up to his land i.e. Survey No.43. The said road is in existence since long and is being used by the agriculturist. Nobody has ever raised objection to its use. The Surveyor (PW-4) is alleged to have surveyed the land on 26.12.1998. He had shown the existence of the road in dispute in the sketch map prepared by him.

27. The aforesaid evidence simply proves that there exists a road on Survey No.57 Hissa No.13A/1 for long but that by itself is not sufficient to prove that the Gala's have acquired any easementary right over the same. There is no evidence to prove that the Gala's are in use of the said land for the last over 20 years uninterruptedly.

The Gala's have entered the scene only on purchasing the said land on 17.09.1994 after the suit had been filed and as such, they could not and have not deposed anything about the pre-existing right or the easementary right attached with the Dominant Heritage. The said right has to be proved as existing prior to the institution of the suit. Neither the Gala's nor their predecessor-in-interest Joki Woler Ruzer have dared to come in the witness box. They have only relied upon the deposition of their Power of Attorney holder/the Manager.

28. The law as understood earlier was that a General Power of Attorney holder though can appear, plead and act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party.

However, subsequently in Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.3, this Court held that the Power of Attorney holder can maintain a plaint on behalf of

the person he represents provided he has personal knowledge of the transaction in question. It was opined that the Power of Attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence.

However, to resolve the controversy with regard to the powers of the General Power of Attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of Janki Vashdeo Bhojwani (supra) in A.C Narayan vs. State of Maharashtra4 concluded by upholding the principle of law laid down in Janki Vashdeo Bhojwani (supra) and clarified that Power of Attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it.

The Power of Attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the General Power of Attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the Power of Attorney; meaning thereby ordinarily there cannot be any sub-delegation.

29. It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene.

The aforesaid Power of Attorney holder PW-1 had clearly deposed that he is giving evidence on behalf of plaintiff Nos. 2 to 4 i.e. the Gala's. He was not having any authority to act as the Power of Attorney of the Gala's at the time his statement was recorded. He was granted Power of Attorney subsequently as submitted and accepted by the parties. Therefore, his evidence is completely meaningless to establish that Gala's have acquired or perfected any easementary right over the disputed rasta in 1994 when the suit was instituted.

30. The only proper and valuable evidence in this regard could have been that of Joki Woler Ruzer who had instituted the suit but he failed to depose before the court. His pleadings are also vague and do not specifically state that he had been in use of the rasta in dispute for over 20 years or that he had acquired and perfected easementary right over the said rasta by prescription or necessity.

31. In the absence of any evidence or material to show that Joki Woler Ruzer had actually acquired any easementary right over the rasta in dispute before the

institution of the suit, he could not have transferred any such right in favour of the Gala's.

32. The easementary right by necessity could be acquired only in accordance with Section 13 of the Act which provides that such easementary right would arise if it is necessary for enjoying the Dominant Heritage. In the instant case, findings have been returned not only by the appellate courts but even by the trial court that there is an alternative way to access the Dominant Heritage, which may be a little far away or longer which demolishes the easement of necessity. There is no justification to go into those findings of fact returned by the courts below.

33. In the light of the aforesaid findings, the Gala's are not entitled to any easementary right by necessity upon the disputed rasta.

34. The next contention is that the Gala's have acquired easementary right under the Sale Deed dated 17.09.1994 and that it would not stand extinguished even if the necessity has ceased to exist. To buttress the above submission reliance has been placed upon Dr. S. Kumar & Ors. vs. S. Ramalingam5. In the above case, the right of easement claimed was expressly granted under the sale deed to the buyer and therefore it was held that the right so granted cannot be defeated or extinguished merely for the reason that easement of necessity has come to an end.

35. The situation in the present case is quite different. The property owned and possessed by the Gala's was originally the property of Ramchandra Borkar which was acquired by the government. It was purchased by Woler Francis in public auction from the government on 25.04.1969. Thereafter, it devolved upon his legal heir Joki Woler Ruzer who sold it to the predecessor-in-interest of the Gala's vide Sale Deed dated 17.09.1994.

There is no evidence whatsoever on record to establish that the government ever transferred any easementary right over the rasta in question to Francis Woler or that his legal heir Joki Woler Rozer ever acquired or perfected any easementary right over it. Therefore, the right which was not possessed by them could not have been transferred to the Gala's under the Sale Deed dated 17.09.1994.

36. The said Sale Deed dated 17.09.1994 in original has not been produced in evidence. It was only the photocopy of the same which was brought on record. The photocopy of a document is inadmissible in evidence. Moreover, the said sale deed was executed by predecessor-in-interest i.e. Joki Woler Ruzer in favour of predecessor-in-interest of the present Gala's.

The said sale deed would not bind the third parties who are not signatories or parties to the said sale deed. No evidence has been adduced to prove that Joki Woler Ruzer, predecessor-ininterest of the Gala's, had perfected easementary

rights over the disputed rasta and thus was legally entitled to transfer the same. He himself has not come before the Court that he had actually acquired any easementary right in the disputed rasta.

It is not the case of Gala's that their predecessor-in-interest had acquired or purchased the said property from government auction with any easementary right over the rasta in dispute. Thus, the Gala's have failed to prove that they have acquired any easementary right under the sale deed. In view of the above discussion, reliance upon Dr. S. Kumar & Ors. (supra) is completely misplaced and the submission in this regard has no merit.

37. Lastly, a frail submission was advanced that one Dharmadhikari, owner of Survey No. 57 House No. 13A/2 is enjoying easementary right over the said rasta and, therefore, Gala's cannot be denied the same benefit. The submission has been noted to be rejected for the simple reason that in the Sale Deed Exh. 163, the original owner Vasant Ramchandra Borkar while transferring land to Dharmadhikari has specifically assigned right to use the said rasta to Dharmadhikari and not to anyone else.

The predecessor-in-interest of the Gala's i.e., Joki Woler Ruzer or Francis Woler never acquired any such right under their sale deed so as to legally transfer it to the Gala's. DW-1, Sanjay Vasant Borkar, grandson of the original owner of the entire property, clearly deposed that the disputed rasta was only for use by Dharmadhikari as per the sale deed but no such right was sold/assigned to the predecessor-ininterest of the Gala's. Therefore, the Gala's cannot acquire easementary right as is enjoyed by Dharmadhikari whose case stand on a totally different footing.

38. It would not be fair on our part if we do not deal with yet one another submission of Shri Ahmadi regarding the powers of the appellate court in disturbing the findings recorded by the court of first instance. The submission made in this context is quite elementary in nature as Section 107 of the Code of Civil Procedure, in unequivocal terms, lays down the powers of the appellate court vis-à-vis to determine the case finally; to remand the case; to frame issues and refer them for trial; and to take additional evidence or to require such evidence to be taken and shall have the same powers to perform duties as nearly as may be that are conferred by the code to the courts of original jurisdiction.

39. Therefore, on the simple reading of the above provision, it is evident that the first appellate court is empowered to exercise powers and to perform nearly the same duties as of the courts of original jurisdiction. Therefore, the first appellate court has the power to return findings of fact and law both and in so returning the finding, it can impliedly overturn the findings of the court of first instance if it is

against the evidence on record or is otherwise based upon incorrect interpretation of any document or misconstruction of any evidence adduced before the court of first instance.

40. In view of the facts and circumstances of the case and the above discussions, we find that none of the contentions raised by Shri Ahmadi, learned senior counsel for the appellants (Gala's), are of any substance. We do not find any basis to record that the Gala's have acquired easementary right over the disputed rasta in any manner much less by prescription, necessity or under an agreement.

Therefore, the appellate courts and the High Court have not committed any error of law in dismissing Suit No.14 of 1994 of the plaintiffs/appellants and in decreeing Suit No.7 of 1996 of the defendants/respondents.

41. The appeals lack merit and are accordingly dismissed.

.....J. (Pankaj Mithal)

.....J. (Prashant Kumar Mishra)

New Delhi;

April 10, 2024.

1 Hereinafter referred to as "The Act", for short

2 (1987) 2 SCC 555

3 (2005) 2 SCC 217

4 (2014) 11 SCC 790

5 (2020) 16 SCC 553

IN THE SUPREME COURT OF INDIA

Mukhtar Zaidi
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 9122 of 2021]

HEADNOTE – (1) If the Magistrate takes cognizance of the offence and issues summons to an accused by recording satisfaction based on the additional evidence produced by way of a protest petition filed by the informant, then such a protest petition ought to be treated as a private complaint case under Section 200 Cr.P.C.

(2) Rejection of protest petition is no bar to file fresh complaint under Sec. 200 Cr.P.C.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. This appeal assails the correctness of the order dated 24.08.2021 passed by the Allahabad High Court dismissing the application under Section 482 of the Code of Criminal Procedure, 1973[1] filed by the appellant wherein a prayer was made to quash the Summoning Order dated 08.03.2021 by the Chief Judicial Magistrate[2], Aligarh in Case No.129/2020 under Sections 147, 342, 323, 307, 506 of the Indian Penal Code, 1860[3] Police Station, Civil Lines, District Aligarh. There is an order dated 01.11.2021 passed by the High Court wherein the Case Number mentioned in the order dated 24.08.2021 was corrected as Case No.5727/2021.

3. Respondent no.2 lodged a First Information Report[4] bearing the aforesaid details whereupon the same was investigated and after investigation the police report under Section 173(2) Cr.P.C. was submitted according to which the Investigating Officer found that no evidence could be collected which could substantiate the allegations made in the FIR.

The said report was submitted to the Court concerned whereupon notices were issued to the informant. The informant filed a Protest Petition along with affidavits to show that the investigation carried out by the Investigating Officer

was not a fair investigation. He had completed the case diary sitting at the Police Station without actually recording the statements of the witnesses.

4. The CJM, by order dated 08.03.2021 rejected the police report under Section 173(2) Cr.P.C. and further proceeded to take cognizance for offences under Sections 147, 342, 323, 307, 506 of the IPC and under Section 190 (1) (b) of the Cr.P.C. and also directed that the matter would continue as a State case.

Accordingly, it summoned the accused, fixed 30th April, 2021. This order of cognizance and summoning the present appellant was assailed before the High Court by way of a petition under Section 482 Cr.P.C. registered as Application u/s.482 No.15273 of 2021. The said application has sine been dismissed by the High Court giving rise to the present appeal.

5. Shri Vinod Prasad, learned senior counsel appearing for the appellant submitted that the CJM as also the High Court fell in error in taking cognizance under Section 190(1)(b) Cr.P.C. inasmuch as the CJM had relied upon not only the Protest Petition which was supported by affidavit of the complainant but also on the affidavits of witnesses which were filed along with the Protest Petition to support the contents of the complaint.

The submission was that once the CJM was relying upon additional material in the form of evidence produced by the complainant along with the Protest Petition then the only option for the CJM was to treat it as a complaint under Section 200 Cr.P.C. and proceed accordingly. The said case could not have been continued as a State case and should have been treated as a private complaint.

It was also submitted that it was open for the CJM to have rejected the police report submitted under Section 173(2) Cr.P.C. for closure and relying upon the material in the case diary, (in effect, the material collected during investigation) could have taken cognizance but once additional evidence was being relied upon which had been filed along with the Protest Petition then the only option open was to treat it as a private complaint and after following the due procedure in Chapter XV of the Cr.P.C. proceeded to take cognizance under Section 190(1)(a) Cr.P.C.

6. On the other hand, the submission advanced by the learned counsel for the State as also the Complainant - respondent no.2 was that the CJM did not take into consideration any additional evidence filed in the form of affidavits along with the Protest Petition and had only relied upon the material collected during the investigation as contained in the case diary and based upon the same the satisfaction recorded by the CJM to reject the police report and take cognizance was well within his domain and such cognizance would fall within Section

190(1)(b) Cr.P.C. It was thus submitted that the impugned order does not suffer from any infirmity.

7. We have carefully examined the order dated 24.08.2021 passed by the CJM taking cognizance and summoning the police and we find that the CJM had actually taken into consideration not only the Protest Petition but also the affidavit filed in support of the Protest Petition as well as the four affidavits of witnesses filed along with the Protest Petition. It was based on consideration of such affidavits that the CJM was of the view that the investigation was not a fair investigation and these affidavits made out a prima facie case for taking cognizance and summoning the accused.

8. Once we have held as above without going into many judgments of this Court on the point as to how the Magistrate would proceed under Section 190 Cr.P.C. once the Investigating Officer had submitted a closure report under Section 173(2) Cr.P.C., we may briefly deal with the legal issue and refer to relevant paragraphs of a recent decision. In this connection, Section 190(1) (a) and (b) of Cr.P.C. is extracted hereunder:

190. Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section

(2), may take cognizance of any offence -

(a)upon receiving a complaint of facts which constitute such offence;

(b)upon a police report of such facts;"

9. In the case of Vishnu Kumar Tiwari vs. State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow & Anr.,[5] Justice K.M.Joseph, speaking for the Bench laid down the legal position relying upon previous judgments of this Court. In the said case the facts were quite similar to that of the present case where affidavits were filed along with the Protest Petition.

The net result is that the Magistrate in the present case ought to have treated the Protest Petition as a complaint and proceeded according to Chapter XV of the Cr.P.C.. The relevant paragraphs dealing with the above aspect in the case of Vishnu Kumar Tiwari (supra), being paragraphs 42 to 46 are reproduced hereunder:

"42. In the facts of this case, having regard to the nature of the allegations contained in the Protest Petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the Protest Petition as a complaint.

The fact that he may have jurisdiction in a case to treat the Protest Petition as a complaint, is a different matter. Undoubtedly, if he treats the Protest Petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined.

No doubt, depending upon the material which is made available to a Magistrate by the complainant in the Protest Petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code.

But as the Magistrate could not be compelled to treat the Protest Petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the Protest Petition.

In Mahabir Prasad Agarwala v. State [Mahabir Prasad Agarwala v. State, 1957 SCC OnLine Ori 5 : AIR 1958 Ori 11], a learned Judge of the High Court of Orissa, took the view that a Protest Petition is in the nature of a complaint and should be examined in accordance with the provisions of Chapter XVI of the Criminal Procedure Code.

We, however, also noticed that in Qasim v. State [Qasim v. State, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows: (Qasim case [Qasim v. State, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , SCC OnLine All para 6)

"6. In Abhinandan Jha [Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] also what was observed was "it is not very clear as to whether the Magistrate has chosen to treat the Protest Petition as complaint". This observation would not mean that every Protest Petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under Section 200 CrPC.

If the Magistrate did not treat the Protest Petition as a complaint, the Protest Petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance.

The Protest Petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a Protest Petition the case is to become a complaint case."

(emphasis supplied)

44. We may also notice that in Veerappa v. Bhimareddappa [Veerappa v. B himareddappa, 2001 SCC OnLine Kar 447 : 2002 Cri LJ 2150] , the High Court of Karnataka observed as follows: (SCC OnLine Kar para 9)

"9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 CrPC, but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) CrPC on a complaint.

If it were to be so, the Protest Petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) CrPC, and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) CrPC. Instead, if it is to be simply styled as a Protest Petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 CrPC."

45. "Complaint" is defined in Section 2(d) of the Code as follows:

"2. (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a noncognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

46. If a Protest Petition fulfils the requirements of a complaint, the Magistrate may treat the Protest Petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the Protest Petition. The prayer in the Protest Petition is to set aside the final report and to allow the application against the final report.

While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the Protest Petition in this case, is summing up of the objections of the second respondent against the final report."

10. From a perusal of the above opinion of this Court, it is also reflected that the Magistrate also had the liberty to reject the Protest Petition along with all other material which may have been filed in support of the same. In that event the Complainant would be at liberty to file a fresh complaint. The right of the Complainant to file a petition under Section 200 Cr.P.C. is not taken away even if the Magistrate concerned does not direct that such a Protest Petition be treated as a complaint.

11. In the present case as the Magistrate had already recorded his satisfaction that it was a case worth taking cognizance and fit for summoning the accused, we are of the view that the Magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr.P.C. Accordingly, we allow this appeal, set aside the impugned orders passed by the High Court as also the CJM, Aligarh.

12. However, we leave it open for the Magistrate to treat the Protest Petition as a complaint and proceed in accordance to law as laid down under Chapter XV of the Cr.P.C.

We make it clear that we have not made any comments on the merits of the matter and any observations made would not influence the CJM in taking an appropriate decision as required above.

.....J. (Vikram Nath)

.....J. (Satish Chandra Sharma)

New Delhi

April 18, 2024

1 Cr.P.C.

2 CJM

3 IPC

4 FIR

5 (2019) 8 SCC 27

IN THE SUPREME COURT OF INDIA

Babu Sahebagouda Rudragoudar and Ors.
Vs.
State of Karnataka,

Criminal Appeal No(S). 985 of 2010

HEADNOTE – (1) The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a "memorandum of confession" of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. This statement is admissible only to the extent it leads to the discovery of new facts.

(2) Principles that must be adhered to by the appellate Court while reversing the decision of acquittal as arrived by the Trial Court. The guiding principles read as follows:
(a) That the judgment of acquittal suffers from patent perversity;
(b) That the same is based on a misreading/omission to consider material evidence on record;
(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

JUDGMENT

Mehta, J.

1. The appellants herein, namely, Babu Sahebagouda Rudragoudar(A-1), Alagond Sahebagouda Rudragoudar(A-2) and Mudakappa @ Gadegappa Rudragoudar(A-3) along with Sahebagouda Gadageppa Rudragoudar(A-4), Basappa Avvanna @ Huvanna Giradi @ Chigari (A-5) and Basappa Dundappa @ Dondiba Hanjagi (A-6) were subjected to trial in Sessions Case No. 28 of 2002 in the Court of the learned Fast Track Court I, Bijapur for charges pertaining to offences punishable under Sections 143, 147, 148, 506(2) and Section 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter being referred to as 'IPC').

2. For the sake of convenience, the appellants shall hereinafter be referred to as A-1, A-2 and A-3. 3. The learned trial Court proceeded to discard the prosecution story and acquitted the accused appellants(A-1, A-2 and A-3) along with A-4, A-5 and A-6 vide judgment dated 23rd July, 2005.

4. The State of Karnataka challenged the said judgment recording acquittal of A-1 to A-6 by filing Criminal Appeal No. 2215/2005 before the High Court of Karnataka. The Division Bench of High Court vide its judgment dated 14th September, 2009 proceeded to allow the appeal; reversed the acquittal of A-1, A-2 and A-3 and convicted these accused for the offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs. 50,000/- each within a period of six months and in default, to further undergo imprisonment for two years.

The appeal as against A-5 and A-6 was dismissed, while appeal qua A-4 stood abated on account of his death. Out of the fine amount to be realised, a sum of Rs. 10,000/- was ordered to be paid to the State Government and the balance amount of Rs. 1,40,000/- was ordered to be paid to the complainant(PW-1).

5. The judgment dated 14th September, 2009 rendered by the learned Division Bench of the High Court reversing the acquittal of the accused appellants and convicting and sentencing them as above is assailed in the present appeal.

Brief facts:-

6. The complainant, Chanagouda(PW-1) owns agricultural lands and a house in village Babanagar, Bijapur, Karnataka. It is alleged by the prosecution that in the morning of 19th September, 2001, the deceased Malagounda, son of complainant, along with labourers/servants Revappa(PW-2), Siddappa(PW-3), Hiragappa(PW-4) and Suresh(PW-5) had gone to put up a bund (check dam) in their land. At about 12 o' clock in the afternoon, the complainant(PW-1) packed lunch for these five persons and proceeded to the field where the farming operations were being undertaken.

The work continued till 3.30 p.m. and thereafter, the four servants(PW-2, PW-3, PW-4 and PW-5), along with the deceased Malagounda and the complainant(PW-1) proceeded to the village. They had reached near the land of one Ummakka Kulkarni at about 4.00 pm, where A-1, A-2, A-3 and A-4 suddenly came around and exhorted that the way the complainant party had murdered Sangound, they would take revenge upon the members of the complainant party in the same manner.

A-1 holding a jambai, A-2 holding an axe, A-3 holding a sickle and A-4 holding an axe, belaboured Malagounda, as a result of which he fell down. The assailants thereafter threatened the complainant(PW-1) that if he tried to intervene, he too would meet the same fate as his son. Fearing for his own life, the complainant(PW-1) ran away and hid behind the bushes in order to avoid being beaten by the accused.

7. After sunset, the complainant(PW-1) returned to the village and narrated about the incident to his family members. A written complaint of this incident came to be submitted by the complainant(PW-1) at Tikota Police Station on 20th September, 2001 at 4.00 am in the morning whereupon FIR(Exhibit P-10) was registered and investigation commenced.

After conclusion of investigation, a charge sheet came to be filed against the appellants(A-1, A-2, A-3) and other accused(A-4, A-5 and A-6) for the offences punishable under Sections 143, 147, 148, 506(2) and Section 302 read with Section 149 IPC in the Court of jurisdictional Magistrate. The case being exclusively sessions triable was committed to the Court of Sessions Judge, Bijapur where charges were framed against the accused for the above offences. The accused persons pleaded not guilty and claimed trial.

The prosecution examined as many as 27 witnesses, exhibited 24 documents and 17 material objects to prove its case. The accused, upon being questioned under Section 313 of Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') claimed that they were innocent and had been falsely implicated in the case. However, no evidence was led in defence. For the sake of convenience, the details of the prosecution witnesses are enlisted below: -

PW-1	Chanagouda (complainant)(eye witness)
PW-2	Revappa (eye witness)
PW-3	Siddappa (eye witness) (hostile)
PW-4	Hiragappa (eye witness)
PW-5	Suresh (eye witness) (hostile)
PW-6	Basagonda (eye witness)
PW-7	Appasaheb (last seen witness)
PW-8	Sabu (panch witness)
PW-9	Basu (panch witness)
PW-10	Ramu (panch witness)
PW-11	Bhimanna (panch witness)
PW-12	Sangond (panch witness)
PW-13	Shantinath (panch witness)
PW-14	Sakrubai (mother of the deceased) (hearsay witness)
PW-15	Shankargouda (eye witness)
PW-16	Siddappa (hearsay witness)
PW-17	Dr. Anilkumar (Medical Jurist)
PW-18	Shetteppa (Retd. ASI) (registered the FIR) (Poujadar)
PW-19	Veerbhadrayya (Carrier Constable)
PW-20	Dayanand (Photographer)
PW-21	Raju (Scribe of Sketch Map)

PW-22	Shrishail (Carrier Constable)
PW-23	Ratansing (Assistant Sub-Inspector)
PW-24	Chandrashekhar (Investigating Officer)
PW-25	Jaganath (PSI)
PW-26	Mohammadsharif (Assistant Sub-Inspector)
PW-27	Basanagouda (Police Inspector, State Intelligence, Bangalore) (2nd Investigating Officer)

8. Upon hearing the arguments advanced by the prosecution and the defence counsel and after thoroughly appreciating the evidence available on record, the trial Court proceeded to hold that the prosecution could not prove the charges levelled against the accused beyond all manner of doubt and acquitted all the six accused vide judgment dated 23rd July, 2005 with the following pertinent findings:-

(i) That in the charge sheet, the prosecution had involved A-5 and A-6. However, none of the witnesses examined by the prosecution spoke a single word incriminating A-5 and A-6 either individually or vicariously and this circumstance casted serious doubts in the mind of the Court with regard to the conduct of the witnesses to implicate A-1 to A-4 while exonerating A-5 and A-6.

