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

Year – 2024

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nobody else knows

NO. 9 OF 2024

NEWSLETTER

September 2024

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Established in Sept. 2022

For Judicial Service Aspirants

In the service of Judicial Fraternity

1. Study Material-Law

Doctrine of Rarest of Rare

INTRODUCTION

The death penalty, commonly known as capital punishment, is a serious issue of debate all over the world. The Supreme Court, in a landmark judgment, has placed specific limitations on capital punishment and established the "rarest of rare" concept. "A sincere and enduring concern for the dignity of human life presupposes opposition to taking a life through the instrumentality of legislation," the Supreme Court wrote. That should only be done in the rarest of circumstances when the other opinion is absolutely excluded." The Indian judiciary, on the other hand, frequently refrains from imposing capital punishment, preferring instead to impose a maximum sentence of life imprisonment. The 'Rarest of Rare Case' theory is utilized by the judiciary in independent India as a criterion for awarding the death penalty to accused offenders who are found guilty of committing horrific crimes.

FURTHER DETAILS

The case of **Nathuram Godse Vs Crown, 1949 CriLJ 834. (Mahatma Gandhi's assassination)** is the most well-known example of the rarest of rare natural occurrences in free India. On the night of January 30, 1948, Nathuram Godse shot Mahatma Gandhi during a prayer meeting at Birla Mandir in Delhi. Justice Amarnath condemned him to death after a lengthy preliminary hearing, and the Punjab High Court's three adjudicators unanimously supported his sentence. The Supreme Court upheld the death penalty imposed by the trial court and upheld by the High Court against the three appellants Kehar Singh, Balbir Singh, and Satwant Singh for plotting and carrying out the murder of Smt.Indira Gandhi under sections 302, 120B, 34, 107, and 109 of the Indian Penal Code in **Kehar Singh Vs. Delhi Administration, AIR 1988 SC 1883.** The Court decided that the homicide was one of the rarest of rare situations in which a professional killer and his accomplices deserved special treatment.

APPLICATION AND EVOLUTION OF THE DOCTRINE

Supreme Court of India stated in **Bacchan Singh Vs. State of Punjab, AIR 1980 SC 898,** that the death penalty should be reserved for the "rarest of rare" cases; this view was favored to reduce the use of capital punishment to punish

criminals; however, the legislation contradicted this view by increasing the number of crimes for which capital punishment is awarded. In the case of Bacchan Singh, the Supreme Court stated various noteworthy factors connected to misconduct and criminal activity, in which determining the level of discipline or deciding on the decision of sentence for various offenses, including one under Section 302 of the Penal Code, the court ought not to bind its thought "chiefly" or only to the circumstances associated with the specific wrongdoing, additionally give due attention to the circumstances of the criminal.

Article 21 of the Constitution declares that no one's right to life may be taken away unless it is done in accordance with the law, however capital punishment violates the law. Its implementation is always final, preventing an individual from the opportunity to profit from new evidence or legislation that may lead to a conviction being overturned or a death sentence being overturned. When the stakes are as high as life and death, we must hold our judicial system to the same high standards as our airlines. It is one of our criminal justice system's core tenets that it is preferable for many bad individuals to walk free than for one innocent person to suffer. Many people have been released from death row since the contemporary death penalty was reinstated because they were innocent. We endeavor to prevent executions and seek the abolition of capital punishment via litigation, legislation, and commutation by helping to build a renewed public outcry against this inhumane and brutalizing institution.

Hon'ble Supreme Court, in **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597,** introduced a new dimension to the interplay between Articles 14, 19, and 21 of the Indian Constitution. It said that penalizing a person for an offence committed by him must pass the procedural and substantive tests of all three Articles. Later, in A.K. Gopalan v. State of Madras, AIR 1950 SC 27 a six-judge panel decided that if an accused is sentenced to any form of punitive detention or imprisonment after being convicted, it is beyond the ambit of Article 19. The term "Rarest of Rare Case" was first used **in Machhi Singh Vs. State of Punjab, AIR 1983 SC 957.** Supreme Court attempted to spell forth concrete factors on which it might be established whether a case falls within the category of 'Rarest of Rare Cases' or not.

MODELS THAT HAVE BEEN DETERMINED FROM THIS

1. When a homicide is done in an extraordinarily terrible, despicable, repulsive, or unforgivable manner in order to evoke unusual and extraordinary anger from the network, it is referred to as a "method of homicide commission."
2. When the victim's home is set on fire in order to prepare him for death.
3. When a victim is subjected to heinous acts in order to bring about his or her death.

4. When a victim's body is brutally battered or chopped apart.
5. When the cognitive processes that lead to killing are sheer depravity and savagery, there is no justification for committing violence.
6. The behavior is deplorable in social terms: When a homicide of a person from a backward social class is reported.
7. When the magnitude of the crime is large, such as in the case of several killings, the enormity of the wrongdoing.
8. When the alleged offence is preplanned and cold-blooded and committed against someone or a group who were not able to defend themselves while the commission of the offence

INTERNATIONAL ASPECT

According to Article 6 of the International Covenant on Civil and Political Rights(ICCPR), no human being should be deprived of his or her life arbitrarily. It further specifies that in nations that have not abolished the death penalty, it may be used only for the most heinous crimes, in compliance with the legislation in place at the time of the commission of the offence and not in contravention of the terms of the present Covenant and the Genocide Convention. The death sentence for adolescents is specifically prohibited by the United Nations Convention on the Rights of the Child. According to Article 3 of the Universal Declaration of Human Rights, states should gradually diminish "the number of offences for which capital penalty may be inflicted, with a view to the desirability of eliminating this punishment in all nations." The Economic and Social Council of the United Nations maintained that the death penalty should be reserved for the most serious crimes and that the scope of these crimes "shall not go beyond purposeful offences with deadly or other extremely grave consequences". The death sentence shall not be applied "for political offences or similar common offences," according to Article 4(4) of the American Convention on Human Rights.

CONCLUSION

Within the Indian judiciary, the concept of 'Rarest of Rare Cases' plays a significant role. The right to life, as established in the Indian Constitution, is accorded the highest priority. However, this does not mean that someone who has committed a horrific act is immune from punishment. The judiciary must offer legal justice to the victim, but it does not mean that the accused's rights can be violated. Following the application of this philosophy, the death penalty has become an extremely unusual punishment in our judicial system, with life imprisonment being far more common. When a case is decided in favor of capital punishment, it is a critical time for both the Court and the accused, as human life is about to be taken away on the basis of the law.

B. Important Cases September 2024

Important Supreme Court Cases
September 2024

S.N.	Subject	Case Reference
1.	An application under Section 28 of the Specific Relief Act, 1963, can be filed before the trial court even if the decree for specific performance was passed by the appellate Court.	Ishwar (Since Deceased) Thr. Lrs and Ors. Vs. Bhim Singh and Anr., decided on 03-09-2024
2.	No overact has to be imputed to a particular person in an unlawful assembly. Presence of the accused as a part of the unlawful assembly is sufficient for conviction. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC.	Nitya Nand Vs. State of Uttar Pradesh and Anr., decided on 04-09-2024
3.	Regular Civil/Family Court dealing with child custody cases is in an advantageous position. The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same.	Somprabha Rana and Ors. Vs.State of Madhya Pradesh and Ors., decided on 06-09-2024
4.	Order to summon additional accused passed under Sec. 319 Cr.P.C. after acquittal/conviction of co-accused is unsustainable	Devendra Kumar Pal Vs. State of U.P. and Anr., decided on 06-09-2024
5.	An accused already in custody in	Dhanraj Aswani Vs. Amar S.

	connection with one case can apply for anticipatory bail in connection with another case. Custody in one case does not have the effect of taking away the apprehension of arrest in another case.	Mulchandani and Anr., decided on 09-09-2024
6.	The provisions of the Prevention of Money Laundering Act (PMLA), 2002, will prevail over the Code of Criminal Procedure, 1973 (Cr.P.C.) in relation to the summoning of a person. Discuss distinction between Sec. 160 Cr.P.C. and Sec. 50 PMLA Act, 2002	Abhishek Banerjee and Anr. Vs. Directorate of Enforcement, decided on 09-09-2024
7.	A co-owner whose share in the joint property remained undetermined cannot transfer the entire suit property to another person without its partition being completed by metes and bounds. In other words, when there exist various co-owners in the property, then the subsequent purchaser of the suit property cannot acquire right, title and interest in the whole of the suit property solely based on the sale deed executed by one co-owner/transferor.	Sk. Golam Lalchand Vs. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes & Ors., decided on 10-09-2024
8.	Alteration/modification/revocation of an order passed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 can be sought through Section 25(2) only on the basis of change of circumstances which took place subsequent to the passing of the order.	S. Vijikumari Vs. Mowneshwarachari C., decided on 10-09-2024
9.	No transfer of title is possible in the absence of a registered instrument.	Beena and Ors. Vs. Charan Das (D) Thr. Lrs. & Ors., decided on 11-09-2024
10.	Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case.	Ranjit Singh & Anr. Vs. State of Uttarakhand & Ors., decided on 12-09-2024

11.	Grants bail granted to Arvind Kejriwal in CBI Case. CBI is a premier investigating agency. It's in public interest that CBI must not only be above board but must also be seen to be so. Every effort must be made to remove any perception that investigation is not carried out fairly and that the arrest was made in a high-handed and biased manner. In a functional democracy governed by the rule of law, perception matters. Like Caeser's wife, an investigating agency must be above board. Not so long ago this Court had castigated the CBI comparing it to a caged parrot. It is imperative that the CBI dispels the notion of being a caged parrot, rather the perception should be that of an uncaged parrot	Arvind Kejriwal Vs. Central Bureau of Investigation, decided on 13-09-2024
12.	The legal heirs of the deceased who died in the road accident can't be denied their rightful compensation on the ground that the driver of the car contributed to the accident. The contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be.	Sushma Vs. Nitin Ganapati Rangole & Ors., decided on 19-09-2024
13.	Essential ingredients of dowry death discussed.	Shoor Singh and Anr. Vs. State of Uttarakhand, decided on 20-09-2024
14.	➢ Storage of child pornography without deletion or reporting indicates intention to transmit, constitutes offence under POCSO Act, 2012 ➢ Watching child pornography over the internet without downloading would also amount to "possession" of such material in terms of Section 15 of the Protection of Children from Sexual Offences Act, 2012. ➢ The intention to transmit can be	Just Rights for Children Alliance Vs. S. Harish, decided on 23-09-2024

	gauged from the failure of a person to delete and report the material. ➢ Doctrine of constructive possession applied – Constructive possession extends the concept of possession beyond physical control to situations where an individual has the power and intention to control the contraband, even if it is not in their immediate physical possession. ➢ Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual r physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession. ➢ Parliament should seriously consider to bring about an amendment to the POCSO for the purpose of substituting the term "child pornography" with "child sexual exploitative and abuse material" (CSEAM) with a view to reflect more accurately on the reality of such offences. The Union of India, in the meantime may consider to bring about the suggested amendment to the POCSO by way of an ordinance. ➢ Directed to all Courts to abstain from using the term 'Child Pornography' in their judgments and instead resort to CSEAM.	
15.	The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons.	Yogarani Vs. State by the Inspector of Police, decided on 23-09-2024
16.	Amendment of plaint under Order VI	Dinesh Goyal @ Pappu Vs.

	Rule 17 CPC – Principles laid down.	Suman Agarwal (Bindal) & Ors., decided on 24-09-2024
17.	To challenge the conviction based on the alteration of charges, the accused must demonstrate that substantial 'failure of justice' is caused to them by such conversion of charges.	Baljinder Singh @ Ladoo and Ors. Vs. State of Punjab, decided on 25-09-2024

IN THE SUPREME COURT OF INDIA

Ishwar since (D) through LRS. & Ors.
Vs.
Bhim Singh & Anr.

[Civil Appeal No. 10193_ of 2024
arising out of SLP (C) No. 29899 of 2017]

HEADNOTE – An application under Section 28 of the Specific Relief Act, 1963, can be filed before the trial court even if the decree for specific performance was passed by the appellate Court

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns an order of the High Court of Punjab and Haryana at Chandigarh[1] dated 11.01.2017 passed in Civil Revision No.8105 of 2016, whereby the revision preferred by the appellant(s) against the order of the Civil Judge (Senior Division), Kaithal[2] dated 03.11.2016 was dismissed.

FACTUAL MATRIX

3. A suit for specific performance was instituted by the respondents against the appellant(s) (which would include their predecessor in interest) for enforcement of an agreement to sell dated 18.05.2005. In the plaint, inter alia, it was alleged that the appellant(s) had agreed to sell the property in dispute at a total consideration of Rs.18 lacs, out of which Rs.9.77 lacs was paid in advance, yet, despite service of notice requesting execution of sale deed, the appellants failed to execute the same.

4. The trial court (i.e., the Court of Additional Civil Judge (Senior Division), Kaithal), vide judgment and decree dated 28.02.2011, decreed the suit in part whereunder the appellant(s) were directed to refund the earnest money with interest, etc.

5. Aggrieved by rejection of the prayer for specific performance of the agreement, the respondents went in appeal. The appellate court (i.e., the Court of Additional District Judge, Kaithal (for short ADJ)) allowed the appeal vide judgment and decree dated 12.01.2012 and accepted the prayer for specific performance of the agreement.

While doing so, it directed the appellants herein to execute the sale deed in favour of the respondents herein on payment of balance sale consideration within a period of two months from the date of the decree, failing which, liberty was given to the decree holder(s) to get the sale deed executed through Court.

6. On 20.03.2012, the respondents (i.e. decree holders) filed an execution application before the Court of first instance (i.e., the trial court) praying thus:

"It is therefore, prayed that the sale deed as per the decree passed in Civil Appeal No.53 of 2011 may kindly be got executed and registered in favour of the decree holders by the appointment of the local commissioner and possession may kindly be got delivered to the decree holder and the balance sale price may kindly be got deposited in the Court for payment to the J.Ds and cost for the suit and the appeal and this execution may also be got recovered from the J.Ds."

7. While the application for execution of the decree was pending, the appellant(s) (i.e., the judgment debtor(s)) challenged the appellate court decree by filing Second Appeal No.3730 of 2012 before the High Court, which came to be dismissed on 07.11.2013.

8. Upon dismissal of the Second Appeal, the respondents (i.e., decreeholders) filed an application before the Execution Court on 24.03.2014 seeking permission to deposit the balance consideration in Court. Opposing this prayer of the decree holder, in the execution proceeding itself, the appellant(s) (i.e. the judgmentdebtors) submitted an application under Section 28^3 of the Specific Relief Act, 1963 (in short "the 1963 Act") to rescind the contract on the ground that decree-holder(s) had failed to make deposit within two months, as directed by the first appellate court.

9. The Execution Court, however, rejected the application of the judgment-debtor(s) for rescission of the contract vide order dated 03.11.2016 and, simultaneously, permitted the decree-holder(s) to make deposit of the balance consideration.

10. Aggrieved by the aforesaid order of the Execution Court, the appellant(s) (i.e., the judgment-debtors) filed a Civil Revision before the High Court, which came to be dismissed by the impugned order.

11. We have heard Shri Subhasish Bhowmick for the appellant(s); Mr. Devendra Singh for the respondents; and have perused the materials on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

12. The learned counsel for the appellants submitted:

(i) The Execution Court held no jurisdiction to extend the time for depositing the balance consideration as the decree under execution was passed by the appellate court.

(ii) The decree was executable on payment of balance sale consideration within two months. No application for extension of time to make deposit was made within the aforesaid period, therefore the Court had no power to extend the time for deposit.

(iii) The Execution Court committed grave error in extending the time to make deposit of the balance amount after four years of the appellate court's decree, when, otherwise, it was to be paid within two months from the date of the decree.

SUBMISSIONS ON BEHALF OF RESPONDENTS

13. Per contra, the learned counsel for the respondents submitted:

(i) The execution application was filed in the same Court where the original suit was instituted, therefore, the Court had jurisdiction to extend the time to make deposit;

(ii) The decree under execution did not specifically fix the mode of payment and there was no direction to deposit the balance consideration in Court, therefore, except to file for execution of the decree and seek permission of the Court to deposit the balance consideration, there was no other method by which decree holder could have paid the balance amount, more so, when the judgment debtor was not interested in abiding by the decree;

(iii) The judgment - debtor(s) were offered balance consideration within time, and the execution application was also filed within time, but, instead of executing the sale deed, the judgment- debtor(s) chose to prefer a second appeal before the High Court. Not only that, after the second appeal was dismissed, the judgment-debtor(s) preferred a Special Leave Petition (in short SLP) before this Court, which, too, was dismissed on 07.11.2016. Thus, it is clear that the decree-holders were throughout ready and willing to perform their part under the contract / decree whereas the judgment-debtor(s) avoided execution of the sale deed. In these circumstances and having regard to the facts of the case, the Execution Court was justified in allowing the application for extension of time and rejecting the application for rescission of the contract.

ISSUES

14. Having noticed the rival contentions, in our view, the following issues arise for our consideration:

(i) Whether the Execution Court had jurisdiction to deal with the application(s) for (a) recission of contract and (b) extension of time to deposit the balance sale consideration?

(ii) If Execution Court had the jurisdiction, whether those applications ought to have been decided as one in the suit (i.e., original side)? If yes, then, whether, in the facts of the case, on that ground alone, the impugned order warrants interference in exercise of jurisdiction under Article 136 of the Constitution of India?

ANALYSIS

A. The Execution Court had jurisdiction

15. A bare reading of Section 28(1) of the 1963 Act gives an impression that the power to extend time to deposit, or to rescind the contract on failure of deposit, vests in the Court which passed the decree in as much as the words used in Section 28 (1) are:

"The vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require."

16. In Ramankutty Guptan Vs. Avara[4], this Court answered two questions. One, whether an application under Section 28 of the 1963 Act is maintainable in the Court of first instance when the decree has been passed by the appellate court. Second, whether the Execution Court in which the original suit was filed can entertain an application under Section 28 of the 1963 Act. After taking note of the provisions of Section 37[5] of the CPC, this Court held:

"8. Therefore, it is clear that the decree of the appellate court would be construed to be the decree passed by the court of first instance. It is settled law that an appeal is a continuation of the suit. Therefore, when a decree for specific performance has been dismissed by the trial court, but decreed by the appellate court, it should be construed to be in the same suit.

When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the Court may allow to pay the purchase money or other sum which the court has ordered him to pay. In K. Kalpana Saraswathi Vs. P.S.S. Somasundaram Chettiar6, this Court held that on an oral prayer made by the counsel for the plaintiff for permission to deposit the entire amount as directed by the trial court this Court directed the appellant to

deposit the amount within six months from that date together with interest and other conditions mentioned therein.

An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate court which decree is under execution. It is to be seen that the procedure is the handmaid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice.

Therefore, technicalities would not stand in the way to subserve substantive justice. Take a case where the decree is transferred for execution to a transferee executing court, then certainly the transferee court is not the original court and execution court is not the "same court" within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same Court."

(Emphasis supplied)

17. Following the view taken in Ramankutty Guptan (Supra), in V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Anr.[7] this Court held:

"16. In view of the decision of this Court in Ramankutty Guptan case when the trial court and the executing court are the same, the executing court can entertain the application for extension of time though the application is to be treated as one filed in the same suit. On the same analogy, the vendor judgment-debtor can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of the decree."

(Emphasis supplied)

18. Having regard to the aforesaid decisions, in our view, the expression "may apply in the same suit in which the decree is made" as used in Section 28 of the 1963 Act must be accorded an expansive meaning so as to include the court of first instance even though the decree under execution is passed by the appellate court. This is so, because the decree is in the same suit and, according to Section 37 of the CPC, the expression "the court which passed a decree", or words to that effect, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, would include:

(a) the court of first instance even though the decree to be executed has been passed in the exercise of appellate jurisdiction; and

(b) where the court of first instance has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Thus, an application under Section 28 of the 1963 Act, either for recission of contract or for extension of time, can be entertained and decided by the Execution Court provided it is the Court which passed the decree in terms of Section 37 of the CPC.

19. In the instant case, the Court of first instance (i.e., where the civil suit was instituted) was the Court of Additional Civil Judge (Senior Division), Kaithal, as would appear from the decreesheet placed on record as Annexure P1. The execution application was also filed before the Court of Additional Civil Judge (Senior Division), Kaithal, as would appear from Annexure P2. Paragraph No.1 of the impugned order indicates that the order dated 03.11.2016 by which the application under Section 28 was disposed of was passed by the Court of Civil Judge (Senior Division), Kaithal.

Thus, by virtue of Section 37 of the CPC, the Execution Court being the Court of first instance with reference to the suit in which the decree was passed had jurisdiction to deal with the application under Section 28 of the 1963 Act. We, therefore, reject the objection as regards jurisdiction of the Execution Court to deal with the application for extension of time / rescission of the contract under Section 28 (1) of the 1963 Act. Issue (i) is decided in the aforesaid terms.

B. Execution Court ought to have decided the Application under Section 28 of the 1963 Act as an application in the Suit

20. The next question which falls for our consideration is whether the application under Section 28 of the 1963 Act ought to have been dealt with as an application on the original side (i.e., as an application in the suit) or on the execution side (i.e., as an application in the execution proceedings). This issue is no longer res integra as it has been answered by this Court in Ramankutty Guptan (Supra) in the following terms:

"9. The question then emerges is whether it should be on the original side or execution side. Section indicates that it should be "in the same suit". It would obviously mean in the suit itself and not in the execution proceedings. It is equally settled law that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The Court retains control over the decree even after the decree has been passed. It was open to the Court to exercise the power under Section 28(1) of the Act either for extension of time or for rescinding the contract as claimed for.

Since the execution application has been filed in the same court in which the original suit was filed, namely, the court of first instance, instead of treating the application on the execution side, it should have as well been numbered as an interlocutory application on the original side and disposed of according to law. In this view, we feel that the judgment of the Bombay High Court laid down the law correctly and that of the Andhra Pradesh High Court is not correct. The High Court, therefore, is not right in dismissing the application treating it to be on execution side, instead of transferring it on the original side for dealing with it according to law."

(Emphasis supplied)

21. The above view was followed in Sanjay Shivshankar Chitkote Vs. Bhanudas Dadarao Bokade (Died) through L.Rs.[8] wherein, upon finding that the applications under Section 28 were dealt with on the execution side, this Court set aside the order of the execution court and directed that the applications shall be transferred to the file of the civil suit so that they could be numbered as an application in the suit.

22. The law is, therefore, settled that an application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of. As a sequitur, even if the Execution Court is the Court of first instance with reference to the suit wherein the decree under execution was passed, it must transfer the application filed under Section 28 to the file of the suit before dealing with it. Issue (ii) is partly decided in the aforesaid terms.

C. Not a Fit Case for Interference Under Article136 of the Constitution

23. Now, the question which survives for our consideration is whether, in the facts of the case, the order impugned is liable to be interfered with only because the Court which passed the order dealt with the application on the execution side and not on the original side (i.e., as an application in the suit).

24. Before we examine facts relevant to the issue, we must reiterate that the jurisdiction of this Court under Article 136 of the Constitution is a discretionary jurisdiction to advance the cause of justice. The Court does not exercise its jurisdiction under Article 136 only because it is lawful to do so[9]. For the purpose of doing complete justice to the parties, the Court may not interfere with the order even if it suffers from some legal error. Not only that, the Court may deny relief to a party having regard to its conduct and may, in a given situation, mould the relief to do complete justice to the parties[10].

25. In Chanda v. Rattni[11], this Court held that the power to rescind the contract under Section 28 of the 1963 Act is discretionary in nature and is to do complete justice to the parties. The Court does not cease to have the power to extend the time even though the decree may have directed that payment of balance price is to be made by a certain date.

While exercising discretion in this regard, the Court is required to take into account facts of the case so as to ascertain whether the default was intentional or not. If there is a bona fide reason for the delay/ default, such as where there appears no fault on the part of the decree holder, the Court may refuse to rescind the contract and may extend the time for deposit of the defaulted amount.

26. We shall now consider whether the impugned order does substantial justice to the parties. For this end, it would be apposite to have a close look at the facts of the case as it would help us in determining whether discretion to extend the time for depositing the balance consideration was justifiably exercised in favour of the decree holder.

27. In the instant case, the agreement, of which specific performance was sought, is of the year 2005. The suit for specific performance was filed in the year 2006. The trial court partly decreed the suit, inter alia, for refund of the earnest money in the year 2011. The plaintiff(s) (respondents herein) being aggrieved by rejection of their prayer for specific performance of the agreement, filed an appeal before the appellate court.

The appellate court allowed the appeal on 12.1.2012 and directed the defendants (appellants herein) to execute the sale deed on payment of balance consideration within two months from the date of the appellate court order, failing which the plaintiff(s) were entitled to get the sale deed executed through Court. Notably, the mode of payment of the balance consideration was not specified in the decree and there was no direction upon the plaintiff(s) to deposit the balance consideration in Court.

Further, the decree did not spell out consequences of nonpayment within the stipulated period. Rather, right was given to the decree holder to get the sale deed executed through Court if it was not executed upon payment within two months. As the mode of payment was not specified in the decree, what course the decree holder could have adopted in case the judgment-debtor refused to abide by the decree becomes a relevant consideration for the purposes of exercise of discretion in one way or the other.

28. In the instant case, admittedly, the decree attained finality upon dismissal of second appeal on 7.11.2013, and, finally, SLP on 7.11.2016. In between, pursuant to the order of the Execution Court dated 3.11.2016, as claimed by the

respondents in their written submission, the balance sale consideration was deposited on 13.11.2016. Before that, the decree-holder(s) had promptly filed for execution of the decree immediately after expiry of 60 days from the date of the appellate court decree.

Not only that, as no specific mode for payment/ deposit of the balance consideration was provided for in the decree, the decree holder(s) sought a direction from the Court to permit them to deposit the amount in Court so as to get the decree executed through its intervention. This application, however, remained pending as challenge to the decree was being considered by higher courts.

In the meantime, as soon as the Second Appeal was dismissed, the decree-holder(s) applied for fresh permission to deposit the balance consideration. Ultimately, when permission was granted by the Execution Court, the deposit was made, as noted above. In these circumstances, the decree holder(s) had all throughout displayed their intention to pay the balance consideration and there appears no intentional or deliberate fault on their part so as to deprive them of the fruits of the decree.

29. The contention of the learned counsel for the appellant(s) that there was no proper prayer for condonation of delay in making the deposit of the balance consideration, or that there was no proper application for extension of time to make deposit, is unworthy of acceptance. Because, in the execution application itself, which was promptly filed after expiry of 60 days from the date of the appellate court decree, the decree holder had sought permission to make deposit.

Not only that, the application filed after dismissal of second appeal also sought permission to make deposit. The prayer to extend the time to make deposit was therefore implicit in the prayer to permit the decree holder to make deposit of the balance consideration. In this view of the matter, we reject the submission of the appellants that as there was no proper application for extension of time to make deposit, the Court held no jurisdiction to extend the same.

30. In light of the discussion above and on an overall assessment of the facts, we are of the considered view that the respondents had all throughout shown their intention to pay the balance consideration for execution of the sale deed whereas the appellants appeared interested only in challenging the decree before higher Courts.

In these circumstances, taking note of all the events, the Execution Court justifiably exercised its discretion in favour of the decree-holder(s) by allowing them to deposit the balance consideration. In our view, therefore, substantial justice has been done to the parties and if we interfere with the impugned order

only on the technical ground that the application was not dealt with as one on the original side, grave injustice would be caused to the decree holder(s).

More so, when the judgment-debtor(s) themselves applied to the Execution Court for rescinding the contract under Section 28(1) of the 1963 Act, and raised no such jurisdictional issue either before the Execution Court or the High Court. Therefore, in our view, no interference with the impugned order is called for in exercise of our discretionary jurisdiction under Article 136 of the Constitution.

31. For the reasons above, the appeal is dismissed. Interim order, if any, stands discharged. Parties to bear their own costs.

32. Pending application(s), if any, stands disposed of.

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

.....J. (Manoj Misra)

New Delhi;

September 03, 2024

1 High Court

2 Execution Court

3

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchase or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

4 (1994) 2 SCC 642

5
37. Definition of the court which passed a decree - The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include-

(a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) Where the court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

6 (1980) 1 SCC 630

7 (1999) 4 SCC 702

8 Civil Appeal No.8022 of 2023 @ SLP (C) No.24720 of 2023 decided on 08.12.2023

9[9] See C.K. Prahalada v. State of Karnataka, (2008) 15 SCC 577

10[10] See Lajpat Rai Mehta v. Govt. of Punjab (Deptt. of Irrigation & Power), (2009) 3 SCC 260

11[11] (2007) 14 SCC 26

IN THE SUPREME COURT OF INDIA

Nitya Nand
Vs.
State of Uttar Pradesh & Anr.

[Criminal Appeal No. 1348 of 2014]

HEADNOTE – No overact has to be imputed to a particular person in an unlawful assembly. Presence of the accused as a part of the unlawful assembly is sufficient for conviction. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC.

JUDGMENT

Ujjal Bhuyan, J.

1. This appeal is directed against the judgment and order dated 27.09.2012 passed by the Allahabad High Court upholding the conviction of the appellant alongwith others under Sections 148 and 302/149 of the Indian Penal Code, 1860 (IPC).

2. It may be mentioned that learned Sessions Judge, Etah vide the judgment and order dated 20.01.1997 passed in Sessions Trial No. 17 of 1993 convicted the appellant alongwith three others under Sections 148 and 302/149 IPC and sentenced each of them to undergo rigorous imprisonment (RI) for two years and to pay fine of Rs. 2,000.00 for the conviction under Section 148 IPC with a default stipulation and further sentenced to undergo imprisonment for life under Section 302/149 IPC. Another accused Shree Dev was convicted for the offences punishable under Sections 147 and 302/149 IPC. He was sentenced to undergo RI for two years and to pay fine of Rs. 2,000.00 with a default stipulation for the offence committed under Section 147 IPC and to suffer imprisonment for life under Section 302/149 IPC.

3. Being aggrieved by the aforesaid conviction and sentence, all the five accused persons including the appellant herein preferred criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the Allahabad High Court (High Court) which was registered as Criminal Appeal No. 340 of 1997. By the judgment and order dated 27.09.2012, a division bench of the High Court affirmed the conviction and sentence of all the accused persons including that of the appellant and dismissed the criminal appeal.

4. The appellant then preferred petition for special leave to appeal before this Court being SLP(Criminal) No. 750/2013. This Court vide the order dated 04.02.2013 had issued notice on the special leave petition as well as on the

application for bail. On 30.06.2014, this Court granted leave but rejected the prayer for bail. It was thereafter that Criminal Appeal No. 1348 of 2014 came to be registered.

5. We have heard learned counsel for the parties.

6. Prosecution case in brief is that informant Sarwan Kumar, son of late Satya Narain, had lodged a written report (First Information Report) i.e. FIR before Police Station Soron, District Etah on 08.09.1992 at 05:10 PM. He stated that on 08.09.1992 at about 04:30 PM, he and his father Satya Narain as well as his uncle Laxmi Narain as per their daily routine, came to Ganga ghat near Ambhagarh Akhada, after easing themselves, for taking bath.

At around the same time, from the side of Dhimaro Ka Mohalla, Bhola Shankar and Kuldeep Kumar Tiwari came. He and his uncle proceeded ahead while talking with Bhola Shankar and Kuldeep Kumar Tiwari. This way they had reached the temple of Govardhan Nath Ji. In the meantime, from the southern side of Tulsi Park, Shree Dev and his four sons, viz., Munna Lal, Raju, Nitya Nand and Uchchav @ Pappu, resident of Mohalla Tiraha, Chodah Pore, P.S. Soron, armed with kanta, knives and country-made pistol confronted his father Satya Narain.

All the accused persons caught hold of his father and started assaulting him with kanta and knives. On hearing the cries of his father, informant Sarwan Kumar and others dashed towards Satya Narain to save him. It was then that appellant Nitya Nand fired from his country-made pistol whereafter all the accused persons made good their escape from the south-western side. When the informant and others reached the spot, his father Satya Narain had already succumbed to the multiple injuries which he had suffered on his body.

6.1. A written report of the incident scribed by Kuldeep Kumar Tiwari i.e., the FIR was submitted by Sarwan Kumar at 05:10 PM on the same day at P.S. Soron.

6.2. It was mentioned that Shree Dev, deceased Satya Narain, and Laxmi Narain were the three brothers. Laxmi Narain, who was the youngest of the three, had no issue; so he had executed a will in favour of Satya Narain's sons. Shree Dev and his sons including the appellant Nitya Nand were enraged by this disposition of property by Laxmi Narain. This led to filing of several cases between them. Due to such litigation, there was an old enmity and for that reason, the accused persons had fatally assaulted Satya Narain on that fateful day.

7. On the basis of the FIR, Crime No. 237/1992 was registered at P.S. Soron under Sections 147, 148, 149 and 302 IPC. The investigating officer had carried out investigation of the case. The post-mortem report indicated multiple ante-mortem injuries on the person of the deceased. On completion of the

investigation, charges under Sections 148 and 302/149 IPC were framed against the accused Munna, Raju, Uchchav @ Pappu and Nitya Nand. Similarly, charges under Sections 147 and 302/149 IPC were framed against the accused Shree Dev.

8. The accused persons denied the charges and claimed to be tried.

9. To prove its case, the prosecution examined a total of five witnesses. After closure of the prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C.

10. The trial court on an appreciation of the evidence adduced and considering the materials on record, convicted the accused Shree Dev under Sections 147 and 302/149 IPC and also convicted the appellant and the other sons of Shree Dev i.e. Munna Lal, Raju and Uchchav @ Pappu under Sections 148 and 302/149 IPC. All the accused were thereafter sentenced as indicated above.

11. In appeal, the High Court observed that the eyewitness account of the incident stood fully corroborated by the medical evidence. Prosecution had proved its case beyond all reasonable doubt against each of the accused. Therefore, while upholding the conviction and sentence, the High Court dismissed the appeal.

12. Learned counsel for the appellant submits that both the trial court and the High Court committed a manifest error in convicting the appellant under Sections 148 and 302/149 IPC. He submits that allegation against the appellant was that he was carrying a country-made pistol. As the informant and others tried to rush towards Satya Narain on hearing his cries as he was being assaulted by the other accused persons, appellant Nitya Nand fired from his country-made pistol thereby threatening the informant and the others who tried to rescue Satya Narain.

As the appellant fired from his country-made pistol, all the accused persons made good their escape from the crime scene. However, neither were there any firearm injuries on the person of the deceased nor on anyone else. That apart, there was no recovery of any countrymade pistol or empty cartridge from the crime scene or from anywhere else. In the absence thereof, both the courts below were not justified in so convicting the appellant.

12.1. Learned counsel for the appellant further submits that Laxmi Narain, who was with the deceased and who had walked ahead along with the informant while talking with Bhola Shankar and Kuldeep Kumar Tiwari, was not examined by the prosecution as a witness. This is a crucial omission as because only due to gifting of the property by Laxmi Narain to the sons of the deceased Satya Narain which led to such bad blood between the brothers leading to the fatal incident.

Learned counsel also emphasized that another crucial omission on the part of the prosecution is that Kuldeep Kumar Tiwari was not examined as a witness. Such glaring omission has cast uncertain shadows over the prosecution case. Omission to examine Kuldeep Kumar Tiwari as a prosecution witness has completely punctured the prosecution case because it was he who had written the FIR lodged by the informant besides being an eyewitness.

12.2. Learned counsel for the appellant finally submits that appellant has been convicted solely on the basis of suspicion. In a criminal trial, the conviction must be based on hard evidence and not on mere suspicion. Even if there is an iota of doubt as to the culpability of an accused, as in the present case, he has to be given the benefit of the doubt. That being the position, the impugned conviction and sentence of the appellant should be interfered with by this Court.

13. Learned counsel for respondent No. 1, State of U.P., has vehemently argued that conviction and sentence of the appellant is fully justified. There is no reason to interfere with the same.

13.1. He submits that there was a clear motive for the accused persons, including the appellant, to have caused the murder of Satya Narain. According to him, the accused Shree Dev, deceased Satya Narain, and Laxmi Narain were the three brothers, Laxmi Narain being the youngest of the three. Since Laxmi Narayan had no issue, he executed a will in favour of the sons of Satya Narain. Shree Dev and his sons, including the appellant, were unable to come to terms with this development. They were highly agitated which led to filing of several cases by and between them. This was the real intention behind the plot to kill Satya Narain.

13.2. Learned counsel for respondent No. 1 submits that the appellant was very much a part of the unlawful assembly as one of the persons at the place of occurrence which was mentioned in the FIR itself. That apart, in their evidence, PW-1 and PW-2, categorically stated that appellant was carrying a country-made pistol from which he fired in the air with the intent to frighten the informant and others who tried to come to the rescue of the deceased. Taking advantage of the situation, the accused persons escaped from the crime scene.

13.3. The evidence of PW-1 and PW-2 in this regard is unflinching. Therefore, non-recovery of the country-made pistol or any cartridge fired therefrom cannot be fatal to the prosecution case.

13.4. The very act of the appellant in firing from his countrymade pistol to enable the accused persons to escape is clearly an overt act whereby he became part of the unlawful assembly with a common object to cause the death of the deceased.

The evidence on record clearly provides that appellant was part of the unlawful assembly having the common object to kill the deceased.

13.5. Learned counsel for respondent No. 1 State submits that it is a case of direct evidence which clearly establish the involvement of the appellant in the killing of Satya Narain. The ocular evidence is fully supported by the medical evidence. That apart, the post incident conduct of the appellant is also a significant factor. Laxmi Narain, who could have been an important eyewitness, was killed on 25.10.1993. In that case, appellant herein along with others were named as accused. Therefore, it was not possible for the prosecution to present Laxmi Narain as a prosecution witness.

13.6. He, therefore, submits that there is no merit in the criminal appeal which should be dismissed.

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

15. Question for consideration is whether the prosecution could establish the culpability of the appellant in the murder of Satya Narain beyond any reasonable doubt? In other words, whether the prosecution could prove the charges against the appellant under Sections 148 and 302/149 IPC beyond any reasonable doubt?

16. To answer the aforesaid question it is necessary to briefly analyse the evidence on record. PW-1 is Shri Sarwan Kumar S/o Late Satya Narain. He is the informant in the case. In his examination in chief, PW-1 stated that his father Late Satya Narain was one of the three brothers, Shree Dev being the eldest and Laxmi Narain alias Daroga being the younger. Shree Dev had four sons viz. Munna Lal, Raju, Nitya Nand (appellant) and Uchchav alias Pappu. His uncle Laxmi Narain was issueless and was residing with Satya Narain. Laxmi Narain gifted all his property to the informant and his brothers i.e. to the sons of Satya Narain. This was not to the liking of the accused persons which resulted in litigation and enmity.

16.1. He further stated that on the fateful day at about 04:30 PM his father Satya Narain, uncle Laxmi Narain and himself after easing themselves at about 04:30 PM, had reached Ambhagarh Akhada, Har Ki Pauri. At the same time from the side of Dhimaro Ka Mohalla, Shri Kuldeep S/o Ram Prakash and Bhola Shankar S/o Siaram came.

Informant and his uncle Laxmi Narain started a conversation with the above two persons and while talking with the two persons went ahead and reached the temple of Goverdhan Nath Ji. Father of PW-1 Satya Narain had got down from the stairs for bathing in the Ganga at Har Ki Pauri. In the meanwhile, from the southern side of Tulsi Park, the accused persons came. While Shree Dev was

armed with a danda, Munna Lal was armed with kanta. Raju and Uchchav were armed with knives. Appellant Nitya Nand was carrying a country-made pistol in his hand.

As they confronted Satya Narain, Shree Dev exhorted the other accused persons to kill him. Thereafter, the accused persons caught hold of his father and started assaulting him with knives and kanta. As Satya Narain cried for help, Bhola Shankar, Kuldeep, Laxmi Narain and PW-1 rushed to help him. They had reached the Bharoji temple when appellant Nitya Nand fired a shot in the air from his country-made pistol to frighten PW-1 and the others. Taking advantage of the situation, the accused persons made good their escape from the crime scene through the south-western side.

16.2. As PW-1 went near his father, he found that his father had received multiple injuries inflicted by knives and kanta on his head, cheek, neck, back and ribs. His father Satya Narain had died on the spot with half of his body inside the water. While blood was splattered on the spot, sandal of his father was lying on the stairs with stick in the water. PW-1 stated that he had dictated a report of the incident on the spot to Kuldeep Kumar Tiwari S/o Ram Prakash who had scribed the same.

After he had completed writing down what was dictated, scribe Kuldeep Kumar Tiwari read over the same to PW-1 and thereafter took his signature. PW-1 stated that he along with his uncle Laxmi Narain went to the police station in a tricycle (rickshaw) and handed over the report to the incharge of the police station who registered a case and handed over a copy of the same to PW-1.

17. In his cross-examination PW-1 stated that after hearing the cries of his father, he had rushed back to the spot. About fivesix nearby people had also gathered there but he could not remember their names. Regarding Bhola Shankar, PW-1 stated that he came after the incident.

17.1. When PW-1 tried to go near his father, appellant Nitya Nand had fired in the air to stop him and thereafter he ran away. No fire was shot for causing injury either to PW-1 or to the deceased. People did not find any cartridge or empty cartridge on the spot.

17.2. He admitted that because of his uncle Laxmi Narain gifting all his property to the sons of Satya Narain including himself there was enmity between the two sides.

17.3. Regarding the deceased, PW-1 stated that he had taken his last meal between 02.00 to 02.30 PM when he had taken dal and roti. His father's daily routine was to go to Har ki Pauri for taking a bath in the Ganga. On the fateful day, his father went to ease himself first and then went for bathing.

17.4. PW-1 stated that his uncle Shree Dev had exhorted the other accused persons to kill his father. This fact however is not mentioned in the FIR.

17.5. PW-1 stated that he was at the crime scene for about half an hour. During this period, about 100-200 people had gathered. After intimation was sent to home about the incident, people from home had also arrived. After getting the report written, PW-1 proceeded to the police station in a rickshaw and submitted the same.

17.6. PW-1 denied the suggestion that the incident as reported in the FIR had not happened at the time mentioned therein and that the accused persons were falsely implicated due to previous enmity. He also denied the suggestion that the FIR (Ex.1) was not written in the handwriting of Kuldeep.

18. Bhola Shankar, son of Satya Narain, deposed as PW-2. While reiterating what was stated by PW-1 leading to the incident, he further stated that Satya Narain had cried out for help to save him when he was being assaulted by the accused persons. He stated that he alongwith other people rushed to the spot when appellant Nitya Nand fired from his country-made pistol. He asserted that he alongwith the other people had seen the accused assaulting Satya Narain. After the accused persons escaped towards the south-western side, they came to the spot where Satya Narain was lying. By that time, he was already dead with half of his body inside the water.

18.1. In his cross-examination, PW-2 stated that he had seen the incident with his own eyes. FIR was written by Kuldeep Kumar and his statement was also recorded by the police. He further stated that he had seen Satya Narain falling down the stairs and crying for help. At that time, PW-1 was also near him and he had also witnessed the assault.

18.2. He denied the suggestion that he was not present at the time of the incident and that he was not witness to the writing and lodging of the FIR. He further denied the suggestion that he was deposing falsely due to his friendship with the informant.

19. Dr. Satya Mitra, who was serving in the District Hospital, Etah, deposed as PW-3. He had carried out the postmortem examination on the dead body of Satya Narain on 09.09.1992, following which he found the following ante-mortem injuries on the body of the deceased:

1. Incised wound 10 cm x 1 cm x brain matter deep over right side and back of head at left of back of upper and of right external ear. Skin muscle (scalp) bone meninges and brain cut.

2. Multiple incised wound in an area 10 cm x 7 cm on the right side cheek and upper part of neck measuring 1 cm x 0.3 cm muscle deep to 3 cm x 0.7 cm x bone deep. Mandible on right side fractured.

3. Stab wound 3 cm x 1 cm x thoracic cavity deep over right side lateral side of chest 8 cm below axillary crease. On discussion subcostal muscle underlying rib, pleura right side, lung right side, cut direction right to left transverse.

4. Stab wound 3.5 cm x 1 cm x thoracic cavity deep on left side chest 6 cm below left nipple. Skin, muscle underlying the 8th rib, left pleura, left lung and pericardium part are cut. Direction left to right and slightly upwards.

5. Multiple incised wound in an area 10 cm x 5 cm on the left side chest above nipple measuring 2 cm x 0.3 cm x skin deep to 3 cm x 0.5 cm x muscle and rib deep.

6. Multiple incised wound over back of chest in an area 20 cm x 20 from base of neck above measuring 2 cm x 0.2 cm. Muscle deep to 3 cm x 0.5 cm x thoracic cavity deep. Right scapula cut. Right pleura and right lung cut at places.

7. Multiple incise wound in an area 10 cm x 6 cm over front and external aspect of left upper arm 3 cm below the left shoulder joint.

19.1. He opined that death was possibly caused due to shock and haemorrhage as a result of the injuries. The injuries were caused by sharp-edged weapons like kanta, knives etc.

19.2. PW-3 proved the post-mortem report which was in his handwriting as well as his signature thereon.

20. At the relevant point of time, Ramesh Chandra Sharma served as Inspector at Soron Police Station. He deposed as PW-4. He has stated that investigation of the case was started by Shri Devi Dayal Prajapati from whom he had taken over the investigation on 23.09.1992. On completion of investigation, he had submitted the chargesheet on 13.10.1992.

20.1. In his cross-examination, he has stated that he did not record the statement of any of the witnesses. On the basis of the statements recorded by his predecessor Shri Devi Dayal Prajapati, and after perusal of other documents, the chargesheet was submitted against the accused persons.

21. Shri Devi Dayal Prajapati deposed as PW-5. He has stated that on the date of receipt of the first information, he had recorded the statements of Laxmi Narain, Bhola Shankar, Kuldeep Kumar and the witnesses of the panchnama. Despite

search, the accused persons were not found and, therefore, they could not be arrested. Thereafter, investigation was taken over by PW-4.

21.1. In his cross-examination, he admitted that though he had taken blood sample from the stairs where the dead body of Satya Narain was found, he did not send the sampled blood for chemical examination. Though he had recorded the statement of the informant, the latter did not mention in his statement that his uncle Shree Dev had exhorted the other accused persons to kill his father and that he should not be spared as he had grabbed the property of his younger brother. Again, he did not mention in the case diary that Bhola Shankar was present on the spot. That apart, Bhola Shankar did not mention the names of any assailant.

22. From the evidence tendered on behalf of the prosecution, it is clear that PW-1 and PW-2 are the eyewitnesses. When PW-1 Satya Narain and Laxmi Narain had reached Har Ki Pauri at Ambhagarh Akhada, they were joined by Kuldeep and Bhola Shankar (PW-2). PW-1 and Laxmi Narain went ahead talking with Kuldeep and PW-2. Satya Narain was walking down the steps for a dip in the river. At that time, the accused persons arrived at the scene from the southern side of Tulsi Park.

Both PW-1 and PW- 2 were categorical in their evidence that Shree Dev was armed with a danda, Munna Lal was armed with kanta and Raju and Uchchav were armed with knives. Appellant Nitya Nand was carrying a country-made pistol in his hand. Though the appellant did not assault Satya Narain, the other accused persons actively participated in the assault. Hearing the cries of Satya Narain, PW- 1, PW-2, Kuldeep and Laxmi Narain rushed back. When they had reached near the crime scene, appellant Nitya Nand fired a shot in the air from his country-made pistol to frighten PW-1 and the others. As the appellant fired in the air, all the accused persons escaped from the crime scene.

23. At this stage, we may mention that PW-2 was categorical in his cross-examination that he had seen the incident with his own eyes and that PW-1 was also with him then.

24. Neither PW-1 nor PW-2 has stated that appellant had fired at them nor he had fired at the deceased. The role attributed to the appellant was helping the other accused persons and himself flee from the scene of crime by frightening the people including PW-1 and PW-2 when they were about to reach the crime scene by firing from his country-made pistol into the air. The fact that the death of Satya Narain was homicidal has been fully established by the post-mortem report as well as by the evidence of PW-3 i.e. the doctor. The ocular evidence supported by the medical evidence clearly establish that it was a case of murder of the deceased by the other accused persons under Section 302 IPC.

25. Appellant has been roped in by virtue of Sections 148 and 149 IPC. Appellant was a part of the unlawful assembly which had the common object of eliminating Satya Narain by means of criminal force and, therefore, being a member of the unlawful assembly, he was also guilty of the offence committed in prosecution of the common object i.e. the offence under Section 302 IPC.

26. At this juncture, we may briefly survey the relevant legal provisions.

27. Section 141 IPC defines unlawful assembly. It says an assembly of five or more persons is designated as unlawful assembly if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

28. As per Section 148 IPC which deals with rioting armed with deadly weapon, whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Rioting is defined in Section 146 IPC. As per the said definition, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

29. This brings us to the pivotal section which is Section 149 IPC. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.

30. In Krishnappa Vs. State of Karnataka1, this Court while examining Section 149 IPC held as follows:-

20. It is now well-settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence.

Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.

30.1. Thus, this Court held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

31. As a matter of fact, this Court in Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel2 has reiterated the position that Section 149 IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held:

20. In cases where a large number of accused constituting an "unlawful assembly" are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies.

The mere presence of an accused in such an "unlawful assembly" is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" - for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.

32. It is true that there are certain lacunae in the prosecution. The scribe Kuldeep was not examined. Similarly, the younger brother Laxmi Narain was not examined though it has come on record that Laxmi Narain was killed in the year 1993 and in that case one of the accused is the appellant himself. It is also true that neither any country-made pistol was recovered nor any cartridge, empty or otherwise, recovered. However, the appellant has been roped in with the aid of Section 149 IPC.

Therefore, as held by this Court in Yunis alias Kariya Vs. State of M.P.3, no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW-1 and PW-2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

33. In view of what we have discussed above, we have no doubt in our mind that the trial court had rightly convicted the appellant under Section 148 IPC read with Section 302/149 IPC and that the High Court was justified in confirming the same. The question framed in paragraph 15 above is therefore answered in the affirmative.

34. Thus, we see no merit in the appeal which is accordingly dismissed.

.....J. [Abhay S. Oka]

.....J. [Ujjal Bhuyan]

New Delhi;

September 04, 2024

1 (2012) 11 SCC 237

2 (2018) 7 SCC 743

3 (2003) 1 SCC 425

IN THE SUPREME COURT OF INDIA

Somprabha Rana and Ors.
Vs.
State of Madhya Pradesh and Ors.

[Criminal Appeal No. 3821 of 2023]

HEADNOTE – Regular Civil/Family Court dealing with child custody cases is in an advantageous position. The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same.

JUDGMENT

Abhay S. Oka, J.

FACTUAL ASPECTS

1. This appeal arises from a very unfortunate dispute about the custody of a female child (for short, 'the child') whose present age is two years and seven months. The mother of the child unfortunately died an unnatural death on 27th December 2022. It is alleged that the death of the mother was by hanging. The 4th respondent is the father of the child.

The 2nd and 3rd respondents are the paternal grandparents of the child. The 5th respondent is the sister-in-law of the 4th respondent (his brother's wife). The 1st to 3rd appellants are the real sisters of the deceased mother. The 4th and 5th appellants are the child's maternal grandparents, who were not the parties before the High Court. The 5th respondent is also a real sister of the child's mother. The 5th respondent is the wife of the 4th respondent's brother.

2. The 2nd to 4th respondents invoked the jurisdiction of the Madhya Pradesh High Court by filing a petition seeking a writ of Habeas Corpus under Article 226 of the Constitution of India. A case made out in the petition was that the 4th respondent and the mother of the child were residing in Indore, where the unnatural death of the mother occurred.

A First Information Report was registered against the 2nd and 4th respondents for offences punishable under Sections 304-B and 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961. According to the case of the 2nd to 5th respondents, the 2nd and 3rd appellants came to Indore on 28th December 2022. When the 4th respondent was busy completing the formalities of the post-mortem, without the consent of the 4th respondent, the 2nd and 3rd appellants took away the minor child.

The 4th respondent - the father, was arrested in connection with the offence on 19th February 2023 and was granted bail after filing the charge sheet on 19th April 2023. The petition under Article 226 filed by the 2nd to 5th respondents proceeded on the allegation that the 2nd and 3rd appellants illegally took over custody of the child. It must be noted here that on the date of death of the mother, the age of the child was 11 months.

3. By the impugned judgment dated 23rd June 2023, the Division Bench of the High Court of Madhya Pradesh at Indore allowed the writ petition. It issued a writ of Habeas corpus directing the appellants to hand over custody of the child to the 2nd to 5th respondents. On 7th July 2023, this Court issued notice and granted a stay of the operation of the impugned judgment. On 5th December 2023, this Court granted leave and continued the stay.

However, this Court observed that it would be open for the husband to apply for custody before the appropriate Court. As of this date, the husband has not applied for custody by filing proceedings under the Guardians and Wards Act, 1890 (for short, "the GW Act"). The appellants made such an application under the GW Act, but it was withdrawn later. This is the statement made by the learned counsel for the appellants. Now, the question is whether the High Court was justified in disturbing the custody of the child, whose age was one year and five months at the time of passing the impugned judgment.

SUBMISSIONS

4. The learned senior counsel appearing for the appellants urged that by the impugned judgment, without making any inquiry, the High Court has ordered the child's custody to be disturbed based only on the legal rights of the child's father and grandparents. He submitted that in the facts of the case, the High Court ought not to have entertained a petition for Habeas Corpus. He submitted that even if the petition was to be entertained, it was the duty of the Court to see what was in the best interests of the minor and custody could not have been disturbed at such tender age without considering the question of the welfare of the minor child.

5. Learned senior counsel appearing for the respondents extensively relied upon decisions of this Court in the cases of Tejaswini Gaud & Ors. v. Shekhar Jagdish

Prasad Tewari & Ors.1, Swaminathan Kunchu Acharya v. The State of Gujarat2 and Gautam Kumar Das v. NCT of Delhi & Others3. Learned senior counsel would urge that the case of Gautam Kumar Das3 is identical on facts where the High Court had declined to entertain the petition for Habeas corpus by expressing a view that statutory remedy should be adopted for seeking custody.

However, this Court interfered and granted the father custody of the minor child. He submitted that the father and his parents reside together and, therefore, are in a position to take the best possible care of the child. He submitted that the appellants have not allowed the father to see even the face of the child. The learned senior counsel appearing for the appellants relied upon a decision of this Court in the case of Nirmala v. Kulwant Singh and Others4.

CONSIDERATION OF SUBMISSIONS

6. After having perused various decisions of this Court, the broad propositions of settled law on the point can be summarised as follows:

a. Writ of Habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy;

b. The High Court always has the discretion not to exercise the writ jurisdiction depending upon the facts of the case. It all depends on the facts of individual cases;

c. Even if the High Court, in a petition of Habeas Corpus, finds that custody of the child by the respondents was illegal, in a given case, the High Court can decline to exercise jurisdiction under Article 226 of the Constitution of India if the High Court is of the view that at the stage at which the Habeas Corpus was sought, it will not be in the welfare and interests of the minor to disturb his/her custody; and

d. As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking Habeas Corpus concerning a minor.

7. Now, we come to the impugned judgment. The reasons given by the Division Bench are found only in two paragraphs, namely, paragraphs nos. 10 and 11, which read thus:

"10. From perusal of the Tejaswini Gaud & Ors.(supra), the Habeas Corpus proceeding is not to justify or examine the legality of the custody. In the present case, the only thing which is required to be considered is whether the detention of

the minor child by the parents or others was illegal and without any authority of law.

It is the settled proposition of law that the Writ of Habeas Corpus is maintainable only if the person is able to prove that the Corpus is in illegal custody or is kept in illegal confinement. In the present case, admittedly the petitioners would have precedence over the respondent Nos.3 and 4 who are the relatives from the maternal side whereas the petitioner No.3 is the biological father of the Corpus, therefore, the writ of Habeas Corpus is maintainable as well as the petitioners would have precedence for custody of the minor child qua the respondent Nos.3 and 4.

11. The writ of the Habeas Corpus for seeking custody of minor child is maintainable only if the Corpus is in illegal custody. In the present case, the custody/detention of a minor child by the respondent Nos.3 and 4 who are not the natural guardian of the Corpus, are not entitled to her legal custody. Accordingly, the respondent Nos.3 and 4 are directed to hand over the custody of the minor child namely XXXX to the petitioners within 15 days from the date of receipt of certified copy of the order."

(emphasis added)

8. It is apparent that the High Court has not dealt with and considered the issue of the welfare of the child. The High Court has disturbed the child's custody based only on the father's right as a natural guardian.

9. The High Court was dealing with the custody of the child, whose age at that time was one year and five months. The child had been in the custody of the appellants from the tender age of 11 months after her mother died. The child, at present, has been in the custody of the appellants for more than one and a half years.

When the Court deals with the issue of Habeas Corpus regarding a minor, the Court cannot treat the child as a movable property and transfer custody without even considering the impact of the disturbance of the custody on the child. Such issues cannot be decided mechanically. The Court has to act based on humanitarian considerations. After all, the Court cannot ignore the doctrine of parens patriae. Learned senior counsel appearing for the 2nd to 5th respondents submitted that if the Court is of the view that there is no proper consideration by the High Court, the order of remand may be passed to the High Court.

10. We believe that considering the peculiar facts of the case and the child's tender age, this is not a case where custody of the child can be disturbed in a petition under Article 226 of the Constitution of India. Only in substantive proceedings under the GW Act can the appropriate Court decide the issue of the

child custody and guardianship. Regular Civil/Family Court dealing with child custody cases is in an advantageous position.

The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same.

11. Coming to the facts of the case, at this stage, it will be very difficult to decide whether the welfare of the minor child requires custody of the maternal aunts to be disturbed. The child has not seen the father and grandparents for over a year. At the tender age of two years and seven months, if custody of the child is immediately transferred to the father and grandparents, the child will become miserable as the child has not met them for a considerably long time.

Moreover, even the contesting respondents have not alleged that the child is not being looked after properly by the appellants. Whether the father is entitled to custody or not is a matter to be decided by a competent court, but surely, even assuming that the father is not entitled to custody, at this stage, he is entitled to have access to meet the child. It is in the child's best interest that she knows her father and grandparents and remains with them for some time to begin with.

12. We repeatedly asked the learned senior counsel representing the husband whether the husband was willing to apply for custody. However, he has shown unwillingness to apply for custody. The husband is a member of the Bar practising at the Indore Bench of the Madhya Pradesh High Court. Even he was personally present during the hearing. However, the learned senior counsel appearing for the appellants stated that the appellants or any of them would apply for claiming declaration as a guardian and retaining the custody.

The earlier application filed by the appellants has been withdrawn. However, orders of the Court regarding custody are never final. Therefore, we propose to permit the appellants or any of them to apply for custody to the Regular Court under the GW Act. Even in the petition filed by the appellants, the competent Court can permit the father to take over the custody if it is satisfied that the welfare of the minor requires custody to be granted to the father.

13. We propose to direct the appellants to give access to the father and paternal grandparents of the child to meet the child once a fortnight. To begin with, access can be provided in the office of the secretary of the District Legal Service

Authority so that the secretary can supervise the access. We propose to direct the secretary of the District Legal Service Authority to take assistance from a child psychologist or a psychiatrist (preferably female) attached to a local public hospital.

If no such expert is available with the local public hospital, such an expert can be appointed at the appellants' cost. The expert will ensure that the child responds to the father and grandparents and interacts with them. The order of access shall continue for four months. After that, it will be open for the concerned Trial Court to modify this order of access in all respects. When the child becomes comfortable with his father and grandparents, the Court can also consider granting overnight access to the father and the grandparents.

14. Hence, we pass the following order:

a. Impugned judgment and order dated 23rd June, 2023 is set aside, and Writ Petition No. 11004 of 2023 is hereby dismissed. We make it clear that the Writ Petition is dismissed not on merits but on the ground that on facts, the discretion could not have been exercised under Article 226 of the Constitution of India to disturb the custody of the appellants at this stage;

b. On every 1st, 3rd and 5th Saturdays starting from 21st September 2024, the appellants shall take the child to the office of the secretary of the District Legal Service Authority at district Panna in the State of Madhya Pradesh at 03.00 p.m. Under the supervision of the secretary of the District Legal Service Authority, the father and grandparents of the child shall be permitted to meet the child till 05.00 p.m.;

c. The secretary of the District Legal Service Authority shall take the assistance of a child psychologist or a psychiatrist (preferably female) working in any local public hospital. If such experts are unavailable, the secretary shall privately engage one such expert at the appellants' cost. The appellants will pay necessary charges as and when called upon by the secretary. The payment will be subject to the outcome of the proceedings for grant of custody;

d. The expert so appointed shall remain present at the time of access. The expert's duty will be to persuade the child to interact with her father and grandparents. As regards the mode and manner of allowing the father and grandparents to meet the child, the parties and the secretary of the District Legal Service Authority shall be guided by the opinion of the expert;

e. As assured to the Court, the appellants or some of them shall file a petition seeking a declaration of guardianship and permanent custody of the child under the provisions of the GW Act before the competent Court within a maximum period of two months from today;

f. The concerned Court in which the application will be filed shall pass further orders regarding the grant of access and/or overnight custody to the husband and the grandparents. Further interim directions regarding access, overnight access, etc., shall be issued by the competent Court in which the appellants apply for custody. To enable the said court to pass an appropriate interim order, we direct that the interim arrangement made as above for the grant of access to the father and the grandparents will continue to operate for four months from today. Thereafter, the competent Court will deal with the prayer for interim relief on its own merits. Needless to add, in the event the husband and/or grandparents apply for custody, the application filed by them and the application filed by the appellants shall be heard together, and

g. In the event of failure of both parties to apply to the competent Court, the parties will be free to apply to this Court for appropriate directions.

15. The appeal is, accordingly, partly allowed on the above terms.

16. We direct the registry to immediately forward a copy of this judgment to the secretary of the District Legal Service Authority at District Panna, State of Madhya Pradesh, who shall act upon the copy of the judgment provided by the registry of this Court. If the secretary of the District Legal Service Authority needs any further directions from this Court, it will be open for him to submit a report to the Registrar (Judicial) of this Court, who shall immediately place the same before this Bench and/or the appropriate Bench.

17. There will be no orders as to costs.

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

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

New Delhi;

September 6, 2024.

1 (2019) 7 SCC 45

2 (2022) 8 SCC 804

3 (2024) INSC 610

4 (2024) SCC OnLine SC 758

IN THE SUPREME COURT OF INDIA

Devendra Kumar Pal
Vs.
State of U.P. and Anr.

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 6960 of 2021]

HEADNOTE – Order to summon additional accused passed under Sec. 319 Cr.P.C. after acquittal/conviction.

JUDGMENT

B.R. Gavai, J.

1. Leave granted

2. The present appeal challenges the judgment and order dated 25th August 2021 passed by the learned Single Judge of the High Court of Judicature at Allahabad, vide which the petition filed by the present appellant challenging the order passed by the learned Additional Sessions Judge (hereinafter referred to as "learned Trial Judge") dated 21st March 2012 was dismissed.

3. The facts of the present case are not disputed.

4. The trial court proceeded with the trial in connection with the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC").

5. After the conclusion of the trial, the learned Trial Judge convicted some of the accused and acquitted the others.

6. The learned Trial Judge was also of the opinion that the present appellant was also required to be tried.

7. By an order dated 21st March 2012, the learned Trial Judge in the first half recorded the order of conviction in respect of the accused whom it had found to be guilty and also recorded the order of acquittal for the remaining accused, it found to be not guilty. Post lunch, the learned Trial Judge first recorded the order of sentence insofar as the accused who were convicted. Thereafter, the learned trial Judge had passed an order summoning the present appellant, Devendra Kumar Pal for trial by invoking powers under Section 319 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.")

8. We have heard Mr. Puneet Singh Bindra, learned counsel appearing for the appellant and Mr. Vishnu Shankar Jain, learned counsel appearing for the respondent-State.

9. Shri Bindra, learned counsel submits that in the case of Sukhpal Singh Khaira vs. State of Punjab1, the matter was referred to the Constitution Bench for deciding the question as to "whether the Trial Court had power under Section 319 of Cr.P.C. for summoning an additional accused when the trial with respect to other co-accused has ended and the judgment of conviction and sentence was rendered before summoning the additional accused". Relying on the same, he submits that, since in the present case also, first the order of conviction and sentence was recorded and only thereafter an order under Section 319 of Cr.P.C. was passed, the same would not be sustainable in law.

10. Shri Jain, learned counsel, on the contrary, submits that the Constitution Bench has held that if the judgment of the conviction and sentence and the order of summoning under Section 319 of Cr.P.C. are passed on the same date, the Court may have to examine the facts and circumstances of the case. He submits that in the present case, the order of sentence and the order under Section 319 of Cr.P.C. are passed by the learned Trial Judge in the same breath and, therefore, no error could be found with the same.

11. The issue is no more res integra.

12. It will be relevant to refer to paragraph 33 of the judgment passed by the Constitution Bench of this Court in the case of Sukhpal Singh Khaira (supra), which reads thus:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Indisputably, in the present case, on 21st March 2012, the order of conviction in the case of some of the accused and the order of acquittal in the case of the other accused was passed in the first half of the day. In the second half, the Court first passed an order for sentencing of the persons who were convicted and only thereafter passed an order under Section 319 of Cr.P.C. for summoning the present appellant.

14. The Constitution Bench has clearly held that if such a summoning order is passed, either after the order of acquittal or imposing of sentence in the conviction, the same may not be sustainable.

15. Sitting in a two-judge combination, we are bound by the law laid down by the Constitution Bench of this Court.

16. As a result, the appeal is allowed. The impugned judgment and order dated 25th August 2021 passed by the learned Single Judge of the High Court, so also the order of summoning passed by the learned Trial Judge dated 21st March 2012

in respect of the present appellant under Section 319 of Cr.P.C. are quashed and set aside.

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

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

.....J. (K.V. Viswanathan)

New Delhi;

September 06, 2024.

1 (2023) 1 SCC 289 : 2022 INSC 1252

IN THE SUPREME COURT OF INDIA

Dhanraj Aswani
Vs.
Amar S. Mulchandani & Anr.

[Criminal Appeal No. 2501 of 2024
arising out of SLP (Crl.) No. 6942 of 2024]

HEADNOTE – 1. An accused is entitled to seek anticipatory bail in connection with an offence, so long as he is not arrested in relation to that offence. Once he is arrested, the only remedy available to him is to apply for regular bail under S.437/439 CrPC.

2. There is no explicit or implied restriction in the CrPC or in any other statute that prohibits the Sessions Court or the High Court from entertaining and deciding an anticipatory bail application in relation to an offence while the applicant is in custody in relation to a different offence.

3. No restriction can be read into Section 438 of the CrPC to preclude an accused from applying for anticipatory bail in relation to an offence while he is custody in a different offence, as that would be against the purport of the provision and the intent of the legislature. The only restriction on the power of the Court to grant anticipatory bail under S.438 CrPC is one prescribed under sub-section (4) of Section 438 CrPC and in other statutes like SC/ST Prevention of Atrocities Act etc.

4. While a person already in custody in a particular offence apprehends arrest in a different offence, then the subsequent offence is a separate offence for all practical purposes. Then it would necessarily imply that all rights conferred by the statute on the accused as well as the investigating agency in relation to the subsequent offence are independently protected.

5. The investigating agency, if it deems necessary, for the purpose of interrogation/investigaiton in an offence, can seek remand of the accused while he is in custody in connection with a previous offence so long as the order granting anticipatory bail has not been passed in relation to the subsequent offence. However, if an order granting anticipatory bail is obtained by the accused, it shall no longer be open to the investigating agency to seek remand of the accused in relation to the subsequent offence. Similarly, if an order of remand is passed before the accused is able to obtain an order of anticipatory bail, it would thereafter not be open to the accused to seek anticipatory bail and the only option available to him is to seek regular bail.

6. Under Section 438 CrPC, the precondition for an accused to apply for pre-arrest bail is a reason to believe that he is likely to be arrested. Therefore, the only precondition for exercising the said right is the apprehension of the accused that he is likely to be arrested.

7. Custody in one case does not have the effect of taking away the apprehension of arrest in another case.

JUDGMENT

J.B. Pardiwala, J.:

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

A. SUBMISSIONS ON BEHALF OF THE APPELLANT .....

B. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (ORIGINAL ACCUSED) .....

C. VIEWS OF DIFFERENT HIGH COURTS ON THE ISSUE IN QUESTION .....

D. ANALYSIS .....

   i. Evolution of the concept of anticipatory bail .....

   ii. Whether a person, while in custody for a particular offence, can have a "reason to believe" that he may be arrested in relation to some other non-bailable offence? .....

   iii. Illustrative Examples .....

E. CONCLUSION .....

1. A short question of general public importance on which there is great divergence of judicial opinion that falls for the consideration of this Court is as under:

"Whether an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (for short, "CrPC") is maintainable at the instance of an accused while he is already in judicial custody in connection with his involvement in a different case?"

2. This appeal arises from the judgment and order dated 31.10.2023 passed by the High Court of Judicature at Bombay in Anticipatory Bail Application No. 2801 of 2023 by which the High Court overruled the objection raised by the appellant herein (original complainant) as regards the maintainability of the anticipatory bail application filed by respondent no. 1 (original accused) in connection with CR No. 806 of 2019 registered with Pimpri Police Station for the offences

punishable under Sections 406, 409, 420, 465, 467, 468, 471 respectively read with Section 34 of the Indian Penal Code (for short, "IPC") and thereby took the view that although respondent no.1 herein may already be in custody in connection with ECIR No. 10 of 2021, yet he would be entitled to pray for anticipatory bail in connection with a different case.

3. It appears from the materials on record that respondent no. 1 herein came to be arrested in connection with ECIR No. 10 of 2021. While in custody, he apprehended arrest in connection with CR No. 806 of 2019 registered against him at the instance of the appellant herein. In such circumstances, he prayed for anticipatory bail before the High Court.

The appellant herein intervened in the proceedings of said anticipatory bail application and raised an objection that as respondent no. 1 herein is already in custody in connection with ECIR No. 10 of 2021, he cannot pray for anticipatory bail in connection with CR No. 806 of 2019. The objection raised by the appellant herein in his capacity as the complainant came to be overruled and the High Court proceeded to hold that although respondent no. 1 herein may be in custody in one case, yet the same would not preclude him from seeking pre-arrest bail in connection with a different case. Since the objection was overruled, the appellant is now before this Court.

A. SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Mr. Sidharth Luthra, the learned Senior counsel appearing for the appellant canvassed the following submissions:

i. The High Court committed a serious error in taking the view that although a person might be in custody after his arrest in one case, yet such a person can apply for the grant of pre-arrest bail under Section 438 of the CrPC in connection with a different case.

ii. The essential part of arrest is placing the corpus (body of the person) in custody of the police authorities. The natural corollary, therefore, is that a person who is already in custody cannot have reasons to believe that he would be arrested as he already stands arrested. The pre-condition to invoke Section 438 CrPC is that the accused should have a reason to believe that he "may be arrested". If the accused is already in custody, then he can have no reason to believe that he "may be arrested".

iii. The salutary provision of Section 438 of the CrPC was enshrined with a view to see that the liberty of any individual concerned is not put in jeopardy on frivolous grounds at the instance of unscrupulous or irresponsible person or officers who may be in charge of the prosecution. If such is the objective behind

the enactment of Section 438 of the CrPC, then for a person who is already arrested there is no question of any humiliation being caused.

iv. If an accused while being in custody in connection with one case, is granted anticipatory bail under Section 438 of the CrPC in connection with a different case, then it would not be possible for him to fulfill the requirement of the condition that may be imposed under Section 438(2)(i) of the CrPC i.e. to make himself/herself available for interrogation as and when required. In other words, a person in custody would not be able to meet or comply with the condition that may be imposed under Section 438(2)(i) of the CrPC. This being a material consideration for grant of anticipatory bail, it would be illogical to permit a person to seek anticipatory bail if he is unable to satisfy conditions that may be imposed under Section 438(2)(i) of the CrPC.

v. If a person who is already in custody in connection with one case apprehends arrest in connection with a different case, then he is not remediless. In such circumstances, he can seek to surrender and pray for regular bail on the principle of "deemed custody" both in Magistrate as well as Sessions triable cases.

5. Mr. Luthra, with a view to fortify his aforesaid submissions, placed strong reliance on the following decisions:

i. Kartar Singh v. State of Punjab, [1994] 2 SCR 375, (1994) 3 SCC 569

ii. Gurbaksh Singh Sibbia v. State of Punjab, [1980] 3 SCR 383, (1980) 2 SCC 565

iii. Sushila Aggarwal v. State (NCT of Delhi), [2020] 2 SCR 1, (2020) 5 SCC 1

iv. Sunil Kallani v. State of Rajasthan, 2021 SCC OnLine Raj 1654

v. Rajesh Kumar Sharma v. CBI, 2022 SCC OnLine All 832

vi. Tejesh Suman v. State of Rajasthan, 2023 SCC OnLine SC 76 vii. Bashir Hasan Siddiqui v. State (GNCTD), (2023) SCC OnLine Del 7544

viii. Narinderjit Singh Sahni v. Union of India, [2001] Supp. 4 SCR 114, (2002) 2 SCC 210.

6. In such circumstances referred to above, the learned Senior counsel prayed that there being merit in his appeal, the same may be allowed and the impugned order passed by the High Court be set aside.

B. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (ORIGINAL ACCUSED)

7. Mr. Siddharth Dave, the learned Senior counsel appearing for the original accused, vehemently opposed the present appeal and canvassed the following submissions:

i. The legal maxim ubi jus ibi remedium i.e. where there is a right, there is a remedy, is recognised as a basic principle of jurisprudence. A Constitution Bench of this Court in Anita Kushwaha v. Pushap Sudan reported in (2016) 8 SCC 509 held that the right to access justice is so inalienable, that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. It was also held that the ancient Roman jurisprudential maxim ubi jus ibi remedium has contributed to the acceptance of access to justice as a basic and inalienable human right, which all civilized societies recognise and enforce.

ii. The right of an accused to apply for pre-arrest bail under Section 438 of the CrPC is intrinsically linked to his right to access the competent courts to avail his remedies under the law. A person would thus be entitled to apply for pre-arrest bail under Section 438 of the CrPC in one case, even though he may be in custody in connection with some other case.

iii. The right of an accused to protect his personal liberty within the contours of Article 21 of the Constitution of India, by applying for pre-arrest bail under Section 438 CrPC cannot be eliminated without a procedure established by law. Further, such procedure should also pass the test of fairness, reasonableness and manifest nonarbitrariness on the touchstone of Article 14 of the Constitution of India.

iv. Under Section 438 of the CrPC, the pre-condition for a person to apply for pre-arrest bail is a "reason to believe that he may be arrested on accusation of having committed a non-bailable offence". Therefore, the only pre-condition for exercising the said right is the apprehension of the accused that he may be arrested.

v. The arrest of an accused in one case cannot foreclose his right to apply for pre-arrest bail in a different case, since there is no such stipulation in the language of Section 438 of the CrPC. The restrictions on the exercise of power to grant pre-arrest bail under Section 438 of the CrPC are prescribed under Section 438(4) of the CrPC which provides that the provisions of Section 438 shall not apply to cases involving arrest under Sections 376(3), 376AB, 376DA or 376DB respectively of the IPC.

vi. A Constitution Bench of this Court, in Sushila Aggarwal (supra) while considering the statutory restrictions on Section 438 of the CrPC held that where the Parliament intended to exclude or restrict the powers of the Court under Section 438 of the CrPC, it did so in categorical terms (such as Section 438(4)).

The omission on the part of the legislature to restrict the right of any person accused of having committed a non-bailable offence to seek anticipatory bail can lead one to assume that neither a blanket restriction can be read into the text of Section 438 CrPC by this Court, nor can inflexible guidelines in the exercise of discretion be insisted as that would amount to judicial legislation.

vii. A statutory restriction on the right to apply for pre-arrest bail is also found under Sections 18 and 18A(2) respectively of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989"). The said provisions provide that Section 438 of the CrPC shall not apply to cases under the Act, 1989. That despite the statutory bar under Sections 18 and 18A(2) respectively of the Act, 1989 a three-Judge Bench of this Court in Prathvi Raj Chauhan v. Union of India reported in (2020) 4 SCC 727 held that if a complaint does not make out a prima facie case for applicability of the Act, 1989 the bar under Sections 18 and 18A(2) respectively of the said Act shall not apply. The aforesaid judgment indicates the judicial approach of adopting an interpretation in favour of personal liberty.

8. In such circumstances referred to above, Mr. Dave prayed that there being no merit in the appeal, the same may be dismissed.

C. VIEWS OF DIFFERENT HIGH COURTS ON THE ISSUE IN QUESTION

9. In Sunil Kallani (supra), a learned Single Judge of the High Court of Rajasthan took the view that an application for anticipatory bail would not be maintainable at the instance of a person who is already arrested and is in police custody or judicial custody in relation to a different case. The line of reasoning adopted by the High Court in taking such a view was that a person who is already in custody cannot have a reason to believe that he would be arrested as he already stood arrested, albeit in a different case.

The High Court observed that arrest means to actually touch or confine the body of the person to the custody of a police officer and an essential part of arrest is placing the corpus, that is the body of the person, in custody of the police authorities. In light of this essential requirement to constitute an arrest, a person who is already in custody cannot have a reason to believe that he may be arrested as he stood already arrested. The High Court tried to fortify its view by relying on some of the observations made by this Court in Narinderjit Singh Sahni (supra). A few relevant observations made by the High Court are extracted hereinbelow:

"17. The Scheme of Code of Criminal Procedure does not define the word arrest. In Chapter V of Code of Criminal Procedure, Section 41 lays down when police

may arrest without warrant. Section 41B lays down procedure of arrest and duties of officer. Section 46 mentions how arrest is to be made.

18. Upon reading Section 46 Cr.P.C. (supra), it is apparent that arrest would mean to actually touch or confine the body of the person to custody of the police officer. Section 167 Cr.P.C. lays down that the custody may be given to the police for the purpose of investigation (called as remand) or be sent to jail (called as judicial custody). Thus the essential part of arrest is placing the corpus, body of the person in custody of the police authorities whether of a police station or before him or in a concerned jail.

19. The natural corollary is therefore that a person who is already in custody cannot have reasons to believe that he shall be arrested as he stands already arrested. In view thereof, the precondition of bail application to be moved under Section 438 Cr.P.C. i.e. reasons to believe that he may be arrested" do not survive since a person is already arrested in another case and is in custody whether before the police or in jail.

23. As pointed out by learned counsel for the petitioner that there may be cases where a person who has already been arrested in a particular case may be faced with registering of several FIRs by the persons who do not want him to be released from jail and in the said circumstances only option available is to take anticipatory bail in other FIRs as the police would seek his arrest in all the cases. It may be subsequently registered against him for non-bailable Offences and in such an event, there would be infraction of his personal liberty.

However this Court does not agree to the submissions noticed as above. Once the FIR has been registered in relation to an offence committed against any person by an accused he cannot claim to be protected from offences which he may have committed with other persons who have their individual right of registering an FIR against such an accused. The accused will have to face investigation and subsequent trial in relation to each and every case individually. The question whether he may be punished separately or jointly for other cases is a completely different question altogether and need not be gone into the present case.

24. However, keeping in view observations in Narinderjit Singh Sahni, (supra) and considering that the purpose of preventive arrest by a direction of the court on an application under Section 438 Cr.P.C. would be an order in vacuum. As a person is already in custody with the police this Court is of the view that such an anticipatory bail application under Section 438 Cr.P.C. would not lie and would be nothing but travesty of justice in allowing anticipatory bail to such an accused who is already in custody.

25. Examining the issue from another angle if such an application is held to be maintainable the result would be that if an accused is arrested say for an offence committed of abduction and another case is registered against him for having committed murder and third case is- registered against him for having stolen the car which was used for abduction in a different police station and the said accused is granted anticipatory bail in respect to the offence of stealing of the car or in respect to the offence of having committed murder the concerned Police Investigating Agency where FIRs have been registered would be prevented from conducting individual investigation and making recoveries as anticipatory bail once granted would continue to operate without limitation as laid down by the Apex Court in Sushila Aggarwal, (supra).

The concept of. anticipatory bail, as envisaged under- Section 438 Cr.P.C. would stand frustrated. The provisions of grant of anticipatory bail are essentially to prevent the concerned person from litigation initiated with the object of injuring and humiliating the applicant by haying him so arrested and for a person who stands already arrested, such a factor does not remain available.

26. In view of above discussion, this Court holds that the anticipatory bail would not lie and would not be maintainable if a person is already arrested and is in custody of police or judicial custody in relation to another criminal case which may be for similar offence or for different offences."

(Emphasis supplied)

10. In the case of Rajesh Kumar Sharma (supra), a learned Single Judge of the High Court of Allahabad followed the view taken by the High Court of Rajasthan referred to above.

11. In Bashir Hasan Siddiqui (supra), a learned Single Judge of the High Court of Delhi, relying on Sunil Kallani (supra) and Rajesh Kumar Sharma (supra), took a similar view that an application seeking anticipatory bail would not be maintainable at the instance of a person who apprehends arrest if such a person is already arrested and is in custody in connection with a different offence. The relevant observations made by the High Court in paragraph 6 of the said decision are extracted as under:

"6. Therefore, keeping in view the entire facts and circumstances and also taking into account the judgment passed by the Rajasthan High Court in Sunil Kallani (supra) and subsequently judgment passed by Allahabad High Court in Rajesh Kumar Sharma (supra), this Court is in consonance with the opinions of both the High Court that since the accused is in custody in another FIR, the anticipatory bail in other FIR is not maintainable. As a result, the present petition stands dismissed."

(Emphasis supplied)

12. In Alnesh Akil Somji v. State of Maharashtra reported in 2021 SCC OnLine Bom 5276, a learned Single Judge of the High Court of Judicature at Bombay formulated the following question of law for its consideration:

"Whether an anticipatory bail application would be maintainable by an accused who is already arrested and is in magisterial custody in relation to another crime?"

13. The Bombay High Court also took notice of the decision of the High Court of Rajasthan in Sunil Kallani (supra). The decision of this Court in the case of Narinderjit Singh Sahni (supra) was also looked into and ultimately it was held that an accused has every right, even if he is arrested in a number of cases, to move the courts for anticipatory bail in each of the offence registered against him, irrespective of the fact that he is already in custody in relation to a different offence. The High Court was of the view that the application(s) under Section 438 of the CrPC would have to be heard and decided on merits independent of the other cases in which he is already in custody. We may refer to some of the observations made by the High Court as under:

"8. A plain reading of the provision would show that the only restriction provided is under Section 438 (4) of the Cr. PC, which says that the provision will not apply to accusations of offences which are stated in Section 438 (4) of the Cr.P.C. Similarly, certain special statutes have excluded the operation of Section 438 of the Cr.P.C. for accusation of offences punishable under those special statutes, for example Section 18A of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 bars exercise of powers under Section 438 of the Cr.P.C.

9. The Hon'ble Apex Court in the case of Sushila A Aggarwal and others (supra), while dealing with the scope of Section 438 of the Cr.P.C has followed the decision in the case of Shri Gurbaksh Singh Sibbia and others Versus State of Punjab and regarding the bar or restriction on the exercise of power to grant anticipatory bail, the Hon'ble Apex Court has held as follows:

"62. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant anticipatory bail) is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under Section 376 (3) or Section 376-AB or Section 376-DA or Section 376-DB of the Penal Code.

In other words, Parliament has now denied jurisdiction of the court (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such

offences. The amendment [Code of Criminal Procedure Amendment Act, 2018 introduced Section 438 (4)] reads as follows:

"438. (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code".

63. Clearly, therefore, where Parliament wished to exclude or restrict the power of courts, under Section 438 of the Code, it did so in categorical terms. Parliament's omission to restrict the right of citizens, accused of other offences from the right to seek anticipatory bail, necessarily leads one to assume that neither a blanket restriction can be read into by this Court, nor can inflexible guidelines in the exercise of discretion, be insisted upon- that would amount to judicial legislation".

10. Similarly, the Hon'ble Apex Court has made following observations in the case of Shri Gurbaksh Singh Sibbia and others (supra):

"39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested".

11. It is thus very clear, according to Hon'ble Apex Court, that anticipatory bail will not be maintainable in case a person is in custody in the same offence for which pre-arrest bail is sought, the restriction, if any, upon maintainability of prearrest bail will be there only if a person is in custody in that particular offence itself.

12. From the above pronouncements, two things are clear. First, there is no such bar in Cr.P.C or any statute which prohibits Session or the High Court from entertaining and deciding an anticipatory bail, when such person is already in judicial or police custody in some other offence. Second, the restriction cannot be stretched to include arrest made in any other offence as that would be against the purport of the provision.

14. I may point out here that the case of Narinderjit Singh Sahni and Another (supra) was in respect of maintainability of Article 32 wherein relief in the nature of Section 438 was sought. Even, the said judgment does not hold in very clear terms that a person arrested in one offence cannot seek the relief provided under Section 438 of Cr.PC in another offence merely on the ground that he stands arrested in another district offence.

15. In my considered opinion, there was no proper interpretation of Section 438 of the Cr.PC at the hands of learned Additional Sessions Judge. Accused has every right, even if he is arrested in number of cases, to move in each of offence registered against him irrespective of the fact that he is already in custody but for different offence, for the reason that the application (s) will have to be heard and decided on merits independent of another crime in which he is already in custody.

16. One cannot and must not venture, under the garb of interpretation, to substantiate its own meaning than the plain and simple particular though provided by statute. What has not been said cannot be inferred unless the provision itself gives room for speculation. If the purpose behind the intendment is discernible sans obscurity and ambiguity, there is no place for supposition."

(Emphasis supplied)

14. In Sanjay Kumar Sarangi v. State of Odisha reported in 2024 SCC OnLine Ori 1334, a learned Single Judge of the High Court of Orissa took the view that there is no statutory bar for an accused in custody in connection with a case to pray for grant of anticipatory bail in a different case registered against him. The court, upon perusal of the relevant provisions, took the view that arrest means physical confinement of a person with or without the order of the Court. The Court noted that Section 167(2) of the CrPC, which governs 'remand', is applicable to a case where the accused is already arrested, and chargesheet has not been filed.

The Court observed that there is no specific provision in the CrPC which governs a situation where a person is required to be arrested/remanded in connection with a new case when he is already in custody in connection with some other case and in such a situation, the accused can only be remanded in connection with the new case on the order of the competent court. Answering the question whether such order of remand by the court can be equated with an act of arrest, the Court held that the purpose of remand as in the case of arrest is to collect evidence during investigation, and thus both amount to one and the same thing.

15. The High Court proceeded to explain that if a new case is registered against a person already in custody in connection with one case, the police in such circumstances can either seek an order of remand from the court or arrest the accused, as and when he is released from custody in connection with the other case.

The Court explained that it is only in the latter scenario that an order of anticipatory bail under Section 438 of the CrPC would become effective because it is only after the accused is released from custody that he can be arrested in relation to the subsequent case. The Court said that the anticipatory bail operates

at a future time. After being released from custody in the former case, if he is sought to be arrested in relation to the subsequent case, there is no reason why he should be precluded from approaching the court beforehand with the necessary protection in the form of anticipatory bail.

16. The court clarified that a person cannot be arrested if he is already in custody in connection with some case, however, his right to obtain an anticipatory bail in connection with a different case cannot be curtailed having regard to the scheme of the CrPC. The anticipatory bail, if granted, shall however be effective only if he is arrested in connection with the subsequent case consequent upon his release from custody in the previous case.

17. Lastly, the Court observed that there is nothing in the CrPC which takes away the right of the accused to seek his liberty or of the investigating agency to investigate the case only because the accused is in custody in a different case. The Court observed that an accused can exercise his right of moving the court for anticipatory bail just as the investigating agency can exercise its right to investigate the subsequent case by seeking remand of the accused from the court having jurisdiction over the case. Both the rights can co-exist and operate at their respective and appropriate times.

The court held that if the application of the investigating agency, seeking remand of the accused whilst he is in custody in connection with the former case, is allowed, the accused can no longer pray for anticipatory bail in the subsequent case, as then he could be said to be technically in custody in connection with the subsequent case also. In such a scenario, the accused can only seek regular bail. The Court further elaborated that the grant of anticipatory bail does not clothe the accused with a licence to avoid investigation or claim any immunity therefrom.

18. We may refer to some of the relevant observations made by the learned Single Judge as under:

"13. To illustrate, a person is in custody in connection with a case and a new case is registered against him for commission of some other offence. Two recourses are available to the police in such a situation - firstly to seek an order of remand from the Court if the presence of the accused is required for investigation or secondly, to arrest him, as and when he is released from custody in connection with the previous case. It is only in the second scenario that an order of anticipatory bail can become effective because only then can he be 'arrested'.

It is trite law that the distinction between an order in case of custody bail and anticipatory bail is that the former is passed when the accused is already arrested and in custody and operates as soon as it is passed (subject to submission of bail bonds etc), while the latter operates at a future time-when the person not being in

custody, is arrested. This, according to the considered view of this Court, is the crux of the issue.

To amplify, since an order granting anticipatory bail becomes effective only when the person is arrested and as it is not possible to arrest a person already in custody, it follows that when, on being released from custody in the former case, he is sought to be arrested in the new case, there is no reason why he shall be restrained from moving the Court beforehand to arm himself with necessary protection in the form of anticipatory bail to protect himself from such a situation.

If such an order is passed by the Court in his favour, it shall become effective if and when he is arrested as normally happens. The only catch is, he cannot be arrested as long as he is in custody in the first-mentioned case. So, his right to obtain an order in the new case beforehand that can be effective only upon his release from the first-mentioned case cannot be denied under the scheme of the Code.

14. Another aspect must also be taken into consideration - when a person is in custody in connection with a case and a new case gets registered against him, it is, for all practical purposes a separate case altogether. This implies all rights conferred by the statute on the accused consequent upon registration of a case against him as well as the investigating agency are independently protected. There is no provision in the Code that takes away the right of the accused to seek his liberty or of the investigating agency to investigate into the case only because he is in custody in another case.

As already stated, the accused can exercise his right of moving the court for anticipatory bail which would of course be effective only upon his release from the earlier case and in the event of his arrest in the subsequent case. Similarly, the right of the investigating agency to investigate/interrogate in the subsequent case can be exercised by seeking remand of the accused from the court in the subsequent case. Both these scenarios are not mutually exclusive and can operate at their respective and appropriate times.

The investigating agency, if it feels necessary for the purpose of interrogation/investigation can seek remand of the accused whilst he is in custody in connection with the previous case and if such prayer is allowed, the accused can no longer pray for grant of anticipatory bail as then he would be technically in custody in connection with the subsequent case also.

Then, he can only seek regular or custody bail. It is also to be considered that if the prosecution has the power to register a case against a person who is in custody in connection with another case how can the accused be deprived of his

right to seek protection of his liberty in such case? This would militate against the very principle underlying Article 21 of the Constitution as also Section 438 of the Code.

15. This takes the court to the reasoning adopted by the learned single judge of Rajasthan High Court in the case of Sunil Kallani (supra) that "the concerned Police Investigating Agency where FIRs have been registered would be prevented from conducting individual investigation and making recoveries as anticipatory bail once granted would continue to operate without limitation as laid down by the Apex Court in Sushila Aggarwal, (supra)."

With great respect, this Court is unable to persuade itself to agree with the above-quoted reasoning in view of the fact that grant of anticipatory bail does not and cannot grant the accused a licence to avoid investigation or clothe him with any immunity therefrom. In fact, sub-section (2) of Section 438 holds the answer to this question as follows:

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required; It is needless to mention that an order under subsection (1) can be passed only upon hearing the Public Prosecutor. Hence, the prosecution can always insist upon inclusion of such a condition by the court in the order grating anticipatory bail. And in so far as 'recoveries' are concerned, as already stated, it is always open to the investigating agency to pray for remand of the accused, as long as he is in custody, for such purpose and an order granting anticipatory bail has not been passed.

17. From a conspectus of the analysis made hereinbefore thus, this Court holds as follows:

(i) There is no statutory bar for an accused in custody in connection with a case to pray for grant of anticipatory bail in another case registered against him;

(ii) Anticipatory bail, if granted, shall however be effective only if he is arrested in connection with the subsequent case consequent upon his release from custody in the previous case;

(iii) The investigating agency, if it feels necessary for the purpose of interrogation/investigation can seek remand of the accused whilst he is in custody in connection with the previous case and in which no order granting anticipatory bail has yet been passed. If such order granting remand is passed, it would no

longer be open to the accused to seek anticipatory bail but he can seek regular bail.

18. In the cases at hand, the prosecution has not sought for nor obtained any order from the Court for remand of the petitioners in the subsequent cases registered against them. Thus, this Court holds that the Anticipatory Bail applications are maintainable."

(Emphasis supplied)

19. Thus, it appears from the aforesaid discussion that there are divergent opinions expressed by different High Courts of the country. The Rajasthan, Delhi and Allahabad High Courts have taken the view that an anticipatory bail application would not be maintainable if the accused is already arrested and is in custody in connection with some offence. On the other hand, the Bombay and Orissa High Courts have taken the view that even if the accused is in custody in connection with one case, anticipatory bail application at his instance in connection with a different case is maintainable.

D. ANALYSIS

i. Evolution of the concept of anticipatory bail

20. The Code of Criminal Procedure, 1898 (for short, "the 1898 Code") did not contain any specific provision analogous to Section 438 of the CrPC. In Amir Chand v. The Crown reported in 1949 SCC OnLine Punj 20, the question before the Full Bench was whether Section 498 of the 1898 Code empowered the High Court or the Court of Session to grant bail to a person who had not been placed under restraint by arrest or otherwise. The Full Bench answered the reference as under:

"The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued. Section 498, Criminal Procedure Code, does not permit the High Court or the Court of Session to grant bail to anyone whose case is not covered by sections 496 and 497, Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a Court.

Such person must be liable to arrest and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself. No bail can be allowed to a person at liberty for whose arrest no warrants have been issued. The petitioners in the present case

are, therefore, not entitled to bail. The question referred to the Full Bench is, therefore, answered in the negative."

(Emphasis supplied)

21. Under the 1898 Code, the concept of anticipatory or pre-arrest bail was absent and the need for introduction of a new provision in the CrPC empowering the High Court and Court of Session to grant anticipatory bail was pointed out by the 41st Law Commission of India in its report dated September 24, 1969. It observed thus in para 39.9 of the said report (Volume I):

"Anticipatory bail

39.9 The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code.

The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting detained in jail for some days. In recent times, the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter. In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

(3) If any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.' We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted.

But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused."

(Emphasis supplied)

22. The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced clause 447 in the Draft Bill of the Code of Criminal Procedure, 1970 with a view to confer express power on the High Court and the Court of Session to grant anticipatory bail. The said clause of the draft bill was enacted with certain modifications and became Section 438 of the CrPC.

23. The Law Commission, in paragraph 31 of its 48th Report (1972), made the following comments on the aforesaid clause:

"The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised. We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice. It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."

(Emphasis supplied)

24. Section 438 of the CrPC reads thus:

"Discretion for grant of bail to person apprehending arrest.-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and.

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under subsection (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court, (1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under subsection (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860)."

25. The Statement of Objects and Reasons accompanying the bill for introducing Section 438 in the CrPC indicates that the legislature felt that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases.

The purpose behind incorporating Section 438 in the CrPC was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty of individuals by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court. [See: Siddharam Satlingappa Mhetre v. State of Maharashtra and Others reported in (2011) 1 SCC 694].

26. In the context of anticipatory bail, this Court, in Siddharam Satlingappa Mhetre (supra), discussed the relevance and importance of personal liberty as under:

"36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilised existence.

37. Origin of "liberty" can be traced in the ancient Greek civilisation. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 BC, an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realise itself as fully as possible through the self-realisation of the individual by way of human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the State was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was natural and necessary to man. Plato found his "republic" as the best source for the achievement of the self-realisation of the people.

43. A distinguished former Attorney General for India, M.C. Setalvad in his treatise War and Civil Liberties observed that the French Convention stipulates common happiness as the end of the society, whereas Bentham postulates the greatest happiness of the greatest number as the end of law. Article 19 of the Indian Constitution averts to freedom and it enumerates certain rights regarding individual freedom. These rights are vital and most important freedoms which lie at the very root of liberty. He further observed that the concept of civil liberty is essentially rooted in the philosophy of individualism.

According to this doctrine, the highest development of the individual and the enrichment of his personality are the true function and end of the State. It is only when the individual has reached the highest state of perfection and evolved what is best in him that society and the State can reach their goal of perfection. In brief, according to this doctrine, the State exists mainly, if not solely, for the purpose of affording the individual freedom and assistance for the attainment of his growth and perfection. The State exists for the benefit of the individual.

49. An eminent English Judge, Lord Alfred Denning observed: "By personal freedom I mean freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasion without hindrance from any person. It must be matched, of course, with social security by which I mean the peace and good order of the community in which we live."

50. An eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol. 18 (1978), p. 133 observed that "Liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body.""

27. In Kartar Singh (supra), a Constitution Bench of this Court held that there is no constitutional or fundamental right to seek anticipatory bail. In the said case,

this Court was called upon to consider the constitutional validity of sub-section (7) of Section 20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. The Constitution Bench also looked into the validity of Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976 which deleted the operation of Section 438 of the CrPC in the State of Uttar Pradesh with effect from 28.11.1975. In the aforesaid context, Justice Ratnavel Pandian speaking for himself and on behalf of four other Judges observed as under:

"326. The High Court of Punjab and Haryana in Bimal Kaur [AIR 1988 P&H 95 : (1988) 93 Punj LR 189 : 1988 Cri LJ 169] has examined a similar challenge as to the vires of Section 20(7) of TADA Act, and held thus:

"In my opinion Section 20(7) is intra vires the provision of Article 14 of the Constitution in that the persons charged with the commission of terrorist act fall in a category which is distinct from the class of persons charged with commission of offences under the Penal Code and the offences created by other statutes. The persons indulging in terrorist act form a member of well organised secret movement.

The enforcing agencies find it difficult to lay their hands on them. Unless the Police is able to secure clue as to who are the persons behind this movement, how it is organised, who are its active members and how they operate, it cannot hope to put an end to this movement and restore public order. The Police can secure this knowledge only from the arrested terrorists after effective interrogation. If the real offenders apprehending arrest are able to secure anticipatory bail then the police shall virtually be denied the said opportunity."

327. It is needless to emphasise that both the Parliament as well as the State Legislatures have got legislative competence to enact any law relating to the Code of Criminal Procedure. No provision relating to anticipatory bail was in the old Code and it was introduced for the first time in the present Code of 1973 on the suggestion made of the Forty-first Report of the Law Commission and the Joint Committee Report. It may be noted that this section is completely omitted in the State of Uttar Pradesh by Section 9 of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 (U.P. Act No. 16 of 1976) w.e.f. 28-11-1975.

In the State of West Bengal, proviso is inserted to Section 438(1) of the Code w.e.f. 24-12-1988 to the effect that no final order shall be made on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, without giving the State not less than seven days' notice to present its case. In the State of Orissa, by Section 2 of Orissa Act 11 of 1988 w.e.f. 28-6-1988, a proviso is added to Section 438 stating that no final order

shall be made on an application for anticipatory bail without giving the State notice to present its case for offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years.

329. Further, at the risk of repetition, we may add that Section 438 is a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21. In Gurbaksh Singh [(1980) 2 SCC 565 : 1980 SCC (Cri) 465 : (1980) 3 SCR 383] , there is no specific statement that the removal of Section 438 at any time will amount to violation of Article 21 of the Constitution."

(Emphasis supplied)

28. The aforesaid decision was discussed in the course of the hearing of this case for the limited proposition that there is no constitutional or fundamental right to seek anticipatory bail. Section 438 of the CrPC is just a statutory right.

29. In Gurbaksh Singh Sibbia (supra), a Constitution Bench of this Court (speaking through Justice Y.V. Chandrachud, Chief Justice, as his Lordship then was) undertook an extensive analysis of the provision of anticipatory bail. This Constitution Bench decision can be termed as a profound and passionate essay on how personal liberty under the Constitution can be consistent with needs of investigations and why this Court should avoid any generalisation that would take away the discretion of the courts dealing with a new set of facts in each case. Chief Justice Y.V. Chandrachud observed thus:

"8. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a Court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

12. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory, bail.

That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is

a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in Clauses (i) to (iv) of Subsection(2).

14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful.

There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.

15. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises."

30. As regards making out a 'special case' to seek anticipatory bail, this Court in Gurbaksh Singh Sibbia (supra) said:

"21. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

27. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every

opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

31. In Gurbaksh Singh Sibbia (supra), this Court emphasized that the applicant must have a tangible reason to believe. Vague apprehension will not do. Secondly, it held that the High Court or the Court of Session should not ask an applicant to go before the Magistrate to try his luck under Section 437 of the CrPC. It was also observed that once the accused is arrested, Section 438 of the CrPC ceases to play any role with reference to the offence or offences for which he is arrested. This Court also cautioned against passing a blanket order for anticipatory bail.

32. The following principles of law as regards the grant of anticipatory bail can be discerned from Gurbaksh Singh Sibbia (supra):

i. The applicant must genuinely show the "reason to believe" that he may be arrested for a non-bailable offence. Mere fear is not belief and the grounds on which the belief of the applicant is based must be capable of being examined by the Court objectively. Specific events and facts must be disclosed to enable the Court to judge the reasonableness of belief or likelihood of arrest, the existence of which is the sine qua non in the exercise of the power to grant anticipatory bail.

ii. The High Court or the Court of Session must apply its mind to the question of anticipatory bail and should not leave it to the discretion of the Magistrate under Section 437 CrPC.

iii. Filing of the FIR is not a condition precedent. However, imminence of a likely arrest founded on the reasonable belief must be shown.

iv. Anticipatory bail can be granted so long as the applicant is not arrested in connection with that case/offence.

v. Section 438 of the CrPC cannot be invoked by the accused in respect of the offence(s)/case in which he has been arrested. The remedy lies under Section 437 or 439 of the CrPC, as the case may be, for the offence for which he is arrested.

vi. The normal rule is to not limit the operation of the order in relation to a period of time.

33. On account of various decisions of benches of lesser strength than in Gurbaksh Singh Sibbia (supra) taking a view curtailing the scope of the findings in the said case, the scope of Section 438 of the CrPC came to be considered yet again in Siddharam Satlingappa Mhetre (supra). A two-Judge Bench in Siddharam Satlingappa Mhetre (supra) held that the intervening decisions

between 1980 and 2011 curtailing the scope of Gurbaksh Singh Sibbia (supra) were per incuriam.

34. However, since Siddharam Satlingappa Mhetre (supra) was delivered by a coram of two Judges, the matter again reached the Constitution Bench in the judgment rendered in the case of Sushila Aggarwal (supra) laying down the following principles:

i. An application for anticipatory bail should be based on concrete facts (and not vague or general allegations). It is not essential that an application should be moved only after an FIR is filed.

ii. It is advisable to issue a notice on the anticipatory bail application to the Public Prosecutor.

iii. Nothing in Section 438 of the CrPC compels or obliges courts to impose conditions limiting relief in terms of time. The courts would be justified - and ought to impose conditions spelt out in Section 437(3) of the CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions would have to be judged on a case-tocase basis.

iv. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail or not.

v. Once granted, Anticipatory bail can, depending on the conduct and behaviour of the accused, continue after filing of the chargesheet till the end of trial.

vi. An order of anticipatory bail should not be a "blanket" order and should be confined to a specific incident.

vii. An order of anticipatory bail does not limit the rights of the police to conduct investigation.

viii. The observations in Gurbaksh Singh Sibbia (supra) regarding "limited custody" or "deemed custody" would be sufficient for the purpose of fulfilling the provisions of Section 27 of the Indian Evidence Act, 1872.

ix. The police can seek cancellation of anticipatory bail under Section 439(2) of the CrPC.

x. The correctness of an order granting bail can be considered by the appellate or superior court.

35. The aforesaid principles as regards the grant of anticipatory bail discernible from the decision of this Court in Sushila Aggarwal (supra) are general and may not have a direct bearing on the question we are called upon to consider and answer. What is important to be taken note of in the decision in Sushila Aggarwal (supra) is the following:

"62. In this background, it is important to notice that the only bar, or restriction, imposed by Parliament upon the exercise of the power (to grant anticipatory bail) is by way of a positive restriction i.e. in the case where accused are alleged to have committed offences punishable under Section 376 (3) or Section 376-AB or Section 376-DA or Section 376-DB of the Penal Code. In other words, Parliament has now denied jurisdiction of the courts (i.e. Court of Session and High Courts) from granting anticipatory bail to those accused of such offences.

63. Clearly, therefore, where Parliament wished to exclude or restrict the power of courts, under Section 438 of the Code, it did so in categorical terms. Parliament's omission to restrict the right of citizens, accused of other offences from the right to seek anticipatory bail, necessarily leads one to assume that neither a blanket restriction can be read into by this Court, nor can inflexible guidelines in the exercise of discretion, be insisted upon-that would amount to judicial legislation".

(Emphasis supplied)

36. What has been conveyed in the aforesaid decision is that the court, on its own, should not try to read any other restriction as regards the exercise of its power to consider the plea for grant of anticipatory bail. Wherever parliament intends or desires to exclude or restrict the power of courts, it does so in categorical terms. This is very much evident from the plain reading of sub-section (4) of Section 438 of the CrPC itself. The dictum as laid is that the court should not read any blanket restriction nor should it insist for some inflexible guidelines as that would amount to judicial legislation.

ii. Whether a person, while in custody for a particular offence, can have a "reason to believe" that he may be arrested in relation to some other non-bailable offence?

37. The line of reasoning adopted by the High Court of Rajasthan in Sunil Kallani (supra) was that once a person is taken in custody in relation to an offence, it is not possible thereafter to arrest him in relation to a different offence as one of the essential conditions for arrest is placing the body of the accused in custody of the police authorities by means of actual touch or confinement. As there cannot be any actual touch or confinement while a person is in custody, he

cannot have a "reason to believe" that he may be arrested in relation to a different offence.

38. However, there are two fundamental fallacies in the reasoning adopted by the Rajasthan High Court. First, the High Court failed to consider the possibility of arrest of the person in custody in relation to a different offence immediately after he is set free from the custody in the first offence. In such a scenario, if it is held that the application seeking anticipatory bail in relation to an offence, filed during the period when the applicant is in custody in relation to a different offence, would not be maintainable, then it would amount to precluding the applicant from availing a statutory remedy which he is otherwise entitled to and which he can avail as soon as he is released from custody in the first offence.

Thus, in cases where the accused has a "reason to believe" that he may be arrested in relation to an offence different from the one in which he is in custody immediately upon his release, the view taken by the Rajasthan High Court, if allowed to stand, would deprive him of his statutory right of seeking anticipatory bail because it is quite possible that before such a person is able to exercise the aforesaid right, he may be arrested.

39. In our opinion, no useful purpose would be served by depriving the accused of exercising his statutory right to seek anticipatory bail till his release from custody in the first offence. We find force in the submission of the respondent that if the accused is not allowed to obtain a pre-arrest bail in relation to a different offence, while being in custody in one offence, then he may get arrested by the police immediately upon his release in the first case, even before he gets the opportunity to approach the competent court and file an application for the grant of anticipatory bail in relation to the said particular offence. This practical shortcoming in the approach taken by the Rajasthan High Court is prone to exploitation by investigating agencies for the purpose of putting the personal liberty of the accused in peril.

40. The second fallacy in the reasoning of the High Court is that there can be no arrest of an accused in relation to a different offence while he is already in custody in relation to some offence. Although there is no specific provision in the CrPC which provides for the arrest of an accused in relation to an offence while he is already in judicial custody in a different offence, yet this Court explained in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni reported in (1992) 3 SCC 141 that even if an accused is in judicial custody in connection with the investigation of an earlier case, the investigating agency can formally arrest him in connection with his involvement in a different case and associate him with the investigation of that other case. In other words, this Court clarified that even when a person is in judicial custody, he

can be shown as arrested in respect of any number of other crimes registered elsewhere in the country.

Reliance was placed by this Court on the decision of Punjab & Haryana High Court in S. Harsimran Singh v. State of Punjab reported in 1984 Cri LJ 253 wherein it was held that there is no inflexible bar under the law against the re-arrest of a person who is already in judicial custody in relation to a different offence. The High Court held that judicial custody could be converted into police custody by an order of the Magistrate under Section 167(2) of the CrPC for the purpose of investigating the other offence. The relevant paragraphs of Anupam J. Kulkarni (supra) are extracted hereinbelow:

"11. A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest.

The learned Additional Solicitor-General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences.

We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days.

If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case.

In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. The learned Additional Solicitor-General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand case [(1969) 5 DLT 179] extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences.

We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations.

The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody.

In S. Harsimran Singh v. State of Punjab [1984 Cri LJ 253 : ILR (1984) 2 P&H 139] a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to a single case or is attracted to a series of different cases requiring investigation against the same accused and held thus: (p. 257, para 10-A)

"We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for investigating another offence. Therefore, a rearrest or second arrest in a different case is not necessarily beyond the ken of law."

This view of the Division Bench of the Punjab and Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the

investigation of a different case other than the specific one in respect of which the accused is already in custody.

A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred.

It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

13. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction.

Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above."

(Emphasis supplied)

41. It was submitted on behalf of the appellant that a person already in judicial custody in relation to an offence, cannot have a "reason to believe" that he may be arrested on the accusation of having committed a different offence. However, we do not find any merit in the aforesaid submission. There are two ways by which a person, who is already in custody, may be arrested -

a. First, no sooner than he is released from custody in connection with the first case, the police officer can arrest and take him into custody in relation to a different case; and

b. Secondly, even before he is set free from the custody in the first case, the police officer investigating the other offence can formally arrest him and thereafter obtain a Prisoner Transit Warrant ("P.T. Warrant") under Section 267 of the CrPC from the jurisdictional magistrate for the other offence, and thereafter, on production before the magistrate, pray for remand;

OR

Instead of effecting formal arrest, the investigating officer can make an application before the jurisdictional magistrate seeking a P.T. Warrant for the production of the accused from prison. If the conditions required under 267 of the CrPC are satisfied, the jurisdictional magistrate shall issue a P.T. Warrant for the production of the accused in court.

When the accused is so produced before the court in pursuance of the P.T. Warrant, the investigating officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the CrPC. At that time, the jurisdictional magistrate shall consider the request of the investigating officer, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused. [See: State v. K.N. Nehru reported in 2011 SCC OnLine Mad 1984]

42. As arrest in both the aforesaid circumstances is permissible in law, it would be incorrect to hold that a person, while in custody, cannot have a "reason to believe" that he may be arrested in relation to a different offence. As a logical extension of this, it can also be said that when procedural law doesn't preclude the investigating agency from arresting a person in relation to a different offence while he is already under custody in some previous offence, the accused too cannot be precluded of his statutory right to apply for anticipatory bail only on the ground that he is in custody in relation to a different offence.

43. The procedure for arrest of the accused in relation to an offence after he is released from custody in the first offence would be similar to the procedure of arrest which is required to be followed in any other cognizable offence. However, we think it is necessary to shed some light on the procedure to effect arrest in the second category of cases, that is, where the investigating agency arrests the accused in relation to an offence while he is in custody in relation to a different offence.

44. As discussed in the preceding paragraphs, an accused could be arrested either when he is free or when he is in custody in some offence. Similarly, an arrest can be made by a police officer either without a warrant or with a warrant issued by a court. Thus, the following possibilities emerge:

a. If an accused is arrested without a warrant while he is free and not in custody, then he has to be produced before the nearest Magistrate, who may remand him to police or judicial custody or may grant bail if applied for by the accused.

b. If an accused is arrested with a warrant while he is free and not in custody, then Section 81 of the CrPC permits the production of such a person before the court issuing the warrant.

c. If an accused is arrested with or without a warrant while he is already in custody in one offence, then it is only under Section 267 of the CrPC that he can be removed from such custody and produced before the Magistrate under whose territorial jurisdiction the other offence is registered.

45. Section 46(1) of the CrPC reads as under:

"46. Arrest how made.- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest."

46. Thus, the plain reading of the aforesaid makes it clear that arrest involves actual touch or confinement of the body of the person sought to be arrested. However, arrest can also be effected without actual touch if the person sought to be arrested submits to the custody by words or action.

47. The term 'arrest' is not defined either in the procedural Acts or in the various substantive Acts, though Section 46, CrPC, lays down the mode of arrest to be effected. Black's Law Dictionary (5th Edition, 1979) defines arrest as follows:

"To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All that is required for an 'arrest' is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer, as formal declaration of arrest is required."

48. Similarly, the term 'custody' too is not defined either in the CrPC or the IPC. The Corpus Juris Secondum (Vol. 25 at Page 69) defines 'custody' as follows:

"When it is applied to persons, it implies restraint and may or may not imply physical force sufficient to restrain depending on the circumstances and with reference to persons charged with crime, it has been defined as meaning on actual confinement or the present means of enforcing it, the detention of the person contrary to his will. Applied to things, it means to have a charge or safe-keeping, and connotes control and includes as well, although it does not require, the element of physical or manual possession, implying a temporary physical control merely and responsibility for the protection and preservation of the thing in custody.

So used, the word does not connote dominion or supremacy of authority. The said term has been defined as meaning the keeping, guarding, care, watch, inspection, preservation or security of a thing, and carries with it the idea of the thing being within the immediate personal care and control of the prisoner to whose custody it is subjected; charge; charge to keep, subject to order or direction; immediate charge and control and not the final absolute control of ownership." [See: Roshan Beevi and others v. Joint Secretary to Government of Tamil Nadu and others, 1983 SCC OnLine Mad 163]

49. The Rajasthan High Court proceeded on the assumption that there can be no arrest while a person is in judicial custody because it is not possible for the police officer to arrest him without actual touch or confinement while such person is under custody. However, we are unable to agree with the view taken by the High Court for the reason that a lawful arrest can be made even without actually seizing or touching the body. Actions or words which successfully bring to the notice of the accused that he is under a compulsion and thereafter cause him to submit to such compulsion will also be sufficient to constitute arrest. This Court in State of U.P. v. Deoman Upadhyaya reported in AIR 1960 SC 1125 held that submission to the custody by word or action by a person is sufficient so as to constitute arrest under Section 46 of the CrPC.

50. In the aforesaid context, we may also refer to and rely upon the decision of the Queen's Bench in Alderson v. Booth reported in [1969] 2 All ER 271. The relevant observations are as under:

"There are a number of cases, both ancient and modern, as to what constitutes an arrest, and whereas there was a time when it was held that there could be no lawful arrest unless there was an actual seizing or touching, it is quite clear that is no longer the law. There may be an arrest by mere words, by saying "I arrest you" without any touching, provided of course that the accused submits and goes with the police officer. Equally it is clear, as it seems to me, that an arrest is constituted when any form of words in used which, in the circumstances, of the case, were calculated to bring to the accused's notice, and did bring to the

accused's notice, that he was under compulsion and thereafter he submitted to that compulsion."

(Emphasis supplied)

51. The aforesaid decision fortifies the view that the actual seizing or touching of the body of the person to be arrested is not necessary in a case where the arrester by word brings to the notice of the accused that he is under compulsion and thereafter the accused submits to that compulsion. This is in conformity with the modality of the arrest contemplated under Section 46 of the CrPC wherein also it is provided that the submission of a person to be arrested to the custody of the arrester by word or action can amount to an arrest. The essence of the decision in Alderson (supra) is that there must be an actual seizing or touching, and in the absence of that, it must be brought to the notice of the person to be arrested that he is under compulsion, and as a result of such notice, the said person should submit to that compulsion, and then only the arrest is consummated.

52. As pointed out in the preceding paragraphs, a police officer can formally arrest a person in relation to an offence while he is already in custody in a different offence. However, such formal arrest doesn't bring the accused in the custody of the police officer as the accused continues to remain in the custody of the Magistrate who remanded him to judicial custody in the first offence. Once such formal arrest has been made, the police officer has to make an application under Section 267 of the CrPC before the Jurisdictional Magistrate for the issuance of a P.T. Warrant without delay.

If, based on the requirements prescribed under Section 267 of the CrPC, a P.T. Warrant is issued by the jurisdictional Magistrate, then the accused has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of the CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed.

The only reason why we have delineated the procedure followed in cases where a person already in custody is required to be arrested in relation to a different offence is to negate the reasoning of the Rajasthan, Delhi and Allahabad High Courts that once in custody, it is not possible to re-arrest a person in relation to a different offence. When a person in custody is confronted with a P.T. Warrant obtained in relation to a different offence, such a person has no choice but to submit to the custody of the police officer who has obtained the P.T. Warrant.

Thus, in such a scenario, although there is no confinement to custody by touch, yet there is submission to the custody by the accused based on the action of the police officer in showing the P.T. Warrant to the accused. Thereafter, on

production of the accused before the jurisdictional Magistrate, like in the case of arrest of a free person who is not in custody, the accused can either be remanded to police or judicial custody, or he may be enlarged on bail and sent back to the custody in the first offence.

A number of decisions have held that although Section 267 of the CrPC cannot be invoked to enable production of the accused before the investigating agency, yet it can undoubtedly be invoked to require production of the accused before the jurisdictional Magistrate, who can thereafter remand him to the custody of the investigating agency.

Such an interpretation of the provision would give true effect to the words "other proceedings" as they appear in the text of Section 267 of the CrPC, which cannot be construed to exclude proceedings at the stage of investigation. [See: C. Natesan v. State of Tamil Nadu and Others, 1998 SCC OnLine Mad 931; Ranjeet Singh v. State of Uttar Pradesh, 1995 Cri LJ 3505; State of Maharashtra v. Yadav Kohachade, 2000 Cri LJ 959]

53. Thus, contrary to the view taken by the Rajasthan, Allahabad and Delhi High Courts, a person, while in custody in relation to an offence, can be arrested in relation to a different offence, either after getting released from custody in the first offence, or even while remaining in custody in the first offence. In such circumstances, it follows that a person, while in custody in relation to an offence, can have "reason to believe" that he may be arrested in relation to a different cognizable offence.

We find no restriction in the text of Section 438 or the scheme of the CrPC precluding a person from seeking anticipatory bail in relation to an offence while being in custody in relation to another offence. In the absence of any such restriction, we find no valid reason to read any prohibition in the text of Section 438 of the CrPC, to preclude a person in custody from seeking anticipatory bail in relation to different offences.

54. The option of applying for anticipatory bail in relation to an offence, while being in custody in relation to a different offence, will only be available to the accused till he is arrested by the police officer on the strength of the P.T. Warrant obtained by him from the court concerned. We must clarify that mere formal arrest (on-paper arrest) would not extinguish the right of the accused to apply for anticipatory bail.

We say so because a formal arrest would not result in the submission of the accused, who is already in custody, to the custody of the police officer effecting a formal arrest in the subsequent case. However, if after effecting a formal arrest, the police officer on the strength of the same procures a P.T. Warrant from the

jurisdictional Magistrate, the accused would have no other choice but to submit to that compulsion and the right of the accused to apply for anticipatory bail would thereafter get extinguished.

55. If an accused is granted anticipatory bail in relation to an offence, while being in custody in a different offence, then it shall no longer be open to the police officer in the first case to apply under Section 267 of the CrPC for the production of the accused before the jurisdictional Magistrate for the purpose of remanding him to police or judicial custody. However, it shall be open to the jurisdictional Magistrate to require the production of accused under Section 267(1) for any other purpose mentioned under the said section except for the purpose of remanding him to police or judicial custody. [See: Tusharbhai Rajnikantbhai Shah v. State of Gujarat, reported in 2024 SCC OnLine SC 1897]

56. We would also like to observe that contrary to the submission of the appellant that grant of anticipatory bail to the accused would prevent the investigating authorities from conducting investigation and discoveries, etc., it is always open to the concerned investigating officer to apply before the Magistrate in whose custody the accused is in relation to a different offence, seeking permission of such Magistrate to interrogate the accused in relation to the particular offence which he is investigating.

57. It was also submitted by the appellant that as the object of Section 438 of the CrPC was to prevent an accused from the humiliation of arrest, the protective cover of the provision would not include within its ambit a person who is already in custody. In other words, a person once arrested in relation to an offence, cannot be said to suffer further humiliation for any subsequent arrest which may take place, and thus, the relief of anticipatory bail should not be made available to a person who is already in custody.

58. We are unable to accept the aforesaid contention of the appellant. Each arrest a person faces compounds their humiliation and ignominy. We say so because each subsequent arrest underscores a continued or escalating involvement in legal troubles that can erode the dignity of the person and their public standing. The initial arrest itself often brings a wave of social stigma and personal distress, as the individual struggles with the implications of their legal predicament.

When a subsequent arrest occurs, it intensifies this emotional and social burden, amplifying the perception of their criminality and reinforcing negative judgments from society. Subsequent arrest in relation to different offences, while the individual is in custody in a particular offence, further alienates the individual from their community and adversely affects their personal integrity. For this reason, it is incorrect to assume that subsequent arrests diminish the level of humiliation. On the contrary, each additional arrest exacerbates the person's

shame making the cumulative impact of such legal entanglements increasingly devastating.

iii. Illustrative Examples

59. The discrimination that would be caused if the submissions canvassed on behalf of the appellant were to be accepted can be understood with the aid of the following illustrations:

Illustration A

(1) 'A' is in custody for a case under Section 420 of the IPC, and is enlarged on bail on a particular date. On the same day, 'A's' wife registers a case under Section 498A IPC against him. Here, if the appellant's argument is accepted, 'A' would be able to apply for anticipatory bail.

(2) 'B' is in custody under Section 420 of the IPC, and he has applied for bail. However, the order releasing him on bail is yet to be passed. While so, 'B's' wife files a case under Section 498A of the IPC against him. Here, if the appellant's argument is accepted. 'B' would not be able to apply for anticipatory bail while in custody for a case under Section 420. He can apply for anticipatory bail in relation to the case under Section 498A only if he is not arrested immediately after his release in the case under Section 420.

If he is arrested immediately in the case under Section 498A after being released in the case under Section 420, then the only remedy left for him would be to seek regular bail. If the interpretation sought to be put forward by the appellant is accepted, two persons who are accused of similar offences are entitled to different sets of rights. While one is permitted to avail the right under Section 438 of the CrPC, the other is deprived of it, merely on the basis of the point in time when the FIR gets lodged.

Illustration B

(1) 'X' is in custody for an offence under Section 302 of the IPC punishable by life imprisonment or death, and subsequently an FIR is registered against him for an offence under Section 376 of the IPC which is punishable with imprisonment which may extend for life. Here, if the appellant's argument is accepted, then 'X' would not be able to apply for anticipatory bail in the subsequent case, since he is in custody for the earlier case under Section 302 of the IPC.

(2) 'Y' is in custody for an offence under Section 384 of the IPC [extortion - punishable with imprisonment for 3 years], and while in custody for this offence, an FIR is registered against him for an offence under Section 406 of the IPC [criminal breach of trust - punishable with imprisonment for 3 years]. In this

example as well, if the argument of the appellant is accepted, 'Y' would not be able to apply for anticipatory bail, even though the offence is punishable with imprisonment for 3 years. 'Y', therefore, would be placed at par with a person who has committed a serious crime and would ordinarily not be granted anticipatory bail. However, by prohibiting 'Y' from even applying for anticipatory bail for an offence punishable by imprisonment for a maximum of 3 years [i.e. Section 406 of the IPC], 'Y' is placed in the same class as 'X'.

E. CONCLUSION

60. Our examination of the matter has led us to the following conclusions:

i. An accused is entitled to seek anticipatory bail in connection with an offence so long as he is not arrested in relation to that offence. Once he is arrested, the only remedy available to him is to apply for regular bail either under Section 437 or Section 439 of the CrPC, as the case may be. This is evident from para 39 of Gurbaksh Singh Sibbia (supra).

ii. There is no express or implied restriction in the CrPC or in any other statute that prohibits the Court of Session or the High Court from entertaining and deciding an anticipatory bail application in relation to an offence, while the applicant is in custody in relation to a different offence. No restriction can be read into Section 438 of the CrPC to preclude an accused from applying for anticipatory bail in relation to an offence while he is in custody in a different offence, as that would be against the purport of the provision and the intent of the legislature. The only restriction on the power of the court to grant anticipatory bail under Section 438 of the CrPC is the one prescribed under sub-section (4) of Section 438 of the CrPC, and in other statutes like the Act, 1989, etc.

iii. While a person already in custody in connection with a particular offence apprehends arrest in a different offence, then, the subsequent offence is a separate offence for all practical purposes. This would necessarily imply that all rights conferred by the statute on the accused as well as the investigating agency in relation to the subsequent offence are independently protected.

iv. The investigating agency, if it deems necessary for the purpose of interrogation/investigation in an offence, can seek remand of the accused whilst he is in custody in connection with a previous offence so long as no order granting anticipatory bail has been passed in relation to the subsequent offence. However, if an order granting anticipatory bail in relation to the subsequent offence is obtained by the accused, it shall no longer be open to the investigating agency to seek remand of the accused in relation to the subsequent offence. Similarly, if an order of police remand is passed before the accused is able to obtain anticipatory bail, it would thereafter not be open to the accused to seek

anticipatory bail and the only option available to him would be to seek regular bail.

v. We are at one with Mr. Dave that the right of an accused to protect his personal liberty within the contours of Article 21 of the Constitution of India with the aid of the provision of anticipatory bail as enshrined under Section 438 of the CrPC cannot be defeated or thwarted without a valid procedure established by law. He is right in his submission that such procedure should also pass the test of fairness, reasonableness and manifest non-arbitrariness on the anvil of Article 14 of the Constitution of India.

vi. Under Section 438 of the CrPC, the pre-condition for a person to apply for pre-arrest bail is a "reason to believe that he may be arrested on an accusation of having committed a non-bailable offence". Therefore, the only pre-condition for exercising the said right is the apprehension of the accused that he is likely to be arrested. In view of the discussion in the preceding paragraphs, custody in one case does not have the effect of taking away the apprehension of arrest in a different case.

vii. If the interpretation, as sought to be put forward by Mr. Luthra is to be accepted, the same would not only defeat the right of a person to apply for pre-arrest bail under Section 438 of the CrPC but may also lead to absurd situations in its practical application.

61. Before we part with the matter, we would like to underscore the importance of the rights conferred under the procedural laws as noted by a Constitution Bench of this Court in A.R. Antulay v. R. S. Nayak reported in (1988) 2 SCC 602. It was observed therein that no man can be denied of his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law, and not in derogation of it. This Court held that a denial of equal protection of laws, by being singled out for a special procedure not provided under the law, caused denial of rights under Article 14 of the Constitution of India. A few relevant observations are extracted hereinbelow:

"41. In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the Seven Judges Bench judgment in Anwar Ali Sarkar case [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defence which, others similarly charged, were able to claim.

81. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court, in its anxiety to facilitate the parties to have a speedy trial gave directions on 16-2-1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on 16-2-1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law."

(Emphasis supplied)

62. Similarly, a Constitution Bench of this Court in State of West Bengal v. Anwar Ali Sarkar reported in (1952) 1 SCC 1, held that procedural law confers very valuable rights on a person, and their protection must be as much the object of a Court's solicitude as those conferred under the substantive law. Few pertinent observations are extracted hereinbelow:

"27. The argument that changes in procedural law are not material and cannot be said to deny equality before the law or the equal protection of the laws so long as the substantive law remains unchanged or that only the fundamental rights referred to in Articles 20 to 22 should be safeguarded is, on the face of it, unsound. The right to equality postulated by Article 14 is as much a fundamental right as any other fundamental right dealt with in Part III of the Constitution. Procedural law may and does confer very valuable rights on a person, and their protection must be as much the object of a court's solicitude as those conferred under substantive law."

(Emphasis supplied)

63. It was also sought to be argued by Mr. Luthra that the issue at hand has already been dealt with and decided by a three-Judge Bench of this Court in Narinderjit Singh Sahni (supra). It was contended that the dictum laid therein is that an anticipatory bail application filed by an accused in a different case, while he is in custody in one case, would not be maintainable. However, we are unable to agree with such submission of the appellant.

In the said case, the Petitioners therein, who were arrayed as accused in multiple FIRs registered at various police stations across the country, had invoked the jurisdiction of this Court under Article 32 praying for an order for bail in the

nature as prescribed under Section 438 of the CrPC. The crux of the grievance of the Petitioners was that although they had secured an order of bail in one case yet they were being detained in prison on the strength of a production warrant in another matter. This, according to the petitioners, was violative of Article 21 as they were deprived of their liberty despite having been granted bail in one of the cases.

64. The aforesaid contention of the Petitioners in the said case was ultimately rejected by this Court on the ground that even if the Petitioners could be said to have been deprived of their liberty, such deprivation was in accordance with the due process of law. Having observed thus, this Court dismissed the Writ Petition filed by the Petitioners as no infraction of Article 21 was established.

65. Evidently, this Court in the aforesaid case had no occasion to go into the question of maintainability of an application for grant of anticipatory bail by an accused who is already in judicial custody in relation to some offence. On the contrary, this Court in Narinderjit Singh Sahni (supra) examined the issue whether a blanket order in the nature of anticipatory bail could be passed by this Court in exercise of its Writ Jurisdiction, wherein the Petitioner was arrayed as an accused in multiple criminal proceedings.

66. On the other hand, in the present case, we have decided the issue of maintainability of an anticipatory bail application filed at the instance of an accused who is already in judicial custody in a different offence and have reached the conclusion that such an application is maintainable under the scheme of the CrPC. However, it is clarified that each of such applications will have to be decided by the competent courts on their own merits.

67. In view of the aforesaid discussion, the present appeal must fail and the same is thereby dismissed.

68. The High Court of Judicature at Bombay shall now proceed to decide the anticipatory bail application filed by the respondent accused on its own merits.

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

70. The Registry shall forward one copy each of this judgment to all the High Courts across the country.

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

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

.....J. (Manoj Misra)

New Delhi;

September 09, 2024.

IN THE SUPREME COURT OF INDIA

Abhishek Banerjee and Anr.
Vs.
Directorate of Enforcement

[Criminal Appeal No(s). 2221-2222 of 2023]

HEADNOTE – The provisions of the Prevention of Money Laundering Act (PMLA), 2002, will prevail over the Code of Criminal Procedure, 1973 (Cr.P.C.) in relation to the summoning of a person. Discuss distinction between Sec. 160 Cr.P.C. and Sec. 50 PMLA Act, 2002

JUDGMENT

Bela M. Trivedi, J.

1. Both these Appeals are arising out of the Common Impugned Order dated 11.03.2022 passed by the High Court of Delhi in W.P (Crl.) No. 1808 of 2021 and Crl. M.C. No. 2442 of 2021, filed by the Appellants (Original Petitioners), whereby the High Court has dismissed the same.

2. The Writ Petition (Crl.) No. 1808 of 2021 was filed by the Appellants - Abhishek Banerjee and Rujira Banerjee seeking quashing of the Summons dated 10.09.2021 issued to them by the Respondent - ED under Section 50 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "PMLA"), and seeking further direction against the Respondent not to issue any Summons under Section 50 of the said Act to the Appellants for their appearance in New Delhi, rather than their hometown/ place of domicile i.e. Kolkata.

The Crl. M.C. No. 2442 of 2021 was filed by the Appellant - Rujira Banerjee seeking quashing of the Complaint dated 13.09.2021 filed by the respondent-ED against her for the offence under Section 174 of India Penal Code (IPC), and for quashing the Order dated 18.09.2021 passed by the Chief Metropolitan Magistrate (CMM), Patiala House, New Delhi taking cognizance of the complaint, as also the Order dated 30.09.2021 summoning her, passed by the said Court.

3. The facts in the nutshell are that an FIR/R.C. bearing No. RC0102020A0022 came to be registered by the CBI, ACB, Kolkata on 27.11.2020 for the offences under Section 120B and 409 of IPC and Section 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act"), in respect of alleged illegal excavation and theft of Coal taking place in the leasehold areas of Eastern Coalfields Limited (ECL) by one Anup Majee alias

Lala with the active connivance of certain employees of ECL. Based on the said FIR, on 28.11.2020, an ECIR bearing No. 17/HIU/2020 came to be registered by the Respondent at their Head Investigative Unit situated at New Delhi.

4. During the course of investigation of the FIR in respect of theft of Coal and illegal excavation being done by the criminal elements in the leasehold area of ECL, a large number of vehicles/ equipments used in the illegal coal mining and its transportation were seized. It was also found that the said case involved money laundering to the tune of Rs. 1300 Crores.

According to the Respondent - ED one of the accused Vikas Mishra was arrested on 16.03.2021 and another accused Inspector Ashok Mishra of Bankura Police Station was arrested on 03.04.2021, who had become part of illegal Coal mafia and had helped in laundering several hundred crores of rupees. It was also found during the course of investigation that Inspector Ashok Kumar Mishra had allegedly received Rs.168 crores in just 109 days from the co-accused Anup Majee, to be delivered to his political bosses including co-accused Vinay Mishra. The said Rs.168 crores were allegedly transferred through vouchers to Delhi and Overseas.

5. On 22.07.2021, the Respondent issued Summons to the Appellant No.1 under Section 50 of PMLA seeking his personal appearance on 03.08.2021 in New Delhi with the documents sought for. Again on 04.08.2021, another Summons were issued to the Appellant No.1 seeking the same documents as sought in Summons dated 22.07.2021 for remaining present on 12.08.2021 in New Delhi. The Appellant No.2 was also issued Summons on 04.08.2021 under Section 50 of PMLA for her personal appearance in New Delhi on 13.08.2021 along with the documents/records stated in the said Summons.

Both the Appellants did not remain present as directed and furnished their respective replies on 12.08.2021 seeking time to comply with the said Summons. The Respondent again issued Summons on 18.08.2021 requiring the Appellant No.1 to remain present in New Delhi on 06.09.2021 and Appellant No.2 to remain present in New Delhi on 01.09.2021. The Appellant No.2 replied to the Summons dated 18.08.2021 requesting the Respondent to examine her at Kolkata as there was a functional office of the Respondent in Kolkata and the alleged cause of action had arisen in West Bengal.

The Appellant No.1 in due compliance to the Summons dated 18.08.2021 appeared before the Respondent - ED on 06.09.2021 at New Delhi, however he was again issued Summons on the same day seeking his personal appearance along with the documents in New Delhi on 08.09.2021. The Appellant No.1 did not appear before the respondent however, submitted a reply on 08.09.2021 requesting for four weeks' time to collect and collate the documents sought. The

Appellant No.1 was further served with another Summons dated 10.09.2021 seeking his appearance in New Delhi on 21.09.2021. The said summons came to be challenged by the appellants by filing the W.P. (Crl.) No.1808/2021 before the High Court.

6. On 13.09.2021, the Respondent filed a Complaint against the Appellant No.2 in the Court of Chief Metropolitan Magistrate, Patiala House, New Delhi under Section 190 (1)(a) r/w Section 200 Cr.P.C. r/w Section 63(4) PMLA, alleging the commission of the offence under Section 174 of IPC for non-compliance of the Summons dated 04.08.2021 and 18.08.2021. The said Court vide the Order dated 18.09.2021 took cognizance of the impugned offence and issued Summons to the Appellant No.2 for her personal appearance on 30.09.2021.

The Appellant No.2 on 30.09.2021 appeared virtually and sought exemption from personal appearance. The Learned CMM passed an Order allowing the exemption application for that day only, and directed the Appellant No.2 to remain personally present before the Court on 12.10.2021. The said complaint filed by the respondent and the said orders passed by the CMM Court came to be challenged by the Appellant Rujira by filing the Crl. M.C No. 2442 of 2021 before the High Court.

7. As stated earlier, both the W.P. (Crl.) No.1808/2021 and Crl. M.C. No.2442/2021 came to be dismissed by the High Court vide the impugned order.

8. The Learned Senior Counsel Mr. Kapil Sibal, appearing for the Appellant No.1 - Abhishek Banerjee made lengthy submissions, the crux of which may be stated as under:-

i. Section 50 of the PMLA merely indicates the substantive power of ED to summon but does not provide the procedure for exercise of such power.

ii. The procedure relating to territoriality of investigation, or power to summon sick, or infirm/ women/ children and record their statements has not been provided under Section 50 PMLA, as it is provided under Section 160 and 161 Cr.P.C.

iii. Power without guidance for manner in which it is to be exercised could not be said to be fair, just and reasonable procedure established by law under Article 21 of the Constitution.

iv. A combined reading of Section 4(2) Cr.P.C. and Section 65 PMLA would show that the application of the Code is not barred as long as the provisions of the Code are consistent with the PMLA.

v. The Judgment of this Court in Vijay Madanlal Choudhary and Others vs. Union of India and Others1 has not dealt with the issue of procedure for summoning under Section 50 of the PMLA.

vi. The Cr.P.C. provides that the existence of the territorial nexus to the commission of a crime is a jurisdictional threshold for the exercise of powers of investigation by a police officer. However, the Respondent - ED has not demonstrated as to how it could be prejudiced by calling the Appellant No.1 to its office in Kolkata where the ED has the Zonal Office.

vii. The Department of Revenue, Ministry of Finance has issued administrative instructions consistent with Section 51 of PMLA that demarcate the specific territorial jurisdiction of various Zonal Offices of the ED. The said instructions must be strictly complied with by the ED in consonance with Article 21 of the Constitution of India.

viii. The Appellant No.1 is a permanent resident of Kolkata and being Member of Parliament has a residence in Delhi, which however does not alter his permanent residence at Kolkata.

ix. Section 91 of Cr.P.C. only deals with summons for production of documents, whereas the summons issued to the Appellant No.1 under PMLA are for personal appearance before the Respondent at New Delhi is nothing but an abuse of process of law.

9. In addition to the above submissions, Learned Senior Counsel Mr. Abhishek Manu Singhvi along with Learned Senior Counsel Mr. Gopal Sankaranarayanan appearing for the Appellant No.2 broadly made following submissions:-

i. The Appellant No.2 has been summoned to appear in New Delhi despite she being a home maker and a mother of two children. The ED has created Zonal Offices and has an office at Kolkata. Therefore, summoning the Appellant No.2 in Delhi is illegal and reeks mala fide.

ii. The Appellant No.2 is neither an accused in the predicate offence nor in the money laundering offence.

iii. Protection of woman provided under Section 160 of Cr.P.C would be applicable to the PMLA also.

iv. Section 65 of PMLA makes provisions of Cr.P.C. applicable in so far as they are not inconsistent with the provisions of PMLA with regard to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the said Act. Therefore, in the absence of any specific procedure for summoning of witnesses the Cr.P.C. will apply.

v. Article 21 of the Constitution provides that a person's life and liberty can be curtailed by State only in accordance with the procedure established by law, and therefore the procedure for Summons curtailing the right of the Appellant No.2 to life and liberty must be just and reasonable.

10. The Learned Senior Counsel, Mr. S.V. Raju also made elaborate submissions on behalf of the Respondent - ED which may be summarized as under:-

i. Section 91 Cr.P.C. neither encompasses any territorial jurisdictional limit nor does it contain any proviso for women, minors or elderly akin to Section 160 Cr.P.C. A police officer has to resort to Section 91 Cr.P.C. to mandate the provision of any document. Hence, Section 91 Cr.P.C. cannot be equated with the powers under Section 50 of PMLA.

ii. Section 160 Cr.P.C. applies to a Police Officer who is making an investigation under Chapter XII of Cr.P.C., whereas the process envisaged by Section 50 of PMLA is in the nature of an inquiry and is not an Investigation in the strict sense of the term as held in case of Vijay Madanlal (supra).

iii. ED has the power to summon any person whose attendance is considered necessary whether to give evidence or to produce any record as contemplated in Section 50 of the PMLA. A statement made under Section 50 is admissible in evidence, whereas the statement made under Section 161 is inadmissible as provided under Section 162 Cr.P.C.

iv. There are stark inconsistencies between Section 50 PMLA and Section 160 Cr.P.C., and therefore Section 160 Cr.P.C would not apply to the proceedings under Section 50 of PMLA.

v. The procedure to exercise power under Section 50 PMLA is laid down in the Rules called the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005.

vi. The Appellant No.1 had attempted to mislead the Court by suppressing the fact that he had residence in New Delhi also.

vii. The statement made under Section 50 of PMLA would not infringe any fundamental right of the person contained in Article 20(3) inasmuch as the person making the statement is not an accused at the time when the statement under Section 50 is recorded.

viii. As regards territorial jurisdiction, it is submitted in the alternative that as per the case of ED, the proceeds of crime to the tune of Rs.168 Crores were

transferred through vouchers to Delhi and Overseas, and therefore, there was adequate nexus with the territory of Delhi with the alleged offence. Even a prosecution complaint could have been filed in Delhi, which would be consistent with the law laid down by this Court in Rana Ayyub vs. Directorate of Enforcement2.

ix. The Regional Offices created in the Directorate of Enforcement are for administrative convenience and do not in any manner limit the scope of enquiry of those concerned offices or officers, if the offence of money laundering spreads over multiple States.

x. Section 5 r/w Section 4 (2) of Cr.P.C. itself contemplates that nothing contained in the Code of 1973 would apply or affect any special law in force regulating the manner of place of investigation, inquiring into or dealing with such special offences.

xi. There was no illegality in summoning the Appellant No.2 to New Delhi, as according to the ED the proceeds of crime had travel to New Delhi, which would be the area in which part of the offence has been allegedly committed.

xii. Section 50 of PMLA is gender neutral as it does not make any distinction between a man and a woman. The Court cannot carve out an exception in favour of women in Section 50, when there is none. Whenever the legislature felt the need to carve out an exception in favour of women, it has done so as evident from the proviso to Section 45 of PMLA. Therefore, there cannot be any presumption that a casus omissus exists in Section 50.

11. For the sake of convenience, let us refer to some of the provisions of Cr.P.C and PMLA, relevant for the purpose of deciding these Appeals, as also relied upon by the learned counsels for the parties. Relevant Provisions of Cr.P.C.:

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.-

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

91. Summons to produce document or other thing.-

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

160. Police officer's power to require attendance of witnesses.-

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

Relevant Provisions of PMLA:

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.-

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not-

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

51. Jurisdiction of Authorities.-

(1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely: -

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf 63.

Punishment for false information or failure to give information, etc.-

(I) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,-

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time, he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

(4) Notwithstanding anything contained in clause (c) of subsection (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code (45 of 1860).

65. Code of Criminal Procedure, 1973 to apply.-

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.

71. Act to have overriding effect. -

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

12. In exercise of the powers conferred by sub-Section (1) read with clause (a), clause (m), clause (n), clause (o), clause (pp) and clause (w) of subsection (2) of Section 73 of the PMLA, 2002, the Central Government has also framed the Rules called "the Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005". As per Rule 11 of the said Rules, the Summoning Officer, while exercising the powers under sub-section (2) and (3) of Section 50 of the PMLA, has to issue Summons in Form V, appended to the said Rules. Rule 11 of the said Rules reads as under: -

"**Rule 11:- Forms of records.-** The Summoning Officer shall, while exercising powers under sub-sections (2) and (3) of Section 50 of the Act, issue summons in Form V appended to these rules."

13. At the outset, it may be noted that as well settled by now, the provisions of PMLA are not only to investigate into the offence of money laundering but more importantly to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and the matters connected therewith and incidental thereto. As held by the Three-Judge Bench in Vijay Madanlal (supra), the PMLA is a selfcontained Code and the dispensations envisaged thereunder, must prevail in terms of Section 71 thereof, which predicates that the provisions of the Act shall have effect notwithstanding

anything inconsistent therewith contained in any other law for the time being in force, which includes provisions of the Cr.P.C.

The Section 65 of the Act predicates that the provisions of the Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of the PMLA in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act. It is pertinent to note that Section 4(2) of the Code states that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Further, Section 5 of the Code states that nothing contain in the Code shall, in absence of specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Thus, having regard to the conjoint reading of Section 71 and Section 65 of the PMLA as also Section 4(2) and Section 5 of the Code, there remains no shadow of doubt that the provisions of PMLA will have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including the provisions of the Cr.P.C.