(ii) That PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 gave contradictory versions regarding exact identities/names of the assailants.

(iii) PW-4 who was a coolie and had worked along with the deceased Malagounda did not implicate A-4 in the crime.

(iv) Basagonda(PW-6), projected to be an eye witness gave evidence contradicting the evidence of PW-2 and PW-4.

(v) Rudrappa, son of PW-6 was one of the accused in the murder of Sangound, son of A-4 and thus, the said witness had a motive to speak against A-1 to A-4.

(vi) Likewise, another projected eyewitness, namely, Shankargouda(PW-15), did not state about the presence of A- 4 at the time of incident.

(vii) The trial Court further found that it was admitted by the eye witnesses(PW-6 and PW-15) that it had rained in the village continuously for three days prior to the incident and thus, the theory put forth by the complainant that the deceased and the four labourers(PW-2 to PW-5) had gone to the field for raising a bund was improbable as during the spell of incessant rainfall, it would not have been possible to carry out such an operation and for that matter, any other farming activity.

9. At para 15 of the judgment, the trial Court concluded as below:-

"In view of conflicting nature of evidence of these eye witnesses, it is clear that their evidence is not consistent with the prosecution case and it has a different version with reference to each witness. Hence a serious doubt arises as to the truthfulness of the prosecution."

10. The trial Court discussed evidence of ASI, Tikota Police Station(PW-18), wherein he admitted that police visited the place of incident in the night only. It was also noted that complainant(PW-1) admitted that the complaint was made after the police had visited the place of incident.

11. PW-2 stated in his cross examination that the police came to the village at about 10 or 11 am and recorded his statement at the police station at that time only i.e. at 12 o' clock. Taking this into consideration, the trial Court recorded a categoric finding that complaint(Exhibit P-1) was a post-investigation document and as such, it was hit by Section 162 CrPC and did not have any evidentiary worth. This conclusion was recorded in Para 17 of the judgment which is extracted hereinbelow for the sake of ready reference:-

"According to the cross - examination of P.W.2, the police came to the village at about 10 or 11 a.m. He called by the police and they went to the place and the police inspected the dead body. P.W.2 is very much specific that they went to the place along with the police at 11p.m. and thereafter went to the police station at 12 O' clock in the night. According to P.W.2, the police have recorded his statement in the police station at that time only i.e., at 12 O clock.

This goes to show that the police were aware of the offence at 11.00 p.m. on 19.09.2001. P.W.6., who claims to be an eye witness, returned to the house at about 5-00 or 6-00 p.m. and informed the incident to the children of his uncle viz., he informed Pargouda, Shankargouda and Chanagouda. But, however, P.W.1 was hiding near the bushes at his land and if what P.W.6 says is true, then in that case, P.W.1 was in the house at 5-00 or 6-00 pm only.

Nothing prevented P.W.1 to rush immediately to the police station which was 10 Kms away and to file the complaint. Even P.W.6 further admits that he told the incident to these persons and they had told him that they will go to the police station and it was 6-00 or 7-00 p.m., at the time. Even if that is the case, P.W.1 has to offer explanation as to why he filed the complaint at 4.00 a.m. When the admissions of this witness are taken into account, the police were aware of the murder at about 11 p.m. in the night and they had even visited the place of offence.

Nothing prevented the police who visited the place of offence to record the statement of P.W.1 at his house and the delay for six hours as per the evidence of P.W.1 or as to the evidence of P.W.6, the delay of eight hours is not explained by the prosecution. If already the statements of the witnesses were recorded at the village only after seeing the dead body, then in that case Ex.P1 which is the complaint, is hit by Section 162 of CrPC and cannot have evidentiary value."

12. The trial Court also concluded that the opinion of the Medical Officer regarding time of death of the deceased totally contradicted the case set up by the prosecution witnesses in their evidence regarding the time of incident.

13. Regarding the seizure of weapons/articles, the trial Court noted at para 19 that the complainant(PW-1) admitted in his cross-examination that the police had shown him the weapons of offence on the date of incident itself. However, as per the Investigating Officer(PW-27), the weapons were shown to have been recovered on 1st October, 2001 and, therefore, evidence of complainant(PW- 1) totally contradicted the claim of the Investigating Officer(PW-27) that he had seized the weapons in furtherance of the disclosure statements of the accused.

14. Taking note of these inherent lacunae, infirmities and contradictions in the prosecution evidence, the trial Court proceeded to hold that the prosecution case was full of inconsistencies and infirmities and that it had failed to prove the charges against the accused beyond all manner of doubt. Accordingly, the accused appellants(A-1, A-2 and A-3) and other three accused(A-4, A-5 and A-6) were acquitted of the charges.

15. The State preferred an appeal under Section 378(1) read with 378(3) CrPC challenging the acquittal of the accused. The learned Division Bench of High Court of Karnataka partly allowed the said appeal vide judgment dated 14th September, 2009 and while reversing the acquittal of the accused A-1, A-2 and A-3 as recorded by the trial Court, convicted and sentenced them as above. The appeal against A-4 stood abated on account of his death. The appeal against A-5 and A-6 was dismissed upholding their acquittal.

16. The instant appeal has been instituted at the instance of the accused appellants(A-1, A-2 and A-3) for assailing the judgment dated 14th September, 2009 rendered by the learned Division Bench of the High Court of Karnataka, Circuit Bench, Gulbarga whereby the acquittal of the appellants has been reversed and they have been convicted and sentenced to suffer life imprisonment.

Submissions on behalf of the appellants:-

17. Learned counsel representing the appellants urged that the view taken by the High Court in reversing the acquittal of the appellants recorded by the trial Court

by a well-reasoned judgment is totally contrary to the settled principles laid down by this Court regarding scope of interference in an appeal against acquittal.

18. Learned counsel urged that the appellate Court should be very slow to intervene with the acquittal of an accused as recorded by the trial Court. Acquittal can be reversed only if the findings recorded by the trial Court are found to be patently illegal or perverse or if the only view possible on the basis of the evidence available on record points towards the guilt of the accused. If two views are possible, the acquittal recorded by the trial Court should not be interfered with unless perversity or misreading of evidence is reflected from the judgment recording acquittal.

19. Learned counsel further urged that the learned Division Bench of the High Court, while rendering the judgment reversing acquittal of the appellant barely referred to the findings on the basis of which the trial Court had acquitted the accused by extending them the benefit of doubt. Rather, the High Court went on to record its own fresh conclusions after re-appreciation of the evidence. Such an approach is de hors the well-settled principles governing consideration of an appeal against acquittal and hence, the impugned judgment deserves to be set aside.

20. They advanced pertinent submissions assailing the judgment of the High Court seeking acquittal of the accused appellants.

21. It was urged that the complainant(PW-1), father of the deceased Malagounda and the four labourers(PW-2, PW-3, PW-4 and PW-5) abandoned the deceased victim whom they claimed to have seen being belaboured with their own eyes. They neither made any efforts to take stock of the victim's condition nor was the matter reported to the police promptly which makes it clear that the so called eye witnesses actually never saw the incident happening with their own eyes and a case of blind murder has been foisted upon the appellants on account of prior enmity.

22. The attention of this Court was drawn to the following excerpts from the evidence of complainant, Chanagouda(PW-1):-

"Again I returned back and went near my land and entered the bushes to hide myself. I sat at that place up to 6 or 7 PM in the evening. After the sun-set I returned to my village. I told the incident to my family members. In the night myself and my brothers and relatives went to the place and saw the dead body. Thereafter we informed to the police. The cousins informed about the incident to the police. At that time the police came to our house and took me to the police station.

The police enquired me and I informed them about the incident and they made a writing. It was about 2 or 3 AM in the morning. In the morning hours the police came to the place. I now see the complaint at ex.P.1, and it bears my signature at Ex.p.1(a).... The police recorded what I have stated to them in the police station. Thereafter I signed to that writing. On the next day the police have taken my statement. The Poujadar recorded my statement. The inspector also questioned me. It is not correct to suggest that the inspector has not recorded my statement.

My relatives did not made a telephone call and personally went to the police station and brought the police. At that time initially the police came and thereafter the Poujadar came. They came to our house. The poujadar questioned me what has happened. I told the Poujadar what I was knowing. The poujadar made a writing about it. The writing was made after the police visited the place of incident. Myself and my relatives went to see the dead body in the night and at that time it was 10 to 11 PM.

When we returned to house it was 10 or 11 PM. Phone facilities are available in our village. I did not made any telephone call to the police. I also did not tell-to my relatives to make a telephone call to the police station. Shivanagouda and Banagouda are my other two sons. Both of them are educated. They were present in the house when I returned from the land.

When I told my son about the incident, they went on motor-cycle to the police station but did not made any telephone call to the police station. My son Shivanagouda and Sangond went on the motor-cycle to the police station. They went to the police station at about 12 o'clock in the night. The distance between Tikota Police Station and my village is 10 KMS. On the day of incident only the police showed the weapon of offence."

(emphasis supplied)

23. In this very context, the attention of the Court was drawn to the evidence of ASI Tikota Police Station(PW-18), who recorded the FIR(Exhibit P-10) wherein he admitted that he did not know whether prior to 4.00 am on that day, the information of the murder was already provided at the police station.

24. Learned counsel thus urged that the police had already been informed about the incident by none other than the sons of the complainant(PW-1) around 12 o' clock in the night and hence, there was no reason as to why the FIR was not registered immediately on receiving such information.

25. Learned counsel contended that the complainant(PW-1) admitted in cross examination that the Poujadar scribed a complaint and he was made to append his signatures thereupon. It was submitted that the said complaint was not produced

on record. Hence, there is a genuine doubt regarding the FIR(Exhibit P-10) being a subsequently created post investigation document.

26. He then referred to the statement of Revappa(PW-2) who admitted in cross-examination that the police came to the village at about 10 or 11 pm and he was sleeping in his house when the call came from the police. A police officer from Tikota Police Station came to call him. He along with the police officer went to the place of incident where the dead body was lying. The time was about 11.00 pm. They went to the police station at 12 o' clock in the night where his statement was recorded.

27. The Court was taken through the statement of Hiragappa(PW-4) who also stated that police came to their village at 8.00 or 9.00 pm in the night. They inquired from him and he divulged as to how the incident had happened. He and the other witnesses were questioned and their statements were noted whereafter they proceeded to the crime scene. They all went to the police station at about 11.00 pm in the night. He travelled in the police jeep. His statement was again recorded at the Police Station around 12'o clock or 1.00 am.

28. Learned counsel also referred to the statement of Basagonda(PW-6) who claimed to be an eye witness of the incident and urged that the witness stated about the presence of only two servants with the deceased Malagounda while he was allegedly being assaulted by the accused. Most significantly, he did not state about the presence of the complainant(PW-1) at the crime scene. PW-6 admitted in his cross-examination that he returned to his house at about 5 to 6 pm and informed about the incident to the children of his uncle and Paragouda, Shankargouda and Chanagouda(PW-1).

Many people had gathered when he spoke about the incident. It was submitted that this version of PW-6 completely belies and eclipses the claim of the complainant(PW-1) that he had seen the incident with his own eyes because, if the complainant(PW-1) had himself witnessed the occurrence, there was no occasion for PW-6 to collect all the family members including the complainant(PW-1) and inform them about the incident.

29. The evidence of PW-15, another alleged eye witnesses was criticised and it was submitted that the conduct of this witness who happens to be a cousin of PW-1, in casually going away to his farmland despite witnessing the brutal assault and not taking any steps to inform the police or the close relatives clearly shows that he is a cooked up witness and was not present at the crime scene.

30. The statement of Dr. Anil Kumar(PW-17) was referred to and it was submitted that the Medical Jurist conducted autopsy upon the dead body at about

9.00 am on 20th September, 2001 and gave pertinent opinion that the time of death of the victim was 18 to 24 hours before the autopsy being carried out. In cross-examination, he admitted that decomposition had set in the dead body and that the time of death was more than 24 hours prior to the examination. Thus, it was submitted that the time of incident as portrayed in the evidence given by the so called eye witnesses is totally contradicted by the opinion of the Medical Jurist.

31. It was also contended that the Investigating Officer(PW-27) has given false evidence regarding the disclosure statements made by the accused and the recoveries of the weapons effected in furtherance thereof, because the complainant(PW-1) clearly admitted in his evidence that the police had showed him the weapons on the very day of the incident.

32. It was also contended that neither the disclosure statements nor the recovery memos bear the signatures/thumb impressions of the accused and hence, the recoveries cannot be read in evidence or attributed to the accused appellants.

33. Learned counsel for the appellants vehemently urged that the learned Division Bench of the High Court was not justified in causing interference into the well-reasoned judgment of acquittal rendered by the learned trial Court and reversing the acquittal of the accused appellants and that too, without recording any finding that the trial Court's judgment was perverse or that no view except the one warranting conviction of the accused was possible upon appreciation of evidence as available on record. On these grounds, he implored the court to set aside the impugned judgment and restore the acquittal of the appellants.

Submissions on behalf of Respondent-State:-

34. Per contra, learned counsel appearing for the respondent State vehemently and fervently opposed the submissions advanced by learned counsel for the appellants. He urged that learned Division Bench of the High Court, while considering the appeal against acquittal, thoroughly reappreciated the evidence available on record and arrived at an independent and well considered conclusion that the depositions of the eye witnesses PW-1, PW-2, PW-4, PW-6 and PW-15 were convincing and did not suffer from any significant contradictions or infirmities so as to justify the decision of the trial Court in discarding their evidence and acquitting the accused of the charges. The FIR(Exhibit P-10) was promptly lodged at 4.00 am in the morning of 20th September, 2001.

There was no such delay in lodging the report which could cast a doubt on the truthfulness of the prosecution story. The so called contradictions and discrepancies highlighted by the trial Court in the evidence of the eyewitnesses

for doubting their evidentiary worth are trivial and insignificant and acquittal of accused as recorded by the learned trial Court disregarding the testimony of the eyewitnesses is based on perverse and unacceptable reasoning. Learned counsel thus urged that the High Court was perfectly justified in reversing the acquittal of the accused appellants by the impugned judgment which does not require interference in this appeal.

35. We have given our thoughtful consideration to the submissions made at bar and have gone through the judgments of the trial Court and High Court as well as the evidence available on record.

Discussion and Conclusion:-

36. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial Court.

37. This Court in the case of Rajesh Prasad v. State of Bihar and Another1 encapsulated the legal position covering the field after considering various earlier judgments and held as below:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

38. Further, in the case of H.D. Sundara & Ors. v. State of Karnataka2 this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:-

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

41. In light of the above legal principles, if we go through the impugned judgment, we find that none of these essential mandates governing an appeal against acquittal were adverted to by learned Division Bench of the High Court which proceeded to virtually decide the appeal as a first Court on independent appreciation of evidence and recorded its own findings to hold the accused appellants(A-1, A-2 and A-3) guilty of the charge under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life.

42. Thus, on the face of record, the judgment of the High Court causing interference with the acquittal of the accused appellants as recorded by the trial Court is contrary to the principles established by law.

43. Keeping the above scenario in mind, we now proceed to analyse the evidence and shall assign our reasons regarding the impugned judgment being flawed, with reference to the material infirmities and lacunae in the prosecution case.

44. The place of occurrence is admittedly at a distance of 10 kms from Police Station Tikota. The complainant(PW-1), father of the deceased Malagounda claiming to be an eye witness of the incident deposed that he lodged a complaint(Exhibit P-1) at the police station at 4 am, which resulted into registration of FIR(Exhibit P- 10).

It was alleged in the report that the complainant along with PW-2, PW-3, PW-4 and PW-5(servants, who had accompanied the deceased Malagounda to erect a bund in their land) witnessed the incident wherein, the assailants including the appellants herein, assaulted and killed the deceased by inflicting injuries with sharp weapons. It may be noted that even though the complainant(PW- 1), the deceased and the labourers were all going together and the assailants were six in number, none other than the deceased Malagounda received a single injury in the incident.

45. Relevant portions from the evidence of complainant(PW-1) have been extracted and highlighted above and on going through the same, we find that his testimony suffers from patent infirmities, contradictions and inherent loopholes which brings him within the category of wholly unreliable witness.

46. The complainant(PW-1) stated in his evidence that he saw the brutal assault launched by the appellants and A-4(Sahebagouda) on his son Malagounda which took place at 4.00 pm or 5.00 pm in the evening of 19th September, 2001. While the incident was going on, he hid amongst the bushes so as to avoid being harmed by the assailants. The complainant did not state anything about the accused going away from the crime scene after the incident. However, he claimed that he returned back to his house just after sunset.

The incident took place in the month of September and thus, it can be presumed that sunset must have occurred around 6:15 to 6.30 pm. The complainant stated that on reaching home, he divulged about the incident to his family members and soon thereafter, he and his cousins (as per his version in examinationin- chief) and his sons Shivanagouda and Banagouda(as per cross examination) went to the Police Station Tikota and informed the police about the incident.

47. Apparently, thus, the close relatives of the deceased had gone to the police station in the late hours of 19th September itself. If this version was true then, in natural course, these persons were bound to divulge about the incident to the police and their statement/s which would presumably be about an incident of the homicidal death would have mandatorily been entered in the Daily Dairy of the police station if not treated to be the FIR. However, the Daily Diary or the Roznamcha entry of the police station corresponding to the so called visit by the relatives of the deceased to the police station was not brought on record which creates a grave doubt on the genuineness of the FIR(Exhibit P-10).

The complainant(PW-1) admitted in cross examination that the Poujadar came to his house and he narrated the incident to the officer who scribed the same and thereafter, the complainant appended his signatures on the writing made by the Poujadar. However, ASI Tikota Police Station(PW-18) testified on oath that complainant(PW-1) came to the police station and submitted a written report which was taken as the complaint of the incident. He did not state anything about any complaint being recorded at the house of the complainant prior to lodging of the report.

Thus, there is a grave contradiction on this important aspect as to whether the report was submitted by the complainant(PW-1) in the form of a written complaint or whether the oral statement of complainant(PW-1) was recorded by the police officials at his home leading to the registration of FIR(Exhibit P-10). The nonproduction of the Daily Dairy maintained at the police station assumes great significance in the backdrop of these facts. Apparently thus, the FIR(Exhibit P-10) is a post investigation document and does not inspire confidence.

48. Shivanagouda and Banagouda, the educated sons of the complainant(PW-1), who were the first persons to approach the police station(as stated by PW-1 in cross-examination) were not examined by the prosecution. The complainant(PW-1) also stated that his relatives personally went to the police station and brought the police to the village. The factum of the police having arrived at the village at about 10.00 pm or 11.00 pm was also stated by PW- 2 and PW-4.

49. A very important fact which is evident from the evidence of Basagonda(PW-6) who claimed to be an eye witness of the incident is that he did not state about the presence of the complainant(PW 1) at the place of incident while the victim was being assaulted. PW-6 stated that he returned to his house at about 5.00 pm or 6.00 pm and then he informed the family members, i.e., Paragouda, Shankargouda and Chanagouda(PW-1).

Thus, the case set up by prosecution that complainant, Chanagouda(PW-1) was an eye-witness to the incident, is totally contradicted by evidence of PW-6 who categorically stated that it was he who had informed the family members, the informant Chanagouda (PW-1) being one of them, about the incident at 6.00 or 7.00 pm and that they responded saying that they would be going to the police station for filing a report.

50. Thus, the claim of complainant(PW-1) that he was an eye witness to the incident is totally contradicted by the statement of PW-6. The conduct of the family members of the deceased and the other villagers in not taking any steps to protect the dead body for the whole night and instead, casually going back to their houses without giving a second thought as to what may happen to the mortal remains of the deceased, lying exposed to the elements is another circumstance which creates a grave doubt in the mind of the Court that no one had actually seen the incident and it was a case of blind murder which came to light much later.

As a matter of fact, if at all the sequence of events as emanating from the evidence of the prosecution witnesses was having even a grain of truth, then it cannot be believed that the dead body would be abandoned in this manner or that even the police officials would not put a guard at the crime scene.

51. Added to that, the version of Medical Jurist(PW-17) who stated in his cross-examination that the dead body of the deceased Malagounda was in a stage of decomposition and that the time of death was more than 24 hours prior to the autopsy done at 9.00 a.m. on 20th September, 2001 creates further doubt in the mind of the Court on the theory of the so called eye witnesses that the incident happened at 4.00 pm on 19th September, 2001.

52. The witnesses Revappa(PW-2), Basagonda(PW-6) and Shankargouda(PW-15) admitted that it had been raining incessantly in the village for almost three days. In such circumstances, the reason assigned by the complainant(PW-1) for the deceased Malagounda and the four servants(PW-2, PW-3, PW- 4 and PW-5) to have gone to the agricultural land, i.e., for putting up a bund is totally unacceptable. Since it was raining incessantly, there could not be any possibility for these people to have made an attempt to put up a bund on the land.

53. Thus, there is no logical explanation for the presence of the deceased and the servants in their field on the date and time of the incident. It seems that not only did the complainant party create eye witnesses of the incident but has also suppressed the true genesis of the occurrence.

54. PW-1 and PW-6 admitted that Sangound, son of the accused A-4 had been murdered in front of their house and that the accused party was carrying a grudge that deceased Malagounda had murdered the boy. PW-6 also admitted that deceased Malagounda, his father[(complainant)(PW-1)] and two brothers(Shivanagouda and Banagouda) were arraigned as accused for the murder of Sangound(son of A-4). The incident of murder of Sangound happened two years prior which is far too remote in point of time so as to impute motive to the appellants that in order to seek revenge, they had murdered the deceased Malagounda.

55. It has been laid down by this Court in a catena of decisions that motive acts as a double-edged sword. Hence, the very fact that members of the prosecution party were arraigned as accused in the murder of Sangound, son of A-4, this could also have been the motive for the prosecution witness to rope in the accused appellants for the murder of Malagounda.