14. Though, it was sought to be vehemently submitted by the learned counsels for the appellants that the sweep of Section 160 of Cr.P.C. would extend to summoning any person irrespective of whether that person is an accused of that offence or a mere witness, the said submission deserves to be discarded outrightly in view of the specific observations made by the three-Judge Bench in Vijay Madanlal, to the effect that the provisions of Chapter XII of the Code (under which Section 160 falls) do not apply in all respects to deal with information derived relating to the commission of money laundering offence much less investigation thereof. The precise observations made by the Court in Vijay Madanlal, while considering the issue, whether an ECIR could be equated with an FIR under the 1973 Code or not, are reproduced as under:-

"456. Considering the scheme of the 2002 Act, though the offence of money-laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof.

This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of moneylaundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money-laundering offence much less investigation thereof.

The dispensation regarding prevention of money-laundering, attachment of proceeds of crime and inquiry/investigation of offence of money laundering upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of concerned persons and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money-laundering including bail and attachment, confiscation and vesting of property being proceeds of crime.

Indeed, after arrest, the manner of dealing with such offender involved in offence of money-laundering would then be governed by the provisions of the 1973 Code - as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof."

15. In view of the above, it is abundantly clear that the dispensation regarding Prevention of Money Laundering, Attachment of Proceeds of Crime, and Inquiry/Investigation of offence of Money Laundering including issuing summons, recording of statements, calling upon persons for production of documents etc. upto filing of the Complaint in respect of offence under Section 3 of PMLA is fully governed by the provisions of the said Act itself. The jurisdictional police who is governed by the regime of Chapter XII of the Code, can not register the offence of money laundering, nor can investigate into it, in view of the special procedure prescribed under the PMLA with regard to the registration of offence and inquiry/investigation thereof, and that the special procedure must prevail in terms of Section 71 of the PMLA.

16. Apart from the fact that Section 50 is a gender neutral, as it does not make any distinction between a man and a woman, there are glaring inconsistencies between the provisions contained in Section 50 of PMLA and Section 160/161 of Cr.P.C. The Chapter XII of Cr.P.C. pertains to the "Information to the Police and their Powers to Investigate".

Section 160 which falls under Chapter XII empowers the Police Officer making an investigation under the said Chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 of the PMLA is in the nature of an inquiry against the proceeds of crime and is not "Investigation" in strict sense of the term for initiating prosecution; and the Authorities referred to in Section 48 of PMLA are not the Police Officers as held in Vijay Madanlal.

It has been specifically laid down in the said decision that the statements recorded by the Authorities under Section 50 of PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the Judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a Police Officer in the course of an investigation under Chapter XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Section 160/161 Cr.P.C, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof.

17. So far as the procedure to be followed by the Summoning Officer while exercising the powers under sub-section (2) and (3) of Section 50 of the PMLA is concerned, it is pertinent to note that Rule 11 of the said Rules 2005, requires the Summoning Officer to follow the procedure as prescribed therein, i.e., to issue Summons in Form V appended to the said Rules.

The said prescribed Form V requires Summoning Officer to mention not only the Name, Designation and Address of the Summoning Officer but also the details of the persons summoned as also the documents sought therein. The foot note of Form V also mentions that the proceedings shall be deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of the IPC, and if the person summoned fails to give evidence as mentioned in the Schedule, he would be liable to penal proceedings under the Act.

Thus, there being specific procedure prescribed under the Statutory Rules of 2005 for summoning the person under sub-sections (2) and (3) of Section 50 of the Act, the same would prevail over any other procedure prescribed under the Code, particularly the procedure contemplated in Section 160/161, as also the procedure for production of documents contemplated in Section 91 of the Code, in view of the overriding effect given to the PMLA over the other Acts including the Cr.P.C. under Section 71 r/w Section 65 of the PMLA.

18. The submission made on behalf of Learned Counsels for the Appellants that the conferment of power upon the Authority under Section 50 of PMLA excluding the procedural safeguards would be contrary to the standard of "procedure established by law" under Article 21 of the Constitution, is also thoroughly misconceived. The validity of Section 50 was sought to be challenged in Vijay Madanlal on the ground of being violative of Article 20(3) and Article 21 of the Constitution and the Court upholding the validity observed as under:-

"425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person.

We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act....

426 to 430....

431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such.

The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority.

At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money -laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee.

Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution.

However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20 (3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence."

19. The above ratio laid down in Vijay Madanlal clinches the contentions raised by the learned counsels for the appellants with regard to the provisions of Section 50 being violative of Article 20(3) or Article 21 of the Constitution, and we need not further elaborate the same, nor do we need to deal with the decisions of this Court on the said issue which have already been dealt with in Vijay Madanlal.

Suffice it to say that Section 50 enables the authorized Authority to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of the proceedings under the Act, and that the persons so summoned is bound to attend in person or through authorized agent, and to state truth upon the subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of subsection (3) of Section 50. At the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution, the same being not "testimonial compulsion".

At the stage of recording of statement of a person for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime, is not an investigation for prosecution as such. The summons can be issued even to witnesses in the inquiry so conducted by the authorized officers. The

consequences of Article 20(3) of the Constitution or Section 25 of the Evidence Act may come into play only if the involvement of such person (noticee) is revealed and his or her statements is recorded after a formal arrest by the ED official. In our opinion, the learned counsels for the appellants have sought to reagitate the issues which have already been settled in Vijay Madanlal.

20. Much reliance has been placed by the Learned Counsels for the Appellants on the Annual Report of Ministry of Finance, GOI, which according to them has stated about the Organizational Structure of Directorate of Enforcement, demarcating the territorial jurisdiction of various Zonal Office of the ED. According to them, such instructions by the Department of Revenue are for exercise of powers of investigation by the ED as mandated by Section 51 PMLA and therefore must be strictly complied with. The said submission also being fallacious cannot be accepted.

Apart from the fact that the document relied upon is an Annual Report by the Ministry of Finance, showing the Organizational Structure of the ED, the same could not be construed as the directions issued by the Central Government for the purpose of exercise of powers and performance of the functions by the Authorities as contemplated in Section 51 of the said Act. As stated in the said Report, the said Offices of the Directorate of Enforcement all over India are set up to ensure that the Money Laundering offences are investigated in an effective manner and they act as deterrence for the potential offenders of the Money Launderers. Pertinently, the Headquarters Investigation Unit (HIU) has not been restricted to any territorial jurisdiction in the said Organizational Structure.

The present ECIR bearing ECIR/17/HIU/2020 is recorded at the HIU. Further, as per the specific case of the ED in the complaint, filed against the accused persons before the Special Court, PMLA, Rouse Avenue Courts, New Delhi, Rs.168 Crores were allegedly received by the Inspector Ashok Kumar Mishra from the co-accused Anup Majee to be delivered to his political bosses, and the said Rs. 168 Crores were transferred through vouchers to Delhi and Overseas, which clearly established adequate nexus of the offence and the offenders with the territory of Delhi.

We therefore do not find any illegality in the summons issued by the respondent-ED summoning the Appellants to its Office at Delhi, which also has the territorial jurisdiction, a part of the offence having been allegedly committed by the accused persons as alleged in the complaint. It is also not disputed that the Appellant No.1 being a Member of Parliament has also an official residence at Delhi.

21. In that view of the matter, we do not find any substance in the challenge made by the Appellants to the Summons issued to the Appellants under Section 50 of

the PMLA. As contemplated in the sub-section (3) of Section 50, all the persons summoned are bound to attend in person or through authorized agents as the officer may direct and are bound to state the truth upon any subject respecting which they are examined or make statements, and to produce the documents as may be required.

As per sub-section (4) thereof every proceeding under sub-sections (2) and (3) is deemed to be a Judicial proceeding within the meaning of Section 193 and Section 228 of the IPC. As per sub-section (4) of Section 63, a person who intentionally disobeys any direction issued under Section 50 is liable to be proceeded against under Section 174 of the IPC.

22. As transpiring from the Status Report submitted by the Deputy Director, Directorate of Enforcement, New Delhi, pursuant to the Order passed by this Court on 18.07.2024, the Appellant No.2 - Rujira Banerjee had not appeared and not produced the documents as required vide the Summons dated 04.08.2021 and 18.08.2021. The ED therefore had filed the Complaint in the Court of Chief Judicial Magistrate, Patiala House Courts, New Delhi against her under Section 63 PMLA r/w Section 174 IPC.

It is also pertinent to note that though the Appellant No.2 by filing the Crl. M.C. No. 2442 of 2021 before the High Court had challenged the Order dated 18.09.2021 passed by the said Court taking cognizance of the said Complaint and the Order dated 30.09.2021 summoning her before the Court, she has not even bothered to produce the said Orders before this Court in the instant Appeals.

Since the said Complaint is pending before the concerned Court of Chief Judicial Magistrate, we do not express any opinion on the merits of the said Complaint. Suffice it to say that we do not find any illegality in the said orders passed by the concerned court and that the said complaint shall be proceeded further by the said Court in accordance with law.

23. For the reasons stated above, both the Appeals being devoid of merits are dismissed.

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

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

New Delhi

September 09, 2024

1 (2022) SCC OnLine SC 929

2 (2023) 4 SCC 357

IN THE SUPREME COURT OF INDIA

Sk. Golam Lalchand
Vs.
Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes & Ors.

Civil Appeal No. 4177 of 2024

HEADNOTE – A co-owner whose share in the joint property remained undetermined cannot transfer the entire suit property to another person without its partition being completed by metes and bounds. When there exist various co-owners in the property, then the subsequent purchaser of the suit property cannot acquire right, title and interest in the whole of the suit property solely based on the sale deed executed by one co-owner/transferor.

JUDGMENT

Pankaj Mithal, J.

1. Heard Shri Rauf Rahim, learned senior counsel for the appellant and Shri Pijush K. Roy, learned senior counsel for the respondent No. 1.

2. The dispute in this Civil Appeal is about the property measuring more or less 6 Cottahs 1 Chittack and 30 sq. ft. along with 17 rooms (about 4395 sq. ft. which comprises of tile sheds/huts) situate at 100/3 Carry Road, Howrah.

3. The plaintiff-respondent Nandu Lal claims that he had acquired rights in the aforesaid property through his father late Salik Ram along with his other brothers and that Brij Mohan, his cousin, the son of his uncle late Sita Ram, had no exclusive right to sell the property in favour of anyone much less to one of the tenants S.K. Golam Lalchand, the defendant-appellant.

4. The Title Suit No.212/2006 filed by the plaintiffrespondent Nandu Lal was dismissed by the court of first instance as he failed to prove his possession but in appeal the decree was reversed and the suit was decreed disbelieving the family settlement and holding that there was no partition of the property. The judgment and order of the First Appellate Court was affirmed by the High Court in Second Appeal.

5. Aggrieved by the judgment and order of the First Appellate Court and its affirmation by the High Court vide judgment and order dated 06.07.2021, the defendant-appellant has preferred this appeal.

6. The facts in brief are that the suit property was admittedly purchased by the two brothers namely, late Sita Ram and late Salik Ram in 1959 from one Sahdori Dasi and both of them had equal rights in the said property.

7. It is alleged that one of the brothers late Salik Ram gifted his share in the suit property to his brother late Sita Ram who allegedly became the absolute owner of the entire property. The aforesaid late Sita Ram died intestate in 1975 leaving behind his son Brij Mohan and three daughters who appear to have relinquished their rights in the suit property in favour of their brother Brij Mohan. It is also alleged that the suit property under the family settlement was settled in favour of Brij Mohan.

8. On the other hand, plaintiff-respondent Nandu Lal alleges that his father late Salik Ram made no gift of his share in the suit property in favour of late Sita Ram and that there is no family settlement as alleged by the other side. Therefore, Brij Mohan, the son of late Sita Ram, had no right to transfer the whole of the property in favour of one of the tenants, defendant-appellant S.K. Golam Lalchand and the sale deed in this regard dated 19.05.2006 is void.

9. Upon the aforesaid sale of the entire suit property by Brij Mohan to defendant-appellant S.K. Golam Lalchand, the plaintiff-respondent Nandu Lal filed Title Suit No.212/2006 for declaration and permanent injunction claiming that the defendant-appellant S.K. Golam Lalchand could not have acquired any right, title and interest in the suit property by virtue of any sale deed, if any, executed by Brij Mohan and that he has no right to dispossess other tenants from the suit property and, therefore, he, his men and agents be restrained from taking forcible possession of any tenanted portion and from causing any disturbance in the possession of the plaintiff-respondent Nandu Lal.

10. The plaintiff-respondent Nandu Lal alleged that the suit property was admittedly the joint property of both late Sita Ram and his father late Salik Ram. Late Salik Ram never made any gift of his share in the suit property in favour of late Sita Ram. There was no family settlement settling the suit property in favour of Brij Mohan, son of late Sita Ram. Since the property has not been partitioned, Brij Mohan could not have sold the same in entirety.

11. The suit was contested by the defendant-appellant S.K. Golam Lalchand as well as Brij Mohan on the allegation that late Salik Ram, sometime in 1960, gifted his share in the suit property to late Sita Ram. Thus, late Sita Ram became the absolute owner. Upon his death in 1975, the property devolved upon his son Brij Mohan and three daughters who relinquished their rights in favour of Brij Mohan, thus, making Brij Mohan the absolute owner of the entire property.

The defendant-appellant S.K. Golam Lalchand by filing a separate written statement stated that he is a bona fide purchaser in good faith of the whole property vide registered sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, in unequivocal terms, states the manner in which Brij Mohan had acquired the property. Therefore, the suit of the plaintiff-respondent Nandu Lal is misconceived and liable to be dismissed.

12. On the pleadings and submissions of the parties, the moot question which has arisen before us in the appeal is whether Brij Mohan, son of late Sita Ram, alone was competent to transfer the entire suit property by way of sale deed dated 19.05.2006 in favour of defendant-appellant S.K. Golam Lalchand.

13. The plaintiff-respondent Nandu Lal, in order to substantiate his case, apart from other documents and oral evidence, brought on record the original deed of purchase of the property of the year 1959 Exh.1 and he himself appeared as a witness PW-1 to prove his case. The said original sale deed is undoubtedly in the joint name of late Salik Ram and late Sita Ram, both of whom acquired equal rights in the purchased property. This position is otherwise also admitted to the parties.

14. The defendant-appellant S.K. Golam Lalchand or Brij Mohan has not led any evidence to prove the gifting of the share by late Salik Ram in favour of late Sita Ram. No gift deed in this regard has been produced in evidence. Therefore, as a natural consequence, both the brothers late Salik Ram and late Sita Ram continued to be the joint owners of the property.

15. On the death of Sita Ram, his share in the suit property naturally devolved upon his son Brij Mohan and three daughters. No evidence was brought on record to establish that the daughters have relinquished/gifted their rights in the suit property in favour of their brother Brij Mohan. In this way, Brij Mohan had not acquired the rights in the property possessed by his sisters.

16. Even the claim of the defendant-appellant S.K. Golam Lalchand or Brij Mohan to the suit property on the basis of the family settlement has not been proved. The settlement has not been adduced in evidence. Therefore, by no stretch of imagination, it can be said that Brij Mohan had acquired exclusive right in the entire property acquired and possessed by late Salik Ram and late Sita Ram by virtue of the sale deed 1959 Exh.1.

17. Even the Trial Court which had dismissed the suit of the plaintiff-respondent Nandu Lal has categorically recorded that the suit property was never partitioned as the defendant-appellant S.K. Golam Lalchand had not produced any cogent material on record to prove the partition meaning thereby the property continued to be a joint property.

18. The First Appellate Court also recorded a finding that it is beyond pale of controversy that the suit property was equally owned by late Salik Ram and late Sita Ram and that the property had always remained undivided and joint between the co-owners. The family settlement on the basis of which partition or settlement is being claimed was never produced in evidence and proved. The First Appellate Court further recorded that the sisters of Brij Mohan have not gifted their share in the property or have relinquished their rights in it as no such documentary evidence was brought on record.

19. The above findings of the Trial Court and that of the First Appellate Court have not been disturbed by the High Court rather the Second Appellate Court has accepted the same which clearly demonstrates that the story of family settlement, as set up by the defendant-appellant S.K. Golam Lalchand and Brij Mohan was totally disbelieved by all the three courts. Moreover, it had come to the forefront that the property had remained the joint property of late Salik Ram and late Sita Ram as the gifting of share by late Salik Ram in favour of late Sita Ram was not proved. The gifting and the relinquishment of shares by the three daughters/sisters in favour of Brij Mohan also could not be established.

20. In this view of the matter, the entire property purchased by the two brothers late Salik Ram and late Sita Ram in the year 1959 vide Exh.1 continued to be the joint property in which both of them had equal rights. On their death, the same devolved upon their respective heirs and legal representatives including Brij Mohan, his three sisters on one side and plaintiff-respondent Nandu Lal, his three brothers and five sisters on the other side. Thus, Brij Mohan alone was not competent to execute a sale of the entire property in favour of the defendant-appellant S.K. Golam Lalchand, that too without its partition by metes and bounds.

21. Since the suit property has many co-owners including the plaintiff-respondent Nandu Lal and Brij Mohan, the defendant-appellant S.K. Golam Lalchand could not have acquired right, title and interest in the whole of the suit property solely on the basis of the sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, if at all, in accordance with Section 44 of the Transfer of Property Act, 1882 may be a valid document to the extent of the share of Brij Mohan in the property and defendantappellant S.K. Golam Lalchand is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against Brij Mohan.

22. The authorities cited on behalf of the defendant-appellant S.K. Golam Lalchand are only to the effect that there is no illegality on his part in purchasing the share of Brij Mohan in the suit property and to that effect the sale in his favour is valid. There are no two opinions on the above aspect as mentioned

earlier but those authorities do not help him in any way to enable us to reverse the decree passed by the First Appellate Court as affirmed by the High Court.

23. A faint effort was made in the end to contend that the plaintiff-respondent Nandu Lal had not asked for any relief of cancellation of the sale deed by which the property was purchased by the defendant-appellant S.K. Golam Lalchand and, therefore, is not entitle to any relief in this suit. The argument has been noted only to be rejected for the simple reason that Section 31 of the Specific Relief Act, 1963 uses the word 'may' for getting declared the instrument as void which is not imperative in every case, more particularly when the person is not a party to such an instrument.

24. The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.

25. The point for determination formulated in paragraph 12 above is accordingly answered and it is held that Brij Mohan alone was not competent to transfer the entire property without getting his share determined and demarcated so as to bind the other co-owners. Accordingly, the defendant-appellant S.K. Golam Lalchand has rightly been restrained by the decree of injunction in acting in derogation of the propriety rights of the co-owners until and unless the partition takes place.

26. In the above facts and circumstances, we do not find any merit in this appeal and the same is dismissed upholding the judgments and orders of the High Court dated 06.07.2021 and of the First Appellate Court dated 07.04.2018.

27. In the facts and circumstances of the case, there shall be no orders as to costs.

.....J. (Sudhanshu Dhulia)

.....J. (Pankaj Mithal)

New Delhi;

September 10, 2024

IN THE SUPREME COURT OF INDIA

S Vijikumari
Vs.
Mowneshwarachari C

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 5342 of 2023]

HEADNOTE – Alteration/modification/revocation of an order passed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 can be sought through Section 25(2) only on the basis of change of circumstances which took place subsequent to the passing of the order.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. Being aggrieved by the order dated 06.04.2023 passed in Criminal Revision Petition No.674/2022 by the High Court of Karnataka at Bengaluru, the appellant who is the wife of the respondent has preferred this appeal.

3. Briefly stated, the facts are that the appellant-wife had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act"). The said petition, i.e., Criminal Miscellaneous No.6/2014 was allowed by the learned Magistrate by order dated 23.02.2015, granting Rs.12,000/- (Rupees Twelve Thousand only) per month as maintenance and Rs.1,00,000/- (Rupees One Lakh only) towards compensation.

At this stage itself, it may be mentioned that the respondent-husband did not let in any evidence in the said proceeding. Being aggrieved by the order of the learned Magistrate, the respondent filed an appeal under Section 29 of the Act which was dismissed by the Appellate Court on the ground of delay. The aforesaid orders attained finality as they were not assailed by the respondent herein.

4. Thereafter, the respondent filed an application under Section 25 of the Act before the learned Magistrate. The said application was dismissed. Being aggrieved, the respondent filed Criminal Appeal No.757/2020 under Section 29 of the Act before the Appellate Court. The said appeal was allowed and the matter was remanded to the learned Magistrate with a direction to consider the application filed by the respondent under Section 25 of the Act, by giving an

opportunity to both the parties to adduce their evidence and to dispose of the same in accordance with law.

5. Being aggrieved by the said order, the appellant herein filed Criminal Revision Petition No.674/2022 before the High Court, which, by the impugned order dated 06.04.2023 dismissed the same with a direction to the learned Magistrate to consider the application filed by the respondent under Section 25 of the Act, without being influenced by any observation made by the Appellate Court while disposing of Criminal Appeal No.757/2020. Being aggrieved by the aforesaid orders, the appellantwife has filed this appeal.

6. We have heard learned counsel for the respective parties at length.

7. Learned counsel for the appellant, during the course of her submissions, drew our attention to the prayers sought for by the respondent in the application filed under Section 25 of the Act, in light of sub-section (2) of the said Section. She submitted that the application filed under the said provision could be by an aggrieved person seeking alteration, modification or revocation of any order made under the Act and for reasons to be recorded in writing, the learned Magistrate can pass such an order appropriate to the facts of the case.

But in the instant case, the respondent is seeking setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and with an additional prayer for seeking return of the entire amount of maintenance paid by the respondent to the appellant on the ground of fraud. Learned counsel for the appellant submitted that such prayers are not maintainable. She contended that the aforesaid application is not for alteration, modification or revocation of an order made under the Act; it is in substance for setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014; that such an application is not maintainable at all.

8. Learned counsel further submitted that the High Court as well as the Appellate Court were not right in remanding the matter to the learned Magistrate to consider the application filed by the respondent herein under sub-section (2) of Section 25 of the Act. She therefore submitted that the impugned orders may be set aside and the application filed by the respondent may be dismissed and consequently, the earlier order passed on 23.02.2015 in Criminal Miscellaneous No.6/2014 may be given effect to while sustaining the order dated 04.03.2020, by which the application under Section 25 of the Act was dismissed.

9. Per contra, learned counsel for the respondent submitted that the reason as to why the application under Section 25 of the Act was filed was owing to the fact that the appellant herein had misrepresented the fact that she was in need of

maintenance whereas she is an employed person and not at all in need of maintenance.

The fact that she had said that she was unemployed goes to the root of the matter and hence, despite the order of the learned Magistrate awarding Rs.12,000/- (Rupees Twelve Thousand Only) per month as maintenance having attained finality, an application under Section 25 of the Act was filed seeking revocation of the said order and the Appellate Court as well as the High Court were justified in directing the learned Magistrate to consider the said application.

10. We have considered the arguments advanced at the Bar in light of the facts of this case and Section 25 of the Act. For immediate reference, Section 25 of the Act is extracted as under:

"25. Duration and alteration of orders (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge. (2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate."

On a reading of the same, it is evident that an aggrieved person or a respondent as defined under the Act can seek for alteration, modification or revocation of an order made under the provisions of the Act if there is a change in the circumstances as per sub-section (2) of Section 25 of the Act. This would indicate that after an order has been made, inter alia, under Section 12 of the Act, such as in the instant case granting Rs.12,000/- as maintenance per month, if there is any change in the circumstance, the same could be a ground for seeking alteration, modification or revocation of such an order.

Such circumstances could be illustratively stated in the context of the present case as the wife on divorce having been given an alimony or the wife earning an amount higher than the respondent-husband and, therefore, not in need of maintenance or such other circumstances. The said change in the circumstance must occur only after an initial order is made under Section 12 of the Act and cannot relate to a period prior to the passing of an order under Section 12 of the Act.

11. The Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship.

12. Section 25(2) of the Act contemplates an eventuality where an order passed under the Act can be altered, modified or revoked. Section 25(2) of the Act provides that the aggrieved person or the respondent, as defined under the Act, may approach the Magistrate by filing an application for alteration, modification or revocation of "any order" made under the Act. Thus, the scope of Section 25(2) of the Act is broad enough to deal with all nature of orders passed under the Act, which may include orders of maintenance, residence, protection, etc.

If any such application is filed before the Magistrate by any of the two parties, i.e., the aggrieved person or the respondent, then the Magistrate may, for reasons to be recorded in writing, pass an order as he may deem appropriate. Thus, an order passed under the Act remains in force till the time that order is either set aside in an appeal under Section 29 of the Act, or altered/modified/revoked in terms of Section 25(2) of the Act by the Magistrate.

13. However, the Magistrate while exercising his discretion under Section 25(2) of the Act has to be satisfied that a change in the circumstances has occurred, requiring to pass an order of alteration, modification or revocation. The phrase "a change in the circumstances" has not been defined under the Act. The said phrase was present under Section 489 of the now repealed Code of Criminal Procedure, 1898, as well as under Section 127(1) of the Code of Criminal Procedure, 1973 (CrPC, 1973), now repealed, as is also found under Section 146(1) of the present Bharatiya Nagarik Suraksha Sanhita, 2023 (BNNS, 2023), but the legislature (Parliament) has intentionally not provided a definition for the same in the repealed Codes or the present Sanhita.

Thus, the Magistrate has to adjudge the change in the circumstances based on the material put forth by the parties in a case and having regard to the circumstances of the said case. A change in the circumstances under the Act may be of either a pecuniary nature, such as a change in the income of the respondent or an aggrieved person or it could be a change in other circumstances of the party paying or receiving the allowance, which would justify an increase or decrease of the maintenance amount ordered by the Magistrate to pay or any other necessary change in the relief granted by the Magistrate including a revocation of the earlier order.

The phrasing of the provision is wide enough to cover factors like the cost of living, income of the parties, etc. Further, a change in the circumstances need not just be of the respondent but also of the aggrieved person. For example, a change in the financial circumstances of the husband may be a vital criterion for alteration of maintenance but may also include other circumstantial changes in the husband or wife's life which may have taken place since the time maintenance was first ordered.

14. However, for the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act. Alexander Sambath Abner vs. Miron Lede, 2009 SCC OnLine Mad 2851 is also to the same effect. Thus, an order for alteration, modification or revocation operates prospectively and not retrospectively.

Though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction - to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case.

15. The position is analogous to Sections 125 and 127 of the CrPC, 1973, wherein the legislature under Section 125(2) of the CrPC, 1973 had given power to the Magistrate to grant maintenance from the date of the application, but did not give any such power under Section 127 of the CrPC, 1973. Therefore, under the Act, the order of alteration or modification or revocation could operate from the date of the said application being filed or as ordered by the Magistrate under Section 25(2) of the Act. Thus, the applicant cannot seek its retrospective applicability, so as to seek a refund of the amount already paid as per the original order.

16. The respondent herein has however sought the following prayers in the application filed under Section 25 of the Act, which read as under:

"WHEREFORE, the petitioner respectfully prays that this Hon'ble Court may be pleased to pass the following orders:

a) Set aside the order dated 23-02-2015 passed in Crl. Mis. 6/2014,

b) In pursuant of that direct the respondent to pay back the entire amount received by her by playing fraud on the court and on petitioner.

c) Direct the respondent to pay the cost of this litigation,

d) Grant such other relief or reliefs on this Hon'ble Court deem fit and proper in the circumstances of the case to meet the ends of justice."

What the respondent is seeking is in fact a setting aside of the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and return of the amount paid by him to the appellant herein in terms of the said order by way of a restitution of the status quo ante.

17. Learned counsel for the appellant rightly contended that the said order has in fact merged with the Appellate Court's order in the appeal filed by the respondent which was dismissed on the ground of delay and there being no further challenge to the said order. In fact, the order dated 23.02.2015 has attained finality. Therefore, there cannot be a setting aside of the order dated 23.02.2015 for the period prior to such an application for revocation being made.

Unless there is a change in the circumstance requiring alteration, modification or revocation of the earlier order owing to a change occurring subsequent to the order being passed, the application is not maintainable. Thus, the exercise of jurisdiction under sub-section (2) of Section 25 of the Act cannot be for setting aside of an earlier order merely because the respondent seeks setting aside of that order, particularly when the said order has attained finality by its merger with an appellate order as in the instant case unless a case for its revocation is made out.

Secondly, the prayers sought for by the respondent herein are for refund of the entire amount of maintenance that was paid prior to the application under sub-section (2) of Section 25 of the Act being filed and the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 being in fact revoked. The revocation of an order, inter alia, under Section 12 of the Act sought by a party cannot relate to a period prior to such an order being passed.

We find that in the instant case the second prayer was not at all maintainable inasmuch as we have already observed that any alteration, modification or revocation of an order passed under Section 12 of the Act owing to a change in circumstances could only be for a period ex post facto, i.e., post the period of an order being made in a petition under Section 12 of the Act and not to a period prior thereto. Thus, such an application for alteration, modification or revocation filed under sub-section (2) of Section 25 of the Act cannot relate to any period prior to the order being passed, inter alia, under Section 12 of the Act.

18. In the circumstances, we find that the prayers sought for by the respondent herein were not at all maintainable under sub-section (2) of Section 25 of the Act as they related to the period prior to 23.02.2015 when the original order was passed. In fact, the prayers sought for by the respondent are totally contrary to the spirit of sub-section (2) of Section 25 of the Act.

While making such a prayer, the respondent could not have sought in substance for setting aside of the original order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 and seeking refund of the maintenance amount which was paid to the appellant pursuant to the said order.

The respondent could not have also sought the aforesaid prayers: firstly, because he did not participate in the proceedings before the learned Magistrate; secondly,

respondent belatedly filed an appeal before the Appellate Court which was dismissed and thirdly, when that appeal was dismissed on the ground of delay, he did not choose to assail the said order before a higher forum.

19. In the circumstances, the orders of the High Court as well as the first Appellate Court are set aside and the application filed by the respondent is dismissed. However, liberty is reserved to the respondent herein to file a fresh application under Section 25 of the Act, if so advised.

If such an application is filed by the respondent, the same shall be considered by the learned Magistrate having regard to the observations made above and on its own merits, which can be relatable to the period subsequent to the date of making the earlier order dated 23.02.2015 in the instant case. Any revocation of the order dated 23.02.2015 could be with effect from the date of the application, if any, to be made by the respondent herein or as ordered by the learned Magistrate.

20. This appeal is allowed and disposed of in the aforesaid terms.

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

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

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

September 10, 2024

IN THE SUPREME COURT OF INDIA

Beena and Ors.
Vs.
Charan Das (D) Thr. Lrs. & Ors.

[Civil Appeal No. 3190 of 2014]

HEADNOTE – No transfer of title is possible in the absence of a registered instrument.

JUDGMENT

Pankaj Mithal, J.

1. What was once a dispute between landlord and tenant for the eviction of the tenant from the premises in dispute ended into a consent order way back in the year 1979. Unfortunately, the said consent order gave rise to a bitter civil dispute between the parties, which has now landed in this Court after the suit was dismissed by the court of first instance which judgment and order was upheld by the First Appellate Court. However, the decree so passed was reversed by the High Court in Second Appeal. This is how the parties are now before this Court.

2. Late Bhawani Parshad alias Bhagati Parshad (now represented by his legal representatives) was the landlord and late Charan Dass (now represented by his legal representatives) was a tenant in the premises consisting of a house of two rooms/godown comprised in Khasra No.1383 situate in Mohalla Charpat, Church Road, Chamba Town.

3. The landlord applied under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 for the eviction of the tenant, late Charan Dass, on the ground that the house in question was in a dilapidated condition which required demolition and reconstruction. The suit was initially contested by the tenant wherein issues were framed, out of which two issues were relevant and important; as to whether the house in dispute is in a dilapidated condition, unfit for habitation and requires demolition and reconstruction; and whether the landlord requires the said house for his bona fide personal use.

3A. In the said suit on one of the dates fixed i.e. 05.09.1979, the landlord appeared in court and stated that there has been a settlement between the parties and the tenant has accepted to deposit a sum of Rs.12,500/- before 15.12.1979 in the court. In the event the amount is so deposited on or before the aforesaid date, the application of the landlord shall be deemed to be dismissed; otherwise, on failing to do so, the landlord's application would be deemed to be allowed. The tenant also appeared before the court on the said date and accepted the settlement.

He stated that in case he fails to deposit the aforesaid amount on or before the date fixed, he shall vacate the house/godown, and in the event of him depositing the same, the application of the landlord shall be deemed to be dismissed.

4. In terms of the aforesaid settlement, as per the statement of both the landlord and tenant, the Court of Rent Controller, on the very same day, i.e. 05.09.1979 passed an order allowing the application of the landlord conditionally; that if the tenant fails to deposit the aforesaid sum of Rs.12,500/- in court in the name of the landlord on or before 15.12.1979, the application would be deemed to be allowed, and the tenant would deliver vacant possession of the house immediately, otherwise, if the tenant deposits the amount within the stipulated period, the application of the landlord would be deemed to be dismissed.

5. The tenant, in pursuance of the above consent order dated 05.09.1979, deposited a sum of Rs.12,500/- in the Chamba Treasury on 06.09.1979, i.e., on the very next day. Thus, the application of the landlord under Section 14 of the Act came to be dismissed in terms of the consent order.

6. The landlord, however, challenged the aforesaid order by means of Civil Revision No.168/79 before the High Court which was dismissed on 07.12.1984, observing that in case the landlord was aggrieved by the dismissal of his application under Section 14 of the Act, the appropriate remedy available to him was to file an appeal under Section 21(1)(b) of the Act.

7. It has come on record that the Special Leave Petition of the landlord against the above order of the High Court also stood dismissed, though, nothing in detail to that effect has been brought on record. In short, the consent order dated 05.09.1979 between the landlord and the tenant became final and conclusive.

8. Despite the fact that there was no eviction order against the tenant or any positive direction in his favour, he moved an application for the execution of the consent order, which came to be allowed by the Rent Controller on 28.08.1989, wherein it was directed that the name of the tenant be entered as owner in possession of the disputed premises by making corrections in the relevant records. Aggrieved by the aforesaid order of the executing court, the landlord preferred a civil revision, contending that there could have been no execution of the consent order at the behest of the tenant, as his application for eviction of the tenant stood dismissed and that the executing court could not have ordered for recording the name of the tenant as owner in possession of the disputed premises.

The said civil revision was allowed, holding that in the meantime, the building had collapsed and nothing remained on the spot which could be recorded in the name of the tenant. The court, therefore, in the end held that the remedy of the

tenant was not by way of an execution petition and the order of the Rent Controller dated 28.08.1989 was not sustainable in law.

9. After having lost in the execution proceedings in getting his name recorded as the owner in possession of the disputed premises on the basis of the consent order dated 05.09.1979, the tenant filed a suit for permanent mandatory injunction, for possession and recovery of Rs.2,000/- arraying the landlord as the defendant. The said Civil Suit No.3 of 1990 was dismissed with cost by the court of first instance vide judgment and order dated 16.07.1994. The appeal of the tenant also met with the same fate.

However, in Second Appeal before the High Court, the judgment, order and decree passed by the court of first instance as affirmed by the First Appellate Court was reversed and the suit was decreed holding that under the consent order, the tenant had become the owner of the suit premises and since he became the owner, and had been dispossessed by the landlord, he was entitled to a decree of possession. Accordingly, the suit was decreed in terms of the prayer made by the tenant.

10. It may be pertinent to note that the building existing on the tenanted premises was alleged to be in a dilapidated condition when the application under Section 14 of the Act was filed by the landlord in the year 1977 and that it had collapsed after the consent order was passed during the pendency of the revision arising from the order of the executing court. It is admitted to the parties that after the collapse of the building and its vacation by the tenant, altogether a new building has been constructed on the premises in question by the landlord.

11. We have heard Shri Rajesh Gupta, learned counsel for the appellants-landlord and Shri Rajesh Srivastava, learned counsel for the respondents-tenants.

12. On the submission of the counsel for the parties, the moot question which arises for our consideration is as to whether under the consent order dated 05.09.1979 passed on an application under Section 14 of the Act moved by the landlord, the tenant can claim himself to be the owner of the property as he has deposited the stipulated amount of Rs.12,500/-.

13. The answer to the above issue depends upon the interpretation of the consent order vis-à-vis the statements of the landlord and tenant recorded by the Rent Controller in passing the aforesaid consent order.

14. There is no dispute to the fact that there existed a relationship of landlord and tenant between the parties and that the landlord had filed an application for the eviction of the tenant under Section 14 of the Act on the ground of dilapidated condition and on bona fide need.

15. In the said proceedings on 05.09.1979, the statement of the landlord was recorded which is reproduced hereinbelow:

"Statement of Shri Bhagati Parshad S/o Sh. Duni Chand Resident of Chamba - applicant with counsel on Solemn affirmation.

Stated that I have settled with respondent. As per the settlement respondent will pay me Rs.12,500/- before 15.12.1979 as against the value of Godown and house in dispute. The manner of making such payment shall only be one and that is the amount shall have to be deposited in Court in my name. As per this settlement, my application shall be deemed to be allowed in-case the respondent fails to deposit the said amount on or before 15.12.1979; should the said amount be so deposited my application shall be deemed to be dismissed."

16. The said statement and the settlement were accepted by the tenant on the same date who got his statement recorded as under:

"Statement of Shri Charan Dass son of Shri Hans Ram - Respondent with counsel on Solemn Affirmation.

Stated that I the above statement of applicant has been heard and, accepted. In case I fail to deposit Rs.12,500/- before 15.12.1979 I shall vacate the Godown and house in dispute, and incase I deposit within time, applicant's application shall be deemed to be dismissed."

17. A plain reading of the aforesaid two statements clearly demonstrates that under the settlement, the tenant had agreed to pay a sum of Rs.12,500/-, to be deposited in court in the name of the landlord on or before 15.12.1979, treating it to be the value of the house/godown.

It was further agreed that if the amount is deposited, the application of the landlord for eviction would stand dismissed, and in case the tenant fails to make the deposit, as agreed, the application of the landlord for eviction would stand allowed. This is also clearly implicit from the statement of the tenant who accepted the settlement and stated that in case he fails to deposit the stipulated amount on or before 15.12.1979, he shall vacate the house/godown and in case he deposits the sum within time, the application of the landlord shall be deemed to be dismissed.

18. The aforesaid two statements nowhere provide that the amount liable to be deposited by the tenant was a sale consideration of the property, though, it may have been stated that it is equivalent to the value of the property or that the tenant, or on deposit of such an amount, he would become the owner of the property. Therefore, on the plain reading of the above statements, it cannot be said by any stretch of imagination that there was any settlement of transfer of the

property on the above sale consideration. It may also be noted that there is no document witnessing the transfer of the property in pursuance of the above statements or the consent order.

19. The Rent Controller in passing the consent order on 05.09.1979 recorded that the dispute between the landlord and tenant had been compromised. According to the terms of the compromise contained in the statements of the parties, on the payment of Rs.12,500/- by the tenant as the price of the house, he was to become the owner in possession. This narration of fact that the tenant would become the owner in possession in the order of the Rent Controller is obviously against the record, i.e., the statement of the parties, wherein it has nowhere been stipulated that the tenant, on deposit would become the owner of the property.

However, in the end, the Rent Controller himself records that on the price of Rs.12,500/- being deposited on or before the 15.12.1979, the application of the landlord would be deemed to have been dismissed and on failure to deposit, it shall deem to have been allowed. It means the aforesaid consent order was only with regard to dismissing and allowing of the application of the landlord in the eventuality of depositing of the amount and non-depositing of the amount by the tenant.

The settlement recorded in terms of the statements of the parties and even the consent order does not in any way provide or confer right of ownership upon the tenant, nor it could have been done in a proceeding for eviction of the tenant. No document, much less a registered instrument, was executed between the parties transferring the title of the suit premises. In its absence obviously no transfer of title can pass from one party to another. In such a proceeding, the only option available to the Rent Controller was either to order eviction or to dismiss the application for eviction as has been done by him.

20. In view of the aforesaid facts and circumstances, we are crystal clear in our mind that the High Court had patently erred in interpreting the consent order and in reversing the well-considered judgments and orders of the court of first instance and the First Appellate Court, dismissing the suit of the tenant.

21. Accordingly, the judgment and order of the High Court dated 20.04.2011 is set aside and the appeal is allowed with costs.

.....J. (Pankaj Mithal)

.....J. (R. Mahadevan)

New Delhi;

September 11, 2024

IN THE SUPREME COURT OF INDIA

Ranjit Singh & Anr.
Vs.
State of Uttarakhand & Ors.

[Civil Appeal No. 2394/2023]
[Civil Appeal No. 2395/2023]
[Civil Appeal No. 2396/2023]
[Civil Appeal No. 2398/2023]
[Civil Appeal Nos. 2399-2401/2023]
[Civil Appeal No. 2402/2023]
[Civil Appeal No. 2403/2023]
Civil Appeal Nos. 2399-2401/2023

HEADNOTE – Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case.

JUDGMENT

Abhay S Oka, J.

Civil Appeal Nos. 2399-2401/2023

1. The appellants are the defendants in a suit filed by the first respondent and one Shanti Devi, who is no more and has been shown as the third respondent in these Appeals. For convenience, we are referring to the parties with reference to their status in the suit. We have heard the learned counsel for the parties.

2. The suit was filed on 8th November, 2001 for possession of the property, more particularly described in the schedule (suit property). The allegation in the suit is that the first defendant, the State of Uttaranchal (now Uttarakhand), was a tenant of the plaintiffs in respect of the suit property at a monthly rent of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirtytwo), which was fixed by an order dated 18th May, 1999 passed by the learned 3rd Additional District Judge, Dehradun.

The allegation is that though the rent was fixed with effect from 1st September, 1993, the first defendant did not pay the rent. Therefore, the plaintiffs issued a notice of termination of tenancy under Section 106 of the Transfer of Property Act, 1882. As the defendants failed to comply with the said notice, the suit for eviction was filed.

3. It appears from the record of the Trial Court that after the service of summons on the defendants, they appeared and applied for adjournments for filing the written statement. The first such application was made on 13th December 2001. Subsequent applications were made for adjournments. On 22nd April 2002, the learned trial Judge did not accede to the prayer for grant of further time and passed an order that the suit would proceed ex parte and a date for ex parte hearing, i.e., 30th May 2002, was fixed. At this stage, we may also note that the plaintiffs also made an application to strike out the defence of the defendants.

The said application was filed on 18th February 2002. On the said application, the Advocate for the plaintiffs made an endorsement in the margin that as there was no advocate representing the defendants, a copy of the application was attached to the application. Though the date for the ex parte hearing was already fixed as 30th May 2002, on 3rd May 2002, the plaintiffs made an application to the Trial Court for passing an order on the application dated 18th February 2002 for striking out the defendants' defence.

Interestingly, on the same day, the plaintiffs moved another application stating that the plaintiffs may be permitted to lead their ex parte evidence through affidavits. It appears that on 3rd May, 2002, the Trial Court allowed the application for striking out the defence. Subsequent facts narrated in this judgment would show that the suit was taken on the cause list on that day without any notice to the defendants.

4. On 16th May, 2002, an application was moved by the defendants for setting aside the order dated 22nd April, 2002. In the application, the averments were made that on 22nd April, 2002, the District Judge before whom the suit was pending, was holding a Camp Court at Mussoorie. We may note that the suit was pending in the Court at Dehradun. The contention in the said application was that as the learned District Judge was unavailable, the defendants were under the impression that the suit would not proceed.

In fact, in the affidavit filed in support of the said application by one Mukesh Kumar Malik on behalf of the Superintendent of Police, Dehradun, it is stated that he was present on 22nd April 2002 till 4:00 p.m., but the case was not called out. On 30th May, 2002, the application for setting aside the order directing the suit to proceed ex parte was rejected. At this stage, we may note here that in the proceedings of 22nd April 2002, it was recorded that on that day, the lawyers had abstained from the Court work, and the learned Presiding Judge was on a tour of Mussoorie for holding a camp.

There is no mention in the proceedings of 22nd April, 2002 that any in charge Judicial Officer passed an order to proceed with the suit ex parte. To the specific allegations made by the defendants in the application for setting aside the ex

parte order that the Judicial Officer was not available, in the reply filed by the plaintiffs in paragraph 4, all that is stated is that the contentions that on 22nd April, 2002, the learned District Judge had proceeded to Mussoorie, are misconceived and the provisions of the Assam and Agra Civil Courts Act are apparent in this respect.

5. On 1st July, 2002, the defendants applied for setting aside the order dated 3rd May, 2002 by which their defence was struck out. The application proceeds on the allegation that on 3rd May, 2002, the Court proceeded to strike out the defendants' defence without giving them an opportunity of being heard and the hearing was conducted ex parte. Very interestingly, a reply was filed to the said application by the plaintiffs in which a stand has been taken that as the suit was directed to proceed ex parte, there was no occasion to give an intimation to the defendants or their counsel that the application will be taken up on 3rd May, 2002.

Therefore, it is an accepted position that the application for striking out the defence of the defendants was taken up on the cause list on 3rd May 2002 without issuing notice to the defendants, though on 22nd April, 2002, the next date was already fixed as 30th May 2002. The application for setting aside the order dated 3rd May, 2002 was rejected. At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed.

A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation. Therefore, notwithstanding an order passed earlier to proceed ex parte, while deciding an application for striking out the defence, it was the duty of the Court to give an opportunity of being heard to the defendants. However, that was not done.

As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence. When the defendants had appeared in the suit, the act of preponing the date without notice to them or their advocate was completely illegal and contrary to elementary principles of natural justice. Therefore, it follows that the order striking out the defendants' defence is completely illegal, and the said order deserves to be set aside.

6. There is something further which must be noted. As can be seen from the record, the plaintiffs moved an application on 2nd August, 2002 to amend the description of the suit property. The endorsement on the application records that

'the case is proceeding ex parte against the defendants'. Therefore, a copy of the said application was not served upon the defendants. As seen from the proceedings, the application was allowed on 2nd August, 2002. Thereafter, the suit was decreed on 24th August, 2002.

It is true that before the application for amendment of the plaint was allowed, the defendants' defence was already struck out. Even if the defendants' defence was struck out, the defendants were entitled to a copy of the amended plaint. What was struck out was the right to defend the suit as unamended. Whether the subsequent plaint will affect the earlier order of striking out the defence will depend upon the nature of the amendment. However, even a copy of the amended plaint was not served on the defendants.

7. The defendants challenged the ex parte decree by filing a statutory revision application under Section 25 of the Provincial Small Cause Courts Act, 1887, before the learned Single Judge of the High Court. By the impugned judgment, the learned Single Judge rejected the said revision application without noticing the glaring facts borne out from the record which we have reproduced above.

A review of the said order of the learned Single Judge was sought. However, the same was dismissed on 4th January, 2011. However, the defendants did not challenge the decree or the order passed on the revision application or review for three years. Instead, they were advised to raise objections under Section 47 of the Code of Civil Procedure, 1908 in the execution proceedings.

8. The learned senior counsel appearing for the plaintiffs submitted that the defendants' conduct needs to be deprecated. The revenue entries were illegally altered to enable them to raise a contention regarding the lack of title on the part of the plaintiffs. Even the State Government prosecuted the plaintiffs.

9. Now, the clear picture which emerges is that the suit was decreed ex parte without giving proper opportunity to the defendants to defend themselves. On 22nd April 2002, when the order directing that the suit would proceed ex parte was passed, the date fixed for ex parte hearing was 30th May 2002. On that date, the defendants could have appeared and applied for setting aside the said order. The Court could have always favourably considered that application by putting the defendants to conditions.

However, without waiting till 30th May, 2002, on 3rd May 2002, without issuing notice to the defendants, the suit was taken up by the Trial Court, and an order of striking out the defendants' defence was passed, obviously, without hearing the defendants. Therefore, an illegality has been associated with the conduct of the suit proceedings and the manner in which the ex parte decree was passed.

Consequently, we propose to set aside the orders dated 22nd April, 2002 and 3rd May, 2002 and relegate the suit to that stage.

10. There is another aspect of the matter. On 18th May 1999, the 3rd Additional District Judge, Dehradun, passed an order in an Appeal directing the defendants to pay rent at Rs.86,232/ (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month. The High Court and this Court confirmed the said order. The defendants' liability under the said order was to pay rent at Rs.86,232/- per month from 1st September, 1993. The learned Attorney General for India, on instructions of the State Government, states that the rent at the said rate has been deposited up to date. We take the statement on record.

11. Much water has flown after the rent was fixed at the rate of Rs.86,232/- per month on 18th May, 1999. The fact remains that the proceedings were delayed due to some default on the part of the defendants. Therefore, as a condition for setting aside the ex parte decree, we propose to direct the State Government to pay an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 and continue to pay the said amount till the disposal of the suit.

The deposit will be subject to the outcome of the suit. The defendants will be entitled to an adjustment of the amounts they paid at the rate of Rs.86,232/- per month. We propose to grant two months to the defendants to pay the balance amount payable up to date at the rate of Rs.1,00,000/- per month from 14th July, 2014.

12. Hence, we set aside the impugned orders and partly allow the Appeals with the following directions:

(i) The ex parte decree dated 24th August, 2002 passed by the learned District and Session Judge, Dehradun, in SCC Suit No.24/2001 is hereby set aside. The suit is restored to the file of the learned District and Session Judge, Dehradun, subject to the condition of the appellants/defendants depositing an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 with the Trial Court within a period of two months from today. As stated earlier, the appellants/defendants will be entitled to an adjustment of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month deposited by them for the said period. We make it clear that on the failure of the appellants/defendants to deposit the said amount within the stipulated period, the ex parte decree shall stand revived;

(ii) If the direction mentioned above is complied with, even the orders dated 22nd April, 2002 and 3rd May, 2002 will stand set aside;

(iii) The defendants shall continue to deposit the amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month till the disposal of the suit;

(iv) In the event the compliance is made by the appellants/defendants, we direct that the restored suit shall be listed before the learned District and Session Judge, Dehradun in the morning on 25th November, 2024. We make it clear that the defendants and the plaintiffs shall be under an obligation to appear before the Court of the learned District and Session Judge, Dehradun, on that day, and no further notice shall be served upon them. We clarify that on the date of appearance, the appellants/defendants shall file a reply to the application for striking out the defence, and no further time shall be granted to them for that purpose. If the appellants/defendants fail to file a reply to the application for striking out their defence on that day, the Trial Court will be justified in proceeding with the hearing of the said application without the reply of the appellants/defendants;

(v) Only after deciding the application for striking out the defence, depending upon the outcome of the said application, the Trial Court will pass orders regarding permitting the appellants/defendants to file written statement;

(vi) The amounts deposited in this Court at the rate of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month with accrued interest thereon shall be transferred by the Registry of this Court to the Trial Court at Dehradun after expiry of the present fixed deposit. We direct the Trial Court to invest the amount which may be deposited by the appellants/defendants in terms of this judgment and the amount which will transferred by the Registry of this Court to the Trial Court in a fixed deposit with any nationalised bank;

(vii) After the application for striking out the defence is decided, it will be open for the plaintiffs to apply for withdrawal of the amounts. The Trial Court shall decide the said application on its own merits. All contentions on that behalf are left open;

(viii) We make it clear that we have made no adjudication on the merits of the controversy, including the title issue raised by the appellants/defendants. The Trial Court shall pass appropriate orders in accordance with the law in the restored suit on its own merits;

(ix) We make it clear that as we have directed the appellants/defendants to deposit the ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month, we are not passing a separate order of costs;

(x) Considering the fact that the suit is of the year 2001, it is obvious that the Trial Court will give necessary out of turn priority for hearing the application for striking out the defence. In the event the suit is required to be heard on merits, the

Trial Court will give the necessary priority to the disposal of the suit, considering the fact that the suit is of the year 2001;

(xi) In view of this judgment, the pending execution application for execution of the decree will not survive. However, if the ex parte decree is revived in terms of the clause (i) above, the execution application shall proceed;

(xii) The findings recorded in this judgment are only for the limited purposes of considering the legality and validity of the ex parte order and the order by which the defence of the defendants was struck out. This judgment will not affect any other proceedings pending between the parties and all contentions therein are left open;

(xiii) The Appeals are partly allowed on above terms; and

(xiv) The Registry is directed to immediately return the record of the suit along with a copy of this judgment to the Trial Court.

Civil Appeal No. 2394/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

Civil Appeal No. 2395/2023

1. The compulsory acquisition of the property claimed by the appellants was initiated by the State Government, which has been set aside by the impugned judgment. The appellants cannot have any grievance about setting aside the acquisition. Hence, no case for interference with the impugned order is made out. The Appeal is, accordingly, dismissed.

Civil Appeal No. 2396/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

Civil Appeal No. 2398/2023

1. The application made by the appellant under Rule 97 Order XXI of the Code of Civil Procedure, 1908, has been dismissed by the executing Court on the ground that the appellant was not in possession. It is an admitted position that the appellant was not in possession. Therefore, we find no error in the view taken under the impugned order. The Appeal is, accordingly, dismissed.

Civil Appeal No. 2402/2023

1. As the decree dated 24th August, 2002 has been set aside in terms of the judgment in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The Appeal is disposed of accordingly by keeping all the contentions in the restored suit expressly open.

Civil Appeal No. 2403/2023

1. Admittedly, this Appeal arises from the orders passed in the execution of the decree dated 24th August 2002. Therefore, in view of the judgment passed today in Civil Appeal Nos.2399-2401/2023 setting aside the decree dated 24th August 2002, this Appeal will not survive, and the same is disposed of accordingly.

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

.....J. (Ahsanuddin Amanullah)

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

New Delhi;

September 12, 2024.

IN THE SUPREME COURT OF INDIA

Arvind Kejriwal
Vs.
Central Bureau of Investigation

[Criminal Appeal No. 3816 / 2024
arising out of SLP (Crl.) No. 11023 / 2024]

[Criminal Appeal No. 3817 / 2024
arising out of SLP (Crl.) No. 10991 / 2024]

HEADNOTE – Grants bail granted to Arvind Kejriwal in CBI Case. CBI is a premier investigating agency. It's in public interest that CBI must not only be above board but must also be seen to be so. Every effort must be made to remove any perception that investigation is not carried out fairly and that the arrest was made in a high-handed and biased manner. In a functional democracy governed by the rule of law, perception matters. Like Caeser's wife, an investigating agency must be above board. Not so long ago this Court had castigated the CBI comparing it to a caged parrot. It is imperative that the CBI dispels the notion of being a caged parrot, rather the perception should be that of an uncaged parrot

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. These appeals are directed against the judgements and orders dated 05.08.2024 passed by the High Court of Delhi (hereinafter, 'High Court'), dismissing the Appellant's challenge to his arrest being illegal as well as his application for the grant of regular bail. Consequently, the High Court upheld the legality of the Appellant's arrest and has summarily declined to exercise its concurrent jurisdiction under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter, 'CrPC'), thereby denying his prayer for regular bail.

FACTS:

3. At the very outset, it is essential to advert to the brief factual background to provide context to the manner in which the present proceedings have arisen.

3.1. The Appellant is a public representative and has been elected thrice the Chief Minister of the Government of National Capital Territory of Delhi (hereinafter 'GNCTD'). He also happens to be the National Convenor of Aam Aadmi Party, a political party in India.

3.2. Central Bureau of Investigation (hereinafter 'CBI') - the Respondent registered an FIR No. RC0032022A0053 (hereinafter 'FIR'), on 17.08.2022 under Sections 120B read with Section 477A of the Indian Penal Code, 1806 (hereinafter 'IPC') and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter 'PC Act') against various persons. The FIR alleged irregularities, falsification, undue advantage, and a conspiracy among the persons holding positions of responsibility within the GNCTD, in framing and implementing the Excise Policy for the year 2021-2022 (hereinafter 'Excise Policy'). However, the Appellant's name did not figure in the FIR.

3.3. On 21.03.2024, the Directorate of Enforcement (hereinafter 'ED'), arrested the Appellant in the purported exercise of its power under Section 19 of the Prevention of Money Laundering Act, 2002. Subsequently, this Court granted the Appellant interim bail on 10.05.2024, until 01.06.2024. The Appellant surrendered thereafter before the jail authorities on 02.06.2024. We may hasten to add here that the question of law sought to be raised in the ED matter is presently pending consideration before a larger bench of this Court and is not relevant to the present controversy, and its particulars are included solely to ensure lucidity in the factual matrix.

3.4. The Special Judge vide order dated 20.06.2024 granted the Appellant regular bail while his bail in the ED matter was pending before this Court and reserved for judgement. However, the ED swiftly sought the cancellation of that bail order. The High Court on 21.06.2024 stayed the operation of that order, as a result of which, the Appellant continued to remain in jail.

3.5. CBI moved an application on 24.06.2024 before the Special Judge (PC Act) (hereinafter 'Trial Court') under Section 41A of the CrPC, seeking to interrogate the Appellant, which was thereupon allowed. Having completed interrogation and examination, the CBI filed an application on 25.06.2024 seeking permission to arrest the Appellant and for the issuance of production warrants. Thereafter, the Trial Court allowed the CBI's application noting that the accused was already in judicial custody in the ED matter. In the meantime, the High Court conclusively stayed the order granting regular bail to the Appellant in the ED matter on 25.06.2024 itself.

3.6. Shortly thereafter, on 26.06.2024, the Appellant was produced before the Trial Court, whereupon he was arrested in the instant CBI case and a copy of the arrest memo was handed over to the Appellant's counsel. On the same day, on an application moved by the CBI, the Trial Court remanded the Appellant to police custody for five days. Subsequently, on 29.06.2024, the Trial Court remanded the Appellant to judicial custody till 12.07.2024. It may be noted that the investigation at that time was ongoing.

3.7. Both the above stated orders dated 26.06.2024 and 29.06.2024 of the Trial Court, came to be challenged by the Appellant before the High Court vide a Writ Petition, inter alia seeking a declaration that his arrest was illegal. On 02.07.2024, when the Petition was heard, the High Court issued notice to the CBI and scheduled the matter to be heard on 17.07.2024.

In the interregnum, the Appellant also approached the High Court under Section 439 CrPC, seeking regular bail in connection with the subject FIR. On 05.07.2024, when the Bail Application came up for hearing, the High Court issued notice and renotified it to be heard on 17.07.2024, along with the Writ Petition challenging the very arrest of the Appellant.

3.8. The High Court extensively heard the matter on 17.07.2024 and reserved judgement in the Writ Petition. The Bail Application was renotified for further hearing on 29.07.2024, which was also reserved. Finally, on 05.08.2024, the High Court vide the impugned judgement and order upheld the arrest of the Appellant by the CBI and congruously denied him regular bail, with liberty to approach the Trial Court for such relief.

3.9. As regard to the legality of the Appellant's arrest, the High Court upheld the same on the following broad points:

(i) The five circumstances delineated under Section 41(1)(b) of the CrPC apply only to arrests made without a warrant and does not pertain to arrests made under the aegis of Section 41(2) of the CrPC, which is an arrest upon the order of a court;

(ii) The arrest was made in accordance with Section 41(2) of the CrPC; and

(iii) The plea of non-compliance with Section 41A of the CrPC was totally unsubstantiated.

3.10. As regard to the Appellant's prayer for regular bail, the High Court has denied the same for the following reasons:

(i) The complexity of the facts and material on record necessitated a more comprehensive determination of the Appellant's role in the alleged conspiracy so as to assess his entitlement to bail; and

(ii) The Bail Application had been filed prior to the chargesheet being submitted, and since the chargesheet has now been filed before the Trial Court, the Appellant was directed to first approach the Court of the Sessions Judge.

3.11. Meanwhile, this Court vide order dated 12.07.2024, passed in Criminal Appeal No. 2493/2024 directed the Appellant's release on interim bail in the ED

matter.[1] However, the Appellant continues to face incarceration on account of the proceedings initiated by the CBI.

3.12. The instant appeals are therefore restricted to the Appellant's challenges regarding the legality and propriety of his arrest by the CBI and his prayer for release on regular bail in connection with the proceedings initiated by the CBI via the subject FIR.

CONTENTIONS OF THE PARTIES

4. Dr. Abhishek Manu Singhvi, Learned Senior Counsel representing the Appellant, argued first and foremost that the Appellant had been arrested illegally, in violation of the procedure enumerated in Sections 41(1) and 41A of the CrPC. In this vein, he assailed that the Appellant was arrested without giving any reasons, thus violating the:

(i) precondition of just and valid reasons for the change of a case from 'non-arrest' to 'arrest' under Section 41A (3) of the CrPC; and

(ii) the mandatory details that have to be fulfilled under Section 41(1)(b)(ii), to satisfy that the arrest fell within the purview of any of the clauses (a) to (e). Considering that none of these stipulations were complied with, the Appellant's arrest is fraught with illegality.

5. Dr. Singhvi drew our attention to the High Court having erred in misapplying the provision of Section 41(2) of the CrPC to justify the non-compliances of Section 41(1)(b)(ii) of the CrPC and consequential arrest of the Appellant. He highlighted that Section 41(2) is attracted only to non-cognizable offences, whereas the arrest of the Appellant was made in a case of cognizable offence. This was fortified by contending that none of the applications moved by the CBI seeking remand, sought to invoke Section 41(2). These violations, Learned Senior Counsel contended, were squarely against the dictum of this Court in Arnesh Kumar v. State of Bihar[2] and a plethora of other subsequent decisions.

6. Dr. Singhvi further argued that the Appellant deserves to be granted bail, as his continued incarceration is not necessitated, given that the entire material is in the safe custody of the CBI. He also emphasized that the Appellant has been granted both interim and regular bail in the ED matter by this Court, where the conditions are stricter, thus demonstrating that he would invariably meet the threshold explicated by the 'triple test' in the CBI matter as well: he has no criminal antecedents, is not a flight risk, and poses no threat of tampering with witnesses or evidence.

He also assailed that the High Court ought not to have relegated the Appellant to the Trial Court, considering that it exercises concurrent jurisdiction under Section

439 of the CrPC. This measure, he underscored, was akin to taking the Appellant back to square one, leading to a travesty of justice and unwarranted delay in the adjudication of his bail application.

7. Lastly, Dr. Singhvi drew our attention to the fact that the trial was not likely to be concluded in the near future, as the FIR was registered on 17.08.2022, with one chargesheet and three supplementary chargesheets having been filed, 17 accused persons arraigned, as many as 224 witnesses cited and the physical and digital records running into lakhs of pages. Further, the fourth supplementary charge sheet was filed on 29.07.2024, cognizance of which was taken only recently, and which was yet to be supplied to the Appellant. These reasons, he contended, irrefutably validated his apprehension of reasonable delay in the conclusion of trial.

8. Per contra, Mr. S.V. Raju, Learned Additional Solicitor General of India argued that the arrest of the Appellant had been conducted in due compliance with the statutory procedure as contemplated in Section 41(1) and 41A of the CrPC. He contended that these provisions do not, in any manner, mandate a blanket ban on the arrest of an individual, against whom there is a reasonable suspicion of commission of a cognizable offence, punishable with imprisonment up to seven years.

The law only stipulates that the investigating authority ought to be satisfied with the necessity of such an arrest, which has been duly met in the present case. He strenuously urged that the pre-requisites set out in Section 41(1)(b)(ii) had been fulfilled as the CBI deemed it imperative to conduct the custodial interrogation of the Appellant to unearth a larger conspiracy hatched amongst the accused persons and to establish the money trail of ill-gotten proceeds.

9. Mr. Raju contended that the requirement of notice under Section 41A of the CrPC is intended solely to compel the accused to appear before the investigating authority. Since the accused in the instant case was already in judicial custody, such notice would have been an empty formality. He argued that the CBI had obtained permission from the Trial Court, under whose custody the Appellant was.

He supported his contention by referencing Section 41A (4) of the CrPC, which outlines the procedure for situations where an accused fails to comply with a Section 41A notice. Mr. Raju maintained that, given the Appellant's incarceration, the circumstance envisaged under Section 41A (4) becomes inapplicable, and therefore, the requirement of notice thereunder was not necessary. In regard to the misgivings on the erroneous application of Section 41(2) of the CrPC, he explained that the High Court had inadvertently mistyped

the provision and that it ought to be read as Section 41(1)(b)(ii) of the CrPC instead.

10. While strongly opposing the Appellant's prayer for bail, Mr. Raju contended that there was a likelihood of witness intimidation, should the Appellant be released on bail, resulting in the trial proceedings being severely derailed. Mr. Raju also alluded to certain instances having occurred in the context of M/s. Mahadev Liquors of Punjab, thus pointing to the influence exerted by the Appellant, whose political outfit is ruling more than one State.

11. Mr. Raju vehemently pressed into aid his preliminary objection to relegate the Appellant to the Trial Court, who he stressed ought not to have approached the High Court directly, notwithstanding the concurrent jurisdiction under Section 439 of the CrPC. He urged that the Appellant should not be granted any special treatment merely because of the position of power he holds or his political stature. Mr. Raju canvassed that the Appellant deserves to be treated like any other undertrial and, hence, he must firstly approach the Trial Court, emphasizing that the High Court's jurisdiction is discretionary and should be exercised only in rare and exceptional circumstances.

12. According to the Learned ASG, the High Court was correct in refusing to exercise its jurisdiction because the Appellant had failed to make out an exceptional case warranting such special scrutiny. Furthermore, Mr. Raju highlighted a significant anomaly: the Appellant's failure to annex the chargesheet while applying for bail. He argued that a crucial aspect of seeking bail is to demonstrate, based on the material on record, that no prima facie case exists against the accused. Due to these oversights, Mr. Raju asserted that the Appellant should first seek relief from the Trial Court.

13. Lastly, Mr. Raju submitted that since the chargesheet and some supplementary chargesheets have been filed after the Appellant had approached the High Court for his enlargement on bail, it is a significant change in circumstances and therefore, in light of this too the Appellant should be relegated to the Trial Court. Such relegation would aid in his bail claim being considered with reference to the nature of evidence gathered by the CBI and the complicity of the Appellant, if any, as may be discernible from such evidence.

ISSUES

14. Having considered the material on record and the extensive submissions made by the parties, the following questions fall for our deliberation:

i. Whether there was any illegality in the Appellant's arrest? If so, whether the Appellant is entitled to be released forthwith, even in the absence of a formal bail application?

ii. Whether the Appellant, regardless of his lawful arrest, is entitled to be enlarged on regular bail?

iii. Whether the filing of a chargesheet is a change in circumstances of such a decisive nature that an accused would be liable to be relegated to the Trial Court to make out a case for grant of regular bail?

ANALYSIS

15. We have bestowed our consideration to the rival contentions, along with the sequence of events that culminated in the Appellant's arrest. Given the nature of the issues pending determination, it is essential to address them each independently and arrive at a definitive conclusion.

A. Whether the procedure undertaken in arresting the Appellant was illegal?

16. The primary basis for the Appellant's challenge rests on the contention that the procedure for arrest, as outlined under Sections 41(1)(b)(ii) and 41A of the CrPC, was not complied with. For the purpose of analysing the legality of the Appellant's arrest, there are two key aspects which we propose to examine separately, namely: (i) whether the issuance of a notice under Section 41A of the CrPC was duly complied with, in the context of the present factual scenario; and (ii) whether Section 41(1)(b)(ii) of the CrPC is applicable in the facts and circumstances of this case.

i. Compliance with Section 41A of the CrPC

17. Section 41A of the CrPC pertains to the issuance of a notice by a police officer to an individual when their arrest is not warranted under Section 41(1) of the CrPC, but their presence is still required before the investigating authority. Issuance of a notice under Section 41A(1) therefore would be imminent, when there is a complaint made, credible information received or there is a reasonable suspicion of the individual having committed a cognizable offence.

Clause (2) of Section 41A thereafter, demands that an individual to whom such a notice has been issued, complies with the same. Section 41A (3) bears out that an individual who complies and continues to comply with such notice is not to be arrested in respect of the offence mentioned, unless the police officer, for reasons to be recorded, deems it necessary to arrest them. Finally, Section 41A (4) stipulates that if an individual fails to comply with the notice or refuses to identify themself, the police may arrest such an individual for the offence recorded in the notice, subject to any orders passed by a competent court.

18. Given the lucid nature of the language of the provision, it is crucial to examine the circumstances surrounding the Appellant's arrest in order to gauge whether there was due compliance with the procedural safeguards enshrined within Section 41A. In the present context, since the Appellant was already in judicial custody at the relevant time in the ED case, the CBI filed an application on 24.06.2024 before the Trial Court under Section 41A of the CrPC, inter alia seeking to interrogate and examine him.

Such examination was allegedly necessitated by new facts and evidence uncovered by the CBI upon further investigation. The CBI, vide this application, outlined the reasons prompting such examination, including the purported irregularities in the framing and implementation of the Excise Policy, and its manipulation to facilitate the monopolization and cartelization of wholesale and retail liquor trade in India.

19. The application also alleged that, upon further investigation, statements from several witnesses, incriminating documents and messages exchanged between the accused persons named in the chargesheets, revealed that the Appellant was a critical component in the criminal conspiracy related to the Excise Policy.

It was claimed that the Appellant, in connivance with the other accused persons, engaged in tweaking the policy to enhance the profit margin of wholesalers from 5% to 12%, resulting in significant windfall gains. These gains were ultimately alleged to have been utilised by the Appellant's political party towards election related expenses, during the 2021-22 Goa Assembly elections.

The application highlighted that the emergence of these new facts, pointing toward the Appellant's complicity, required further examination, as there was reasonable suspicion of his involvement in the commission of the offence. Upon considering these reasons, the Trial Court, by its order dated 24.06.2024, allowed the CBI's application seeking to interrogate the Appellant.

20. At this juncture, it is pertinent to first address the Appellant's allegations regarding the CBI's non-compliance with Section 41A of the CrPC, particularly concerning the issuance of notice or lack thereof. In this regard, it is crucial to draw reference to the language and intent of the provision, which aims to ensure an individual's appearance through the issuance of a notice.

The provision, however, does not outline any express procedure to be undertaken where the individual in question is already incarcerated. It is to be remembered that the Court is, in a way, the guardian of an undertrial, while he is in judicial custody. That being so, there could possibly be no other way to secure the Appellant's physical presence for the purpose of further investigation, except to seek prior permission of the Trial Court for his interrogation.

21. In fact, given what was contended by the Appellant, it must be explicated that Section 41A does not envisage or mandate the issuance of a notice to an individual already in judicial custody. As such a person is already under the court's authority, any request to include them in an investigation in another case must be approved by the competent court. The CBI has thus followed the procedure which is contemplated in terms of the intent and purpose of Section 41A CrPC.

22. Contrarily, if the Appellant's contention is taken to its logical conclusion, it could lead to detrimental consequences. For instance, serving a notice upon an undertrial in jail through the Jail Superintendent, without informing the court that placed them in judicial custody, would effectively enable the police to arrest such individuals in a new case without the court's knowledge.

This could result in a misuse of police authority and a violation of the Constitutional and procedural rights afforded to undertrials. Alternatively, when the court's permission is sought, it ensures the application of judicial scrutiny to assess whether custodial interrogation is necessary and, if so, for what duration.

23. In the case in hand, the Trial Court's approval of the CBI's application to interrogate the Appellant should be viewed as satisfying the essential requirements of Section 41A, as the issuance of a formal notice through the jail authorities would have had an adverse impact on the rights of the Appellant. Thus, it is our considered view that the CBI complied with the procedure encompassed within the framework of Section 41A of the CrPC.

24. That being said, let us now address the specific contention pertaining to the alleged violation of Section 41A(3) of the CrPC. The provision elucidates, at the risk of reiteration, that an individual who complies with the notice issued under Section 41A should not be arrested, unless the police officer for reasons recorded, opines that arrest is necessary. The vital takeaway from this provision is that while compliance with the notice generally shields an individual from arrest, the police may still proceed with the arrest if they conclude that it is essential and provide duly recorded reasons for doing so.

25. In the present case, following the interrogation, the CBI moved another application to the Trial Court on 25.06.2024, seeking permission to arrest the Appellant. The CBI justified the arrest on the grounds that the Appellant had allegedly given evasive responses during questioning and that custodial interrogation was necessary to confront him with evidence and uncover a purported larger conspiracy involving the accused persons in the implementation of the excise policy. The Trial Court, after considering these reasons, allowed the CBI's application for the Appellant's arrest and issued production warrants on the same day.

26. In this respect, our analysis is confined to assessing whether Section 41A(3) was violated, thereby rendering the arrest per se illegal. First, it is trite law that there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of a Magistrate. Thus, there is no impediment in terms of arresting a person already in custody for the purposes of investigation, whether for the same offence or for an altogether different offence.[3] The Appellant's arrest by the CBI was thus entirely permissible, in light of the Trial Court's order dated 25.06.2024.

27. Second, Section 41A(3) allows for arrest, provided the reasons are recorded, justifying the necessity of such a step, and the police officer is satisfied that the individual should be arrested. In this context, we have already noted that the CBI, in their application dated 25.06.2024, clearly recorded the reasons as to why they deemed the Appellant's arrest necessary.

These reasons were also summarized in the arrest memo dated 26.06.2024. It is important to clarify that our current analysis is limited to verifying whether the CBI followed the correct procedure, including the recording of sufficient reasons. This issue would not detain us further, as the reasons as to why the Appellant's arrest was necessitated are discernible from the CBI's application dated 25.06.2024.

28. Third, Section 41A(1), when read with Section 41A(3) CrPC, does not impose an absolute prohibition on the arrest of an individual against whom there exists reasonable suspicion of having committed a cognizable offence punishable with imprisonment up to seven years.

This is evident from the language of the provision itself. Section 41A(3) explicitly states that an arrest is permissible if the police officer believes it to be necessary and duly records the reasons for such arrest. This provision thus essentially carves out an exception to the general rule under Section 41A, which mandates that an individual whose appearance is required should not be arrested under Section 41(1) of the CrPC.

29. Therefore, in view of these considerations, we do not find any merit in the Appellant's contention that the CBI failed to comply with Section 41A CrPC, in its true letter and spirit.

ii. Whether Section 41(1)(b)(ii) of the CrPC is applicable?

30. At the outset, it is imperative to clarify that our analysis will be restricted to the procedure outlined under Section 41(1)(b)(ii) of the CrPC. This is because Section 41(1), in its entirety, addresses multiple situations and complexities regarding the procedure for arrest, which may not be directly applicable to the intricacies of the present case.

31. In this vein, the language of Section 41(1)(b) postulates as follows:

"41. When police may arrest without warrant.-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

32. Section 41(1)(b)(ii) of the CrPC clearly stipulates that an arrest under this provision can be made based on a complaint or credible information that an individual has committed a cognizable offence punishable with imprisonment up to seven years, with or without a fine. However, such an arrest must be conducted subject to the satisfaction of specific conditions outlined in subsections (a) to (e). The rigors of Section 41(1)(b)(ii) have been extensively examined by this Court in Arnesh Kumar (supra), where it was observed that:

"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC."

33. Given this annotation, while there exists no doubt that the submissions made by the Appellant in regard to the precepts of Section 41(1)(b) are sound, the provision is inapplicable to the vicissitudes of the present factual matrix. Here is a case where the court upon application of judicial mind accorded its approval to the Appellant's arrest for which necessary warrant was issued. There was thus no occasion for the arresting police officer to form an opinion regarding the existence of valid reasons of arrest. The competent court having undertaken such a task, the police officer cannot be expected to sit over the order of the court.

34. Still further, Section 41(1) opens with the expression that 'any police officer may arrest without an order from a Magistrate or without a warrant'. It necessarily means that where a Magistrate has issued an order, the police officer stands absolved form his statutory obligation of forming an opinion. Consequently, it becomes apparent that the variables and conditions ensconced in

Section 41(1)(b)(ii) of the CrPC would cease to apply in the present context, given the order granted by the Trial Court prior.

35. Lastly, we are inclined to agree with the explanation given by the Learned ASG that the reference to Section 41(2) of the CrPC in the High Court's judgment appears to have been included inadvertently and is a typographical error. Both parties, during their submissions, have rightly clarified that Section 41(2) which pertains to the procedure of arrest in non-cognizable offences, does not apply to the facts and circumstances here.

36. Having considered the CBI's compliance with Section 41A of the CrPC and the inapplicability of Section 41(1)(b)(ii) of the CrPC, we are thus of the view that the Appellant's arrest does not suffer with any procedural infirmity. Consequently, the plea regarding non-compliance of these provisions, merits rejection. Ordered accordingly.

B. Whether the Appellant is entitled to the relief of regular bail?

37. Adverting to the question of granting bail to the Appellant, it may be noticed that the High Court has viewed that due to the complexity and web of facts and the material on record, it was crucial to comprehensively determine the role of the Appellant in the alleged conspiracy and then only decide his entitlement to bail. The High Court further observed that considering the charge sheet had been filed before the Trial Court, the Appellant should first seek relief from that court.

38. The evolution of bail jurisprudence in India underscores that the 'issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process'.[4] The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty.

This Court in Union of India v. K.A. Najeeb has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter 'UAPA') notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time.[5] The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.

39. It was submitted during these proceedings that the FIR was registered on 17.08.2022, and since then, the chargesheet along with four supplementary chargesheets have been filed. The fourth supplementary chargesheet was filed as

recently as 29.07.2024 and we are informed that the Trial Court has taken cognizance of the same. Additionally, seventeen accused persons have been named, 224 individuals have been identified as witnesses, and extensive documentation, both physical and digital, has been submitted. These factors suggest that the completion of the trial is unlikely to occur in the immediate future.

40. In our considered view, although the procedure for the Appellant's arrest meets the requisite criteria for legality and compliance, continued incarceration for an extended period pending trial would infringe upon established legal principles and the Appellant's right to liberty, traceable to Article 21 of our Constitution. The Appellant has been granted interim bail by this Court in the ED matter on 10.05.2024 and 12.07.2024, arising from the same set of facts. Additionally, several co-accused in both the CBI and ED matters have also been granted bail by the Trial Court, the High Court, and this Court in separate proceedings.

41. So far as the apprehension of the Appellant influencing the outcome of the trial is concerned, it seems that all evidence and material relevant to the CBI's disposition is already in their possession, negating the likelihood of tampering by the Appellant.

Similarly, given the Appellant's position and his roots in the society, there seems to be no valid reason to entertain the apprehension of his fleeing the country. In any case, in order to assuage the apprehensions of the CBI, we may impose stricter bail conditions. As regard to Appellant indulging in influencing witnesses, it needs no emphasis that in the event of any such instance, it will amount to misuse of the concession of bail and necessary consequences will follow.

42. Therefore, in the light of these extenuating circumstances and considering the foregoing analysis, it could be resolved that the Appellant satisfies the requisite triple conditions for the grant of bail. We order accordingly.

C. Whether the filing of a chargesheet is a change in circumstances warranting relegation to the trial court for grant of regular bail?

43. It is true that generally the Trial Court should consider the prayer seeking bail once the chargesheet is filed, since the material that an Investigating Authority may have been able to procure would undoubtedly facilitate that court to form a prima facie opinion with regard to (i) the gravity of offence; (ii) the degree of involvement of the applicant; (iii) the background and vulnerability of the witnesses; (iv) the approximate timeline for conclusion of the trial based on the number of witnesses; and (v) the societal impact of granting or denying bail.

However, there can be no straitjacket formula which enumerates that every case concerning the consideration of bail should depend upon the filing of a chargesheet. In fact, each case ought to be assessed on its own merits, recognizing that no one-size fits all formula exists for determining bail.

44. An undertrial thus should, ordinarily, first approach the Trial Court for bail, as this process not only provides the accused an opportunity for initial relief but also allows the High Court to serve as a secondary avenue if the Trial Court denies bail for inadequate reasons. This approach is beneficial for both the accused and the prosecution; if bail is granted without proper consideration, the prosecution too can seek corrective measures from the High Court.

45. However, superior courts should adhere to this procedural recourse from the outset. If an accused approaches the High Court directly without first seeking relief from the Trial Court, it is generally appropriate for the High Court to redirect them to the Trial Court at the threshold. Nevertheless, if there are significant delays following notice, it may not be prudent to relegate the matter to the Trial Court at a later stage. Bail being closely tied to personal liberty, such claims should be adjudicated promptly on their merits, rather than oscillating between courts on mere procedural technicalities.

46. This issue is however, more or less academic in the instant case as the High Court did not relegate the Appellant to the Trial Court at the preliminary stage. Since notice was issued and the parties were apparently heard on merits by the High Court, we do not deem it necessary at this stage to relegate the Appellant to the Trial Court even though filing of a chargesheet is a change in the circumstances.

CONCLUSION:

47. We, thus, deem it appropriate to pass the following order:

i. The Criminal Appeal challenging the legality of arrest (arising out of SLP (Crl.) No. 10991/2024) is, hereby, dismissed.

ii. The Criminal Appeal (arising out of SLP (Crl.) No. 11023/2024) is allowed and the impugned judgement of the High Court dated 05.08.2024, to that extent is set aside. Consequently,

a. the Appellant is directed to be released on bail in connection with FIR No. RC0032022A0053/2022 registered by the CBI at PS CBI, ACB, upon furnishing bail bonds for a sum of Rs. 10,00,000 /- with two sureties of such like amount, to the satisfaction of the Trial Court;

b. the Appellant shall not make any public comments on the merits of the CBI case, it being sub judice before the Trial Court. This condition is necessitated to dissuade a recent tendency of building a self-serving narrative on public platforms;

c. however, this shall not preclude the Appellant from raising all his contentions before the Trial Court;

d. the terms and conditions imposed by a coordinate bench of this Court vide orders dated 10.05.2024 and 12.07.2024 passed in Criminal Appeal No. 2493/2024, titled Arvind Kejriwal v. Directorate of Enforcement, are imposed mutatis mutandis in the present case;

e. the Appellant shall remain present before the Trial Court on each and every date of hearing, unless granted exemption; and

f. the Appellant shall fully cooperate with the Trial Court for expeditious conclusion of the trial proceedings.

48. Pending applications, if any, shall stand disposed of in the above terms.

49. Ordered accordingly.

.....J. (Surya Kant)

New Delhi

September 13, 2024

1 Arvind Kejriwal v. Directorate of Enforcement, Criminal Appeal No. 2493/2024.

2 Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

3 Central Bureau of Investigation v. Anupam J. Kulkarni, (1992) 3 SCC 141.

4 Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240.

5 Union of India v. K.A. Najeeb, AIR 2021 SC 712.

IN THE SUPREME COURT OF INDIA

Arvind Kejriwal
Vs.
Central Bureau of Investigation

[Criminal Appeal No. 3816 / 2024
arising out of SLP (Crl.) No. 11023 / 2024]

[Criminal Appeal No. 3817 / 2024
arising out of SLP (Crl.) No. 10991 / 2024]

HEADNOTE – Grants bail granted to Arvind Kejriwal in CBI Case. CBI is a premier investigating agency. It's in public interest that CBI must not only be above board but must also be seen to be so. Every effort must be made to remove any perception that investigation is not carried out fairly and that the arrest was made in a high-handed and biased manner. In a functional democracy governed by the rule of law, perception matters. Like Caeser's wife, an investigating agency must be above board. Not so long ago this Court had castigated the CBI comparing it to a caged parrot. It is imperative that the CBI dispels the notion of being a caged parrot, rather the perception should be that of an uncaged parrot

JUDGMENT

Ujjal Bhuyan, J.

1. I have gone through the draft judgment of my esteemed senior colleague Justice Surya Kant. I am in complete agreement with the conclusion and direction of his Lordship that the appellant should be released on bail. However, on the necessity and timing of the arrest, I have a definite point of view. Therefore, I deem it appropriate to render a separate opinion on the point of necessity and timing of the arrest of the appellant while concurring with the opinion of Justice Surya Kant that the appellant should be released on bail.

2. Leave granted.

3. At the outset, a brief recital of the relevant dates and the attending facts as borne out from the record may be noted.

3.1. A case was registered by the CBI on 17.08.2022 being RC No. 0032022A0053 under Section 120B read with Section 477A of IPC and Section 7 of the PC Act. The aforesaid case was registered on the basis of source information as well as on the basis of a written complaint received from Shri Praveen Kumar Rai, Director, Ministry of Home Affairs, Government of India dated 22.07.2022. This letter also conveyed complaint dated 20.07.2022 of Shri Vinay Kumar Saxena, Lieutenant Governor of the Government of National Capital Territory of Delhi.

The complaint sought for enquiry into the irregularities and manipulation in the framing and implementation of the excise policy of the Government of National Capital Territory of Delhi (GNCTD) for the year 202122. The precise allegation is that the accused persons had deliberately tweaked and manipulated the excise policy of 202122 which resulted in enhanced profit of the liquor manufacturers, wholesalers and retailers in lieu of illegal gratification received by the accused persons from what is called the "south group" to meet the election related expenses of the Aam Admi Party at Goa.

3.2. On 14.04.2023, appellant received summons under Section 160 Cr.P.C. from the CBI to appear before it on 16.04.2023. In compliance thereto, appellant appeared before the CBI on 16.04.2023. According to the appellant, he was questioned by the CBI for about 9 to 10 hours.

3.3. CBI filed a total of four chargesheets wherein 17 persons were named as accused. Manish Sisodia and Kavitha Kalvakuntala were named as accused amongst others. Appellant Shri Arvind Kejriwal was not named as an accused in the said chargesheets. The gist of the chargesheets is that the excise policy in question was a result of criminal conspiracy which was hatched by a cartel of liquor manufacturers, wholesalers and retailers ensuring undue gain to them in lieu of pecuniary benefits to the accused persons. Such criminal conspiracy resulted in huge loss to the government exchequer.

3.4. Fifth and final chargesheet has been filed by the CBI on 29.07.2024 wherein appellant has been named as an accused.

4. Directorate of Enforcement or ED recorded ECIR No. HIUII/ 14/2022 on 22.08.2022 under the Prevention of Money Laundering Act, 2005 (PMLA) on the basis of the offences under which the CBI case was registered. Thus, the offences under the CBI case became the predicate offence leading to investigation by the ED under PMLA. ED filed the first prosecution complaint on 26.11.2022 in respect of which the Special Court took cognizance on 20.12.2022. ED has since then filed seven supplementary prosecution complaints. In the last supplementary prosecution complaint filed on 17.05.2024, appellant has been named as an accused.

4.1. According to ED, several notices under Section 50 of PMLA were issued to the appellant for his examination and recording of statement but he failed to appear and join the investigation. However, according to the appellant, the notices issued under Section 50 were illegal, bad in law and invalid.

5. Be that as it may, appellant was arrested by the ED on 21.03.2024. Appellant challenged his arrest before the High Court by filing a petition under Article 226

of the Constitution of India read with Section 482 Cr.P.C. However, the same was dismissed by the High Court on 09.04.2024.

6. It is stated that the competent authority accorded permission under Section 17A of the PC Act on 23.04.2024 whereafter CBI proceeded to investigate the role of the appellant in the CBI case. However, it is not mentioned as to when such permission was sought for.

7. In so far arrest of the appellant in the PMLA case is concerned, appellant carried his challenge from the High Court to this Court. On 10.05.2024, this Court granted interim bail to the appellant till 02.06.2024 in Criminal Appeal No. 2493 of 2024 in view of the ongoing Lok Sabha elections. On completion of the period of interim bail, appellant surrendered and was taken back into custody.

8. On 20.06.2024, appellant was granted regular bail by the learned Special Judge in the ED case. This bail order was challenged by the ED before the High Court which stayed the bail order on 21.06.2024 on an oral mentioning. A detailed order staying the bail of the appellant in the ED case was pronounced by the High Court only on 25.06.2024.

9. CBI sought for custody of the appellant so as to interrogate him. Application filed by the CBI in this regard under Section 41A Cr.P.C. was allowed by the learned Special Judge on 24.06.2024.

10. It is stated that CBI interrogated the appellant in Tihar Jail on 25.06.2024 for 3 hours but according to the CBI, he did not furnish satisfactory reply to the questions put to him. His reply was found to be evasive.

11. At around the same time the High Court stayed the bail of the appellant in the PMLA case, on 25.06.2024 CBI sought for permission of the learned Special Judge to formally arrest the appellant in the CBI case. On production of the appellant before the learned Special Judge on 26.06.2024, appellant was formally arrested and remanded to CBI custody till 29.06.2024 by the learned Special Judge. In the arrest memo dated 26.06.2024, CBI mentioned in column 7 that it had explained the grounds of arrest to the appellant. The grounds of arrest were mentioned as under:

He is not cooperating with the investigation and concealing the true facts even after being confronted with evidences gathered during the investigation so far and also the facts which are exclusively in his knowledge and relevant for the purpose of the investigation to reach to the just conclusion of the case. He is trying to purposely derail the investigation. He may influence the witnesses.

11.1. In the remand application, CBI mentioned in paragraph 17 that appellant was examined/interrogated in Tihar Jail on 25.06.2024. During his interrogation

he remained evasive and non-cooperative, failing to give satisfactory replies to the questions put to him regarding his role in the conspiracy. CBI mentioned as under:

That Arvind Kejriwal was examined/interrogated in Tihar Jail on 25.06.2024. During his interrogation, he remained evasive and non-cooperative, failing to give satisfactory replies to the questions raised to him regarding his role in the matter of demand of upfront money of Rs. 100 Crores from coaccused persons of South Group, the acceptance and delivery of the same to Aam Aadmi Party through his close associate Vijay Nair as well as utilization of the illgotten money so received in the Assembly Elections of Goa during the year 202122 to meet the election related expenditures of Aam Aadmi Party.

He further gave evasive replies regarding his role and the role of other coaccused in respect of criminal conspiracy hatched. His replies are contrary to the oral and documentary evidence gathered by CBI during the investigation. He is not disclosing the facts truthfully, despite being confronted with the incriminating evidence and also concealing the vital facts, which are exclusively in his knowledge. These facts are relevant for the purpose of the investigation to reach to the just conclusion of the case.

11.2. On 29.06.2024, learned Special Judge remanded the appellant to judicial custody till 12.07.2024.

12. Criminal Appeal No. 2493 of 2024 was heard by this Court in the meanwhile. On 12.07.2024, a detailed judgment was passed. A bench of two Hon'ble Judges of this Court framed the following three questions of law for consideration by a larger bench:

(a) Whether the "need and necessity to arrest" is a separate ground to challenge the order of arrest passed in terms of Section 19(1) of the PML Act?

(b) Whether the "need and necessity to arrest" refers to the satisfaction of formal parameters to arrest and take a person into custody, or it relates to other personal grounds and reasons regarding necessity to arrest a person in the facts and circumstances of the said case?

(c) If questions (a) and (b) are answered in the affirmative, what are the parameters and facts that are to be taken into consideration by the court while examining the question of "need and necessity to arrest"?

12.1. While making the reference as above, the bench observed that right to life and liberty is sacrosanct. Appellant had suffered incarceration of over 90 days. The above questions referred to a larger bench would require in depth consideration. Therefore, appellant was directed to be released on interim bail in

connection with ECIR No. HIUII/ 14/2022 dated 22.08.2022 on the same terms which were imposed earlier while granting temporary bail on 10.05.2024.

13. CBI filed its final chargesheet naming the appellant for the first time as an accused on 29.07.2024.

14. Appellant filed Bail Application No. 2285/2024 before the High Court under Section 439 of Cr.P.C. seeking regular bail in the CBI case. On 05.07.2024, a learned Judge of the High Court issued notice. Thereafter, arguments were heard on interim bail on 17.07.2024. However, the case was directed to be listed again on 29.07.2024 at 03:00 PM. On 29.07.2024, arguments were heard and the judgment was reserved.

14.1. Seven days thereafter the judgment was delivered on 05.08.2024. Without deciding the bail application on merit, the High Court disposed of the same giving liberty to the appellant to approach the Court of Special Judge for regular bail saying that such a course of action would be more beneficial to the appellant.

15. From the narration of facts as noted above, it is seen that CBI had registered its case RC No. 0032022A0053 on 17.08.2022. A total of four chargesheets were filed by CBI in the case naming 17 persons as accused. Appellant Arvind Kejriwal was not named as an accused in those chargesheets.

16. In the meanwhile, ED recorded ECIR No. HIUII/ 14/2022 under PMLA on 22.08.2022. ED filed seven complaints under PMLA. In none of the above complaints, appellant was named as an accused. However, appellant was arrested by the ED in the PMLA case on 21.03.2024.

17. On 20.06.2024, appellant was granted regular bail by the learned Special Judge in the ED case. On oral mentioning, this bail order was stayed by the High Court on 21.06.2024.

18. It was thereafter that CBI sought for custody of the appellant in the CBI case which was allowed by the learned Special Judge on 24.06.2024.

19. Finally, this Court granted interim bail to the appellant in the PMLA case on 12.07.2024.

20. CBI filed the fifth and final chargesheet in the CBI case on 29.07.2024 wherein appellant has been named as an accused.

21. Since appellant's arrest by the ED, bail granted by the learned Special Judge and stay of bail by the High Court in the PMLA case are subject matter of parallel proceedings where appellant has been granted interim bail by this Court,

I would refrain from commenting thereon. Therefore, I will confine this opinion only to two aspects: arrest of the appellant and the judgment of the High Court.

Arrest of the appellant by the CBI: necessity and timing

22. In so far arrest of the appellant by the CBI is concerned, it raises more questions than it seeks to answer. As already noted above, CBI case was registered on 17.08.2022. Till the arrest of the appellant by the ED on 21.03.2024, CBI did not feel the necessity to arrest the appellant though it had interrogated him about a year back on 16.04.2023.

It appears that only after the learned Special Judge granted regular bail to the appellant in the ED case on 20.06.2024 (which was stayed by the High Court on 21.06.2024 on oral mentioning) that CBI became active and sought for custody of the appellant which was granted by the learned Special Judge on 26.06.2024. Even on the date of his arrest by the CBI on 26.06.2024, appellant was not named as an accused by the CBI. Only in the last chargesheet filed by the CBI on 29.07.2024, appellant has been named as an accused.

23. Thus, it is evident that CBI did not feel the need and necessity to arrest the appellant from 17.08.2022 till 26.06.2024 i.e. for over 22 months. It was only after the learned Special Judge granted regular bail to the appellant in the ED case that the CBI activated its machinery and took the appellant into custody. Such action on the part of the CBI raises a serious question mark on the timing of the arrest; rather on the arrest itself. For 22 months, CBI does not arrest the appellant but after the learned Special Judge grants regular bail to the appellant in the ED case, CBI seeks his custody. In the circumstances, a view may be taken that such an arrest by the CBI was perhaps only to frustrate the bail granted to the appellant in the ED case.

24. In so far the grounds of arrest are concerned, I am of the view that those would not satisfy the test of necessity to justify arrest of the appellant and now that the appellant is seeking bail post incarceration, those cannot also be the grounds to deny him bail. The respondent is definitely wrong when it says that because the appellant was evasive in his reply, because he was not cooperating with the investigation, therefore, he was rightly arrested and now should be continued in detention.

It cannot be the proposition that only when an accused answers the questions put to him by the investigation agency in the manner in which the investigating agency would like the accused to answer, would mean that the accused is cooperating with the investigation. Further, the respondent cannot justify arrest and continued detention citing evasive reply.

25. We should not forget the cardinal principle under Article 20(3) of the Constitution of India that no person accused of an offence shall be compelled to be a witness against himself. This Court has held that such a protection is available to a person accused of an offence not merely with respect to the evidence that may be given in the court in the course of the trial, but is also available to the accused at a previous stage if an accusation has been made against him which might in the normal course result in his prosecution.

Thus, the protection is available to a person against whom a formal accusation has been made, though the actual trial may not have commenced and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution. An accused has the right to remain silent; he cannot be compelled to make inculpatory statements against himself.

No adverse inference can be drawn from the silence of the accused. If this is the position, then the very grounds given for arrest of the appellant would be wholly untenable. On such grounds, it would be a travesty of justice to keep the appellant in further detention in the CBI case, more so, when he has already been granted bail on the same set of allegations under the more stringent provisions of PMLA.

26. That apart, the apprehension of tampering with the evidence or influencing witnesses has already been answered by this Court in the case of Manish Sisodia in the following manner:

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

27. Power to arrest is one thing but the need to arrest is altogether a different thing. Just because an investigating agency has the power to arrest, it does not necessarily mean that it should arrest such a person. In Joginder Kumar Vs. State of U.P.[1], a threeJudge bench of this Court examined the interplay of investigation and arrest. Referring to the third report of the National Police Commission, this Court declared that no arrest can be made just because it is lawful for police officers to do so. The existence of the power of arrest is one thing but justification for the exercise of it is quite another. It was held as under:

20. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from

his power to do so. Arrest and detention in police lockup of a person can cause incalculable harm to the reputation and selfesteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person.

It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.

The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

28. In the case of Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi)[2], this Court emphasized that investigation must be fair and effective. Investigation should be conducted in a manner so as to draw a just balance between a citizen's right under Articles 19 and 21 of the Constitution of India and the expansive power of the police to make investigation. Concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.

29. This Court in the case of Arnesh Kumar Vs. State of Bihar[3], while examining the provisions of Sections 41 and 41A Cr.P.C. observed that arrest brings humiliation, curtails freedom and cast scars forever. This Court, while emphasizing the need to sensitize the police against highhanded arrest, deprecated the attitude to arrest first and then to proceed with the rest. While emphasizing that police officers should not arrest the accused unnecessarily and that the Magistrate should not authorize detention casually and mechanically, this Court observed as follows:

5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public.

The need for caution in exercising the drastic power of arrest has been emphasized time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

30. Again in the case of Mohd. Zubair Vs. State (NCT of Delhi)[4], a threeJudge Bench of this Court once again emphasized that the existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. This Court reiterated the role of the courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment.

Referring to its earlier decision in Arnab Ranjan Goswami Vs. Union of India[5], this Court observed that the courts should be alive to both ends of the spectrum: the need to ensure proper enforcement of criminal law on the one hand and the need to ensure that the law does not become a ruse for targeted harassment on the other hand. Courts must ensure that they continue to remain the first line of defence against the deprivation of liberty of the citizens. Deprivation of liberty even for a single day is one day too many.

31. When the CBI did not feel the necessity to arrest the appellant for 22 long months, I fail to understand the great hurry and urgency on the part of the CBI to arrest the appellant when he was on the cusp of release in the ED case. The substantive charge against the appellant is under Section 477A IPC which deals with falsification of accounts and if convicted carries a punishment of imprisonment for a term which may extend to seven years or with fine or with both.

The appellant has also been charged under Section 7 of the PC Act which deals with offence relating to a public servant being bribed. Here the punishment, if convicted, is imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Without entering into the semantics of applicability of Section 41(1)(b)(ii) and Section 41A Cr.P.C. as explained by this Court in Arnesh Kumar (supra), timing of the arrest of the appellant by the CBI is quite suspect.

32. CBI is a premier investigating agency of the country. It is in public interest that CBI must not only be above board but must also be seem to be so. Rule of law, which is a basic feature of our constitutional republic, mandates that investigation must be fair, transparent and judicious. This Court has time and again emphasized that fair investigation is a fundamental right of an accused

person under Articles 20 and 21 of the Constitution of India. Investigation must not only be fair but must be seem to be so. Every effort must be made to remove any perception that investigation was not carried out fairly and that the arrest was made in a highhanded and biased manner.

33. In a functional democracy governed by the rule of law, perception matters. Like Caesar's wife, an investigating agency must be above board. Not so long ago, this Court had castigated the CBI comparing it to a caged parrot. It is imperative that CBI dispel the notion of it being a caged parrot. Rather, the perception should be that of an uncaged parrot.

Impugned order

34. Let me now deal with the impugned judgment and order of the High Court whereby the bail application of the appellant was disposed of. Appellant had filed Bail Application No. 2285 of 2024 before the High Court under Section 439 Cr.P.C. in the CBI case where he was taken into custody on 26.06.2024. On 05.07.2024, a learned Judge of the High Court issued notice, fixing 17.07.2024 for arguments. On 17.07.2024, arguments were heard on interim bail; thereafter, the case was directed to be listed on 29.07.2024 at 03:00 PM. On 29.07.2024, arguments were heard and the judgment was reserved. Finally, the judgment was pronounced on 05.08.2024, the relevant portion of which reads as under:

5. Though there is no quarrel about the proposition that the District Courts and this Court have concurrent jurisdiction, as has been held in the Judgments relied on behalf of the appellant, but at the same time it has been held time and again by the Apex Court that the Party must first approach the Court of first instance.

6. In the present case, it is more in the benefit of the appellant, considering the complexity and the web of the facts and the material on record, to comprehensively determine the role of the appellant in this alleged conspiracy to determine if he is entitled to bail. It may also be noted that when the Bail Application was filed before this Court, the chargesheet had not been filed. However, in the changed circumstances, when the chargesheet has already got filed before the learned Special Judge, it would be in the benefit of the appellant, to first approach the Court of Sessions Judge.

7. In these circumstances, this Bail Application is hereby disposed of with the liberty to the appellant to approach the learned Special Judge for regular bail.

34.1. After observing that it would be more to the benefit of the appellant if the appellant approaches the learned Special Judge first for bail more so when the chargesheet has been filed, the High Court relegated the appellant to the forum of the learned Special Judge though both the Court of the Special Judge and the High Court have concurrent jurisdiction in the matter.

35. If indeed the High Court thought of remanding the appellant to the forum of the Court of Special Judge, it could have done so at the threshold itself. After issuing notice, after hearing the parties at length and after reserving the judgment for about a week, the above order was passed by the High Court. Though couched in a language which appears to be in favour of the appellant, in practical terms it has only resulted in prolonging the incarceration of the appellant for a far more longer period impacting his personal liberty.

36. In somewhat similar circumstances, this Court in Kanumuri Raghurama Krishnam Raju Vs. State of A.P.[6], after observing that jurisdiction of the trial court as well as of the High Court under Section 439 Cr.P.C. is concurrent, held that merely because the High Court was approached by the appellant without approaching the trial court would not mean that the High Court could not have considered the bail application of the appellant.

In the facts of that case, this Court opined that the High Court ought to have considered the bail application of the appellant on merit and decided the same. However, having regard to the fact that much time had lapsed since passing of the order of the High Court and there were subsequent medical reports of the appellant, this Court did not relegate the appellant back to the High Court but considered the bail application of the appellant on merit herein itself. This Court held thus:

14. The jurisdiction of the trial court as well as the High Court under Section 439 of the Code of Criminal Procedure, 1973 is concurrent and merely because the High Court was approached by the appellant without approaching the trial court would not mean that the High Court could not have considered the bail application of the appellant. As such, in our view, the High Court ought to have considered the bail application of the appellant on merits and decided the same.

However, since the High Court has not considered the matter on merits and much water has flown since the passing of the order of the High Court, as now there are two medical reports of the appellant, one by the government hospital on the direction of the High Court and the other by Army Hospital on the directions of this Court, we deem it fit and proper to consider the bail application of the appellant on merits.

37. Mr. Raju, learned Additional Solicitor General of India, while supporting the order of the High Court vehemently argued that the appellant has to first approach the trial court for bail though under Section 439 Cr.P.C. both the Special Court and the High Court have concurrent jurisdiction.

No special privilege should be shown or granted to the appellant. I am afraid such a submission cannot be accepted. In this regard, I am in respectful agreement

with the view taken by this Court in Kanumuri Raghurama Krishnam Raju. That apart, when the appellant has been granted bail under the more stringent provisions of PMLA, further detention of the appellant by the CBI in respect of the same predicate offence has become wholly untenable.

In such circumstances, asking the appellant or relegating the appellant to approach the trial court, then to the High Court and then to this Court for a fresh round of bail proceedings in the CBI case after he had already traversed the same route in the PMLA case would be nothing but a case of procedure triumphing the cause of justice. In this connection, it would be apt to refer to the observations of this Court in the case of Manish Sisodia Vs. CBI, Criminal Appeal No. 3296 of 2024, decided on 09.08.2024:

32. It could thus be seen that this Court had granted liberty to the appellant to revive his prayer after filing of the chargesheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter this Court, in our view, would be making him play a game of "Snake and Ladder". The trial court and the High Court have already taken a view and in our view relegating the appellant again to the trial court and the High Court would be an empty formality. In a matter pertaining to the life and liberty of a citizen which is one of the most sacrosanct rights guaranteed by the Constitution, a citizen cannot be made to run from pillar to post.

37.1. Manish Sisodia is a coaccused in the same CBI case and the ED case. His second bail application was rejected by the trial court on 30.04.2024 after taking about three months' time to decide the same. When Sisodia moved the High Court for bail, the same also came to be rejected on 21.05.2024. It was thereafter that Manish Sisodia approached this Court in the second round.

In the hearing which took place on 04.06.2024, the learned Solicitor General for India made a statement before the Court that investigation would be concluded and final complaint as well as chargesheet would be filed in both the ED and CBI cases on or before 03.07.2024. On the basis of the above statement of the learned Solicitor General, this Court disposed of the two criminal appeals of Shri Manish Sisodia with liberty to him to revive his prayer afresh after filing of final complaint and chargesheet.

When Shri Sisodia approached this Court for bail after the complaint and the chargesheet were filed, Mr. Raju learned Additional Solicitor General of India appearing for the ED as well as the CBI contended that Shri Sisodia should again approach the trial court for regular bail as in the interregnum, the complaint and the chargesheet were filed. Such submission of Mr. Raju was rejected by this Court. Adverting to the earlier order of this Court dated 04.05.2024, this Court in Manish Sisodia observed as under:

33. It will be a travesty of justice to construe that the carefully couched order preserving the right of the appellant to revive his prayer for grant of special leave against the High Court order, to mean that he should be relegated all the way down to the trial court. The memorable adage, that procedure is a hand maiden and not a mistress of justice rings loudly in our ears.

38. This Court in Gudikanti Narasimhulu Vs. Public Prosecutor[7], had highlighted that bail is not to be withheld as a punishment. The requirement as to bail is merely to secure the attendance of the prisoner at trial. This Court in Manish Sisodia referred to and relied upon the aforesaid decision and reiterated the salutary principle that bail is the rule and jail is the exception. This Court has observed that even in straightforward open and shut cases, bail is not being granted by the trial courts and by the High Courts. It has been held as under:

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very wellsettled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of nongrant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

39. Bail jurisprudence is a facet of a civilised criminal justice system. An accused is innocent until proven guilty by a competent court following the due process. Hence, there is presumption of innocence. Therefore, this Court has been reiterating again and again the salutary principle that bail is the rule and jail is the exception. As such, the courts at all levels must ensure that the process leading to and including the trial does not end up becoming the punishment itself.

40. This Court has emphasized and reemphasized time and again that personal liberty is sacrosanct. It is of utmost importance that trial courts and the High Courts remain adequately alert to the need to protect personal liberty which is a cherished right under our Constitution.

41. That being the position and having regard to the discussions made above, I am of the unhesitant view that the belated arrest of the appellant by the CBI is unjustified and the continued incarceration of the appellant in the CBI case that followed such arrest has become untenable.

42. In the circumstances, the judgment and order of the High Court dated 05.08.2024 in W.P.(Crl.) No. 1939 of 2024 is clarified to the above context while

the judgment and order of the High Court dated 05.08.2024 in Bail Application No. 2285 of 2024 is set aside.

43. Consequently, it is directed that the appellant shall be released on bail forthwith in the CBI case i.e. RC No. 0032022A0053 dated 17.08.2022. In so far bail conditions are concerned, this Court in the ED case i.e. in Criminal Appeal No. 2493 of 2024 has imposed several terms and conditions including clauses (b) and (c) vide the orders dated 10.05.2024 and 12.07.2024 which have been incorporated in clause (d) of paragraph 47(ii) of the judgment delivered by Justice Surya Kant.

Though I have serious reservations on clauses (b) and (c) which debars the appellant from entering the office of Chief Minister and the Delhi Secretariat as well as from signing files, having regard to judicial discipline, I would refrain from further expressing my views thereon at this stage since those conditions have been imposed in the separate ED case by a two judge bench of this Court.

44. Both the appeals are accordingly disposed of.

.....J. [Ujjal Bhuyan]

New Delhi;

September 13, 2024.

1 (1994) 4 SCC 260

2 (2010) 6 SCC 1

3 (2014) 8 SCC 273

4 (2022) SCC Online SC 897

5 (2020) 14 SCC 12

6 (2021) 13 SCC 822

7 (1978) 1 SCC 240

Arvind Kejriwal
Vs.
Central Bureau of Investigation

[Criminal Appeal No. 3816 of 2024
arising out of SLP (Crl.) No. 11023/2024]
[Criminal Appeal No. 3817 of 2024
arising out of SLP (Crl.) No. 10991/2024]

1. Leave granted.

2. In view of the separate order passed by Hon'ble Mr.Justice Ujjal Bhuyan, however, there being a concurrent opinion that the appellant is entitled to be released on bail, subject to the terms and conditions mentioned in para 47 of the order, authored by Hon'ble Mr.Justice Surya Kant, the Criminal Appeal challenging the legality of arrest (arising out of SLP(Crl.)No.10991/2024 is dismissed, the Criminal Appeal arising out of SLP(Crl.)No.11023/2024 is allowed and while setting aside the impugned judgment of the High Court dated 05.08.2024, the appellant is directed to be released on bail, subject to the following terms and conditions:

a. the Appellant is directed to be released on bail in connection with FIR No. RC0032022A0053/2022 registered by the CBI at PS CBI, ACB, upon furnishing bail bonds for a sum of Rs. 10,00,000 /- with two sureties of such like amount, to the satisfaction of the Trial Court;

b. the Appellant shall not make any public comments on the merits of the CBI case, it being sub judice before the Trial Court. This condition is necessitated to dissuade a recent tendency of building a self-serving narrative on public platforms;

c. however, this shall not preclude the Appellant from raising all his contentions before the Trial Court;

d. the terms and conditions imposed by a coordinate bench of this Court vide orders dated 10.05.2024 and 12.07.2024 passed in Criminal Appeal No. 2493/2024, titled Arvind Kejriwal v. Directorate of Enforcement, are imposed mutatis mutandis in the present case;

e. the Appellant shall remain present before the Trial Court on each and every date of hearing, unless granted exemption; and

f. the Appellant shall fully cooperate with the Trial Court for expeditious conclusion of the trial proceedings.

.....J. (Surya Kant)

.....J. (Ujjal Bhuyan)

New Delhi

September 13, 2024

IN THE SUPREME COURT OF INDIA

Sushma
Vs.
Nitin Ganapati Rangole & Ors.,

[Civil Appeal No(s). 10648 of 2024
arising out of SLP (Civil) No(s). 21172 of 2021]

[Civil Appeal No(s). 10649 of 2024
arising out of SLP (Civil) No(s). 1023 of 2022]

[Civil Appeal No(s). 10650 of 2024
arising out of SLP (Civil) No(s). 21248 of 2021]

[Civil Appeal No(s). 10651 of 2024
arising out of SLP (Civil) No(s). 337 of 2022]

[Civil Appeal No(s). 10652-10653 of 2024
arising out of SLP (Civil) No(s). 17692-17693 of 2023]

Civil Appeals @ SLP (Civil) Nos. 21172 of 2021
Civil Appeals @ SLP (Civil) Nos. 1023 of 2022
Civil Appeals @ SLP (Civil) Nos. 21248 of 2021
Civil Appeals @ SLP (Civil) Nos. 337 of 2022

HEADNOTE – The legal heirs of the deceased who died in the road accident can't be denied their rightful compensation on the ground that the driver of the car contributed to the accident. The contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be.

JUDGMENT

Mehta, J.

1. Leave Granted.

2. The appellant-claimants have preferred these appeals being aggrieved by the common judgment dated 7th April, 2021 passed by the Division Bench of High Court of Karnataka in MAC appeals1 filed by the appellant-claimants and respondent No.2-Reliance General Insurance Limited (for short the 'Insurer') under Section 173(1) of the Motor Vehicles Act, 1988 (for short the 'Act'). The

Division Bench of the High Court disposed of the appeals in the following manner:-

"ORDER

1. Miscellaneous First Appeals filed by both the Insurance Company and the Claimants are disposed of;

2. The modified compensation in all the appeals is as follows:

MFA No.	Amount (Rs.)
102773 of 2016 (MVC 2277 of 2013)	21,81,718.00
102774 of 2016 (MVC 2278 of 2013)	74,720.00
102775 of 2016 (MVC 2279 of 2013)	59,54,392.00
102776 of 2016 (MVC 2280 of 2013)	7,01,400.00
102777 of 2016 (MVC 2281 of 2013)	15,000.00

3. Insurance company shall satisfy the award within four weeks from the date of receipt of certified copy of this order;

4. Apportionment and disbursement of the compensation amount shall be as per the award of the Tribunal;

5. The amount in deposit, if any, be transmitted to the Tribunal forthwith, for disbursement to the claimants."

3. Brief facts relevant and essential for the disposal of the present appeals are that on 18th August, 2013, a car bearing registration No. MH-09/BX-4073 (for short 'the car') collided with a 14-wheeler trailer truck bearing registration No. MH-09/CA- 0389 (for short 'the offending truck') which was left abandoned in the middle of the highway without any warning signs in the form of indicators or parking lights.

The collision resulted into the death of the passengers of the car, namely, Sunita, Ashtavinayak Patil, Deepali and the driver Saiprasad Karande at the spot. One of the passengers, namely, Smt. Sushma (wife of deceased- Ashtavinayak Patil) survived the accident, however, sustaining grievous injuries. The car was insured by respondent No. 4-IFFCO-TOKIO General Insurance Co. Ltd. (for short the 'Insurance Company'), whereas, the offending truck was insured by respondent No.2-Insurer.

4. The injured Smt. Sushma and the legal heirs of the deceased occupants of the car filed separate claim petitions under Section 166 of the Act before the VI Additional District and Sessions Judge and Member, Additional Motor Accident Claims Tribunal, Belagavi (hereinafter being referred to as 'Tribunal') claiming

compensation from the owner of offending truck i.e. respondent No. 1 and the insurer of the offending truck i.e. respondent No.2-Insurer.

No relief was sought by the claimants against the owner and the insurer of the car. The claimants alleged that since the offending truck was left abandoned in the middle of the highway without switching on the parking lights or indicators or without taking any other precautionary measures to warn the incoming traffic, the person in control of the said vehicle was fully responsible for the accident.

5. The Tribunal, while deciding the claims held that it was a case of contributory negligence by the drivers of both the vehicles. The Tribunal observed that the driver of the car had contributed to the accident because he failed to take appropriate preventive measures so as to avoid collision with the offending truck which was parked in the middle of the road.

6. As the appellant-claimants had not claimed compensation from owner of the car, i.e., respondent No.3-Shri Vasant Ravan Jadhawar and respondent No.4-Insurance Company of the car, these respondents were exonerated and the claims against them were dismissed.

7. The Tribunal computed the compensation as below:-

MVC No.	Amount (Rs.)
2277 of 2013	22,25,000.00
2278 of 2013	30,000.00
2279 of 2013	66,02,500.00
2280 of 2013	87,500.00
2281 of 2013	12,500.00

8. The Tribunal held the owner of the offending truck, respondent No.1 and the respondent No. 2-Insurer jointly and severally responsible to indemnify the claims of the appellant-claimants and at the same time directed reduction of the compensation awarded by 50% on account of contributory negligence.

9. Aggrieved by the quantum of compensation awarded and the reduction on account of contributory negligence, the appellant-claimants filed appeals under Section 173(1) of the Act before the High Court of Karnataka.

10. Upon hearing arguments advanced on behalf of the parties and appreciating the material available on record, the Division Bench of the High Court of Karnataka applied the rule of last opportunity and held that had the driver of the car been cautious, he could have avoided the accident. The High Court gave imprimatur to the Tribunal's observation with respect to contributory negligence, however, it modified and enhanced compensation awarded by the Tribunal while disposing of the appeals vide judgment dated 7th April, 2021 (supra). The High

Court affirmed the direction of the Tribunal holding the respondent No.2-Insurer responsible to indemnify the claims to the extent of 50%.

11. The appellant-claimants have preferred these appeals by special leave primarily aggrieved by the deduction of the compensation awarded to them on account of contributory negligence.

12. Thus, the core issue involved in these appeals centres around the deduction of 50% compensation awardable to the appellant-claimants, who have assailed the concurrent findings of the Courts below on the aspect of contributory negligence whereby, the driver of the car, i.e. Saiprasad Karande (deceased), was held jointly responsible for causing the collision.

13. The challenge in these appeals is against the concurrent findings of the Courts below. The scope of interference by this Court in such concurrent finding while exercising jurisdiction under Article 136 of the Constitution of India is well-established. In the case of Sukhbiri Devi v. Union of India2, this Court noted:

"3. At the outset, it is to be noted that the challenge in this appeal is against concurrent findings by three Courts, as mentioned hereinbefore. The scope of an appeal by special leave under Article 136 of the Constitution of India against the concurrent findings is well settled. In State of Rajasthan v. Shiv Dayal3 reiterating the settled position, this Court held that a concurrent finding of fact is binding, unless it is infected with perversity. It was held therein:-

"When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. (see observation made by learned Judge Vivian Bose, J. as His Lordship then was a Judge of the Nagpur High Court in Rajeshwar Vishwanath Mamidwar v. Dashrath Narayan Chilwelkar, AIR 1943 Nag 117 Para 43)."

4. Thus, evidently, the settled position is that interference with the concurrent findings in an appeal under Article 136 of the Constitution is to be made sparingly, that too when the judgment impugned is absolutely perverse. On appreciation of evidence another view is possible also cannot be a reason for substitution of a plausible view taken and confirmed. We will now, bearing in mind the settled position, proceed to consider as to whether the said appellate power invites invocation in the case on hand."

(emphasis supplied)

14. This Court while dealing with the exercise of power under Article 136 to interfere with concurrent findings in Mekala Sivaiah v. State of A.P.,4 expounded: -

"15. It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.

16. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact.

18. In Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728] , a two-Judge Bench of this Court held that this Court does not interfere with the concurrent findings of fact unless it is established:

18.1. That the finding is based on no evidence.

18.2. That the finding is perverse, it being such as no reasonable person could arrive at even if the evidence was taken at its face value.

18.3. The finding is based and built on inadmissible evidence which evidence, excluded from vision, would negate the prosecution case or substantially discredit or impair it.

18.4. Some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded."

(emphasis supplied)

15. In view of the above precedents, it is clear that this Court in exercise of its jurisdiction under Article 136 of the Constitution of India has the power to interfere, even if the Courts below have concurrently reached to a common conclusion with respect to a certain factual aspect, subject to the condition that such a conclusion is so perverse that no reasonable person could arrive at such a conclusion even if the evidence was taken at its face value.

16. Having considered the submissions advanced by learned counsel for the parties and after going through the impugned judgements passed by the High Court and the Tribunal as well as upon appreciating the material placed on record, we feel that the contentious finding whereby, the driver of the car, namely, Saiprasad Karande (deceased) was held jointly responsible for causing the accident along with the driver/owner of the offending truck leading to the claims of the passenger-Sushma & dependants of the deceased-passengers being deducted by 50% on the principle of contributory negligence is perverse on the face of the record.

17. In addition, we hold that the finding of the Courts below, which reduced the claims of the legal heirs of the deceased and the injured, other than the legal heirs of the driver-Saiprasad Karande (deceased) is also invalid in the eyes of law. The Courts below uniformly applied the principle of contributory negligence while directing deduction from the compensation awarded to the respective appellant-claimants, i.e. the dependents of passengers and the injured as well as the dependents of the driver-Saiprasad Karande @ 50%. Thus, the contributory negligence of the driver of the car was vicariously applied to the passengers which is prima facie illegal and impermissible.

18. In the case of Union of India v. United India Insurance Co. Ltd.,5 this Court dealt with the question whether the driver's negligence in any manner vicariously attaches to the passengers of the motor vehicle of which he was the driver, and it was held as below:-

"10. There is a well-known principle in the law of torts called the "doctrine of identification" or "imputation". It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff where the employee is acting in the course of employment. But, it has been also held in Mills v. Armstrong [(1888) 13 AC 1, HL] (also called The Bernina case) that that principle is not applicable to a passenger in a vehicle in the sense that the negligence of the driver of the vehicle in which the passenger is travelling, cannot be imputed to the passenger. (Halsbury's Laws of England, 4th Ed., 1984 Vol. 34, p. 74; Ratanlal and Dhirajlal, Law of Torts, 23rd Ed., 1997, p. 511; Ramaswamy Iyer, Law of Torts, 7th Ed., p. 447.)

The Bernina case [(1888) 13 AC 1, HL] in which this principle was laid in 1888 related to passengers in a steamship. In that case a member of the crew and a passenger in the ship Bushire were drowned on account of its collision with another ship Bernina. It was held that even if the navigators of the ship Bushire were negligent, the navigators' negligence could not be imputed to the deceased who were travelling in that ship. This principle has been applied, in latter cases, to passengers travelling in a motor vehicle whose driver is found guilty of contributory negligence.

In other words, the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. There is no rule that the driver of an omnibus or a coach or a cab or the engine driver of a train, or the captain of a ship on the one hand and the passengers on the other hand are to be "identified" so as to fasten the latter with any liability for the former's contributory negligence. There cannot be a fiction of the passenger sharing a "right of control" of the operation of the vehicle nor is there a fiction that the driver is an agent of the passenger.

A passenger is not treated as a backseat driver. (Prosser and Keeton on Torts, 5th Ed., 1984, pp. 521- 22.) It is therefore clear that even if the driver of the passenger vehicle was negligent, the Railways, if its negligence was otherwise proved - could not plead contributory negligence on the part of the passengers of the vehicle. What is clear is that qua the passengers of the bus who were innocent, - the driver and owner of the bus and, if proved, the Railways - can all be joint tortfeasors."

(emphasis supplied)

19. It is clear from the ratio of the above judgment that the contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be.

20. Thus, we have no hesitation in holding that the Courts below committed gross error in law while reducing the compensation awarded to the appellant-claimants, being the dependents of the deceased-passengers and Smt. Sushma as the claims of these claimants cannot be truncated by attaching the vicarious liability with the driver. However, the claim of the dependents of the deceased driver Saiprasad Karande would stand on a different footing.

21. We shall now proceed to discuss whether the Courts below were justified in fastening partial liability on the driver of the car on the basis of contributory negligence in causing the accident. 22. The High Court, after adverting to the evidence available on record, made the following observations on the aspect of contributory negligence: -

"12. The Investigation Officer has filed charge sheet against the driver of the car as also the driver of truck. Exhibit P4-spot mahazar establishes the fact that the offending truck was parked on the middle of the road. Undisputedly, accident took place at 9.10 pm and the truck is a Heavy Goods Vehicle. Exhibit P6-Photograph of the place of accident substantiate that the offending truck was fourteen wheeled heavy truck which was parked on the middle of the road.

Though Shri G.N. Raichur, learned counsel submitted that the truck was parked on the extreme left of the road, however, perusal of the photographs would clearly substantiate the fact that the truck was parked on the middle of the road and on the other hand, the learned counsel for the claimants submitted that there was fog at the time of the accident. There are no eye-witnesses to the incident.

Taking into consideration the facts in totality, it may be stated that if the driver of the car was cautious, he would have avoided the accident and accordingly, the rule of last opportunity would be squarely applicable to the facts of the case and therefore, the finding recorded by the Tribunal fastening 50% contributory negligence on the drivers of both the vehicles in question, is just and proper. In view of the same, the finding recorded by the Tribunal on issue No.1 is, hereby, affirmed and the appeals filed by the Insurance Company challenging the liability are required to be rejected, accordingly rejected."

(emphasis supplied)

23. On going through the above extract from the impugned judgment, it is evident that the High Court recorded an affirmative finding that the offending truck was parked in the middle of the road. This finding as borne out from the evidence is not under challenge and has attained finality. The accident took place on 18th August, 2013 which as per the Hindu calendar fell on Shukla Paksha Dwadashi, and thus, there was not even a remote possibility that the road would be illuminated by moonlight at the time of the accident.

The discussion of evidence by the Tribunal and the High Court makes no reference to availability of streetlights at the collision site and hence, there is no doubt that at the time of the accident, the conditions on the road would have been pitch dark making it virtually impossible for the incoming vehicles to sight the stationary offending truck within a reasonable distance.

24. Learned counsel for the appellant-claimants, urged that there is neither any evidence nor any finding by the Courts below that the offending truck was parked on the road after taking due care and caution i.e. either by switching on the parking lights or by putting any prominent markers around the vehicle so as to warn the passing vehicles. Apparently thus, the offending truck was left abandoned in the middle of the highway (as concurrently held by both the Courts below) without taking due care and caution to switch on the parking lights or to put in place any other precautionary measures to warn the vehicles traversing the highway in the dead of the night.

25. Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to the other road users.

26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

27. A highway or a road is a public place as defined in Section 2(34) of the Act: -

"2(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.

29. Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any "public place" in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.

31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.

32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.

33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity.

But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire responsibility for the negligence leading to the accident was of the truck owner/driver.

34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises.

Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.

35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.

36. In the case of Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak6, this Court while referring to a decision of the High Court of Australia in Astley v. Austrust Ltd.7, went on to hold that: -

"where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty."

37. In the very same judgment, this Court also referred to and approved the view taken in Swadling v. Cooper8, as below: -

"Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence."

(emphasis supplied)

38. A three Judge Bench of this Court in the case of Archit Saini and Another v. Oriental Insurance Company Limited and Others9, had the occasion to consider an identical fact scenario, and after analysing the evidence available on record, it was held:-

"8. After having perused the evidence of PW7, Site Map (Ext. P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view.

The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side.

Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext. P-45) reinforces the version of PW7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext. P-45) filed along with the chargesheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/offending vehicle was parked without any indicator or parking lights.

The fact that PW7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flashlights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW7 nor has any suggestion been made that no vehicle with flashlights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

9. Suffice it to observe that the approach of the High Court in reversing the well-considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.

10. Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent no.1 negligently parked the Gas Tanker/offending vehicle in the middle of the road without any indicator or parking lights."

39. We are of the view that the aforesaid decision applies to the case at hand on all fours and thus, the appellant-claimants cannot be denied their rightful compensation on the ground that the driver of the car, namely Saiprasad Karande (deceased), was jointly responsible for the accident with the person in control of the offending truck and hence, their claims should be reduced on the principle of contributory negligence.

40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high.

In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult.

Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is ex-facie perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts.

41. We, therefore, hold that the person in control of the offending truck insured by respondent No. 2-Insurer, was fully responsible for the negligence leading to the accident.

42. As a consequence, the deduction of 50% of compensation awarded to the appellant-claimants on account of contributory negligence, as directed by the Tribunal and affirmed by the High Court, cannot be sustained. The finding recorded by the Courts below on this issue is reversed as being perverse and unsustainable in the facts as well as in law. Resultantly, it is directed that there shall be no deduction from the compensation payable to the appellant-claimants who shall be entitled to the full compensation as assessed by the Tribunal and modified by the High Court by the impugned judgment.

43. It is further directed that respondent No. 2-Insurer shall be jointly and severally liable along with the owner of the offending truck to indemnify the awards.

44. The appeals are accordingly allowed. No costs.

Civil Appeals @ SLP(Civil) Nos. 17692-17693 of 2023

45. Leave granted.

46. In these appeals, the appellant-Malutai10 has challenged the apportionment of the compensation awarded by the Tribunal between the appellant and the co-claimant11. Modification in the apportionment is sought on the ground that the co-claimant Smt. Sushma has remarried after the claim was decided and thus, she cannot claim equal share in the compensation.

47. Having considered the submissions advanced on behalf of the parties, we are not inclined to interfere in the apportionment of the compensation between the appellant-Malutai and co-claimant (respondent No.5), as directed by the Tribunal and affirmed by the High Court. Thus, the said prayer of the appellant-Malutai is declined.

48. However, we reiterate the findings recorded in Civil Appeal @ SLP (Civil) No. 21172 of 2021 and connected matters and direct that the claimants, being the mother and wife of the deceased- Ashtavinayak Patil, shall be entitled to full compensation without any deduction on account of contributory negligence.

49. The respondent No.2-Insurer shall be liable to indemnify the award, however, the apportionment of the compensation inter se between the claimants as directed by the Tribunal shall not be disturbed.

50. The appeals are accordingly disposed of. No costs.

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

.....J. (Pamidighantam Sri Narasimha)

.....J. (Sandeep Mehta)

New Delhi;

September 19, 2024.

1 In Miscellaneous First Appeal Nos. 102776, 102549, 102775, 102546, 102773, 102547, 102777 & 102550 of 2016 and 100204 of 2017.

2 2022 SCC OnLine SC 1322

3 (2019) 8 SCC 637

4 (2022) 8 SCC 253

5 (1997) 8 SCC 683

6 (2002) 6 SCC 455

7 (1999) 73 ALJR 403

8 1931 AC 1

9 (2018) 3 SCC 365

10 Mother of the deceased-Ashtavinayak Patil

11 Smt. Sushma, wife of the deceased-Ashtavinayak Patil (respondent No. 5 in the present appeals)

IN THE SUPREME COURT OF INDIA

Shoor Singh & Anr.
Vs.
State of Uttarakhand

[Criminal Appeal No. 249/2013]

HEADNOTE – To constitute a 'dowry death', punishable under Section 304- B IPC, the following ingredients must be satisfied:
(i) death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;
(ii) such death must have occurred within seven years of her marriage;
(iii) soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
(iv) such cruelty or harassment must be in connection with any demand for dowry.

JUDGMENT

Manoj Misra, J.

1. This appeal is against the judgment and order of the High Court1 dated 26.04.2012, whereby, while affirming the conviction of the appellants under Sections 304-B and 498- A IPC2, the appeal3 of the appellants was partly allowed thereby reducing the sentence awarded by the Trial Court4 from 10 years to 7 years R.I. under Section 304-B IPC and maintaining the sentence of 1 year R.I. under Section 498-A IPC.

FACTUAL MATRIX

2. The appellants are father-in-law and mother-in-law, respectively, of the deceased (Neelam), who was daughter of Shanker Singh (PW-1) and Sarojini Devi (PW-2). The deceased was married to appellants' son Jitendra Singh (coaccused) on 1.03.2006. On 30.12.2006, deceased gave birth to a male child. Naming ceremony of the child was performed on 11.01.2007. On 17.01.2007, deceased died at her matrimonial home due to extensive burn injuries.

Upon being informed of her death, PW-1 lodged a first information report5 (Ex. Ka-1) on the same day, inter alia, alleging that,- when he along with PW-2 had visited deceased's matrimonial home on 4.1.2007, deceased's father-in-law, mother-in-law, brother-in-law (i.e., husband's elder brother - not tried) and sister-in-law (husband's elder brother's wife - not tried) had told PW-1 and PW-2 that on the day of naming ceremony of the child they would have to give a motor-cycle and cash of Rs.50,000/-.

Besides that, it was alleged that when PW-1 and PW-2 visited deceased's matrimonial home on 11.01.2007, the deceased inquired from PW-1 and PW-2 whether they had brought motorcycle and cash. However, when PW-1 expressed his inability to meet the demand, the deceased told PW-1 that lot of pressure was being put on her and if the demand is not met, she would be killed.

With these allegations, and by stating that accused had killed his daughter on account of the demand being not met, PW-1 lodged the FIR, which was registered as case crime No.1 of 2007 at P.S. Langur Walla-2, district Pauri Garhwal, under Sections 304-B, 498-A IPC and Sections 3/ 4 Dowry Prohibition Act, 1961, against three accused, namely, Jitendra Singh (husband of the deceased) and the appellants, who were all tried together by the Court of Session, Pauri Garhwal in Sessions Trial No.25 of 2007.

3. During trial, prosecution examined 7 witnesses. PW-1 (the first informant - father of the deceased); PW-2 (mother of the deceased); and PW-3 (uncle of the deceased) were family members of the deceased who proved the date of marriage and alleged that the deceased was depressed on account of the demand. PW-4 was the doctor who conducted autopsy of the cadaver. He proved that the deceased had suffered extensive ante-mortem burn injuries which resulted in her death.

PW-5 is cousin of the deceased who had arrived at the spot along with PW-1 on receipt of information regarding her death. He is also the inquest witness. PW-6 is the Patwari who made GD entry of the FIR and took initial steps of investigation such as preparation of inquest report and dispatch of the cadaver for autopsy. PW-7 completed the investigation and submitted charge-sheet. PW-7, inter alia, stated that at the time of inquest the body of the deceased was lying in the courtyard.

4. In their statement recorded under Section 313 CrPC6 the accused admitted:

(a) the factum of marriage;

(b) the date of marriage;

(c) the date of childbirth;

(d) that parents of the deceased visited her matrimonial home on 04.01.2007 to see their daughter and the child; and

(e) that on 11.01.2007 child naming ceremony was done.

The accused, however, denied demand of dowry/ motorcycle/ cash of Rs.50,000/- as well as harassment of the deceased. Jitendra Singh (i.e., husband of the

deceased) stated that the deceased committed suicide due to depression on account of staying separate from him as no quarter was allotted to him, and also because a photograph of her with a male stranger was found. He had also stated that at the time of the incident he had gone to collect wood. Accused Shoor Singh (appellant no.1 herein) added that he had gone to Lansdowne at the time of incident. Similarly, accused Gangotri Devi (appellant no.2 herein) stated that she had gone out to wash clothes.

5. The defense had examined 4 witnesses (DW-1 to DW-4) and produced color photographs (Ex Kha-1 to Kha-6). DW-1 stated that the deceased used to accompany her for collecting grass and wood, but she never made any complaint about her harassment on account of dowry demand. Rather, the deceased used to say that if she is not taken by her husband to his workplace she would die. DW- 2 stated that in the morning of 17.01.2007 (i.e., date of the incident) she had seen Shoor Singh (appellant no.1 herein) going towards Lansdowne.

DW-3 stated that between 12.30 and 1.00 p.m. he saw smoke bellowing from the house of Shoor Singh. When he reached there, he noticed that none of the accused were there, and the body of the deceased was lying outside the shutter in a burnt condition. Whereafter, he went to inform Gangotri Devi who was washing clothes near a water well. DW-4 stated that he was present at the time of inquest when he saw an empty can of kerosene and matchsticks lying near the body of the deceased; and smell of kerosene was all over.

6. The trial court primarily relied on the testimonies of PW-1, PW-2 and PW-3 to hold that the deceased was harassed soon before her death in connection with demand for a motorcycle and cash and, therefore, in view of the presumption under Section 113-B of the Evidence Act, 1872, the accused were liable to be convicted for dowry death, punishable under Section 304-B IPC, and for cruelty, punishable under Section 498-A IPC.

7. Aggrieved therewith, two separate criminal appeals were filed before the High Court. One appeal was by the husband of the deceased and the other was by the appellants herein. Both appeals were decided by the impugned order. In so far as the accused Jitendra Singh is concerned, he has served out the sentence and has not filed any appeal. This appeal is, therefore, by father-in-law and mother-in-law of the deceased. 8. We have heard learned counsel for the parties and have perused the record.

SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

9. Learned counsel for the appellants submitted:

(i) The autopsy report indicated no mark of injury, other than burn injuries, on the body of the deceased. Body of the deceased was found in the courtyard of the

house. Further, the evidence indicated death during daytime. The defense evidence indicated that when smoke was noticed, the witness reached the spot to find a burnt body of the deceased lying in the courtyard and, at that time, none of the accused persons were present. Even prosecution witnesses do not state that at the time of incident the accused were present in the house. All of this would suggest that it is a case of suicide, which could be for multiple reasons.

(ii) There is no direct evidence regarding demand of dowry by the appellants. The testimonies of PW-1 and PW-2 do not support the FIR allegation that on 4.1.2007 appellants had demanded a motorcycle and cash from PW-1 and PW-2.

(iii) There is no evidence that motorcycle or cash was demanded in connection with marriage. Hence, a case of dowry death is not made out.

(iv) The courts below failed to test the merit of the allegations against the weight of surrounding circumstances and the deposition of prosecution witnesses during cross-examination. Interestingly, PW-1 and PW-2, who had been visiting the matrimonial home of the deceased, admitted during cross-examination that they did not confront the accused in respect of the alleged demand as reported to them by their daughter (i.e., the deceased) because they thought it to be a joke. If it was so, the question of subjecting the deceased to cruelty does not arise.

(v) Admittedly, husband of the deceased in connection with service was residing elsewhere. Accused in their statement under Section 313 CrPC stated that the deceased was unhappy and depressed because she was not able to live with her husband as no residential quarter was allotted to him. A suggestion to that effect was also given to the prosecution witnesses. Hence, this was a material circumstance explaining the drastic step to commit suicide.

(vi) PW-1 tried to implicate even the elder brother of the husband of the deceased even though he resided in another town in connection with service. This would suggest that there was a malicious attempt to implicate the entire family without any basis. In such circumstances, the Court ought to have been circumspect. More so, when no witness of the locality was produced in support of the prosecution case.

(vii) Presumption under Section 113-B of the Evidence Act arises only when the necessary ingredients of a dowry death are proved beyond reasonable doubt. Here there was no direct and reliable evidence that the deceased was subjected to cruelty in connection with demand of dowry soon before her death. Hence, there was no occasion to raise a presumption in respect of a dowry death.

(viii) There were sufficient reasons for the deceased to commit suicide, such as:

(a) She was depressed for not being able to reside with her husband who had to be away from home in connection with his service.

(b) She was shamed by discovery of a photograph (Ex. Kha-1) wherein she was noticed alone with a male stranger in front of a waterbody.

SUBMISSIONS ON BEHALF OF STATE

10. On behalf of the prosecution (i.e., the State of Uttarakhand), it was submitted:

(i) PW-1, PW-2 and PW-3 have all been consistent about the deceased reporting to them that accused persons were demanding a motorcycle and cash of Rs.50,000/- and threatening her that if their demand is not met by the date of child naming ceremony, she would be killed. Naming ceremony was held on 11.01.2007 and soon thereafter the deceased died on 17.01.2007. Thus, deceased's statement was in respect of circumstances of the transaction which resulted in her death and, therefore, admissible in evidence under Section 32 (1) of the Evidence Act.

(ii) The courts below justifiably raised a presumption of the offence of dowry death; and that presumption was not dispelled by the accused-appellants. Moreover, the appellants being fatherin- law and mother-in-law of the deceased, residing in the same house where the deceased died an unnatural death, were liable to be convicted.

(iii) The photograph (Ex. Kha-1) was not admissible in evidence as neither the person who took the photograph nor its negative was produced in evidence. Otherwise also, it did not reveal any such compromising position of which the deceased will be ashamed of.

(iv) The appeal is concluded by concurrent findings of fact, therefore no case for interference is made out.

ANALYSIS/ DISCUSSION

11. Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:

(a) the deceased was married to the son of the appellants within seven years of her death;

(b) the deceased died an unnatural death on account of ante-mortem burn injuries;

(c) place of death of the deceased was her matrimonial home;

(d) just 18 days before her death, the deceased had given birth to a male child;

(e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;

(f) there is no evidence that any of the accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g) there is no evidence that the deceased was physically assaulted by any of the accused in connection with demand for dowry or motorcycle or cash.

12. To constitute a 'dowry death', punishable under Section 304- B7 IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry. The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

13. When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B8 of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

14. In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

15. The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.

16. No doubt testimonies of PW-1 and PW-2 would not be hit by the rule against hearsay evidence because it related to one of the circumstances of the transaction resulting in their daughter's unnatural death. However, a distinction must be drawn between admissibility and acceptability/reliability of a piece of evidence. Merely because a piece of evidence is admissible does not mean that it must be accepted. Before accepting the evidence to hold that the fact in issue stands proved beyond reasonable doubt, the Court must evaluate the same against the weight of surrounding circumstances and other facts proven on record.

17. In the instant case, the witnesses PW-1 and PW-2 were asked whether they took up the issue of motorcycle /cash demand with the accused. Their reply was that they did not, because they took it as a joke. We fail to understand how parents could treat their daughter's multiple reporting of apprehension to her life, on account of demand being not met, as a joke.

This creates a serious doubt about the truthfulness of the allegation more so when there is no allegation that any such demand was ever raised either before or at the time of marriage. This doubt gets fortified by change in stance of PW-1 from what was taken in the FIR. Notably, in the FIR it was alleged that the accused-appellants including their elder son, and his wife, had directly raised demand for a motorcycle and cash.

This allegation was not supported by the deposition of both PW-1 and PW-2 while admitting that appellant's elder son was a doctor serving in another district. Thus, there appears to be a knee-jerk reaction to the unnatural death of their daughter to make out a case of dowry death. Besides that, no independent witness of the vicinity was examined. In our considered view, therefore, one of the essential ingredients of dowry death, namely, any demand for dowry, was not proved beyond reasonable doubt.

18. Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self- inflicted, the accused suffered any other antemortem injury. Moreover, the presence of the accused in the house at the

time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved.

But, as noted above, here harassment/ cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt. As regards the reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased.

Suggestion was given to the prosecution witnesses, and statement was also made under Section 313 CrPC, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to lack of residential quarter. That apart, a photograph of the deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement under Section 313 CrPC a stand was taken that this photograph had shamed her.

Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the appellants are entitled to be acquitted of the charge of offences punishable under Section 304-B and 498-A IPC.

19. The appeal is accordingly allowed. The order convicting and sentencing the appellants under Section 304-B and 498-A IPC is set aside. The appellants are on bail. They need not surrender. Their bail bond(s) stand discharged.

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

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

.....J. (Manoj Misra)

New Delhi;

September 20, 2024

1 The High Court of Uttarakhand at Nainital

2 Indian Penal Code, 1860

3 Criminal Appeal No.87 of 2010

4 Sessions Judge, Pauri Gharwal

5 FIR

6 Code of Criminal Procedure, 1973

7 **Section 304-B. Dowry Death.-** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961].

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life

8 **Section 113-B. Presumption as to dowry death.** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304 capital B of the Indian Penal Code [45 of 1860]

IN THE SUPREME COURT OF INDIA

Just Rights for Children Alliance & Anr.
Vs.
S. Harish & Ors.

[Criminal Appeal Nos. 2161-2162 of 2024
arising out of SLP (Crl) Nos. 3665-3666 of 2024]

HEADNOTE –

1. Storage of child pornography without deletion or reporting indicates intention to transmit, constitutes offence under POCSO Act, 2012

2. Watching child pornography over the internet without downloading would also amount to "possession" of such material in terms of Section 15 of the Protection of Children from Sexual Offences Act, 2012.

3. The intention to transmit can be gauged from the failure of a person to delete and report the material.

4. **Doctrine of constructive possession applied** – Constructive possession extends the concept of possession beyond physical control to situations where an individual has the power and intention to control the contraband, even if it is not in their immediate physical possession.

5. Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual r physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.

6. The Parliament should seriously consider to bring about an amendment to the POCSO for the purpose of substituting the term “child pornography” with “child sexual exploitative and abuse material” (CSEAM) with a view to reflect more accurately on the reality of such offences. The Union of India, in the meantime may consider to bring about the suggested amendment to the POCSO by way of an ordinance.

7. Directed to all Courts to abstain from using the term 'Child Pornography' in their judgments and instead resort to CSEAM.

JUDGMENT

J. B. Pardiwala, J.:

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

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1. Since the issues raised in both the captioned appeals are same and the challenge is also to a self-same judgment and order passed by the High Court those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The present appeals arise out of the final judgment and order passed by the High Court of Judicature at Madras dated 11.01.2024 in Criminal Original Petition (Crl. O.P.) No. 37 of 2024 ("Impugned Order") filed by the respondent no. 1 (accused) herein under Section 482 of the Code of Criminal Procedure, 1973 (for short, the "Cr.P.C.") by which the High Court allowed the petition and thereby quashed the chargesheet dated 19.09.2023 filed for the offences punishable under Section 67B of the Information Technology Act, 2000 (for short, the "IT Act") and Section 15(1) of the Protection of Children from Sexual Offences Act, 2012 (for short, the "POCSO") arising out of the FIR No. 03 of 2020, P.S. Ambattur, Chennai. As a consequence, the criminal proceedings in Special Sessions Case No. 170 of 2023 stood terminated.

3. It may be necessary to clarify that the appellant no. 1 herein, 'Just Rights for Children Alliance' is a collation comprising of five different NGOs that work in unison against child trafficking, sexual exploitation and other allied causes. Whereas the appellant no. 2 is a child rights organization working towards

protecting children from exploitation and one of the partner NGOs to the aforesaid collation.

The appellants herein were not a party to the proceedings before the High Court. However, having regard to the serious issue of public importance involved in the matter they sought leave of this Court to challenge the impugned judgment of the High Court. The respondent nos. 2 & 3 are the State of Tamil Naidu and the Inspector of Police, All-Women's Police Station Ambattur, Chennai, respectively.

A. FACTUAL MATRIX

4. On 29.01.2020, the All-Women's Police Station Ambattur, Chennai, Tamil Naidu i.e., the respondent no. 3 herein, received a letter from the Additional Deputy Commissioner of Police (Crime against women and children Branch) wherein it was mentioned that as per the Cyber Tipline Report of the National Crimes Record Bureau (NCRB), the respondent no. 1 herein is an active consumer of pornography and has allegedly downloaded pornographic material involving children in his mobile phone.