56. The High Court heavily relied upon the circumstance of recoveries of weapons made at the instance of the accused as incriminating evidence. However, as was rightly pointed out by learned counsel representing the accused appellants, the complainant(PW-1) admitted in his cross-examination that he was shown the weapons of the offence by the police on the date of incident itself.

57. At this stage, we would like to note that the Investigating Officer(PW-27) who investigated the matter, claims to have effected the recoveries in furtherance of the disclosure statements of the accused and testified as below to prove the procedure of disclosure and the discoveries:-

"On 1.10.2001 PSI Tikota produced accused Babusaheb Sahebgouda Biradar and Alagond Sahebgouda Biradar who were interrogated and recorded vol. statement of both accused persons. I now see the vol. statement or Alagond which is at

Ex.P.15. It bears my signature and the LTM of Alagond. I now see the vol. statement of Babu and it is marked as Ex.P.16 and it bears my signature and the LTM of Babu Biradar. I recorded vol. statement of Babu Sahebgouda Pudragoudar and Alagond Sahebgouda Biradar.

And accordingly conducted seizure panchanama and seized two axes and one koyta produced by Pudragoudar i.e. Babu Sahebgouda Pudragoudar, in the field of Anasari. And accordingly also seized one Jambiya produced by Alagond Biradar. I recorded the statements of Krishnaji Govindappa Kulkarni. On 2.10.2001 produced both the accused before the Hon'ble Court.

On 3.10.01 I arrested accused Mudakappa Gadigoppa@Sahebgouda Pudragoudar and the interrogated to him and also recorded his voluntary statement. As per the vol. st. conducted seizure panchanama and seized two sickles, 0 pen shirt which was blood stained, bush-shirt which was blood stained which were belonging to accd. Gradi and one plastic carry bag.Which articles are kept in land of Basappa Gradi."

58. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act') and the discoveries made in furtherance thereof.

59. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of State of Uttar Pradesh v. Deoman Upadhyaya3.

60. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

61. As per Section 60 of the Evidence Act, oral evidence in all cases must be direct. The section leaves no ambiguity and mandates that no secondary/hearsay evidence can be given in case of oral evidence, except for the circumstances enumerated in the section. In case of a person who asserts to have heard a fact, only his evidence must be given in respect of the same.

62. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.

63. In the case of Mohd. Abdul Hafeez v. State of Andhra Pradesh4, it was held by this Court as follows: -

"5. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

64. Further, in the case of Subramanya v. State of Karnataka5, it was held as under: -

"82. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

"27. How much of information received from accused may be proved.-

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

83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself.

Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact

statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law.

This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused.

If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

(emphasis supplied)

65. Similar view was taken by this Court in the case of Ramanand @ Nandlal Bharti v. State of Uttar Pradesh6, wherein this Court held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.

66. If we peruse the extracted part of the evidence of the Investigating Officer(PW-27)(reproduced supra), in the backdrop of the above exposition of law laid down by this Court, the interrogation memos of the accused A-2(Exhibit P-15) and A-1 (Exhibit P-16), it is clear that the Investigating Officer(PW-27) gave no description at all of the conversation which had transpired between himself and the accused which was recorded in the disclosure statements. Thus, these disclosure statements cannot be read in evidence and the recoveries made in furtherance thereof are non est in the eyes of law.

67. The Investigating Officer(PW-27) also stated that in furtherance of the voluntary statements of accused(A-1 and A-2), he recovered and seized two axes and one koyta produced by A-1 in the field of Ansari and one jambiya produced

by A-2. The Investigating Officer(PW-27) nowhere stated in his deposition that the disclosure statement of the accused resulted into the discovery of these weapons pursuant to being pointed out by the accused.

68. The Investigating Officer(PW-27) further stated that he arrested accused A-3, recorded his voluntary statement and seized two sickles. However, neither the so called voluntary statement nor the seizure memo were proved by the Investigating Officer(PW- 27) in his evidence.

69. Thus, we are of the firm opinion that neither the disclosure memos were proved in accordance with law nor the recovery of the weapons from open spaces inspire confidence and were wrongly relied upon by the High Court as incriminating material so as to reverse the finding of the acquittal recorded by the trial Court.

70. The evidence of seizure of weapons of the offence is not trustworthy and was rightly discarded by the trial Court.

71. In addition thereto, we may note that admittedly, the prosecution did not procure any serological opinion to establish blood group, if any, on the weapons so recovered. Thus, the recoveries are otherwise also meaningless and an exercise in futility.

72. Thus, neither the evidence of the eye witness is trustworthy nor did the prosecution provide any corroboration to the vacillating evidence of the so called eye witnesses. We have already held that the FIR(Exhibit P-10) was a post investigation document. Thus, the entire prosecution case comes under the shadow of doubt.

73. Resultantly, we are of the firm opinion that the view taken by the trial Court in the judgment dated 23rd July, 2005 recording acquittal of accused is a plausible and justifiable view emanating from the discussion of the evidence available on record. The trial Court's judgment does not suffer from any infirmity or perversity. Hence, the High Court was not justified in reversing the well37 reasoned judgment of the trial Court thereby turning the acquittal of the accused appellants into conviction.

74. The impugned judgment dated 14th September, 2009 rendered by the High Court cannot be sustained and is hereby reversed. The accused appellants are acquitted of all the charges. They are on bail and need not surrender. Their bail bonds are discharged.

75. The appeal stands allowed accordingly.

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

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

.....J. (Sandeep Mehta)

New Delhi;

April 19, 2024

1 (2022) 3 SCC 471

2 (2023) 9 SCC 581

3 AIR 1960 SC 1125

4 (1983) 1 SCC 143

5 2022 SCC Online SC 1400

6 2022 SCC OnLine SC 1396

IN THE SUPREME COURT OF INDIA

Maya Gopinathan
Vs.
Anoop S.B. & Anr.

[Civil Appeal No._____ of 2024
arising out of SLP (Civil) No. 13398/2022]

HEADNOTE – Stridhan is an "absolute property" of a woman, and while the husband has no control over the same, he can use it in times of distress. Nevertheless, he has a "moral obligation" to restore the same or its value to his wife.

JUDGMENT

Dipankar Datta, J.

1. Leave granted.

2. The present appeal assails the final judgment and order dated 5th April, 2022 of the High Court of Kerala ("High Court", hereafter) in a matrimonial appeal[1]. The High Court partly allowed the appeal of the respondents and set aside the relief granted to the appellant by the Family Court, Alappuzha, Kerala ("Family Court", hereafter).

3. We have noticed that the second respondent passed away on 11th July, 2022 during the pendency of this appeal; hence, the first respondent, surviving as the sole contesting respondent in the present lis, has opposed the appeal.

4. Although the parties before the Family Court were at issue on several fronts, the ambit of the dispute before us is limited as would unfold hereafter. The brief factual matrix relevant for a decision on the present appeal, discerned from the records, is as follows:

I. Marriage of the appellant and the first respondent was solemnised according to Hindu rites and customs on 4th May, 2003. For both of them, it was their second marriage. While the appellant was a widow, the first respondent was a divorcee. According to the appellant, 89 sovereigns of gold were gifted to her by her family at the time of marriage. Additionally, after the wedding, the appellant's father ("P.W.2", hereafter) made over to the first respondent a sum of Rs. 2,00,000/- (Rupees two lakh) through a demand draft dated 26th July, 2004.

II. According to the appellant, on the first night of marriage (i.e., on 4th May, 2003) itself, the first respondent took custody of all her jewellery and entrusted

the same to the second respondent under the garb of safekeeping. It was also the case of the appellant that all such jewellery stood misappropriated by the respondents to discharge their pre-existing financial liabilities.

III. In course of time, owing to inter-se disputes and differences, the spouses drifted apart. In 2009, the appellant filed an original petition[2] before the Family Court for the recovery of the value of jewellery, and the amount of Rs. 2,00,000/- (Rupees two lakh) which was paid by P.W.2 to the first respondent. The appellant also filed a petition for dissolution of marriage[3]. The respondents filed a counter claim for Rs. 70,000/- (Rupees seventy thousand) as the value of a gold ring and gold chain which the first respondent customarily gifted to the appellant during the wedding ceremony.

IV. The Family Court, vide common judgment dated 30th May, 2011, held that the respondents had indeed misappropriated the appellant's gold jewellery and that she was entitled to recoup the loss caused to her by the said misappropriation. The Family Court while allowing the appellant to recover Rs. 8,90,000/- (Rupees eight lakh ninety thousand) as the value of 89 sovereigns of gold from the respondents, also directed the first respondent to recompense to the appellant Rs. 2,00,000/- (Rupees two lakh) with 6% interest per annum from the date of institution of the proceedings till realisation within 3 (three) months.

V. Additionally, the Family Court by a decree of divorce dissolved the marriage between the parties and dismissed the counterclaim of the respondents as well. The Family Court held that the ring and chain presented by the first respondent to the appellant was in the nature of a gift and the appellant could not be compelled to surrender it to the first respondent.

VI. Aggrieved by the decree of the Family Court allowing the appellant's claim with respect to recovery of the value of the gold jewellery as well as directing the first respondent to return Rs. 2,00,000/- (Rupees two lakh) to the appellant with 6% interest, the respondents moved the High Court in appeal. There was, however, no challenge to the decree for dissolution of marriage.

VII. The High court, vide the impugned judgment, while partly setting aside the relief granted by the Family Court held that the appellant had not been able to establish misappropriation of gold jewellery by the respondents. It was, inter alia, observed by the High Court that there was no documentary evidence to prove the acquisition of gold jewellery by the appellant's family, and it characterised the testimony of the appellant as unreliable being riddled with inconsistencies and gaps in the narrative. However, the High Court upheld the direction of the Family Court whereby the first respondent was required to return Rs. 2,00,000/- (Rupees two lakh) to the Appellant.

5. The appellant has taken exception to this judgment of the High Court in the present appeal on multiple grounds. The task before us is limited to determining whether the appellant was able to establish misappropriation of her gold jewellery by the respondents and whether the High Court committed an error in setting aside the relief granted to the appellant by the Family Court.

6. The appellant claimed that during the pre-marriage negotiations it was agreed by and between P.W.2 and the first respondent that Rs. 2,00,000/- (Rupees two lakh) would be paid to the latter. P.W.2 also informed the first respondent that the appellant had 50 sovereigns of gold from her first marriage and such amount would be further supplemented by additional gold which will be bought by P.W.2.

7. As noticed, the appellant further claimed that on the first night of marriage all her gold jewellery were taken by the first respondent in his custody and given to the second respondent under the garb of safekeeping. Also, in keeping with his promise, P.W.2 made over Rs.2,00,000/- (Rupees two lakh) to the first respondent after marriage. At the time of marriage, the first respondent had informed the appellant's family that he conducts certain business activities in Kozhikode. Later, the appellant found out that the gold had been utilised by the respondents to discharge their pre-existing financial liabilities which arose in those business activities.

8. Per contra, the respondents disputed the case pleaded by the appellant. The respondents denied that any demand for dowry was made by them as it was a second marriage for both the parties. However, the respondents admitted that P.W.2 informed them of the pre-existing 50 sovereigns of gold which the appellant had and that P.W.2 had further promised the respondents that he would supplement the same. The respondents further admitted that Rs. 2,00,000/- (Rupees two lakh) was given by P.W.2 through a demand draft.

9. However, the respondents claimed through the testimony of the first respondent that they were not aware of the exact amount of gold that the appellant was carrying with her since the same was never weighed by them.

10. On the point of custody of the gold jewellery, it was the version of the respondents that on the first night of marriage the appellant kept the same in her own custody by locking it in an almirah. The appellant kept the key to the almirah under her pillow; thus, the appellant was in complete possession of her gold jewellery and the respondents were never given the custody of the said jewellery.

The first respondent in his testimony stated that on the sixth day of marriage, while wearing all her gold jewellery, the appellant along with him went to P.W.2's house. The appellant justified taking all the gold with her by stating that she already had a locker facility, and it would be safer to store the gold there instead of storing it at the respondents' house where the elderly mother resides alone for the majority of the year.

11. The first respondent asserted that he was a post graduate and employed as a manager in a private company. He maintained that he never engaged in any sort of business activity and hence did not have any financial liability which needed to be discharged. Hence, the appellant's version of utilisation of gold by the respondents to discharge preexisting liabilities was not only highly improbable but completely imaginary; moreover, the appellant failed to produce any documentary evidence to prove the existence of the alleged liabilities of either respondent.

12. Lastly, the respondents placed reliance on certain photographs from the wedding ceremony of the first respondent's brother (appellant's brother-in-law), marked Ext.B3 before the Family Court. It took place around 4 (four) months after the marriage of the parties.

The respondents contended that the appellant could be seen wearing her wedding jewellery on such occasion, which appeared to be in complete contradiction to the appellant's story that her gold jewellery was taken by the first respondent on the first day of her marriage itself with him. It is significant to note that the appellant explained Ext.B3 photographs by stating that the jewellery worn by her on such occasion did not belong to her; on the contrary, the same was borrowed by her from her sister-in-law (appellant's brother's wife).

13. The Family Court undertook an exhaustive examination of the depositions rendered by the witnesses to conclude that the respondents had indeed misappropriated the jewellery entrusted to them by the appellant. The narrative of events testified by the appellant was corroborated in its entirety by P.W.2. On the contrary, it was found that the respondents did not specifically deny the appellant's allegation that she had brought with her to the matrimonial home 89 sovereigns of gold jewellery.

Such an omission to specifically deny the allegation was held by the Family Court to amount to an admission. With respect to the allegation of misappropriation, the respondents had raised a twofold defence - firstly, that it was the appellant who kept all the jewellery in a bag, which was kept under lock and key in an almirah on the wedding night and was taken by her to her paternal home on the sixth day of marriage; and secondly, the fact that it was the appellant

who was in possession of her wedding jewellery throughout was evidenced by the fact that she wore a selection of this very jewellery at the first respondent's brother's wedding on 12th September, 2003, photographs of which event were exhibited as Ext.B3.

A comparative analysis of the photographs of the wedding of the parties (Ext.A3) with Ext.B3 was pressed by both parties, with varying contentions and differing conclusions. While the appellant argued that a comparison would show that the jewellery worn at the two events were different, the respondents submitted that a comparison would clearly show the striking similarity in the jewellery worn at the two events, thus proving that the appellant had always been in possession of her jewellery. The Family Court rejected both arguments of the respondents, with there being no evidence for the first argument and the photos on record not supporting the second argument.

14. The High Court, in exercise of its appellate powers conferred by the Code of Civil Procedure, re-examined the facts on record to arrive at a conclusion diametrically opposite to that of the Family Court, i.e., the respondents had not misappropriated the appellant's jewellery and that the same was in her possession.

15. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

16. Having taken a close look at the materials on record and the conclusions drawn by the High Court on the basis thereof, we have little doubt in our mind that the impugned judgment is legally unsustainable. This is because of an erroneous approach adopted by the High Court by demanding a standard of proof as if it were seized of a criminal trial as well as by basing its findings on assumptions and suppositions which, by no stretch of imagination, can be said to be borne from the evidence on record.

Also, though the judgment of the Family Court delved deep into the evidence to arrive at reasonable findings, we have noted with some degree of distress that the High Court criticised the judgment as one rendered without taking into consideration the factual foundations of the case and by jumping to conclusions.

17. We commence our discussion by reminding ourselves of a passage on 'Standard of Proof' found in Halsbury's Laws of England[4], reading thus:

19. Standard of proof.- To succeed on any issue the party bearing the legal burden of proof must (1) satisfy a judge or jury of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent, and (2) adduce evidence sufficient to satisfy them to the required standard or degree of

proof. The standard differs in criminal and civil cases. In civil cases the standard of proof is satisfied on a balance of probabilities.

However, even within this formula variations in subject matter or in allegations will affect the standard required; the more serious the allegation, for example fraud, crime or professional misconduct, the higher will be the required degree of proof, although it will not reach the criminal standard. In criminal cases, the standard required of the prosecution is proof beyond reasonable doubt. This standard is also requisite in cases of committal for contempt, and in pension claims cases.

In matrimonial cases it seems that proof on balance of probabilities is sufficient, although proof beyond reasonable doubt is required to rebut the presumption of the formal validity of marriage. Once a matter is established beyond reasonable doubt it must be taken for all purposes of law to be a fact, as there is no room for a distinction between what is found by inference from the evidence and what is found as a positive fact.

(underlining ours, for emphasis)

18. We find an elucidation of 'Standard of Proof' in the seminal decision by a bench of three Hon'ble Judges of this Court in Dr. N.G. Dastane v. Mrs. S. Dastane[5]. This Court eloquently settled the law in the following words:

"24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact.

As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies.

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vascillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.

26. Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is 'satisfied' on matters mentioned in Clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word 'satisfied' must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. Section 23 does not alter the standard of proof in civil cases."

(underlining ours, for emphasis)

19. A bench of two Hon'ble Judges of this Court [of which one of us (Hon'ble Sanjiv Khanna, J.) was a member] in a decision of recent origin in Roopa Soni v. Kamalnarayan Soni[6] applied the ratio of the decision in Dr. N.G. Dastane (supra) while reiterating that the standard of proof for disputes in the matrimonial sphere would be preponderance of probabilities and not beyond reasonable doubt.

20. Law is well-settled that inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. Since the mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole, there must be evidence - direct or circumstantial - to deduce necessary inferences in proof of the facts in issue.

There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact which it is sought to establish. In some cases, the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases, the inferences do not go beyond reasonable probability. If there are no positive proved facts - oral, documentary, or circumstantial - from which the inferences can be drawn, the method of inference would fail and what would remain is mere speculation or conjecture.

Therefore, when drawing an inference of proof that a fact in dispute is held to be established, there must be some material facts or circumstances on record from which such an inference could be drawn. In civil cases including matrimonial disputes of a civil nature, the standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable.

21. The facts are clear that the appellant did not lodge any complaint of criminal breach of trust but by initiating civil proceedings, sought return of money equivalent to her stridhan property which stood lost forever.

This Court in Rashmi Kumar v. Mahesh Kumar Bhada[7] [a decision by a bench of three Hon'ble Judges of this Court on a reference made by a bench of two Hon'ble Judges, who considered it necessary that a fresh look at the view expressed in a previous decision of three Hon'ble Judges in Pratibha Rani v. Suraj Kumar[8] be had], after scrutiny of several treatises and precedents had the occasion to observe in paragraph 10 that the properties gifted to a woman before marriage, at the time of marriage or at the time of bidding of farewell or thereafter are her stridhan properties.

It is her absolute property with all rights to dispose at her own pleasure. The husband has no control over her stridhan property. He may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhan property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.

It was also observed in paragraph 13 that to make out an offence under section 406 of the Indian Penal Code, 1860, what was required to be proved was entrustment of stridhan property with dominion over such property to the husband or to any member of his family as well as dishonest misappropriation of or conversion to his own use the said property by the husband or such other member of his family. Admittedly, we are not concerned with any criminal offence and, therefore, proof on balance of probabilities would be sufficient.

22. It is true that a finding of fact recorded by a high court is not ordinarily disturbed by the Supreme Court but it is not a rigid rule, cast in a straitjacket formula, which can never be departed from. It is always open to this Court, in diverse situations, to test whether the conclusions of fact reached upon a consideration of the probabilities contain any serious error.

23. The impugned judgment embarking on reappreciation of evidence reveals several grounds resting whereon the High Court allowed the respondents' appeal.

24. First and foremost, we have found the High Court to have attributed lack of bona fide on the part of the appellant solely on account of the petition being filed in 2009 although cohabitation of the spouses had ended in 2006 itself.

In concluding so, the High Court erred to take into consideration the explanation proffered by the appellant and P.W.2 that substantial amount of time after separation was spent to attempt reconciliation; and it is with the fervent hopes of such attempts at reconciliation succeeding that legal proceedings were not initiated. Matters of matrimony can rarely be said to be simple or straightforward; hence, human reaction as per a mechanical timeline before the sacred bond of marriage is severed is not what one would expect.

Divorce, majorly, in Indian society is still considered a stigma, and any delay in commencement of legal proceedings is quite understandable because of the attempts made to have the disputes and differences resolved; more so, in a case of the present nature, when the appellant was faced with the imminent prospect of termination of her second marriage. Even otherwise, the appellant did not present before the Family Court a time15 barred claim. Doubting the bona fide of the appellant, on facts and in the circumstances, was thus not called for.

25. Secondly, the High Court held the appellant's failure to lead documentary evidence to support purchase of 89 sovereigns of gold, which she allegedly brought with her to the matrimonial home, as fatal. To our mind, the approach is entirely indefensible. The version of the respondents with regard to retention of custody of jewellery by the appellant has been noticed in paragraph 10 (supra). Although we accept as probable that the jewellery had not been weighed, there is no escape from the conclusion that the respondents did admit the appellant having brought with her sufficient jewellery constituting stridhan.

The dispute was raised firstly with regard to quantum and secondly, with regard to custody. How far is the version of the first respondent believable that on the night of the wedding, the appellant put her jewellery in an almirah and locked the same, with the keys being kept below the pillow? To find an answer, we pose a question to ourselves: for a person of ordinary prudence, is it reasonable to expect that a woman, who is freshly married and is intending to live in the same house and under the same roof with her husband, to keep her personal belongings like jewellery, etc. under her own lock and key, thus, showing a spirit of distrust to the husband right after the moment she gets married?

The answer cannot but be in the negative. On the contrary, the circumstance that the husband had volunteered to take custody of the jewellery for safekeeping with his mother appears to be more plausible than the rival version considering the probabilities that are associated with similar such situations. The very concept of

marriage rests on the inevitable mutual trust of the spouses, which conjugality necessarily involves.

To assume that the appellant from day one did not trust the first respondent is rather improbable. The High Court, thus, failed to draw the right inference from facts which appear to have been fairly established. That apart, we have neither been shown nor do we know of any binding precedent that for a claim of return of stridhan articles or money equivalent thereof to succeed, the wife has to prove the mode and manner of such acquisition.

It was not a criminal trial where the chain of circumstances had to be complete and conclusively proved, without any missing link. Undisputedly, the appellant had brought to the matrimonial home sufficient quantum of jewellery, which she wore during the marriage and as is evidenced from photographs being Ext. A3 series; and, having regard thereto, the High Court committed serious error in first doubting and then disbelieving the appellant's version on the specious ground that documents proving acquisition thereof by P.W.2 had not been produced.