5. Accordingly, in view of the aforesaid letter an FIR was registered against the respondent no. 1 herein on the very same day i.e., 29.01.2020 at the All-Women's Police Station Ambattur, Chennai, Tamil Naidu as Crime No. 03 of 2020 for the offence punishable under Section(s) 67B of the IT Act and 14(1) of the POCSO. The relevant portion of the FIR reads as under:-

"Today on 29.01.2020 at 12.00 noon, I, the Inspector of W28, All Women Police Station was on duty, received letter RC. No. 03/ADC CWC/West/Camp/2020 dated 28.01.2020 from Thirumathi S. Megalina, Additional Deputy Commissioner of Police, Prevention of Crimes against Women and Children Division, Chennai, West Zone. On perusal of the same, 4 References were mentioned therein viz.

Ref: 1. DO.Lr.No.05/ADGP-CWC/NCMEC/2020

2. C. No.30/COP/CO/2020

3.R.C. No. 228 VIII/DC CWC/Genl/2020 (CTR No. 49303278)

4. RC No. 68 /Japu - ii/NCMEC/2020

As per the notice issued in CTR No. 49303278 by National Crime Record Bureau, it is seen that Harris, resident of Door No.2, 1st Main Road, VPC Nagar, Kallikuppam, Ambattur, Mobile No. 99406 87836, has for the past more than two years, been watching child pornographic films. Details have also been obtained with regard to child pornographic films which were made by using children who

have been exploited, children who have gone missing, and by collecting information from centres which deal with missing children, and details have been provided with regard to the persons who have downloaded such child pornographic films.

When those notices were perused, it was seen that the above said person had downloaded those films through Old Site IDKALLI/ OLD/ Chm ID-CHM2307, with a view to indulge in sexual activities, and these films were made at the address 'Gopalsamy, No.2, Gangai Amman Kovil 3rd Main Road, Kallikuppam, Ambattur' by exploiting children in this area.

Since this bad activity is a crime against good social order, it was directed to take appropriate action against the said person, and therefore, Crime No. 03/2020 U/S 67B IT ACT r/w 14(1) POCSO Act 2012 was registered, and the original FIR has been sent to the concerned Court of learned Judicial Magistrate, and copies have been sent to the concerned superior officers of police without any delay, and investigation has been taken up.

13. Action Taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2, registered the case and took up the investigation. FIR read over to the complainant/Informant, admitted to be correctly recorded and a copy given to the Complainant/Informant free of cost."

6. During the course of the investigation, the mobile phone belonging to the respondent no. 1 was seized and sent to the Forensic Science Laboratory for analysis. The respondent no. 1 was also questioned whether he had ever viewed any pornographic content, to which the respondent no. 1 admitted that he used to regularly view pornography while he was in college.

7. As per the Computer Forensic Analysis Report dated 22.08.2020 it was found that the mobile phone of the respondent no. 1 contained two video files relating to child pornography depicting two underage boys involved in sexual activity with an adult woman. The Computer Forensic Analysis Report further stated that more than hundred other pornographic video files were downloaded and stored in the said mobile phone. The relevant portion of the said Computer Forensic Analysis Report reads as under:-

"COMPUTER FORENSIC ANALYSIS REPORT

Received from	: The Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court) Tiruvallur.
Crime No. & P.S.	: 03/2020 of Ambattur AWPS
Organization Report No.	: CF/52/2020

Case received Date : 28.02.2020

Case received through : WHC 43450, Tmt. Poornima

Seals status : Correct & Intact

Nature of crime : 67(B) IT Act and 14(1) of POCSO Act 2012

Tools used : UFED 4 PC. Report date: 22.08.2020

Head of the Division : A. Visalakshi, M.Sc, PGDCA

Examiner : S. Hemalatha, M.Sc., (FS), M.Sc., (CS)

RECEIVED DEVICE DESCRIPTION

One (1) sealed cloth-lined paper parcel marked, "PI No. 5/2020. Cr. No. 3/2020, Ambattur AWPS " containing the following item:

Marked as	**Name of the Item received**	**Details of the Item**	**Packing / Labelling details**
1	Mobile phone	Make: MOTO Model: XT 1804 IMEI1: 356477088126073 IMEI2: 356477088126081	Kept in a plastic box marked, "PI No: 05/2020".
	SIM 1	Airtel 4G 128K ICCID: 899100090253366247 3U	
	Memory Card Battery	Strontium 16 GB Inbuilt	

Objective

The above item was examined with a view to find if there is any facility of viewing video files using YouTube application and the details. And also to find if any media files pertaining to pornography were found accessed/downloaded/saved.

EXAMINATION

Mobile Phone: [MOTO]

The internal memory of the mobile phone was acquired using file system extraction and examined using the forensic software tool "UFED 4 PC". The retrieved details such as contacts, call logs, SMS messages and media files are generated as a report and the report (in pdf) is copied on to a Compact Disc

marked as "CF 52/20". Selected pages from the report are given as Annexure-I. Some of the findings from the report are as follows:-

Above findings indicated that the mobile phone was found to be equipped with the facility of viewing videos through YouTube Application.

4. (a) Video files pertaining to pornography (more than 100 Nos.) were found downloaded and stored in different paths, the details of the same are given as Annexure - II.

(b) Some of the vide files pertaining to pornographic nature were found stored under the path "Motorola GSM_XT1806 MotoG5SPlus.zip/sdcard/ProgramData/Android/Language/.fr/Vid eos/wat up pono".

(c) Under the same path two video files which could be accounted for Child Pornography content were found stored. In the videos boys (under-teen) were found involved in sexual activity with a adult woman/girl. The details of the same are pasted below:-

S. No.	File Info	Additional File Info
1.	Name: VID-20190614- WA0006.mp4	Size (bytes): 11256288
	Path: Motorola GSM_XT1806 MotoG5SPlus.zip/sdcard/Program Data/Android/Language/.fr/Videos/ wat up pono/ VID-20190614- WA0006.mp4	Modified: 6/14/2019 15:44 (UTC +5:30)
2.	Name: Unmayal sollungal Ennodu sellungal with Vadivel Balaji in AIE 4-8-2012 - Youtube.3GP	Size (bytes): 20467994
	Path: Media/Internal shared storage/trending/adhu idu/Unmayal sollungal Ennodu sellungal with Vadivel Balaji in AIE 4-8-2012 - Youtube.3GP	Modified: 9/5/2016 23:12 (UTC +5:30)

Memory Card: [Strontium 16 GB]

The memory card was acquired and examined using the forensic software tool "UFED 4 PC". The retrieved details such as document, image and video files are generated as a report and the report (in pdf) is copied on to a Compact Disc marked as "CF 52/20". The full report is given as Annexure-III.

On perusing the medial files, multiple video snapshot images and video files were found related to pornography. The representative samples of the same are copied onto the CD mentioned earlier under a specified folder."

8. Upon completion of the investigation, chargesheet dated 19.09.2023 was filed against the respondent no. 1 for the offences punishable under Section(s) 67B of the IT Act and 15(1) of the POCSO respectively. It may not be out of place to state at this stage, that although the FIR was registered for the offence punishable under Section 14(1) of the POCSO yet in light of the materials collected in the course of the investigation and the findings recorded in the Computer Forensic Analysis Report, the chargesheet was ultimately filed for the offence punishable under Section 15(1) of the POCSO. The relevant portion reads as under: -

"Final Report

Before the Hon'ble Mahila Fast Track Mahila Court, Tiruvallur

Police Final Report under 173(i) W28 Ambattur All Women Police Station Crim no- 3/2020 U/s 67(B) IT ACT & 14 (1) of POCSO ACT 2012 @67 (B) IT ACT 15(1) of POCSO ACT 2012.

Nature of the case
Mrs. Megallina, Additional Deputy Commissioner of Police, Women and Child Crime Branch, Chennai, West Zone LETTER RC.NO. 03/ADC CWC/West/Camp/2020 Dated: 28.01.2020 in that mentioned Ref: 1. Do. Lr. No. 05/ ADGP- CWC/ camp/ NCMEC/ 2020, 2. C.No.30/ COP/ CO/ 2020, 3. R.CNO. 228 VIII/ DC CWC/ Genl/ 2020 (CTR No. 49303278), 4. RC.No. 68/ japu- ii/ NCMEC/ 2020 as per the detail, Haris residing at 1st Main Road, Door No.03, VPC Nagar, Kallikuppam, Ambattur has reported to NCRB (National Crime Record Bureau) that he had seen child pornography on his mobile phone number 99406 87836 for more than two years at CTR No. 49303278 has been obtained and a report on child exploitation and missing persons and details of those who have downloaded child pornography against children banned by the data collection system has been obtained.

Aforesaid person OLD Size ID- KALLI 4/OLD Chm Id- CHM2307 Downloaded from the address No.2 Gopalsamy, 3rd Main Road, Gangaiyamman Temple, Ampathur, Kallikuppam, with the malicious intention of viewing children's pornographic films for sexual purposes. As this evil act is considered to be a crime of disturbance of social morals, after being instructed to take appropriate action against the said person, the All Women Police Station registered a case in CRIME NO. 03/20 U/ S 67B IT ACT r/ w 14(1) POCSO Act 2012 and the copy of the same was sent to the concerned court and the copies to the higher police officers without delay for investigation.

In the investigation conducted so far, crime scene no. 2, VPC Nagar to Main Road Kallikuppam Ambattur, Chennai is within the jurisdiction of Ambattur All Women Police Station.

On 28.01.2000 Additional Deputy Commissioner, Women and Child Prevention Division, Chennai West Zone gone through the case received from (NCMEC) According to the National Center for Exploited Children in this case accused Harish AGE 24/S/o. Santhanam No. 2 VPC Nagar First Main Road Kallikuppam Ampathur Chennai has been using his phone number (99406 87836) for more than two years from his mobile phone number OLD Size IDKALLI 4/OLD Chm Id- CHM2307 Downloaded from the address No.2 Gopalsamy, 3rd Main Road, Gangaiyamman Temple, Ampathur, Kallikuppam, with the malicious intention of viewing children's pornographic films for sexual purposes As this evil act is considered to be a crime of disturbance of social morals, as per CTR NO 49303278 a report of the crime has been received by NCRB.

Therefore, the accused in this case is considered to have committed an offense of disturbing public morals and therefore has committed a cognizable offense under Section 67 (B) IT ACT & 15 (1) of the POCSO Act 2012."

B. IMPUGNED ORDER

9. Aggrieved by the aforesaid, the respondent no. 1 went before the High Court of Judicature at Madras by way of a quashing petition being the Criminal Original Petition (Crl. O.P.) No. 37 of 2024 for the purposes of getting the aforesaid chargesheet and the criminal proceedings arising therefrom quashed.

10. The impugned judgment of the High Court is in three-parts. In other words, the High Court quashed the criminal proceedings essentially on three grounds: -

(i) First, the High Court was of the view that to constitute an offence under Section 14(1) of POCSO, a child must have been used by the person accused for pornographic purposes. It observed that although the two videos depicting children engaged in a sexual activity were found to have been downloaded and stored in the mobile phone belonging to the respondent no. 1, and assuming that the accused had watched the same yet the same would not constitute an offence under Section 14(1) of the POCSO. The relevant observations read as under:-

"9. To make out an offence under Section 14(1) of Protection of Child from Sexual Offences Act, 2012, a child or children must have been used for pornography purposes. This would mean that the accused person should have used the child for pornographic purposes. Even assuming that the accused person had watched child pornography video, that strictly will not fall within the scope of Section 14(1) of Protection of Child from Sexual Offences Act, 2012. Since he has not used a child or children for pornographic purposes, at the best, it can only be construed as a moral decay on the part of the accused person."

(ii) Secondly, the High Court held that, to constitute an offence under Section 67B of the IT Act, the person accused must have published, transmitted or

created material depicting children in sexually explicit act or conduct. It held that although the respondent no. 1 had admitted that he was addicted to watching pornography, yet mere watching or downloading of child pornography without any transmission or publication of the same does not fall within the purview of Section 67B of the IT Act. The relevant portion reads as under: -

"6. This Court enquired the petitioner and he stated that his date of birth is 13.11.1995 and that he has an elder brother. After a lot of persuasion, the petitioner admitted that during his teens, he had the habit of watching pornography. However, the petitioner made it clear that he had never watched child pornography. That apart, he also stated that he had never attempted to publish or transmit any of the pornographic materials to others. He had merely downloaded the same and he had watched pornography in privacy.

10. In order to constitute an offence under Section 67-B of Information Technology Act, 2000, the accused person must have published, transmitted, created material depicting children in sexual explicit act or conduct. A careful reading of this provision does not make watching a child pornography, per se, an offence under Section 67- B of Information Technology Act, 2000. Even though Section 67-B of Information Technology Act, 2000, has been widely worded, it does not cover a case where a person has merely downloaded in his electronic gadget, a child pornography and he has watched the same without doing anything more."

(iii) Lastly, the High Court in light of its aforesaid discussion and by placing reliance on Section 292 of the Indian Penal Code, 1860 (for short, the "IPC") took the view that although the pornographic content was found to have been downloaded and stored in the mobile phone of the respondent no. 1 yet in the absence of any material to show that the respondent no. 1 had transmitted or published the same, no offence whatsoever could be said to have been made out either under the POCSO, IT Act or the IPC and thus quashed the criminal proceedings. The relevant observations read as under:-

"8. This Court had the advantage of going through the entire CD file. The mobile phone that was seized from the petitioner did contain pornographic materials. However, for the purposes of this case, only two videos were identified as child pornography. Those two videos contain boys (under teen) involved in sexual activity with an adult woman/girl. Admittedly, those two videos were downloaded and available in the mobile phone belonging to the petitioner and it was neither published nor transmitted to others and it was within the private domain of the petitioner.

11. The Kerala High Court had an occasion to deal with the scope of Section 292 IPC. That was a case where a person was caught watching porn videos and a First

Information Report came to be registered against him. While dealing with this issue, the Kerala High Court held that, watching an obscene photo or obscene video by a person by itself will not constitute an offence under Section 292 IPC. This is in view of the fact that this act is done by the concerned person in privacy without affecting or influencing anyone else. The moment the accused person tries to circulate or distribute or publicly exhibits obscene photos or videos, then the ingredients of the offence starts kicking in.

11. Thus, the High Court vide its impugned judgment and order dated 11.01.2024 allowed the petition and thereby quashed the criminal proceedings in Spl. S.C. No. 170 of 2023 on the ground that no offence could be said to have been made out against the respondent no. 1 either under Section 14(1) of the POCSO or Section 67B of the IT Act. The operative portion of the Impugned Order reads as under:-

"12. In the considered view of this Court, the materials that have been placed before this Court does not make out an offence against the petitioner under Section 67-B of Information Technology Act, 2000 and Section 14(1) of Protection of Child from Sexual Offences Act, 2012.

18. In the light of the above discussion, the continuation of the proceedings against the petitioner will amount to abuse of process of Court. That apart, it will be a stumbling block for the petitioner's career in future. Therefore, this Court is inclined to quash the proceedings in Spl.S.C.No.170 of 2023 on the file of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District.

Accordingly, this Criminal Original Petition stands allowed and the proceedings in Spl.S.C.No.170 of 2023 on the file of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District, is hereby quashed. Consequently, connected criminal miscellaneous petition is closed."

(Emphasis supplied)

12. From the aforesaid it could be said that the High Court laid down three propositions of law which are as follows: -

i. Mere possession or storage of any pornographic material is not an offence under the POCSO. We are mindful of the fact that, whilst endorsing the aforesaid proposition of law, the High Court in its impugned Order either consciously did not deem it necessary to refer to Section 15 of the POCSO or inadvertently failed to refer to Section 15 of the POCSO. Nevertheless, in either case that may be, the aforesaid proposition of law found favour with the High Court.

ii. Section 67B of the IT Act only makes the act of transmission, publication or creation of material depicting children in sexually explicit manner an offence.

Mere watching or downloading of child pornography in private domain is not punishable under the same.

iii. In the absence of any material to indicate any transmission or publication of pornographic content involving child, no offence could be said to have been committed under the POCSO or the IT Act, and the criminal proceedings would be liable to be quashed. In other words, to attract the provisions of the POCSO or the IT Act it is not sufficient to merely establish storage or possession of child pornography and that transmission or publication of the same is also required to be established. In the absence of the same the criminal proceedings are liable to be quashed.

13. In such circumstances referred to above, the appellants being aggrieved with the Impugned Order passed by the High Court have come up before this Court with the present appeal.

C. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellants.

14. Mr. H.S. Phoolka, the learned Senior Counsel appearing for the appellants submitted that the interpretation of the relevant provisions of POCSO by the High Court for the purpose of holding that mere storage or possession of any child pornographic material does not amount to an offence, poses a significant threat to the well-being of children and may result in proliferation of child pornography, posing a significant threat to the very social fabric of the society at large. In support of his submissions, Mr. Phoolka relied on the Convention on Cybercrime and the United Nations Convention on the Rights of the Child, 1989.

15. He further submitted that the chargesheet filed by the investigating agency specifically records that, as per the information received from the National Commission for Missing and Exploited Children, USA (NC-MEC), the accused had been watching child pornographic videos for the past two years.

16. He further contended that the High Court erroneously proceeded under Section 14(1) of the POCSO, which deals with the use of children for pornographic purposes, without giving due consideration to Section 15(1) of the Act.

17. He further submitted that Section 15(1) explicitly penalizes the downloading and failure to delete child pornography. In the present case, the respondent's stance that he had received two files containing child pornography via WhatsApp is falsified by the NC-MEC report. Furthermore, there is nothing on record to substantiate that the videos were received on WhatsApp.

18. It was further argued that the High Court committed a serious error in quashing the criminal proceedings without addressing itself on Section 15 of the POCSO. He submitted that the impugned judgment poses a significant threat to child welfare and is contrary to several national and international commitments.

19. He further submitted that the High Court also failed to distinguish between adult pornography and child pornography, as Sections 67 and 67A of the IT Act deal with adult pornography, while Section 67B was specifically introduced in 2009 to provide more stringent punishment for collecting, downloading, or watching child pornographic material.

20. He further submitted that in view of Section 30 of the POCSO the High Court was legally obliged to presume the existence of a culpable mental state on the part of the accused for having committed any offence under the Act that requires such a mental state.

21. In the last, Mr. Phoolka submitted that a conjoint reading of Section 67B of the IT Act, Section 15, and Section 30 of the POCSO leaves no manner of doubt as regards the culpability of persons in possession of child pornography.

ii. Submissions on behalf of the National Commission for Protection of Child Rights (NCPCR).

22. Ms. Swarupama Chaturvedi, the learned Senior Counsel appearing for the National Commission for Protection of Child Rights (NCPCR), submitted that there was a serious lapse on the part of the State in failing to register the FIR for the offence punishable under Section 15 of the POCSO, 2012, as the possession of pornographic material involving a child in any form by itself is an offence under Section 15(1) of the Act. It was also argued that the State as a Prosecuting agency failed in its duty to bring it to the notice of the High Court that chargesheet was ultimately filed for the offence under Section 15(1) of the POCSO & not Section 14.

23. She further submitted that the accused had downloaded pornographic material involving a child onto his mobile phone, retained possession of it, and failed to take any steps to delete the same for two years, as mandated under Section 19 of the POCSO, 2012.

24. She contended that the High Court failed to appreciate the mandate of Section 30, which raises a presumption of a culpable mental state on the part of the accused for any offence under the Act that necessitates such a mental state. The provision, therefore, shifts the burden of proving the absence of a culpable mental state onto the accused.

25. She would further submit that Section 19 of the POCSO imposes mandatory reporting of an offence under the Act if there was an apprehension that such offence is likely to be committed or knowledge that such an offence has been committed. It was pointed out that the failure to discharge this obligation by itself is punishable under Section 21 of the POCSO.

She pointed out that the social media platforms claim to report such instances to the National Center for Missing and Exploited Children (NCMEC), a US-based NGO, which then reports them to the National Crime Records Bureau (NCRB). However, Section 19 mandates reporting such cases to the Special Juvenile Police Unit (SJPU) or the Special Police. Therefore, reporting to an NGO cannot absolve the social media platforms of its liability under Section 21 of the POCSO.

26. In the last, it was submitted that the issue as regards the plight of minors involved or used in child pornography is a matter of serious concern for one and all. She prayed for issuance of appropriate directions. She submitted that in an age when children require internet access for educational purposes, it has become imperative to provide them with a safe online environment in accordance with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).

iii. Submissions on behalf of the respondent no. 1 / the Sole Accused.

27. Mr. Prashant S. Kenjale, the learned Counsel appearing for the respondent no. 1 / the accused, submitted that the FIR was lodged for the offence under Section 14(1) of the POCSO and Section 67B of the IT Act, and thus, no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

28. He further submitted that the date of the receipt of the videos recovered from the mobile phone of the respondent no. 1 phone is 14.06.2019, at which point the 2019 amendment to Section 15 was not yet in force.

29. He further contended that the two files found from the Respondent's phone were named (a.) VID-20190614-WA005.mp4 and (b.) VID-20190823-WA0020.mp4. The use of "WA" in the file names indicates that they were automatically downloaded by WhatsApp, which has an auto-download feature, as shown in a research study. He would submit that in such circumstances, the said videos had been automatically downloaded onto his phone and that the respondent no. 1 was unaware of their existence. He argued that the forensic evidence clearly indicates both the creation and modification date as 14.06.2019, thereby indicating that the files were never accessed.

30. He further submitted that the mere possession of the aforesaid videos does not constitute an offence under Section 15(1) of the POCSO, as the respondent never had any intention to share or distribute them. He also argued that even if it is assumed that the respondent no. 1 had watched the said videos once and then failed to delete it, he cannot be charged under Section 15(1) of the POCSO, as he was unaware of its presence due to the government's failure to publicize the law.

31. He submitted that ignorance of law on the part of the respondent no. 1 was accompanied by a bona fide belief, and as such it would not constitute an offence under Section(s) 15 of the POCSO and 67B of the IT Act. In support of this argument, he placed reliance on the decisions of this Court in Chandi Kumar Das Karmarkar v. Abanidhar Roy, reported in AIR 1965 SC 585, and Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., reported in (1979) 2 SCC 409.

iv. Submissions on behalf of the respondent nos. 2 & 3 / the State.

32. Mr. D. Kumanan, the learned Counsel appearing for the State, submitted that the High Court, whilst passing the Impugned Order proceeded on an erroneous footing that an offence under Section 14 of the POCSO had been alleged against the accused, even-though both the chargesheet as-well as the quashing petition clearly mentioned that the indictment against the accused was under Section 15(1) of the POCSO.

33. He further submitted that the High Court in its Impugned Order failed to look into Section 67B of the IT Act. The High Court whilst quashing the criminal proceedings neither discussed nor gave any due consideration to Section 67B, eventhough chargesheet had been filed for an offence under it.

34. It was submitted that both Section 15 of the POCSO and Section 67B of the IT Act had been enacted with the salutary object of curtailing child abuse by penalizing any form of use of child pornography, including watching of such pornographic content in order to tackle the larger problem of creation and dissemination of such material by the perpetrators.

35. He submitted that more than hundred pornographic videos were found stored in the mobile phone of the respondent no. 1 / accused herein. Furthermore, the accused had himself admitted before the High Court that he along with his friends would regularly watch such pornographic material. In such circumstances it was argued that the accused had stored such material in his phone with the intention of sharing it with his friends.

36. It was further submitted that the marginal note of Section 15 of the POCSO i.e. "Punishment for storage of pornographic material involving child" is self-explanatory and that sub-section (1) of the said provision punishes the storage or possession of any such pornographic material when done with an intention to

share or transmit it. Reliance was placed on Section 30 of the POCSO to argue that the said provision specifically provides for presumption of a culpable mental state on part of the accused for any offence under the Act which requires such mental state, and as such the onus was on the accused to prove that he had no intention to share the material that was found stored in his phone, which was also overlooked by the High Court.

37. In the last, it was submitted that once the chargesheet and the other materials on record prima-facie disclosed the commission of an offence, more particularly the pornographic videos that were found stored in the mobile phone of the accused, it was not proper for the High Court to exercise its inherent powers under Section 482 of the Cr.P.C to quash the criminal proceedings.

D. ISSUES FOR DETERMINATION

38. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of law fall for our consideration: -

I. What is the scope of Section 15 of the POCSO? In other words, what is the underlying distinction between sub-section(s) (1), (2) and (3) respectively of the POCSO?

II. Whether, mere viewing, possessing or storing of any child pornographic material is punishable under the POCSO?

III. What is the true scope of Section 67B of the IT Act?

IV. What is the scope of Section 30 of the POCSO? In, other words, what are the foundational facts necessary for invoking the statutory presumption of culpable mental state in respect of Section 15 of the POCSO?

V. Whether, the statutory presumption contained in Section 30 of the POCSO can be invoked only at the stage of trial by the Special Court alone established under the POCSO? In other words, whether it is permissible for the High Court in a quashing petition filed under Section 482 of the Cr.P.C. to resort to the statutory presumption of culpable mental state contained in Section 30 of the POCSO?

E. ANALYSIS

i. Relevant Statutory Scheme and Provisions.

a. Legislative History and Scheme of the POCSO.

39. Before adverting to the rival submissions canvassed on either side, it would be apposite to first look into the statutory scheme and refer to the relevant provisions of the POCSO.

40. As the long title, 'Protection of Children from Sexual Offences Act, 2012' suggests, the POCSO was enacted by the Parliament to address the urgent need for a comprehensive law to protect children from sexual abuse and exploitation.

41. Sexual exploitation of children is a pervasive and deeply rooted issue that has plagued the societies worldwide and has been a matter of serious concern in India. Prior to the enactment of the POCSO, India lacked a specific legal framework dedicated to dealing with sexual offenses against children. While the provisions related to sexual offenses existed in the IPC, they were not adequately tailored to address the unique vulnerabilities and the needs of children.

42. The inadequacy of the existing laws to effectively deal and combat with the sexual abuse of children was starkly evident. The IPC, though equipped to handle sexual offences, did not explicitly recognize the various forms of sexual abuse that children might face. Under the IPC there was no distinction between an adult and a child victim for the purposes of the offences punishable under the Code nor did it account for the specific psychological and developmental needs of such child victims.

Moreover, the procedural laws were not child-friendly, often resulting in secondary victimization during the legal process. The increasing incidence of child sexual abuse in India and the growing awareness of the long-term psychological impact on the victims underscored the need for a dedicated law. The POCSO was introduced to fill this gap and provide a robust legal mechanism to safeguard children from sexual crimes and protect them from offences of sexual assault, sexual harassment and pornography.

43. The Statement of Objects and Reasons for the enactment of the POCSO makes it abundantly clear that since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and for matters connected therewith and incidental thereto.

44. It further states that the POCSO is a 'self-contained comprehensive legislation' for the purpose of enforcing the rights of all children to safety, security and protection from sexual abuse and exploitation countered through commensurate penalties as an effective deterrence for sexual offences and

pornography and has been enacted keeping in mind Articles 15 and 39 of the Constitution respectively and the United Nations Convention on the Rights of the Children. The Statement of Objects and Reasons of the POCSO reads as under: -

"STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

The United Nations Convention on Rights of Children, ratified by India on 11th December,1992, requires the State Parties to undertake all appropriate National, By-lateral and Multi lateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'study on child abuse: India 2007' conducted by the Ministry of Women and Child Department. Moreover, sexual offences against children are not adequately addressed by the extent laws.

A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

It is, therefore, proposed to enact a self-contained comprehensive legislation inter-alia to provide for protection of children from the sexual offences and pornography with due regard for safeguarding the interest and well being of the child at every stage of the Judicial process, incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

(Emphasis supplied)

45. The primary legislative intent behind the enactment of the POCSO was to create a comprehensive legal framework that would not only punish offenders but also provide a child-friendly system for the recording of evidence, investigation,

and trial of offenses. The POCSO was designed to cover all forms of sexual abuse against children, including sexual harassment, child pornography, and aggravated sexual assault, among others. It aimed to ensure the safety and dignity of child victims during the legal process, with specific provisions that mandate in-camera trials, the presence of a trusted adult during the proceedings, and the prohibition of aggressive questioning of child victims.

46. The POCSO is a manifestation of the unique scheme formed by Article(s) 15 and 39 respectively of the Constitution and the obligation cast by the United Nations Convention on Rights of Children that was ratified by India. Article 15 more particularly sub-article (3) read with Article 39(f) of the Constitution i) enables the State to make special provisions for children AND ii) at the same time obligates the State to direct its policy towards ensuring that the tender and vulnerable age of children is not exploited or abused and to secure a dignified and healthy childhood and youth, free from any moral or material abandonment or exploitation.

The UN Convention on Rights of Children prescribes a set of standards that have to be ensured by all State parties including India to secure the best interest of the child and to specifically undertake preventive measures against any form of exploitation of children such as prostitution, unlawful sexual activity or pornographic performances and depictions. The POCSO is a legislative manifestation towards realization of these constitutional provisions, by providing a specialized framework to combat and prevent any and all forms of sexual abuse and exploitation as stated in its long Preamble. The relevant portion of the long Preamble of the POCSO reads as under: -

"An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

Whereas clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent -

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials; And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed."

47. Section 2(1) sub-clause (d) of the POCSO defines the term "child" to mean any person below the age of eighteen years. Thus, the definition of the term "child" used under the POCSO is denuded of any gender i.e., the term is both gender neutral and gender fluid and as such will include any person who is below the age of 18-years. The relevant provision reads as under:-

"2. Definitions.-

(1) In this Act, unless the context otherwise requires, -

(d) "child" means any person below the age of eighteen years;"

48. Section 2(1)(da) defines the term "child pornography" to mean and include any visual depiction of a child involved in any sexually explicit conduct such as photograph, video, image generated digitally or by a computer which is indistinguishable from an actual child i.e., any self-generated image of an actual child or any other image that has been created, adapted or modified, that appears to depict a child. The relevant provision reads as under:-

"2. Definitions.-

(1) In this Act, unless the context otherwise requires, -

(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated

image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child;"

49. Section 15 of the POCSO delineates and provides when the storage or possession of pornographic material involving a child shall be a punishable offence under the POCSO and further prescribes the punishment for such storage or possession of pornographic material involving a child. The relevant provision reads as under: -

"15. Punishment for storage of pornographic material involving child.-

(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine."

50. It would be worthwhile to note that Section 15 of the POCSO had undergone a significant change by virtue of the Protection of Children from Sexual Offences (Amendment) Act, 2019 (for short, the "2019 Amendment Act"), whereby several key changes were introduced. We shall discuss the said provision viz-à-viz the unamended provision of Section 15 along with the object and purpose behind the 2019 Amendment Act in more detail in the latter part of this judgment.

51. Section 30 of the POCSO provides for the presumption of culpable mental state and provides that where any offence under the POCSO requires a culpable mental state on the part of the accused, the existence of such mental state on the part of the accused shall be presumed by the Special Court, and that it shall be open for the accused to rebut this presumption. In other words, the accused can

prove that he had no such mental state with respect to any offence under the Act. The relevant provision reads as under:-

"30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

52. This Court in its decision in Independent Thought v. Union of India & Anr. reported in 2017 INSC 1030 held that the preamble to the POCSO recognizes and mandates that the Act and its provisions ought to operate and be interpreted in a manner that would be in the best interest and well-being of the child. It should i) ensure that the sexual exploitation and abuse of children are addressed effectively and ii) induce a healthy physical, emotional, intellectual and social development of the child. The relevant observations read as under: -

"42. The Preamble to the POCSO Act also recognizes that it is imperative that the law should operate "in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child". Finally, the Preamble also provides that "sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed"."

(Emphasis supplied)

53. In Attorney General for India v. Satish reported in 2021 INSC 762 this Court had the occasion to examine the entire legislative scheme of the POCSO. It held that each provision of the POCSO should be construed viza- viz the other provisions of the Act and with reference to the context or background with which the legislation was enacted, so as to make the Act and its provisions more meaningful and effective.

This Court further emphasized that, while construing the provisions of the POCSO, the impact of sexual assault and exploitation on the children should not be ignored and further the courts should avoid a narrow or pedantic interpretation

that would the defeat the statute; rather, where the intention of the legislature cannot be given effect to or cannot be realized, a meaningful construction of the statute should be adopted to bring about a more effective result. The relevant observations read as under:-

"33. As per the rule of construction contained in the maxim "Ut Res Magis Valeat Quam Pereat", the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the Legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result.

37. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-avis the other provisions so as to make a consistent enactment of the whole Statute relating to the subject matter. The Court can not be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment etc. have to be construed vis-a-vis the other provisions, so as to make the objects of the Act more meaningful and effective."

(Emphasis supplied)

54. Justice S. Ravindra Bhat in his concurring opinion in Attorney General for India (supra) further observed that the POCSO and its nuanced provisions were designed keeping in mind the need to protect the autonomy and dignity of children. It was enacted to criminalize those acts and behaviour that have the propensity to harass, discomfit or demean minors, and as such it is the duty of the courts to ensure that the provisions of the POCSO are not interpreted in a manner that would undermine its purpose or the pressing needs of the times. The relevant observations read as under: -

"11. The limitations in law in dealing with acts that undermined the dignity and autonomy of women and children, ranging from behaviour that is now termed "stalking" to pornography, or physical contact, and associated acts, which were not the subject matter of any penal law, were recognized and appropriate legislative measures adopted, in other countries. These have been alluded to in Trivedi, J's judgment, in detail. These laws contain nuanced provisions criminalizing behaviour that involve unwanted physical contact of different types and hues, have the propensity to harass and discomfit women and minors (including minors of either sex), or demean them.

33. In the end, I cannot resist quoting Benjamin Cardozo that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by." It is, therefore, no part of any judge's duty to strain the plain words of a statute, beyond recognition and to the point of its destruction, thereby denying the cry of the times that children desperately need the assurance of a law designed to protect their autonomy and dignity, as POCSO does."

(Emphasis supplied)

55. Similarly in Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr. reported in 2017 INSC 658, this Court observed that the POCSO had been brought with the purpose of protecting the children from sexual exploitation and harassment. It had been designed to secure the wellbeing and the best interests of the child with the protection of the child's dignity being the backbone of the legislation. The dignity, protection and interest form the bedrock of the POCSO. The relevant observations read as under: -

"18. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child.

Best interest and well being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The statement of objects and reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.

63. The POCSO Act, as I have indicated earlier, comprehensively deals with various facets that are likely to offend the physical identity and mental condition

of a child. The legislature has dealt with sexual assault, sexual harassment and abuse with due regard to safeguard the interest and well being of the children at every stage of judicial proceeding in an extremely detailed manner. The procedure is child friendly and the atmosphere as commanded by the provisions of the POSCO Act has to be congenial. The protection of the dignity of the child is the spine of the legislation."

(Emphasis supplied)

56. In Nawabuddin v. State of Uttarakhand reported in 2022 INSC 162 this Court held that any act of sexual assault, exploitation or harassment of the children should be dealt with in a stringent manner and that no leniency should be shown when dealing with an offence under the POCSO in view of the object that is sought to be achieved by the Act. The relevant observations read as under: -

"10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act.

By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure."

(Emphasis supplied)

b. Relevant Provisions of the IT Act.

57. For better and effective adjudication of the issues involved in the case at hand, it would be apposite to refer to the IT Act which also contains several provisions, more particularly Section(s) 67, 67A and 67B respectively, that penalize the use, transmission and publication of obscene materials including child pornography. These provisions together encompass and collectively form the umbrella scheme of comprehensive penal provisions contained in the IT Act in this regard.

58. Section 67 of the IT Act is the principal provision that criminalizes the publication or transmission of "obscene material" in any electronic form and constitutes an offence. Section 67A of the IT Act, is a more aggravated offence, prescribing enhanced punishment than the preceding provision. It does so by further amplifying the scope of 'obscene material' by stipulating that any obscene material that contains or depicts any sexually explicit act or conduct, when published or transmitted shall be punishable under the said provision.

59. Section 67B of the IT Act specifically deals with child pornographic materials. It provides for an even more severe form of offence by bringing within its ambit those obscene materials in any electronic form that depict a child in any sexually explicit act or conduct and by further expanding the scope of 'actus reus' which is punishable under the provision to include not just publication or transmission but also the browsing, creation, collection, online facilitation or enticement of children into any sexual act or conduct etc. The said provision reads as under: -

"67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.- Whoever-

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resources; or

(d) facilitates abusing children online; or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of Section 67, Section 67-A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

Explanation.- For the purpose of this section, "children" means a person who has not completed the age of 18 years."

ii. Scope of Section 15 of the POCSO and Section 67B of the IT Act.

60. In the case at hand, we are concerned with the interpretation of Section 15 of the POCSO and Section 67B of the IT Act, more particularly the scope of these two provisions and what would constitute an offence under each of them. In other words, what exactly has been made punishable under Section(s) 15 of the POCSO and 67B of the IT Act respectively and what are the necessary ingredients or elements to establish or make out an offence under it. a. Contradictory Views of different High Courts on the subject.

61. Before proceeding with the analysis of the aforesaid two provisions, it would be appropriate to refer to the decisions of various High Courts and the cleavage of opinion that have been expressed as regards the scope of Section 15 of the POCSO and Section 67B of the IT Act.

62. In Nupur Ghatge v. State of Madhya Pradesh (MCRC No. 52596 of 2020), the accused therein was alleged to have uploaded child pornographic videos and photographs on his social media account, and thus, a case was registered against him under Section 67B of the IT Act. The Gwalior Bench of the Madhya Pradesh High Court held that Section 67B penalizes various forms of acts including the act of watching or transmitting any child pornographic material in electronic form. It further held that any defence of the accused as to the absence of any involvement in transmission or sharing of such material or the mental state of the accused cannot be looked into at the stage of quashing under Section 482 of the Cr.P.C. The relevant observations read as under: -

"From the whats-app chats filed by the applicant, it appears that the applicant himself was involved in porn activities, therefore, the provision of Section 67B of the Act, 2000 would be applicable as Section 67-B of the Act, 2000 also includes records in any electronic form own abuse or that of others pertaining to sexually explicit act with children.

The burden is on the applicant to prove his defence which cannot be decided by this Court in exercise of powers under Section 482 of CrPC."

63. In P.G. Sam Infant Jones v. State represented by Inspector of Police reported in 2021 SCC OnLine Mad 2241 the accused therein was alleged to have browsed, downloaded and transmitted child pornographic material through his e-mail and social media account. Accordingly, a case was registered against him for the offences under Section 15(1) of POCSO and Section 67B of the IT Act, whereupon the accused therein preferred an anticipatory bail application before the Madurai Bench of the Madras High Court.

The Madras High Court observed that while viewing of pornography in private domain may not be an offence in view of an individual's right to expression and privacy, child pornography falls outside the ambit of such individual rights and stands on a different footing. It held that Section 67B penalizes various kinds of acts pertaining to child pornography including the act of viewing such material. The relevant observations read as under: -

3.The case of the prosecution is that on 27.06.2020 at 17.38:51 hours, the petitioner browsed, downloaded and transmitted child pornographic material by using Airtel Sim bearing No.9787973370 through his e-mail and Facebook Account.

5. Viewing pornography privately will not constitute an offence. Offence is an act that is forbidden by law and made punishable. That is the definition found in Section 40 of IPC. As on date, there is no provision prohibiting such private acts. There are some who even elevate it as falling within one's right to free expression and privacy. But child pornography falls outside this circle of freedom. Section 67-B of the Information Technology Act, 2000 penalises every kind of act pertaining to child pornography. Therefore, even viewing child pornography constitutes an offence.

(Emphasis supplied)

64. In Ajin Surendran v. State of Kerala & Anr. reported in 2022 KER 7207 child pornographic videos were found stored in the mobile phone of the accused therein. The High Court of Kerala at Ernakulam observed that Section 15 of POCSO gets attracted when any person stores or possesses pornographic material in any form involving a child, with an intention to share or transmit it, whereas Section 67B of the IT Act gets attracted when a person browses or downloads any such material in any electronic form. Accordingly, it held that in view of the videos that were found stored in the accused's mobile phone, prima-facie both of the aforesaid provisions are said to be squarely attracted, and thus the power under Section 482 cannot be invoked for quashing the criminal proceedings. The relevant observations read as under: -

"3. I have gone through the first information statement as well as the final report. It would show that the mobile phone belongs to the petitioner and the sim card was examined and it was found that in the memory card, pornographic video of children were stored. Section 15 of POCSO Act gets attracted when any person stores or possesses pornographic material in any form involving a child, with an intention to share or transmit child pornography. Section 67B(b) of the IT Act gets attracted when a person among other things, browses or downloads material in any electronic form depicting children in obscene or indecent or sexually explicit manner. Thus, both the sections are squarely attracted. When prima facie case is made out, power under Section 482 cannot be invoked."

(Emphasis supplied)

65. In Manuel Benny v. State of Kerala reported in 2022 KER 9730 it was found that the accused person therein had downloaded and stored pornographic videos depicting children in a sexually explicit manner in his mobile phone from a messaging app; 'Telegram' for private viewing. Accordingly, a case was registered against the accused therein under Section 15 of the POCSO and Section 67B of the IT Act. When the final report came to be filed, the offence under Section 15 of the POCSO was dropped, and chargesheet was filed only for the offence under Section 67B of the IT Act.

The accused preferred a quashing petition before the High Court of Kerala at Ernakulam on the ground that even if the materials in the chargesheet were taken at their face value, no ingredients were made out to constitute the offence under Section 67B of the IT Act. A learned Single Judge of the High Court whilst quashing the criminal proceedings held that in order to attract the offence under Section 67B of the IT Act, the pornographic material in question must be voluntarily downloaded. It held that there should be an intention on the part of the accused to download any pornographic content in order to view it so as to constitute an offence under Section 67B of the IT Act.

The learned Single Judge further observed that as per the FSL report, the child pornographic videos had been accessed through the messaging app 'Telegram' wherein there is a possibility of automatic download of videos. Since there was no material to show that the accused therein had voluntarily downloaded or browsed the pornographic material in question, no prima facie offence had been made out under Section 67B of the IT Act, and thus the High Court quashed the criminal proceedings. The relevant observations read as under:-

"5. A perusal of the final report would show that the only allegation against the petitioner is that he downloaded and enjoyed material depicting children in obscene, indecent and sexually explicit manner from the application called 'Telegram'. In order to attract the offence under Section 67B of the IT Act, the

videos or material has to be voluntarily downloaded into any device. In other words, there should be intention on the part of the petitioner to download the material in order to view it.

The definite case of the petitioner is that he did not download any offensive material. Even in Annexure A3 FSL report it is seen that the path of those images is from Android backup and the child pornographic videos were accessed through 'Telegram'. The learned Additional DGP submitted that the contents transmitted in the 'Telegram' can be automatically downloaded in the mobile phone by default. Hence, it cannot be said that the petitioner has intentionally downloaded the material, considering the features of the 'Telegram' App.

Since there is no material to show that the petitioner has browsed or downloaded child pornographic material, the offence under Section 67B of the IT Act is not attracted. Hence, no purpose will be served in proceedings with the matter further. Accordingly, the Crl.M.C is allowed. All further proceedings pursuant to Annexure A2 final report in Crime No.531/2020 of Melukavu Police Station now pending as C.C.No.257/2021 on the files of the Judicial Magistrate of the First Class, Erattupetta stands hereby quashed."

(Emphasis supplied)

66. In Lakshya v. State of Maharashtra & Anr. (Criminal Writ Petition No. 479 of 2022), the accused therein had viewed and stored a child pornographic video in his mobile, which he subsequently showed to his other friends and co-accused therein. On the basis of the aforesaid, a case was registered against the accused persons under Section(s) 15(1) and (3) of the POCSO along with Section 67B of the IT Act.

The accused preferred a discharge application which came to be rejected by the Trial Court whereafter the accused therein went in appeal before the High Court of Judicature at Bombay, Nagpur Bench. The learned Single Judge of the High Court dismissed the appeal and upheld the rejection of the discharge application by the Trial Court. The High Court held that merely because the accused therein was not the creator of the pornographic material in question it cannot be said that no offence had been made out.

It held that the act of the accused to store and forward the pornographic material and the failure on his part to delete or report the same would squarely fall within the ambit of Section(s) 15(1) and (2) of the POCSO and Section 67B of the IT Act. However, the High Court chose not to advert to the offence under Section 15(3) of the POCSO that was contained in the chargesheet as a prima facie case had already been established against the accused therein for the other offences with which they were charged. The relevant observation reads as under: -

"8. With the assistance of the learned Advocate for the accused and the learned APP for the State, I have gone through the provisions of Section 67-B of the I. T. Act and Section 15 of the POCSO Act. The main allegation against the accused is that they stored, forwarded and shared with each other porn video. Even if it is assumed for the sake of argument that they are not creators of the porn video, in my view, the benefit of discharge cannot be granted to them.

9. In my view, perusal of Section 15 of the POCSO Act in entirety would show that the act of the accused persons to store, forward and possess pornographic material involving a child is squarely covered under Section 15(1) and (2) of the POCSO Act. They failed to delete or destroy or report the same to the designated authority. As per the case of the prosecution, they stored, possessed and circulated the said porn video. Therefore, in my view, at this stage, it is very difficult for the accused to come out of the tentacles of Section 15(1) and (2) of the POCSO Act.

10. Section 67-B of the I.T. Act provides a punishment for publishing or transmitting the material depicting children in Sexually explicit act, etc., in an electronic form. If the basic ingredient of Section 67-B, prima facie, are applied to the facts of the case on hand, it would show beyond doubt that the act of the accused is squarely covered within the ambit of Section 67- B of the I. T. Act.

In my view, in the teeth of the allegations against the accused and the material collected during the course of investigation and compiled in the charge-sheet, it would be very difficult to accept the contention of the accused persons. It is true that the applicants are young. They are students. They are from reputed family. However, while deciding the discharge application this could not be the consideration. If this submission is accepted on this ground then this would be nothing short of showing misplaced sympathy to the persons who are prima facie accused of the commission of offence."

(Emphasis supplied)

67. In Shantheeshlal T. v. State of Kerala reported in 2024 KER 35968, during investigation certain pornographic videos involving a child had been recovered from the device of the accused thereunder. Accordingly, chargesheet was submitted against the accused therein for the offences punishable under Section(s) 15(1) of the POCSO and 67B of the IT Act. The accused thereunder preferred a quashing petition before the High Court of Kerala at Ernakulam, wherein the learned Single Judge quashed the aforesaid chargesheet and the criminal proceedings taking the view as under: -

(i) First, the learned Single Judge held that in order to attract the provision of Section 15(1) of the POCSO there must be a storage or possession of child

pornographic material and further such material should be shown to have been shared or transmitted by the person accused. Mere possession or storage of pornographic material by itself is not an offence under Section 15(1) of the POCSO unless it is shown that the accused person had indeed shared or transmitted such material. In other words, to constitute an offence under Section 15(1) there must be an actual act of transmission or sharing of the pornographic material depicting a child in a sexually explicit act or conduct that was found to be stored or in possession of the accused. The relevant observation reads as under: -

"9. Reading the provision, it is emphatically clear that storing or possessing pornographic materials in any form involving a child and failure to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be an offence. So mere storing or possessing pornographic material is not an offence under Section 15(1) of POCSO Act, if the said storing or possession is without any intention to share or transmit the same.

Therefore, mere storing or possessing pornographic materials by itself is not an offence. Thus, in order to attract an offence under Section 15(1) of the POCSO Act, the stored or possessed pornographic materials should be shared or transmitted. In the instant case, there is no material available to hold that the accused either shared or transmitted pornographic materials, though storing of the same was detected. Therefore, the offence under Section 15(1) of the POCSO Act is not made out in the instant case."

(Emphasis supplied)

(ii) Secondly, it observed that, even for the purposes of Section 67B of the IT Act there must be some material to show that the accused person had either browsed, downloaded, published, transmitted or created any material in electronic form depicting a child in a sexually explicit act or conduct. To constitute an offence under Section 67B of the IT Act the accused person must have intentionally either downloaded, browsed, recorded or transmitted a pornographic material involving a child. In the absence of any material to show or establish specific intention on the part of the accused to share or transmit the pornographic material found, no offence could be said to have been made out under Section 67B of the IT Act. Any accidental or automatic download of such material will not fall within the purview of the said provision. The relevant observations read as under: -

"11. Publishing, transmitting or causing any material in electronic form which depicts children engaged in sexually explicit act or conduct or creation of text or digital images etc. are the ingredients under Section 67B of the IT Act also.

13. Therefore, going by the decision, automatic or accidental downloading of children engaged in sexually explicit act or conduct is not an offence under Section 67B, once the specific intention to do so is not established, by the materials which form part of the prosecution records.

14. In the present case, the materials collected during investigation would show that some pornographic messages, which would depict children engaged in sexually explicit act or conduct were found in the devise of the accused. But there are no materials to show that the petitioner intentionally downloaded or browsed or recorded the same. More particularly there are no materials to show that the petitioner had either shared, transmitted or published the same in any manner.

15. Thus, the materials available do not suggest the ingredients to find prima facie, commission of offence under Section 67B of the IT Act."

(Emphasis supplied)

As besides the recovery of the pornographic material from the device of the accused there was nothing to show that he had either shared or transmitted or intentionally downloaded the same in the first place. In such circumstances, the learned Single Judge held that no prima facie offence had been made out either under Section(s) 15(1) of the POCSO or 67B of the IT Act and thus, proceeded to quash the criminal proceedings.

68. Similarly, in Akash Vijay v. State of Kerala reported in 2024 KER 42626, the Kerala High Court placing reliance on the decision of Shantheeshlal T (supra) held that mere storage or possession of any pornographic material involving a child will not constitute an offence under Section(s) 15 of the POCSO or 67B of the IT Act in the absence of any material to show that the accused person either intentionally downloaded or browsed the said material or that he shared or transmitted the same. The relevant observations read as under: -

"6. On perusal of the prosecution records, no materials collected during investigation to show that the petitioner intentionally downloaded or browsed or recorded the same and there are no materials available to show that the petitioner had either shared, transmitted or published the video, in any manner. The allegation is confined to that of presence of porn video in the mobile phone of the accused alone.

8. Reading the facts of this case, the same is similar to the facts dealt in Shantheeshlal T.'s case (supra). Therefore, applying the same ratio, this Crl.M.C. is liable to be allowed."

(Emphasis supplied)

69. In Akhil Johny v. State of Kerala reported in 2024 KER 53767, the learned Single Judge of the Kerala High Court held that where the allegations are limited only to the presence of pornographic material involving a child in the mobile phone or hard disk of the accused, no offence could be said to have been made out under Section(s) 15 of the POCSO or 67B of the IT Act and as such the criminal proceedings would be liable to be quashed. The relevant observations read as under: -

"6. On perusal of the prosecution records, no materials collected during investigation to show that the petitioner intentionally downloaded or browsed or recorded the same and there are no materials available to show that the petitioner had either shared, transmitted or published the video, in any manner. The allegation is confined to that of presence of porn video in the mobile phone of the accused alone.

8. Reading the facts of this case, the same is similar to the facts dealt in Shantheeshlal T.'s case (supra). Therefore, applying the same ratio, this Crl.M.C. is liable to be allowed."

(Emphasis supplied)

70. In Inayathulla N (1) v. State reported in 2024 KHC 26513, the accused therein was charged for browsing a website and viewing pornographic materials involving a child. Accordingly, a case was registered against him under Section(s) 67B of the IT Act. A learned Single Judge of the High Court of Karnataka held that the soul and essence of Section 67B lies in the act of publication or transmission of any material depicting a child in any sexually explicit conduct, and that mere browsing or watching of such material would not attract the aforesaid provision. It further held that in such cases even investigation should not be permitted to be continued and thus, proceeded to quash the criminal proceedings. The relevant observations read as under: -

"7. Section 67B of the IT Act punishes those persons who would publish, transmit the material depicting children in sexually explicit acts in electronic form. The soul of the provision is publishing or transmitting of material depicting children in sexually explicit act.

8. The allegation against the petitioner is that he has watched a pornographic website. This, in the considered view of the Court, would not become publishing or transmitting of material, as is necessary under Section 67B of the IT Act. At best, as contended, the petitioner could be a porn addict, who has watched pornographic material. Nothing beyond this, is alleged against the petitioner. If the facts are pitted against the ingredients necessary to drive home Section 67B

of the IT Act, what would unmistakably emerge is, further proceedings cannot be permitted to be continued, as it would become an abuse of process of law.

9. The Apex Court in the afore laid postulates holds that even if the facts that forms the complaint is accepted as true, it would not make out any offence. In such cases, even investigation should not be permitted to be continued. Therefore, the impugned proceedings cannot be permitted to be continued, as it does not make out an offence under Section 67B of the IT Act."

(Emphasis supplied)

71. We are conscious of the fact that the aforesaid decision of Inayathulla N (1) (supra) was subsequently taken in review by the learned Single Judge of the Karnataka High Court under the nomenclature "recall" upon realising that Section 67B of the IT Act had been misinterpreted more particularly the failure to advert to sub-section (b) of the said provision which criminalizes the browsing of child pornographic sites.

Consequently, in Inayathulla N (2) v. State reported in 2024 KHC 28204 the learned Single Judge set aside its earlier order in Inayathulla N (1) (supra) by observing that although Section 67B sub-section (a) of the IT Act may not apply in the absence of any transmission or publication of any child pornography, yet sub-section (b) of the said provision would indeed be applicable where the allegations involve browsing or viewing of any child pornographic material.

It is relevant to note that although the court was apprised of the fact that even Section 15 of the POCSO was being contemplated to be added in the chargesheet, yet the High Court in view of the limited question before it did Criminal Appeal Nos. 2161-2162 Page 54 of 199 not deem it necessary to go into the applicability of the said provision at that stage. The relevant observations read as under: -

"5. This Court accepting the facts had allowed the petition in terms of its order dated 10-07-2024. After release of the order, the State appears to have noticed the short assistance rendered by it, as also the fact that the cyber tipline/2nd respondent was not heard in the matter. The further fact is that the State has filed an application before the Court to bring in Section 15 of the Protection of Children from Sexual Offices Act, 2012 ('POCSO Act' for short). By a separate order passed on 19-07-2024, the I.A. filed by the State stood answered and the order dated 10-07-2024, by accepting the reasons indicated in the affidavit was recalled and the matter was restored to file.

8. The reliance placed by the petitioner is on Section 67B(a) of the Act which was relied on and proceedings quashed. What becomes applicable to the case at hand is Section 67B(b). Section 67B(b) open up prosecution against a person who creates text or digital images, collects, seeks, browses, downloads,

advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner. It is not in dispute that the petitioner, in the case at hand, has browsed child pornographic material for about 50 minutes. Browsing child pornographic material makes it an offence under Section 67B(b) of the Act."

(Emphasis supplied)

72. Thus, it appears from the aforesaid that there are divergent views expressed by different High Courts of the country as regards the ingredients necessary to constitute an offence under Section 15 of the POCSO and Section 67B of the IT Act. The Kerala High Court has taken the view that mere possession or viewing of pornographic material involving a child will not fall within the ambit of Section 15 of the POCSO, rather what the provision criminalizes is the actual act of transmission or sharing of the said material.

It has held that where the allegations are confined only to the possession of pornographic material and there is nothing to indicate the actual transmission of the same, the criminal proceedings shall be liable to be quashed. Whereas, the Bombay High Court appears to have taken the view that under Section 15(1) of the POCSO, what is penalized is the storage of child pornography and resultant failure to delete or report the same while under Section 15(2), it is the storage and consequent transmission of child pornography.

Similarly, with respect to Section 67B, both the Karnataka High Court and the Kerala High Court have held that what is criminalized is the intentional browsing or transmission of child pornography, and not the mere possession of such material.

b. Three distinct offences punishable under Section 15 of the POCSO.

73. Prior to the 2019 Amendment Act, Section 15 of the POCSO as originally enacted, stipulated that any person who stores any pornographic material involving a child for commercial purposes shall be punishable under the said provision. Thus, under the erstwhile Section 15 of the POCSO only one act was criminalized; in other words, only the storage of child pornography for a commercial purpose was made a punishable offence. Storage of such material for any other purpose was outside the scope and purview of the said provision. The said provision as it then stood, reads as under: -

"15. Punishment for storage of pornographic material involving child.- Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extent to three years or with fine or with both."

74. Over a period of time, the legislature realized that despite the enactment of POCSO, there had been an increase rather than a decline in the number of cases pertaining to child sexual abuse. The legislature noted that some of the provisions of the POCSO were not proving to be effective in addressing the various forms of sexual degradation, abuse and exploitation of children in the country.

The Protection of Children from Sexual Offences (Amendment) Act, 2019 earmarked a significant step by the legislature in response to the aforesaid problem, by introducing several new offences and further making the existing offences more stringent with enhanced punishments, as a form of deterrence to sexual predators and to combat the sexual exploitation of children in order to safeguard a secure and dignified environment for them. The Statement of Objects and Reasons of the 2019 Amendment Act read as under: -

"STATEMENT OF OBJECTS AND REASONS

"1. The Protection of Children from Sexual Offences Act, 2012 (the said Act) has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

2. The said Act is gender neutral and regards the best interests and welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.

3. However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers, who have been barbaric in their approach towards young victims, is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent. in 2013 over 2012 and 178.6 per cent. in 2014 over 2013 and no decline in the number of cases thereafter.

4. The Supreme Court, in the matter of Machhi Singh vs. State of Punjab [1983 (3) SCC 470], held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict

death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of Devender Pal Singh vs. State (NCT of Delhi)[AIR 2002 SC 1661] wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.

5. In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority.

6. The Protection of Children from Sexual Offences (Amendment) Bill, 2019, for the aforementioned purpose, which was introduced and pending consideration and passing in the Lok Sabha, lapsed on the dissolution of the Sixteenth Lok Sabha. Hence, the present Bill.

7. The Bill seeks to achieve the above objectives. NEW DELHI; The 12th July, 2019."

(Emphasis supplied)

75. Pursuant to the aforesaid 2019 Amendment Act, a slew of amendments were brought within the POCSO, which inter alia included i) the insertion of Section 2(da) by which "child pornography" came to be defined under the Act AND ii) the amendment of Section 15 of the Act whereby now three distinct offences are made punishable under the said provision. Again, at the cost of repetition, the amended Section 15 of the POCSO is reproduced hereunder: -

"15. Punishment for storage of pornographic material involving child.-

(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine."

(Emphasis supplied)

76. A bare perusal of the aforesaid provision makes it abundantly clear that Section 15 of the POCSO is in three parts. The legislature by virtue of the 2019 Amendment Act has now made three different forms of storage or possession of child pornography a punishable offence under the said provision, unlike the erstwhile provision, which had criminalized only one form of storage of child pornography.

77. Section 15 sub-section (1) of the POCSO now provides that any person who either stores or possesses any pornographic material involving a child and fails to either delete, destroy or report the same with the intention to share or transmit such material, shall be liable to fine of not less than rupees five thousand for the first offence, and a fine of not less than rupees ten thousand for any subsequent offence.

78. On the other hand, Section 15 sub-section (2) of the POCSO provides that any person who either stores or possesses any pornographic material involving a child for transmitting, displaying, propagating, or distributing the same in any manner except for either reporting it or for using it as evidence shall be punishable with either imprisonment extending upto threeyears or with fine or both.

79. Whereas, Section 15 sub-section (3) of the POCSO stipulates that any person who either stores or possesses any pornographic material involving a child for commercial purpose shall be punishable with imprisonment of not less than three-years, which may extend upto five-years, or with fine, or both for the first offence, and for any subsequent offence, he shall be punishable with imprisonment not less than five-years, that may extend upto seven-years and along with fine.

I. Concept of an Inchoate Crime - The 'Actus Reus' and 'Mens Rea' required under Section 15.

80. Before proceeding further to discuss the scope of Section 15 of the POCSO and the ingredients necessary to constitute an offence thereunder, it would be

apposite to first understand the true purpose and the nature of the said penal provision.

81. A plain reading of Section 15 of the POCSO and the marginal note appended thereto would reveal that the common theme permeating across subsection(s) (1), (2) and (3) respectively is that there is no requirement whatsoever for an actual transmission of any child pornographic material in order to fall within the ambit of the said provision.

What is sought to be penalized under Section 15 of the POCSO is the storage or possession of any child pornographic material when done with a particular intention or purpose as stipulated in sub-section(s) (1), (2) or (3), as the case may be. Thus, the bare textual reading of the said provision makes it clear that it is the intention which is being punished and not the commission of any criminal act in the traditional sense. This in the criminal jurisprudence is known as an 'Inchoate Crime' or 'Inchoate Offence'.

82. Inchoate crimes are defined as criminal acts that are committed in preparation for a further offence. The term "inchoate" itself means "undeveloped" or "incomplete."

83. The Doctrine of Inchoate Crimes is a cornerstone of criminal jurisprudence. It is aimed at addressing the legal culpability of those who engage in a conduct that is preparatory to the commission of any substantive offence. Inchoate crimes, are often referred to and described as an incomplete or preliminary offence, that capture the essence of criminal intent and the preparatory actions that precede the commission of a criminal act. It underscores the principle that the law does not merely respond to offences already committed but also intervenes when a crime is in the process of being committed, thus thereby protecting public order and safety. Inchoate crimes represent a critical aspect of criminal law, embodying the legal system's proactive and deterrent approach to crime itself.

84. The primary rationale for the existence of inchoate crimes within the legal framework is the prevention of harm by intervening at an early stage i.e before the potential damage is caused. It recognizes that though certain actions do not result in an offence, nonetheless those actions pose a sufficient threat to society to warrant legal intervention. The jurisprudence surrounding inchoate crimes has evolved as a balance struck between i) the need for early intervention on the one hand with ii) the cardinal principle of criminal law that no one should be punished merely for their thoughts or intentions on the other, by criminalizing only those actions of an individual that demonstrate a clear movement towards the commission of a criminal offense.

It is deeply rooted in the preventive or deterrent nature or approach of a particular law by criminalizing those conduct, actions or intentions that pose a significant risk of harm. An inchoate offence requires towing a delicate balance between the need for prevention of potential threat to the society and the risk of undoing the sacrosanct fundamental principle of 'actus non facit reum nisi mens sit rea' in order to ensure that the law remains a powerful tool in the maintenance of public order.

This inherent tension between respecting the autonomy of an individual's thought and state of mind with the societal interest and safety is often balanced and resolved by carefully shaping and defining the point at which any particular action or preparatory step becomes sufficiently proximate to the commission of an offence.

In other words, the law would only intervene at the point where an individual has acquired the means to commit a further offence, and will not punish the mere thought of committing an offence in the absence of any overt steps towards the same. Thus, the critical or central component of any inchoate crime is the preliminary or preparatory actus reus that sufficiently reflects the essence or existence of a criminal intent.

85. Offence pertaining to the possession of any contraband is a prime example and one of the facets of an inchoate crime, as they involve the possession of items that are prohibited by law due to their inherent dangerousness or their use in the commission of further criminal offences. The criminalization of possession as an inchoate crime is predicated on the idea that possession is not an innocuous act but a preparatory step towards more significant criminal conduct.

This is because, first, it allows intervention at an early stage, before the contraband can be used to cause harm. Secondly, it acts as a deterrent by penalizing individuals who engage in activities that are likely to lead to more serious offenses. Thirdly, it reflects the societal interest in preventing the accumulation and availability of dangerous items that have no legitimate purpose except for the further perpetuation of a more severe offence and harm to society at large.

86. The POCSO as outlined in its Statement of Object and Reasons was specifically designed to provide commensurate penalties to serve as a deterrent against the sexual abuse and exploitation of children. Additionally, the Statement of Objects and Reasons accompanying the 2019 Amendment Act which inter-alia amended Section 15 of the Act to provide for three distinct offences punishable under it, explicitly emphasizes that the said amendments had been introduced in order to implement stringent measures aimed at addressing and deterring the alarming increase in child sexual abuse.

The plain reading of sub-section(s) (1), (2) and (3) respectively of Section 15 of the POCSO along with the marginal note appended to it which reads "Punishment for storage of pornographic material involving child" indicates, that the said provision punishes only the storage of pornographic material involving a child when done with a specific intent prescribed thereunder and that there is no requirement for any actual transmission.

It is trite to say that, in the absence of any inherent conflict or contradiction between the marginal note and the substantive parts of a particular provision, the marginal note may be used to aid in the interpretation of the provision. Thus, the aforesaid leaves no manner of doubt in the mind of this Court, that the provision of Section 15 of the POCSO is in the nature and form of an inchoate offence which penalizes the mere storage or possession of any pornographic material involving a child when stored with a specific intent prescribed thereunder, without requiring any actual transmission, dissemination etc.

87. Under Section 15 sub-section (1), where a person either stores or possesses any child pornography and does not delete or report the same, in order to share or transmit the same, he will be liable under the said provision. The use of the words "with an intention to share or transmit child pornography" in the said provision makes it clear that no actual sharing or transmission is required to occur, rather what is required is only the intention to share or transmit because of which the said material was neither deleted, destroyed, or reported.

In other words, the actus reus that is penalized under Section 15 sub-section (1) is the failure to delete, destroy or report any child pornography that was stored or in possession of any person with an intention to share or transmit the same. Had the intent of the legislature been otherwise, it would have clearly used the words "transmits" or "shares" instead.

88. Similarly, Section 15 sub-section (2) penalizes the storage or possession of any child pornographic material when done for the purpose of either transmitting, propagating, displaying or distributing the same in any manner. The use of the words "for transmitting or propagating or displaying or distributing in any manner at any time" clearly suggests that again no actual act of transmission, propagation, display or distribution is required to take place. Had the intent of the legislature been otherwise, it would have explicitly stated "any person, who stores or possesses pornographic material in any form involving a child and transmits or propagates or displays or distributes in any manner at any time".

The use of the words "for transmitting or propagating or displaying or distributing in any manner" in Section 15 sub-section (2) makes it crystal clear that the said provision deals with two kinds of actus reus being (I) first, the storage or possession of a pornographic material involving a child when done

with an intention to either transmit it or to propagate it or to display or distribute it though no actual transmission, propagation, display or distribution might have occurred OR (II) secondly, the storage or possession of a pornographic material involving a child which was actually transmitted, propagated, displayed or distributed in any form or manner.

In other words, the actus reus that is required under Section 15 sub-section (2) is that a pornographic material involving a child must be found to have been stored or in possession with an intention to either transmit it or to propagate it or to display or distribute it or the same must have been transmitted, propagated, displayed or distributed in any form or manner.

89. The underlying difference in the actus reus under Section 15 sub-section(s) (1) and (2) is that in the former the storage or possession of any such material is due to the omission to delete, destroy or report the same whereas in the latter, the storage or possession of any such material is in order to facilitate the transmission, propagation, display or distribution of the same.

To further put the distinction into perspective, the actus reus under sub-section (1) must be such that indicates that the child pornographic material found in storage or possession was only due to an omission to delete or destroy. Whereas under sub-section (2) it must be shown that such material had been stored or in possession for a reason more than just mere omission i.e., for the reason of transmitting, propagating, displaying or distributing the same.

The use of the words "any manner" in sub-section (2) makes it clear that apart from the storage or possession of such pornographic material, there must be something more to show either (I) the actual transmission, propagation, display or distribution of such material OR (II) the facilitation of any transmission, propagation, display or distribution of such material, such as any form of preparation or setup done that would enable that person to transmit it or to display it. Thus, Section 15 sub-section (2) of the POCSO would cover both the actual transmission, propagation, display or distribution of any child pornography as-well as the facilitation of any of the abovementioned acts.

90. On the other hand, the mens rea which is required to constitute an offence under Section 15(1) is the intent to share or transmit a pornographic material involving a child, and the said intention is to be gathered or gauged from the actus reus itself i.e., by culling out the manner in which there was an omission to delete, destroy or report such a material or the reason behind the same.

This is evinced from the construction of the expression "but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography" which makes it clear that the

scope of discerning the intent to share or transmit has been both limited AND tied to only the omission to delete, destroy or report i.e., the actus reus. The expression "with an intention to share or transmit" cannot be singled out and construed devoid of its context. Thus, it is the manner in which along with the attending circumstances attributable to the failure to delete, destroy or report that must sufficiently be indicative of the intent to share or transmit any material.

91. In Section 15 sub-section (1) of the POCSO the legislature by qualifying and linking the expression "intent to share or transmit" to the omission to delete, destroy or report, has in its wisdom made the intention or mens rea under the said provision a matter of inference, to be ascertained from the actus reus itself. The degree of probability for inferring such intention would largely depend upon the manner in which the actus reus i.e., how the omission took place. It is for the courts to ascertain whether the manner in which the material was found in storage or possession, the attending circumstances to the omission and the conduct of the person accused sufficiently refutes or displaces the inference of an intention to share or transmit or not.

92. The underlying reason behind tying the inference of intention to the omission alone is because the legislature was alive to the practical difficulty that exists in establishing an intention to share or transmit any child pornographic material from just the mere possession of such material. In offences pertaining to or involving the possession of any contraband, it is too uphill a task for the courts to peer through and look into the mind of the person accused and then cull out the intention of that person behind possessing or storing such material.

Thus, in such cases instead of directly establishing the intention from the mental state of the person accused, it is established indirectly by inferring it from the manner in which the contraband was found to have been stored or in possession. Here again due to the infeasibility or difficulty in cogently establishing an inference of intention often due to the lack of any material and the very private and clandestine nature of the offence, the courts instead try to look for some material or circumstances that might displace the inference of such an intention, and wherever there is nothing to show the same, the courts may without hesitation proceed to infer the existence of such an intention.

93. Whereas, under Section 15 sub-section (2) the mens rea is to be gathered from the manner in which the pornographic material was found to be stored or in possession and any other material apart from such possession or storage that would be indicative of any facilitation or actual transmission, propagation, display or distribution of such material.

Thus, wherever in addition to the storage or possession of any child pornographic material, there exists any material or attending circumstances that would either

show or indicate the facilitation or actual commission of any of the acts enumerated in Section 15 sub-section (2) of the POCSO, the said provision would get attracted in place of Section 15 sub-section (1).

We say so because, the presence of such additional material may demonstrate that the intention of the person accused has gone beyond the contours of Section 15 sub-section (1). It evinces a more significant manifestation of the intention of the person accused, which moved from what is required in sub-section (1) to a much higher degree of intention that is required under sub-section (2). In other words, the existence of such additional material strengthens the inference of that intention which is required and made punishable under Section 15 sub-section (2).

94. Section 15 sub-section (3) penalizes the storage or possession of any child pornographic material when done for any commercial purpose. The term 'commercial purpose' refers to and encompasses any activity or transaction that is carried out or undertaken as a means of any commercial enterprise i.e., with the object or intention of any gain, irrespective of whether it was in monetary terms or not. Thus, to constitute an offence under this provision, the requirement is that the storage or possession of any child pornography must be in lieu of any monetary gain or for receiving any other valuable consideration.

Again, the words "any commercial purpose" indicate that the storage or possession must be with an intention to generate or acquire any monetary gain or any other form of valuable consideration, irrespective and regardless of whether such monetary gain or valuable consideration is actually generated or acquired. Thus, it is immaterial whether any monetary gain or any other benefit was actually realized or not.

To establish an offence under Section 15 sub-section (3), besides the storage or possession of the pornographic material involving a child, there must be some additional material or attending circumstances that may sufficiently indicate that the said storage or possession was done with the intent of any form of gain or benefit. As soon as there is any material to indicate that the storage or possession of any child pornographic material was done in lieu or in expectation of some form of gain or benefit, it would constitute an offence under Section 15 sub-section (3) of the POCSO notwithstanding whether such gain was actually realized.

95. Thus, while Section 15 sub-section (1) requires the existence of the requisite mens rea or intention due to which the child pornographic material was not deleted, destroyed or reported, Section 15 sub-section (2) requires the existence of the requisite mens rea or intention which propelled or led the person accused to not only store or possess the said material but also to take some additional

steps towards either the actual transmission, propagation, display or distribution or the facilitation of the same. In contrast, Section 15 sub-section (3) requires the existence of the requisite mens rea or intention due to which the person accused not only stored or possessed the child pornographic material but also compelled him to take some additional steps either for any gain or benefit or in lieu or expectation of some form of gain or benefit.