26. Further, the High Court grossly erred in retuning inherently contradictory findings. While casting doubt on the version of the appellant that the first respondent had never exhibited love or affection for her and that the jewellery was taken by him on the first night itself without even sparing the gold chain that was given to her, it held against the appellant by remarking that if indeed "that be so, there was no chance for giving Rs.2 lakh to the 1st appellant (the husband) on 26.07.2004 i.e. after about one year of their marriage" (underlining ours, for emphasis).

Such a finding was recorded even though at a later stage, the High Court itself noted the admission of the first respondent of receipt of Rs. 2,00,000/- (Rupees two lakh) which he was ready to return. We regret, the High Court allowed its vision to be blurred and its focus of attention got diverted from the points in dispute.

27. On the issue of whether the first respondent misappropriated the appellant's jewellery, the High Court decided in favour of the first respondent on the basis of four conclusions - first, that the appellant had led no evidence to prove existence of financial liabilities on the first respondent's part so as to warrant the sale of her jewellery; secondly, comparison of photographs being Ext.A3 series on the one hand and Ext.B3 on the other showed that the appellant was wearing similar jewellery on both occasions, thus, establishing her continuous possession of the same; thirdly, the appellant's sister-in-law, whose jewellery the appellant claims to be wearing in Ext.B3 photographs, was not examined and this was held adversely against her; and fourthly, it was the appellant who admittedly owned a

bank locker prior to her marriage, while there was no such locker owned by the first respondent, making it probable that it was the appellant who had taken the jewellery and kept them in her locker. We propose to deal with each of these conclusions individually.

28. On the aspect of the first respondent's financial liabilities and the existence of the same, we find that the High Court imposed a greater burden on the appellant than was warranted. The appellant could gain awareness of the same through multiple informal ways, whereas obtaining documentary proof would be well-nigh an impossible task especially if such liabilities pre-dated the marriage of the parties. It was in the evidence of the appellant that during the pre-marriage negotiations, the first respondent had disclosed of his involvement in business activities in Kozhikode.

In view of the conduct of the first respondent subsequent to marriage, we do not consider that anything more was required to be proved by the appellant. The avarice of the first respondent is evidenced by the acceptance of Rs. 2,00,000/- (Rupees two lakh), which would not have occasioned unless a demand were made to the appellant's family. Acceptance of the said amount more than a year after the marriage, which was admitted by the first respondent, speaks volumes about his conduct.

The first respondent's contention that he had not made a demand for the money and was only given the same pursuant to a pre-marriage promise made by the appellant's family, was disproved before the Family Court and against this finding the first respondent did not appeal. In view of such conduct of the first respondent, it is thus highly probable that there existed a monetary need, in fulfilment whereof, the appellant's jewellery would have been sold.

29. We now proceed to discuss the much-contested photographs being Exts.A3 and B3 series. Upon conducting a detailed scrutiny of the colour photographs on record, we cannot help but note the significant differences in the jewellery worn by the appellant on her wedding, and that on her brother-in-law's wedding. While the appellant is adorned with multiple pieces of jewellery on her own wedding as evidenced by Ext.A3, in Ext.B3 we find the appellant to be comparatively scantily ornamented, wearing a meagre two necklaces, both of which make no appearance on the appellant's person in Ext.A3.

There exists a marked contrast in the jewellery worn on both occasions, and based on our appreciation of photographs being Exts.A3 and B3 series, it is the appellant's narrative of events we believe and accept to be true. Nonexamination of the appellant's sister-in-law, whose borrowed jewellery the appellant claims to be wearing in Ext.B3, is an insignificant lacuna in the appellant's case and cannot

be held to be fatal to it in the light of the surrounding facts and circumstances of the case.

30. Black's Law Dictionary[9] defines entrustment as:

"To give (a person) the responsibility for something after establishing a confidential relationship".

It is the appellant's contention that she entrusted all 89 sovereigns of gold jewellery to the first respondent on the assurance that his mother would keep it safely for the appellant. What was required to be proved is entrustment of the property in the hands of the husband. 89 sovereigns is a substantial amount of gold, and as a newly-wed bride entering a new home, it would have been only natural for the appellant to trust her newly-wed husband's word and entrust the custody of such precious jewellery to him.

It is evidently borne by the depositions of the witnesses that the appellant did not permanently gift or transfer the jewellery to the first respondent, and only for safekeeping that the custody of the jewellery was handed over. The Family Court, thus, rightly concluded that there being an element of entrustment, disposal and non-return of such jewellery by the first respondent would constitute misappropriation. Based on the evidence on record, we too are inclined to the view that it is indeed probable that the appellant made over possession of her jewellery to the first respondent in the firm belief that they would remain in the safe custody of his mother.

31. The fourth ground taken by the High Court, i.e., possession of the jewellery vesting in the appellant and not the first respondent, merely on the basis of the appellant admittedly owning a bank locker prior to marriage, thus giving her a place to store the jewellery, is yet again an explanation which is more conjectural than factual, for which reason we find ourselves unable to agree with it.

32. Although some doubt was cast regarding the weight of jewellery that the appellant claimed to have brought with her and there was absence of evidence (except oral) regarding its accurate weight, the High Court once again committed error in failing to resolve the issue on this front because of its prejudgment from the inception that the appellant's approach smacked of lack of bona fide.

The appellant had been married before and it is in the evidence of P.W.2 that the appellant had 50 sovereigns of gold from her first marriage and that P.W.2 assured to supplement it. Not only could this evidence be demolished in course of cross-examination, it was corroborated by the evidence of the first respondent in the sense that he too testified having been told by P.W.2 during pre-marriage negotiation of due existence of 50 sovereigns of gold in the appellant's locker.

In view of such evidence, doubt cast by the High Court even to the extent of 50 sovereigns of gold, which the appellant already had, seems to be unwarranted. It was further assumed by the High Court that it was not believable for a newly married woman to be deprived of all gold jewellery on the first night itself. We have no reason to agree with such a conclusion drawn by the High Court. Greed is a powerful motivator and has spurred humans to commit crimes far dastardlier.

We, thus, do not find it outside the realm of human possibility for a husband to commit against his wife such unacceptable and undesirable acts, which were alleged. In the light of the same, it can hardly be disputed that the appellant was indeed in possession of at least 50, if not 89, sovereigns of gold jewellery when she crossed the threshold of the matrimonial home on the fateful night of 4th May, 2003.

33. It is further evident from the photographs, i.e., Ext.A3 series that the appellant is wearing a considerable amount of gold jewellery. Curiously, the respondents did not question the nature, quality, and valuation of the gold jewellery. It was never the respondents' case that the jewellery which adorned the appellant during the wedding ceremony was not gold, but merely imitation jewellery. This peculiar omission on the part of the respondents, to our minds, only lends further plausibility to the case made out by the appellant that it was gold jewellery which she wore, and that such gold jewellery could have weighed 89 sovereigns.

34. Besides, the High Court unfortunately failed to notice and appreciate what the counterclaim of the first respondent before the Family Court precisely was. Therein, he demanded the return of the ring and the gold chain gifted by him to the appellant, as was customary, at the time of marriage.

It is well established that gifts made to the bride by the bride's husband or her parents or by relatives from the side of her husband or parents, at the time of marriage, constitute her stridhan. It was, thus, rightly held by the Family Court that the first respondent could lay no claim over the same, since there was nothing to suggest that the jewellery was a gift merely temporary in nature, with its return being expected in future.

The first respondent's rapacious conduct, as glaringly evidenced in the counterclaim filed by him, afforded sufficient ground for the Family Court to draw adverse inference against him and the High Court patently fell in error in interfering with a well-written reasoned decision of the Family Court.

35. The case is one fit for a remand and normally we would have ordered so. However, having regard to the lapse of time since proceedings were instituted by

the appellant before the Family Court (it has been in excess of a decade and a half), we considered it fit and proper not to delay a decision further which made it necessary to consider the evidence in the case.

Notwithstanding the infirmities, which are not considered not too serious or significant so as to defeat the claim of the appellant, we are of the opinion that weighing the evidence on record being what they are and on a preponderance of probabilities, it is the appellant who has established a stronger and more acceptable case.

36. For the reasons aforesaid, the impugned judgment of the High Court is set aside and the judgment of the Family Court that the appellant is entitled to relief is accepted.

37. The appellant had successfully initiated action towards recovery of money in lieu of 89 sovereigns of gold, which in the year 2009 was valued at Rs 8,90,000/- (Rupees eight lakh ninety thousand). Mere upholding of the decree of the Family Court at this distance of time, without anything more, would bring about injustice to her.

Bearing in mind the passage of time, the escalation in cost of living, and in the interest of equity and justice, we deem it fit in exercise of power conferred by Article 142 of the Constitution of India to award to the appellant a sum of Rs 25,00,000/- (Rupees twenty-five lakh). We hope and trust that such financial recompense would provide to the appellant (presently aged 50 years), comfort and security for her future life.

38. The first respondent shall pay Rs 25,00,000/- (Rupees twenty-five lakh) to the appellant within six months from date, failing which he shall be liable to pay to the appellant interest @ 6 % per annum on the said sum from this date till date of full payment. In default of payment as indicated above, the appellant will be at liberty to initiate proceedings for realisation thereof in accordance with law.

39. With the aforesaid modification of the decree of the Family Court, the appeal stands allowed to the extent mentioned before.

Parties shall, however, bear their own costs.

.....J. (Sanjiv Khanna)

.....J. (Dipankar Datta)

New Delhi;

1 Matrimonial Appeal No. 847 of 2011

2 O.P. (OS) No. 10 of 2009

3 O.P. (HMA) No. 96 of 2009

4 Volume 17, Fourth Edition

5 (1975) 2 SCC 326

6 2023 SCC OnLine SC 1127

7 (1997) 2 SCC 397

8 (1985) 2 SCC 370

9 Ninth Edition

IN THE SUPREME COURT OF INDIA

Association for Democratic Reforms
Vs.
Election Commission of India and Anr.

[Writ Petition (Civil) No. 434 of 2023]
[Writ Petition (Civil) No. 184 of 2024]
[Writ Petition (Civil) No._____ of 2024 Diary No. 35782 of 2023]

HEADNOTE – Rejected the pleas seeking 100% cross-verification of Electronic Voting Machines (EVMs) data with Voter Verifiable Paper Audit Trail (VVPAT) records.

JUDGMENT

Sanjiv Khanna, J.

1. Delay in refiling is condoned.

2. At the outset, we take on record that the counsel for the petitioners, in unison, have stated that the petitioners do not attribute any motive or malice to the Election Commission of India[1], or for that matter contend that the Electronic Voting Machines[2] have been tutored or configured to favour or disfavour a candidate or political party. However, due to possibility of manipulating the EVMs there is suspicion and, therefore, this Court should step in to instil confidence in the voters[3] and the people. Voters have the right to know that the franchise exercised by them has been correctly recorded and counted.

3. On a pointed question put by the Court, it was argued, without prejudice and in the alternative, on behalf of the petitioner - Association for Democratic Reforms, that the Court should direct:

a) return to the paper ballot system; or

b) that the printed slip from the Voter Verifiable Paper Audit Trail machine[4] be given to the voter to verify, and put in the ballot box, for counting; and/or

c) that there should be 100% counting of the VVPAT slips in addition to electronic counting by the control unit.

4. Other arguments raised relate to - the alleged modification of the VVPAT in the year 2017, whereby the glass window on the VVPAT was made translucent/tinted instead of transparent, depriving the voter from knowing

whether the vote cast by him was actually registered and counted; Rule 49MA of the Conduct of Election Rules, 1961[5] is draconian, arbitrary, and contrary to law as reference to Section 177 of the Indian Penal Code, 1860[6] in the written declaration under Rule 49MA is wrong and misconceived; and lastly, the voters' right to know that the vote as cast is duly registered, being a paramount and indelible fundamental right, any administrative reason and ground raised by the ECI objecting to 100% counting of the VVPAT paper trail should be rejected.

5. Paper ballots were the norm, till EVMs were projected as a viable alternative in 1980s. EVMs were first used in an assembly bye-election in Kerala in 1982. All through the 1980s and early 1990s, the use of EVMs for elections was discussed and debated by politicians and experts in the domain of technology and electoral process, and after due deliberations and review, the EVMs were accepted and embraced. In view of the legal challenge[7] regarding use of EVMs without legislative approval, the Parliament vide Act 1 of 1989 amended the Representation of the People Act, 1951[8] allowing the use of EVMs. They were used in the General Elections in 2004 and have been used in each and every General and other election thereafter.

6. ECI maintains that the EVMs have been a huge success in ensuring free, fair and transparent elections across the nation in all elections. They restrict human intervention, checkmate electoral fraud and malpractices like stuffing and smudging of votes, and deter the errors and mischiefs faced in manual counting of ballot papers.

While earlier it was apprehended that the introduction of EVMs will lead to hardship and disenfranchisement, independent studies showcase that EVMs have led to increase in voter participation.[9] Yet, it is also true that time and again use of EVMs has been objected to and questioned, not by one but by all political parties and others. There have been several litigations in this Court and the High Courts, albeit the challenge to the use of EVMs has been rejected recording good grounds and reasons.

7. We deem it appropriate to begin this decision by referring to some of the earlier case laws and judgments of this Court on the efficacy and use of EVMs in the elections in this country.

8. This Court in Subramanian Swamy v. Election Commission of India,[10] held that a paper trail was an indispensable requirement of free and fair elections. The relevant portion of the judgment is reproduced below:

"28. From the materials placed by both the sides, we are satisfied that the 'paper trail' is an indispensable requirement of free and fair elections. The confidence of

the voters in the EVMs can be achieved only with the introduction of the "paper trail". EVMs with Vvpat system ensure the accuracy of the voting system. With an intent to have fullest transparency in the system and to restore the confidence of the voters, it is necessary to set up EVMs with Vvpat system because vote is nothing but an act of expression which has immense importance in a democratic system.

29. In the light of the above discussion and taking notice of the pragmatic and reasonable approach of ECI and considering the fact that in general elections all over India, ECI has to handle one million (ten lakh) polling booths, we permit ECI to introduce Vvpat in gradual stages or geographical-wise in the ensuing general elections. The area, State or actual booth(s) are to be decided by ECI and ECI is free to implement the same in a phased manner. We appreciate the efforts and good gesture made by ECI in introducing the same. For implementation of such a system (Vvpat) in a phased manner, the Government of India is directed to provide required financial assistance for procurement of units of Vvpat."

Accordingly, to ensure full transparency and confidence of voters, this Court recommended that EVMs be set up with VVPATs. Amendment to the 1961 Rules was notified on 14.08.2013 to introduce the VVPAT mechanism.

9. In N. Chandrababu Naidu and Others v. Union of India and Another,[11] the petitioners prayed that 50% randomised VVPAT slip verification be conducted in every General and Bye Elections instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency. This Court held as under:

"9. At the very outset the Court would like to observe that neither the satisfaction of the Election Commission nor the system in vogue today, as stated above, is being doubted by the Court insofar as fairness and integrity is concerned. It is possible and we are certain that the system ensures accurate electoral results. But that is not all.

If the number of machines which are subjected to verification of paper trail can be increased to a reasonable number, it would lead to greater satisfaction amongst not only the political parties but the entire electorate of the country. This is what the Court should endeavour and the exercise, therefore, should be to find a viable number of machines that should be subjected to the verification of Vvpat paper trails keeping in mind the infrastructure and the manpower difficulties pointed out by the Deputy Election Commissioner. In this regard, the proximity to the election schedule announced by the ECI must be kept in mind.

10. Having considered the matter, we are of the view that if the number of EVMs in respect of which Vvpat paper slips is to be subjected to physical scrutiny is

increased from 1 to 5, the additional manpower that would be required would not be difficult for the ECI to provide nor would the declaration of the result be substantially delayed. In fact, if the said number is increased to 5, the process of verification can be done by the same team of polling staff and supervisors/officials.

It is, therefore, our considered view that having regard to the totality of the facts of the case and need to generate the greatest degree of satisfaction in all with regard to the full accuracy of the election results, the number of EVMs that would now be subjected to verification so far as Vvpat paper trail is concerned would be 5 per Assembly Constituency or Assembly Segments in a Parliamentary Constituency instead of what is provided by Guideline No. 16.6, namely, one machine per Assembly Constituency or Assembly Segment in a Parliamentary Constituency.

We also direct that the random selection of the machines that would be subjected to the process of Vvpat paper trail verification as explained to us by Mr Jain, Deputy Commissioner of the Election Commission, in terms of the guidelines in force, shall apply to the Vvpat paper trail verification of the 5 EVMs covered by the present order."

Accordingly, instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency, as stipulated under the erstwhile Guideline 16.6 of the Manual on EVM and VVPAT, it was held that five EVMs per assembly constituency or assembly segment in a parliamentary constituency would be subject to VVPAT verification.

10. This Court vide order dated 22.11.2018 dismissed Writ Petition (Civil) No. 1332/2018 titled Nyaya Bhoomi and Another v. Election Commission of India, seeking return to the ballot paper system instead of EVMs.

11. This Court vide order dated 21.05.2019 dismissed Writ Petition (Civil) No. 692/2019 titled Tech for All v. Election Commission of India, seeking 100% verification of VVPATs against the EVM outcomes, as the issue had already been decided in N. Chandrababu Naidu (supra).

12. Even earlier, this Court vide order dated 30.10.2017 in Prakash Joshi v. Election Commission of India[12], had rejected a similar prayer with regard to modification of the procedure for counting of votes by use of EVMs, leaving it to the discretion of the ECI. It was observed that this Court was not inclined to enter into the said arena.

13. This Court vide order dated 30.09.2022 dismissed Special Leave Petition (Civil) No. 16870/2022 titled Madhya Pradesh Jan Vikash Party v. Election

Commission of India regarding use of EVMs with costs. This Court observed that:

"The election process under the representation of the People Act, 1951 is monitored by a Constitutional Authority like Election Commission. Electronic Voting Machines (EVM) process has been utilized in our Country for decades now but periodically issues are sought to be raised. This is one such endeavor in the abstract."

14. Recently, this Court vide order dated 22.09.2023 dismissed Writ Petition (Civil) No. 826/2023 titled Sunil Ahya v. Election Commission of India seeking independent audit of the source code of EVMs. This Court observed that:

"The Election Commission is a constitutional entity entrusted under Article 324 of the Constitution with superintendence and control over the conduct of the elections. The petitioner has placed no actionable material on the record of the Court to indicate that the Election Commission has acted in breach of its constitutional mandate.

Ultimately, the manner in which the source code should be audited and the way the audit should be dealt with bears on sensitive issues pertaining to the integrity of the elections which are conducted under the superintendence of the Election Commission. On such a policy issue, we are not inclined to issue a direction as sought by the petitioner. There is no material before this Court, at this stage, to indicate that the Election Commission is not taking suitable steps to fulfill its mandate."

15. This Court in Kamal Nath v. Election Commission of India and Others[13], observed that it was without doubt that over the last several decades ECI has built the reputation of an impartial body and a constitutional authority which strives to hold fair election in which the people of this country participate with great trust and faith. The challenge to the EVMs and prayer for conducting VVPAT verification on random basis for 10% of the votes was rejected.

16. We could have dismissed the present writ petitions by merely relying upon the past precedents and decisions of this Court which, in our opinion, are clear and lucid, and as repeated challenges based on suspicion and doubt, without any cogent material and data, are execrable and undesirable. However, we would like to put on record the procedure and safeguards adopted by the ECI to ensure free and fair elections and the integrity of the electoral process. For this purpose, we shall refer to and take on record the features of EVMs.[14] Lastly, we would give two directions, and take on record suggestion(s) for consideration of the ECI.

17. The EVM consists of three units, namely, the ballot unit, the control unit, and the VVPAT. The ballot unit acts as a keyboard or a keypad. The ballot unit consists of 16 keys/buttons one of which the voter has to press when he exercises his choice to vote for any candidate. The keys are political party and candidate agnostic. The serial numbers, names of the candidates and the symbols of the political parties/candidates are physically pasted on the ballot unit so as to enable the voter to identify the corresponding key/button against the respective candidate and the symbol.

The control unit, which is also called the master unit, remains with the polling/presiding officer. Before the ballot unit can be used by a voter, the polling/presiding officer is required to press the 'BALLOT' button on the control unit, thereby enabling the voter to cast his vote on the ballot unit. As soon as the voter presses the 'blue button' and casts his/her vote on the ballot unit, an LED against the candidate button glows red and the control unit sends the command to the VVPAT.

The VVPAT then prints the VVPAT slip comprising of the serial number, candidate name and the symbol. The VVPAT slip, after being printed, is displayed through the glass window which is illuminated for 7 seconds to enable the voter to know and verify the serial number, the candidate and the symbol for whom they have voted. The VVPAT slip then gets cut from the roll and falls into the box/compartment attached to the VVPAT. The fall sensor in the VVPAT then sends a confirmation to the control unit. The control unit records the vote.

18. The control unit, as explained below in some detail, has burnt memory, which is agnostic and does not have the names of the candidates and symbols allotted to the candidates or political parties. As noted earlier, the polling/presiding officer has to activate the EVM by pressing the 'BALLOT' button on the control unit. The data stored in the control unit, upon the vote being cast, records and counts the button or the key pressed on the ballot unit. The data, therefore, records the total number of votes as cast by the voters, and the key or the button number on the ballot unit pressed by the voters for casting their vote. After the vote is cast and the control unit has recorded the vote, a loud beep sound confirms the registration of the vote.

19. The EVMs are manufactured and supplied to the ECI by two public sector undertakings, namely, Bharat Electronics Limited[15] (which functions under the Ministry of Defence), and Electronic Corporation of India Limited[16] (which functions under the Department of Atomic Energy).[17] The EVMs in use after 2013 are referred to as 'M3' EVMs.

The EVM setup is designed in a rudimentary fashion and the EVM units are standalone and non-networked, that is, they are unconnectable to any other third-party machine or input source. In case any unauthorised attempt is made to access the microcontroller or memory of the EVM, the Unauthorised Access Detection Mechanism (UADM) disables it permanently. The advanced encryption techniques and strong mutual authentication or reception capability rules out the deciphering of communication between the EVM units and any unauthorised interaction with the EVM.

20. The programme loaded in the EVM[18] is key hashed and burnt into a One Time Programmable microcontroller chip at the time of manufacturing, thus dispelling any possibility of tampering. It is pertinent to note that all the three units of the EVM - ballot unit, control unit and VVPAT, have microcontrollers in which the respective firmware is burnt. The burnt programme/code is unalterable and cannot be modified after the EVM is delivered/supplied by the manufacturer to ECI. Every key press of the control unit is dynamically coded, thus making it impossible to decode the signal flowing among the units of the EVM inter se. Further, each key press is recorded with date and time stamp on a real time basis.

21. As mentioned earlier, the firmware of the control unit is agnostic to any candidate name or political party symbol. The control unit only recognises the button/key pressed on the ballot unit. The control unit has a capacity to store up to 2000 vote entries.

22. Apart from the burnt one-time programmable memory, the VVPAT has a flash memory of 4 megabytes. The flash memory of the VVPAT is designed to solely store and recognise a bitmap format file. The VVPAT can store a maximum of 1024 bitmap files containing the symbol, the serial number and name of the candidate. One candidate's name, symbol, and serial number is packed into a single bitmap file of 4 kilobytes. The VVPAT does not store or read any other software or firmware.[19]

23. The VVPAT flash memory is empty and does not contain any symbol or name related details at the time of supply/delivery to the ECI. VVPATs in this form/state are stored in warehouses. The control units and ballot units are also stored and secured in the warehouses.

24. Five to six months before national or state elections are to be held, the required quantity of the EVMs are taken out from the warehouses and stored in the designated strong rooms. The EVMs, after they are put in the strong room, are subjected to First Level Check[20] by engineers of the manufacturers in the presence of the representatives of the recognised political parties. The FLC is

carried out at the district level under the supervision of the District Election Officer.

25. During the FLC, 100% or all machines are checked by casting of vote in each of the 16 buttons on the ballot unit 6 times. Further, 5% of the machines are randomly selected by the representatives of the recognised political parties for a higher mock poll by them. Out of the 5% EVMs; 1200 votes are cast in 1% EVMs, 1000 votes are cast in 2% EVMs and 500 votes are cast in 2% EVMs. The voting result indicated in the control unit is tallied with the VVPAT slip count. A list of 'FLC OK' EVMs is prepared and shared with all the recognised political parties.

26. After check and verification that the EVM is working properly, the control unit of each EVM is sealed with a pink paper seal which is signed by the representatives of the political parties. Thereafter, the plastic cabinet of the EVMs cannot be opened. There is no access to any of the EVM components. Till this stage the VVPAT flash memory is empty and it does not have any data or symbols.

27. 10% of the 'FLC OK' EVMs are taken out for training and awareness purpose in the presence of the recognised political parties. The list of the training and awareness units is also shared with the political parties. These training and awareness units are stored separately in a designated warehouse. EVM demonstration centres are set up at the District Election Office, and at the Returning Officer Headquarter/ Revenue Sub-Division Offices. Mobile demonstration vans are also deployed to cover all polling locations. The EVMs used for training and awareness are thereafter not mingled and are taken back to the designated warehouse.

28. To dispel any scenario of bias or prior knowledge, the verified EVMs undergo a two-stage randomization process. It is submitted that not even the manufacturer of the EVMs would be able to know the allotment of a particular machine for a particular state or constituency. The randomization process is conducted without any human intervention by the EVM Management System software application. The first randomization is conducted to allocate the EVMs Assembly constituency/segment-wise.

The second randomization is conducted to allocate the machines polling station wise and for the reserve pool. The randomization process is done in the presence of the representatives of the political parties/candidates and the Central Observers deputed by the ECI. The list of EVMs containing serial number as randomly allocated constituency wise and then to a particular polling station are provided to the representatives of the political parties/candidates.

29. It is important to reiterate that till this stage, particulars of the candidates or the political parties are not loaded or stored in the VVPAT. The flash memory of the VVPAT is blank/empty. The control unit being agnostic to any political party or candidate, only recognises the push button on the ballot unit. It is programmed to compute the number of times all and a particular button/key has been pressed.

30. About 10 to 15 days prior to the date of polling, the symbol loading process is undertaken by using the symbol loading units. The symbols are loaded in the flash memory of the VVPATs in the form of a bitmap file, comprising the symbol of the political party/candidate, serial number and name of the candidate.

A laptop/PC with the symbol loading application is used to create a bitmap file comprising the serial number, the candidate name and the symbol. This file is loaded on VVPAT units by using the symbol loading units. Authorised engineers of the manufacturers and the District Election Officer are involved in the symbol loading process. The whole process takes place in the presence of the candidates or their representatives and a monitor/TV screen displays the symbol loading process.

31. It is at this stage that the specific button/key on the ballot unit is allocated to each candidate. The sequence/location of button/key allocated to a candidate of a political party is done in alphabetical order on the basis of the name of the candidate, first for the National and State recognised political parties, followed by other State registered parties, and then for independent candidates.

Thus, the sequence/location of the button/key on the ballot unit and the consequent allotment for the purposes of the VVPAT varies from constituency to constituency. For example, candidate or political party 'A' may be allocated button '1' in one parliamentary constituency, whereas button '1' may be allocated to political party 'B' in another constituency.

32. There are 16 buttons/keys on each ballot unit. In case there are more than 15 candidates (one button is for NOTA), more than one ballot units are attached to the control unit. A total of 24 ballot units can be connected to a control unit to make a single EVM set. Therefore, a maximum of 384 candidates (including NOTA) can be catered by the EVM.

33. The advantages of the EVM-VVPAT mechanism are noted below:

- It runs on battery/power-packs and does not require any external power supply.
- Voting is done by pressing a button thereby negating a scenario of invalid vote akin to an invalid paper ballot.

- It does not permit more than 4 votes per minute, thereby deterring and disincentivising booth capturing.
- After the pressing of 'CLOSE' button on the control unit, there is no possibility of voting.
- It ensures quick, error-free and mischief-free counting of votes.
- Voter is instantly able to verify the recording of their vote through the beep sound. Further, the VVPAT slip helps verify that the vote casted is recorded correctly.
- By pressing the 'TOTAL' button on the control unit at any time, the total number of votes polled up to the time of pressing the button is displayed, without indicating the candidate-wise result of votes.
- The original program, which is political party and candidate agnostic, is ported on to the microcontroller of the EVM[21] during the manufacturing at the factory. This process is done way before the elections and it is impossible to know the serial number of any candidate in advance. Thus, it is not possible to pre-program the EVM in a spurious manner.

34. After the symbol loading process is completed, all or 100% of the EVMs, including the VVPATs, are checked by casting one vote by pressing each candidate button, including NOTA. A higher mock poll is also conducted in 5% randomly selected units wherein 1000 votes are cast, and the electronic result is tallied with the VVPAT slip count.

The candidates or their representatives are also allowed to choose the 5% EVMs and conduct a mock poll. Once the symbol loading process or the candidate setting is completed, and the mock polls are conducted, the ballot unit of the EVM is also sealed with the thread or plain paper seals. The symbol loaded VVPATs are sealed with address tags. The paper seals and address tags bear the signatures of the representatives of the political parties/candidates.

35. Thus, it is clear that till the symbol loading into the VVPAT is done by using the symbol loading unit, the EVM is blank and has no data/particulars of political parties or candidates. One cannot ascertain and know which button/key in the ballot unit will be allocated to a particular candidate or a political party.

36. It has been highlighted before us by the ECI that the symbol loading process conducted by using symbol loading unit in the VVPAT cannot be equated with the uploading of the software. A bitmap file comprising of the serial number, name of the candidate and the symbol allocated to the particular candidate is uploaded in the symbol loading process. The symbol loading process undertaken by using the symbol loading unit cannot alter or modify the programme/firmware in the VVPAT which has been burnt/loaded in the memory.

The control unit and the ballot unit are not subjected to the symbol loading process and not touched. The burnt/loaded firmware in the control unit and the ballot unit is and remains candidate and political party agnostic. The control unit acts and functions as the calculator, computing the total votes cast on the basis of the number of times the key/button on the ballot unit are pressed, and the number of times a specific key/button on the ballot unit is pressed.

37. On the polling date, one and a half hours before the start of polling, the presiding officer/polling officer takes out the EVMs and conducts a mock poll of 50 votes. The votes are counted electronically. The VVPAT paper slips are also counted and tallied with electronic votes. Each EVM unit is thereupon again sealed with a paper seal of a different colour. Paper seals are also signed by the candidates or their representatives.

38. The paper seals used from time to time at different stages have a serial number. They also have security features and cannot be replicated. As paper seals are used at different stages, they are given different colours.

39. The polled EVM[22] units are sealed and stored in the strong room in the presence of the candidates or their representatives. The candidates or their representatives are also allowed to put their seals on the lock of the strong room. The strong room is guarded by minimum one platoon of armed security and has CCTV coverage. The candidates or their representatives are allowed to stay and watch the strong room and in case where the entrance to the strong room is not visible, CCTV display facility is provided.

40. The VVPAT paper slips are in a roll form of 1500 slips. The control unit can store up to 2000 votes. In view of the restriction on the number of VVPAT paper slips, each EVM can be used for casting of up to 1500 votes and not more. The control unit is configured in a way that each vote would take about 15 seconds. Thus, in one minute only four votes can be cast. This prevents and checks bogus voting.

41. As explained earlier and to recapitulate, after each vote is cast by pressing the button on the ballot unit, the VVPAT glass window illuminates and the name, serial number, and symbol of the candidate voted is displayed for 7 seconds to the voter. The display of VVPAT slip informs and assures the voter that the vote as cast has been recorded. Thereafter, the VVPAT printer cuts the slip from the roll and the VVPAT slip drops in the box compartment of the VVPAT.

The fall sensor in the VVPAT printer drop box senses and chronicles the fall of the slip in the drop box, and thereupon the control unit records the button/key pressed on the ballot unit. The burnt memory, as noticed above, which records

this data is agnostic to the candidates/political parties. The control unit records the serial number of the button/key pressed on the ballot unit by each voter. The presiding officer by pressing the 'TOTAL' key on the control unit can ascertain the total number of votes recorded in the control unit.

However, the breakup of votes cast in favour of each candidate is not known. On the counting day, in the presence of the candidates/their representatives, the 'RESULT' key on the control unit is pressed. The control unit displays the number of times each button/key was pressed in the ballot unit on the polling day, thus depicting the result. EVMs are standalone machines which cannot be connected to internet. The EVMs do not have any ports so as to enable a person to have access to the burnt memory.

42. It flows from the above discussion that the possibility to hack or tamper with the agnostic firmware in the burnt memory to tutor/favour results is unfounded. Accordingly, the suspicion that the EVMs can be configured/manipulated for repeated or wrong recording of vote(s) to favour a particular candidate should be rejected. At this stage we would refer to other checks and protocols to ensure and ascertain the legitimacy and integrity of the EVMs and the election process.

43. Part IV, Chapter II of the 1961 Rules, which relates to voting by EVMs, lays down details of preparation of the voting machine by the returning officer, arrangements at the polling station, admission to the polling stations, and preparation of voting machine for poll. The three units of the EVM have to bear the serial number of the unit, name of the constituency, serial number and name of the polling station(s), and the date of poll.

Before the commencement of the poll, the presiding officer has to demonstrate to the polling agent and other persons present that no vote has already been recorded in the control unit, the three units bear the label as prescribed and the drop box of the VVPAT printer is empty. Paper seal is thereupon used for securing the control unit. The presiding officer affixes his own signature on the paper seal and also obtains the signatures of the polling agents who are desirous of affixing the same. The VVPAT and the ballot unit are put in the voting compartment and are connected with the control unit in the manner directed.

44. Before permitting any elector to vote, the polling officer is required to record the electoral roll number of the elector as mentioned in the electoral rolls, signature or thumb impression of the elector, name of the elector and the document produced by the elector in proof of their identification. These particulars are recorded in Form 17A prescribed under Rule 49L of the 1961 Rules. The format prescribed in terms of Form 17A is as under:

Sl. No.	Sl. No. of elector in the electoral roll	Details of the document produced by the elector in proof of his / her identification	Signature / Thumb impression of elector	Remarks
(1)	(2)	(3)	(4)	(5)
1.				
2.				

Form 17A is required to be signed by the presiding officer.

45. Every elector is permitted to vote in secrecy in the voting compartment of the polling station. They are required to press the blue button or key on the ballot unit against the name and symbol of the candidate/political party they intend to vote. In terms of the proviso to Rule 49M(3), the elector is entitled to view through the transparent window of the printer of VVPAT, kept along with the ballot unit inside the voting compartment, the printed paper slip showing the serial number, the name and the symbol of the candidate for whom he has voted. Thereupon, the paper slip gets cut and drops into the drop box attached to the VVPAT. No elector is permitted to enter the voting compartment when another voter is inside.

46. Rule 49O deals with the scenario where an elector, even after entering her/his details in Form 17A and having put signature or thumb impression thereon, does not vote. The presiding officer is then required to make a remark in Form 17A and take the signature or thumb impression of the elector against such remark.

47. Rule 49M(6) deals with the scenario where the elector who has been permitted to vote under Rule 49L or Rule 49P refuses, even after the warning by the presiding officer, to observe the procedure of voting laid down in Rule 49(M)(3). In such a case, the presiding officer, or the polling officer under the direction of the presiding officer, shall not allow such elector to vote. Rule 49M(7) lays down that in such a scenario, a remark to that effect shall be made against the elector's name in Form 17A by the presiding officer under his signature.

48. As per instructions issued by the ECI, the presiding officer is periodically required to check the total number of votes cast as recorded in the control unit with the data as recorded in Form 17A.

49. As per Rule 49S, at the close of the poll, the presiding officer is required to prepare an account of votes recorded in Form 17C. This is a detailed form, which in Part I, requires the presiding officer to mention the total number of electors assigned to the polling station, the total number of voters as entered in the register for voters, that is, Form 17A, the total number of voters who had decided

not to vote even after recording their details in Form 17A (Rule 49O scenario), and the total number of voters not allowed to vote (Rule 49M scenario).

The form also requires to give details of the total number of votes recorded per voting machine. This total number recorded in the voting machine should tally with the total number of voters entered in Form 17A minus the number of voters deciding not to vote and the number of voters not allowed to vote. The details of the paper seals supplied for use, paper seals used, unused paper seals returned to the returning officer etc. are also recorded and entered after the close of the poll.

50. Under Rule 49S of the 1961 Rules, at the time of close of the poll, the presiding officer furnishes attested true copy of the account of votes recorded in Part I of Form 17C to the polling agents of the candidates. He also retains a receipt of the same from the polling agent.

51. Before start of counting of votes, the serial number of the EVMs and the paper seals affixed on the EVMs are verified with details mentioned in Form 17C and are shown to the counting agents. The total votes displayed by pressing the 'TOTAL' button on the control unit is also tallied with the total votes polled as per Form 17C.

52. The counting is done in the presence of the polling agents/candidates by pressing the 'RESULT' button on the control unit. The total votes polled and the total votes polled by each candidate is thereupon displayed on the display panel.

53. In terms of the directions issued by this Court in N. Chandrababu Naidu (supra), the VVPAT slips of five polling stations per assembly constituency/assembly segment of the parliamentary constituency, are randomly selected and counted. The results are then tallied with the electronic results of the control unit.

54. It may be relevant here to also refer to Rule 56D of the 1961 Rules, which reads as under:

"56-D. Scrutiny of paper trail.-

(1) Where printer for paper trail is used, after the entries made in the result sheet are announced, any candidate, or in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to count the printed paper slips in the drop box of the printer in respect of any polling station or polling stations.

(2) On such application being made, the returning officer shall, subject to such general or special guidelines, as may be issued by the Election Commission,

decide the matter and may allow the application in whole or in part or may reject in whole, if it appears to him to be frivolous or unreasonable.

(3) Every decision of the returning officer under sub-rule (2) shall be in writing and shall contain the reasons therefor.

(4) If the returning officer decides under sub-rule (2) to allow counting of the paper slips either wholly or in part or parts, he shall-

(a) do the counting in the manner as may be directed by the Election Commission;

(b) if there is discrepancy between the votes displayed on the control unit and the counting of the paper slips, amend the result sheet in Form 20 as per the paper slips count;

(c) announce the amendments so made by him; and

(d) complete and sign the result sheet."

55. Any candidate, or in his absence an election agent or counting agent, as per the said Rule, can apply in writing to the returning officer to count the printed paper slips in the drop box in respect of any polling station(s). The returning officer, subject to any general or special guidelines issued by the ECI, has to decide the matter and can allow the application in whole or in part, or may reject the application in full if it appears to be frivolous or unreasonable. Every decision of the returning officer is to be in writing and has to contain reasons. If the returning officer decides to allow counting of paper slips, either wholly or in part, he has to do so in the manner prescribed in sub-rule (4) to Rule 56D of the 1961 Rules.

56. As per the ECI guidelines, in case there is any mismatch between the total number of votes recorded in the control unit and Form 17C on account of non-clearance of mock poll data or VVPAT slips, in terms of Rule 56D(4)(b) of the 1961 Rules etc., the printed VVPAT slips of the respective polling stations are counted and considered if the winning margin is equal to or less than total votes polled in such polling stations.

57. At this stage, we would refer to the data on the performance of the EVMs. More than 118 crore electors have cast their votes since EVMs have been introduced. In 2019, about 61.4 crore voters had cast their votes in 10.35 lakh polling stations. 23.3 lakh ballot units, 16.35 lakh control units and 17.40 lakhs VVPAT units were used in the 2019 General Elections. For the purpose of the 2024 General Elections, 10.48 lakh polling stations have been established to

enable 97 crore registered voters to cast their votes. 21.60 lakh ballot units, 16.80 lakh control units and 17.7 lakh VVPAT units have been made ready for being used.

58. ECI has conducted random VVPAT verification of 5 polling booths per assembly segment/constituency for 41,629 EVMs-VVPATs. Further, more than 4 crore VVPAT slips have been tallied with the electronic counts of their control units. Not even a single case of mismatch, (except one which we will refer to subsequently), or wrong recording of votes has been detected. Returning officers have allowed VVPAT slip recounting under Rule 56D in 100 cases since 2017. The VVPAT slip count matched with the electronic count recorded in the control unit in all cases.[23]

59. In the 2019 Lok Sabha Elections, 20,687 VVPAT slips were physically counted, and except in one case, no discrepancy or mismatch was noticed.

60. The discrepancy during mandatory verification of VVPAT slips happened in polling station No. 63, Mydukur Assembly Constituency, Andhra Pradesh during the 2019 Lok Sabha Elections. On verification, it was found that the discrepancy had arisen on account of failure of the presiding officer to delete the mock poll data.[24] While it is not possible to rule out human errors, paragraph 14.5 of Chapter 14 of the Manual on EVM and VVPATs deals with such situations and lays down the protocol which is to be followed.

61. During the course of hearing, our attention was drawn to Rule 49MA which permits an elector to raise a complaint regarding the mismatch between the name and symbol of the candidate shown on paper slip generated by the VVPAT and the vote cast on the ballot unit. Such elector is required to make a written declaration to the presiding officer. There have been 26 such cases in which the electors have complained under Rule 49MA. There is not even a single case in which any mismatch or defect was found.

62. The EVMs have been subjected to test by technical experts committee from time to time. These committees have approved and did not find any fault with the EVMs. The M3 EVMs currently in use are designed by engineers of BHEL and ECIL. These designs are vetted by the technical experts committee.

63. Our attention was drawn to the query of the Parliamentary Committee on Government Assurances regarding the data on discrepancy between the EVM and VVPAT counts in 2019 Lok Sabha Elections. Reliance is placed on a news report published in The Wire to submit that the ECI failed to submit the requisite information and revert back to the parliamentary committee despite multiple

reminders. The ECI has explained that a reply regarding the said query was sent to the Parliamentary Committee on 05.07.2019.

64. Reliance was placed on a news report of The Quint to contend that there were discrepancies in 2019 Lok Sabha Elections, viz. the electronic votes recorded in the control unit and the total votes polled/voter turnout. The ECI has explained that the report referred to in the Quint is with reference to the live voter turnout data uploaded on the website of the ECI during 2019 Lok Sabha Elections.

The voter turnout data is dynamic in nature and is uploaded by the ECI on real time approximation by taking inputs from the presiding officers of the polling stations. Inaccuracies were found in the real-time inputs given by the presiding officers. However, there was no mismatch of the data of votes recorded in the EVMs and the data of total votes recorded in Form 17C. The data in the EVM and Form 17C matched and accordingly the results were declared in Form 20.

65. On a question being put by the Court, it was stated that a minimum of 50% of the polling stations are equipped with CCTV cameras. Data from the CCTV cameras is stored and retained at least for a period of 45 days from the date of announcement of the polling results. Similarly, the EVMs are retained in the strong room along with seals etc. as affixed after counting of the votes.

The candidates have the right to challenge the poll result by filing an election petition within 45 days from the date of election of the returned candidate. The ECI guidelines/protocol stipulate that confirmation regarding the filing status of election petitions must be obtained from the relevant High Courts. If challenge is made, the EVMs are retained in the strong room along with the seals etc. for a longer period. In cases where no election petitions are filed, the strongrooms are opened and the EVMs are shifted to the warehouse.

66. The ECI has also in its counter affidavit stated that the EVMs have been continuously used in different elections since the year 2000. The electoral outcome had been divergent, favouring or disfavouring different political parties. Details of the political parties with maximum number of seats since 2004 is tabulated as under:

PARTY WITH MAXIMUM NUMBER OF SEATS IN LEGISLATIVE ASSEMBLY ELECTION SINCE 2004										
Andhra Pradesh	2004 INC	2009 INC	2014 TDP	2019 YSRCP		Meghalaya	2008 INC	2013 INC	2018 INC	2023 NPEP
Arunachal Pradesh	2004 INC	2009 INC	2014 INC	2019 BJP		Mizoram	2008 INC	2013 INC	2018 MNF	2023 ZPM
Assam	2006 INC	2011 INC	2016 BJP	2021 BJP		Nagaland	2008 NPF	2013 NPF	2018 NPF	2023 NDPP
Bihar	2005 RJD	2010 JD(U)	2015 RJD	2020 RJD		Odisha	2004 BJD	2009 BJD	2014 BJD	2019 BJD
Chhattisgarh	2008 BJP	2013 BJP	2018 INC	2023 BJP		Punjab	2007 SAD	2012 SAD	2017 INC	2022 AAP
Goa	2007 INC	2012 BJP	2017 INC	2022 BJP		Rajasthan	2008 INC	2013 BJP	2018 INC	2023 BJP
Gujarat	2007 BJP	2012 BJP	2017 BJP	2022 BJP		Sikkim	2004 SDF	2009 SDF	2014 SDF	2019 SKM
Haryana	2005 INC	2009 INC	2014 BJP	2019 BJP		Tamil Nadu	2006 DMK	2011 AIADMK	2016 AIADMK	2021 DMK
Himachal Pradesh	2007 BJP	2012 INC	2017 BJP	2022 INC		Telangana	2014 TRS	2018 TRS	2023 INC	
Jammu & Kashmir	2008 JKNC	2014 JKPDP				Tripura	2008 CIP(M)	2013 CIP(M)	2018 BJP	2023 BJP
Jharkhand	2005 BJP	2009 BJP & JMM	2014 BJP	2019 JMM		Uttarakhand	2007 BJP	2012 INC	2017 BJP	2022 BJP
Karnataka	2004 BJP	2008 BJP	2013 INC	2018 BJP	2023 INC	Uttar Pradesh	2007 BSP	2012 SP	2017 BJP	2022 BJP
Kerala	2006 CPI(M)	2011 CPI(M)	2016 CPI(M)	2021 CPI(M)		West Bengal	2006 CPI(M)	2011 TMC	2016 TMC	2021 TMC
Madhya Pradesh	2008 BJP	2013 BJP	2018 INC	2023 BJP		NCT of Delhi	2008 INC	2013 BJP	2015 AAP	2020 AAP
Maharashtra	2004 NCP	2009 INC	2014 BJP	2019 BJP		Puducherry	2006 INC	2011 AINRC	2016 INC	2021 AINRC
Manipur	2007 INC	2012 INC	2017 INC	2022 BJP						

67. We have referred to the data, after elucidating the mechanics and the safeguards embedded in the EVMs to check and obviate wrongdoing, and to evaluate the efficacy and performance of the EVMs. We acknowledge the right of voters to question the working of EVMs, which are but an electronic device that has a direct impact on election results. However, it is also necessary to exercise care and caution when we raise aspersions on the integrity of the electoral process. Repeated and persistent doubts and despair, even without supporting evidence, can have the contrarian impact of creating distrust.