96. For the sake of clarity, it would be apposite to give few illustrations as a guiding example to further demonstrate the fine but pertinent distinction that exists between sub-section (1), (2) and (3) of Section 15 of the POCSO.

97. For illustration; say certain child pornographic material was found stored in the personal mobile phone of 'A' and the same was neither deleted, destroyed nor reported. Here though there is possession or storage of child pornographic material but since there is nothing to show any facilitation of transmission, propagation, display or distribution of the said material, this would attract the provision of Section 15(1).

At the same time, since the material in question was found in the personal mobile of 'A' the same is indicative that the omission to either delete, destroy or report in all likelihood was due to the intent to share or transmit. Here the manner in which the omission has occurred is sufficiently indicative of the intent to share or transmit, as there is nothing apart to show that the omission was attributable to any other reason but the intent to share or transmit, and thus it would constitute an offence under Section 15(1) of the POCSO.

98. Conversely, say for example certain child pornographic material was found stored in a broken mobile phone of 'A' and the said material had never been deleted, destroyed or reported. Now again, there is nothing to show that there was either any actual transmission, propagation, display or distribution nor anything to show that something apart from and in addition to the storage or possession had been done by 'A' for facilitation of the transmission, propagation, display or distribution of such material. This would again attract the provision of Section 15(1) instead of 15(2) of the POCSO.

However, since the material was found in a broken phone, it is likely that the failure to delete, destroy or report the same was attributable to the inability of 'A' to operate the broken mobile rather than the intent to share or transmit, thus, no offence would be made out under Section 15(1) of the POCSO. This is because, the manner in which the omission has occurred is not sufficiently indicative of the intent to share or transmit. Thus, no offence could be said to have been constituted under Section 15 sub-section (1) of the POCSO.

99. Take for instance, certain child pornographic material was found stored in the mobile phone of 'A' but this time, the said material had found its way in the device due to an automatic download of media of which 'A' had no knowledge whatsoever. Here although there is possession or storage of such material, yet the omission to delete, destroy or report is clearly shown and established by 'A' that it was due to lack of knowledge about the existence of such material on his parts. Here the manner in which the omission has occurred is not sufficiently indicative of the intent to share or transmit, thus no offence could be said to have been made out under Section 15(1) of the POCSO.

100. Take a case where certain child pornographic material was found stored in the mobile phone of 'A' but this time in addition to the aforesaid material few chats were also recovered wherein 'A' told his friend 'B' that he had some child pornographic material which he could share with him. Here, since there is additional material to show that 'A' had taken some overt steps in order to propagate the said material, he would be liable under Section 15(2) of the POCSO.

101. For another illustration, say for example, again certain child pornographic material was found stored in the mobile phone of 'A' but this time 'A' creates a chat group consisting of several of his friends, and sends a message therein stating that he has some child pornographic material which he would forward on the group. Here, since there is additional material to show that 'A' had taken some overt steps in order to distribute the said material, he would be liable under Section 15(2) of the POCSO.

102. Conversely, say 'A' who has certain child pornographic material in his phone, again creates a group consisting of several of his friends, but this time he sends a message stating that he has some child pornographic material which he would send in exchange of some amount of money. Here, since there is additional material to show that 'A' had taken some overt steps in respect of the said material for some monetary gain, he would now be liable under Section 15(3) of the POCSO instead.

103. We may at the cost of repetition clarify that there may be situations where the possession or storage of the pornographic material is found to be in a such a manner that the same by itself would be indicative of an intention to either transmit, display, propagate or distribute such material or that it was done in lieu or expectation of any gain. In such cases the storage or possession of child pornographic material itself would sufficiently be indicative of the requisite intention either under Section 15 sub-section(s) (2) or (3) as the case may be, and there would be no requirement to adduce any additional material as long as the manner of storage or possession of such material or the attending circumstances itself is sufficiently indicative of such intention.

104. For illustration; say certain child pornographic material was found stored in five to six television devices in a hotel run by 'A'. Here, because the pornographic material has been found to be stored in multiple devices that too at a place which has easy access for the public, the same would be indicative that the 'A' was using the hotel and the television devices therein as a means for facilitating display of such pornographic material, and thus, would be punishable under Section 15 sub-section (2) of the POCSO.

105. For another illustration say again certain child pornographic material were found stored in five to six television devices in a hotel run by 'A', but this time some price was mentioned onto the pornographic material itself. Here, because some amount of money was found to be mentioned on the material itself and the said material was stored in a place with easy public access, the same would be indicative that the 'A' was using the hotel and the television devices therein as a means for facilitating display of such pornographic material in lieu of monetary gain, thus, would be punishable under Section 15 sub-section (3) of the POCSO.

106. The aforesaid illustrations have been provided only as a guiding example to highlight the distinction between sub-section(s) (1), (2) and (3) of Section 15 of the POCSO. These illustrations should not be mechanically applied or construed by any court in any proceeding while dealing with any matter involving Section 15 of the POCSO devoid of the context in which these illustrations have been given and without applying its mind as to whether the necessary ingredients have been established or not in the individual facts and circumstances of the matter. Any matter involving Section 15 sub-section (1), (2) or (3) of the POCSO, must be dealt with independent of the illustrations narrated above and stricto-sensu in accordance with only the ratio of this decision.

107. Lastly, we must also caution the police and the courts to be mindful of the fact that wherever in a given case a particular sub-section of Section 15 is found to be applicable, the other two remaining sub-sections of the said provision will cease to be applicable. Section 15 sub-section(s) (1), (2) and (3) respectively of the POCSO are independent and distinct offences. The three offences cannot coexist simultaneously in the same set of facts.

They are distinct from each other and are not intertwined that they cannot survive without each other. This is because, the underlying distinction between Section 15 sub-section(s) (1), (2) and (3) respectively lies in the different degree of culpable mens rea that is required under each of the three provisions. The inception of the requisite culpable mens rea begins and takes shape from the intention specified under sub-section (1), then gradually continues to transform into the intention stipulated under sub-section (2) and finally culminates into the intention prescribed under sub-section (3).

Under Section 15 sub-section (1) of the POCSO, the requisite intention therein is still in fieri i.e., in process of developing and culminating into either the intention under sub-section(s) (2) or (3). Whenever, the said intention ultimately crystalizes into the intention either under sub-section(s) (2) or (3), the other provisions would automatically become inapplicable.

108. Yet one another important aspect, that the police and the courts should be mindful of is that while examining any matter involving the storage or possession of any child pornography, it finds that particular sub-section of Section 15 is not attracted, it must not jump to the conclusion that no offence at all is made out under Section 15 of the POCSO. The police at the time of investigation and the courts at the time of taking cognizance, should keep this aforesaid aspect in mind. In other words, both should try to ascertain that if offence is not made out in one particular sub-section, whether the same is made out in the other two sub-sections or not. II. Concept of 'Possession', 'Constructive Possession' and 'Immediate Control' under Section 15 of the POCSO.

109. During the course of hearing, our attention was also drawn to a recent news article that reported how on social media, links to view child pornography were being circulated and sold for anywhere between Rs. 40 to Rs. 5,000. The news report indicates, how social media platforms are rife with child sexual abuse, and gave certain insight about the modus operandi of the distribution of such material on these platforms.

It explained how the sellers and distributors of child pornographic material rather than sharing any downloads to such material, would ingeniously only share links to such material instead in lieu of money, so as to circumvent the penal provisions of the POCSO and IT Act, which criminalized only the storage of such material. By indefinitely forwarding links, they completely bypass the requirement of first storing such material onto any device, and similarly those who view such material also only use the links, without ever downloading such material onto their device.

110. As earlier mentioned, prior to the 2019 Amendment Act, Section 15 of the POCSO only criminalized the storage of any child pornographic material for any commercial purpose. Thereafter, the legislature in view of the increasing number of child sexual abuse cases, amended Section 15 of the POCSO, to recognize and criminalize three distinct forms or manner of storage of child pornographic material, as has been discussed in the preceding parts of this judgment.

111. One another subtle but significant change that was made to all three subsections of Section 15 was the inclusion of the word "possession" in addition to storage, which was earlier not there in the erstwhile provision of Section 15 of the POCSO.

112. Thus, while the word "possession" was originally absent in the unamended Section 15 of the POCSO, the legislature in its wisdom, specifically added the said word in the amended Section 15, whereby now both the storage or the possession of any child pornographic material would be liable to be punished when done with any of the specified intention thereunder.

113. We believe that the change referred to above was not made inadvertently or lightly, but rather was done specifically with the intention of making the provisions of Section 15 of the POCSO more stringent to effectively deter the dissemination and use of child pornography.

114. An important aspect of the jurisprudence on possession as an inchoate crime is the doctrine of constructive possession. Constructive possession extends the concept of possession beyond physical control to situations where an individual has the power and intention to control the contraband, even if it is not in their immediate physical possession. This doctrine is particularly relevant in cases where contraband is found in a location that is not directly under the physical control of the accused, but where the accused has access to and control over the area where the contraband is found.

115. In U.S. v. Tucker reported in 150 F. Supp. 2d 1263 (D. Utah. 2001), the U.S. District Court, Utah, explained and elaborated on the doctrine of constructive possession. In the said case, the defendant therein used to routinely view child pornography, but he never used to keep it stored in his computer, and would often delete any such material and its traces from its computer after he was finished viewing them. When charged with the offence of possession of child pornographic material, he challenged the same, contending that since no material had been stored in his disk, he cannot be said to be in possession of any child pornography.

The court held that wherever a person exercises some form or manner of immediate control over any particular material, both tangible or intangible, such material would be said to be in his constructive possession. It observed that the control of a person over such material can be ascertained by seeing whether he could manipulate, alter, modify or destroy such material or not, if the answer to any of the above is in an affirmative, such material would be deemed to be in his conscious or constructive possession.

116. Similarly in U.S. v. Romm reported in 455 F. 3d. 990 (9th Cir., 2006), the defendant therein admitted to viewing images of child pornography on the Internet. He would save them to disk, view them for about 5 minutes, then delete them. The Court held that a person can be said to possess child pornography even without downloading or storing it, if he or she seeks it out and exercises dominion or control over it. It observed that this dominion or control may be

evident by factors such as when viewing the images on the screen, did the person have the ability to print them, save them, forward them or delete them. If he did, then he can be said to have knowingly exercised custody or control over those images and thus, consequently in possession of the same.

117. Thus, for establishing constructive possession both the power to control the material in question and the knowledge of exercise of such control are required. The doctrine of constructive possession, is a crucial development in the criminal jurisprudence, especially pertaining to inchoate crimes where possession is sought to be punished, as it ensures that no person can evade liability by simply distancing themselves from the physical possession of contraband while retaining the ability to control it.

118. We are of the considered view, that wherever a person indulges in any activity such as viewing, distributing or displaying etc. pertaining to any child pornographic material without actually possessing or storing it in any device or in any form or manner, such act would still tantamount to 'possession' in terms of Section 15 of the POCSO, if he exercised an invariable degree of control over such material, applying the aforesaid doctrine of constructive possession.

119. Say for instance, 'A' routinely watches child pornography over the internet, but never downloads or stores the same in his mobile. Here 'A' would still be said to be in possession of such material, as while watching he exercises a considerable degree of control over such material including but not limited to sharing, deleting, enlarging such material, changing the volume etc. Furthermore, since he himself on his own volition is viewing such material, he is said to have knowledge of having control over such material.

120. Conversely, say 'A' is sent an unknown link by 'B', which upon clicking opened a child pornographic video on the phone of 'A'. Here although 'A' at the time of opening the link had control over the said link, yet he cannot be said to have a knowledge of that control over such material as he at that relevant point of time was unaware as to what would open from the said link; thus 'A' cannot be said to be in possession.

We say so, because, 'A' had no information as to what the link pertained to, in order to have knowledge of control over such material, a person requires reasonable information such as what is involved in the material in question, what is the purpose of such material, etc. Without such information no person can decide whether he wants to view it, or delete it or further forward it i.e., he cannot effectively exercise the control that he has, without a certain degree of knowledge.

121. However, in the aforementioned illustration, if 'A' rather than closing the link in a reasonable time, continues to view such material he would be deemed to be in possession of such material. This is because, after a reasonable window of time, he would be said to have sufficient information about such material to have knowledge for the effective exercise of his control over such material.

122. Thus, we are of the considered view that any form of intangible or constructive possession of any child pornographic material will also amount to "possession" under Section 15 of the POCSO in terms of the Doctrine of Constructive Possession. There is no requirement of a physical or tangible "storage" or "possession" of such material in Section 15 of the POCSO. We may clarify with a view to obviate any confusion that, where any child pornographic material is in the constructive possession of an accused, there the failure or omission to report the same would constitute the requisite actus-reus for the purposes of Section 15 sub-section (1) of POCSO.

123. For instance, say, 'A' is sent an unknown link by 'B', which upon clicking opened a child pornographic video on the phone of 'A'. Now if 'A' immediately closes the link, although once the link is closed 'A' is no longer in constructive possession of the child pornography, this by itself does not mean that 'A' has destroyed or deleted the said material by merely closing the link. 'A' will only be absolved of any liability if he after closing the link further reports the same to the specified authorities. Thus, when it comes to constructive possession of an accused, it is the failure or omission to report that constitutes the requisite actus-reus for the purposes of Section 15 subsection (1) of POCSO.

124. At this juncture we may also address ourselves on another pertinent aspect for constituting an offence under Section 15 of the POCSO. The term 'storage' and 'possession' that has been used in the said provision does not require that such 'storage' or 'possession' must continue to be there at the time of registration of an FIR or any criminal proceeding. The provision of Section 15 is not fixated any particularly time-frame. What is simpliciter required to constitute an offence under Section 15 of the POCSO is the establishment of 'storage' or 'possession' of any child pornographic material with the specified intention under sub-section(s) (1), (2) or (3), at any relevant point of time.

Even, if the said 'storage' or 'possession' no longer exists at the time of registration of the FIR, nonetheless an offence can be made out under Section 15 if it is established that the person accused had 'stored' or 'possessed' of any child pornographic material with the specified intention at any particular point of time even if it is anterior in time. We say so because, any other view aside from the above, in our opinion would lead to a chilling effect with drastic consequences, whereby the provisions of the POCSO may be defeated by a devious person.

If for instance, a person immediately after storing and watching child pornography in his mobile phone deletes the same before an FIR could be registered, could it be said that the said person is not liable under Section 15, because at the time of registration of the FIR, such material no longer existed on the device of the person accused? The answer to the aforesaid, must be an emphatic "no".

Thus, we clarify that there is no requirement under Section 15 of the POCSO that 'storage' or 'possession' must continue to exist at the time of initiation of the criminal proceeding, and no such requirement can be read into the said provision. An offence can be made out under Section 15 if it is established that the person accused had 'stored' or 'possessed' of any child pornographic material with the specified intention at any particular point of time even if it was before such initiation or registration of criminal proceedings.

c. Pornographic Material must prima facie appear to involve a Child.

125. At this stage, we may explain one another crucial aspect concerning Section 15 of the POCSO, more particularly the criteria for determining whether the material in question involves or depicts a 'child', or in other words whether such material can be considered a 'child pornography' or not. The determination of whether the individual involved is a 'child' or not, in terms of the POCSO is a crucial foundational element for constituting various offences under the Act.

126. Section 2(1)(d) of the POCSO stipulates that the term 'child' means and refers to any person who is below the age of eighteen years. Thus, under the POCSO more particularly Section 2(1)(d) an objective criterion has been prescribed by the legislature for determining whether a person is a 'child' or not for the purposes of any offence under the Act. The said criteria is based on the age of the individual in question, and involves ascertaining and establishing whether he or she is under eighteen years of age, if so, such person would be considered a 'child' for the purposes of any offence in respect of such child that is punishable under the POCSO.

127. Earlier under the POCSO, there was no specific definition of 'child pornography'. Thus, under the erstwhile Section 15 of the POCSO, there was only one criteria for ascertaining whether the material in question can be regarded as 'child pornography' or not, which was by establishing that the material depicts or involves a person who is under the age of eighteen years.

128. It was only with the enactment of the aforesaid 2019 Amendment Act, whereby the term "child pornography" was specifically defined under the POCSO by way of insertion of Section 2(1)(da) in the Act. At the cost of repetition, Section 2(1)(da) of the POCSO is reproduced below: -

"2. Definitions.-

(1) In this Act, unless the context otherwise requires,-

(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child;"

129. A plain reading of the above would indicate that the term "child pornography" means any visual depiction of a child involved in any sexually explicit conduct. It further explains that the expression 'visual depiction' means and includes the following:-

i. A photograph or video, which may be either in actual or any electronic form.

ii. An image generated digitally or by a computer which is indistinguishable from an actual child i.e., any self-generated image which appears to depict a lifelike child indistinguishable from an actual child, and will not include any artistic or cartoon based depiction.

iii. Any other image (including any video-based imagery) that has been created, adapted or modified.

The above list of material mentioned is inclusive in nature i.e., the different types, form and manner of visual depiction that has been enumerated therein is not exhaustive in any manner. In the last, the said provision, more particularly the words "but appear to depict a child" lays down the test or criteria for ascertaining, whether any of the above mentioned visual depiction is a 'child pornography' or not, by prescribing a prima facie subjective satisfaction that the material appears to depict a child.

130. The use of the comma before the words "but appear to depict a child" is significant. The legislature has used the aforesaid comma both as a disjunctive and a conjunctive to the words preceding it. It has been used as a disjunctive to stress, that the subjective criteria that the material in question appears to depict a child is not inextricably linked or limited to just one category of visual depictions i.e., the last category being "image created, adapted, or modified". At the same time, it has been used as a conjunctive in relation to all types of visual depictions that have been illustrated in the said provision, to clearly indicate, that this subjective criterion applies to the entire provision i.e., to all types of visual depictions mentioned therein or in other words to 'child pornography'.

131. Thus, any visual depiction of a sexually explicit act which any ordinary person of a prudent mind would reasonably believe to prima facie depict a child

or appear to involve a child, would be deemed as 'child pornography' for the purposes of the POCSO. Therefore, for any offence under the POCSO that relates to child pornographic material, such as Section 15, the courts would only be required to form a prima facie subjective satisfaction that the material appears to depict a child from the perspective of any ordinary prudent person. Such satisfaction may be arrived at from any authoritative and definitive opinion such as through a forensic science laboratory (FSL) report of such material or from any expert opinion on the material in question, or by the assessment of such material by the courts themselves, depending on the peculiar facts and circumstances of each case.

132. This aforesaid test or criteria of 'subjective satisfaction' is not a superfluous or imaginary creation of the legislature, but a well-founded test, that exists in various other countries. In this regard, reference may be made to the decision of the Court of Appeal of England & Wales in Regina v. Michael Land reported in [1997] EWCA Crim J1010-15 wherein the court was dealing with an offence of possession of indecent photographs of children for the purpose of distribution under Section 1(1)(c) of the Protection of Children Act 1978. There the question arose whether the individual in the aforesaid photographs was under sixteen years of age or not.

The court observed that often there lies an inherent difficulty in making any positive identification of the person in question, so as to establish their age conclusively. It held that, thus in such situations, the question whether such person is a child or not would have to be ascertained as a matter of inference from the facts and the material in question, without any need for a formal proof of the same. The court further rejected the contention that in the absence of any paediatric or other expert evidence, no such inference can be drawn. It observed that such fact-based questions of age can be assessed by the judge or the jury as the case may be by use of their critical faculties and senses such as their eyes, supplemented with their own judgement and experience.

133. In John Leadbetter v. Her Majesty's Advocate reported in [2020] HCJAC 51, the High Court of Justiciary, Scottland held that no expert witness is required for proof of age of any person depicted in an obscene material in question. It further held that, such proof of age may be established by any witness or a person who demonstrates a certain extent of skill or knowledge in determination of the age on the basis of a wide range of evidence that may be available.

134. In United States v. Katz reported in 178 F.3rd 368 (5th Cir. 1999), it was held by the U.S. Court of Appeals, Fifth Circuit, Louisiana, that the threshold question whether the age of any person in a child pornography may be determined by a 'lay' jury without the assistance of expert testimony where there is no conflict of opinion as to the age. However, it observed that where the

individual in question appears to have reached puberty, there expert testimony or opinion as to proof of age would be necessary.

135. In Commonwealth v. Robert reported in (829 A.2d. 127), the Superior Court of Pennsylvania observed that proof of age, like proof of any material fact, can be accomplished by the use of either direct or circumstantial evidence, or both. It held that the proof necessary to satisfy the element of age in a dissemination or possession of child pornography case is not limited to expert opinion testimony.

136. What is discernible from the aforesaid is that, although, in the few decisions referred to by us, there is a difference of opinion as to whether an expert's testimony or determination is necessary or not for the proof of age of an individual depicted in any pornographic material, yet in all of the aforementioned decisions it has been consistently held that the criteria for such determination is only the subjective satisfaction.

137. The test or criteria of 'subjective satisfaction' is in view of the practical difficulty that exists in conclusively establishing the age of an individual in any pornographic material through any objective means or criteria. This is owed to the fact that often, it is next to impossible to establish the identity of the victim, then to trace the whereabouts of such person, and then objectively determine their age. If such a criterion is adopted, then most of the cases pertaining to the possession of any child pornographic material would fail at the threshold, due to want of any means or information for conclusively proving the age of the victim.

138. The aforesaid aspect may be looked at from one another angle. Any mandate of an objective determination of the age by conclusive means, could possibly result in absurd consequences. For instance, say a pornographic material involves an under-teen child who by virtue of his built on the face of it appears to be a child, yet such material will not be considered child pornographic material in the eyes of law, unless an objective determination of the exact age of such child is carried out in a conclusive manner. In the absence of any such determination, the prosecution of possession of such material would have to fail, merely due to technicalities and the inflexible character of the criteria or test for determining the age.

139. The aforesaid provision of Section 2(1)(da) of the POCSO holds significant importance, as the legislature whilst giving teeth to the existing provision of Section 15 of the Act, and making three distinct offences punishable under it through the 2019 Amendment Act, also consciously defined the term 'child pornography' under the POCSO through the very same amendment. It indicates the legislature's intention of construing both these provisions together as a whole; neither Section 15 of the POCSO nor Section 2(1)(da) can be interpreted or invoked in isolation from the other.

140. The legislature through Section 2(1)(da) of the POCSO, made a conscious departure from the already existing objective criterion of determination of age in terms of Section 2(1)(d) which is generally applicable to the POCSO, as it was alive to aforementioned inherent difficulty that is posed by such criteria. The legislature was well aware, that if the proof of age in offences pertaining to child pornography such as under Section 15 of the POCSO would also have to be assessed by the existing objective test, it would lead to a very chilling effect, whereby the entire Section 15 of the POCSO could be rendered unworkable merely on account of a hyper-technical approach as to determination of age, thereby defeating the very object of the POCSO.

141. The aforesaid aspect may also be looked at from one more angle. Section 2(1)(da) of the POCSO was inserted by the legislature with two-fold purpose in mind. While one of the purpose of Section 2(1)(da) of the POCSO, was to explicitly define and delineate what type of visual depictions would be considered 'child pornography' to remove any ambiguity that existed earlier, the real purpose behind insertion of the said provision was to mitigate the tendency of the courts to refer and apply the objective criteria of age determination prescribed under Section 2(1)(d) of the POCSO, even when dealing with matters involving child pornography. Which is why the legislature in addition to explaining the contour of visual depiction in Section 2(1)(da) of the POCSO, also specifically added the words "but appear to depict a child" in the end.

142. If the courts while dealing with any matter involving child pornography, continue to refer and rely on Section 2(1)(d) of the POCSO, then the same will frustrate the intention behind Section 2(1)(da) more particularly the words "but appear to depict a child" in the statute book, thereby render that portion of the aforesaid provision otiose and nugatory.

143. The true purport of Section 2(1)(da) of the POCSO, is to ensure that for offences pertaining to child pornography, it is Section 2(1)(da) that is given due regard and not Section 2(1)(d). Thus, in any offence pertaining to child pornography the definition of 'child' in Section 2(1)(d) would pale in comparison to the definition of 'child pornography' under Section 2(1)(da) of the POCSO.

As such, the court while dealing with an offence under Section 15 of the POCSO, must be mindful of the fact, that it is Section 2(1)(da) of the POCSO, which has to be referred to and relied upon and not Section 2(1)(d). In other words, it is the definition of 'child pornography' which is of relevance while considering whether Section 15 of the POCSO can be invoked or not. d. Scope of Section 67B of the IT Act.

144. The IT Act was originally enacted with the object of providing a legal framework for inter-alia recognizing electronic records & digital signatures,

facilitating electronic commerce, and providing a legal sanctity to e-contracts. While the IT Act did include certain provisions to penalize cybercrimes, they were rudimentary and did not comprehensively address issues like creation and facilitation of sexual abuse of children, the online publication, transmission and distribution of child pornography or the sexual inducement, enticement and exploitation of children over the internet.

145. The aforesaid was due to the fact that, the IT Act prior to the Information Technology (Amendment) Act, 2008 (for short, the '2008 Amendment Act'), criminalized only one act being the publication or transmission of obscene material, under Section 67. The IT Act made no distinction between the publication or transmission of an 'obscene material' from the publication or transmission of an obscene material involving any sexually explicit act or conduct i.e., pornographic material or for that matter child pornographic material.

More glaringly, there was no difference in either publication or transmission of such material from the distribution, facilitation and consumption of such material over the internet. The IT Act also did not recognize other forms of sexual abuse and exploitation of children over the internet as a punishable offence such as enticement of children into any sexual act.

146. Over a period of time, as the age of internet evolved, the inadequacies of the IT Act became apparent, primarily due to more and more children using the internet and a corresponding increase in number of cyber-crimes being committed against them. Thus, there was a need for a more robust legal framework particularly for the protection of vulnerable population like children over the internet.

147. The 50th Report of the Standing Committee on Information Technology on the 'Information Technology (Amendment) Bill, 2007' noted that although a new provision in the form of Section 67A had been proposed for specifically criminalizing publication or transmission of pornographic material with enhanced punishment, yet there was no specific provision pertaining to child pornography.

The Standing Committee, rejected the response of the Department of Information Technology that the provision of Section 67A in general would also include child pornography, and instead recommended that a specific provision for child pornography be incorporated, in order to not just criminalize the publication and transmission of child pornography with an enhanced punishment but also to tackle and criminalize other related forms of child sexual abuse such as, online enticement of children into sexual acts, distribution of child pornography and the facilitation or creation of such material. The relevant recommendations read as under: -

"6. The Information Technology Act, 2000 was enacted keeping in view technology directions and scenario as it existed at that point of time. As the technology has a habit of reinventing itself into cheaper and more cost-effective options, it becomes imperative to give a fresh look to any technology driven law from time to time. Moreover, due to overall increase in e-commerce, growth in outsourcing business, new forms of transactions, new means of identification, consumers concern, promotion of e-governance and other information technology applications, technology neutrality from its present 'technology specific' form in consonance with development all over the world, security practices and procedures for protection of Critical Information infrastructure, emergence of new forms of computer misuse like child pornography, video voyeurism, identity theft and ecommerce frauds like phishing and online theft, rationalization of punishment in respect of offences with reference to the Indian Penal code, a need was felt to review the Indian Information Technology Act, 2000"

(iii) Child Pornography

118. Clause 31 proposes to insert Section 67 A whereby punishment has been provided for publishing or transmitting of material containing sexually explicit act in electronic form.

119. In the above context, a non-official witness as well as the CBI have been of the view that the proposed Section should be recast to include 'child pornography' also and specific provisions should be incorporated in this Section to criminalize child pornography in tune with the laws prevailing in advanced democracies of the world as well as Article 9 of the Council of Europe Convention on Cyber Crimes which states as under:-

"Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

(a) producing child pornography for the purpose of its distribution through a computer system;

(b) offering or making available child pornography through a computer system;

(c) distributing or transmitting child pornography through a computer system;

(d) procuring child pornography through a computer system for oneself or for another person;

(e) possessing child pornography in a computer system or on a computer-data storage medium.

2. For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts: (a) a minor engaged in sexually explicit conduct; (b) a person appearing to be a minor engaged in sexually explicit conduct; (c) realistic images representing a minor engaged in sexually explicit conduct. 3. For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years. 4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c

120. When the Committee desired to hear the views of the Department of Information Technology in incorporating an express provision on defining child pornography as suggested by the Expert Committee, it was replied that a new Section 67A related to punishment for publishing or transmitting of material containing sexually explicit acts has been proposed as per which stringent provision has been made relating to pornography in general and would also automatically cover child pornography.

121. On the issue of criminalising child pornography and making penal provision towards that, the Department stated that, the advice/ assistance in the Commission of Crime (Pornography) through offering advice on information regarding the websites for facilitating any possession or downloading illegal content might be considered an offence.

122. The Department of Information Technology also agreed to a suggestion that the pre-offence grooming i.e. the initial actions taken by the offender to prepare the child for sexual relationships through online enticement and distributing or showing pornography to a child should also be made a criminal offence.

RECOMMENDATIONS / OBSERVATIONS

Child Pornography

24. The Committee note that Clause 31 of the Bill intends to insert a new Section 67A which provides for stringent punishment for publishing or transmitting of material containing sexually explicit acts in electronic form. But the Committee are concerned to find that the term 'child pornography' has nowhere been mentioned in the proposed Section.

The Department's argument that the Section while covering 'pornography' will automatically cover child pornography does not convince the Committee as there should be no scope for assumption or presumption when fresh amendments are being proposed. The Committee, therefore, impress upon the Department to include the term 'child pornography' in the proposed Section 67A in view of its growing menace. They also desire that specific provisions should be incorporated

in this Section to criminalise child pornography in tune with the laws prevailing in the advanced Countries and Article 9 of the Council of Europe Convention on Cyber Crimes.

In view of the several manifestations of sexual abuse of the children and its loathsome ramifications, the Committee desire that the act of grooming the child for sexual relationship through online enticement or distributing/showing pornography or through any other online means should also be made a criminal offence and a suitable provision be made in this regard in the proposed Section 67A." (Emphasis supplied)

148. From the aforesaid, it can be seen that the Standing Committee whilst making its recommendation, underscored that no useful purpose would be served if the publication or transmission of any child pornography is punished all the same as any other pornographic material. It highlighted, that while the IT Act had originally been enacted keeping in mind the requirements that existed then, yet now with the march of the age of internet, it has become imperative to undertake a fresh approach to the provisions of the IT Act particularly those relating to cyber-crime in light of the new emerging forms of misuse of the internet. It opined that, merely criminalizing the publication or transmission of child pornography will not be sufficient, and that other various forms of online sexual abuse and exploitation also need to be recognized and adequately punished, on par with the laws prevailing in various other countries.

149. It was in the aforesaid backdrop that the legislature by virtue of the Information Technology (Amendment) Act, 2008 inter-alia amended Section 67 of the IT Act and introduced Section 67A along with Section 67B. This was for the first time, that a specific provision had been made, to recognize and protect the vulnerable and tender age of children by criminalizing various forms of online sexual degradation, abuse and exploitation with enhanced punishment. At the cost of repetition, Section 67B of the IT Act is being reproduced below:-

"67-B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.-

Whoever-

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resources; or

(d) facilitates abusing children online; or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees: Provided that provisions of Section 67, Section 67-A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

Explanation.- For the purpose of this section, "children" means a person who has not completed the age of 18 years."

150. A conjoint reading of Section(s) 67 and 67A viz-a-viz 67B would reveal that unlike the former which penalizes only the publication or transmission of any obscene material or pornographic material, the scope and ambit of Section 67B is much wider inasmuch as it recognizes and penalizes five different forms / categories of actus reus, being: -

(i) Section 67B sub-section (a): -

a. Section 67B sub-section (a) of the IT Act pertains to the dissemination of child pornography and penalizes the publication or transmission of any material involving a child in any sexually explicit act or conduct, and the direct or indirect involvement in aiding or facilitating the dissemination of such material.

b. In order, to constitute an offence under this provision, there must be an actual publication or transmission of any child pornographic material, though the said publication or transmission may be done either by the accused himself or be caused through someone else at the instance or behest of the accused. In other, words Section 67B subsection (a) punishes any person who is involved in a

process, in any manner that leads to the publication or transmission of any child pornographic material.

c. Thus, twin-conditions as prescribed under Section 67B(a) of the IT Act, need to be satisfied in order to constitute an offence:-

(I) the actual publication or transmission of any child pornographic material AND (II) the involvement of the accused in such publication or transmission process in any manner.

(ii) Section 67B sub-section (b): -

a. It penalizes the creation of any text or image-based content in any electronic form, that depict children in any obscene or indecent or sexually explicit manner. It further penalizes the collection, solicitation, browsing i.e., online viewing, or downloading of such material. Thus, even the mere viewing of any child pornographic material that is stored in a mobile phone would tantamount to 'browsing' of such material in electronic form. Lastly, it also penalizes the advertising, promotion, exchange or distribution of any such material. Here again, what is punishable is only the actual commission of any of the above-mentioned acts.

b. The scope of Section 67B sub-section (b), is more expansive than the preceding sub-section because, (i) first, the term 'material' here includes any electronic content depicting children in sexually explicit acts as well as in obscene or indecent contexts, and (ii) secondly, the actus reus encompasses not just the act of disseminating but also the acts of creating, propagating, or engaging with or using such material.

c. In other words, Section 67B sub-section (b) penalizes the actual commission of any of the following: -

i. the act of producing or creating any text or digital image based electronic material (incl. videos) that depict children in any obscene, indecent or sexually explicit manner;

ii. the act of engaging or using such material by way of collecting, browsing, accessing, downloading, saving, seeking, actively searching such material from any computer resource, and;

iii. the act of facilitating or propagating the circulation or dissemination of such material by advertising, promoting, exchanging or sharing, distributing or offering for sale such material from any computer resource on the internet.

(iii) Section 67B sub-section (c): -

a. Section 67B sub-section (c) of the IT Act penalizes the act of any person to induce or entice a child to participate or indulge in any sexually explicit act or any other act that would offend any adult of reasonable mind, using any computer resource.

b. In order to constitute an offence under the said provision, what is required is only the actual commission of an act of inducement or enticement in any manner by the accused alone, and there is no requirement that such enticement or inducement must have resulted in the child indulging in any sexually explicit or any other offensive act.

c. Thus, even where the accused merely attempts to entice a child to indulge in any such act, through a computer resource, he would be liable under this provision, irrespective of whether the child also indulges in such act or not. Furthermore, such enticement or inducement may be for having the child either indulge in any sexually or offensive act with the accused himself or with any other person at the instance or persuasion of the accused.

d. In other words, what is penalized under Section 67B sub-section (c) is the act of enticing or inducing a child to indulge in any sexually explicit offensive act or behaviour.

(iv) Section 67B sub-section (d): -

a. Section 67B sub-section (d) penalizes any form or manner of facilitation of abuse of children, online i.e., it penalizes any form of degradation, exploitation, or abuse of children on any online platform. The actus reus punishable under the said provision is the doing, aiding or abetting of any act, either directly or indirectly that would facilitate or enable the abuse of children online in any indecent, lascivious or prurient manner.

b. It is pertinent to note, that under Section 67B sub-section (d) there is no requirement that the act in question must have been done only with an intention to facilitate the abuse of children online. What is rather required to constitute an offence under the said provision is that the act must be such which likely would facilitate the abuse of children online.

c. In other words, what is penalized is any act that has the propensity or likelihood to aid, enable or support the online abuse of children in any obscene, indecent, or lewd fashion.

(v) Section 67B sub-section (e): -

a. Section 67B sub-section (e) of the IT Act penalizes the act of recording through video or any other electronic means, the participation of any sexually

explicit act with or in the presence of any child. The actus reus required is the use of any video or any other electronic means to record any sexually explicit act being done either by the accused himself or by anyone else in the presence of a child.

b. It must be borne in mind, that the sexually explicit act itself need not be done in the actual presence of the child, rather what is required is that the child was made privy to such sexually explicit act, and the same was recorded by the accused in any electronic form. Say for instance, that in the presence of a child, a pornographic video is played, and the same is then recorded by the accused. Here since, the recording includes a child being subjected to a sexually explicit act in the form a pornographic video, an offence would be constituted under the said provision, even though no such act was done in the actual presence of the child.

c. In other words, what is penalized under Section 67B sub-section (e) is the act of exposing or subjecting a child to any sexually explicit act by anyone, and recording the same in any electronic form.

151. From the aforesaid, it is clear that Section 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children online. It not only punishes the electronic dissemination of child pornographic material, but also the creation, possession, propagation and consumption of such material as-well as the different types of direct and indirect acts of online sexual denigration and exploitation of the vulnerable age of children.

152. This Court in Sharat Babu Digumarti v. Govt. of NCT of Delhi reported in (2017) 2 SCC 18 held that Chapter XI of the IT Act, more particularly Section(s) 67 through 67B are a complete code in itself when it comes to offences relating to electronic forms of obscene and pornographic material. The relevant observations read as under: -

"31. Having noted the provisions, it has to be recapitulated that Section 67 clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with Sections 67-A and 67-B is a complete code relating to the offences that are covered under the IT Act."

(Emphasis supplied)

153. Thus, Section(s) 67, 67A and 67B of the IT Act being a complete code, ought to be interpreted in a purposive manner that suppresses the mischief and advances the remedy and ensures that the legislative intent of penalizing the various forms of cyber-offences relating to children and the use of obscene / pornographic material through electronic means is not defeated by a narrow construction of these provisions.

iii. The Presumption of Culpable Mental State under Section 30 of the POCSO.

154. As discussed earlier, the POCSO is a special legislation that was specifically enacted to punish aggravated forms of offences related to sexual abuse and exploitation of children as well as including the well-being of the children. Its nuanced provisions have been deliberately designed to provide stringent measures in order to secure the dignity protection and interest of children.

It was in this backdrop, that the legislature in its wisdom specifically provided for certain statutory presumptions as regards commission of certain specified offences as-well as presumption of the existence of a culpable mental state on the part of the person accused so as to ensure that the legislation is effective in addressing the increasing number of child sexual abuse cases.

155. The provisions pertaining to statutory presumptions under the POCSO are contained in Section(s) 29 and 30 which provide for presumption as to certain offences and presumption of culpable mental state respectively. In the case at hand we are concerned with Section 30 of the POCSO which at the cost of repetition is being reproduced hereunder: -

"30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.- In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

156. Section 30, sub-section (1) provides that where any offence under the POCSO requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state. It further provides that the accused may as a defence prove that he had no such mental state with respect to any act being sought to be punished under the Act. Thus, Section 30(1), makes it clear that the presumption of culpable mental state applies to any offence under the said Act that requires such mental state, and the use of the word "shall" makes it mandatory for the Special Court to presume the existence of such mental state.

However, the said provision also clarifies that, although the said presumption is mandatory yet it is rebuttable inasmuch as the person accused is permitted to prove any fact to establish the contrary i.e., to show that no such mental state existed on his part. Section 30 sub-section (2) further explains the manner and the circumstances under which the said presumption can be rebutted, insofar as it stipulates that in order to prove any fact to show that no such mental state existed, the person accused has to prove the same beyond a reasonable doubt and not on a mere preponderance of probability.

Thus, the standard prescribed for rebutting the said statutory presumption of culpable mental state is beyond a reasonable doubt. Lastly, the Explanation appended to the said provision provides that 'culpable mental state' shall include intention, motive, knowledge of a fact and the belief in, or the reason to believe a fact.

a. Concept of Statutory Presumption and Principle of Foundational Facts.

157. In Attorney General (supra) this Court while considering the aforesaid Section(s) 29 and 30 of the POCSO observed that the same had been specifically incorporated by the legislature in view of the serious nature of the offences punishable under the POCSO and the object behind the enactment of the said legislation. Furthermore, this Court in view of the importance of the aforesaid provisions, held that any offence under the Act pertaining to sexual, assault, harassment etc., ought to be construed viz-a-viz the other provision (sic Section(s) 29 and 30) of the POCSO. The relevant observations read as under: -

"36. It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the Legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

It may further be noted that though as per sub section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to

Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Thus, on the conjoint reading of Section 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, "sexual intent" would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of "culpable mental state" on the part of the accused.

37. This takes the Court to the next argument of Mr. Luthra that there being an ambiguity, due to lack of definition of the expressions - "sexual intent", "any other act", "touching" and "physical contact", used in Section 7, coupled with the presumptions under Sections 29 and 30 of the Act, the reverse burden of proof on the accused would make it difficult for him to prove his innocence and, therefore, the POCSO Act must be strictly interpreted. In the opinion of the Court, there cannot be any disagreement with the said submission of Mr. Luthra.

In fact it has been laid down by this Court in catena of decisions that the Penal Statute enacting an offence or imposing a penalty has to be strictly construed. A beneficial reference of the decisions in the case of Sakshi v. Union of India reported in (2004) 5 SCC 518, in the case of R. Kalyani v. Janak C. Mehta reported in (2009) 1 SCC 516 and in the case of State of Punjab v. Gurmeet Singh, (2014) 9 SCC 632 be made in this regard. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole Statute relating to the subject matter.

The Court can not be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment etc. have to be construed vis-a-vis the other provisions, so as to make the objects of the Act more meaningful and effective."

(Emphasis supplied)

158. The statutory presumption of culpable mental state is neither a concept which is alien to the law nor is it something which is exclusive to the POCSO alone. In fact, there are several legislations which also contain similar provisions relating to the statutory presumption of culpable mental state, such as Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the "NDPS Act"), Section 138A of the Customs Act, 1962 (for short, the "Customs Act"), Section 278E of the Income Tax Act, 1961 (for short, the "Act, 1961") to

name a few. Since all of the aforesaid provisions are pari materia with Section 30 of the POCSO, it would be apposite to refer to the various decisions of this Court interpreting these analogous provisions.

159. In Bhanabhai Khalpabhai v. Collector of Customs reported in 1994 Supp.

(2) SCC 143, this Court whilst examining the scope of Section 138A of the Customs Act which relates to presumption of culpable mental state observed that the said statutory presumption had been incorporated by the legislature in view of the difficulty that the prosecution often faces in proving every link in respect of commission of certain offences by way of direct evidence. It further observed that such statutory presumption is an exception to the general criminal jurisprudence that the onus never shifts on the accused and he has only to raise a doubt in the mind of the court, in respect of the correctness of the prosecution version. The relevant observation reads as under: -

"9. In the facts and circumstances of the case, it can also be held that the appellant was concerned with the specified goods in connection with 'fraudulent evasion or attempt at evasion' of duty chargeable on the specified goods. It is well known, that it is very difficult for the prosecution, to prove every link, in respect of the commission of the offence under the Act by direct evidence. The whole process of smuggling, for evading payment of custom duty consists of different links.

The links aid and abate each other, sometimes through a remote control. That is why, Parliament has introduced Section 138-A in the Act. The provision relates only to burden and nature of proof at the trial, as such it was applicable in the present case. In view of the aforesaid section, a presumption has to be drawn, in respect of existence of the alleged mental state. An option has been given to the accused to prove by way of defence the fact, that he did not have any such mental state with respect to the act charged which is an offence.

It can be said that the provision aforesaid is an exception to the general criminal jurisprudence that onus never shifts on the accused and he has only to raise a doubt in the mind of the court, in respect of the correctness of the prosecution version. It is different from Sections 106 and 114 of the Evidence Act. In view of Section 138-A, once a presumption is raised about a culpable mental state on the part of the accused, that he had stored the silver ingots, to export them outside the country evading payment of custom duties, the accused has to prove as a defence that no such mental state with respect to the act charged, did exist."

(Emphasis supplied)

160. In another decision of this Court in Devchand Kalyan Tandel v. State of Gujarat reported in (1996) 6 SCC 255, it was reiterated that the statutory

presumption engrafted in Section 138A of the Customs Act was out of necessity in view of the growing number of cases pertaining to evasion of duty or prohibitions or other alike economic offences and the inherent difficulty of the prosecution in establishing ingredients of such offences. It held that, once the recovery of prohibited goods from the accused person has been duly established by the prosecution, the statutory presumption would arise. It further held, that the question in such cases would be whether in the proved facts and circumstances, could the recourse of the statutory presumption be taken. The relevant observations read as under: -

"10. It is no doubt true that in a charge for violation of the provisions of Section 135(1)(a) it is required for the prosecution to establish that the accused have fraudulently evaded or attempted to evade any duty chargeable on the goods or have violated the prohibition imposed under the Act in respect of the goods. But if the prosecution establishes the aforesaid facts then there is no necessity of attracting the statutory presumption under Section 138-A and without such presumption an accused can be convicted under Section 135(1)(a).

But the legislature having found it difficult to establish the necessary ingredients of such evasion of duty or prohibitions and the economic offences having grown in proportion beyond the control, came forward with the presumption available under Section 138-A of the Act. The main object of Section 138 A is to raise a presumption as to the culpable mental state on the part of the accused when he is prosecuted in a court of law. In other words, if a recovery is made from the accused of any prohibited goods within the notified area then the statutory presumption would arise that he was knowingly concerned in the fraudulent evasion or attempted evasion of any duty chargeable on the goods in question.

In the case of Bhanabhai Khalpabhai v. Collector of Customs [1994 Supp (2) SCC 143 : 1994 SCC (Cri) 882] this Court has held that in view of Section 138-A a presumption has to be drawn in respect of the existence of the alleged mental state. An option has been given to the accused to prove by way of defence the fact, that he did not have any such mental state with respect to the act charged which is an offence. The question, therefore, arises as to whether in the proved facts and circumstances the courts below were justified in taking recourse to the statutory presumption under Section 138-A of the Act.

(Emphasis supplied)

161. In State of Punjab v. Baldev Singh reported in (1999) 6 SCC 172 a Constitution Bench of this Court held that a presumption is an inference of fact drawn from the facts which are known as proved and as such the statutory presumption under Section 54 of NPDS Act that an accused has committed an offence under the Act will only get attracted once the prosecution has established

that the accused was found to be in possession of the contraband in a search conducted in accordance with the procedure laid down in the Act. The relevant observations read as under: -

"54. Thus, even if it be assumed for the sake of argument that all the material seized during an illegal search may be admissible as relevant evidence in other proceedings, the illicit drug or psychotropic substance seized in an illegal search cannot by itself be used as proof of unlawful conscious possession of the contraband by the accused. An illegal search cannot also entitle the prosecution to raise a presumption under Section 54 of the Act because presumption is an inference of fact drawn from the facts which are known as proved. A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50."

(Emphasis supplied)

162. In Seema Silk Sarees v. Directorate of Enforcement reported in (2008) 5 SCC 580, although the provision involved therein is not pari materia with Section 30 of the POCSO, yet the observations made by this Court are relevant to the issue involved in the case at hand. Therein this Court whilst upholding the constitutional validity of Section 18 of the Foreign Exchange Regulation Act, 1973 which inter-alia provided for a statutory presumption of contravening the provisions of the said Act, held that such a statutory presumption would stand attracted once certain foundational facts are established by the prosecution. The relevant observation read as under: -

"19. A legal provision does not become unconstitutional only because it provides for a reverse burden. The question as regards burden of proof is procedural in nature.

20. The presumption raised against the trader is a rebuttable one. Reverse burden as also statutory presumptions can be raised in several statutes as, for example, the Negotiable Instruments Act, Prevention of Corruption Act, TADA, etc. Presumption is raised only when certain foundational facts are established by the prosecution. The accused in such an event would be entitled to show that he has not violated the provisions of the Act.

(Emphasis supplied)

163. Similarly in Noor Aga v. State of Punjab & Anr. reported in (2008) 16 SCC 417, the constitutional validity of Section 35 of the NDPS Act was challenged which as aforestated provided for the presumption of culpable mental state. This Court speaking through Justice S.B. Sinha (as he then was) whilst upholding the validity of the aforesaid provision observed that although the presumption of

innocence being a human right cannot be thrown aside, yet the same would still be subject to exceptions.

The court held that where a statute raises a presumption with regard to the culpable mental state on the part of the accused and also places the burden of proof on the accused to prove the contrary, the said presumption would be constitutionally valid and can be raised provided that the foundational facts pertaining to the establishing the actus reus of the requisite offence has been proved. It further held that despite such statutory presumption, the initial burden would always lie upon the prosecution to prove certain foundational facts clearly establishing the actus reus in respect of the offence that is sought to be punished.

It is only after the prosecution has proved the foundational facts, that the statutory presumption gets attracted, whereafter the burden would shift onto the accused to prove otherwise. In the last it also held that the extent of burden to prove the foundational facts pertaining to the actus reus by the prosecution would depend upon the seriousness of the offence. The relevant observations read as under: -

"35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld.

51. The Act specifically provides for the exceptions. It is a trite law that presumption of innocence being a human right cannot be thrown aside, but it has to be applied subject to exceptions.

56. The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the court to impose fine of more than maximum punishment of Rs 2,00,000 as also the presumption of guilt emerging from possession of narcotic drugs and psychotropic substances, the extent of burden to prove the foundational facts on the prosecution i.e. "proof beyond all reasonable doubt" would be more onerous. A heightened scrutiny test would be necessary to be invoked.

It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but, on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights by insisting upon scrupulous compliance with the provisions of the Act for the

purpose of upholding the democratic values. It is necessary for giving effect to the concept of "wider civilisation". The court must always remind itself that it is a well-settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused.

58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift.

Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

(Emphasis supplied)

164. In Bhola Singh v. State of Punjab reported in (2011) 11 SCC 653 this Court while placing reliance on the decision in Noor Aga (supra) reiterated that the statutory presumption envisaged in Section 35 of the NDPS Act will only come into play after the prosecution had discharged its initial burden to prove certain foundational facts. It observed that the applicability of such statutory presumption is dependent upon the facts as spelt out by the prosecution, after which the burden would shift onto the accused to establish otherwise. It held that in the absence of any foundational facts pertaining to the alleged offence, no presumption can be drawn. The relevant observations read as under: -

"10. While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play.

11. Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he

owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn."

(Emphasis supplied)

165. In Baldev Singh v. State of Haryana reported in (2015) 7 SCC 554 this Court held that the presumption of culpable mental state contained in Section 35 of the NDPS Act would come into play once the possession of the contraband in question by the accused has been established by the prosecution, whereafter, the onus would be on the accused to rebut the said presumption.

It further held, that such presumption may be rebutted by the accused by either raising doubts in the prosecution's case and the material relied upon it for establishing the possession or that it may adduce any other evidence to rebut the same. In the last, it also held that where the prosecution is unable to establish the possession or where the court has doubts over the prosecution's case, the said presumption would automatically be discharged. The relevant observations read as under: -

"12. Once the physical possession of the contraband by the accused has been proved, Section 35 of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband. The Explanation to sub-section (1) of Section 35 expanding the meaning of "culpable mental state" provides that "culpable mental state" includes intention, knowledge of a fact and believing or reason to believe a fact.

Sub-section (2) of Section 35 provides that for the purpose of Section 35, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of the probability. Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. Burden of proof cast on the accused under Section 35 of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case.

The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give reasonable assurance to the court that the accused could not have had the knowledge of the required intention, the burden cast on him under Section 35 of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter on his defence."

(Emphasis supplied)

166. What can be discerned from the above is that the idea behind providing for a statutory presumption of culpable mental state is in view of the exigency posed by the difficulty that often exists in establishing certain types of offences such as inchoate offences due to its clandestine nature. Such presumptions are in essence an exception to the cardinal principle of criminal jurisprudence that the act does not make a person guilty unless the mind is also guilty.

167. Traditionally, it is the prosecution who bears the burden of proving every element in a particular offence, including the accused's mental state, beyond a reasonable doubt. In order to establish the commission of any offence, the prosecution must stand on its own legs i.e., the onus lies on the prosecution to prove beyond reasonable doubt not just the wrongful act but also the wrongful intention of the person in doing such an act.

However, in certain offences particularly economic offences or inchoate offences like possession of child pornography where apart from the actus reus there exists no other material to depict or demonstrate the mens rea, it is too difficult for the prosecution to look into the mind of the accused to cull out with certainty what his intention was or could have been for doing a particular act let alone cogently establish the same beyond a reasonable doubt. Due to the elusive and concealed nature of such offences there is often little to no direct evidence available to establish what was in fact in the mind of the accused at the time when the particular act in question occurred or that the said act was done only with a particular intention.

168. It is in such scenarios, the legislature consciously provides for a statutory presumption of a culpable mental state to overcome the aforesaid hurdles and assist the prosecution to prove its case. This presumption of a culpable mental state is neither a conclusive proof of guilt for any particular offence nor does it completely replace or absolve the prosecution of its burden of proof and should not be understood as such, but rather it is a potent tool to assist the prosecution in discharging its initial burden and establishing its case.

It seeks to bridge the evidentiary gap that exists between the actus reus and the mens rea in complex clandestine offences which otherwise cannot be proved

through conventional means. 169. One good reason for providing such statutory presumptions in different legislations is owed to the fact that at times having regard to the peculiar case the prosecution may find it extremely difficult to know the mind of the accused so as to establish his intention and mental state. In contrast, the accused may not have to face the same degree of difficulty because he is fully aware of his mental state and can explain his intentions on the basis of his conduct or actions.

170. However, since the courts were in seisin of the harshness of such presumptions and the inherent danger they pose - particularly in blurring the line between the presumption of a culpable mental state and the presumption of the guilt itself and thereby undoing or compromising the fairness of such criminal proceeding, this Court for the first time in Baldev Singh (supra) sowed the seeds for a test to ascertain as to when such presumption can be safely attracted which was later more fully evolved in Noor Aga (supra) wherein a brightline test was laid down in the form of the 'Rule or Principle of Foundational Facts'.

171. This 'Rule or Principle of Foundational Facts' simpliciter lays down that before the statutory presumption of culpable mental state could be validly invoked, the prosecution must first establish certain foundational facts. These foundational facts typically involve or correspond to proving those facts or elements that cogently establish the actus reus required for the offence alleged by the prosecution.

It is only after such foundational facts have been proved beyond a reasonable doubt that the prosecution may take recourse of the statutory presumption provided by the legislature. The rationale behind the same is two-fold. First, in the absence of any actus reus there is no possible way to ascertain the corresponding mens rea that is required to be established. This is because it is the actus reus which demarcates or delineates the mens rea which is to be looked for and established.

Without an actus reus of any form there arises no question of establishing and consequently presuming the mens rea, in view of the fundamental principle of criminal jurisprudence, that no one should be punished for their thoughts or intention alone unless accompanied by some form of act. Secondly, and more importantly it ensures that the statutory presumption does not overreach or take the place of proof of guilt under the guise of 'presumption of culpable mental state'.

172. It would be too much to shift the entire onus onto the accused and to then ask him to prove a negative fact. Thus, any statutory presumption would operate only after the prosecution first lays the foundational facts necessary for the offences that have been alleged beyond a reasonable doubt. This is because a

negative cannot be proved in the initial threshold, in order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first.

Thus, in law it is trite that the initial burden always lies on the prosecution. This why, the establishment of foundational facts by the prosecution is a prerequisite for triggering the statutory presumption for shifting the onus on the accused to prove the contrary. It is a delicate balance struck between the practical need for such presumption in law and the cardinal principles of criminal jurisprudence to ensure that the presumption does not cross or transgress the fine line that demarcates presumption of 'culpable mental state' from the 'presumption of guilt' itself.

173. Since a negative cannot be proved, an accused cannot be asked to disprove his guilt even before the foundational allegations with supporting material thereof are placed and duly established by the prosecution before the court. Unless the prosecution is able to prove foundational facts in the context of the allegations made against the accused under any specific provision of the POCSO as the case may be, the statutory presumption of culpable mental state under Section 30 of the POCSO will not come into the picture.

174. Even if the prosecution establishes such foundational facts and the presumption is raised against the accused, he can rebut the same either by discrediting prosecution's case as improbable or absurd or the accused could lead evidence to prove his defence, in order to rebut the presumption, however the said presumption under Section 30 of the POCSO will be said to have been rebutted only where the accused by way of his defence establishes a fact contrary to the presumption and proves the same beyond a reasonable doubt.

b. Foundational Facts required under Section 15 of the POCSO.

175. Now coming to Section 15 of the POCSO, as discussed earlier, the foundational facts ordinarily pertain to the actus reus required under a particular offence. However, given the fact that Section 15 penalizes three distinct and varying degrees of intention and having regard to the mutually exclusive nature of each of the three offences provided thereunder, the mere storage or possession of a child pornographic material cannot become the foundational facts or basis for attracting all three of the said offences all the same.

176. As discussed by us in the foregoing parts of this judgment, while on a plain reading Section 15 sub-section(s) (1), (2) and (3) it might appear that all require the same actus reus i.e., the storage or possession of the child pornographic material, however, such an interpretation is flawed as a closer examination of each of the sub-section would reveal that there exists a very fine but pertinent

distinction in the actus reus which is required to constitute an offence under Section 15 sub-section(s) (1), (2) or (3) of the POCSO.

177. Thus, for the purpose of Section 15 sub-section (1), the necessary foundational facts which the prosecution would first have to establish before it can be allowed to validly raise the statutory presumption of culpable mental state would simpliciter be the storage or possession of any child pornographic material and that the person accused had failed to delete, destroy or report the same. Once, the aforesaid is clearly established by the prosecution, a presumption would be raised in terms of Section 30 of the POCSO that the person accused had the knowledge of the child pornographic material that was found to be stored or possessed by him and that he had the intent to share or transmit the same due to which he failed to delete, destroy or report it.

178. Whereas when it comes to Section 15 sub-section (2), since the actus reus required to constitute an offence thereunder requires the storage or possession of any pornographic material involving a child along with any additional mater to show either the actual transmission, propagation, display or distribution of any such material or the facilitation of any of the abovementioned acts.

Thus, in order to invoke the statutory presumption of culpable mental state as contained in Section 30 of the POCSO, the prosecution would be required to first establish not just the storage or possession of any child pornographic material, but also any other material to indicate any actual transmission, propagation, display or distribution of any such material or any form of an overt act such as preparation or setup done for the facilitation of the transmission, propagation, display or distribution of such material, whereafter, the statutory presumption would stand attracted, and it shall be presumed by the courts that the said act was done with the intent of transmitting, displaying, propagating or distributing such material and that the said act(s) had not been done for the purpose of either reporting or for use as evidence.

We clarify that, though wherever any actual transmission, propagation, display or distribution of such material takes place, the offence under Section 15 sub-section (2) would be constituted, thereby seemingly not requiring any further to be proved. However, due to the two exceptions carved out in sub-section (2) namely that transmission, propagation, display or distribution of child pornographic material when done for either reporting the same or for use as evidence, the statutory presumption in such scenario will still continue to serve a useful purpose by aiding the prosecution in reinforcing that any of the abovementioned acts had not been done with the intention of either reporting the same or for using it as evidence, unless the contrary is proven.

179. Lastly, for the purpose of Section 15 sub-section (3) of the POCSO, the actus reus required therein is the storage or possession of any child pornographic material and any other material to indicate that such storage or possession was done in lieu or in expectation of some form of gain or benefit. Thus, where the prosecution established the storage or possession of such material and further shows anything else that might indicate that the same had been done for some form of gain or benefit or the expectation of some gain or benefit, the foundational facts would be said to have been proved, and the statutory presumption envisaged under Section 30 of the POCSO can be validly raised. Then the onus would lie on the accused to prove that the storage or possession of such material had not been done with intention of any commercial purpose.

c. Whether the Presumption under Section 30 of the POCSO can be resorted to in a Quashing Proceeding?

180. The last aspect which remains to be examined is whether the said statutory presumption of culpable mental state provided in Section 30 of the POCSO can be resorted to in a quashing proceeding by the High Courts in exercise of their inherent powers under Section 482 of the Cr.P.C. (corresponding Section 530 of the Bhartiya Nagrik Suraksha Sanhita, 2023, for short, the "BNSS"). In other words, at what stage can the aforesaid said statutory presumption be invoked at. Before proceeding with the analysis of the said aspect, it would be appropriate to refer to a few decisions of this Court on this issue.

181. In State of M.P. v. Harsh Gupta reported in (1998) 8 SCC 630, this Court held that the statutory presumption contained in Section 69 of the Indian Forest Act, 1927 could not have been ignored by the High Court in deciding the quashing petition under Section 482 of the Cr.P.C. The relevant observations read as under: -

"3. It is rather surprising that at a stage when the only question to be considered was whether the complaint and its accompaniments disclosed any or all of the offences alleged against the respondent, the learned Judge not only went into a detailed discussion about his defence but recorded a conclusive finding that he was not guilty of the offences alleged against him. More surprising is that the learned Judge ignored the provisions of Section 69 of the Act which expressly raises a statutory presumption against a person arraigned that the forest produce recovered from him was a property of the Government, until the contrary is proved; and needless to say, the question of proof of the contrary can be answered after evidence is led.

4. For the foregoing discussion, we allow this appeal, set aside the impugned judgment and direct the Magistrate to proceed with the case in accordance with

law, without in any way being influenced by any of the observations made by the High Court in the impugned order."

(Emphasis supplied)

182. This Court in Prakash Nath Khanna v. CIT reported in (2004) 9 SCC 686 examined the scope of Section 278E of the Act, 1961. It held that where there is a statutory presumption as regards the existence of a culpable mental state on the part of the accused in respect of any offence alleged, any defence in respect of the absence of such mental state can only be pleaded in the trial. It further held that in such scenario, it will not be open for the High Court to delve into the aspect of the absence of such mental state in a quashing proceeding. The relevant observations read as under: -

"23. There is a statutory presumption prescribed in Section 278- E. The court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. Therefore, the factual aspects highlighted by the appellants were rightly not dealt with by the High Court. This is a matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial."

(Emphasis supplied)

183. In another decision of this Court in R. Kalyani v. Janak C. Mehta & Ors. reported in (2009) 1 SCC 516 although the issue therein did not pertain to the applicability of any statutory presumption, yet the observations made therein are significant. This Court held that the High Court in a quashing petition in exercise of its inherent jurisdiction cannot go into the aspect of either the existence or absence of any mens rea or actus reus for a particular offence to pass an order in favour of the accused. The relevant observations read as under: -

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the

same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

(Emphasis supplied)

184. In a recent decision of this Court in Rathis Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) & Anr. reported in 2022 INSC 480 it was held that when there is a statutory presumption, it would not be judicious of the quashing court to carry out a detailed enquiry on the facts alleged before first permitting the trial court to evaluate the evidence. It further observed that where a accused moves the court for quashing even before the commencement of trial, the High Courts in such cases should be slow and circumspect in prematurely extinguishing by discarding the legal presumption all together. The relevant observation reads as under: -

"11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint.

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption."

(Emphasis supplied)

185. From the above exposition of law, it is clear that there is no bar for the High Court to invoke the statutory presumption at the stage of deciding the quashing petition in respect to any offence to which such a presumption is applicable. Rather, any failure to give due weightage to the same, may result in dire consequences such as premature quashing of the criminal proceeding or allowing the accused to completely bypass the statutory presumption which otherwise would have been applicable in the trial. In light of our earlier discussion and without again referring to a plethora of decisions in this regard, it is clear how the statutory presumption plays a vital role when it comes to offences such as those under the POCSO.

186. This Court in Attorney General (supra) specifically held that considering the objects of POCSO, its provisions, more particularly, pertaining to sexual assault etc should be construed viz-a-viz the other provisions of the Act more meaningful and effective. Any selective reference to a particular provision in complete ignorance of the other provision would result in a mutilation of the entire scheme and purport of the legislation and thereby defeat the purpose with which it was enacted.

The High Courts as a matter of choice should not shy away from referring to the statutory presumption that has been incorporated in the Act, whilst deciding a quashing petition. The High Courts must not deal with a particular offence under any enactment devoid or in disregard of the rest of the statutory framework, it must recognize and refer to the legislation in toto.

187. Otherwise, it would give an undue advantage to an accused by allowing him to mischievously prefer a quashing petition before the trial commences and completely bypass the statutory presumption provided by the legislature and walk right away from the criminal proceedings, thereby setting the entire legislation at naught. It is imperative for the courts to discourage any such attempts on part of the accused to short circuit the statutory provisions and procedure laid in a

particular Act and evade trial entirely. In such situations, the statutory presumption becomes all the more important to effectively ensure that criminal process is not manipulated by any devious accused.

188. As has been held in Prakash Nath Khanna (supra) and Rathis Babu Unnikrishnan (supra), any defence of the accused for the purpose of rebutting the said statutory presumption should ordinarily be left to the trial court to be looked into at-least when it comes to quashing petitions. Though, in certain exceptional circumstances, the High Court may entertain such defence to quash the criminal proceedings where it appears from the facts itself that the allegations themselves are completely false and bogus and by no stretch of imagination said to be established. But in doing so, the High Court must be slow and circumspect & must exercise some restraint. The statutory presumption may be ignored only where no foundational facts have been established from the material on record.

189. Once the foundational facts are prima facie established from the materials on record, it would be improper for the High Court in a quashing petition to conduct an intricate evidentiary inquiry into the facts and ascertain whether the requisite mental elements are present or not. All these aspects should be left to be decided by the trial court which is the appropriate forum for the evaluation of the same, especially where the statutory presumption has been attracted prima facie from the material on record.

190. When the High Court quashes any criminal proceedings without considering the legal effect of the statutory presumption, it effectively scuttles the process of trial and thereby denies the parties the opportunity to adduce appropriate evidence and the right to a fair trial. This would not only defeat the very case of the prosecution but would also thwart the very object of a particular legislation and thereby undermine the public confidence in the criminal justice system.

191. We are conscious of the fact that in Noor Aga (supra) this Court had held that the statutory presumption under Section 35 of the NDPS Act would only operate in the trial of the accused. However, a close reading of the said decision would reveal that this Court in Noor Aga (supra) only went so far as to say that before a statutory presumption could be invoked, the foundational facts must have been established by the prosecution. We may at the cost of repetition again reproduce the relevant observations of Noor Aga (supra) in this regard: -

"58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden

exists upon the prosecution and only when it stands satisfied, would the legal burden shift.

Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

(Emphasis supplied)

192. What has been conveyed by this Court in so many words in the aforesaid paragraph of Noor Aga (supra) is that despite the statutory presumption of culpable mental state, the initial burden to establish the foundational facts will still lie on the prosecution. This Court by no stretch of imagination could be said to have held that the statutory presumption of culpable mental state would only be applicable in trial. Even otherwise, since the decision of Noor Aga (supra) arose from a criminal appeal against conviction, this Court by no extent had the occasion to examine the applicability of the statutory presumption to proceedings other than the trial and appeal thereof.

193. We are also in seisin of the fact that Section 30 sub-section (1) specifically provides that "the Special Court shall presume the existence of such mental state". Similarly, Section 30 sub-section (2) also uses the words "Special Court". However, this in no manner can be construed to hold that it is the Special Court alone which has been vested with the power to raise the presumption under Section 30 of the POCSO. We say so, because: -

(i) First, the use of the words "the Special Court shall presume the existence of such mental state" in sub-section (1) and other mention of Special Courts in the provision is only explanatory in nature inasmuch as the legislature has used the said word to only explain how such presumption would ordinarily operate in a trial. It by no stretch can be understood as a bar on the applicability of such presumption to other proceedings, as the said provision does not in any manner delineate or lay down the scope of such presumption and rather only elucidates the nature of the presumption (i.e., presumption of culpable mental state), the manner in which it would operate (i.e., applicable to any offence under the POCSO which requires any culpable mental state) and the standard of proof required to prove anything contrary (i.e., beyond a reasonable doubt). By no means it could be said that the legislature by the use of the words "Special Court" in Section 30 of the POCSO intended to curtail the application of the said statutory provision only in trial. Any such interpretation would completely render

the other penal provisions meaningless, wherever the accused at the earlier stages moves for a quashing petition.

(ii) Secondly, the statutory presumption under Section 30 of the POCSO operates or gets attracted not by virtue of the court before which the matter happens to be at, but by the offence itself, for which the legislature specifically provides such presumption in the first place. Since, the presumption in essence is in respect of mens rea required for any offence under the POCSO, this presumption is inextricably linked to the offence alone and not the power conferred upon a particular court. This is evinced by Section 30 sub-section (1), more particularly the expression "In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused". Furthermore, the aforesaid expression is of wide import and the words "prosecution for any offence under this Act" occurring therein would subsume and include any proceeding in respect of an offence under the POCSO would.

(iii) Thirdly, even otherwise, the mere usage of words "Special Court" in the said provision can by no extent defeat or override the inherent powers that have been vested in the High Court by virtue of Section(s) 482 and 530 of the Cr.P.C. and BNSS, respectively. As such, the statutory presumption envisaged under Section 30 of the POCSO is applicable and can be invoked in any proceeding which involves an offence under the said Act that requires a culpable mental state, irrespective of the court where such proceeding is taking place.

194. It is a settled position of law that a statute is an edict of the legislature, the elementary principle of interpreting or construing a statute is to gather the mens or sententia legis i.e., the true intention of the legislature. It is trite saying that while interpreting a statute, the courts should strive to ascertain the intention of the Legislature enacting it, and it is the duty of the Courts to accept an interpretation or construction which promotes the object of the legislation and prevents its possible abuse. Thus, we are of the considered view that any other interpretation of the provisions of the POCSO and of the various issues that have been discussed by us in the foregoing paragraphs, would frustrate the very avowed and salutary object of the POCSO and its provisions. iv. Whether the case at hand was one fit for the High Court to quash?

195. The undisputed facts are that, during investigation two videos depicting children involved in a sexual activity were recovered from the mobile phone of the respondent no. 1. As per the FSL Report, the aforesaid two videos were last modified in the memory of the accused person's phone on 05.09.2016 and 14.06.2019 respectively.

The respondent no. 1 himself admitted before the High Court as recorded in the impugned order that he was addicted to watching pornography. In what

circumstances such statement come to be recorded by the High court is a mystery. Although, the FIR dated 29.01.2020 alleged offences under Section(s) 14(1) of the POCSO and 67B of the IT Act, yet in the chargesheet, the aforesaid offence under Section 14(1) of the POCSO was substituted and instead offence under Section 15(1) of the POCSO was alleged to have been committed.

196. The High Court in its Impugned Order whilst quashing the criminal proceedings arising out of the aforesaid chargesheet dated 19.09.2023 completely failed to advert to the actual charge that was alleged therein more particularly Section 15 sub-section (1) of the POCSO. Instead, the High Court appears to have just relied upon the FIR and premised its findings on Section 14 of the POCSO, even though the said offence had been dropped in the chargesheet.

Thus, there appears to be a serious lapse on part of the High Court in failing to advert to Section 15 of the POCSO especially when the chargesheet had already been filed at the time of passing of the Impugned Order. It is no longer res-integra that once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet.

197. It is no longer res-integra, that the High Court in exercise of its inherent powers under Section(s) 482 of the Cr.P.C. or 530 of the BNSS as the case must not conduct a mini trial or go into the truthfulness of the allegations while dealing with a quashing petition. The High Court may be justified in quashing the chargesheet if it appears to it that continuance of criminal proceedings would be nothing but gross abuse of the process of law.

198. In R.P. Kapur v. State of Punjab reported in AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings: -

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

199. This Court in State of Haryana v. Bhajan Lal reported in 1992 AIR SC 604 held that the power of quashing must be used very sparingly and with circumspection. It must only be used in the rarest of the rare cases. While laying down the principles relating to quashing of criminal proceedings, this Court held that while examining a complaint or FIR, the quashing of which is sought, the

Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. The relevant observations read as under: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

200. In S.M. Datta v. State of Gujarat reported in (2001) 7 SCC 659 this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint or FIR should rather be an exception and a rarity than an ordinary rule. This Court also held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

201. In view of the aforesaid consistent line of decisions of this Court, the High Court in our considered view could be said to have committed an egregious error by quashing the criminal proceedings without even properly perusing the chargesheet and the other material on record.

202. The High Court should neither be picky nor remain oblivious in deciding which provision to advert to while considering a quashing petition. When dealing with a quashing petition, there lies a duty on the High Court to properly apply its mind to all the material on record.

The least which is expected of High Court in such situation is to carefully go through the allegations contained in the FIR and the charge-sheet, and to ascertain (i) whether, the offences alleged therein could be said to have been prima facie established from the material on record? or (ii) whether, apart from the offences alleged in the FIR or the charge-sheet, there is possibility of any other offence prima facie being made out? The High Court in exercise of its inherent powers, may be justified in quashing the criminal proceedings only where, neither any offence as alleged in the FIR or charge-sheet is disclosed nor any other offence is prima facie made out, and the continuance of the proceedings may be found to amount to abuse of process of law.