This can reduce citizen participation and confidence in elections, essential for a healthy and robust democracy. Unfounded challenges may actually reveal perceptions and predispositions, whereas this Court, as an arbiter and adjudicator of disputes and challenges, must render decisions on facts based on evidence and data. This is the reason why we had re-listed the matters for directions and clarifications on 24.04.2024, when specific points/questions raised were answered by the ECI. The petitioners were also heard.

68. The counsel for the petitioners, on 24.04.2024, drew our attention to a Wikipedia article which states that firmware is a software which provides low-level control of computing device hardware etc. It also states that programmable firmware memory can be reprogrammed via a procedure sometimes called flashing.

This is stoutly denied by the officer of the ECI, who states that this would require the EVMs to be re-engineered by the manufacturers. It is submitted that the

microcontroller used in the EVM has one-time programable memory, that is, it is unalterable once burned. It is only the VVPAT which has a flash memory component for the purpose of storing the bitmap file. To us, it is apparent that a number of safeguards and protocols with stringent checks have been put in place.

Data and figures do not indicate artifice and deceit. Reprogramming by flashing, even if we assume is remotely possible, is inhibited by the strict control and checks put in place and noticed above. Imagination and suppositions should not lead us to hypothesize a wrong doing without any basis or facts. The credibility of the ECI and integrity of the electoral process earned over years cannot be chaffed and over-ridden by baroque contemplations and speculations.

69. The test for determining the scope of unenumerated rights is based on tracing them to specific provision of Part III of the Constitution or to the core values which the Constitution espouses. While we acknowledge the fundamental right of voters to ensure their vote is accurately recorded and counted, the same cannot be equated with the right to 100% counting of VVPAT slips, or a right to physical access to the VVPAT slips, which the voter should be permitted to put in the drop box.

These are two separate aspects - the former is the right itself and the latter is a plea to protect or how to secure the right. The voters' right can be protected and safeguarded by adopting several measures. This Court in Subramanian Swamy (supra) had directed gradual introduction of VVPATs to guarantee utmost transparency and integrity in the system. This direction was made to safeguard the right of the voters to know that the vote has been correctly recorded in the EVM.

The direction has been implemented. The voter can see the VVPAT slip through the glass window and this assures the voter that his vote as cast has been recorded and will be counted. In N. Chandrababu Naidu (supra), the direction for counting the VVPAT paper trail in 5 EVMs per assembly constituency or assembly segment in a parliamentary constituency was issued, primarily as a precautionary measure rather than a justification or necessity.

This decision was aimed at ensuring the highest level of confidence in the accuracy of election results. Giving physical access to VVPAT slips to voters is problematic and impractical. It will lead to misuse, malpractices and disputes. This is not a case where fundamental right to franchise exists only as a parchment, rather, the entire electoral process protocol, and the checks as well as empirical data, ensure its meaningful exercise.

70. VVPAT slip is made of a 9.9 cm x 5.6 cm thermal paper coated with chemical to ensure print retention for about 5 years. It is very soft and sticky, which makes the counting process tedious and slow. The counting process is undertaken through the following steps: the verification of unique ID of the VVPAT, opening of the VVPAT drop box, taking out the paper slips, counting the total number of slips, matching the number of slips with the total votes polled as per Form 17C, segregation of candidate-wise VVPAT slips, making candidate-wise bundles of 25 slips and counting of bundles and leftover slips.

There are instances of recounting and reverification of the slips till the candidatewise tallying is done. Thus, the counting process, it is stated, takes about five hours. The counting is done by a team of three officers under CCTV coverage and under direct supervision of the supervising officer and the ECI observer of the constituency. Candidates/agents can remain present.

We are not inclined to modify the aforesaid directions to increase the number of VVPAT undergoing slip count for several reasons. First, it will increase the time for counting and delay declaration of results. The manpower required would have to be doubled. Manual counting is prone to human errors and may lead to deliberate mischief. Manual intervention in counting can also create multiple charges of manipulation of results. Further, the data and the results do not indicate any need to increase the number of VVPAT units subjected to manual counting.

71. During the course of hearing, it was suggested that instead of physically counting the VVPAT slips, they can be counted by a counting machine. This suggestion, including the suggestion that barcoding of the symbols loaded in the VVPATs may be helpful in machine counting, may be examined by the ECI. These are technical aspects, which will require evaluation and study, and hence we would refrain from making any comment either way.

72. We must reject as foible and unsound the submission to return to the ballot paper system. The weakness of the ballot paper system is well known and documented. In the Indian context, keeping in view the vast size of the Indian electorate of nearly 97 crore, the number of candidates who contest the elections, the number of polling booths where voting is held, and the problems faced with ballot papers, we would be undoing the electoral reforms by directing reintroduction of the ballot papers. EVMs offer significant advantages.

They have effectively eliminated booth capturing by restricting the rate of vote casting to 4 votes per minute, thereby prolonging the time needed and thus check insertion of bogus votes. EVMs have eliminated invalid votes, which were a major issue with paper ballots and had often sparked disputes during the counting

process. Furthermore, EVMs reduce paper usage and alleviate logistical challenges. Finally, they provide administrative convenience by expediting the counting process and minimizing errors.

73. ECI has been categoric that the glass window on the VVPAT has not undergone any change. The term used in Rule 49M is 'transparent window'. The tinted glass used on the VVPAT printer is to maintain secrecy and prevent anyone else from viewing the VVPAT slips. The voter in the voting compartment who is viewing the glass from the top can have clear view of the slip for 7 seconds. Marginal tint on the VVPAT glass window, or the fact that the cutting and dropping of the slip from the roll in to the drop box of the printer is not visible, does not violate Rule 49M.

The words 'before such slips get cut' in the proviso to Rule 49M(3) indicate and require that the slip should be cut from the roll after the elector has seen the print through the glass window. Use of glass window prevents damage, smudging, attempt to deface or physically access the VVPAT slip. The rule ensures that the voter is able to see the slip along with the serial number with name of the candidate and the symbol for whom they have voted.

74. Similarly, we would reject the submission that any elector should be liberally permitted as a routine to ask for verification of vote. Rule 49MA permits the elector to raise a complaint if she/he is of the view that the VVPAT paper slip did not depict the correct candidate/political party she/he voted. However, whenever a challenge is made, the voting process must be halted. An overly liberal approach could cause confusion and delay - hindering the election process and dissuading others from casting their votes.[25] ECI has stated that only 26 such requests in terms of Rule 49MA were received, and in all cases, the allegation was found to be incorrect.

75. We have conducted an in-detail review of the administrative and technical safeguards of the EVM mechanism. Our discussion aims to address the uncertainties and provide assurance regarding the integrity of the electoral process. A voting mechanism must uphold and adhere to the principles of security, accountability, and accuracy.

An overcomplex voting system may engender doubt and uncertainty, thereby easing the chances of manipulation. In our considered opinion, the EVMs are simple, secure and user-friendly. The voters, candidates and their representatives, and the officials of the ECI are aware of the nitty-gritty of the EVM system. They also check and ensure righteousness and integrity. Moreover, the incorporation of the VVPAT system fortifies the principle of vote verifiability, thereby enhancing the overall accountability of the electoral process.

76. Nevertheless, not because we have any doubt, but to only further strengthen the integrity of the election process, we are inclined to issue the following directions:

(a) On completion of the symbol loading process in the VVPATs undertaken on or after 01.05.2024, the symbol loading units shall be sealed and secured in a container. The candidates or their representatives shall sign the seal. The sealed containers, containing the symbol loading units, shall be kept in the strong room along with the EVMs at least for a period of 45 days post the declaration of results. They shall be opened, examined and dealt with as in the case of EVMs.

(b) The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at SI.No.2 or Sl.No.3, behind the highest polled candidate.

Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/ microcontroller after the verification process is conducted.

The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered.

77. The writ petitions and all pending applications, including the applications for intervention, are disposed of in the above terms.

.....J. (Sanjiv Khanna)

.....J. (Dipankar Datta)

New Delhi;

April 26, 2024.

1 For short, 'ECI'.

2 For short, 'EVMs'

3 'Voters' and 'Electors' is used interchangeably.

4 For short, 'VVPAT'.

5 For short, '1961 Rules'.

6 For short, 'IPC'.

7 See A.C. Jose v. Sivan Pillai and others, (1984) 2 SCC 656.

8 For short, 'RP Act'.

9 Legal History of EVMs and VVPATs, Edition 1, January 2024, p.654.

10 (2013) 10 SCC 500.

11 (2019) 15 SCC 377.

12 2017 SCC OnLine SC 1734.

13 (2019) 2 SCC 260.

14 In view of the issue raised, we are not dealing with the post counting handling of EVMs.

15 For short, 'BEL'.

16 For short, 'ECIL'.

17 Collectively referred to as the 'manufacturers'.

18 EVM here refers to the ballot unit, the control unit and the VVPAT unit.

19 It is apposite to note the difference between firmware and software. Firmware is a form of microcode or instructions embedded into hardware devices to help them operate effectively. Firmware size is usually small and ranges in size of a few kilobytes. Software on the other hand, is installed onto a device and used for interaction, such as browsing the internet, computing, word processing and many more complex tasks. Software usually runs on the top of operating systems and are usually large in size between few hundred kilobytes to gigabytes. Software is upgradable or updatable, and its memory is usually accessible and designed for user interactions. The ECI submits that the VVPATs do not have software as they only have firmware.

20 For short, 'FLC'.

21 The EVM, as earlier observed and we clarify here, means the ballot unit, the control unit and the VVPAT unit.

22 The EVM, as earlier observed and we clarify here, means the ballot unit, the control unit and the VVPAT unit.

23 The above figures are updated on the basis of the response given by the ECI to the queries raised by the Court on 16.04.2024. The figures given in the counter affidavit filed by the ECI are as follows:

38,156 randomly selected VVPATs have been physically counted and they have tallied with the electronic count of their control unit. Not even a single case of mismatch or transfer of vote meant for candidate A to candidate B has been detected. Counting of VVPAT slips under Rule 56D has been allowed in 61 cases but there is not even a single case of mismatch.

24 The said discrepancy was duly rectified in terms of the protocol laid down in the Manual on EVM and VVPAT.

25 However, we refrain from making any comments on the application of Section 177 of the Indian Penal Code, 1860.

IN THE SUPREME COURT OF INDIA

Association for Democratic Reforms

Vs.

Election Commission of India & Anr.

[Writ Petition (C) No. 434/2023]

[Writ Petition (C) No._____ /2024 @ Diary No. 35782/2023]

[Writ Petition (C) No. 184/2024]

JUDGMENT

Dipankar Datta, J.

1. I have had the privilege of reading the opinion authored by brother Hon'ble Khanna, J. His Lordship, in my opinion, has dealt with the legal and techno-legal issues arising in connection with the challenge to the process of polling of votes through Electronic Voting Machines[1] mounted by the writ petitioners and the several intervenors with unmatchable finesse and admirable clarity. I do not recollect any previous decision of this Court having explained the working of the EVMs in such great detail with lucidity and dexterity.

The reasons assigned by His Lordship for negating the challenge, without doubt, are cogent and valid. The twin directions in the penultimate paragraph, notwithstanding that the electoral process for constituting the 18th Lok Sabha is in full swing, are in the nature of forwardlooking measures to strengthen the electoral system by bringing in more transparency. Such directions do not have the effect of retarding, interrupting, protracting or stalling the counting of votes, and is a course of action that seems to be perfectly permissible in the light of the Constitution Bench decision of this Court in Election Commission of India v Ashok Kumar[2].

2. Though His Lordship's opinion has my whole-hearted concurrence, I have thought of penning a few words to express my own views, keeping in mind the customary challenges that are laid before this Court whenever an election is reasonably imminent, by way of emphasis. Hon'ble Khanna, J. and I are speaking through different judgments, but our voices are not too different.

3. I have heard senior counsel/counsel for the three petitioners suspect, without however attributing any malice to the Election Commission of India[3] (in which

vests the superintendence, direction and control of elections per Article 324 of the Constitution of India[4]), the efficacy of exercise of the right of franchise through the EVMs which, according to them, are not entirely reliable and open to manipulation, and that completely tallying the Voter Verifiable Paper Audit Trail[5] slips with the votes cast on the ballot unit is the plausible solution to ensure a taint-free election.

I have also heard counsel for the petitioning association in the lead matter rely on certain reports to persuade the Court hold that casting of votes through EVMs is not fool-proof and that voting through electronic means has been discontinued by a European nation in compliance with a judicial verdict. He was also heard to suggest, when called upon by the Court regarding the nature of relief the petitioning association seeks, that the electoral process in India should return to the "paper ballot system" upon discontinuance of voting through the EVMs.

4. I place on record that although such a suggestion was subsequently withdrawn by counsel in course of the proceedings that ensued following listing of the writ petitions "For Directions" on 24 April, 2024 to seek clarifications from the ECI on certain points, nothing much turns on it. The withdrawal was more of an attempt to erase the impression we, the Judges forming the Bench, were urged to form by senior counsel for the ECI while arguing that the petitioning association's utter lack of bona fides (in invoking this Court's writ jurisdiction under Article 32 of the Constitution) is completely exposed thereby.

I have no hesitation to accept the submission of senior counsel for the ECI that reverting to the "paper ballot system" of the bygone era, as suggested, reveals the real intention of the petitioning association to discredit the system of voting through the EVMs and thereby derail the electoral process that is underway, by creating unnecessary doubts in the minds of the electorate.

5. It is of immediate relevance to note that in recent years, a trend has been fast developing of certain vested interest groups endeavouring to undermine the achievements and accomplishments of the nation, earned through the hard work and dedication of its sincere workforce. There seems to be a concerted effort to discredit, diminish, and weaken the progress of this great nation on every possible frontier. Any such effort, or rather attempt, has to be nipped in the bud. No Constitutional court, far less this Court, would allow such attempt to succeed as long as it (the court) has a say in the matter.

I have serious doubt as regards the bona fides of the petitioning association when it seeks a reversion to the old order. Irrespective of the fact that in the past efforts of the petitioning association in bringing about electoral reforms have borne fruit, the suggestion put forth appeared inexplicable. Question of reverting to the

"paper ballot system", on facts and in the circumstances, does not and cannot arise. It is only improvements in the EVMs or even a better system that people would look forward to in the ensuing years.

6. At the same time, one cannot be oblivious that in a society pledged to uphold the rule of law, none - howsoever high or low - is above the law. Everyone is subject to the law fully and completely, and authorities within the meaning of State in Article 12 of the Constitution are no exception.

Concepts of unfettered discretion or unaccountable action has no place in the matter of governance; hence, neither can the ECI nor can any other authority claim to possess arbitrary power over the interests of an individual voter and seek cover from the sunlight of judicial scrutiny if, indeed, a valid cause is set up for interference. After all, "let right be done" is also the motto of our nation like any other civilised State. That the sanctity of the electoral process has to be secured at any cost has never been in doubt.

7. Conducting elections in India is a difficult task, is an understatement; rather, it is a humongous task and presents a novel challenge, not seen elsewhere in the world. India is home to more than 140 crore people and there are 97 crore eligible voters for the 2024 General Elections, which is more than 10% of the world population. These voters represent the largest electorate in the world.

The Representation of the People Act, 1951[6] which, to my mind, amidst the vast legislative landscape of the nation is the most important enactment after the Constitution of India, is also the most effective instrument to uphold democratic and republican ideals, which are the hallmarks of our preambular promise. The RoP Act, which has established the legal framework for conducting elections, ensures that each and every citizen has a fair and equal opportunity to exercise his/her right of vote and to participate in the democratic process for electing his/her governor.

The duties, functions and obligations to be performed/discharged by the ECI are ordained by the RoP Act, which are paramount and nonnegotiable. Being a complete code in itself, the RoP Act reinforces the rule of law and upholds the principles of justice, fairness and transparency. The larger the electorate, greater are the challenges associated with the elections. As it is, the ECI has an onerous responsibility to shoulder and there is absolutely no margin for error.

Periodical challenges to electoral processes, which gain momentum particularly when General Elections are imminent, require the ECI as of necessity to raise robust, valid and effective defence to spurn such challenges failing which any

adverse judgment by a court is bound to undermine the authority and prestige of the ECI and bring disrepute to it.

8. The 2024 General Elections, which are proposed to be conducted in 7 (seven) phases and presently underway, will entail an estimated expenditure of around Rs. 10,00,00,00,00,000 (Rupees One lakh crore); more than 10 lakh polling booths are required to be setup to facilitate the voting process. The EVMs are carried to the remotest areas of this country, occasionally on the backs of horses and other animals; voting booths have been set up in far-off villages at the foothills of the Himalayan mountains as well as the delta of the Sundarbans which are only accessible through boats. These challenges are unique to India, and the election process has to be considered in this context.

9. Taking an example, West Bengal is the 13th largest state in terms of area, spread over 88,752 sq. km. The density of population of the state is 1028 persons/sq. km. Even a small state like West Bengal is more densely populated than most European nations. This being the scenario, any comparison of the nature which was sought to be drawn on behalf of the petitioning association with a particular European nation, may not be adequately representative since the demographic and logistical challenges in the conduct of elections in each country are unique to it. Also, it was not demonstrated before the Court that the machines put to use in the electoral system of such nation are similar and what was said by its court applies ex proprio vigore to India.

10. Electronic voting is not something which is prevalent only in India. Multiple countries use electronic voting in varying degrees in their national elections. However, use of EVMs in elections in India are not without its checks and balances. Reasonable measures to ensure transparency, such as tallying 5% VVPAT slips with votes polled, are already in place after the decision of this Court in N. Chandrababu Naidu v. Union of India[7]. This measure, as has been noticed by Hon'ble Khanna, J., was undertaken out of abundant caution and not as an admission of a flaw in the process.

11. The exercise of tallying 5% VVPAT slips with votes cast by the electors has not, till date, resulted in any mismatch. This assertion of the ECI has not been proved to be incorrect by the petitioners by referring to any credible material or data. So long no mismatch is detected even after tallying 5% of VVPAT slips, as directed in N. Chandrababu Naidu (supra), it would defy the sense of logic and reason of a prudent man to issue a Mandamus to the ECI to arrange for tallying 100% VVPAT slips on the specious ground of the petitioners' apprehension that the EVMs could be manipulated.

12. The petitioning association has relied on the Report titled 'An inquiry into India's Election System: Is the Indian EVM and VVPAT system fit for democratic elections?' submitted by the Citizens' Commission on Elections[8], to emphasize the vulnerabilities of the current electronic voting system. The CCE Report, on a bare reading, appears to be the culmination of inputs given by domain experts. For whatever such report is worth and though counsel claimed that the efficacy of the voting system through EVMs has been doubted, the CCE Report itself concludes, inter alia, that no hacking of any EVM has been detected; what it observes is that there is no guarantee that the EVMs cannot be hacked.

This, in essence captures the underlying weakness in the petitioning association's entire case, inasmuch as the only grounds for the reliefs sought lie in the realm of apprehension and suspicion. In arguendo, even if the CCE Report is taken on face value and it is believed that the EVM-VVPAT system can be hacked, can it be said that there is absence of a redressal mechanism for the same? Should there be hacking, resulting in violation of a right of an elector in any manner, and if there be proof adequate enough to upturn an election result, the law already has in place a remedy, i.e., an election petition under section 80 of the RoP Act.

Such an election petition can be filed not just by an aggrieved candidate, but also by a voter, within 45 (forty-five) days from the date of declaration of the result of election. Since there is already a remedy in law to allay the fears that have been expressed by the petitioners, if and when a discrepancy in the results arises, the Courts are not powerless to uphold the sanctity of the democratic process by appropriate intervention.

13. The petitioning association has also attempted to highlight a public trust deficit with respect to the current voting system by relying on a survey conducted by the Centre for the Study of Developing Societies - Lokniti, which concluded that a majority of the Indian population did not trust the EVMs. It is a private report and I find little reason to trust such a report.

Over the years, more and more voters have participated in the election process. Had the voters any doubt regarding the efficacy of the EVMs, I wonder whether the voting percentage would have seen such increase. EVMs have stood the test of time and the increased voting percentage is sufficient reason for us to hold that the voters have reposed faith in the current system and that the report to the contrary, which has been relied on, merits outright rejection.

14. Next, the petitioners submit that their right to be informed under Article 19(1)(a) vis-à-vis the electoral process have two facets. First, a voter has a right to know that the vote is recorded as cast; and, secondly that the vote as cast is counted. These facets need to be dealt with separately.

15. A citizen's right 'to freedom of speech and expression' under Article 19(1) is not absolute; the State by virtue of Article 19(2) can place reasonable restrictions on these rights. There can be no doubt that the electorate has a right to be informed if the votes, as cast, are accurately recorded. The dispute, in the present writ proceedings, centres around the modality of delivering the information. The petitioners have characterised the present procedure, wherein the voter after pressing the 'blue button' and casting his/her vote can see his VVPAT slip for 7 seconds through an illuminated glass window, as inadequate for the voter to verify if his/her vote, as cast, is recorded.

16. To buttress their submission, the petitioners have relied on the proviso to Rule 49M (3) of the Conduct of Election Rules, 1961[9]. The petitioners urge that the ECI is not following the statutory mandate provided in the Election Rules. I am ad idem with the interpretation of the relevant rule placed by Hon'ble Khanna, J. The ordainment of Rule 49M (3) is that the VVPAT slip should be momentarily visible to the voter; and it is not the requirement of the rule that the VVPAT slip or its copy has to be handed over to the voter.

Recording of the vote cast signifying the choice of the voter and its projection on the VVPAT slip, albeit for 7 (seven) seconds, is fulfilment of the voter's right of being informed that his/her vote has been duly recorded. In my considered view, as long as there is no allegation of statutory breach, there can be no substitution of the Court's view for the view of the ECI that the light in the VVPAT would be on for 7 (seven) seconds and not more.

17. We now address the second facet of the argument based on the right guaranteed by Article 19(1)(a) - the voter's right to know that his/her vote, as recorded, has been counted. To deal with this contention, a question comes to my mind - did this right not exist when the "paper ballot system", which the petitioning association wishes to be reverted to, was in vogue?

Then, voters would simply drop their paper ballots into a box, for it to be safely ferried away to the counting stations, whereafter the same were counted by election officials far away from the voter's scrutiny, with no way of knowing whether the vote cast by the voter was indeed counted or had not fallen victim to human error and missed from being counted. In the present far more technologically advanced system of the EVM - VVPAT, every voter who enters the polling booth has his/her name recorded, along with an affixation of signature in the Register of Voters maintained by the Presiding Officer, as provided by Form 17A of the Election Rules.

Thereafter, the voter presses the desired button on the ballot unit to cast his/her vote, sees a visual confirmation of the same on the transparent VVPAT screen

and hears a loud beep. At the end of the voting process, the Presiding Officer is required to record in Form 17C, not just the total number of voters as per the Register of Voters, but also the total number of votes recorded per voting machine as well as those staying away from the voting process despite affixing signature on the register.

The total votes polled as per Form 17C is then again tallied with the total votes recorded by the control unit. Rule 56D(4) also provides that if there is any mismatch between these two totals, the printed VVPAT slips of the polling station would be counted. Furthermore, if a voter is aggrieved by a mismatch in the candidate voted for in the ballot unit vis-a-vis that recorded in the VVAPT, Rule 49M allows the voter to approach the Presiding Officer.

Upon the conclusion of polling, there exists yet another remedy under Rule 56-D, for a candidate to apply for a count of the VVPAT slips, should any discrepancy be suspected. Thus, it is manifest that there is in place a stringent system of checks and balances, to prevent any possibility of a miscount of votes, and for the voter to know that his/her vote has been counted. There can be no doubt that such a system, which is distinctly more satisfactory compared to the system of the yester-years, suitably satisfies the voter's right under Article 19(1)(a) to know that his/her vote has been counted as recorded.

18. The Republic has prided itself in conducting free and fair elections for the past 70 years, the credit wherefor can largely be attributed to the ECI and the trust reposed in it by the public. While rational scepticism of the status quo is desirable in a healthy democracy, this Court cannot allow the entire process of the underway General Elections to be called into question and upended on mere apprehension and speculation of the petitioners. The petitioners have neither been able to demonstrate how the use of EVMs in elections violates the principle of free and fair elections; nor have they been able to establish a fundamental right to 100% VVPAT slips tallying with the votes cast.

19. In view of the foregoing discussion, the petitioners' apprehensions are misplaced. Reverting to the paper ballot system, rejecting inevitable march of technological advancement, and burdening the ECI with the onerous task of 100% VVPAT slips tallying would be a folly when the challenges faced in conducting the elections are of such gargantuan scale.

20. There are two other ancillary issues, to add to the issues already covered in detail by Hon'ble Khanna, J.

21. The first is the very issue of maintainability of writ petitions of the nature presented before us. Should mere suspicion of infringement of a right be

considered adequate ground to invoke the writ jurisdiction? In my opinion, the answer should be 'NO'.

22. A writ petition ought not to be entertained if the plea is based on the mere suspicion that a right could be infringed. Suspicion that a right could be infringed and a real threat of infringement of a right are distinct and different.

23. To succeed in a claim under Article 32 or 226, one must demonstrate either mala fide, or arbitrariness, or breach of a law in the impugned State action. Though a writ of right, it is not a writ of course. The writ jurisdiction under Article 32/226 of the Constitution of India being special and extraordinary, it should not be exercised casually or lightly on the mere asking of a litigant based on suspicions and conjectures, unless there is credible/trustworthy material on record to suggest that adverse action affecting a right is reasonably imminent or there is a real threat to the rule of law being abrogated. It must be shown, at least prima facie, that there is a real potential threat to a right, which is guaranteed by law to the person concerned.

24. I am not oblivious of two decisions rendered by this Court on the aforesaid issue.

25. A Constitution Bench of this Court in D.A.V. College, Bhatinda v. State of Punjab[10] held thus:

"5. a petition under Article 32 in which petitioners make out a prima facie case that their fundamental rights are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place."

26. In Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu[11] a Bench of two Hon'ble Judges of this Court held:

"12. The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court."

27. While a writ petition may be instituted, if there is a genuine and looming threat of a right being trampled upon, what is, however, clear from the aforesaid decisions is that such threat or apprehension has to be well founded and cannot be based merely on assumptions and presumptions as is found in the present set of writ petitions.

28. The mere suspicion that there may be a mismatch in votes cast through EVMs, thereby giving rise to a demand for a 100% VVPAT slips verification, is

not a sufficient ground for the present set of writ petitions to be considered maintainable. To maintain these writ petitions, it ought to have been shown that there exists a tangible threat of infringement; however, that has also not been substantiated.

Thus, without any evidence of malice, arbitrariness, breach of law, or a genuine threat to invasion of rights, the writ petitions could have been dismissed as not maintainable. But, considering the seriousness of the concerns that the Court suo motu had expressed to which responses were received from the official of the ECI as well as its senior counsel, the necessity was felt to issue the twin directions in the greater public interest and to sub-serve the demands of justice.

29. Finally, I wish to touch upon one other issue of importance.

30. It is pertinent to reiterate that the doctrine of res judicata is applicable to writ petitions under Article 32 and Article 226 as well. The inclusion of the term "public right" in Explanation VI of Section 11 of the Civil Procedure Code, 1908 aims to avoid redundant legal disputes concerning public rights. Given this clarification, there is no room for debate regarding the application of Section 11 to matters of public interest litigation presented through writ petitions.

31. In Daryao and others v. State of U.P. and others[12], a Constitution Bench of this Court emphasized that the rule of res judicata is founded on significant public policy considerations rather than being a mere technicality. It was clarified that petitioners seeking to challenge a decision must present new grounds distinct from those previously raised in order to escape the bar of res judicata. The Bench articulated this as follows:

"31. We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."

32. Another Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association. v. State of Maharashtra and others[13] followed the aforesaid dictum to hold that the principles of res judicata are not foreign to writ petitions. A reference may be made to the following paragraph:

35. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata.

The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. [(1962) 1 SCR 574 : AIR 1961 SC 1457] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata.

The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea.".

33. No doubt, res judicata bars parties from re-litigating issues that have been conclusively settled. It is true that this principle is not rigid in cases of substantial public interest and Constitutional Courts are empowered to adopt a flexible approach in such cases, acknowledging their far-reaching public interest ramifications.

34. However, this standard is applicable only when substantial evidence is presented to validate the irreversible harm or detriment to the public good resulting from the action impugned. The Court must come to the conclusion that the petition is not just an old wine in a new bottle, but rather raises substantial grounds not previously addressed in litigation. Only under these circumstances may it consider such a petition; otherwise, it is within its authority to dismiss it at the threshold.

35. This issue at hand of doubting the efficacy of the EVMs has been previously raised before this Court and it is imperative that such issue is concluded definitively now. Going forward, unless substantial evidence is presented against the EVMs, the current system will have to persist with enhancements. Regressive measures to revert to paper ballots or any alternative to the EVMs that does not adequately safeguard the interests of Indian citizens have to be eschewed.

36. I also wish to observe that while maintaining a balanced perspective is crucial in evaluating systems or institutions, blindly distrusting any aspect of the system can breed unwarranted scepticism and impede progress. Instead, a critical yet constructive approach, guided by evidence and reason, should be followed to

make room for meaningful improvements and to ensure the system's credibility and effectiveness.

37. Be it the citizens, the judiciary, the elected representatives, or even the electoral machinery, democracy is all about striving to build harmony and trust between all its pillars through open dialogue, transparency in processes, and continuous improvement of the system by active participation in democratic practices.

Our approach should be guided by evidence and reason to allow space for meaningful improvements. By nurturing a culture of trust and collaboration, we can strengthen the foundations of our democracy and ensure that the voices and choices of all citizens are valued and respected. With each pillar fortified, our democracy stands robust and resilient.

38. I conclude with the hope and trust that the system in vogue shall not fail the electorate and the mandate of the voting public shall be truly reflected in the votes cast and counted.

.....J. (Dipankar Datta)

New Delhi;

April 26, 2024.

1 EVMs

2 (2000) 8 SCC 216

3 ECI

4 Constitution

5 VVPAT

6 RoP Act

7 (2019) 15 SCC 377

8 CCE Report

9 Election Rules

10 (1971) 2 SCC 261

11 (2016) 2 SCC 725

12 (1962) 1 SCR 574

13 (1990) 2 SCC 715

IN THE SUPREME COURT OF INDIA

Aniruddha Khanwalkar

Vs.

Sharmila Das & Ors.

[Criminal Appeal No._____ of 2024

arising out of SLP (CRL.) No. 10746 of 2023]

HEADNOTE – For summoning of an accused, prima facie case made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant is sufficient.

JUDGMENT

Rajesh Bindal, J.

1. Leave granted.

2. The complainant is before this Court challenging the order dated 25.04.2023[1] passed by the High Court of Madhya Pradesh at Gwalior vide which the order dated 11.01.2021 passed by the 4th Additional Sessions Judge, Shivpuri[2] quashing the summoning order dated 12.03.2019[3] passed by the Trial Court was set aside as far as Section 420, IPC is concerned against the respondent no.1/Sharmila Das and Section 420 read with Section 120-B, IPC against the respondent no.2/Usharani Das and respondent no.3/Sangita.

3. Briefly the facts as available on record are that the marriage of the appellant was solemnized with the respondent no.1 on 28.04.2018 in the presence of the respondent nos. 2 and 3. Having come to know that on the date, the respondent no.1 had solemnized marriage with the appellant, she was already married and had not obtained divorce from her first husband, the appellant filed a petition[4] under Section 11 of the 1955 Act[5] before Principal Judge, Family Court, Shivpuri (M.P.) seeking annulment of marriage between the appellant and the respondent no.1.

4. Subsequently, the appellant preferred a complaint[6] against the respondent nos.1, 2, and 3 in which the Magistrate vide order dated 12.03.2019, after recording preliminary evidence and being satisfied that a prima facie case was made out, directed issuance of process against the respondent no.1 for the offences punishable under Sections 494 and 420 read with Section 120-B, IPC,

and against the respondent nos. 2 & 3 for the offence punishable under Section 420 read with Section 120-B, IPC.

5. The aforesaid order was impugned by the accused persons/respondent nos. 1 to 3 by filing Revision Petition[7] before the 4th Additional Sessions Judge, Shivpuri which was partly allowed by the Sessions Court. The impugned order dated 12.03.2019 passed by the Magistrate was set aside to the extent of taking cognizance of the offence punishable under section 420 of IPC against the respondent no.1 and for the offence punishable under section 420 read with section 120-B of IPC against the respondent nos.2 and 3.

6. The appellant challenged the order of Sessions Court before the High Court. The same was upheld. It is against the aforesaid two orders, the appellant is before this Court.

7. Learned counsel for the appellant submitted that both the parties namely the appellant and the respondent no.1 came in contact through a matrimonial site (name withheld) and thereafter meetings were held at Visakhapatnam on 09.03.2018 and 10.03.2018 in the presence of the respondent nos.2 and 3. The respondent no.1 was earlier married as was even disclosed by her on the matrimonial site. At the time of meeting the appellant was shown a smudged copy of the divorce order passed in favour of the respondent no.1 on mobile phone.

On the document, the date could not be clearly seen as the copy of the order was not clear. It was stated that the order is pending signatures of the Judge. Thereafter, the marriage of the parties was solemnized on 28.04.2018. The respondents dishonestly misrepresented that they are not financially well, and thereby induced the appellant to part with ₹ 2 lakhs and bear the entire expenses of the marriage.

7.1 On 16.06.2018, when respondent no.1 visited the doctor for a checkup, she was found to be pregnant. She wanted to undergo an abortion, but when confronted by the appellant, the reason therefore she told that she had not yet obtained divorce from her previous marriage. The document which was shown to him on mobile phone was forged. This shows that the consent for marriage was obtained dishonestly. The appellant was taken aback. When confronted, the respondent no.1 threatened him of filing false cases, which may lead to his dismissal from Government service besides tarnishing his image.

7.2 As the appellant was in shock, he was left with no option but to file complaint with the police on 08.07.2018. However, no action was taken on the complaint.

Thereafter, the appellant preferred criminal complaint before the Magistrate on 20.07.2018.

7.3 Immediately after coming to know about the filing of the criminal complaint by the appellant, the respondent no.1 approached the Family Court, Panvel on 25.07.2018 where the Divorce Petition filed by her first husband under Sections 13(1)(i) and 13(1) (i-a) of the 1955 Act was pending for more than 6 months. The respondent no.1 filed an application seeking conversion thereof to a divorce by mutual consent under Section 13-B of the 1955 Act. After accepting the application the divorce was granted on the same day.

7.4 In the complaint filed by the appellant he led both documentary and oral evidence. Based on the evidence produced by the appellant, a prima facie case was established. Consequently, the Magistrate issued process against the respondents to face trial under Sections 494, 420, read with Section 120-B, IPC.

7.5 Aggrieved by the same, the respondents preferred Revision Petition before the Sessions Judge. However, without there being any valid reason, the Sessions Judge set aside the summoning order with reference to respondent no.1 under Section 420 of IPC and with reference to respondent nos.1 and 2 under Section 420 read with Section 120-B of IPC; and confirmed the order of Trial Court with reference to summons issued against respondent no.1 under section 494 of IPC.

7.6 Challenge was made by the appellant to the aforesaid order before the High Court raising the contention that the Court without appreciating the facts of the case, which are self-speaking, dismissed the Revision Petition. The impugned order deserves to be set aside, as a prima facie case is made out showing that the appellant had been dishonestly induced by the respondent nos.1, 2 and 3 to believe that the respondent no.1 had obtained divorce by showing him a forged order of divorce from earlier marriage knowing well that it had not yet been dissolved as on the date of marriage with the appellant, and thereby dishonestly induced him to marry respondent no.1. The respondents are liable to face trial under Section 420 read with Section 120-B, IPC for the reason that all of them had conspired with each other to dishonestly induce the appellant into marrying respondent no.1 and parting away with huge amount.

8. On the other hand, learned counsel for the respondents submitted that even on the basis of the pleaded facts and the material produced by the appellant before the Magistrate, no offence under Section 420, IPC can be made out. It cannot be said to be a case of criminal conspiracy and no offence of cheating is made out against the respondents. There is no error in the orders passed by the Sessions Court or the High Court. There was no concealment or cheating at the behest of

the respondents as they had clearly disclosed all the facts to the appellant from the very beginning. The appeal deserves to be dismissed.

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

10. The appellant and the respondent no.1 came in contact through a matrimonial site. The appellant was already divorced whereas the respondent no.1 had uploaded her status as "process of divorce is under consideration." After initial conversation, the appellant along with his family members were invited to visit Visakhapatnam, where they had interaction with the respondents.

At the time of the meeting the appellant was told that the respondent no.1 was earlier married at Mumbai and the divorce had already taken place. On being asked about the copy of the decree of divorce it was stated that the same is pending for signature of the Judge concerned and will be provided in due course. The respondents had shown to the appellants an unclear photocopy of the decree of divorce which was believed to be true.

On 11.03.2018, the appellant gave his consent for the marriage. Date was fixed as 28.04.2018. The respondents pointed out that their financial condition was not good to come to Gwalior for the marriage along with their other relatives. As a result, the appellant booked tickets for the respondents and their relatives from Visakhapatnam to Gwalior and vice-versa, and also gave ₹ 2 lakhs cash to the respondents as expenditure for marriage.

11. On 16.06.2018, on account of some medical complication the appellant as well as the respondent no.1 rushed to the clinic of a lady doctor in Shivpuri (Madhya Pradesh), where couple resided after their marriage. The doctor disclosed that the respondent no.1 was pregnant. The joy of the appellant knew no bounds whereas the respondent no.1 was very sad. The message was even conveyed to the family members of the appellant as well as the respondent no.1. The respondent nos.2 and 3 were not happy.

The appellant was surprised with the reaction. Later, when the reason was asked by the appellant from respondent no.1, he was told that she is yet to get divorce from her previous husband. It was a shock of life for the appellant. It was nothing else but cheating by showing a fake decree of divorce. It was for this reason only that the respondent no.1 wanted to get the pregnancy aborted. The appellant felt cheated. When he told that he would take action against the respondents, he was threatened with criminal cases of various matrimonial offences, which he claimed to have been filed.

12. Written complaint was filed by the appellant to the Superintendent of Police of Shivpuri, Madhya Pradesh on 07.07.2018 and to the Station in-Charge,

Physical Shivpuri on 08.07.2018. However, no action was taken. It was thereafter, that the complaint was filed in the court before the Magistrate on 20.07.2018. The Trial Court after recording the preliminary evidence summoned the respondent no.1 to face trial under Sections 494 and 420 read with Section 120-B, IPC and the respondent nos.2 and 3 to face trial under Section 420 read with Section 120-B, IPC.

12.1 The aforesaid order was challenged by the respondents before the Additional Sessions Judge. The Sessions Court held that no offence punishable under Section 420 read with Section 120-B, IPC was made out as the factum of earlier marriage of the respondent no.1 was clearly disclosed to the appellant. The Sessions Judge failed to appreciate the fact that certain events had taken place thereafter, namely, apprising the appellant about the decree of divorce having been passed and showing the forged copy thereof to him on mobile.

The Learned Sessions Court has considered the revision against the summoning order as if after trial the findings of conviction or acquittal was to be recorded. It was a preliminary stage of summoning. For summoning of an accused, prima facie case is to be made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant.

13. In a challenge by the appellant to the aforesaid order in the quashing petition, the High Court dismissed the petition without recording any reasons.

14. Considering the material on record, in our opinion the approach of the Learned Sessions Court and the High Court in setting aside the summoning order against the accused persons i.e. respondent nos.1,2 and 3 under Section 420 read with Section 120-B IPC is not legally sustainable.

15. For the reasons mentioned above from the facts as pleaded in complaint and the evidence led by the appellant, prima facie case was made out for issuing process against the respondents to face trial for the offence punishable under Section 420 read with Section 120-B, IPC, for which they were summoned.

16. The appeal is accordingly allowed. The impugned orders passed by the High Court and the Sessions Court are set-aside and that of the Magistrate is restored.

It is made clear that nothing said above shall be taken as final opinion on merits of the controversy. The Trial Court shall decide the case on its own merits on the basis of the evidence led by the parties.

.....J. (C.T. Ravikumar)

.....J. (Rajesh Bindal)

New Delhi

April 26, 2024.

1 Passed in Misc. Criminal Case No.11184 of 2021

2 In Criminal Revision No. 155 of 2019

3 Complaint Case bearing Case No.7798 of 2019

4 Case No. RCSHM/34/2019

5 Hindu Marriage Act, 1955

6 The Court of Judicial Magistrate First Class, Shivpuri (M.P.) under Sections 495, 420, 468, 471 and 506 read with Section 34, IPC

7 Criminal Revision No. 155 of 2019

2. Study Material-G.K.

Important Lines and Boundaries of the World

Name of Boundary	Lies Between	Description
Radcliff Line	India and Pakistan	It became the international border between India and Pakistan on 17th August 1947 marking partition of India. It also included the present Bangladesh.
Durand Line	Pakistan and Afghanistan	This line demarcates was drawn up in 1893 by Sir Mortimer Durand in agreement with the Amir of Kabul. Afghanistan does not recognizes the Durand line.
MacMohan Line	India and China	It was drawn by Sir Henry McMohan demarcating the frontier between India and China. China does not recognise this line and violated it in 1962.
49th Parallel	USA and Canada	49th parallel is the circle of latitude located 49 degrees north of equator. It is the international boundary between USA and Canada according to Anglo-American convention of 1818 and Oregon Treaty of 1846.
38th Parallel	North Korea and South Korea	It is circle of latitude 38 degrees north of equator. It formed border between North and South Korea prior to the Korean War.
17th Parallel	North Vietnam and South Vietnam	It is a circle of latitude 17 degrees north of equator. It divided the erstwhile North and South Vietnam as demarcated by 1954 Geneva Accords. The 17th parallel became irrelevant after unification of Vietnam in 1976.
Hindenburg Line	Germany and Poland	The Germans went past this line during the World War I in 1917. It was built as th western front in WW I
Siegfried Line /Westwall	Germany and France (from German side)	It was built by Germany as extension of Hindenburg line during 1916-1917.
Maginot Line	Germany and France (from	Its a 320 km line of fortification that was build by France along its border with

	French side)	Germany before World War II, in order to protect against German attack.
Mannerheim Line	Russia and Finland	It was a defensive fortification built by Finland to defend itself against
Oder-Neisse Line	Poland and Germany	It runs along the rivers Oder and Neisse. The Poland Conference in August 1945 after the World War II lead to its adoption.
20th Parallel	Libya and Sudan	In Africa, the 20th parallel latitude located 20 degrees to the north to the equator, it marks the border between Libya and Sudan.
22nd Parallel	Egypt and Sudan	The major part of Egypt and Sudan border follows the 22nd parallel.
25th Parallel	Mauritania and Mali	The northernmost section of the Mauritania and Mali border is defined by the 25th parallel.
31st Parallel	Iraq and Iran	A part of Iran-Iraq border is defined by the 31st parallel. In United States of America, the 31st parallel defines Mississippi and Louisiana.