203. In the case at hand, there is no dispute by either side that, the two videos infact depicted children in a sexual activity. It is also not the case of the respondent no. 1 that the said videos were not recovered from his mobile phone. In such circumstances, the child pornographic material that was recovered from the personal mobile phone of the accused which was regularly in use by him, prima facie establishes the storage or possession of child pornographic material at his hand. Further, since the aforesaid child pornographic material was found to have been stored in the said personal mobile phone since 2016 and 2019, prima

facie it could be said there was a failure on the part of the respondent no.1 to delete, destroy or report such material.

204. It was also sought to be contended on behalf of the respondent no. 1 that the 2019 Amendment Act whereby and whereunder, the three distinct offences pertaining to the storage or possession of child pornography were made punishable under Section 15 of the POCSO came into force with effect from 16.09.2019. Whereas the both the videos in question had been allegedly stored in the device before the 2019 Amendment Act came into force. Since, the present Section 15(1) of the POCSO was not in operation at the relevant time when the videos were allegedly stored, the respondent no. 1 cannot be punished under the said provision which did not exist at the time of storage of such video.

205. However, we are not impressed with the aforesaid submission. What is sought to be punished under Section 15 is not the time when such material was stored or came to be possessed but rather the storage or possession itself, which may be continuous, wherein the relevant point of time of such storage or possession for constituting any offence under the POCSO more particularly Section 15 would be reckoned from the date of registration of the FIR. In the present case, it is not in dispute that when 2019 Amendment came into force and later when the FIR was registered, the aforesaid two videos were still stored in the mobile phone of the respondent no. 1. In such circumstances, Section 15 sub-section (1) could be said to be prima facie attracted.

a. Plea of Ignorance of Law: Ignorance of Law viz-a-viz Incognizance of Law.

206. At this juncture, we may address yet another submission that was canvassed on behalf of the accused as regards the plea of bona-fide ignorance of law. It was contended that the accused was not aware of the fact that storing of child-pornography was a punishable offence under Section 15 of POCSO and that the child pornographic material which was found stored in his mobile phone was due to his unawareness of the law accompanied by a bonafide belief that such storage was not an offence, and as such he ought not to be held liable. In this regard, reliance has been placed on two decisions of this Court in Chandi Kumar Das Karmarkar (supra) and Motilal Padampat Sugar Mills (supra).

207. In Chandi Kumar Das Karmarkar (supra), the facts of the case are as follows; there was a civil dispute inter-alia between the accused persons therein and the complainant as regards the ownership of a water tank where fishes had been reared. The complainant therein had acquired possession of the said tank on the strength of an ex-parte decree against the accused persons. Eventually, that ex-parte decree was set-aside, however the final decision on the title was still pending.

Although no application for restitution was preferred yet the accused, due to a bona-fide ignorance of law, was under the impression that he had regained possession of the said tank and again started catching fishes in the tank. The complainant lodged an FIR against the accused persons inter-alia alleging theft of fish from his tank. The accused therein in his defence pleaded ignorance of law stating that he was unaware that, the said tank and the fishes in that expanse of water under the law continued to be deemed to be the property of the complainant in the absence of any restitution or that the possession of the water reservoir had not reverted back to him.

He further pleaded that; he was under a bona-fide belief that he had a right of possession of the said tank by virtue of the exparte decree being set-aside. This Court held that any claim of right due to a bona-fide ignorance of law, if reasonable will not constitute an act of theft. It further explained that a claim to such right means one which is not a false pretence but a fair pretence, and not a complete absence of claim but a bonafide claim, however weak. The relevant observations read as under: -

"6. The offence of theft consists in the dishonest taking of any moveable property out of the possession of another with his consent. Dishonest intention exists when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. This intention is known as animus furandi and without it the offence of theft is not complete.

Fish in their free state are regarded as ferae naturae but they are said to be in the possession of a person who has possession of any expanse of water such as a tank, where they live but from where they cannot escape. Fishes are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot. There can thus be theft of fish from a tank which belongs to another and is in his possession, if the offender catches them without the consent of the owner and without any bona fide claim of right.

7. Now the ordinary rule that mens rea may exist even with an honest ignorance of law is sometimes not sufficient for theft. A claim of right in good faith, if reasonable saves the act of taking from being theft and where such a plea is raised by the accused it is mainly a question of fact whether such belief exists or not. This court in Criminal Appeal No. 31 of 1961 (Suvvari Sanyasi Apparao v. Boddepalli Lakhminarayana decided on October 5, 1961 observed as follows:

"It is settled law that where a bona fide claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right."

8. By the expression "colour of a legal right" is meant not a false pretence but a fair pretence, not a complete absence of claim put a bona-fide claim, however weak. This Court observed in the same case that the law was stated in 2 East P.C. 659 to be:

"If there be in the prisoner any fair pretence of property or right, or if it be brought into doubt at all, the court will direct an acquittal." and reffered to 1 Hale P.C. 509 that "the best evidence is that the goods were taken quite openly". The law stated by East and Hale has always been the law on the subject of theft in India and numerous cases decided by Indian Courts are to be found in which these principles have been applied. Niyogi, J. in his judgment also referred to some of the decisions of the Calcutta High Court and we find ourselves in particular agreement with the following statement of the law in Hamid Ali Bepari v. Emperor:

"It is not theft if a person, acting under a mistaken notion of law and; believing that certain property is his and that he has the right to take the same removes such property from the possession of another."

(Emphasis supplied)

208. In Motilal Padampat Sugar Mills (supra) the State Government therein had framed a policy for grant of sales tax exemption to new industrial units in the State. On the basis of the said policy, the appellant therein set-up an industrial unit and approached the State Government for claiming the exemption. The State Government informed him that he would be granted only partial concession in sales tax, to which the appellant was agreeable. However, subsequently, the State having second thoughts, rescinded the concession which was being granted to the appellant.

Aggrieved by which the appellant preferred a writ petition claiming exemption from sale tax as per the policy. However, the State Government in response submitted that the appellant therein by accepting a partial concession on sales tax had waived its right to claim full exemption. This Court rejecting the said plea of waiver and estoppel held that, the appellant therein was unaware about the policy and the extent of the exemption in sales tax under the law. Thus, the appellant due to the ignorance of law had a bona-fide belief that the policy only provided for a partial concession rather than a complete exemption.

This Court observed that it cannot be presumed that the appellant was fully informed about the policy and that he had waived or abandoned his right with full knowledge of the said policy. It further observed that often the maxim "ignorantia juris non excusat" i.e., "ignorance of the law is no excuse" is often misconstrued to mean that everyone is presumed to know the law. Accordingly, this Court

rejecting the plea of promissory estoppel held that due to the ignorance of law on the part of the appellant, it cannot be said that he had full knowledge of its right to exemption so as to waive or abandon the same. The relevant observations read as under: -

"6. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970.

In fact, in the petition as originally filed, the right to claim total exemption from Sales Tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in Martindale v. Falkner:

"There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so."

Scrutton, L.J., also once said:

"It is impossible to know all the statutory law, and not very possible to know all the common law."

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam "the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."

It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the. appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.

(Emphasis supplied)

209. Thus, from the aforesaid, we are of the considered view that the reliance on the part of the accused on the two decisions of this Court in Chandi Kumar Das Karmarkar (supra) and Motilal Padampat Sugar Mills (supra) is completely

misplaced. In Chandi Kumar Das Karmarkar (supra) the question before this Court was whether the accused therein due to the ignorance of law could be said to have a bona-fide belief of a right or claim to possession of the fish tank or in other words whether a plea of ignorance is a valid defence to any acts done pursuant to a bona-fide belief of existence of a right under the mistaken notion of law. Whereas in Motilal Padampat Sugar Mills (supra) the issue for consideration before this Court was whether the appellant therein due to the ignorance of law could be said to have wilfully waived his right, or in other words whether a plea of ignorance is a valid defence to any promissory estoppel to a right.

210. Thus, both the aforesaid decisions in Chandi Kumar Das Karmarkar (supra) Motilal Padampat Sugar Mills (supra) are not applicable. We say so, because this Court in the aforesaid decisions has only gone so far as to say that a plea of ignorance of law can be used as a valid defence for either showing that the purported act was done or not done (as the case may be) due to a consequent bona-fide belief as to the existence of such a right or claim. In other words, a plea of ignorance of law can be a valid defence if it consequently gives rise to a legitimate and bona-fide mistake of fact as to the existence (or non-existence) of a particular right or claim.

211. This may be better understood through a four-prong test wherein for a valid defence, there must exist (1) an ignorance or unawareness of any law and (2) such ignorance or unawareness must give rise to a corresponding reasonable and legitimate right or claim (3) the existence of such right or claim must be believed bonafide and (4) the purported act sought to be punished must take place on the strength of such right or claim. It is only when all the four of the above conditions are fulfilled, that the person would be entitled to take a plea of ignorance of law as a defence from incurring any liability.

212. As held in Chandi Kumar Das Karmarkar (supra) a plea of ignorance of law is a valid defence only to the acts said to have been done on the basis of a right or a claim, the existence of which was bona-fidely believed or entertained on the basis of ignorance of law or mistaken notion of law. Thus, for a plea of ignorance of law, the ignorance or mistake of law must be such which legitimately gives rise to a bona-fide belief of the existence of a right or a claim, and the said person commits any act on the strength of such right or claim.

This is fortified from the following observation "A claim of right in good faith, if reasonable saves the act where such a plea is raised" in paragraph 7 of Chandi Kumar Das Karmarkar (supra). Thus, a plea of ignorance of law is only valid for the defence of a bona-fide claim of right and any acts done thereunder. As such, where a person commits any act on the assertion of a right, the existence of which was bona-fidely believed due to a mistaken notion of law, such person will not be

liable due to the honest but mistaken factum of such right or claim stemming from or accompanied by ignorance of law.

213. Similarly, in Motilal Padampat Sugar Mills (supra) this Court only held that a plea of ignorance of law may be a valid defence for bona-fidely believing the existence of a wrong or incorrect right i.e., the right to only a partial concession of sale tax exemption. Accordingly, this Court held that where a person due to ignorance of law was not fully informed about a particular right, there can be no waiver of such right unless it is shown that such person was indeed aware of the said right.

214. Thus, the aforesaid decisions of this Court in Chandi Kumar Das Karmarkar (supra) Motilal Padampat Sugar Mills (supra) are distinguishable for the simple reason that storage or possession of child pornographic material cannot be equated or traced to any right or assertion even if it was a mistaken one. Even if a person is unaware that the possession or storage of such material is punishable, it by no stretch can be considered to give rise to any right or assertion as there exists no such right to either store or possess such material, and thus it is not a valid defence.

We say so because, no person of an ordinary prudent mind with the same degree of oblivion or unawareness as to the law, more particularly Section 15 of POCSO could as a natural corollary be led to a belief of existence of a right to store or possess any child pornographic material. The ignorance or unawareness must have a reasonable nexus with the right or assertion claimed i.e., the ignorance or unawareness must be such which could legitimately and reasonably give rise to a corresponding right or claim the and the existence of which must be bona-fidely believed.

Otherwise, anyone could make a bald or blanket claim of having a bonafide belief of any right to wriggle out of any liability arising out of its actions on the touchstone of unawareness of any particular law. Thus, even if the accused was unaware about Section 15 of POCSO, this by itself does not give rise to a corresponding legitimate or reasonable ground to believe that there was any right to store or possess child pornographic material. As such the four-prong test is not fulfilled and the defence of ignorance of law by the accused must fail.

215. Even otherwise, one must be mindful to the fact that such a plea is not a statutory defence with any legal backing, but rather a by-product of the doctrine of equity. Whether such a defence is to be accepted or not, largely depends upon the extant of equity in the peculiar facts and circumstances of each individual cases. It is an equally settled cannon of law that equity cannot supplant the law, equity has to follow the law if the law is clear and unambiguous.

216. This Court in National Spot Exchange Ltd. v. Anil Kohli, Resolution Professional for Dunar Foods Ltd. reported in (2022) 11 SCC 761 after referring to a catena of its other judgments, had held that where the law is clear the consequence thereof must follow. The High Court has no option but to implement the law. The relevant observations made in it are being reproduced below: -

"15.1. In Mishri Lal [BSNL v. Mishri Lal, (2011) 14 SCC 739 : (2014) 1 SCC (L&S) 387], it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.

15.2. In Raghunath Rai Bareja [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230] , in paras 30 to 37, this Court observed and held as under : (SCC pp. 242-43)

"30. Thus, in Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 SC 1633] (vide para 12) this Court observed: (AIR p. 1637)

'12. [W]hat is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.'

31. In Council for Indian School Certificate Examination v. Isha Mittal [(2000) 7 SCC 521] (vide para 4) this Court observed: (SCC p. 522)

'4. Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.'

32. Similarly, in P.M. Latha v. State of Kerala [(2003) 3 SCC 541 : 2003 SCC (L&S) 339] (vide para 13) this Court observed: (SCC p. 546)

'13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.'

33. In Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] (vide para 73) this Court observed: (SCC p. 436)

'73. It is now well settled that when there is a conflict between law and equity the former shall prevail.'

34. Similarly, in Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577] (vide para 35) this Court observed: (SCC p. 588)

'35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.'

35. Similarly, in E. Palanisamy v. Palanisamy [(2003) 1 SCC 123] (vide para 5) this Court observed: (SCC p. 127)

'5. Equitable considerations have no place where the statute contained express provisions.'

36. In India House v. Kishan N. Lalwani [(2003) 9 SCC 393] (vide para 7) this Court held that: (SCC p. 398)

'7. The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.'."

(Emphasis supplied)

217. Unawareness or incognizance of law should not be conflated with ignorance of law. This Court in Motilal Padampat Sugar Mills (supra) duly acknowledged that a plea of unawareness of law is fundamentally different in scope and application from the rule that ignorance of the law does not excuse anyone. The former as explained above, is a byproduct of the doctrine of equity whereas the latter is a cardinal rule of criminal jurisprudence and no person can claim to be absolved of any criminal offence or liability on a plea of ignorance of law.

Thus, where something is specifically made punishable under the law, then in such cases the law would prevail over equity, and no plea of ignorance of law can be taken as a defence to absolve or dilute any liability arising out of such punishable offences. Thus, even if all four preconditions are satisfied, the courts are not bound to accept such a plea, if it is in negation or derogation of any law or the idea of justice.

218. Equity modifies the applicable law or ensures its suitability to address the particular circumstances before a court to produce justice. The modification of general rules to the circumstances of the case is guided by equity, not in derogation or negation of positive law, but in addition to it. It supplements positive law but does not supplant it.

In a second sense however, where positive law is silent as to the applicable legal principles, equity assumes a primary role as the source of law itself. Equity steps in to fill the gaps that exist in positive law. Thus, where no positive law is discernible, courts turn to equity as a source of the applicable law. However, where positive law exists, equity will always yield to it. [See M. Siddiq v. Mahant Suresh Das, reported in 2020 1 SCC 1]

219. It was further contended by the respondent no. 1 that although the said child pornographic material was found stored in his mobile phone, yet he had no knowledge of the same. He would submit that, the aforesaid videos that were found stored in his mobile as revealed by the FSL Report had been automatically downloaded into his mobile phone without his knowledge or volition.

220. Even, assuming that the respondent no. 1 did not actually store the aforesaid two videos in his mobile phone, and that he had no knowledge of the existence of those videos, nonetheless, the aforesaid aspect cannot be looked into by us at the stage of quashing, more particularly while deciding whether a prima-facie case is said to be made out. Even otherwise, since the material on record adduced by the prosecution clearly establishes the possession or storage of child pornographic material and the failure on the part of the respondent no. 1 in deleting, destroying or reporting the same, the foundational facts necessary to invoke the statutory presumption of culpable mental state could be said to have been prima facie established.

221. In view of the statutory presumption of culpable mental state being attracted, any defence of the respondent no. 1 such as the absence of knowledge or intention would be a matter of trial. Absence of culpable mental state has to be established before the trial court by leading cogent evidence in that regard. Such defences should not be looked into by us at this stage. All that should be ascertained is whether a prima facie case is said to have been made out.

v. Summary of our conclusion

222. We summarize our final conclusion as under: -

(I) Section 15 of the POCSO provides for three distinct offences that penalize either the storage or the possession of any child pornographic material when done with any particular intention specified under subsection(s) (1), (2) or (3) respectively. It is in the nature and form of an inchoate offence which penalizes the mere storage or possession of any pornographic material involving a child when done with a specific intent prescribed thereunder, without requiring any actual transmission, dissemination etc.

(II) Sub-section (1) of Section 15 penalizes the failure to delete, destroy or report any child pornographic material that has been found to be stored or in possession of any person with an intention to share or transmit the same. The mens-rea or the intention required under this provision is to be gathered from the actus reus itself i.e., it must be determined from the manner in which such material is stored or possessed and the circumstances in which the same was not deleted, destroyed or reported. To constitute an offence under this provision the circumstances must

sufficiently indicate the intention on the part of the accused to share or transmit such material.

(III) Section 15 sub-section (2) penalizes both the actual transmission, propagation, display or distribution of any child pornography as-well as the facilitation of any of the abovementioned acts. To constitute an offence under Section 15 sub-section (2) apart from the storage or possession of such pornographic material, there must be something more to show i.e., either (I) the actual transmission, propagation, display or distribution of such material OR (II) the facilitation of any transmission, propagation, display or distribution of such material, such as any form of preparation or setup done that would enable that person to transmit it or to display it. The mens rea is to be gathered from the manner in which the pornographic material was found to be stored or in possession and any other material apart from such possession or storage that is indicative of any facilitation or actual transmission, propagation, display or distribution of such material.

(IV) Section 15 sub-section (3) penalizes the storage or possession of any child pornographic material when done for any commercial purpose. To establish an offence under Section 15 sub-section (3), besides the storage or possession of the pornographic material involving a child, there must be some additional material or attending circumstances that may sufficiently indicate that the said storage or possession was done with the intent to derive any gain or benefit. To constitute an offence under sub-section (3) there is no requirement to establish that such gain or benefit had been actually realized.

(V) Sub-section(s) (1), (2) and (3) respectively of Section 15 constitute independent and distinct offences. The three offences cannot coexist simultaneously in the same set of facts. They are distinct from each other and are not intertwined. This is because, the underlying distinction between the three sub-sections of Section 15 lies in the varying degree of culpable mens rea that is required under each of the three provisions.

(VI) The police as well as the courts while examining any matter involving the storage or possession of any child pornography, finds that a particular sub-section of Section 15 is not attracted, then it must not jump to the conclusion that no offence at all is made out under Section 15 of the POCSO. If the offence does not fall within one particular subsection of Section 15, then it must try to ascertain whether the same falls within the other sub-sections or not.

(VII) Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO,

provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.

(VIII) Any visual depiction of a sexually explicit act which any ordinary person of a prudent mind would reasonably believe to prima facie depict a child or appear to involve a child, would be deemed as 'child pornography' and the courts are only required to form a prima facie opinion to arrive at the subjective satisfaction that the material appears to depict a child from the perspective of any ordinary prudent person for any offence under the POCSO that relates to child pornographic material, such as Section 15. Such satisfaction may be arrived at from any authoritative opinion like a forensic science laboratory (FSL) report of such material or opinion of any expert on the material in question, or by the assessment of such material by the courts themselves.

(IX) Section 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children online. It not only punishes the electronic dissemination of child pornographic material, but also the creation, possession, propagation and consumption of such material as-well as the different types of direct and indirect acts of online sexual denigration and exploitation of the vulnerable age of children. Section(s) 67, 67A and 67B respectively of the IT Act being a complete code, ought to be interpreted in a purposive manner that suppresses the mischief and advances the remedy and ensures that the legislative intent of penalizing the various forms of cyber-offences relating to children and the use of obscene / pornographic material through electronic means is not defeated by a narrow construction of these provisions.

(X) The statutory presumption of culpable mental state on the part of the accused as envisaged under Section 30 of the POCSO can be made applicable provided the prosecution is able to establish the foundational facts necessary to constitute a particular offence under the POCSO that may have been alleged against the accused. Such presumption can be rebutted by the accused either by discrediting the prosecution's case or by leading evidence to prove the contrary, beyond a reasonable doubt.

(XI) The foundational facts necessary for the purpose of invoking the statutory presumption of culpable mental state for an offence under Section 15 of POCSO are as follows: -

(a) For the purpose of sub-section (1), the necessary foundational facts that the prosecution may have to first establish is the storage or possession of any child pornographic material and that the person accused had failed to delete, destroy or report the same.

(b) In order to invoke the statutory presumption of culpable mental state for an offence under sub-section (2) the prosecution would be required to first establish the storage or possession of any child pornographic material, and also any other fact to indicate either the actual transmission, propagation, display or distribution of any such material or any form of an overt act such as preparation or setup done for the facilitation of the transmission, propagation, display or distribution of such material, whereafter it shall be presumed by the court that the said act was done with the intent of transmitting, displaying, propagating or distributing such material and that the said act(s) had not been done for the purpose of either reporting or for use as evidence.

(c) For the purpose of sub-section (3) the prosecution must establish the storage or possession of such material and further prove any fact that might indicate that the same had been done to derive some form of gain or benefit or the expectation of some gain or benefit.

(XII) The statutory presumption of culpable mental under Section 30 of POCSO can be made applicable in a quashing proceeding pertaining to any offence under the POCSO.

F. FEW MEANINGFUL SUGGESTIONS.

223. Before, we close this matter, we must address ourselves on a very important aspect, as regards the need to effectively address the growing number of dissemination and use of child pornography.

i. The Lingering Impact of Child Pornography on the Victimization & Abuse of Children.

224. A child's victimization begins with the sexual act, continues through its recording, and perpetuates as photographs and videos that float through cyberspace, freely accessible to anyone who has the ability to surf the internet.1 Child sexual exploitation is one of the most heinous crimes imaginable, and the offence of Child Pornography is equally as heinous, if not more, as in the latter the victimization and exploitation of the child does not end with the initial act of abuse.2

The creation or dissemination of such pornographic material further extends and compounds the harm infinitely and at a far larger scale.3 It in essence turns the singular incident of an abuse into a ripple of trauma inducing acts where the rights and dignity of the child is continuously violated each time such material is viewed or shared. This is why it is imperative that we collectively as a society address this issue with the utmost seriousness.

225. The impact of such continuous victimization is profound. Any act of sexual abuse inherently inflicts lasting physical and emotional trauma on the child. However, the dissemination of this act of abuse through pornographic material further accentuates and deepens the trauma into a psychological scar. The knowledge that their abuse is being watched by countless strangers, sometimes years after the actual event, exacerbates the psychological wounds on top of the trauma that was already induced by the act in the first place.4 This perpetuating violation deprives the victim of any remaining hope or chance to heal, recover from the abuse and find closure. 5

226. One must also be mindful of the fact that the term "child pornography" is a misnomer that fails to capture the full extent of the crime. It is important to recognize that each case of what is traditionally termed "child pornography" involves the actual abuse of a child. The use of the term "child pornography" can lead to a trivialization of the crime, as pornography is often seen as a consensual act between adults. It undermines the victimization because the term suggests a correlation to pornography - conduct that may be legal, whose subject is voluntarily participating in, and whose subject is capable of consenting to the conduct.6

227. The term "child sexual exploitative and abuse material" or "CSEAM" more accurately reflects the reality that these images and videos are not merely pornographic but are records of incidents, where a child has either been sexually exploited and abused or where any abuse of children has been portrayed through any self-generated visual depiction.7

228. The term "child sexual exploitative and abuse material" (CSEAM) rightly places the emphasis on the exploitation and abuse of the child, highlighting the criminal nature of the act and the need for a serious and robust response. We are conscious that in the preceding parts of this judgment, we have used the term "child pornography", however the same has been done only for the purposes of giving a better understanding of the nuances involved in the present matter. We further forbid the courts from using the term "child pornography" and instead the term "child sexual exploitative and abuse material" (CSEAM) should be used in judicial orders and judgements of all courts across the country.

229. Although, there exists a tangible difference between the act of viewing CSEAM and the act of engaging in sexual abuse of children, yet the latter desire is always inherent in the former.8 Both the use of CSEAM and the act of child sexual abuse share a common, malevolent intent: the exploitation and degradation of a child for the sexual gratification of the abuser. The production of child sexual exploitative material is inherently linked to the act of sexual abuse. In both cases, the intent is clear: to sexually exploit and harm a child. The creation of such material is not a passive act but a deliberate one, where the

abuser intentionally engages in the exploitation of a child, knowing full well the harm it causes.9

230. This intent is what makes these crimes particularly heinous. The abuser is not only violating the child's body but is also reducing them to an object for their own gratification, with little regard for the child's dignity or well-being. This dehumanization is evident in the production and distribution of CSEAM, where the child is treated not as a person but as a commodity to be consumed. Those who consume such material may develop an increased desire to engage in further acts of child exploitation. The viewing of CSEAM can desensitize individuals to the horrors of child abuse, leading them to seek out more extreme forms of exploitation or even to commit acts of abuse themselves.10

231. Moreover, the demand for such material will always incubate a corresponding production and distribution of CSEAM.11 Abusers may be motivated to create and distribute these materials to satisfy the demand, leading to the abuse of more children.12 This cycle of abuse and exploitation underscores the need for stringent measures to not only punish those who create and distribute CSEAM but also to deter potential consumers and reduce the demand for such material.

232. Child sexual exploitative material is deeply degrading to the dignity of children. It reduces them to objects of sexual gratification, stripping them of their humanity and violating their fundamental rights. Children are entitled to grow up in an environment that respects their dignity and protects them from harm. However, CSEAM violates this right in the most egregious manner possible.

233. The existence and circulation of CSEAM are affronts to the dignity of all children, not just the victims depicted in the material. It perpetuates a culture in which children are seen as objects to be exploited, rather than as individuals with their own rights and agency. This dehumanization is particularly dangerous because it can lead to a broader societal acceptance of child exploitation, further endangering the safety and well-being of children.13

234. Given the severity and far-reaching consequences of child sexual exploitation, there is a clear legal and moral imperative to take strong action against those who produce, distribute, and consume CSEAM. This includes not only criminal penalties for those involved in CSEAM but also preventative measures, such as education and awareness campaigns. Laws must be robust and strictly enforced to ensure that perpetrators are brought to justice and that children are protected from further harm. The courts ought to be loathe in showing any form of leniency in such matters.14

235. The impact of CSEAM on its victims is devastating and far-reaching, affecting their mental, emotional, and social well-being. Victims of such heinous exploitation often endure profound psychological trauma that can manifest as depression, anxiety, and post-traumatic stress disorder (PTSD).15 The relentless reminder that images and videos of their abuse are circulating online can lead to a persistent sense of victimization and helplessness, further exacerbating feelings of shame, guilt, and worthlessness. This awareness can make it highly challenging for victims to move forward, as the fear of being recognized and judged by others remains ever-present.16

236. In our society, where social stigma and notions of honour and shame are deeply entrenched, the social repercussions for victims are particularly severe. Many victims face intense social stigmatization and isolation, finding it difficult to form and maintain healthy relationships due to trust issues and trauma-related challenges. The stigma attached to being a victim of CSEAM can create significant barriers in social interactions, causing victims to withdraw and feel alienated from their communities. The continuous revictimization through the sharing and viewing of these materials perpetuates the victims' suffering.

Each instance of someone viewing or distributing the material represents a new violation, making it harder for victims to heal. This ongoing trauma can severely impact their self-esteem and self-worth, leading to long-term emotional and psychological damage. Furthermore, the impact extends to their education and employment opportunities. Many victims struggle to concentrate on their studies or work due to the overwhelming emotional burden they carry. This can lead to academic underachievement, difficulty in securing employment, and economic hardships, compounding their sense of insecurity and instability.17

237. Providing compassionate and comprehensive support is crucial to help victims heal and reclaim their lives. Therapeutic interventions, including trauma-informed counselling and support groups, can offer a safe space for victims to process their experiences and begin to heal. Legal and social support services are also essential to help victims navigate the complexities of their situation and rebuild their lives.

238. In India, the misconceptions about sex education are widespread and contribute to its limited implementation and effectiveness. Many people, including parents and educators, hold conservative views that discussing sex is inappropriate, immoral, or embarrassing. This societal stigma creates a reluctance to talk openly about sexual health, leading to a significant knowledge gap among adolescents.

239. One prevalent misconception is that sex education encourages promiscuity and irresponsible behaviour among youth. Critics often argue that providing

information about sexual health and contraception will lead to increased sexual activity among teenagers. However, research has shown that comprehensive sex education actually delays the onset of sexual activity and promotes safer practices among those who are sexually active.18

240. Another common belief is that sex education is a Western concept that does not align with traditional Indian values. This view has led to resistance from various state governments, resulting in bans on sex education in schools in some states. This type of opposition hinders the implementation of comprehensive and effective sexual health programs, leaving many adolescents without accurate information. This is what causes teenagers and young adults to turn to the internet, where they have access to unmonitored and unfiltered information, which is often misleading and can plant the seed for unhealthy sexual behaviours.

241. Additionally, there is a misconception that sex education only covers biological aspects of reproduction. Effective sex education encompasses a wide range of topics, including consent, healthy relationships, gender equality, and respect for diversity. Addressing these topics is crucial for reducing sexual violence and promoting gender equity.

242. Despite some of these challenges, there are successful sex education programs in India, such as the Udaan program in Jharkhand. This program's success highlights the importance of community involvement, transparency, and government support in overcoming resistance and creating a supportive environment for sex education.19

243. Positive age-appropriate sex education plays a critical role in preventing youth from engaging in harmful sexual behaviours, including the distribution, and viewing of CSEAM.20 Positive sex education focuses on providing accurate, age-appropriate information about sexuality, consent, and respectful relationships.

Research indicates that comprehensive sex education can significantly reduce risky sexual behaviours, increase knowledge, enable healthy decision-making, reduce misinformation, delay sexual debut, decrease the number of sexual partners, and increase contraceptive use. The research done in India has shown the need for comprehensive sex education programs. A study of over 900 adolescents in Maharashtra found that students not exposed to scientific literature on reproductive and sexual health were more likely to initiate sex early.21

244. Furthermore, positive sex education promotes healthy attitudes towards sexuality and relationships, which can counteract the distorted perceptions often associated with the consumption of child pornography. It can also help foster greater empathy and respect for others, reducing the likelihood of engaging in

exploitative behaviours. Comprehensive sex education programs also teach youth about the importance of consent and the legal implications of sexual activities, helping them understand the severe consequences of viewing and distributing child pornography.

245. It is of paramount importance that we begin to address misconceptions around sexual health, and promoting a comprehensive understanding of sex education's benefits is essential for improving sexual health outcomes and reducing the incidence of sexual crimes in India. This is especially crucial given India's growing population.

246. Section 43 of the POCSO obligates the Central Government and the State Government to undertake measures and ensure that the provisions of the said Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the legislation. It further requires the appropriate government to also impart proper training at tegular intervals to all government offices such as police on the implementation of the provisions of this Act. The relevant provision reads as under: -

"43. Public awareness about Act.-

The Central Government and every State Government, shall take all measures to ensure that-

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act."

247. Section 44 of the POCSO on the other hand obligates the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights constituted under the Act to regularly monitor and assist in the implementation of the provisions of this Act. The relevant provision reads as under: -

"44. Monitoring of implementation of Act.-

(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child

Rights Act, 2005 (4 of 2006) shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006)."

248. We are of the considered view that the obligation of the appropriate government and the commission under Section(s) 43 and 44 of the POCSO respectively, does not end at just spreading awareness about the provisions of the POCSO. Since, one of the salutary and avowed object of the POCSO was the deterrence of offences of child sexual abuse and exploitation, thus, as a natural corollary, the obligation of the appropriate government and the commission under the aforesaid provisions will also entail imparting of sex education and awareness amongst the general public, children as well as their parents and guardians, particularly in schools and places of education.

The steps and efforts of the appropriate government and the commission towards the compliance of Section(s) 43 and 44 must go beyond just the textual wording of the said provisions and ought to earnestly take into account the pragmatic necessities for curtailing the issue of child abuse, exploitation and addiction to pornography.

249. Ultimately, it is our collective responsibility to ensure that victims of child pornography receive the care, support, and justice they deserve. By fostering a compassionate and understanding society, we can help them find their path to recovery and regain a sense of safety, dignity, and hope. This includes changing societal attitudes towards victims, improving legal frameworks to protect them, and ensuring that perpetrators are held accountable.

a. Obligation to report under Section(s) 19 & 20 respectively of the POCSO and Role of the Society and all Stakeholders.

250. Section 19 read with 20 & 21 of the POCSO is one such step towards recognizing this collective responsibility of the society in curtailing the issue of abuse and exploitation of children. Section 19 places an obligation on any person who has an apprehension that an offence under POCSO is likely to be committed

or has knowledge that such an offence has been committed, to report and provide information about the same to the Special Juvenile Police Unit or the local police.

Section 19 further delineates the process and procedure in which such information or report has to be recorded by the authorities, and the course of action to be adopted. Section 20 extends such obligation to any and all personnel of media, hotels, hospitals, clubs or studios etc., to mandatorily report and provide information about any material or object which is sexually exploitative of a child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium to the authorities mentioned above.

Any failure to do so, either in terms of Section 19 or 21 of POCSO shall be liable to be punished with imprisonment upto 6-months or fine or both. Further, any failure on the part of any employer or supervisor in reporting the commission of any offence or its apprehension in respect of a subordinate under his control, will also be liable to be punished with imprisonment which may extend to 1-year and also fine. The relevant provisions read as under: -

"19. Reporting of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,-

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be -

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having

such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twentyfour hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard. (7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of subsection (1).

20. Obligation of media, studio and photographic facilities to report cases.-

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. Punishment for failure to report or record a case.-

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act."

251. Thus, it is evident that, to achieve the avowed purpose, a legal obligation has been imposed under the POCSO Act on any person to report an offence to the relevant authorities specified therein if they have knowledge that an offence

under the Act has been committed. This obligation also extends to individuals who have reason to believe that an offence under the Act is likely to be committed.

In addition to imposing this legal duty under Section 19, the legislature being in seisin of the paramount importance in collectively addressing the problems of child abuse and exploitation, deemed it expedient to make the failure to discharge this obligation punishable under Section 21 of the Act. Such provisions have been inserted with a view to ensure strict compliance of the provisions under the POCSO and thereby to ensure that the tender age of children is not being abused and their childhood and youth is protected against exploitation.

252. In Shankar Kisanrao Khade v. State of Maharashtra, reported in (2013) 5 SCC 546, this Court expressing its anguish over the large number of cases of abuse and exploitation of children, held that such issues must be collectively dealt by all stakeholders in a child-centric manner by applying the best interest of child standard, since best interest of the child is paramount and not the interest of perpetrator of the crime. It further interalia laid down the manner in which all persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc. or wherever children are housed have to comply with the obligation(s) envisaged under Section(s) 19 & 21 of the POCSO. The relevant observations read as under: -

"72. I may also point out that, in large numbers of cases, children are abused by persons known to them or who have influence over them. Criminal courts in this country are galore with cases where children are abused by adults addicted to alcohol, drugs, depression, marital discord, etc. Preventive aspects have seldom been given importance or taken care of. Penal laws focus more on situations after commission of offences like violence, abuse, exploitation of the children.

Witnesses of many such heinous crimes often keep mum taking shelter on factors like social stigma, community pressure, and difficulties of navigating the criminal justice system, total dependency on the perpetrator emotionally and economically and so on. Some adult members of family including parents choose not to report such crimes to the police on the plea that it was for the sake of protecting the child from social stigma and it would also do more harm to the victim.

Further, they also take shelter pointing out that in such situations some of the close family members having known such incidents would not extend medical help to the child to keep the same confidential and so on, least bothered about the emotional, psychological and physical harm done to the child. Sexual abuse can be in any form like sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately

exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on.

73. In my view, whenever we deal with an issue of child abuse, we must apply the best interest of child standard, since best interest of the child is paramount and not the interest of perpetrator of the crime. Our approach must be child-centric. Complaints received from any quarter, of course, have to be kept confidential without casting any stigma on the child and the family members. But, if the tormentor is the family member himself, he shall not go scot-free. Proper and sufficient safeguards also have to be given to the persons who come forward to report such incidents to the police or to the Juvenile Justice Board.

74. The conduct of the police for not registering a case under Section 377 IPC against the accused, the agony undergone by a child of 11 years with moderate intellectual disability, nonreporting of offence of rape committed on her, after having witnessed the incident either to the local police or to the Juvenile Justice Board compel us to give certain directions for compliance in future which, in my view, are necessary to protect our children from such sexual abuses. This Court as parens patriae has a duty to do so because the Court has guardianship over minor children, especially with regard to the children having intellectual disability, since they are suffering from legal disability. Prompt reporting of the crime in this case could have perhaps, saved the life of a minor child of moderate intellectual disability.

76. Considering the entire facts and circumstances of the case, I am inclined to convert death sentence awarded to the accused to rigorous imprisonment for life and that all the sentences awarded will run consecutively.

77. In my opinion, the case in hand calls for issuing the following directions to various stakeholders for due compliance:

77.1. The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc. or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have been committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping upmost secrecy to the nearest Special Juvenile Police Unit (SJPU) or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow-up action casting no stigma to the child or to the family members.

77.2. Media personnel, persons in charge of hotels, lodges, hospitals, clubs, studios and photograph facilities have to duly comply with the provision of

Section 20 of Act 32 of 2012 and provide information to the SJPU, or local police. Media has to strictly comply with Section 23 of the Act as well.

77.3. Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, if come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they in turn be in touch with the competent authority and take appropriate action.

77.4. Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.

77.5. If hospitals, whether government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest Juvenile Justice Board/SJPU and the Juvenile Justice Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of the child.

77.6. The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.

77.7. Complaints, if any, received by Ncpcr, Scpcr, Child Welfare Committee (CWC) and Child Helpline, NGOs or women's organisations, etc., they may take further follow-up action in consultation with the nearest Juvenile Justice Board, SJPU or local police in accordance with law.

77.8. The Central Government and the State Governments are directed to constitute SJPUs in all the districts, if not already constituted and they have to take prompt and effective action in consultation with the Juvenile Justice Board to take care of the child and protect the child and also take appropriate steps against the perpetrator of the crime.

77.9. The Central Government and every State Government should take all measures as provided under Section 43 of Act 32 of 2012 to give wide publicity to the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act."

253. This Court in its decision in State of Maharashtra & Anr. v. Maroti reported in (2023) 4 SCC 298 examined and explained the true purport of the obligations envisaged under Section(s) 19 & 21 of the POCSO. It held that prompt and proper reporting of offences under the POCSO is the bedrock of the obligations that have been cast under the said provisions, and any other view would defeat the very purpose and object of the Act.

It further observed that merely because the failure to discharge the obligation under Section(s) 19 & 21 is punishable with imprisonment for a short duration, does not mean that such an offence is not to be taken seriously. Accordingly, it held that strict compliance of such provisions must be ensured to protect the tender age and youth of children against exploitation. The relevant observations read as under: -

"11. To achieve the avowed purpose, a legal obligation for reporting of offence under the POCSO Act is cast upon on a person to inform the relevant authorities specified thereunder when he/she has knowledge that an offence under the Act had been committed. Such obligation is also bestowed on person who has apprehension that an offence under this Act is likely to be committed.

Besides casting such a legal obligation under Section 19, the Legislature thought it expedient to make failure to discharge the obligation thereunder as punishable, under Section 21 thereof. True that under Section 21 (1), failure to report the commission of an offence under Sub Section 1 of Section 19 or Section 20 or failure to report such offence under Sub Section 2 of Section 19 has been made punishable with imprisonment of either description which may extend to six months or with fine or with both.

Sub section 2 of Section 21 provides that any person who being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under Sub-Section 1 of Section 19 in respect of a subordinate under his control, shall be punishable with imprisonment with a term which may extend to one year or with fine. Certainly, such provisions are included in with a view to ensure strict compliance of the provisions under the POCSO Act and thereby to ensure that the tender age of children is not being abused and their childhood and youth is protected against exploitation.

12. Looking at the penal provisions referred above, making failure to discharge the obligation under Section 19 (1) punishable only with imprisonment for a short duration viz., six months, one may think that it is not an offence to be taken seriously. However, according to us that by itself is not the test of seriousness or otherwise of an offence of failure to discharge the legal obligation under Section 19, punishable under Section 21 of POCSO Act. We are fortified in our view, by the decisions of a three Judge Bench of this Court in Vijay Madanlal Choudhary

& Ors. v. Union of India & Ors. and a two Judge- Bench in Shankar Kisanrao Khade v. State of Maharashtra.

14. the length of punishment is not only the indicator of the gravity of offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the Legislature in the specific international context. In this context, it is also relevant to note that the United Nations Convention on Rights of Children, which was ratified by India on 11.12.1992, requires the State parties to undertake all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices etc. Articles 3 (2) and 34 of the Convention have placed a specific duty on the State to protect the child from all forms of sexual exploitation and abuse.

15. Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the POCSO Act.

We refer to the aforesaid provisions only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the victim concerned and at the same time, if it was committed by an unknown person, it would also enable the investigating agency to commence investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in relation to sexual offences medical evidence has much corroborative value."

(Emphasis supplied)

254. The role of "intermediaries" as defined under Section 2(w) of the IT Act in checking the proliferation of child pornography is significant. Section 79 of the IT Act, 2000 which relates to due diligence that is to be observed by an intermediary, provides an exemption from liability to such intermediaries in certain cases if they are in compliance with the due-diligence requirements prescribed under the said provision, more particularly sub-section (3)(b), this is known as the "safe harbour" protection or provision. "Safe Harbour" protection means that an intermediary will not be held liable for any thirdparty information, data, or communication link made available or hosted by him.

As per sub-section (2), in order to avail such protection, the intermediary foremost must not in any manner be involved in either initiating the transmission,

or the receipt or the modification of the third-party data or information in question, and further is required to observe due diligence while discharging his duties under the IT Act and to also observe such other guidelines as the Central Government may prescribe in his behalf.

Subsection (3) (b) of the above-mentioned provision stipulates that if an intermediary receives actual knowledge or is notified by the appropriate government or its agency that any information, data, or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit an unlawful act, the intermediary must expeditiously remove or disable access to that material on that resource without compromising the evidence in any manner.

It further states that the protection under Section 79 lapses and does not apply if the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act, or if upon receiving "actual knowledge", or if the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act. The relevant provision reads as under: -

"79. Exemption from liability of intermediary in certain cases.-

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission;

(ii) select the receiver of the transmission; and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.-For the purposes of this section, the expression 'third-party information' means any information dealt with by an intermediary in his capacity as an intermediary."

255. Rule 11 of the Protection of Children from Sexual Offences Rules, 2020 (for short, the "POCSO Rules"), places an obligation on the intermediaries to not only report offences under POCSO but also to hand over the necessary material including the source from which such material may have originated to the Special Juvenile Police Unit or the local police, or the cyber-crime portal.

As per a MOU between the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs (MHA) and the National Centre for Missing & Exploited Children (NCMEC), a US based NGO, all social media intermediaries are required to report cases of child abuse and exploitation to the NCMEC, which in turn reports these cases to the NCRB and the NCRB forwards this to the concerned State authorities in India through the national cybercrime reporting portal.

256. It has been brought to the notice of this Court that social media intermediaries do not report such cases of child abuse and exploitation to the local authorities specified under POCSO and rather only comply with the requirements stipulated in the MOU. In view of the salutary object and the mandatory character of the provisions of Sections 19 and 20 of the POCSO read with Rule 11 of the POCSO Rules, we are of the considered view, that an intermediary cannot claim exemption from the liability under Section 79 of the IT Act for any third-party information, data, or communication link made available or hosted by it, unless due diligence is conducted by it and compliance is made of these provisions of the POCSO. We are also of the view that such due diligence includes not only removal of child pornographic content but also making an

immediate report of such content to the concerned police units in the manner specified under the POCSO Act and the Rules thereunder.

257. Section 42A of the POCSO provides that the Act shall be in addition to and not in derogation of the provisions of any other law and further provides that it shall have overriding effect on the provisions of any such law to the extent of the inconsistency. The relevant provision reads as under: -

"42A. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

258. In view of the overriding effect of the POCSO Act and the rules thereunder, merely because an intermediary is in compliance of the requirements specified under Section 79 of the IT Act, will not absolve it of any liability under the POCSO, unless it duly complies with the requirements and procedure set out under it, particularly Section 20 of POCSO Act and Rule 11 of the POCSO Rules.

It is a settled position of law, that when a statute describes or requires a thing to be done in a particular manner; it should be done in that manner or not at all. Thus, social media intermediaries in addition to reporting the commission or the likely apprehension of commission of any offence under POCSO to the National Centre for Missing & Exploited Children (NCMEC) is also obligated to report the same to authorities specified under Section 19 of POCSO i.e., the Special Juvenile Police Unit (SJPU) or the local police.

259. We endorse the view and the directions issued by this Court in Shankar Kisanrao Khade (supra) and are of the considered view that a meaningful effect to the provisions of the POCSO can only be given if such directions are complied with to the letter and spirit. We further caution the courts to refrain from showing any form of leniency or leeway in offences under Section 21 of the POCSO, particularly to schools/educational institutions, special homes, children's homes, shelter homes, hostels, remand homes, jails, etc. who failed to discharge their obligation of reporting the commission or the apprehension of commission of any offence or instance of child abuse or exploitation under the POCSO.

Section(s) 19, 20 and 21 of the POCSO are mandatory in nature, and there can be no dilution of the salutary object and purport of these provisions. Merely because Section 21 prescribes a lesser threshold of punishment, the same in no way derogates or detracts from the gravity or severity of the offence which has been sought to be punished as held in Maroti (supra). It is a settled position of law that

the length of punishment is not the only indicator of the gravity of the offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the legislature in the specific international context i.e., the United Nations Convention on Rights of Children, particularly Article(s) 3(2) and 34 of the said Convention.

ii. Suggestions to the Union of India and to the courts.

260. We propose to suggest the following to the Union of India in its Ministry of Women and Child Development: -

(i) The Parliament should seriously consider to bring about an amendment to the POCSO for the purpose of substituting the term "child pornography" that with "child sexual exploitative and abuse material" (CSEAM) with a view to reflect more accurately on the reality of such offences. The Union of India, in the meantime may consider to bring about the suggested amendment to the POCSO by way of an ordinance.

(ii) We put the courts to notice that the term "child pornography" shall not be used in any judicial order or judgment, and instead the term "child sexual exploitative and abuse material" (CSEAM) should be endorsed.

(iii) Implementing comprehensive sex education programs that include information about the legal and ethical ramifications of child pornography can help deter potential offenders. These programs should address common misconceptions and provide young people with a clear understanding of consent and the impact of exploitation.

(iv) Providing support services to the victims and rehabilitation programs for the offenders is essential. These services should include psychological counselling, therapeutic interventions, and educational support to address the underlying issues and promote healthy development. For those already involved in viewing or distributing child pornography, CBT has proven effective in addressing the cognitive distortions that fuel such behaviour. Therapy programs should focus on developing empathy, understanding the harm caused to victims, and altering problematic thought patterns.

(v) Raising awareness about the realities of child sexual exploitative material and its consequences through public campaigns can help reduce its prevalence. These campaigns should aim to destigmatize reporting and encourage community vigilance.

(vi) Identifying at-risk individuals early and implementing intervention strategies for youth with problematic sexual behaviours (PSB) involves several steps and requires a coordinated effort among various stakeholders, including educators,

healthcare providers, law enforcement, and child welfare services. Educators, healthcare professionals, and law enforcement officers should be imparted training to identify signs of PSB. Awareness programs can help these professionals recognize early warning signs and understand how to respond appropriately.

(vii) Schools can also play a crucial role in early identification and intervention. Implementing school-based programs that educate students about healthy relationships, consent, and appropriate behaviour can help prevent PSB.

(viii) To give meaningful effect to the above suggestions and work out the necessary modalities, the Union of India may consider constituting an Expert Committee tasked with devising a comprehensive program or mechanism for health and sex education, as well as raising awareness about the POCSO among children across the country from an early age, for ensuring a robust and well-informed approach to child protection, education, and sexual well-being.

G. FINAL ORDER

261. For all the foregoing reasons, we have reached the conclusion that the High Court committed an egregious error in passing the impugned judgment. We are left with no other option but to set aside the impugned judgment and order passed by the High Court, and restore the criminal proceedings in Spl. S.C. No. 170 of 2023 to the court of Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District. We accordingly pass such order.

262. We direct the Registry to send one copy each of this judgment to the Principal Secretary, Ministry of Law & Justice, Union of India and to the Principal Secretary, Ministry of Women and Child Development, Union of India, for undertaking appropriate course of action.

263. Pending application(s) if any, also stand disposed of.

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

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

New Delhi

September 23rd, 2024

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IN THE SUPREME COURT OF INDIA

Yogarani
Vs.
State by the Inspector of Police,

[Criminal Appeal No. 477 of 2017]

HEADNOTE – The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons.

Aravind Kumar, J.

1. The appellant who has been arraigned as accused No.2 has challenged the concurrent conviction and sentence ordered under Section 420 Indian Penal Code (for short 'IPC') read with Section 12(2) of the Passports Act, 1967 (herein after referred as 'Passports Act') and sentenced to one-year rigorous imprisonment for each of the offences which are to run concurrently.

2. The short and long of prosecution story is that appellant had wrongfully and illegally facilitated accused No. 1, for obtaining a second passport, who was already holding an Indian passport. It was further alleged that accused No.1 having deposited his passport with his employer at Dubai had applied for second passport in order to have better employment opportunities and said application was forwarded/ routed through the appellant.

The prosecution alleged that second passport which was issued and dispatched to Accused No.1 had been returned undelivered to the Passport Office Trichy and was kept in safe custody and later it was delivered to the appellant by accused No.3 who was in charge of safe custody of the passports through accused No.4 who was working as a casual labourer in the Passport Office. It was also alleged that appellant had demanded payment of Rs.5,000/- from accused No.1 for handing over the passport and he having refused resulted in appellant returning the second passport to the Passport Office by registered post.

3. Along with the appellant other accused persons namely Mr. J. Joseph (Accused No.1), Smt. Sasikala (Accused No.3) - in charge of safe custody of passports, Mr. P. Manisekar (Accused No.4) working as a casual labour in the Passport Office, Trichy and Mr. S. Raghupathy (Accused No.5) then working as an Upper Division Clerk in Passport Office, Trichy who had made an endorsement that no passport had earlier been issued in favour of Accused No.1 were also tried for the offences punishable under Section120B read with Section 420 of IPC, Section 12(1)(b), 12(2) of Passports Act and Section 13(2) and Section 13(1)(d) of Prevention of Corruption Act, 1988 before the Special Judge for CBI cases,

Madurai, which resulted in acquittal of all the accused persons in respect of charge of conspiracy.

Accused Nos.3 and 4 were acquitted of all other charges also. The CBI did not prefer any appeal against acquittal of accused Nos.3 and 4. However, accused Nos.1 and 2 were convicted for offences punishable under Section 420 IPC and Section 12(1)(b) and Section 12(2) of Passports Act respectively. Accused No.5 was convicted under Section 12(2) of Passports Act and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

Accused Nos.1, 2 and 5 preferred criminal appeals challenging their conviction and sentence and by impugned common judgment the High Court allowed the appeals filed by accused Nos.1 and 5 and acquitted them and said judgment has attained finality as it has not been challenged by the CBI. However, the appeal filed by accused No.2 came to be dismissed and as such she is before this Court.

4. We have heard the arguments canvassed on behalf of the appellant and the respondent.

5. The thrust of the argument advanced by the learned counsel appearing on behalf of the appellant is that conviction of appellant alone is not sustainable for more than one reason. Firstly, when accused Nos.3 and 4 who were charged for similar offences had been acquitted of all the charges and no appeal having been filed challenging their acquittal; secondly, when accused No.1 for whose benefit the alleged second passport had been issued, had been acquitted by disbelieving the story of the prosecution namely accused No.3 who was in charge of safe custody of passport had illegally given the second passport to the appellant through accused No.4.

It is further contended that both the courts had erroneously convicted the appellant on the strength of the testimony of PW-3 though she had not deposed that appellant being aware of the details of the previous passport held by accused No.1 had knowingly processed the application of accused No.1. It is further contended that PW-3 had turned hostile and had not supported the story of prosecution and as such conviction could not have been sustained on the basis of the testimony of the said witness.

He would also further contend that the High Court had erroneously evaluated the evidence of PW-16 (handwriting expert) who had not expressed any definite opinion with regard to the hand writing found on the returned postal cover with that of admitted hand writing of the appellant and thereby the guilt of the accused was not proved or established beyond reasonable doubt.

Learned Counsel would also elaborate his submissions by contending that the testimony of PW-15 did not establish as to when the application of the accused

No.1 had been received by the appellant and there was no iota of evidence placed by the prosecution in this regard including the purported payment of registration fees and service charges from appellant by PW-15. Pointing to these gaping holes in the prosecution story it is contended that the judgment of conviction and sentence imposed on the appellant would not be sustainable as such he has prayed for appeal being allowed and appellant being acquitted.

6. On the contrary, learned counsel appearing for the respondent would support the case of the prosecution and would contend that both the courts on proper evaluation of evidence has arrived at a conclusion that the appellant had committed the offence and convicted her, which finding does not suffer from any infirmity either in law or on facts calling for interference. Hence, learned counsel appearing for the respondent has prayed for dismissal of the appeal.

DISCUSSION AND FINDING

7. The case of the prosecution as noted herein above is that appellant had illegally facilitated the issuance of second passport in favour of accused No.1 or in other words accused No.1 who held an Indian Passport had deposited the same with his employer at Dubai and in search of better employment opportunities had clandestinely applied for second passport through the appellant and other accused persons had connived with the appellant in procuring second passport to Accused No.1.

8. The conviction of appellant is based on the deposition of three witnesses namely PW-3 (Selvi Sakila Begum), PW-15(Mr. Selvaraj), and PW-16 (Mr. Ravi). PW-3 is an employee of the proprietorship firm of appellant i.e. Kamatchi Travels and in her examination-in-chief she has deposed that she was working in the said travels which was offering various services including facilitating and obtaining the passports. She has further deposed that as the firm in which she was working could not render such services directly and the applications of their customers for issuance of passports were routed through Eagle Travels run by PW-15.

She has also deposed that the application of accused No.1 was filled by her. However, she had turned hostile and nothing worthwhile was elicited in her cross-examination except to the extent of her admission that appellant was sitting next to her while she was filling the application form of accused No.1. She does not depose that appellant had any knowledge of Accused No.1 was already possessing a passport or appellant having informed her about the passport already held by Accused No.1.

9. PW-15 (Mr. Selvaraj) who is the proprietor of Eagle Travels has deposed that the application Ex.P-7 for issuance of passport in favour of accused No.1 was

submitted through his firm and it was received from the appellant and appellant had paid the registration fee. PW-16 (Mr. Ravi), the Principal Scientific Advisor of Central Forensic Sciences Laboratory who has been examined by prosecution to drive home the fact that hand writing found on the returned postal cover is that of the appellant, though had deposed that there are similarities in the writings has also admitted that it is not possible for him to express any opinion in that regard on the basis of material on hand.

It is pertinent to note at this juncture that prosecution had contended that accused No.3 who was in charge of safe custody of returned passports in the Passport Office had illegally removed the returned passport of accused No.1 from safe custody and had handed over the same to the appellant through accused No.4. However, trial court has not accepted this version of the prosecution and had acquitted accused Nos.3 and 4.

The prosecution had failed to place on record any evidence to establish as to the how the passport kept in the safe custody had gone missing and in what manner it was handed over to the appellant or appellant in turn having returned the same back to Passport Office by post. Thus, for lack of direct evidence the accused No.3 and 4 have been acquitted.

10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v State of Gujarat reported in 2023 INSC 829, this court has held that:

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.

11. There is no direct incriminating information emanating from the evidence of the PW-3 against the Appellant. All that she has deposed is that she had filled the application form of accused No.1 and Appellant was by her side while she was filling the application and she has also deposed that appellant would verify and check the application after filling of the application. PW-3 was treated as hostile by prosecution as already noted herein above and prosecution was not able to

elicit any incriminating material against the Appellant in her cross examination. As such the evidence of PW-3 is not reliable and trustworthy.

12. PW-15 has deposed that application of accused No.1 has been submitted to his firm by Appellant herein and that the charges were paid by Appellant. Apart from the said statement, no documentary evidence was produced to show that charges were paid by the Appellant and that the Appellant had prior knowledge of accused No.1 having a passport. Evidence of this witness does not inspire confidence and even if the same is taken at its face value, it would not discharge the burden cast on the prosecution to prove the guilt of the Appellant beyond reasonable doubt.

13. Evidence of PW-16 would also not come to the assistance of prosecution and, merely because he has deposed there are some similarities between the writings found on postal cover i.e. Ex.P8 and that of admitted writings of Appellant, by itself would not be sufficient to convict the Appellant, since he has admitted that it is not possible for him to express any opinion on the rest of the questioned items except with regard to handwriting of PW-3.

It is pertinent to note that with regard to signature found in Ex.P7/passport application, no opinion was given by him as to who signed the same. It is crucial to note that evidence of PW-16 is not corroborated by any other evidence. This Court in catena of decisions has held that, without independent and reliable corroboration, the opinion of the handwriting experts cannot be solely relied upon to base the conviction. This Court in Padum Kumar v State of Uttar Pradesh reported in (2020) 3 SCC 35 has held as under:-

"14. The learned counsel for the appellant has submitted that without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction. In support of his contention, the learned counsel for the appellant has placed reliance upon S. Gopal Reddy v. State of A.P. [S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596 : 1996 SCC (Cri) 792] , wherein the Supreme Court held as under: (SCC pp. 614-15, para 28)

"28. Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering "conclusive" proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In Magan Bihari Lal v. State of Punjab [Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] , while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7)

'7. we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert.

There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [Ram Chandra v. State of U.P., AIR 1957 SC 381 : 1957 Cri LJ 559] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence.

This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa [Ishwari Prasad Misra v. Mohd. Isa, AIR 1963 SC 1728] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] where it was pointed out by this Court that an expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence.

This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. [Fakhruddin v. State of M.P., AIR 1967 SC 1326 : 1967 Cri LJ 1197] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.'"

15. Of course, it is not safe to base the conviction solely on the evidence of the handwriting expert. As held by the Supreme Court in Magan Bihari Lal v. State of Punjab [Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] that: (SCC p. 213, para 7)

"7. expert opinion must always be received with great caution it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law."

16. It is fairly well settled that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In Murari

Lal v. State of M.P. [Murari Lal v. State of M.P., (1980) 1 SCC 704 : 1980 SCC (Cri) 330] , the Supreme Court held as under: (SCC pp. 708-09, paras 4 and 6)

"4. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses - but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion.

The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons.

It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence [Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his evidence] .

5. ***

6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree.

There can be no hard-and-fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the

opinion, consider all other relevant evidence and decide finally to accept or reject it."

14. Appellant has also been charged for the offence punishable under Section 12(2) of the Passports Act, 1967 which reads as under:

"12. Offences and penalties.-

(1) Whoever-

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him; shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) xxxxxxx (2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence."

It is needless to state that burden is cast on the prosecution to prove that the appellant had knowingly furnished false information or supressing known material information with the intent of securing a passport or travel document to a person and thereby had abetted in the commission of offence punishable under Section 12(1) and thereby punishable under Section 12(2) of the Passports Act.

15. In the case on hand the prosecution failed to place any evidence to prove that the appellant had prior information of accused No.1 was already possessing a passport or knowingly had furnished false information to the passport authorities namely after knowing that accused No.1 had possessed or holding a passport was applying for second passport or having known the fact of accused No.1 possessing the passport was applying for the second passport and thereby there has been suppression of material information.

In other words, the prosecution had failed to place on record any evidence to prove that appellant had any previous knowledge of accused No.1 was already possessing a passport. In the absence of any cogent evidence placed in this regard and accused Nos. 1 and 3 to 5 having been acquitted of the offences alleged, the conviction and order of sentence imposed against the appellant alone cannot be sustained or in other words it has to be held that prosecution had failed to prove the guilt of the appellant beyond reasonable doubt.

16. For the reasons afore-stated the appeal succeeds and appellantaccused No.2 is acquitted of the offences alleged against her. The judgment of the Trial Court passed in C.C. No.5 of 2007 as affirmed in C.A.(Md) No.203 of 2008 by the High Court of Madras at Madurai Bench dated 18.08.2011 are hereby set aside.

17. The bail bonds of the appellant stands cancelled. The appeal stands allowed in the above terms.

.....J. (Sanjay Kumar)

.....J. (Aravind Kumar)

New Delhi

September 23, 2024

IN THE SUPREME COURT OF INDIA

Dinesh Goyal @ Pappu
Vs.
Suman Agarwal (Bindal) & Ors

[Civil Appeal No._____ of 2024
arising out of SLP (Civil) No. 30324/2019]

HEADNOTE – Amendment of plaint under Order VI Rule 17 CPC – Principles laid down.

JUDGMENT

Sanjay Karol, J.

1. Leave granted.

2. Impugned in this appeal is a judgment and order of the High Court of Madhya Pradesh, Gwalior Bench, passed in M.P. No.1695 of 2018 dated 21st August, 2019. The application filed under Order VI Rule 17 of the Code of Civil Procedure, 19081, by respondent No.12 was allowed setting aside order dated 14th March, 2018 passed by the 8th Civil Judge, Class-2, Gwalior, District Gwalior in Civil Suit No.241-A/2016, whereby such application stood rejected.

3. The limited question that arises for our consideration is whether the High Court committed an error in allowing the amendment to the plaint filed by the present respondents.

4. The facts, shorn of unnecessary detail, as necessary for disposal of the present appeal are:-

4.1 The appellant3 and respondents, are siblings being children of Smt. Katoribai. The dispute relates to House No.27/1695, renumbered as 1695/1804 situated at Gangamai Santar, Murar, District Gwalior, M.P.4, which was purchased by way of registered sale deed dated 1st January, 1987.

4.2 On 14th January, 2013 Smt. Katoribai, executed a Will and thereby bequeathed the suit property to the defendant herein. She subsequently passed away on 5th March, 2013. As per the defendant, the respondents recognised the Will and acted in furtherance thereof by way of agreements dated 20th December and 28th December, 2014.

4.3 Smt. Suman Agarwal (Bindal), the plaintiff filed a suit bearing No.241-A/2016 before 8th Civil Judge, Class-2, Gwalior (M.P.), claiming 1/5th share in the suit property by stating that the same belonged to their father late Shri Gyan

Chand Goyal. The defendant filed a written statement on 25th July, 2016 praying that the suit be dismissed in view of the Will executed by Smt. Katoribai.

4.4 Pursuant to an application dated 28th July, 2016 filed under Order XI Rule 14 CPC seeking the production of the Will as well as the Agreements, the defendant produced the same. A temporary injunction was also ordered barring any creation of the third-party rights.

4.5 Mutation in favour of the defendant was carried out in the relevant records. The plaintiff filed an application under Order VI Rule 17 read with Section 151 CPC seeking amendment of her plaint to add a list of movable properties in the property sought to be partitioned as part of the suit, as also questioned the genuineness of the Will. On 26th October, 2017 leave was sought to withdraw the said application. However, a fresh application was filed the same day, along with an application under Order XVIII Rule 1 and 3 CPC asking the defendant to adduce evidence at the first instance.

4.6 By order dated 14th March, 2018, the amendment application as also the application under Order XVIII Rule 1 and 3 were rejected. Aggrieved by the said order a miscellaneous writ petition under Article 227 being M.P.No.1695 of 2018 was preferred by the plaintiff.

4.7. By order dated 21st August, 2019 the High Cout vide the impugned, allowed the application under Order VI Rule 17 CPC.

5. Hence the present appeal.

6. Order VI Rule 17 CPC, as is well-known, pertains to the amendment of pleadings in a civil suit. It reads as under:-

"17. Amendment of pleadings.-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

What can be understood from a reading of the above provision is that, (a) amendment of pleadings can be allowed at any stage; (b) amendment must be necessary to determine the "real question of controversy" "inter se parties"; (c) if

such amendment is sought to be brought after commencement of trial the Court must, in allowing the same come to a conclusion that in spite of best efforts on the part of the party to the suit, the same could not have been brought before the point of time, when it was actually brought.

7. In order to appreciate the plaint as unamended versus the amendment sought to be introduced, we may refer to the same. Para 6A is sought to be inserted after para 6 and certain changes are sought to be made in para 2 and 3 of the suit.

Plaint

"2. That, the father of the plaintiff and defendants late Sh. Gyan Chandra had purchase disputed property through registered sale deed from the seller Babulal, Mahendra Kumar and Prem Kumar S/o late Sh. Ganeshilal Jain and disputed property was received by the mother of the plaintiff from late Sh.Gyan Chandra. Disputed property is recorded in the property tax demand register of Municipal Corporation, Gwalior in the ownership in possession of the mother of the plaintiff Smt. Katoribai W/o late Shj.Gyan Chandra Goel and It was Smt. Katoribai who has been regularly paying house tax of the disputed property during her life time. Smt.Katoribai has died on 5.3.2013. After the death of Smt. Katoribai the plaintiffs and defendants have become owners of the disputed property having equal shares.

3. That, disputed property is ancestral property, in which defendant No.1 and 2 do not sole ownership. Plaintiffs and defendant No.3 and 4 have equal share in aforesaid property and plaintiff and defendants separately have 1/5th shares in disputed property. When the plaintiff has requested defendant No.1 to provide her share in the disputed property then defendant No.1 has got annoyed and refused to give share to the plaintiff in the disputed property.

6. That, on 17.1.2015, Saturday, the son of the plaintiff named Nilesh has passed from the sides of disputed property during his commercial works, on which he saw that Def. No.1 and 2 Sh. Dinesh Ji and Sh. Sanjay Ji respectively have been showing disputed property to some Yadav with an intention to sell the property. At that time the son of I, the plaintiff has told above person titled Yadav that his mother also has her share in disputed property, on which above person said that disputed property belongs to Def. No.1 and 2 and he is entering into agreement to purchase the same from Def. No.1 and 2 and then the son of I, the plaintiff named Nilesh has returned back to the house and informed the plaintiff about above facts and for this reason it became necessary for the plaintiff to present the instant suit in order to safeguard the rights of the plaintiff." The following prayers were sought in the plaint:-

"1. It is declared that plaintiff has 1/5th share in property situated at Gangamai Santar, Murar being house No.1695/1804, which the plaintiff is entitled to separately receive from the defendants on the basis of metes and bounds.

2. That, disputed property be portioned on the basis of metes and bounds 1/5th share of the plaintiff be provided to her and defendant No.1 be restrained not to sell disputed property without getting it partitioned either by himself or through anybody else, not to create any kind of charge over disputed property.

3. Any other relief, which this Hon'ble Court may deem appropriate in the circumstances of this case be also provided to the plaintiff. Entire suit costs be also provided."

Amendment

"6A. That, Def.No.1 has made forged signature of Smt. Katoribai on the so-called forged and fabricated will dated 14.01.2013 and has got the same verified from Notary Sh.Govind Bharadwaj Advocate under collusion and similarly, signature of Smt. Indra Mangal and Smt. Babita are not present on the agreements dated 20.12.14 and 28.12.14 and Def. No.1 and 2 have fraudulently made signatures of Smt. Indra Mangal and Smt. Babita Mangal on the above so-called fabricated documents and Def. No.1 Dinesh Goyal @ Pappu, Def. No.2 Sanjay Goyal, Notary Sh. Govind Bharadwaj Advocate and the so-called witnesses namely Siyaram Gupta, Suraj Kushwah and Narendra Gupta have played lead tole in getting prepared so-called forged and fabricated will and agreements, in respect of which it is necessary to carry out punitive proceedings against the entire persons as per rules", by way of amendment.

2. That, the plaintiff after the word "That" in the first line Para No.2 of her suit, wants to mention following contents "immovable" and the plaintiff after the word "disputed" in line No.4 and 8 of the same paragraph, wants to add the word "immovable" by way of amendment. Similarly, plaintiff wants to delete the words "ancestral" as mentioned in the first line of Para No.3 of her suit and to mention the phrase, "belonging to Smt. Katoribai" by way of amendment."

8. In response to the application dated 16th January, 2018 for amendment, the defendant submitted mainly that:-

a) the amendment application is unduly delayed, having been brought on 26th October, 2017 when the defendant's response to the suit wherein he sought for the same to be dismissed on the ground that Smt. Katoribai had executed a Will, granting the disputed property solely to the appellant, was filed in July, 2016.

b) he has denied any forgery or fabrication in respect of Will of Smt. Katoribai, as also the agreement executed with the respondents herein. It is submitted that

on the one hand, the respondents herein have questioned the Will itself, while on the other hand, partition is sought to be made of moveable properties as mentioned in the Will.

c) the application is not based on any subsequent event or incident but rather the plaintiff was already aware of all relevant facts. Further, it is stated that since the amendment is sought to be introduced post the commencement of trial, the same is not maintainable. In support of this contention, reliance is placed on Vidyabai & Ors. v. Padmalatha & Anr.5

9. The Civil Court by order dated 14th March, 2018 rejected the application observing that proceedings were well on their way. It was observed that the application had been presented nearly a year and three months after the presentation of the Suit, reply to which is dated 25th July 2016. Further, it was observed that the plaintiff had not shown her due diligence, and neither was it based on any subsequent incident.

10. On appeal, the High Court observed that the plaintiff could be denied her share in the property (1/5th as per succession) only when the defendant would be able to establish the genuineness of the Will. It was observed that "For the reasons best known to the trial court, no issue in regard to the genuineness of the Will has been framed."

The approach adopted by the civil court was termed 'hyper-technical' observing that in order to do complete justice the application should have been allowed "specifically when the cross-examination of the plaintiff had not begun.". About the second application under Order XVIII Rule 1 and 3 CPC, it was observed that since the application to amend pleadings has been allowed by the Court, liberty was granted to file a fresh application which would then be considered in the light of changed circumstances.

11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das6 it was held as under:

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings.

In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.]"

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.7, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are -

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in contravention of the statutory language.

13. By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. It has to be then, demonstrated that -

(a) determination of the genuineness of the Will is the necessary course of action in determining the issues inter se the parties; and

(b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.

14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also: Sanjeev Builders (supra); Rakesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd.8; Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.9; B.K. Narayana Pillai v. Parmeswaran Pillai & Anr.10]

15. In our considered view, the two aspects required to be demonstrated in accordance with the statutory language in the present facts, do not stand on the same footing. The first issue will necessarily have to weigh over the second.

16. The scope of the dispute before us is limited to a procedural aspect. In the larger scheme, this dispute pertains to succession. If there is a Will, it has to be honoured. If one of the parties, who will be affected by the Will coming into effect, challenges it on one ground or the other, the process of succession cannot go forward without determination of the dispute regarding the Will.

17. Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained.

If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.

18. Keeping in view the above, along with the fact that without determination of the question of Will and its genuineness, the partition of the Suit property would not be possible, we do not find any infirmity in the order of the High Court, allowing the amendment setting aside refusal of the Trial Court to grant such amendment.

19. The amendment is allowed. The appeal is dismissed. The Trial Court shall decide all issues including the genuineness of the Will, expeditiously. It stands clarified that the discussion hereinabove is only in connection with the application under Order VI Rule 17 CPC and no opinion, whatsoever, has been expressed on the merits of the case.

The Registry to forward a copy of this judgment to the Registrar of the High Court who shall ensure its passage thereafter to the concerned Trial Court. Pending application(s), if any, shall stand disposed of.

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

.....J. (Sanjay Karol)

New Delhi

September 24, 2024;

1 'CPC' for short

2 Hereinafter referred to as 'the plaintiff'

3 Hereinafter referred to as 'the defendant'

4 Hereinafter referred to as 'the suit property'

5 (2009) 2 SCC 409

6 (2008) 8 SCC 511

7 2022 SCC OnLine SC 1128

8 (2012) 5 SCC 337

9 (2007) 5 SCC 602

10 (2000) 1 SCC 712

IN THE SUPREME COURT OF INDIA

Baljinder Singh @ Ladoo and Ors.
Vs.
State of Punjab

[Criminal Appeal No. 1389 of 2012]

HEADNOTE – To challenge the conviction based on the alteration of charges, the accused must demonstrate that substantial 'failure of justice' is caused to them by such conversion of charges.