3. Study Material-Language

SYNONYMS

Synonyms are words or phrases which have the same or nearly the same meaning as other words or phrases in the same language:

Amazing	incredible, unbelievable, improbable, fabulous, wonderful, fantastic, astonishing, astounding, extraordinary
Anger	enrage, infuriate, arouse, nettle, exasperate, inflame, madden
Angry	mad, furious, enraged, excited, wrathful, indignant, exasperated, aroused, inflamed
Answer	reply, respond, retort, acknowledge
Ask	question, inquire of, seek information from, put a question to, demand, request, expect, inquire, query, interrogate, examine, quiz
Awful	dreadful, terrible, abominable, bad, poor, unpleasant
Bad	evil, immoral, wicked, corrupt, sinful, depraved, rotten, contaminated, spoiled, tainted, harmful, injurious, unfavorable, defective, inferior, imperfect, substandard, faulty, improper, inappropriate, unsuitable, disagreeable, unpleasant, cross, nasty, unfriendly, irascible, horrible, atrocious, outrageous, scandalous, infamous, wrong, noxious, sinister, putrid, snide, deplorable, dismal, gross, heinous, nefarious, base, obnoxious, detestable, despicable, contemptible, foul, rank, ghastly, execrable
Beautiful	pretty, lovely, handsome, attractive, gorgeous, dazzling, splendid, magnificent, comely, fair, ravishing, graceful, elegant, fine, exquisite, aesthetic, pleasing, shapely, delicate, stunning, glorious, heavenly, resplendent, radiant, glowing, blooming, sparkling
Begin	start, open, launch, initiate, commence, inaugurate, originate
Big	enormous, huge, immense, gigantic, vast, colossal, gargantuan, large, sizable, grand, great, tall, substantial, mammoth, astronomical, ample, broad, expansive, spacious, stout, tremendous, titanic, mountainous
Brave	courageous, fearless, dauntless, intrepid, plucky, daring, heroic, valorous, audacious, bold, gallant, valiant, doughty, mettlesome
Break	fracture, rupture, shatter, smash, wreck, crash, demolish, atomize
Bright	shining, shiny, gleaming, brilliant, sparkling, shimmering, radiant, vivid, colorful, lustrous, luminous, incandescent, intelligent, knowing, quick-witted, smart, intellectual
Calm	quiet, peaceful, still, tranquil, mild, serene, smooth, composed,

	collected, unruffled, level-headed, unexcited, detached, aloof
Come	approach, advance, near, arrive, reach
Cool	chilly, cold, frosty, wintry, icy, frigid
Crooked—	bent, twisted, curved, hooked, zigzag
Cry	shout, yell, yowl, scream, roar, bellow, weep, wail, sob, bawl
Cut	gash, slash, prick, nick, sever, slice, carve, cleave, slit, chop, crop, lop, reduce
Dangerous	perilous, hazardous, risky, uncertain, unsafe
Dark	shadowy, unlit, murky, gloomy, dim, dusky, shaded, sunless, black, dismal, sad
Decide	determine, settle, choose, resolve
Definite	certain, sure, positive, determined, clear, distinct, obvious
Delicious	savory, delectable, appetizing, luscious, scrumptious, palatable, delightful, enjoyable, toothsome, exquisite
Describe	portray, characterize, picture, narrate, relate, recount, represent, report, record
Destroy	ruin, demolish, raze, waste, kill, slay, end, extinguish
Difference	disagreement, inequity, contrast, dissimilarity, incompatibility
Do	execute, enact, carry out, finish, conclude, effect, accomplish, achieve, attain
Dull	boring, tiring,, tiresome, uninteresting, slow, dumb, stupid, unimaginative, lifeless, dead, insensible, tedious, wearisome, listless, expressionless, plain, monotonous, humdrum, dreary
Eager	keen, fervent, enthusiastic, involved, interested, alive to
End	stop, finish, terminate, conclude, close, halt, cessation, discontinuance
Enjoy	appreciate, delight in, be pleased, indulge in, luxuriate in, bask in, relish, devour, savor, like
Explain	elaborate, clarify, define, interpret, justify, account for
Fair	just, impartial, unbiased, objective, unprejudiced, honest
Fall	drop, descend, plunge, topple, tumble
False	fake, fraudulent, counterfeit, spurious, untrue, unfounded, erroneous, deceptive, groundless, fallacious
Famous	well-known, renowned, celebrated, famed, eminent, illustrious, distinguished, noted, notorious
Fast	quick, rapid, speedy, fleet, hasty, snappy, mercurial, swiftly, rapidly, quickly, snappily, speedily, lickety-split, posthaste, hastily, expeditiously, like a flash
Fat	stout, corpulent, fleshy, beefy, paunchy, plump, full, rotund, tubby, pudgy, chubby, chunky, burly, bulky, elephantine
Fear	fright, dread, terror, alarm, dismay, anxiety, scare, awe, horror,

	panic, apprehension
Fly	soar, hover, flit, wing, flee, waft, glide, coast, skim, sail, cruise
Funny	humorous, amusing, droll, comic, comical, laughable, silly
Get	acquire, obtain, secure, procure, gain, fetch, find, score, accumulate, win, earn, rep, catch, net, bag, derive, collect, gather, glean, pick up, accept, come by, regain, salvage
Go	recede, depart, fade, disappear, move, travel, proceed
Good	excellent, fine, superior, wonderful, marvelous, qualified, suited, suitable, apt, proper, capable, generous, kindly, friendly, gracious, obliging, pleasant, agreeable, pleasurable, satisfactory, well-behaved, obedient, honorable, reliable, trustworthy, safe, favorable, profitable, advantageous, righteous, expedient, helpful, valid, genuine, ample, salubrious, estimable, beneficial, splendid, great, noble, worthy, first-rate, top-notch, grand, sterling, superb, respectable, edifying
Great	noteworthy, worthy, distinguished, remarkable, grand, considerable, powerful, much, mighty
Gross	improper, rude, coarse, indecent, crude, vulgar, outrageous, extreme, grievous, shameful, uncouth, obscene, low
Happy	pleased, contented, satisfied, delighted, elated, joyful, cheerful, ecstatic, jubilant, gay, tickled, gratified, glad, blissful, overjoyed
Hate	despise, loathe, detest, abhor, disfavor, dislike, disapprove, abominate
Have	hold, possess, own, contain, acquire, gain, maintain, believe, bear, beget, occupy, absorb, fill, enjoy
Help	aid, assist, support, encourage, back, wait on, attend, serve, relieve, succor, benefit, befriend, abet
Hide	— conceal, cover, mask, cloak, camouflage, screen, shroud, veil
Hurry	rush, run, speed, race, hasten, urge, accelerate, bustle
Hurt	damage, harm, injure, wound, distress, afflict, pain
Idea	thought, concept, conception, notion, understanding, opinion, plan, view, belief
Important	necessary, vital, critical, indispensable, valuable, essential, significant, primary, principal, considerable, famous, distinguished, notable, well-known
Interesting	fascinating, engaging, sharp, keen, bright, intelligent, animated, spirited, attractive, inviting, intriguing, provocative, though-provoking, challenging, inspiring, involving, moving, titillating, tantalizing, exciting, entertaining, piquant, lively, racy, spicy, engrossing, absorbing, consuming, gripping, arresting, enthralling, spellbinding, curious, captivating, enchanting, bewitching, appealing

Keep	hold, retain, withhold, preserve, maintain, sustain, support
Kill	slay, execute, assassinate, murder, destroy, cancel, abolish
Lazy	indolent, slothful, idle, inactive, sluggish
Little	tiny, small, diminutive, shrimp, runt, miniature, puny, exiguous, dinky, cramped, limited, itsy-bitsy, microscopic, slight, petite, minute
Look	gaze, see, glance, watch, survey, study, seek, search for, peek, peep, glimpse, stare, contemplate, examine, gape, ogle, scrutinize, inspect, leer, behold, observe, view, witness, perceive, spy, sight, discover, notice, recognize, peer, eye, gawk, peruse, explore
Love	like, admire, esteem, fancy, care for, cherish, adore, treasure, worship, appreciate, savor
Make	create, originate, invent, beget, form, construct, design, fabricate, manufacture, produce, build, develop, do, effect, execute, compose, perform, accomplish, earn, gain, obtain, acquire, get
Mark	label, tag, price, ticket, impress, effect, trace, imprint, stamp, brand, sign, note, heed, notice, designate
Mischievous	prankish, playful, naughty, roguish, waggish, impish, sportive
Move	plod, go, creep, crawl, inch, poke, drag, toddle, shuffle, trot, dawdle, walk, traipse, mosey, jog, plug, trudge, slump, lumber, trail, lag, run, sprint, trip, bound, hotfoot, high-tail, streak, stride, tear, breeze, whisk, rush, dash, dart, bolt, fling, scamper, scurry, skedaddle, scoot, scuttle, scramble, race, chase, hasten, hurry, hump, gallop, lope, accelerate, stir, budge, travel, wander, roam, journey, trek, ride, spin, slip, glide, slide, slither, coast, flow, sail, saunter, hobble, amble, stagger, paddle, slouch, prance, straggle, meander, perambulate, waddle, wobble, pace, swagger, promenade, lunge
Moody	temperamental, changeable, short-tempered, glum, morose, sullen, mopish, irritable, testy, peevish, fretful, spiteful, sulky, touchy
Neat	clean, orderly, tidy, trim, dapper, natty, smart, elegant, well-organized, super, desirable, spruce, shipshape, well-kept, shapely
New	fresh, unique, original, unusual, novel, modern, current, recent
Old	feeble, frail, ancient, weak, aged, used, worn, dilapidated, ragged, faded, broken-down, former, old-fashioned, outmoded, passe, veteran, mature, venerable, primitive, traditional, archaic, conventional, customary, stale, musty, obsolete, extinct
Part	portion, share, piece, allotment, section, fraction, fragment
Place	space, area, spot, plot, region, location, situation, position,

	residence, dwelling, set, site, station, status, state
Plan	plot, scheme, design, draw, map, diagram, procedure, arrangement, intention, device, contrivance, method, way, blueprint
Popular	well-liked, approved, accepted, favorite, celebrated, common, current
Predicament	quandary, dilemma, pickle, problem, plight, spot, scrape, jam
Put	— place, set, attach, establish, assign, keep, save, set aside, effect, achieve, do, build
Quiet	silent, still, soundless, mute, tranquil, peaceful, calm, restful
Right	correct, accurate, factual, true, good, just, honest, upright, lawful, moral, proper, suitable, apt, legal, fair
Run	race, speed, hurry, hasten, sprint, dash, rush, escape, elope, flee
Say/Tell	inform, notify, advise, relate, recount, narrate, explain, reveal, disclose, divulge, declare, command, order, bid, enlighten, instruct, insist, teach, train, direct, issue, remark, converse, speak, affirm, suppose, utter, negate, express, verbalize, voice, articulate, pronounce, deliver, convey, impart, assert, state, allege, mutter, mumble, whisper, sigh, exclaim, yell, sing, yelp, snarl, hiss, grunt, snort, roar, bellow, thunder, boom, scream, shriek, screech, squawk, whine, philosophize, stammer, stutter, lisp, drawl, jabber, protest, announce, swear, vow, content, assure, deny, dispute
Scared	afraid, frightened, alarmed, terrified, panicked, fearful, unnerved, insecure, timid, shy, skittish, jumpy, disquieted, worried, vexed, troubled, disturbed, horrified, terrorized, shocked, petrified, haunted, timorous, shrinking, tremulous, stupefied, paralyzed, stunned, apprehensive
Show	display, exhibit, present, note, point to, indicate, explain, reveal, prove, demonstrate, expose
Slow	unhurried, gradual, leisurely, late, behind, tedious, slack
Stop	— cease, halt, stay, pause, discontinue, conclude, end, finish, quit
Story	tale, myth, legend, fable, yarn, account, narrative, chronicle, epic, sage, anecdote, record, memoir
Strange	odd, peculiar, unusual, unfamiliar, uncommon, queer, weird, outlandish, curious, unique, exclusive, irregular
Take	hold, catch, seize, grasp, win, capture, acquire, pick, choose, select, prefer, remove, steal, lift, rob, engage, bewitch, purchase, buy, retract, recall, assume, occupy, consume
Tell	disclose, reveal, show, expose, uncover, relate, narrate, inform,

	advise, explain, divulge, declare, command, order, bid, recount, repeat
Think	judge, deem, assume, believe, consider, contemplate, reflect, mediate
Trouble —	distress, anguish, anxiety, worry, wretchedness, pain, danger, peril, disaster, grief, misfortune, difficulty, concern, pains, inconvenience, exertion, effort
Ugly	hideous, frightful, frightening, shocking, horrible, unpleasant, monstrous, terrifying, gross, grisly, ghastly, horrid, unsightly, plain, homely, evil, repulsive, repugnant, gruesome
Unhappy	miserable, uncomfortable, wretched, heart-broken, unfortunate, poor, downhearted, sorrowful, depressed, dejected, melancholy, glum, gloomy, dismal, discouraged, sad
Use	employ, utilize, exhaust, spend, expend, consume, exercise
Wrong	incorrect, inaccurate, mistaken, erroneous, improper, unsuitable

4. Current Affairs

APRIL 2024

1. Which England player has withdrawn his name from the T20 World Cup – **Ben Stokes**
2. Who took charge as the 33rd Director General of Electronics and Mechanical Engineers- **JS Sidana**
3. Who has taken charge as the National President of FICCI Ladies Organization- **Joyshree Das Verma**
4. Who has taken charge as the Principal Director General of PIB- **Shefali B. asylum**
5. Who has become the first Indian wicketkeeper to score 7,000 runs in T20 cricket- **MS Dhoni**
6. Which pair won the men's doubles title of Miami Open 2024- **Matt Ebden- Rohan Bopanna**
7. Who has been appointed as the first female Prime Minister of Congo- **Judith Suminwa Tuluka**
8. Which app has been launched by the Election Commission to find out the criminal image of the candidates in the Lok Sabha elections 2024 - **'Know Your Candidate'**
9. Who won the men's singles title of Miami Open 2024- **Jannik Sinner**
10. Who won the men's title of National Kho Kho Championship 2023-24- **Maharashtra**
11. Recently discussed 'Operation Sankalp' is related to which of the following - **Maritime Security**
12. Recently Hindustan Aeronautics Limited has handed over two Dornier 228 aircraft to which country- **Guyana**
13. Who has recently become India's top ranked chess player- **Arjun Erigaisi**
14. Recently Abdel-Fattah al-Sisi has been sworn in as the President of which country- **Egypt**
15. Which has become India's largest port in terms of cargo volume- **Paradip Port**
16. Who has recently taken charge as the President of ASSOCHAM- **Sanjay Nair**
17. Kathia wheat, which has recently been given GI tag, belongs to which state- **Uttar Pradesh**
18. Who has recently been appointed as the new Managing Director of Tata International- **Rajeev Singhal**

19. Which ballistic missile was successfully tested by DRDO recently- **Agni-Prime**
20. Where was India's first indigenous gene therapy for cancer launched - **IIT Bombay**
21. Which team has made the second highest team score in IPL history - **Kolkata Knight Riders**
22. Renuka Jagtiani, included in Forbes' New Billionaire 2024 list, is the chairperson of which company - **Landmark Group**
23. What is the theme of National Maritime Day 2024- "Navigating the Future: Safety First!
24. Who has been appointed as the CEO and MD of Wipro recently- **Srinivas Palliya**
25. Who has been appointed as the full-time member of the Sixteenth Finance Commission- **Manoj Panda**
26. When is World Homeopathy Day celebrated every year- **10 April**
27. For which mission the ISRO team was awarded the prestigious 'John L. 'Jack' Swigert Jr.' Awarded- **Chandrayaan-3 Mission**
28. Who has been elected as the next Prime Minister of Iceland- **Bjarni Benediktsson**
29. Who has been sworn in as the new Prime Minister of Ireland- **Simon Harris**
30. With whom has KABIL signed an agreement for technical cooperation for minerals- **CSIR-IMMT**
31. Where was the first steel cutting ceremony of Fleet Support Ships for Indian Navy held- **Visakhapatnam**
32. When is International Human Space Flight Day celebrated every year- **12 April**
33. Who has been recently elected as the Chairman of the Senate, the upper house of the Pakistani Parliament- **Yusuf Raza Gilani**
34. In which country is the Asian Wrestling Championship 2024 being organized- **Kyrgyzstan**
35. Who has been appointed the head of US-India Tax Forum- **Tarun Bajaj**
36. Who has become the eighth Indian to score 7,000 or more runs in T20 cricket- **Suryakumar Yadav**
37. On which day National Safe Motherhood Day is celebrated every year in the country- **11 April**
38. Who will be the new Prime Minister of Singapore- **Lawrence Wong**
39. When is World Art Day celebrated every year- **15 April**
40. Who was recently named South Asian Person of the Year by Harvard University- **Avantika Vandanpu**
41. Who has been appointed as the new director of National Judicial Academy, Bhopal- **Justice Aniruddha Bose**

42. Who was the CEO of Byju India who has resigned from his post- **Arjun Mohan**
43. What is India's rank in the recently released World Cyber Crime Index- **10**
44. Who has been appointed as Joint Director in CBI recently- **Anurag Kumar**
45. Lee Hsien Loong is the Prime Minister of which country who has announced to leave his post- **Singapore**
46. Which is the world's busiest airport- **Atlanta International Airport (US)**
47. Who is the MD of International Monetary Fund, who has been elected for the second five-year term- **Kristalina Georgieva**
48. Which is the first stadium in India to use hybrid pitch technology- **Dharamsala**
49. What is the rank of Delhi Airport in the list of world's busiest airports - **10th**
50. Who won the silver medal in Khelo India NTPC National Ranking Archery Competition- **Sheetal Devi**
51. Sheikh Ahmed Abdullah Al-Ahmad Al-Sabah has become the new Prime Minister of which country- **Kuwait**
52. Recently Nandlal Bose's death anniversary was celebrated, he was related to which field- **Painting**
53. Greenfield Noida International Airport has signed an agreement with whom for fuel pipeline- **BPCL**
54. Where was the 23rd session of the 'United Nations Permanent Forum on Indigenous Issues' held- **New York**
55. The joint military exercise Dustlik is being organized between India and the army of which country- **Uzbekistan**
56. Where is the World Future Energy Summit 2024 being organized- **Abu Dhabi**
57. DRDO successfully test fired which missile off the coast of Odisha- **Indigenous Technology Cruise Missile (ITCM)**
58. When is World Heritage Day celebrated every year- **18 April**
59. Which Indian institute played an important role in Shri Ram 'Surya Tilak' program in Ayodhya- **Indian Institute of Astrophysics**
60. What is the theme of World Heritage Day 2024- **'Discover and Experience Diversity'**
61. Who has recently been given the additional charge of Secretary, Ministry of Statistics and Program Implementation- **Saurabh Garg**
62. Who has been appointed as the next Chief of the Indian Navy- **Dinesh Kumar Tripathi**
63. Which Indian airport won the Skytrax Award 2024 for 'Best Airport Staff'- **GMR Hyderabad International Airport**

64. Recently 'Tricolour Barfi' has been given GI tag, it is related to which city- **Varanasi**
65. Recently India is supplying Brahmos supersonic cruise missile to which country- **Philippines**
66. Who won the Best Airport Award at the Skytrax Awards 2024- **Hamad International Airport (Doha)**
67. Which Indian Grandmaster has won the title of Candidates Chess Tournament- **D Gukesh**
68. BJP candidate Mukesh Dalal has been elected unopposed from which Lok Sabha seat of Gujarat- **Surat**
69. When is World Earth Day celebrated every year- **22 April**
70. Indian milk brand 'Nandini' has become the sponsor of which two teams in the upcoming T20 Cricket World Cup- **Scotland and Ireland**
71. Who has been appointed as the head of 'National Security Guard'- **Nalin Prabhat**
72. Where did PM Narendra Modi inaugurate Bhagwan Mahavir Nirvana Mahotsav- **New Delhi**
73. Indian Navy's Eastern Naval Command conducted 'Eastern Wave Exercise', where is the headquarters of Eastern Command- **Visakhapatnam**
74. Who has become the first bowler to take 200 wickets in IPL history- **Yuzvendra Chahal**
75. Who recently won the title of Shanghai Grand Prix 2024- **Max Verstappen**
76. Which Indian won two gold medals in ACC Paracanoe Asian Championship 2024- **Prachi Yadav**
77. What is the theme of World Book and Copyright Day 2024- **'Read Your Way'**
78. Who has been appointed as the first woman Vice Chancellor of Aligarh Muslim University- **Professor Naima Khatoon**
79. According to the Stockholm International Peace Research Institute, who is the fourth highest spender on defense in 2023- **India**
80. Who has been appointed as the brand ambassador of ICC Men's T20 World Cup 2024- **Usain Bolt**
81. Prabowo Subianto has been appointed as the new President of which country- **Indonesia**
82. Who develops India's lightest bulletproof jacket for protection against highest threat level- **DRDO**
83. Actor Randeep Hooda was recently honored with which award for his contribution to Indian cinema- **Lata Dinanath Mangeshkar Award**

84. In which country is the World Energy Congress 2024 being organized- **Netherlands**
85. Subrahmanya Dhareshwar passed away, he was a famous singer of which folk dance- **Yakshagana**
86. In which state India's first multipurpose (heat and power) green hydrogen pilot project was started- **Himachal Pradesh**

5. Prelims and Mains Notes Preparation Scheme

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

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

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

6. About Coaching

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

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

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

Teaching pedagogy

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

7. About Director and faculty

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

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

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself
2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the

University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

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

9. Library with Research wing

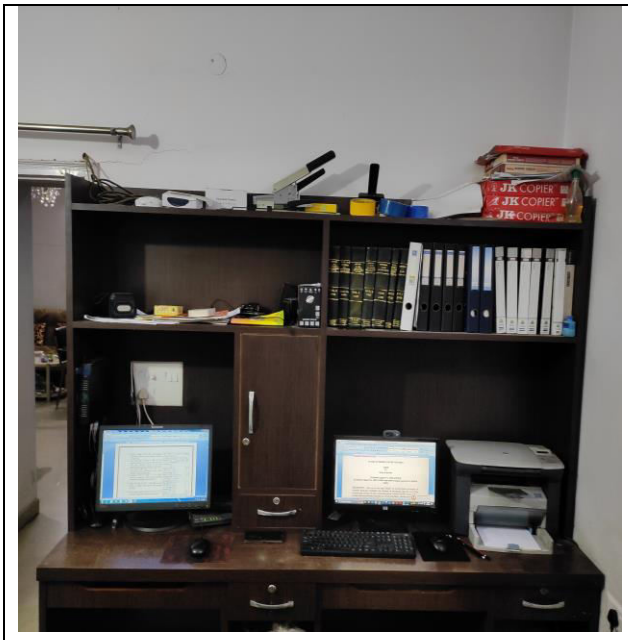
V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person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

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

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

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

Library



Research wing