JUDGMENT

Dipankar Datta, J.

THE APPEAL

1. This is an appeal, by special leave, by 4 (four) appellants. They call in question the judgment and order dated 04th May, 2011[1] passed by the High Court of Judicature at Punjab and Haryana[2] dismissing a criminal appeal[3] under section 374(2) of the Code of Criminal Procedure, 1973[4]. Such appeal was preferred by the appellants, arraigned as "A-1", "A-2", "A-3" and "A-4" in the trial, and a co-accused ("A-5").

The judgment of conviction and the order of sentence dated 04th August, 2001, passed by the Additional Sessions Judge, Punjab[5] in a sessions case[6] registered against A-1, A-2, A- 3, A-4 and A-5 was majorly upheld. While A-5 was acquitted, conviction of A-1, A-2, A-3 and A-4 and the sentence imposed upon them were maintained by the High Court. The Trial Court convicted A-4 under sections 148, 302, 307 of the Indian Penal Code[7] and section 27 of the Arms Act, while A-1, A-2 and A-3 as well as A-5 were convicted under sections 148, 302, 307 IPC read with section 34 IPC. All the accused were sentenced to life in prison.

2. The appeal was heard in the presence of learned advocates for the parties on 09th May, 2024. It was submitted in course of such hearing that A-4 might have died during pendency of the appeal and that A-1 and A-3 were juveniles as on the date of the offence, i.e., 12th December, 1997. Learned advocate for the respondent - State of Punjab was directed to obtain appropriate instructions. He confirmed on 23rd July, 2024 that A-4 was indeed no more, having breathed his last on 16th February, 2019; hence, it was recorded by an order passed on that date that the appeal at the instance of A-4 stands abated. Insofar as the claim of juvenility raised by A-1 and A-3 is concerned, the same was overruled by an order passed by us on 23rd July, 2024 itself.

BRIEF RESUME OF FACTS

3. The facts, leading to the present appeal, may be summarised as follows:

a) The prosecution case was set in motion when P.W.8 - Inspector Gurbhinder Singh/Investigating Officer, SHO, Police Station Sadar, Taran Tarn, upon receiving information on 12th December, 1997 from P.W.2 - Dr. Brij Mohan of the Civil Hospital, Taran Tarn - reached the hospital and recorded the statement of P.W. 3 - victim Puran Singh @ Bhola. P.W.3 recounted that on the morning of 12th December, 1997 around 9:00 AM, he was standing outside his residence near the chowk, when A-1, son of A-4, came riding a scooter from the direction of the gurudwara and bumped into P.W. 3, causing minor injuries to little and the ring fingers of P.W. 3's right hand. In response, P.W. 3 slapped A-1, who in return hurled pejoratives at P.W. 3. Indignantly, P.W. 3 again slapped A-1. Upon hearing the commotion, P.W. 4 - victim Jit Singh, deceased victim Karam Singh[8], deceased victim Laddi[9] and P.W. 5 - victim Jagga @Jagjit Singh intervened and separated P.W. 3 and A-1.

b) Within 15 minutes of such altercation, A-1, A-2 and A-3 (all sons of A-4), armed with dangs and sofas, accompanied by A-4 (who wielded a 12 bore double-barrel gun) and A-5 (armed with a dang) assembled on the street and while raising exhortations (lalkaras) attacked P.W. 3, P.W. 4, P.W. 5, and the deceased nos. 1 and 2[10]. A-1, A-2 and A-3 began brick batting and A- 4, with an intention to kill, fired five shots at the victims, resulting in minor injury to P.W. 3 and serious injuries to P.W.4, P.W. 5 and the victims.

c) First Information Report[11] was registered on 12th December, 1997 at about 12:45 PM, for the offences under sections 307 and 148, IPC read with section 149, IPC and section 25 and 27 of the Arms Act. Deceased no. 1 breathed his last on 13th December, 1997 and consequently offence under section 302, IPC was added to the said FIR. Deceased no.2 succumbed to the gunshot injury suffered by him on 10th January, 1998.

d) Charges were framed against A-4 under sections 148, 302, IPC [on two (2) counts], sections 307 [on three (3) counts] and 324, IPC; and against A-1, A-2, A-3 and A-5 under sections 148, 302 read with 149 [on two (2) counts], 307 read with 149 [on three (3) counts] and 324 read with 149, IPC.

e) The Trial Court vide judgment and order dated 04th August, 2001, after finding the appellants and A-5 guilty, convicted them for the offences and sentenced them as enumerated in paragraph 1 of this judgment.

f) The outcome of the appeal carried from the aforesaid conviction and sentence has also been noticed above.

SUBMISSIONS

4. The argument advanced by learned counsel for the appellants is primarily directed against what he contended to be an apparent error of judgment in convicting the appellants. According to him, the following points deserve deliberation:

a) firstly, the High Court did not dwell upon the dissimilitude between common object and common intention, while transmuting appellants' conviction under section 302 IPC read with section 149 IPC to section 302 IPC read with section 34 IPC.

b) secondly, the absence of brick bat injuries on the bodies of the P.W.3, P.W.4, P.W.5 and the victims, substantiate that A-1, A-2 and A-3 were not present at the crime scene.

c) thirdly, in criminal cases, it is the propensity of a human being to undermine his role while exaggerating the role of the assailant.

d) fourthly, Bir Singh, uncle of P.W.3, was inimical towards the appellants as an FIR was registered against his son by the daughter of A-4.

e) fifthly, the case of exceeding the right of private defence can be made against A-4 for firing in retaliation; when he was chased and attacked by victims and no case against the other appellants has been made out. Names of A-1, A-2, and A-3 were included in the FIR with an intention to implicate all the members of the family.

f) sixthly, the genesis of the entire crime, that is the injury caused on the fingers of P.W.3 by the collision between P.W.3 and A-1, was not found on the fingers of P.W.3; hence, deposition by P.W.3, P.W.4 and P.W.5 appears incredulous.

g) finally, no independent witness has been examined, despite the crime scene, as enumerated by prosecution, being adjoined by several shops and residential houses.

5. Learned counsel for the appellants, called into question "the legality of the impugned order", on merits, by underlining inconsistencies in deposition(s) and has, therefore, prayed for the acquittal of the appellants by setting aside the judgment of conviction and order of sentence passed by the Trial Court, as affirmed by the High Court.

6. Per contra, learned counsel for the respondent, by denying the grounds taken by appellants in the instant appeal, supported the judgment of conviction and

order of sentence passed by the Trial Court, which has been affirmed by the High Court.

ANALYSIS

7. We have heard the parties and considered the evidence led by them before the Trial Court. We have also read the trial and appellate judgment and order.

8. The sole issue that we are tasked to decide is, whether the conviction of A- 1, A-2 and A-3 and the sentence imposed on them warrant interdiction.

9. Prosecution in order to substantiate its case adduced evidence, both ocular and documentary, before the Trial Court. The genesis of the crime is the collision of the scooter driven by A-1 with P.W.3, whereupon P.W.3 slapped A-1 followed by abuses hurled at P.W. 3 by A-1 and retaliation of P.W.3 by again slapping A-1. A-1 was 18 years of age while P.W. 3 was double his age. An elderly man slapping a young boy was considered credible by the High Court. This incident was witnessed by P.W.3, P.W.4, P.W.5 and the victims, who were already present on the spot; and, this has been proved by the unanimous and coherent ocular versions, as narrated by P.W.3, P.W.4 and P.W.5 in their depositions.

10. The learned counsel for the appellants, however, questioned the integrity of the genesis of the case by highlighting the absence of any reference to a finger injury in the medical records of P.W.3. Additionally, the learned counsel for the appellants contended that during cross-examination, P.W.4 and P.W.5 had testified that blood was oozing from P.W.3's fingers. This argument aimed to challenge the reliability of the ocular testimonies of P.W.3, P.W.4, and P.W.5.

11. In the context of the case, it is pertinent to emphasize that the incident involving A-1's scooter bumping into P.W.3, and the subsequent altercation in which P.W.3 slapped A-1, is of greater significance for establishing motive than the minor finger injury sustained by P.W.3. This sequence of events has been unequivocally testified to by P.W.3, P.W.4, and P.W.5. Furthermore, P.W.3 has testified that the injury to the finger was minor, which may account for the absence of any mention of this injury in P.W.3's medical records.

12. Also, it is worth indicating that P.W.3, P.W.4, and P.W.5 are "injured witnesses" or "injured eye-witnesses" in this case. The sworn testimonies provided by injured witnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not warrant the rejection of the entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

13. The abovementioned conclusion stands fortified with reference to paragraph 26 of the decision of this Court in Balu Sudam Khalde and Anr. vs. State of Maharashtra[12]. The relevant passage is reproduced as under:

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

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

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

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

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

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

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

(emphasis supplied)

14. Furthermore, A-1 returned to the street within 15 minutes, accompanied by A-2, A-3, and A-4, all armed with various weapons, viz. a 12 bore doublebarrel gun, dangs, and lathis. They launched an attack on the victims, wherein A-1, A-2, A-3 threw brick bats and A-4 opened fire at the victims. This account is corroborated by testimonies of P.W.3, P.W.4 and P.W.5, which also stood the test of cross-examination and no glaring discrepancies can be found. P.W.8 (I.O.) deposed that three (3) empties of 12 (twelve) bore double barrel gun were recovered from the crime spot, and the gun was recovered with 2 (two) live cartridges after the disclosure statement was made by A-4.

Additionally, the serious/fatal injuries sustained by the victims have been substantiated by medico-legal evidence provided by witnesses from the medical field, who have also testified under oath. The severe nature of the attack by A-4, assisted by A-1, A-2 and A-3, inflicting serious/fatal injuries upon the victims leads to the inference that the appellants came with an intention to kill in

retaliation of a previous altercation. Hence, the prosecution version is indeed reliable.

15. Per contra, the learned counsel for the appellants contended that A-4 was alone at the time of the alleged offence. He asserted that A-4 used to read sehra in weddings and en route to the Sarpanch's son's wedding, where he was supposed to read sehra, he was ridiculed by P.W.3, P.W.4, P.W.5, and the victims for carrying what they claimed was a dummy gun.

In response to the mockery, A-4 verbally retorted, which led to an attack on him with brickbats. According to the appellants, A-4 fired in self-defence during this confrontation. They further claim that A-4, along with A-1, A-2, and A-3, have been falsely implicated in this case as retaliation for an FIR filed by A- 4's daughter against the son of Bir Singh, who is the uncle of P.W.1. However, P.W1, P.W.2 and P.W.3 in unison have deposed that they were oblivious of the case registered against the son of Bir Singh by the daughter of A-4.

16. While the depositions of D.W.1 and P.W.5 establish that A-4's daughter filed an FIR against the son of Bir Singh and that A-4 was known for reading sehra at weddings, the burden of proving an assertion that A-4 was on his way to the Sarpanch's son's wedding lay upon A-4, which would have been more credibly substantiated by the testimony of the Sarpanch himself, as rightly noted in the High Court's judgment. In the absence of testimonies from the Sarpanch and the daughter of A-4, the appellants' claim of being falsely implicated remains unsubstantiated and, therefore, deemed unreliable.

17. Regarding the question of common intention, capable of being formed within 15 minutes', profitable reference may be made to paragraph 26 of the decision of this Court in Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka[13]. Paragraph 26 being relevant is quoted hereunder:

"26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that coperpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens.

Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined

by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence.

The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the coassailants/ perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator.

Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

(emphasis supplied)

18. Section 34, IPC underlines that when a criminal act is done by two or more persons in furtherance of common intention, each of them is liable for the act done as if it were done by him alone.

19. We are of the view that there cannot be a fixed timeframe for formation of common intention. It is not essential for the perpetrators to have had prior meetings to conspire or make preparations for the crime. Common intention to commit murder can arise even moments before the commission of the act. Since common intention is a mental state of the perpetrators, it is inherently challenging to substantiate directly. Instead, it can be inferred from the conduct of the perpetrators immediately before, during, and after the commission of the act.

20. In the present case, the appellants, who are related by blood, arrived at the crime scene armed with a 12 bore double-barrel gun, dangs, and lathis within 15 minutes of the initial altercation, and subsequently attacked P.W.3, P.W.4, P.W.5, and the victims. During this attack, A-4, the father of A-1, raged by the incident of P.W.3 slapping his adult son A-1 and the pursuant altercation, fired with his gun at P.W.3, P.W.4, P.W.5 and the victims. Thereafter, all the appellants fled together carrying their weapons. In view of such conduct of the appellants as mentioned above and in the light of interpretation of Section 34, IPC in Krishnamurthy alias Gunodu (supra), it is evident that the appellants acted with a common intention to kill, seeking to avenge the slapping incident.

21. Be that as it may, the determination of common intention or common object should primarily be within the domain of the trial courts, and at the most the high courts. It should not be the role of this Court to directly adjudicate issues of common intention and common object. This Court has, in a catena of decisions, elaborated on the differences between section 149 and section 34, IPC; the overlapping nature of section 149 and section 34, IPC; and when can the offence under section 302 read with section 149, IPC be changed to section 302 read with section 34, IPC. Such decisions do provide suitable guidance for the lower courts to draw from, to reach their conclusions.

22. In this connection, we may refer to paragraph 14 of the decision of this Court in Chittarmal vs. State of Rajasthan[14]. The relevant excerpt from such decision reads:

"14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap.

But a clear distinction is made out between common intention and common object in that common intention denotes action concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert.

Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted.

But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. [See Barendra Kumar Ghosh v. King Emperor, AIR 1925 PC 1, Mannam Venkatadari v. State of A.P., (1971) 3 SCC 254, Nethala Pothuraju v. State of A.P., (1992) 1 SCC 49, Ram Tahal v. State of U.P., (1972) 1 SCC 136]."

(emphasis supplied)

23. In paragraph 17 of the decision of this Court in Chandra Pratap Singh vs. State of M.P.[15], while dealing with conversion of charge from section 302 read with section 149, IPC to section 302 read with section 34 thereof, the above passage has been quoted with approval.

24. It would be relevant at this juncture to consider section 464 of the Cr. PC. On its plain terms, sub-section (1) of section 464 clearly indicates that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in an appeal, confirmation or revision, a claim of "failure of justice" has been substantiated.

25. Law is well-settled that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. Reference in this connection may be made to the decision in Dalbir Singh vs. State of Uttar Pradesh[16].

26. Also, it is beyond any cavil of doubt that the burden to show that in fact a failure of justice has been occasioned is on the accused. The decision in State of Uttar Pradesh vs. Paras Nath Singh[17] can profitably be referred to in this regard.

27. We have no hesitation to hold that based on the above parameters, the appellants have fairly and squarely failed in their pursuit to demonstrate any failure of justice, which would impel us to exercise power of the nature contemplated in sub-section (2) of section 464, Cr. PC. We, therefore, see no reason to uphold the contention advanced on behalf of the appellants to the contrary.

28. Next, in order to impeach the oral evidence of P.W.3, P.W.4 and P.W.5, the appellants asserted that there is no testimony of any independent witness, despite the place of crime as per the case of prosecution being surrounded by shops and residential houses.

29. It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused. Reference is made to paragraph 24 of the decision of this court in Guru Dutt Pathak vs. State of U.P.[18], where it was ruled as follows:

"24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere nonexamination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.

24.1. In Manjit Singh vs. State of Punjab[19], it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.

24.2. In the recent decision in Surinder Kumar vs. State of Punjab[20], it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.

24.3. In Rizwan Khan vs. State of Chhattisgarh[21], after referring to the decision of this Court in State of H.P. vs. Pardeep Kumar[22], it is observed and held by this Court that the examination of the independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case."

(emphasis supplied)

30. It has been rightly pointed out by the Trial Court that the prosecution's case is not that people from the surrounding locality gathered at the time of the incident. In the light of the aforenoted decisions of this Court and upon careful examination of the testimonies of P.W.3, P.W.4, and P.W.5, along with the relevant other evidence on record, the prosecution's case cannot be dismissed solely on the ground of the absence of independent witness.

31. Having regard to the foregoing discussion, the High Court's decision finding A-1, A-2, and A-3 guilty of offences under sections 148, 302, and 307, IPC read with section 34 thereof is affirmed as correct and upheld.

32. The sole issue is, thus, answered in the negative.

CONCLUSION

33. The appeal is bereft of any merit and, therefore, stands dismissed.

.....J. (Dipankar Datta)

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

New Delhi;

September 25, 2024.

1 impugned judgment, hereafter

2 High Court, hereafter

3 Criminal Appeal No. 454-DB of 2001

4 Cr. PC, hereafter

5 Trial Court, hereafter

6 Sessions Case No. 121 of 1998

7 IPC, hereafter

8 deceased no.1, hereafter

9 deceased no.2, hereafter

10 victims, hereafter when referred to collectively

11 FIR, hereafter

12 2023 SCC OnLine SC 355

13 (2022) 7 SCC 521

14 (2003) 2 SCC 266

15 (2023) 10 SCC 181

16 (2004) 5 SCC 334

17 (2009) 6 SCC 372

18 (2021) 6 SCC 116

19 (2019) 8 SCC 529

20 (2020) 2 SCC 563

21 (2020) 9 SCC 627

22 (2018) 13 SCC 808

International Organizations and their Headquarters

Organization	Headquarters	Year
United Nations Development Programme (UNDP)	New York City, USA	1965
United Nations Environment Programme (UNEP)	Nairobi, Kenya	1972
United Nations Population Fund (UNPF)	New York City, USA	1969
United Nations Human Settlement Programme (UN-Habitat)	Nairobi, Kenya	1978
United Nations Children's Fund (UNICEF)	New York City, USA	1946
World Food Programme (WFP)	Rome, Italy	1961
Food and Agriculture Organization (FAO)	Rome, Italy	1945
International Civil Aviation Organization (ICAO)	Montreal, Canada	1947
International Fund for Agricultural Development (IFAD)	Rome, Italy	1977
International Labour Organization (ILO)	Geneva, Switzerland	1919
International Monetary Fund (IMF)	Washington, DC, USA	1944
International Telecommunication Union (ITU)	Geneva, Switzerland	1865
United Nations Educational, Scientific and Cultural Organization (UNESCO)	Paris, France	1945
United Nations Industrial Development Organization (UNIDO)	Vienna, Austria	1966
World Tourism Organization (UNWTO)	Madrid, Spain	1974
Universal Postal Union (UPU)	Bern, Switzerland	1874
World Health Organization (WHO)	Geneva, Switzerland	1948
World Intellectual Property Organization (WIPO)	Geneva, Switzerland	1967
World Meteorological Organization (WMO)	Geneva, Switzerland	1950
World Bank	Washington, DC, USA	1944
Joint United Nations Programme on HIV/AIDS (UNAIDS)	Geneva, Switzerland	1994
United Nations High Commissioner for Refugees (UNHCR)	Geneva, Switzerland	1950
United Nations Institute for Training and Research (UNITAR)	Geneva, Switzerland	1963
United Nations System Staff College (UNSSC)	Turin, Italy	2002
United Nations University (UNU)	Tokyo, Japan	1973
UN Women	New York City, USA	2010
International Atomic Energy Agency (IAEA)	Vienna, Austria	1957
International Organization for Migration (IOM)	Geneva, Switzerland	1951

Organization for the Prohibition of Chemical Weapons (OPCW)	The Hague, Netherlands	1997
United Nations Framework Convention on Climate Change (UNFCCC)	Bonn, Germany	1994
World Trade Organization (WTO)	Geneva, Switzerland	1995
International Trade Centre (ITC)	Geneva, Switzerland	1964
African Union (AU)	Addis Abab, Ethiopia	2002
Amnesty International (AI)	London, United Kingdom	1961
Arctic Council	Tromso, Norway	1996
Asia-Pacific Economic Cooperation (APEC)	Queenstown, Singapore	1989
Asian Development Bank (ADB)	Mandaluyong, Philippines	1966
Association of Caribbean States (ACS)	Port of Spain, Trinidad, Tobago	1994
Association of Southeast Asian Nations (ASEAN)	Jakarta, Indonesia	1967
European Central Bank (ECB)	Frankfurt, Germany	1998
European Free Trade Association (EFTA)	Geneva, Switzerland	1960
Association of European Parliamentarians with Africa (AWEPA)	Amsterdam, Netherlands	1984
European Space Agency (ESA)	Paris, France	1975
European Union (EU)	Brussels, Belgium	1993
Group of Eight (G8)	New York, USA	1975
G-15 Summit	Geneva, Switzerland	1990
Inter-American Development Bank (IDB)	Washington, DC, USA	1959
Intergovernmental Authority on Development (IGAD)	Djibouti, Djibouti	1986
International Atomic Energy Agency (IAEA)	Vienna, Austria	1957
International Civil Aviation Organization (ICAO)	Montreal, Canada	1947
International Chamber of Commerce (ICC)	Paris, France	1919
International Committee of the Red Cross (ICRC)	Geneva, Switzerland	1863
International Court of Justice (ICJ)	The Hague, Netherlands	1945
International Development Association (IDA)	Washington, DC, USA	1960
International Federation of Red Cross and Red Crescent Societies (IFRC)	Geneva, Switzerland	1919
International Finance Corporation (IFC)	Washington, DC, USA	1956
International Labour Organization (ILO)	Geneva, Switzerland	1919
International Olympic Committee (IOC)	Lausanne, Switzerland	1894

International Organization for Standardization (ISO)	Geneva, Switzerland	1947
International Peace Bureau (IPB)	Geneva, Switzerland	1891
International Seabed Authority (ISA)	Kingston, Jamaica	1994
International Service for Human Rights (ISHR)	Geneva, Switzerland	1984
Multilateral Investment Guarantee Agency (MIGA)	Washington, DC, USA	1988
The Non-Aligned Movement (NAM)	Central Jakarta, Indonesia	1961
North Atlantic Treaty Organization (NATO)	Washington, DC, USA	1949
Organization for Economic Co-operation and Development (OECD)	Paris, France	1961
Organization for Security and Co-operation in Europe (OSCE)	Vienna, Austria	1975
Organization of Arab Petroleum Exporting Countries (OAPEC)	Kuwait, Middle East	1968
Organization of the Islamic Conference (OIC)	Jeddah, Saudi Arabia	1969
Organization of the Petroleum Exporting Countries (OPEC)	Vienna, Austria	1960
South Asian Association for Regional Cooperation (SAARC)	Kathmandu, Nepal	1985
United Nations Environmental Program (UNEP)	Nairobi, Kenya	1972
United Nations Food and Agriculture Organization (FAO)	Rome, Italy	1945
United Nations High Commissioner for Human Rights (UNHCHR)	Geneva, Switzerland and New York City, USA	1993
Western European Union (WEU)	Paris, France	1954
World Federation of United Nations Associations (WFUNA)	Geneva, Switzerland and New York City, USA	1946
World Organization Against Torture (OMCT)	Geneva, Switzerland	1985
World Wide Fund for Nature (WWF)	Gland, Switzerland	1961

International Organizations of which India is Member

International Organization	Headquarters	Foundation
ADB - Asian Development Bank	Manila, Philippines	1956
AfDB - African Development Bank (non-regional members)	Tunis, Tunisia	1964
AG - Australia Group	Brussels, Belgium	1985
ASEAN Regional Forum - The Association of Southeast Asian Nations	Jakarta, Indonesia	1967
BIMSTEC - Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation	Dhaka, Bangladesh	1997
BIS - Bank for International Settlements	Basel, Switzerland	1930
BRICS - Brazil, Russia, India, China, and South Africa	Shanghai, China	2006
CoN - Commonwealth of Nations	London, UK	1931
CERN - European Organization for Nuclear Research	Geneva, Switzerland	1954
EAS - East Asia Summit	Colombo, Sri Lanka	1950
FAO - Food and Agriculture Organization of the United Nations	Rome, Itlay	1945
G-15 - Group of 15	Geneva, Switzerland	1989
G-20 - Group of 20	Cancun, Mexico	1999
G-77 - Group of 77	New York	1964
IAEA - International Atomic Energy Agency	Vienna, Austria	1957
IBRD - International Bank for Reconstruction and Development (World Bank)	Washington DC, US	1944
ICAO - International Civil Aviation Organization	Montreal, Canada	1944
ICC - International Chamber of Commerce	Paris, France	1919
IDA - International Development Association	Washington DC	1950
IEA - International Energy Agency	Paris, France	1974
IFAD - International Fund for Agricultural Development	Rome, Italy	1977
IFC - International Finance Corporation	Washington DC, US	1956
ILO - International Labour Organization	Geneva, Switzerland	1919
IMF - International Monetary Fund	Washington DC,	1945

	US	
Interpol - International Criminal Police Organization	Lyon, France	1923
IOC - International Olympic Committee	Lausanne, Switzerland	1894
IPEEC - International Partnership for Energy Efficiency Cooperation	Paris, France	2009
ISO - International Organization for Standardization	Geneva, Switzerland	1947
ITSO - International Telecommunications Satellite Organization	Washington DC	1964
ITU - International Telecommunication Union	Geneva, Switzerland	1864
NAM - Non-Aligned Movement	Jakarta, Indonesia	1961
OPCW - Organisation for the Prohibition of Chemical Weapons	Hague, Netherland	1997
PCA - Permanent Court of Arbitration	Hague, Netherland	1899
PIF - Pacific Islands Forum (partner)	Suva, Fiji	1971
SAARC - South Asian Association for Regional Cooperation	Kathmandu, Nepal	1985
SACEP - South Asia Co-operative Environment Programme	Colombo, Sri Lanka	1982
SCO - Shanghai Cooperation Organisation (member)	Beijing, China	1996
UN - United Nations	New York	1945
UNAIDS - United Nations Programme on HIV/AIDS	New York	1994
UNESCO - United Nations Educational, Scientific and Cultural Organisation	London, Uk	1946
WHO- World Health Organization	Geneva, Switzerland	1948

3. Study Material-Language

One Word Substitute

S.N.	Sentence	One Word
1.	A person who acts on behalf of others	Agent
2.	A leader or orator who espoused the cause of the common people	Demagogue
3.	A person having a sophisticated charm	Debonair
4.	A leader who sways his followers by his oratory	Demagogue
5.	A dabbler (not serious) in art, science and literature	Dilettante
6.	A man who is womanish in his habits	Effeminate
7.	A person who deliberately sets fire to a building	Arsonist
8.	A government of officials	Bureaucracy
9.	A government by one person	Autocracy
10.	A government by rich and powerful class	Plutocracy
11.	A government by nobles	Aristocracy
12.	A government of the people, by the people and for the people	Democracy
13.	A Government by the Churchmen	Theocracy
14.	A person who heads the Council of Ministers	Prime Minister
15.	A work or a book or a literary piece of work whose author is not known	Anonymous
16.	A diplomatic representative of one country in another	Ambassador
17.	A person selected by disputing parties to settle their difference	Arbitrator
18.	A supplement added at the end of the book	Appendix
19.	A voluntary renouncement of the throne by the King	Abdication
20.	A lover of others	Altruist
21.	A medicine to cure the effect of poison	Antidote
22.	A public sale of property conducted by biddings	Auction Sale
23.	A place where anus and ammunition are kept	Armoury
24.	A person who secret himself by running away from law	Absconder
25.	A member, of the middle class	Bourgeois
26.	A State involved in war	Belligerent
27.	A person who is fond of fighting	Bellicose
28.	A person unable to pay debt	Bankrupt
29.	A lover of books or a collector of books	Bibliophile
30.	A list of books or articles	Catalogue
31.	A person who has been convicted of an offence	Criminal
32.	A person who has been charged of an offence	Accused
33.	A process of compound between two parties	Compound
34.	A general order for people to remain indoor	Curfew
35.	A period of hundred years	Century
36.	A period of ten years	Decade
37.	A round about mode of expression	Circumlocution
38.	A person engaged in diplomacy	Diplomat
39.	A suit filed for the purpose of declaration of title	Declaratory suit
40.	A Hundi on which payment can be made at sight	Darshani Hundi

41.	A long poetic account of the deeds of great heroes	Epic
42.	A person who leaves his country and goes to live in another	Emigrant
43.	A person whose conduct is not normal	Eccentric
44.	A person interested in everything happening around him	Extrovert
45.	A speech given without preparation	Extempore
46.	A speech given for the first time in life	Maiden speech
47.	A poetry or prose recited at the end of a play	Epilogue
48.	A poetry or prose recited at the beginning of the play	Prologue
49.	A man is womaniser	Effeminate
50.	A person who is hi habit of sensuous pleasure	Epicure
51.	A person who believes in fate	Fatalist
52.	A strong believer of religion	Fanatic
53.	A supporter of women movement/women's right	Feminist
54.	A medicine that destroys germs	Germicide
55.	A plane figure with six sides	Hexagon
56.	A person who is unable to pay his debts	Insolvent
57.	A disease communicable by air or water through virus	Infectious
58.	A sound that cannot be heard	Inaudible
59.	A decision which cannot be changed	Irrevocable
60.	A person who goes from one country to another with intention to settle down there	Immigrant
61.	A trade or act which is prohibited by law	Illicit
62.	A person who is confined to his own-self	Introvert
63.	A body of person selected according to law and sworn to give verdict on some matter according to evidence	Jury
64.	A formal decision made by or pronounced by a court of law or other tribunal	Judgment
65.	A person who is skilled in language	Linguist
66.	A gift of personal property by will to a legatee	Legacy
67.	A game of chance, generally unlawful	Lottery
68.	A person with whom money or gain is the most important consideration	Materialist
69.	A soldier who fights for the sake of money	Mercenary
70.	A place where dead body is kept before post-mortem	Mortuary
71.	A handwritten copy	Manuscript
72.	A person who hates woman-kind	Misogynist
73.	A hater of mankind	Misanthrope
74.	A hater of marriage	Misogamist
75.	A person below the age of 18	Minor
76.	A person above the age of 18	Major
77.	A wrongful act done intentionally without a just cause or excuse	Malice
78.	A direction from a superior to an inferior Court	Mandate
79.	A people’s verdict in favour of a party to rule	Mandate
80.	A note according to particulars of an event	Memorandum
81.	A woman who without marriage lives as a wife	Mistress
82.	A sound proposal node in a meeting	Motion
83.	A special favour by a person occupying high position to	Nepotism

	his relatives	
84.	A widely known criminal with had reputation	Notorious
85.	A new born child	Neonate
86.	A plea in abatement which alleged that the plaintiff has failed to join in action all those who have been parties	Non-joinder
87.	A person deprived of the protection of law	Outlaw
88.	A custom or word which is no longer in use	Obsolete
89.	A figure with eight sides and eight angles	Octagon
90.	A child whose parents are dead	Orphan
91.	A man whose wife is dead	Widower
92.	A woman whose husband is dead	Widow
93.	A person who looks at the brighter side of things	Optimist
94.	A person who views life with despair	Pessimist
95.	A garden of fruits	Orchard
96.	A solemn appeal usually to God to witness that some statement is true or that some promise is binding	Oath
97.	A duty, usually legal or moral and of one's choosing to undertake a course of action	Obligation
98.	A proposal, written or oral to give or do something	Offer
99.	A disregard of the essentials of justice	Oppression
100.	A law promulgated by the President or Governors	Ordinance
101.	A tendency to give an unfair judgment through sympathy with one side	Partiality
102.	A child born after the death of his father	Posthumous
103.	A remedy for all ills	Panacea
104.	A person without means	Pauper/Indigent
105.	A person who does not believe in war or favours its abolition	Pacifist
106.	A murder of his own father	Patricide
107.	A woman who offers the use of her body for sexual intercourse to anyone who pays for that	Prostitute
108.	A person who loves his country and is ready to sacrifice his life for his country	Patriot
109.	A man who amuses himself by love making	Philanderer
110.	A man who helps others in difficulty	Philanthropist
111.	A lover of woman kind	Philogynist
112.	A special right or immunity conferred on some person or body	Privilege
113.	A glance at the past events	Retrospect
114.	A law with effect from some earlier date	Retrospective law
115.	A private person at whose suggestion an action is commenced by Attorney-General	Relater
116.	A residue of an estate, depending upon a particular estate and rated together the same at one time	Remainder
117.	A periodic payment made by the tenant or other occupier of land to the owner for its possession and use	Rent
118.	A citation to appear before a Judge or Magistrate	Summons
119.	A person who draws amusement by inflicting cruelty on others	Sadist
120.	A person who doubts the truth of a particular claim	Sceptic

121.	A person or a thing taking place of another	Substitute
122.	A person who knows the philosophy of pain and pleasure and therefore, takes both in the same way	Stoic
123.	A place where artists work	Studio
124.	A truth which is often repeated	Truism
125.	A play of a serious kind with a sad ending	Tragedy
126.	A practice which has continued over a long period	Usage
127.	A person or animal suffering an' injury or loss	Victim
128.	A person who has a long experience	Veteran
129.	A person who gives up himself upto, luxury and sexual pleasures	Voluptuary
130.	A cupboard with shelves, pegs for keeping clothes	Wardrobe
131.	A study of animal life	Zoology
132.	A group of stars	Constellation
133.	A hackneyed phrase	Cliche
134.	A man whose manners are more like those of a woman than a man	Effeminate
135.	A breaker of images	Iconoclast
136.	A man who can disguise the direction of his voice	Ventriloquist
137.	A man with narrow and prejudiced religious views	Bigot
138.	A man who eats human flesh	Cannibal
139.	A person who is head of the joint-Hindu family	Karta
140.	A person knowing everything	Omnicient
141.	A body which is all powerful	Omnipotent
142.	A remedy which never fails	Infallible
143.	A match which ends without victory of either party	Drawn
144.	A place where birds and animals are kept for exhibition	Zoo
145.	A damages not directly related to a wrongful act	Remote
146.	A state of growth of a person between boyhood and youth	Adolescence
147.	A Constitution which contains norms in a written document	Written Constitution
148.	A Constitution which divides power of governance between the national and the regional governments	Federation
149.	A constitutional scheme which provides for governance of the whole country by the Central Government	Unitary
150.	A person who avoids arrest by concealing himself	Absconder
151.	A person who brings the suit	Petitioner
152.	A claim made by the opposite party in a suit	Counter claim
153.	A statement which is not clear and is open to more interpretations	Ambiguous
154.	A loss or damage that cannot be compensated	Irreparable
155.	A widespread disease affecting people at large at the same time	Epidemic
156.	A place where one can reach	Accessible
157.	A loss which can be ascertained	Accessible
158.	A public officer who attests deeds or documents	Notary
159.	A person who has been declared outcast by a community	Ex-communicated
160.	A person who addresses a public gathering	Speaker
161.	A member of the Parliament who presides over its meetings	Speaker

162.	A dignatory who presides over the Meetings of the Council of the State	Chairman
163.	A duty imposed on the manufacture of a thing	Excise
164.	A duty levied at the incidence of importing or exporting goods	Custom duty
165.	A person who can speak and write two languages	Bilinguist
166.	A person who believes in the existence of God	Theist
167.	A person who does not believe in God	Atheist
168.	A person who spends money recklessly	Prodigal
169.	A person who is sent upon a special mission	Envoy
170.	A self centred person who always thinks of his own interest	Egoible
171.	A judgment pronounced on the basis of the agreeing of all the judges on the bench	Unanimous
172.	A diplomatic personnel of highest order sent by one country to another	Ambassador
173.	A person who dies without making will	Intestate
174.	A matter pertaining to parents	Parental
175.	A government which does not interfere into matters of the people	Laissez-faire
176.	A gratuitous payment made secretly	Donatio violate
177.	A property managed by a person for the beneficial use of other person	Trust Property
178.	A legal injury caused without any monetary loss to a person	Injuria sine Damnum
179.	A kind of happening which had never happened earlier	Unprecedented
180.	A work without remuneration	Honorary
181.	A girl who is not married	Virgin
182.	A leave without application	French leave
183.	A person who eats only vegetables	Vegetarian
184.	A sum of money payable yearly either as a personal obligation of the grantor or out of property	Annuity
185.	A detention with a view to prevent the detenue from committing act	Preventive detention
186.	A payment reserved by the grantor of a patent, lease of mine etc. payable proportionately to the use made of the right by the grantee	Royalty
187.	A money comfort qualified by the statute, given as a conciliatory measure for the compulsory acquisition of the land of the citizen by a welfare state	Solatium
188.	A super added charge over and above the usual or current dues	Surcharge
189.	A term during which an office is held	Tenure
190.	A mark used in relation to goods for the purpose of indicating connection in the course of trade between goods and some person having the right to use that mark as proprietor	Trade mark
191.	A device intended to comprehend a mode by which property can pass	Disposition
192.	A visible manifestation of the feelings or sentiments of an	Demonstration

	individual having legal personality	
193.	A collection or individuals classed together under the same name or a religious body having a faith or organisation and designated by a distinctive name	Denomination
194.	A formal resolution of a body reprimanding a person (normally one of its own members) for specified conduct	Censure
195.	A public and formal censure or severe reproof administered to a person in fault by his superior officer or by a body or organisation to which he belongs	Reprimand
196.	A temporary suspension of the execution of a sentence	Respite
197.	A small quantity of any commodity presented for inspection or examination as evidence of the quality of the whole	Sample
198.	A seat of judgment for the administration of justice	Bench
199.	A right of use over the property of another	Easement
200.	A court organised for the argument of hypothetical cases	Moot Court
201.	A sanctuary or place of refuge and protection	Asylum
202.	A person who has committed grave crime	Felon
203.	A body of law constituted by eccesiastical authority for the organisation and governance of the Christian Church	Cannon Law
204.	A place of work in which trade union members working there refuse to allow non-union members to be employed in that industry	Closed shop
205.	A mode of the transfer by which property is transferred from one person to another by written instrument's and related formalities	Conveyance
206.	A form of government in which the administration of affairs is open to all citizens and office of the head of the state is occupied by an elected person	Republic
207.	A breaker of images	Iconoclast
208.	Acquisition of one firm by another so that they become one unit	Merger
209.	Acts, the tendency of which is to injure, annoy etc. to a complainant	Molestation
210.	Act of general pardon	Amnesty
211.	Admitting a person as a citizen of a foreign state	Naturalize
212.	Allowance payable to a wife on judicial separation from her husband	Alimony
213.	All substances found under the earth obtained by mining and containing inorganic substances	Minerals
214.	All land, houses or other buildings forming part of endowment of an ecclesiastical benefice	Glebe
215.	Ambiguity in a document seen on its face	Patent
216.	Ambiguity in a document not found prima facie	Latent
217.	An agreement to do or not to do a particular thing	Covenant
218.	Any living object	Animate
219.	An order issued by the court before the pronouncement of the decision	Interlocutory order
220.	An established principle of practical wisdom	Maxim
221.	An authorised period of delay in performing of obligation	Moratorium

222.	An assembly of members of an Inn or Court at which points of law are argued	Moot
223.	An offence of collective insubordination, collective defiance or disregard of authority or refusal to obey authority	Mutiny
224.	An adult through whom an infant or patient sues/represents	Next friend
225.	An act of omission or commission punishable under criminal law	Offence
226.	An action taken by one person as on retaliation for ton assumed or real wrong by another	Reprisal
227.	An act which wrongfully deprives a person of his freehold	Ouster
228.	An association of individuals entitled to act as an individual having a legal personality	Corporation
229.	An imaginary tome assumed by an author	Pseudonym
230.	An earlier decision taken as an example	Precedent
231.	An act by which one annuls something he has done	Revocation
232.	An offence consisting of breaking and entering and committing a felony in any place of divine worship	Sacrilege
233.	An office to whom high salary is paid for little or no work or responsibility	Sine cure
234.	An express and specific denial of an allegation of fact made in statement of claim	Traverse
235.	An order that is absolutely clear	Unambiguous
236.	An offence with intent to deceive others	Witchcraft
237.	An acknowledgment of something existing before	Recognition
238.	An intangible asset or the whole advantage of the reputation or connections formed with customers together with the circumstances making the connection durable	Goodwill
239.	An order against which appeal may lie	Appealable
240.	An infringement of a provision which empowers a person to get enforced in a court of law	Enforceable
241.	An enactment conforming to norms set in the Constitution	Constitutional
242.	An expert in the science of law	Jurist
243.	An act violative of the norms prescribed by the law	Unlawful
244.	An net whose validity is under challenge	Impugned
245.	An act violative of the norm of morality and decency	Obscene
246.	An act ending the sitting of the House	Adjournment
247.	An act ending the session of a House	Prorogation
248.	An act ending the life of the House of the people	Dissolution
249.	An entity which can sue or be sued	Person
250.	An action of killing infants	Infanticide
251.	An act which is contrary to the nature	Unnatural
252.	An act of importing goods illegally without paying the custom duty	Smuggling
253.	An act of removing objectionable utterances of Legislator's in a House by the Speaker	Expunge
254.	An old student of a institution	Alumni
255.	An act of a officer or body beyond Jurisdiction	Ultravires
256.	An institution where a student has been trained	Alma mater

257.	An incidence worthy to be remembered	Memorable
258.	An act which is wrong	Culpable
259.	An act of engaging oneself in war	Belligerent
260.	An act which is legally allowed	Permissible
261.	An infringement of a provision which empowers a person to get enforced in a Court of law	Enforceable
262.	Absence of restraint	Liberty
263.	Authority to act granted by a competent authority	Licence
264.	Bathing nakedly	French bath
265.	Bank loan allowing a customer's current account to go into debit	Overdraft
266.	Belonging to all	Universal
267.	Belonging to village area	Rural
268.	Belonging to a city	Urban
269.	Belonging to the bank of river or stream	Riparian
270.	Book containing information on all subjects	Encyclopaedia
271.	Chairman of a city council elected by the councillors	Mayor
272.	Charging of the nature of the punishment	Commutation
273.	Charges in respect of goods unloaded from wagons and kept at the station	Demurrage
274.	Capable of being understood	Intelligible
275.	Contrary to nature	Unnatural
276.	Collection of special words with meaning	Glossary
277.	Collector of stamps	Philatelist
278.	Common plea remarks	Platitude
279.	Conferred as an honour unpaid, an officer for which no salary is paid	Honorary
280.	Culpable omission to perform a duty	Neglect
281.	Child brought up by a person other than parents	Foster Child
282.	Disagreement or differences between statement in the writ and pleadings	Variance
283.	Destroying the source of authority of the existing government	Subjugation
284.	Discrimination with an object to safeguard the interest of the weaker sections of the society	Protective Discrimination
285.	Dispatching of goods/articles to another country	Export
286.	Dramatic performance with dumb show	Pantomime
287.	Document issued under the seal of the court as official evidence of the authority of an executor	Probate
288.	Duties imposed by the government on imports	Tariff
289.	Everything which is to be applied for the purpose of healing whether externally or internally	Medicine
290.	Extermination of a race by mass murder	Genocide
291.	Evidence from an independent source conforming and strengthening other evidence	Corroboration
292.	Fixed time from which military operation are counted	Zero hour
293.	Functions which can be performed only by the organs of the government	Sovereign or Regal
294.	Formal investigation of a person's activities	Vetting
295.	Formal suspension of execution of a sentence	Reprieve

296.	Former holder of any office or position	Predecessor
297.	Failure of legacy	Lapse
298.	Fund or property available for discharge of debts	Assets
299.	Generally one's nearest blood relations	Next-of-kin
300.	Generally involves a grant of exclusive possession for a term at rent	Lease
301.	Good observer in matters in which taste is needed	Connoisseur
302.	Government where all adult citizens elect their representatives	Democracy
303.	Government or opposition official responsible for controlling the presence of MP's at debates and votes, arranging pairs etc	Whip
304.	Government based on religion	Theocracy
305.	Getting away from restrain or custody	Escape
306.	Give and take mutually	Reciprocate
307.	Given to finding fault	Censorious
308.	Have blood relation	Kin
309.	Having one wife	Monogamy
310.	Having two wives	Bigamy
311.	Having many wives	Polygamy
312.	Having some resemblance to, but lacking some requisites	Quasi
313.	Having more than one husband	Polyandry
314.	Handing over a fugitive foreign criminal to the proper authorities of his own country when sought to do so	Extradition
315.	Herb eating animal	Herbivorous
316.	Happening once in three years	Triennial
317.	High or profitable post with no duties	Sinecure
318.	Honest intent free from taint of fraud or fraudulent design	Good faith
319.	Happening for the first time	Unprecedented
320.	Illegal export or import of merchandise	Smuggling
321.	Imposition of assessment or tax	Levy
322.	Income, yield of taxes, return on investment-	Revenue
323.	In accordance with the forms of law	Legal
324.	Inconsistency of two or more provisions in a deed or other document	Repugnance
325.	Incapable of being cured	Incurable
326.	Intentional abandonment of a right	Renunciation
327.	Intimation, intelligence, warning, observation	Notice
328.	Instrument by which a payment of money is assured on death	Insurance policy
329.	Killing of either or both parents	Parricide
330.	Kingdom of rulers belonging to one family	Dynasty
331.	Knowledge of how to accomplish something	Know how
332.	Legally capable of making a will	Testable
333.	Let the buyer be aware	Caveat Emptor
334.	Lay of dilly at the incidence of importing the goods	Custom Duty
335.	Living on both land and in water (like frog)	Amphibious
336.	Lover of books	Bibliophile
337.	Life History written by the person concerned	Autobiography

338.	Life history of a person written by other person	Biography
339.	List of books, Articles etc.	Catalogue
340.	List of items of business transaction at a meeting	Agenda
341.	Liable to make mistake	Fallible
342.	Market structure with only a single seller of a commodity	Monopoly
343.	Marrying more than one husband at a time	Polyandry
344.	Malicious destruction of or damage to property so as to harm a business or military potential of the State	Sabotage
345.	Medical examination of dead body	Post-mortem
346.	Mode of acquiring title or property by uninterrupted possession	Usucaption
347.	Money paid for securing freedom of a captive	Ransoms
348.	Medicines that promote sleep	Narcotic
349.	Movement from one country to another	Migration
350.	Missing portion or omission in a document	Lacuna
351.	Murder of an infant	Infanticide
352.	Made of different kinds	Heterogeneous
353.	Man who eats human flesh	Cannibal
354.	Medical examination of a dead body	Autopsy
355.	Money received by a Muslim women as a consideration of marriage	Mehr
356.	Negligence and unreasonable delay in the assertion of a right claiming privilege	Latches
357.	Notes providing a record of proceedings	Minutes
358.	Non-payment of interest on a loan exceeding the principal at time	Damdupat
359.	One who can neither read nor write	Illiterate
360.	One who is not sure about God's existence	Agnostic
361.	One who makes an official examination of accounts	Auditor
362.	One who does a thing for pleasure and not as a profession	Amateur
363.	One who can use either hand with ease	Ambidextrous
364.	One who cannot be won	Invictus
365.	One who speaks on behalf of other	Spokesman
366.	One who feels very sympathetic to all human beings	Humanitarian
367.	One who regards the whole world as his country	Cosmopolitan
368.	One who is liked by everybody	Popular
369.	One who cannot be corrected	Incorrigible
370.	One who is dependent on other	Dependent
371.	One who sells goods in the street roaming about	Hawker
372.	One who is unable to pay his debt	Insolvent
373.	Obliteration of statute by another from the statute hook as completely as it had never been enacted	Repealed
374.	One who examines publications, films and like for objectionable content	Censor
375.	One who does not take any intoxicating drink	Teetotalism
376.	One who walks in sleep	Somnambulis
377.	One who talks in sleep	Somnikquist
378.	One who is appointed to act in place of another	Surrogate
379.	One who makes a settlement of his property	Settlor

380.	One appointed with authority or power to act for another, i.e., meeting, attendance	Proxy
381.	One of the first persons to do anything to go into a country to develop it: first student of a new branch of study	Pioneer
382.	One who walks on foot	Pedestrian
383.	One who depends on others	Parasite
384.	One who has possession as owner or tenant of land or a house and has degree of control associated with his presence on the land or in the house	Occupier
385.	One who does not believe in the existence of God	Atheist
386.	One who leads an austere life	Ascetic
387.	One who can either hand with ease	Ambidextrous
388.	One who is bad in spellings	Cacographer
389.	One who feeds on human flesh	Cannibal
390.	One who is recovering health after illness	Convalescent
391.	One who is a centre of attraction	Cynosure
392.	One who dies for a noble cause	Martyr
393.	One who is very particular about small details	Meticulous
394.	One bound by allegiance and feudal service	Liege
395.	One who makes a lease to another	Lessor
396.	One to whom a lease is made	Lessee
397.	One who entertains a guest	Host
398.	One who sneers at the beliefs of others	Cynic
399.	One who is in debt to another	Debtor
400.	One who is for pleasure of eating and drinking	Epicure
401.	One who often talks of his achievements	Egotist
402.	One who easily believes, whatever is told	Credulous
403.	One who first attacks	Aggressor
404.	One who does work for pleasure and not as an occupation	Amateur
405.	One who intends to destroy the established government, Law and Order	Anarchist
406.	Parliamentary Commissioner for Administration	Ombudsman
407.	Person who compiles a dictionary	Lexicographer
408.	Place, where dead bodies are cremated (burnt)-	Crematory
409.	Properly inherited by a person from his ancestor	Patrimony
410.	Place of detention for those committed to custody under the law	Prison
411.	Period of isolation, originally 40 days, imposed on the ship and its travellers coming from a country in which serious infectious disease has spread	Quarantine
412.	Person who takes up arms against the established government	Rebel
413.	Person escaped to foreign country from religious or political persecution	Refugee
414.	Persuasion to disobedience, illicit sexual intercourse	Seduction
415.	Punishment or penalty imposed on a person found guilty by court	Sentence
416.	Payment by the State to producers or distributors intended to reduce prices paid by consumers	Subsidy
417.	Process becoming entitled to property of deceased by	Succession

	operation of law	
418.	Scientist who studies stars	Astronomer
419.	Someone who leaves one country to settle in another	Emigrant
420.	Specialist in female diseases	Gynaecologist
421.	Specialist in children's diseases	Pediatrician
422.	Specialist in eye diseases	Opthlmologistioculist
423.	Specialist in heart diseases	Cardiologist
424.	Specialist in skin diseases	Dermatologist
425.	Specialist in mental and emotional disorders	Psychiatrist
426.	Science of disease	Pathology
427.	Science of bodily structure	Anatomy
428.	Science of the production of healthier and fitter children	Eugenics
429.	Something said or done at one without preparation	Impromptu
430.	Sending out of a person from his native country	Exile
431.	Send money	Remit
432.	Sexual intercourse between near relations	Incest
433.	Society in which mother is the head of the family	Matriarchy
434.	Stealing from another person's writings	Plagiarise
435.	Substance that prevents infection	Antiseptic
436.	Substance that kill germs	Germicide
437.	Substance that easily catches fire	Inflammable
438.	Substance that breaks easily (like chalk)	Brittle
439.	Statement or story worthy of belief	Credible
440.	State of repugnance between two laws	Repugnancy
441.	Statement in a deed or any formal instrument to explain or to lead up to the operative part of the instrument	Recital
442.	Susceptible to injury	Vulnerable
443.	Statement of a witness in court	Testimony
444.	Speech in which a character speaks to himself in thoughts on the stage	Soliloquy
445.	Power to prohibit or refuse	Veto
446.	Performed by one person as a substitute for, or for the benefit of another	Vicarious
447.	Physical impossibility of the presence of the accused at the scene of offence by reason of his presence of another place	Alibi
448.	Qualified, fit to be chosen	Eligible
449.	Quasi autonomous, non-governmental organisations, generally carrying out regulatory and operational functions	Quangos
450.	Quarrelsome, scolding woman	Shrew
451.	Relating to the affairs of this temporal world	Secular
452.	Referring to damage in ancient civil law caused by a slave or animal	Noxal
453.	Risk of convention and punishment	Jeopardy
454.	Right over another's property	Servitude
455.	Ruler who has absolute power	Dictator
456.	Rule by military during an emergency when the civil authority cannot function	Martial Law
457.	Right or privilege to vote in an election	Suffrage
458.	Repudiation, in Islamic law of a wife by her husband by	Talaq

	means of a formal, triple declaration	
459.	Refers to the deliberate conduct of a person	Wilful
460.	Right of the husband or wife to the society of the other espouse	Conjugal Right
461.	Reasoning from general to particular	A priori
462.	Reasoning from particular to general	A posteriori
463.	Representation of God in the likeness of man	Anthropomorphism
464.	Scientist who studies the development of man from his earliest beginnings	Anthropologist
465.	Scientist who studies the composition of the earth	Geologist
466.	Scientist who studies living organism both animals and plants	Biologist
467.	Status of a child resulting from birth in lawful bedlock	Legitimacy
468.	Stage of gradual recovery of health alter illness	Convalescence
469.	Stage between childhood and youth	Adolescence
470.	The state of being unmarried	Bachelorhood/Celibacy
471.	That which happens once a year	Annual
472.	That which happens once in two year	Biennial
473.	Too turn friends into foes, to estrange	Alienate
474.	To talk impiously about; God/sacred things	Blasphemy
475.	Termination of marriage by coup, thereafter spouses are Ike to remarry	Divorce
476.	Total repudiation of the obligations of marriage	Desertion
477.	Things which one suitable to eat	Eatable
478.	The subject which deals with the derivation of words	Etymology
479.	Total removal of an evil or disease etc.	Eradicate
480.	That Mitch never fails	Infallible
481.	That which is believable	Incredible
482.	That without which one cannot do	Indispensable
483.	That which cannot be defeated	Invincible
484.	The worship of idols	Idolatory
485.	To wage another person to do evil	Instigate
486.	That which must happen	Inevitable
487.	The act of increasing the amount of money in circulation so that there is a price rise	Inflanation
488.	That which cannot be burnt	Incombustible
489.	The science/philosophy of law	Jurisprudence
490.	To throw overboard a ship's cargo or tackle no as to lighten it in an emergency	Jettison
491.	The place for keeping the collection of books	Library
492.	The body of rules and guidelines within which society requires its judges to administer, justice	Law
493.	The owner or holder of land leased to another	Landlord
494.	Me making of law by a competent authority	Legislation
495.	The publication in printed form of a statement which tends to damage the reputation of a person	Libel
496.	The taking of legal action by a party, who is known as litigant	Litigation
497.	The place of living for monks	Monastery

498.	The system of government by a single ruler	Monarchy
499.	To injure to person so that he is crippled	Maim
500.	Time at which to bill of exchange becomes due	Maturity
501.	The act of a third party relating to the settling of a dispute between two contending parties	Mediation
502.	The disposition of an estate or land or other property by debtor to creditor as security for debt with proviso that it shall be returned on payment of debt within certain period	Mortgage
503.	Term generally applied to personal as opposed to real property or immovable property	Movable
504.	Title, deeds and other evidence relating to the title to land	Documents
505.	The study of coins	Numismatics
506.	The place where young plants are grown	Nursery
507.	The bringing of the ownership and management of firms/industries under state control	Nationalisation
508.	The legal relationship attaching to membership of a nation	Nationality
509.	That which is offensive to which causes or tends to cause injury	Noxious
510.	To turn out of society	Ostracize
511.	That which cannot be seen through	Opaque
512.	The killing of un imperial power or a king	Regicide
513.	Too much attention to rules and regulation by civil servants	Red-tapism
514.	To dispose of the person or an individual charged with a crime e.g., on the adjournment of a hearing	Remand
515.	To withdraw from an agreement	Resile
516.	The publication, orally or in writing of words intended to bring into hatred or contempt or to excite disaffection against the authority of States' executive	Sedition
517.	To seek justice by the process of law	Sue
518.	To taking of one's own life intentionally and voluntarily	Suicide
519.	Two or more things occurring at the same time	Simultaneous
520.	The passage of soul after death from one body to the other	Transmigration
521.	That which can be seen through	Transparent
522.	To offer for sale or to offer money etc.	Tender
523.	The greatest happiness of the greatest number	Utilitarianism
524.	The risking of a sum of money on an uncertain, eventual outcome	Wager
525.	The exercise of cure and protection of ward	Wardship
526.	Trees and their fruits blown down by the wind	Windfalls
527.	The damage of a ship sot that she ceases to be of use	Wreak
528.	The official counting of the people of a State	Census
529.	The fixed beginning or ending point of a given run in connection with transportation	Terminal
530.	The amount of money which is turned over in business	Turnover
531.	The thing is not what it pretends to be	Spurious
532.	The money gives to a woman for maintenance	Alimony
533.	The last will drawn by a testator	Ultima voluntas
534.	To remove objectionable matter from a book	Expurgate
535.	The reason for decision of a case	Ratio-decidendi

536.	To root out an evil	Eradication
537.	To hasten the progress	Acceleration
538.	Uncultured person	Philistine
539.	Unauthorised or illegal assumption of rights	Usurpation
540.	Used to indicate the specified number of members of a body	Quorum
541.	Usually solicitor who attests deeds	Notary
542.	Use of public fund not in legal way	Embezzlement
543.	Voluntary murder of one's sister or brother	Fratricide
544.	Which cannot be interpreted clearly	Ambiguous
545.	Words having opposite meaning	Antonyms
546.	Words having similar meaning	Synonyms
547.	Words having the same spelling or pronunciation but different meanings and origins	Homonyms
548.	Words that are pronounced or written in a similar way but which have different lexical meaning	Paranoyms
549.	Whose business is to locate criminals	Detective
550.	Who loves company	Gregarious
551.	Who eats too much	Glutton
552.	Which cannot be easily approached	Inaccessible
553.	With knowledge if facts in question	Knowingly
554.	Written acknowledgment of goods or money received	Receipt
555.	With consent of all	Unanimous
556.	Without force	Void
557.	Word for word	Verbatim
558.	Wilful or ignorant destruction (of works of art, loosely of anything)	Vandalism
559.	Woman having dark complexion	Brunette
560.	Wanting foresight	Imprudent

5. Current Affairs

SEPTEMBER 2024

S.N.	News and Events
1.	Who won the gold medal for India in the individual event of SL3 category of Paralympic badminton- **Nitesh Kumar**
2.	Who is the first Indian female athlete to win 2 medals in track and field events in Paralympics or Olympics- **Preeti Pal**
3.	How many crores of rupees has been approved by the Union Cabinet for the Digital Agriculture Mission- **2,817 crores**
4.	The Ministry of Panchayati Raj is organizing a five-day management development program with- **IIM- Amritsar**
5.	Which medal did athlete Nishad Kumar win in high jump at Paris Paralympics 2024- **Silver**
6.	On which foundation anniversary of the Supreme Court, the new flag and emblem was unveiled- **75th**
7.	In which event did Sumit Antil win the gold medal in Paris Paralympics 2024- **Javelin Throw**
8.	Recently which state assembly passed the anti-rape 'Aparajita' bill- **West Bengal**
9.	In which city of UP the three-day Armed Forces Festival is being organized- **Lucknow**
10.	What is India's rank in the 2023 edition of the Global Innovation Index- **40th**
11.	Which country will host the ICC World Test Championship final in the year 2025- **England**
12.	Rural Doctors Movement was honored with Ramon Magsaysay Award 2024. It is related to which country- **Thailand**
13.	Who has been appointed by Hero MotoCorp as the Executive Vice President of the company- S**anjay Bhan**
14.	The World Bank has raised India's growth forecast for FY25 to **- 7.0%**
15.	Who has become the first Indian PM to make an official bilateral visit to Brunei- **PM Narendra Modi**
16.	The Indian Navy is conducting the 'Varuna' exercise with – **France**
17.	Babita Chauhan was appointed as the – **President of the Uttar Pradesh Women Commission.**
18.	Ajay Ratra has been appointed as the – **selector of the men's cricket team by BCCI.**
19.	Sharad Kumar and Mariyappan Thangavelu won medals in the – **high jump event at the Paris Paralympics 2024.**
20.	The first Joint Commanders Conference under the theme **'Strong and**

	Secure India: Transformation of Armed Forces' is being held in Lucknow
21.	The Vedic 3D Museum will be established in – **Varanasi, Uttar Pradesh**
22.	Brendon McCullum has been appointed as the head coach of – **England's ODI and T20 team.**
23.	Aparna Yadav and Charu Chaudhary have been appointed as the – **Vice Presidents of the Uttar Pradesh Women Commission.**
24.	Where did President Draupadi Murmu inaugurate Vishwashanti Buddha Vihar- **Maharashtra**
25.	Which country has made the highest powerplay total in T20I cricket history- **Australia**
26.	With which country has India recently partnered for the semiconductor sector- **Singapore**
27.	Who is the oldest Indian to swim across the English Channel alone- **Siddharth Agarwal**
28.	Which award did Indian club thrower Dharambir win at Paris 2024 Paralympics- **Gold**
29.	Uttar Pradesh Chief Minister Yogi Adityanath has announced to build how many football stadiums in the state **- 18**
30.	The government has set a target of producing how many million tonnes of domestic steel by the year 2034- **500 million tonnes**
31.	Where will Prime Minister Narendra Modi inaugurate the 'Water Conservation Public Participation' initiative - **Surat (Gujarat)**
32.	Who won the gold medal in men's high jump T64 event at Paris Paralympics 2024- **Praveen Kumar**
33.	In which city did Prime Minister Shri Narendra Modi launch the 'Water Conservation Public Participation' initiative- **Surat**
34.	With whom did the Ministry of Panchayati Raj tie up with the aim of strengthening systems for social change- **UNICEF India**
35.	Which Union Minister has been included in Time Magazine's list of most influential people in AI- **Ashwini Vaishnav**
36.	Which Indian female wrestler won the gold medal in the U20 World Wrestling Championship- **Jyoti Berwal**
37.	Kapil Parmar has become the first Indian athlete to win a Paralympic medal in which sport- **Judo**
38.	Recently which state government announced 33 percent reservation for women in police force- **Rajasthan**
39.	Who won the gold medal in women's long jump in the National Open Athletics Championship- **Ancy Sojan**
40.	Who will represent India and address the United Nations General Assembly 2024- **S. Jaishankar**
41.	Who has recently assumed the role of Prime Minister of France - **Michel Barnier**

42.	When is International Literacy Day observed annually- **8th September**
43.	Which country is hosting the Asian Hockey Champions Trophy - **China**
44.	Who won the Men's Singles title at the US Open 2024 Championship - **Jannik Sinner**
45.	Who has been appointed as India's new Finance Secretary - **Tuhin Kanta Pandey**
46.	How many medals has India won in the Paris 2024 Paralympic Games - **29**
47.	Who is the first Indian elected President of the Olympic Council of Asia- **Randhir Singh**
48.	Who won the Women's Singles title at the US Open 2024 Championship - **Aryna Sabalenka**
49.	In the 54th GST Council Meeting, what was the GST rate on cancer drugs reduced from 12% to - **5%**
50.	Who was recently elected as the Chairman of the Parliamentary Official Language Committee- **Amit Shah**
51.	Who chaired the inaugural Governing Board meeting of Anusandhan National Research Foundation in New Delhi- **PM Narendra Modi**
52.	Who have been made the Indian flag bearers for the closing ceremony of Paris Paralympics 2024- **Harvinder Singh and Preeti Pal**
53.	Which country will host the 2nd Asia Pacific Ministerial Conference on Civil Aviation- **India**
54.	In which city did the All India Institute of Medical Sciences (AIIMS) inaugurate a Tobacco Cessation Clinic (TCC)- **New Delhi**
55.	Tata Advanced Systems Limited has signed an agreement with whom for the C-130J Super Hercules program in India- **Lockheed Martin**
56.	Recently Arun Goyal was appointed as the next Ambassador of India to which country- **Croatia**
57.	In which state India's first center for the conservation of Asian King Vulture has been started- **Uttar Pradesh**
58.	Where is the Commonwealth Chess Championship 2024 being organized- **Sri Lanka**
59.	Who has been recently appointed as the non-executive chairman of ONDC- **RS Sharma**
60.	How many people were honored with the National Florence Nightingale Award by President Draupadi Murmu- **15**
61.	In which state did PM Modi inaugurate Semicon India 2024- **Uttar Pradesh**
62.	Recently RBI has imposed fine on which two banks for non-compliance- **Axis Bank and HDFC**
63.	When is the United Nations International South-South Cooperation Day celebrated- **12 September**
64.	Where is Global Bio India 2024 being organized- **New Delhi**

65.	How many crore rupees have been provisioned by the Union Cabinet under the PM e-Drive scheme- **10,900 crores**
66.	Which country recently took seat as a member country of the United Nations in the 79th General Assembly session- **Palestine**
67.	The Government of India has approved health insurance of how many lakh rupees for senior citizens - **5 lakh**
68.	In which state it has been recently announced to establish a tribal university- **Maharashtra**
69.	When is National Hindi Day celebrated every year- **14 September**
70.	Where will the All India Official Language Conference 2024 be organized- **New Delhi**
71.	The Ministry of External Affairs has recently appointed R Ravindra as the next Ambassador of India to which country- **Iceland**
72.	Which app was recently launched by the Union Fisheries Minister- **'Rangin Machli'**
73.	Which Union Minister launched a web portal related to special Swachh Bharat Abhiyan 4.0- **Dr. Jitendra Singh**
74.	Joint military exercise 'Al Najah' will be held between India and which country- **Oman**
75.	When is World Hindi Day celebrated every year- **10 January**
76.	Recently, the immediate dissolution of the Legislative Assembly of which state has been announced- **Haryana**
77.	In which state was the country's first Namo Bharat Rapid Rail inaugurated- **Gujarat**
78.	Who is the first Pakistani woman to become an international cricket umpire- **Salima Imtiaz**
79.	When is World Ozone Day celebrated every year- **16 September**
80.	Cricketer Dunith Wellage has been named ICC Men's Player of the Month for August 2024. He is a player of which team- **Sri Lanka**
81.	Who won the Women's ICC Player of the Month award for August 2024- **Harshita Samarawickrama**
82.	The country's first Namo Bharat Rapid Rail has been run between which two cities- **Bhuj and Ahmedabad**
83.	Which city has emerged as the biggest tourist center of Uttar Pradesh- **Ayodhya**
84.	In which state did PM Modi launch the Subhadra Yojana- **Odisha**
85.	Who was recently appointed as the Director General of Sashastra Seema Bal- **Amrit Mohan Prasad**
86.	Who has become the new Chief Minister of Delhi- **Atishi Marlena**
87.	Which Indian won the gold medal in the men's 10 meter air pistol event at the Topgun Cup- **Anmol Jain**
88.	On which ship will two women officers of the Indian Navy set out on a mission to circumnavigate the world- **INSV Tarini**

89.	How much amount will be given to women annually under Odisha government's Subhadra Yojana- **10 thousand rupees**
90.	Which two officers of the Indian Navy will circumnavigate the world on INSVS Tarini- Lieutenant Commander **Rupa A. and Lieutenant Commander Dilna K.**
91.	'One Nation-One Election' has been done on the recommendation of which committee- **Ram Nath Kovind**
92.	Recently which Union Minister launched 'Bhaskar' portal- **Piyush Goyal**
93.	Who recently launched the NPS Vatsalya scheme- **Nirmala Sitharaman**
94.	Who is the first female fighter pilot to join the elite 18 'Flying Bullets' squadron of the Indian Air Force- **Mohana Singh**
95.	Who has been appointed as the new country manager of Amazon India recently- **Sameer Kumar**
96.	Where is the third World Food India 2024 being organized- **New Delhi**
97.	How much amount has been allocated by the Centre for relief and rehabilitation of people affected by natural disasters- **12,554 crores**
98.	Recently the Ministry of Shipping has appointed whom as its brand ambassador- **Manu Bhaker**
99.	Who has been appointed as the new Police Commissioner of Kolkata- **Manoj Kumar Verma**
100.	How many crores of rupees has been allocated by the Union Cabinet for Chandrayaan-4 mission- **2,104.06 Crores**
101.	Who was recently appointed as the new Director General of Narcotics Control Bureau- **Anurag Garg**
102.	How much amount has been allocated by the government for PM-Asha scheme to provide better prices to farmers- **35,000 Crores**
103.	Who addressed the inaugural session of the Global Food Regulators Summit 2024- **Health Minister JP Nadda**
104.	Who won the Miss India Worldwide 2024 title- **Dhruvi Patel**
105.	Which medal did Dhanush Loganathan of India win in the Junior World Weightlifting Championship 2024 – **Bronze**
106.	The Uttar Pradesh government has announced to set up how many hi-tech nurseries in the state- **73**
107.	Who took over as the Chairman of Maharashtra Real Estate Regulatory Authority- **Manoj Saunik**
108.	How many crores of rupees have been allocated for the Prime Minister's Tribal Advanced Village Campaign Scheme - **79,156 crores**
109.	Where will the Commonwealth Games 2026 be held- **Glasgow**
110.	Where is the Global Food Regulators Summit 2024 being organized- **New Delhi**
111.	Where is the Junior World Weightlifting Championship 2024 being organized- **Leon, Spain**
112.	Who has been appointed as the head of Sardar Vallabhbhai Patel National

	Police Academy located in Hyderabad- **Amit Garg**
113.	Which film was chosen as India's official entry in Oscars 2025- **'Laapataa Ladies'**
114.	Which medal did India win in the 45th FIDE Chess Olympiad- **Gold**
115.	Where will the IIFA Awards be held in the year 2025- **Jaipur**
116.	Who has been elected as the new President of Sri Lanka- **Anura Kumara Dissanayake**
117.	Who has been recently appointed as the new director of NCRB- **Alok Ranjan**
118.	Which actor was recognized as the most prolific actor in the Indian film industry by Guinness World Records- **Chiranjeevi**
119.	ADB has approved water supply schemes worth how many crores for 12 cities of Tripura- **530 crores**
120.	Which is the new airline of India which has got approval from the Aviation Ministry- **Shankh Air**
121.	In which city did Defense Minister Rajnath Singh recently inaugurate Sainik School- **Jaipur**
122.	Who inaugurated the 16th Assembly of the Asian Organization of Supreme Audit Institutions (ASOSAI) on September 24, 2024- **President Draupadi Murmu**
123.	Who was recently appointed the commissioner of the US National Cricket League- **Aaron Lorgat**
124.	Nagar Van Yojana, which was in the news recently, has been started by which ministry- **Ministry of Environment, Forest and Climate Change**
125.	India has recently announced the opening of new consulates in which two US cities- **Boston and Los Angeles**
126.	Which is the first scheduled airline of Uttar Pradesh, which got approval from the Aviation Ministry- **Shankh Air**
127.	SEBI imposed a fine of how many crores on Jai Anmol Ambani in the Reliance Home Finance case- **1 crore**
128.	What is the rank of India in the recently released Asia Power Index 2024- **Third**
129.	Recently which airport has been named after Jagadguru Sant Tukaram Maharaj- **Pune Airport**
130.	Which state has recently given the status of special tribal group to the Mankidiya community- **Odisha**
131.	When is World Pharmacist Day celebrated every year- **25 September**
132.	Who inaugurated the 41st Indian Coast Guard (ICG) Commanders' Conference- **Rajnath Singh**
133.	Which Union Minister recently inaugurated CSIRT-Power- **Manohar Lal Khattar**
134.	When is World Lung Day celebrated every year- **25 September**
135.	Who won the men's doubles title of Hangzhou Open 2024- **Jeevan**

	Nedunchezhiyan and Vijay Sundar Prashanth
136.	Justice Suresh Kumar Kait has recently become the Chief Justice of which state's High Court – **Madhya Pradesh**
137.	Who has recently been appointed as the next Vice Chief of the Air Force **– S.P. Dharkar**
138.	Who has taken the oath as the Chief Justice of Jharkhand High Court – **M.S. Ramachandra Rao**
139.	Which bank has launched a co-branded travel debit card in partnership with EaseMyTrip – **Bank of Baroda**
140.	Which central minister has launched the web portal "Paridhi 24x25" and the AI Taxonomy e-book – **Giriraj Singh**
141.	Who recently launched the Param Rudra Supercomputer**- PM Narendra Modi**
142.	How many airlines has travel company MakeMyTrip partnered with to promote business class travel? – **10**
143.	Who inaugurated the 5G O-RAN Testing Lab? – **Jyotiraditya M. Scindia**
144.	Shigeru Ishiba has been chosen as the next Prime Minister of which country – **Japan**
145.	In which cities has the Param Rudra Supercomputer been launched? – **Pune, Delhi, and Kolkata**
146.	B. Vanlalvawna was recently appointed as the Indian ambassador to which country? – **Cambodia**
147.	Which cricketer has recently announced retirement from all formats of cricket? – **Dwayne Bravo**
148.	Which state tops the Urban Governance Index – **Kerala**

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.

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	